

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/2012/2023
First Statement of Martin Smith

BETWEEN:

CABINET OFFICE

Claimant

-and-

THE CHAIR OF THE UK COVID-19 INQUIRY

Defendant

-and-

MR HENRY COOK
RT HON BORIS JOHNSON

Interested Parties

WITNESS STATEMENT OF MARTIN SMITH

I, **MARTIN LLOYD SMITH**, state as follows.

1. I am a partner at Fieldfisher LLP and have been appointed by the Defendant, Baroness Heather Hallett to act as Solicitor to the UK Covid-19 Public Inquiry ("the Inquiry") in accordance with rule 2 of the Inquiry Rules 2006.
2. I have previously acted as the Solicitor to a number of statutory and non-statutory public inquiries and high profile inquests. These include the Hutton Inquiry, the inquests into the deaths of Diana Princess of Wales and Dodi Al Fayed, the Baha Mousa Public Inquiry, the inquests arising from the 7/7 London bombings, the resumed Hillsborough inquests, the Litvinenko Inquiry, the Daniel Morgan Independent Panel, the Independent Inquiry into Child Sexual Abuse, the Dyson Investigation into allegations surrounding the interview between Martin Bashir and the late Princess of Wales, and the (ongoing) Dawn Sturgess Inquiry. I have also acted for core participants and witnesses in a number of other inquests and inquiries.

3. I make this statement to provide the court with contextual information about the Inquiry and the section 21 notice issued by the Defendant which is the subject of this application.
4. References **[CB/X]** and **[DB/X]** are to page numbers in the Claimant's permission bundle and the Defendant's bundle filed alongside the Detailed Grounds of Defence respectively.

Background

5. The Defendant's appointment as Chair of the Inquiry was announced by the then Prime Minister, the Rt Hon Boris Johnson on 15 December 2021. There followed a period of public consultation on draft Terms of Reference undertaken by the Inquiry, during which approximately 20,000 people contributed their views. The Defendant proposed various changes to the draft Terms of Reference in light of responses received. On 28 June 2022, Mr Johnson wrote to the Defendant formally establishing the Inquiry and accepting all the changes she had proposed. The Inquiry's Terms of Reference are set out at tab 27 of the Claimant's bundle (pages 203 - 27).
6. On 21 July 2022, the Defendant made a statement formally opening the Inquiry (see **DB/91-99**). The Defendant set out her proposed approach to the Inquiry and the various ways in which she intended to fulfil its Terms of Reference. This included conducting a 'listening exercise' which would allow members of the public to share their experience with the Inquiry, the appointment of scientific and other experts, and commissioning research. She set out a modular approach to the Inquiry's work, with separate teams based across the UK to investigate each module. The module teams would obtain and analyse evidence, make disclosure of documents to core participants, and prepare for public hearings working broadly in parallel. The Defendant said she would then conduct public hearings for each module, one after the other. Modules would be announced in sequence, with those who wished to become core participants making applications on a module by module basis. The Defendant explained that she considered that dividing the Inquiry's work in this way would make each module as manageable as possible and allow the Inquiry to be conducted as efficiently as possible.
7. The first module, into the UK's resilience and preparedness for the pandemic, was formally opened on the same date. Further modules were announced and opened subsequently, covering a range of topics including the impact of the pandemic on healthcare systems as well as vaccines and therapeutics. Module 2 was opened on 31 August 2022, and concerns core UK political and administrative decision-making during the pandemic. The Provisional Scope of Module 2 was published on the Inquiry's website in August 2022 [**DB/100-103**]. It is the work of Module 2 which gives rise to this application for permission to apply for judicial review, although the issue which it raises affects the whole of the Inquiry's work and its dealings with all those supplying evidence to it ('material providers'). Modules 2A, 2B and 2C are closely

related to Module 2 and concern core political and administrative decision-making during the pandemic in Scotland, Wales and Northern Ireland respectively.

