

## Module 2c (Northern Ireland) Week Three

### Witnesses

- **Robin Swann** (Minister for Health, Northern Ireland)
- **Professors Karl O'Connor and Ann- Marie Gray** (Experts, Ulster University)
- **Michelle O'Neill** (former Deputy First Minister and current First Minister, Northern Ireland)
- **Baroness Arlene Foster** (former First Minister, Northern Ireland)
- **Former Assistant Chief Constable Alan Todd** (Police Service Northern Ireland)
- **Sue Gray** (former Permanent Secretary, Department of Finance, Northern Ireland)
- *Closing Statements by Core Participants.*

### **Robin Swann (Minister for Health, Northern Ireland)**

Became the Minister of Health on 11 January 2020. It covers both health and social care, so it extends into the oversight and responsibility for care homes as well as the provision of ordinary adult social care services and children's social care services as well.

There is a duty to bring matters to the attention of the Executive Committee – applies to anything that cuts across the responsibilities of two or more ministers. The duty extends to anything which is significant or controversial.

Sinn Féin kept an eye on what was happening in the Republic of Ireland and the DUP were focused on what was happening in Westminster. Whereas being bound by neither of those, I believe I was able to take a direction which best suited the response in Northern Ireland.

One of my biggest frustrations was the leaks of Executive papers. I felt it was deliberate and was done to influence what the conversation would be in the Executive. The leaks meant there was already a narrative established in the media to either support or mostly to undermine recommendations that were coming to the Executive. Before those conversations could be had across the five parties, there was already pre-conceived positioning going into the Executive meeting.

Our integrated approach to health and social care meant that we could move staff into care homes, and it also enabled us to get PPE into care homes more quickly as delivery processes were more streamlined.

The Executive was invited to the COBR and they determined I was the person who should attend. In hindsight I think it would have been helpful if FM and dFM had attended as well. The Dept of Health was the lead department for the health response, it did not lead the Executive response. A lead department is able to identify and manage the risks in its area of our responsibility. I don't think we would have had the expertise to say to other departments: these are the risks you need to be considering.

PHA gave the CMO reassurances they were ready for what was required of them. I wasn't aware at the time that there were concerns about PHAs capabilities.

17 Feb the CMO requested that the surge plans were provided to him by 13 March. When those surge plans were provided to the Department of Health, they were deficient and had to be sent for much greater detailed consideration. At that point it was me and the CMO at the COBR meeting but the papers were being shared with through CCPBNI so they were picking up the civil contingencies response. My assumption was that departmental planning was going on. Maybe it was an assumption too far. I think if NICCMA had been stood up earlier, it may have raised the red flag to those other departments that hadn't yet taken up the the baton.

CCPB NI or TEO officials could possibly have used their own initiatives for when NICCMA could be stood up. We were not saying don't stand it up. On reflection I do think we could have possibly moved earlier to alert other departments to other Executive bodies.

Once the genome became available, our virology lab in Belfast was actually one of the first 13 sites across the UK that was able to test. We already had a division within our PHA for testing and tracing although it was not large. Unfortunately, the PHA wasn't in a robust enough situation to scale up at pace as was necessary. There were some challenges and deficiencies within the PHA in regard to that testing capability, which weren't brought to my attention at that point in time.

It was only at 10 March that there was a realisation that Covid was something we would have to respond to it. If I hadn't been sounding the alarm bells early enough with that level of seriousness, and other Executive colleagues weren't picking up on the briefings that were being given, if that was a failing on my behalf, I'm perfectly willing to accept that as a failure on my behalf. If there's a failure on my part to alert other ministers as to what was coming down the line, I'll accept that.

It was only on 19 March that I realised the numbers of people that might potentially lose their lives in Northern Ireland. It was the briefing at COBR where they set out, an 80% infection rate and a 1% mortality rate. I did the calculations and that is when I realised the number they were talking about. Until then we'd been talking about percentages, but when I saw that numbers that really took it to another level.

We did have challenges with PPE both as a department and as a nation. The market we purchased our PPE from - we were at the very end of a very long supply chain, ordering what was comparatively small amounts. That's why the ability to work at a UK level was important to us.