8. The Module 2 Inquiry Legal Team (the “ILT”) has subsequently produced and circulated to core participants a draft list of issues which sets out in more detail the matters which are to be considered within the investigation [DB/182-188]. This includes the following:
 - a. Did the UK central government structures and processes at Prime Minister, Cabinet, Cabinet Office and Ministerial levels work effectively? Who made the key strategic decisions? (paragraph 1(a)(iii))
 - b. Were key decisions taken in a timely way and after a proper process of advice/consultation? (paragraph (1)(a)(iii))
 - c. To what extent did informal communication (such as WhatsApp messaging) contribute to key strategic decision-making? Were the mechanisms for considering and recording key decisions adequate or appropriate? (paragraph 1(a)(iv))

9. This will be further refined following consultation with core participants and once finalised, published on the Inquiry’s website in advance of the Module 2 oral evidence hearings which are due to commence on 2 October 2023. As I explain in more detail below, whilst the Provisional Scope document and the List of Issues provide core participants and the public with a more detailed understanding of the lines of investigation that the Inquiry intends to pursue, it would be wrong to regard any of these documents (or all of them taken together) as containing an exhaustive or final statement of the work of this module. The position is far more fluid and dynamic than that. Throughout the life of the module, and in particular in preparation for oral hearings, the Chair and the ILT will constantly reassess the scope of the module, with certain lines of investigation becoming more or less prominent, some being removed, some being considered for adoption and others being added. Much of this dynamic change takes place during and in consequence of the process of receiving and analysing documents. A great deal of this process is never reflected in documents made available either to core participants or to the public.

Obtaining evidence

10. An inquiry is an investigative and inquisitorial process which usually starts with little more than its Terms of Reference to guide its work. It must research and scope its work, making refinements as it progresses. To obtain evidence, this Inquiry makes formal requests for documents and witness statements under rule 9 of the Inquiry Rules 2006.

11. The Inquiry formulates detailed requests under rule 9, which it issues initially in draft form. These requests set out in some detail the questions to be addressed in the draft witness statement, and the categories of material to be provided to the Inquiry. The

Inquiry issues requests for both corporate statements, for example from a Government department or corporate body, and personal witness statements. Where individual witnesses are legally represented, such requests are issued to them by name, but care of their legal representatives. In the case of requests issued to current or former government employees, it is usual (though not exclusive) practice for such witnesses to be represented by their government department with the legal support of the Government Legal Department (“GLD”). That department then adopts the role of ‘material provider’, working with the named witness to ensure materials which are responsive to the rule 9 request issued are provided to the Inquiry.

12. Within the cover letter of the rule 9 request, it is made clear that the request is being issued in draft form and that there is an opportunity for any points of clarification to be raised before the request is considered final. Such points of clarification can be raised in respect of the questions set out in the request, or the call for particular documents to be provided. If required, the Inquiry may hold discussions with the material provider in question to ensure there is clarity about the scope of the evidence which the Inquiry is truly seeking, and to filter out any extraneous material and avoid collating substantial quantities of documents which it considers irrelevant. In Module 1, the Cabinet Office initially provided a large quantity of documents numbering 40,000 which were too broadly drawn and did not respond properly to the Inquiry’s requests. The Inquiry asked for the Cabinet Office to reconsider the Inquiry’s request and identify documents that did so.
13. Where discussion of the draft request with a material provider results in any change, the Inquiry issues an amended rule 9 request for evidence in final form and the material provider works to provide the draft statement and supporting disclosure by a specified date. Once documents and statements have been delivered to the Inquiry, they are reviewed and, where considered relevant by the ILT, prepared for onward disclosure to those who have been designated (in accordance with the provisions of rule 5 of the Inquiry Rules 2006) as core participants to the module in question.
14. The obtaining of evidence is also iterative. The review and analysis of one set of documents or statements, often leads to the need to make discrete requests for additional or consequential evidence to complete a particular line of enquiry or to pursue a new one which arises from the material supplied.
15. It is usually not necessary for the Defendant to use her powers under section 21 of the Inquiries Act 2005 to compel the production of evidence because material providers respond voluntarily to the Inquiry’s rule 9 requests. Sometimes, however, a material provider requests a notice compelling production of documents, for example because it considers this necessary to provide it with a legal gateway to disclose information such as special category personal data. The Inquiry also issues section 21 notices where a material provider ignores or, as is the case with the Claimant in this case, declines to accede to the Inquiry’s request for the evidence it is seeking.