I do accept that not enough was done in the weeks leading up to the lockdown to look at the impacts of it and I regret that. The intensity and duration of that lockdown was not something that had been contemplated or planned for.

I agree that there wasn't anyone coordinating the response. There should have been. That should have been done by the Executive. There were departments coming together and ministers working together but there was always those who had a different opinion or a different approach.

The cross-community vote is a tool that is available to be used in a Northern Ireland Executive meeting. Whether it's legally right to use, I question whether it was morally right to use at that point in time. My

personal perception of a cross-community vote is to support one community's rights or identity over another. The fact that I, as a unionist minister, was bringing forward a recommendation that was then subject to a cross-community vote from another Unionist party, steps outside the rationale as to what that mechanism was intended for.

**Professors Karl O'Connor and Ann- Marie Gray (Experts, Ulster University)**

I was disappointed to see the lack of confidentiality in and respect for confidentiality in that room, to allow ministers to have an open and frank discussion about serious policy consequences. It is detrimental to good governance and the public perception.

With the benefit of hindsight, it would have been prudent to step up the CCA much earlier. While it would have taken people away from other very important tasks, be reminded at this time our Civil Service has already been pared down due to underinvestment for a number of years, so is only working on what it is statutorily required to do. To pull a resource from somewhere is going to mean that we are going to stop doing something, and it's very difficult to stop doing something that you're obliged to do by law. So, this redeployment of staff wouldn't have been an easy decision however if we were able to do it for preparing for EU exit, surely, we would have been able to do it in preparation for a pandemic.

There was obviously a clear frustration among our very experienced civil servants at the outset of the pandemic that this was not being taken seriously politically.

We would have expected the lead to have been taken in the early stage by the Department of Health. What we might then have expected to see was a more co-ordinated response as the realisation struck that it wasn't going to be short term, that it was going to involve education, it was going to involve issues around children's services, issues around people's disability, domestic abuse and so on, and we didn't see that scaling up of a co-ordinated response for quite some time.

**Michelle O'Neill (former Deputy First Minister and current First Minister, Northern Ireland)**

**Role**

- Minister for Health between May 2016 and March 2017.
- Deputy First Minister from 11 January to 4 February 2022.
- Vice president of the Sinn Féin party – Covers both ROI and NI.
- Joint head of government in Northern Ireland.

The backdrop to the Assembly and Executive being restored was public services being decimated with ten years of austerity cuts, the health service was on its knees, we didn't have functioning government for three years prior to that. Ministers were just back around the Executive table on 11 January, just a short number of weeks before the pandemic really took hold.

People had made up their own mind that the Boris Johnson government approach was too slow, it was incongruous to what the WHO were advocating, and at that very same time we had a situation where school closures had happened in the South, and parents couldn't understand what the difference was. Parents couldn't fathom why schools were closed two minutes up the road from the school that their kids go to. The public confidence in our ability to lead from that very early time was being diminished and I was trying to recapture that. Is it ideal to do it outside of the Executive? No, it's not. I tried to change the position from within, unfortunately that didn't happen. However, within a matter of two days the British Government changed their approach and the CMO then changed the advice here. Nothing had changed from when I advocated that position. I do believe that my position that Boris Johnson and his government were too slow to act at the start of the pandemic is vindicated.

I know that my actions in attending the funeral compounded the hurt and that horrible experience that those families have went through. I also know that my actions also angered the families, and for that I am truly sorry, I am sorry for going and I'm sorry for the hurt that was caused after that. I didn't realise at the time the hurt and anger it would cause but I ought to have. I do accept that I in some way damaged our Executive relations with colleagues. I also accept wholeheartedly that I damaged the public health messaging, and I had work to do to regain that. I worked hard to regain that trust and confidence and to lead us through the pandemic.

I believe it was for Health to activate NICCMA. All advice was very clear that Health was the lead department, and they were leading the charge in our response. It's very clear that we were being resisted in setting up NICCMA because health was the lead department. Perhaps they felt we were overreaching or interfering in their area of work. The ability to stand up NICCMA earlier perhaps could have been beneficial in other departments being able to come together in a more unified way earlier on. We could have stood up NICCMA, but the Dept of Health was lead and was advising against it.