Receipt and preparation of evidence

16. Following the establishment of the Inquiry on 28 June 2022, I worked with other members of the Inquiry team to prepare various protocols and other documents which the Inquiry would need to undertake its work. On 29 July 2022 a Protocol on Documents was published [CB/208-211]. A Protocol on the Redaction of Documents [CB/212-214] and a Protocol on Applications for Restriction Orders [CB/215-217] were later formally adopted by the Defendant and published on the Inquiry's website on 18 October 2022.
17. The Protocol on the Redaction of Documents sets out the Inquiry's approach to the receipt and preparation of documents prior to disclosure to core participants. I set out the material parts below, with emphasis added:

3. The Inquiry will operate a three-stage disclosure process. First, it will make requests from Material Providers for documents **which are considered to be of potential relevance to its Terms of Reference**. The scope of each request will be set by the Inquiry's legal team and may relate to one or more of the Inquiry's modules. **It is important that the Inquiry receives documents from Material Providers in clean, unredacted form**. Any departure from this approach must be discussed with the Inquiry's legal team before materials are provided. The provision of documents must not be delayed on grounds that the Material Provider seeks redactions to the material.

4. Material providers are reminded that section 35(3) of the Inquiries Act 2005 makes it an offence intentionally to suppress or conceal a document which the Inquiry is likely to wish to obtain, or to alter or destroy such a document.

5. Second, the Inquiry legal team will review the documents to identify those which are relevant to the scope of any Module. **It is for the Inquiry legal team alone to determine relevance of any particular document. Any document which is identified as relevant will be disclosed to Core Participants**, subject to the application of redactions which will be made by the Inquiry. The Inquiry's approach to making such redactions is set out at paragraphs 12-17 below.

6. Third, before documents are disclosed to Core Participants, the Inquiry will share such documents with the Material Provider in question who will be given an opportunity to review and approve the redactions applied and identify any further redactions it seeks (the "Material Provider Review"). The Inquiry legal team will consider each request for further redactions and will either: a. agree the request for further redactions and apply them. Such documents will then be disclosed to Core Participants; or b. reject the request for further redactions. In such circumstances, the Material Provider will be given a short opportunity to apply for a Restriction Order to prevent disclosure of the information which it seeks to redact. Documents subject to such an application

will be disclosed to Core Participants with provisional redactions applied, pending the outcome of the application. Please refer to the Inquiry's Restriction Order Protocol for further information.

7. In this Protocol, any references to 'document(s)' means anything in which information of any description is recorded, whether in paper or electronic form...

18. The Protocol on the Redaction of Documents, from paragraph 12, sets out the categories of information that the ILT may redact from materials before they are disclosed to core participants. This includes the redaction of content which is:
 - a. considered to be both irrelevant to the Inquiry's Terms of Reference *and* sensitive;
 - b. constitutes personal data within the meaning of UK data protection legislation, further disclosure of which is prohibited by that legislation;
 - c. is subject to a Restriction Order made under section 19(2)(b) of the Inquiries Act 2005; or
 - d. is subject to the determination of an application for a Restriction Order made under section 19(2)(b) of the Inquiries Act 2005.

Paragraph 13 confirms that where the Inquiry decides to redact 'irrelevant and sensitive' information (category (a) above) or personal data (category (b)), it will do so without the need for any application or request. The Inquiry will decide whether any redaction is required on a case by case basis.

19. The Inquiry refers material providers to this protocol when making its requests for evidence under rule 9 of the Inquiry Rules 2006. To my knowledge, it has never received any feedback on the terms of the Protocol, let alone a challenge to its decision to adopt the Protocol.
20. The elements of the Protocol on the Redaction of Documents which are key to the current claim are (a) the requirement that material providers provide documents of potential relevance in clean unredacted form (paragraph 3) and (b) the stipulation that it is for the Inquiry team alone to determine whether a particular document is relevant (paragraph 5).
21. These are standard provisions that are consistent with the approach adopted in the protocols of other statutory public inquiries. By way of example:
 - a. Paragraphs 21 and 22 of the Undercover Policing Inquiry's Disclosure Protocol provide:

'21. Save as is provided for in the following paragraph, the Metropolitan Police Service should provide the Inquiry with all information requested by the Inquiry, and any other information it possesses and which it considers to be

relevant to the request, as soon as possible. Such information should be disclosed in unredacted form and accompanied by a list recording what is being disclosed. The only exceptions to this approach will be where: (a) there is agreement in advance between the Metropolitan Police Service and the Inquiry that the circumstances are such that it would be preferable for the material to be inspected in situ by members of the Inquiry team; (b) the material is withheld, without delay, on the grounds that it is subject to the Metropolitan Police Service's legal professional privilege in accordance with paragraph 26 below; (c) disclosure is prevented by any enactment, in which case the position shall be drawn to the attention of the Chairman; or (d) the Metropolitan Police Service otherwise objects to production of the documents in which case it will inform the Inquiry and the Chairman will consider whether to accept the objection or to issue a notice requiring production of the information pursuant to section 21 of the Act.

22. In light of the procedural protections provided for in the Restriction Protocol, the provision of information to the Inquiry must not otherwise be delayed on the grounds that the Metropolitan Police Service may seek the redaction of a document or some part of it before it is disclosed to any core participant or published' [DB/63].

- b. Paragraph 10 of the Infected Blood Inquiry's 'Statement of Approach - Anonymity and Redaction' provides that 'Documents provided to the Inquiry should be unredacted' [DB/68].
- c. Paragraphs 1 and 2 of the Independent Inquiry into Child Sexual Abuse's Protocol on the Redaction of Documents provide that 'It is important that the Inquiry sees all documents it obtains from institutions which are relevant to its work in complete form. However, there may be legal reasons why the Inquiry may need to apply redactions to documents before they are disclosed to Core Participants in any particular investigation and so to the general public via a public hearing or an investigation report. This protocol sets out the approach that will be taken by the Inquiry to the redaction of documents it receives from providers of information (POI). It is for the Inquiry to determine the relevance of any particular document and for the Inquiry to determine whether a redaction should be applied, whether or not that redaction has been requested by a [provider of information]' [DB/75].
- d. Paragraph 8 of the Post Office Horizon Inquiry's Protocol on the Disclosure of Documents [DB/82] provides '[Providers of documents], including legal representatives, should provide documents requested by the Chair, together with any other documents they consider to be relevant to the Inquiry's Terms of Reference, without delay.' Paragraph 7 of its Protocol on Redaction, Anonymity and Restriction Orders [DB/87] provides 'the Inquiry expects documents to be provided to the Inquiry in their original and unredacted form'.

Requests for documents from the Claimant

22. On 5 September 2022, the Inquiry issued a rule 9 request for a corporate statement to the Cabinet Office in draft form [DB/104-120]. The request stated at paragraph 1(b) of page 2 that “it is understood that a number of formal and informal mechanisms [for decision-making] were utilised, including communications by WhatsApp.” Further on page 2 the request stated:

“The Inquiry is likely to request further statements and disclosure from the Cabinet Office during the course of this module (and in connection with other modules). For the purposes of Module 2, such disclosure requests are likely to include requests for email and other formal and informal methods of communication, including telephone logs, text messages, WhatsApp and other types of communication on government and personal devices. This information is being provided in an effort to assist the Cabinet Office with its preparation in meeting its disclosure obligations.”

Under the header ‘Exhibits and Documents’, clean materials were required to be provided and the Cabinet Office was referred to the Inquiry’s Protocol on Documents [CB/208-211] which sets out at paragraph 15(h) that documents “should be provided in unredacted format”.

23. As set out in the Claimant’s Statement of Grounds, the rule 9 request to Mr Henry Cook, former senior adviser to Mr Johnson on Covid-19, was issued on 12 December 2022 [CB/67-76]. The draft request to Mr Johnson was issued on 3 February 2023 [CB/77-100]. The requests issued to both individuals sought, amongst other things:

- a. Any informal or private communications in the Cabinet Office about the UK Government’s response to Covid-19 of which the witnesses were part including informal groups (such as text messages and WhatsApp groups) or private email communications with Ministers, senior civil servants or advisors; and
- b. Any contemporaneous diary or notes which the witnesses made during the specified period relating to their involvement in the UK Government’s response to Covid-19 and provide copies of any such information.