There needs to be an ability to step in and change that structure in an emergency at least temporarily for the period of a pandemic or another unpredicted circumstance. The role of First Minister and deputy First Minister is a co-ordinating role for the Executive, the problem is that you cannot direct other ministers to do things, even the head of the Civil Service can't direct other permanent secretaries to do things. That makes a response quite difficult in terms of governance.

The health minister had a hugely difficult job. I did accuse him of slavishly following Boris Johnson. But it's also incumbent upon me as a leader, when something's not right to call it out. That's not politics, that's the difference between right and wrong and I did believe the Department of Health were following a Boris Johnson response that was too slow to act, and I still stand over that position. I did feel that I couldn't stay quiet on something that was so important.

On NICCMA, it was very clear that we were being pushed back in terms of the health wanted to maintain their lead role and perhaps maybe they have good reasons for why they thought that was appropriate at that time. Yes, I concede that perhaps we could have insisted that it was stood up, but we would have done so against the advice.

The Irish Govt making the decision to close schools precipitated a whole new set of circumstances. They took that decision but didn't tell us and that wasn't good enough. I didn't have access to what advice they were receiving in Dublin, but I couldn't understand why their advice would be so different around something so fundamental as school closure. That fed into the confusion and put us all in a very difficult spot because it meant that the public position was very different to the Executive position, but thankfully we changed it.

I accept NI was woefully underprepared for going into lockdown. That was a for a number of reasons, particularly austerity and what that meant for public services and the state of readiness in the health system and civil contingencies. I think any objective assessment would say that the system itself wasn't ready to respond to the pandemic. Combined with the absence of leadership for 3 years, the state of readiness in February was not where it should be.

The leaks were very frustrating and made our job more difficult. It was forcing people to take positions before they were properly informed. It is a breach of the ministerial code.

Care homes are one of those areas that we must reflect on. I know that I was concerned from very early on in terms of the discharge of people from hospital without being tested and raised these issues with the Executive. Operational responsibility for care homes fell within the Department of Health. Ministers were repeatedly raising the issue at Executive meetings and were offering up solutions to the problems with testing as there were community and voluntary groups that could have assisted the PHA. Unfortunately, this was an area that was not good enough in those early days and was not fit for purpose and did not serve residents of care homes well.

My device was wiped when I handed it back to the Government so that it could be redistributed to someone else. I accept that there's a duty to commit official discussions about business matters to the record. I accept that I should have kept my additional exchanges, in particular with Arlene, and anything else that was relevant. I thought that I did retain everything but clearly I didn't. I'm satisfied that the vast majority of everything that I communicated was on the device and hopefully on the official record, but I concede that my understanding of the WhatsApp and informal communication is not where it should have been.

#### **Baroness Arlene Foster (former First Minister, Northern Ireland)**

Role:

- Leader of the Democratic Unionist party between 2015 and 2021.
- First Minister of Northern Ireland between 2016 and January 2017 and 11 January 2020 and 14 June 2021.
- Joint head of government with Michelle O'Neill in Northern Ireland as of January 2020.

I gave the leadership that I felt was needed at that time. I took those decisions with the best of intentions, to protect the people of Northern Ireland.

By September/October, people were not abiding by the regulations. People were tired of the regulations. People looked to the example unfortunately from some of the Sinn Féin ministers breaching the regulations in July. So we had reached a point where people were not listening to Executive Ministers as well as they had listened back in March/April time.

By November relationships were very poor and that was why the cross-community vote was triggered.

Early in the year our Chief Medical Officer was saying that the peak was around 14 weeks away. So wrongly we felt that we had time, but we didn't have time, and that's a source of great regret. I accept responsibility, I was First Minister at the time. I do accept that I had joint responsibility with other ministers for the oversight of what happened, for example, in care homes in Northern Ireland. I think the concessions made by Michelle O'Neil that there was no real oversight on the part of the Executive Committee until around mid-March in respect of the response to the pandemic is a fair comment.

With hindsight, we probably should have locked down earlier. Given that this was a novel threat, and the information and modelling was developing all the time, a more precautionary principle might have avoided many deaths.

I accept that we had more knowledge by the time of the second wave. I accept that more people died in NI in the second wave. I accept that I jointly with others bear some responsibility for that outcome.

We can't direct ministers in other departments. We have to try to find common ground where we can and move forward. I really believe I had tried to do that with the Department of Health, to try to get as much information as we needed. With hindsight, we didn't have as much information as we should have had, and I regret that deeply.

I do agree that the protocol doesn't in any way inhibit me or the deputy First Minister or the Executive Office from activating civil contingencies arrangements, but I don't think the protocol reflects the realities of a mandatory coalition. I think that is something that needs to be revisited to reflect those realities.

In relation to the preparedness of the Northern Ireland system and its emergency procedures being 18 months behind the rest of the UK, that wasn't identified to us in our first-day briefing or brought to our attention. I do accept that there should have been more scrutiny at that time, but this is the explanation for why that didn't happen, but certainly not an excuse. I didn't know about the state of preparedness in terms of civil contingencies. I should have known, and it should have been brought to me by the civil servants. If there were particular issues around resourcing, I don't think it's unreasonable to expect those to have been brought to us.

As First Minister I have no power to demand that Ministers provide me with their departments plans. I can request them but that is not the way it works in practice. It is clear from the minutes that when we did try to coordinate a more central role we were pushed back because each department has their own remit and the minister is the lead of that. Is the mandatory coalition an efficient system for governance? No, it's not, but it's the system that was given to us to by the Belfast agreement.

The Dept of Health was saying it was too soon to set up the civil contingencies because it was going to take people away from planning. We were waiting for Dept of Health to say when the optimum moment to set it up was. Health was the lead department and therefore we were waiting to hear from them.

The pandemic was principally a health emergency. It stopped being principally a health emergency when NPIs were introduced around 16-18<sup>th</sup> March as it was having wider societal impacts.

We were heavily reliant, probably too heavily reliant on briefings from the Minister of Health in relation to what was happening.

When testing was stopped I did ask about why that was. Testing was under the remit of PHA and when it was paused, we asked why.

**\*\*\*AF refuses to confirm that she asked no questions about testing capacity before the testing was stopped.\*\*\***

12<sup>th</sup> March ROI closes schools and WHO announced the pandemic. The Civil Contingency arrangements were not stood up at that point because SAGE was not advising. I totally reject the idea that we were sleep-walking into the pandemic. SAGE had indicated that we should trigger interventions at "the right time". The CCG had met on 20 February, albeit it hadn't met again, and NICCMA was stood up on 16 March.

On 16<sup>th</sup> March we voted to keep schools open. The Minister of Education had indicated that he needed time to plan the closure of schools in terms of vulnerable children, making sure that some schools were open for the children of key workers, so therefore the decision was taken not to close schools at that time. It was agreed that schools would close when the CMO advised it.

It's absolutely the case that there was no planning for a lockdown in Northern Ireland, but in GB either. We did not consider the consequences of a lockdown. We were so frightened about the prospect of so many people losing their lives that we didn't give it the due consideration that it probably should have been given. I do accept that Northern Ireland was woefully unprepared for going into a lockdown.

Bobby Storey funeral: It was a huge disappointment and caused massive damage to the credibility of the Executive, to public messaging, and was very hurtful to so many people in Northern Ireland who had stuck by what were very stringent rules around funerals and wakes in particular.

21 September SAGE had noted that incidence was increasing across the country in all age groups and the effect of opening schools at that time had yet to be seen in the transmission rates. SAGE proposed a menu of options, I think the first of those was a short circuit-breaker and then there were others of a lesser nature. The suggestion was certain sectors were not allowed to open, including close contact services and hospitality.

7 October the Chief Scientific Advisor said that cases were getting worse and that medical services were in danger of being overwhelmed. Hospital capacity was more of an issue in the second wave because we were also dealing with normal winter pressures.

There was a concern that a lot of the transmission was happening at house parties, and that instead of looking at hospitality venues we should be concentrating on enforcement in house parties, and I know that there was a reluctance from the police to intervene in the private sphere. People had a sense of relief in the summer, and that was continuing in terms of not complying with the newer restrictions and regulations.