24. Both requests stated that the Inquiry expected materials to be provided in clean form.

25. In respect of Mr Johnson, on 21 February 2023, the Inquiry received a number of requests for clarification from Mr Johnson’s Counsel team. These related to the scope of, or background to a number of the questions which had been asked of Mr Johnson. None of the points raised referred to the requests for material, or sought clarification on the scope or format of disclosure to be provided. None took issue with the requirement for the materials to be provided in clean form. An amended, final rule 9

request was issued to Mr Johnson on 1 March 2023, taking account of these requests for clarification [DB/123-148].

26. The Inquiry did not receive any points of clarification or requests to discuss the request made to Mr Cook. Accordingly, the draft letter issued on 12 December 2022 became the final version.
27. Module 2 has so far made almost 30 requests for witness statements from current or former Cabinet Office / Number 10 employees. Each request includes a requirement to disclose the materials identified at paragraph [23(a) and (b)] above.
28. During regular liaison between the ILT and GLD, the latter explained in February 2023 that a number of Cabinet Office witnesses had concerns about the security and sensitivity of the information contained within their WhatsApp communications. At this time, the ILT and GLD were exploring the mechanisms by which WhatsApp communications would be provided to the Inquiry. The Inquiry's preferred option was for these to be extracted by a third party information technology forensic team called Epiq. The ILT explained that allowing a witness manually to extract their data in a form which could potentially be manipulated or edited was unlikely to be appropriate, and GLD agreed. An email from GLD dated 10 February 2023 [DB/121-122] said:

"A number of Witnesses for the Cabinet Office have expressed concern over handing over their devices for a variety of relevant reasons to Epiq's forensic team to extract and download data, particularly given that we have several high profile witnesses who are wary of data leaks and also witnesses in the media with journalistic sources to protect. Additionally there may very well be some CLOSED material within some of the data which, if flagged, our CLOSED team will have handle and reviewed for security purposes.

There is also a question as to how the data would be sent to us, and ultimately onto you, whilst still preserving as much of the metadata that accompanies with it and ensuring compliance with your protocols and to reduce the need for you to make further requests in respect of WhatsApp data, though all Witnesses are aware of then need to preserve messages as the ILT may very well wish to interrogate the data and ask questions of Witnesses. Our preferred option is for the forensic team at Epiq to download and extract the relevant messages and/or groups as this would be the clearest and most readable way to carry out this process and would come with all the metadata required. This would require the witness to hand over their device and for Cabinet Office to review for any potential CLOSED material and/or sensitive/ irrelevant material.

However if a witness is uncomfortable with handing over their device for any reason, they can identify and download relevant messages themselves. Epiq can provide detailed instructions on how to do this and also provide a secure

file transfer link for the data to be sent safely and securely to us and we can then check for CLOSED material and/or irrelevant/sensitive material.

I wanted to flag to you that it is likely that when the WhatsApp data is transferred to the ILT it is likely to be via a mix of the above 2 options. We are keen to avoid screenshots of a message being taken or a text version of the message being provided as this will lose all metadata associated with the original message. Additionally Cabinet Office is working through notebook data transfer and will look to create a secure folder on their own drive before commission the upload via their Cloud Engineer to Relativity-would this method of transfer be sufficiently secure for you and meet the Inquiry's disclosure protocol?"