A minister did say that transmission rates were higher in Nationalist areas. It is not a view I shared. I did not comment on it publicly because I did not want to give it more oxygen. I did not follow the same approach when it came to the Bobby Storey funeral because that was a moment of maximum risk which I had to manage both internally and externally.

The health minister and his team were looking for a six-week circuit-breaker. I and colleagues felt, given everything else that was going on, particularly with people's livelihoods and their wellbeing, both physical and mental, that six weeks was a very long period of time. We discussed whether we could find a compromise position, and we were able to find a compromise position around four weeks.

9<sup>th</sup> November Exec Comm advised the restrictions should be extended for another 2 weeks.

It became clear that Sinn Fein was not going to support keeping the close contact sector open which I felt was needed to recognise the low-paid workers in that sector who needed to keep an income. As the Deputy First Minister was going to be the Chair of the meeting, she had the agency to ask for a vote rather than look for a consensus. We decided if they were going to push this instead of looking for consensus we should proceed with a cross-community vote because it was a key decision.

I agree the CMO was clear in his advice that a 2 week circuit breaker was needed but we wouldn't just look at the health advice, we would take into consideration other issues as well, and that's what we were trying to do.

I really regret that we couldn't find consensus and we were forced into that position. It certainly wasn't a good look for the Executive, and I regret that it had to be used. I accept that damage was done to public confidence using that vote.

#### **Former Assistant Chief Constable Alan Todd (Police Service Northern Ireland)**

Policing doesn't stop just because there's a pandemic. How we continue to do that with the projected absences was a difficulty. I think the implications for policing started to crystallise for me when I saw the Italian police patrolling and getting people to stay in their home. There wasn't a sufficient level of readiness.

Regulations came at short notice, they came without guidance, there were no powers of arrest, there had seemed to be little consideration given. There was no guidance which would have shown due regard to European Convention considerations, there was no guidance to point the police in terms of section 75 Northern Ireland Act considerations.

None of that was available at the time that lockdown went live, and that places police in a difficult position.

The Storey funeral was wrong. The police service took a lot of criticism. It made life very difficult for my officers. It shifted the number of people who were seeking not to comply with the regulations - their case had strengthened. It undermined confidence in the very people who were making the regulations and that was never going to make it easier for the body charging with enforcing.

#### **Sue Gray (former Permanent Secretary, Department of Finance, Northern Ireland)**

Collective Responsibility operates very differently in Northern Ireland than it does in Westminster. In the UK Government, when Ministers go to meetings, they have an opportunity to be free and frank in those Cabinet discussions, but those discussions stay private and whatever decisions are taken, you stand behind them. In Northern Ireland, although you have a Ministerial Code, it doesn't talk about collective responsibility. Part of the Ministerial Code is to support and to act in accordance with all decisions of the Executive Committee. That would tend to suggest that after a decision is made there is some semblance of collective responsibility for those decisions. It doesn't appear that there is any equivalent sense of collective responsibility before a decision has been taken, so if ministers want to express a different view in public, they're free to do so.

I think with the right culture it is possible to have greater collaboration across departments.

The Govt was reactive rather than proactive – the ministers were just walking through the door when all this was happening and still hadn't built working relationships. It did get better over time.

In the Westminster model the Civil Contingencies Secretariat is hugely influential. It sits in the Cabinet Office, and it reports directly to the Cabinet Secretary and therefore it's got authority. It is a hugely serious body that can be stood up immediately, and it is recognised for what it is. In the Northern Ireland model, I don't think the Executive Office has a similar power or function as the Cabinet Office equivalent. In future there should be a way of making sure it gets triggered.

#### **Closing Statements by Core Participants**

##### **Brenda Campbell KC obo NI CBFFJ**

Every omission or oversight or failure represents a fork in the road, a missed opportunity that if it had not been made might mean the person they loved and lost would still be here or might mean that families would have been comforting loved ones in their death, or they would have been given the sendoff that they so deserved and it would certainly mean that the grieving process would have been a great deal easier. These past three weeks have been littered with oversights, omissions and failings.

The failure to properly consider in advance of, or during the pandemic, the need to protect our older people and those who were medically vulnerable, or indeed at any stage to consider the unequal impact of NPIs and other measures, the reckless policy of hospital discharge, the attendance of ministers at the funeral of Bobby Storey, the consequence of that attendance upon public messaging and public confidence, delays in decision-making in autumn 2020 unquestionably leading to that fatal spike in

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January 2021, the egregious use of the cross-community vote, the leaks and the wiping of phones. They were caught unaware and hopelessly ill prepared.

The experts said it was obvious at an early stage that a cross-government a response was required. Yet it was to be almost a full eight weeks before that realisation was reached in Stormont. That was precious time that we couldn't afford to lose.

The protestations of the First Minister and deputy First Minister that they were out of the loop, that the political arrangements militated against them getting involved must be viewed against the reality that they did not try to get involved. It is equally true that Minister Swann and Mr Pengelly held their grip too tightly for too long. Why didn't they, as the letter of 6 February advised, trigger central crisis arrangements when Covid arrived on our shores?

On 16 March in the Executive meeting, it was noted by Baroness Foster that schools would close "when the CMO advised it". A seismic decision delegated to the CMO. It appears from the message exchange that Mr Edwin Poots (former Minister for Agriculture, Environment and Rural Affairs) was lobbying the CMO for concerts to go ahead. That a senior minister in the Executive Office was turning not to his Executive colleagues but to the CMO for decisions of that nature is staggering, and it lays bare a problem in our power structure.

Exactly a week after Mr Poots' plea to ensure those concerts would proceed, on 30 June Sinn Féin ministers attended the Bobby Storey funeral. The sight of that funeral played on TV screens was breathtakingly insensitive. It caused hurt, anger and outrage to the bereaved.

When the time came in autumn to make Northern Ireland specific decisions, supported by an enhanced understanding of this virus as well as Northern Ireland specific data and recommendations, the Executive got it so very, very wrong. The deliberate and orchestrated deployment of a cross-community vote by the DUP in an Executive meeting that was not going their way was an egregious abuse of power. It's impossible to divorce that unedifying debacle in November 2020 from the chaos in the run-up to Christmas and from that shocking spike in deaths in early 2021.

Older people and the medically vulnerable were failed. The discharge of hundreds of people from hospitals to their own homes, to care homes, to our communities, was carried out, without meaningful or effective pre-planning on how best to protect older people or those who rely on residential or domiciliary care.

#### **Danny Friedman KC obo DPO**

Disabled people were largely invisible during Covid decision-making and their voices unheard. Oversight of disabled people and other marginalised groups was a key failing. The establishment of the Executive taskforce ought to have provided correction, but it did not. Disabled people were not mentioned at all in its moving forward strategy published in March 2021.

It is clear that the essence of the measures was paying benefits on time and setting up helplines that worked for some but not for all. The two ministers in the Department for Communities do not appear to have raised the position of disabled people in the pandemic response in at any time. There was no single officer or unit with overriding responsibility for the needs of disabled people.

### **Commissioner for Older People for Northern Ireland**

Older people make up 23% of the total population. They require not just health services but also social services. The Department of Health should have factored it into the planning and the response to the pandemic and the government should have ensured that it was properly addressed. We're here because they did not, and older people who were known to be vulnerable paid a terrible price for that failure, and their families are living with its consequences.

It was a failure of planning in the months leading up to March 2020 when it was known there would be a pandemic that time wasn't used to think about the impact that there would almost certainly be on older people.

Northern Ireland has an integrated health and social care system. That could have been an advantage, as it should have provided greater oversight, but the integration was more illusory than real and there were no tangible benefits for the patients.

The weaknesses in the structure for delivering adult social care and their implications could and should have been appreciated and factored into planning to avoid potentially disastrous outcomes for older people later on. It seems clear that didn't happen. Older people were left horribly exposed.

The explanation for why no modelling was done in Northern Ireland before the end of March was that there was insufficient data. However, the UK modelling group met before there were any confirmed Covid-19 cases.

### **Recommendations:**

- Greater significance should be given to the role of the chief social work officer,
- Developing a mechanism to better use the available experience and expertise of those in the third sector and bodies such as the Commissioner. This would have improved the government's planning and response.