29. During further discussion between the ILT and GLD, it was agreed that a pragmatic solution might be possible if the ILT could first understand the degree of duplication of WhatsApp exchanges between the Cabinet Office witnesses, and the position of each witness with regard to the forensic extraction of their data - whether they objected or consented. As a first step, it was proposed that where more than one witness was party to a relevant WhatsApp group or one-to-one thread, it might be sufficient to carry out a forensic extraction of the data from that group or thread if only one of the witnesses consented to that process. That would, for example, potentially negate the need to carry out a forensic extraction of a phone belonging to a witness who objected to that process. It was agreed that GLD would provide a schedule setting out the position of each witness with regard to the forensic extraction of data, alongside a schedule of the potentially relevant WhatsApp communications they were understood to be party to, which would identify those relevant WhatsApp 'groups' which had more than one of the Cabinet Office witnesses as members. The first such schedule was provided by GLD on 3 March 2023 **[DB/149-152]**.
30. Members of the ILT and GLD spoke by MS Teams on 6 March 2023. During this meeting GLD confirmed that it had begun the process of redacting content from the WhatsApp communications which had been requested across the rule 9 requests issued to Cabinet Office witnesses. The ILT confirmed that content should not be redacted from the disclosure to be provided. Recognising the concern some witnesses may have about the provision of communications which might include information which the Inquiry deemed irrelevant, the ILT agreed that a robust process should be put in place for the Inquiry's review of the clean materials, which would be led by a small number of senior individuals. Further, the Inquiry would be assisted by any representations the Cabinet Office's legal team wished to make about content which should be redacted as part of that review. In accordance with standard practice, the Claimant would also have the opportunity to make further requests for redactions as part of the 'material provider' review process and in the event agreement could not be reached, it would be entitled to apply for a Restriction Order to prevent publication, in accordance with the Protocol on Restriction Orders.

31. An email to the above effect was sent by the ILT to GLD on 8 March 2023 [DB/153-155].

32. A further call was held between the ILT, GLD and the Claimant's Counsel on 13 March 2023. A note of this meeting [DB/156-162] records the following discussion:

- a. The ILT confirmed the Inquiry required provision of all material within a document (other than that subject to legal professional privilege) including any passages considered by the Claimant to be irrelevant;
- b. The Claimant's Counsel advised that the Inquiry would not be provided with the irrelevant content and that the witnesses had been given the assurance that only relevant material would be provided to the Inquiry;
- c. The Claimant's Counsel indicated that the Inquiry's current approach was inconsistent with the approach taken 'from the beginning'. The ILT said that it had never permitted the redaction of content said to be irrelevant from materials at source;
- d. The Claimant's Counsel confirmed her understanding that the material which had no bearing on Covid-19 would not be disclosed and that the witnesses "will not want to do this now". Counsel further raised concern about the potential for 'leaks', which were a concern to her clients;
- e. The ILT said it recognised that personal and sensitive information might be contained within the materials and proposed a pragmatic approach to be taken, for instance allowing for only a limited number of ILT members to have access to the unredacted materials while they were assessed by the Inquiry.

33. In an email to GLD dated 15 March 2023 [DB/163-164] the ILT stated:

"We are grateful for the further draft WhatsApp schedule provided to us on Friday 3 March and the updates provided during our call. We discussed the need for all discussions in relevant WhatsApp groups to be provided in clean form to the Inquiry, in line with the Inquiry's Redaction Protocol. Anne Studd KC confirmed that she was taking instructions on this matter urgently and we would be grateful for an update tomorrow, as proposed please. We are aware that you are in the process of preparing redacted copies of those scheduled for provision to the Inquiry and as discussed, we would be assisted by receiving those alongside the clean copies so that we can confirm the appropriateness of the redactions proposed, for the reasons we discussed."

34. On 20 March 2023, the ILT was provided with an updated schedule of WhatsApp communications by GLD [DB/165-168].

35. On the same day, GLD sent an email to the ILT regarding the disclosure of Henry Cook's WhatsApp materials [DB/169-171]. This set out the process of relevance review and redaction being carried out by GLD and the Claimant's Counsel as follows:

“Henry Cook has to date provided a number of WhatsApp Group Chats (“groups”) of which he was a member from the Relevant period, which he has identified as containing content relating to the Government’s Covid-19 response. We have recently been informed there may be further groups and we are urgently looking to obtain and review these.

The groups which have provided have been reviewed by panel counsel instructed by the Cabinet Office for relevance and potential (national security) sensitivity. B panel counsel conducted the initial relevancy review and A panel counsel conducted a second level of the majority of the groups and all of the groups where relevancy redactions were applied. A very low threshold of relevance has been applied. If the content is potentially relevant then it has been left in. We have not at this stage applied DPA redactions.

5 groups have been identified as requiring a JIO / FCDO sensitivity review which we understand will take 48 hours from the time they have the material. We provided these groups to those coordinating the sensitivity review today (assuming you have no objection to us doing this). 8 groups (including some of those that require a sensitivity review) have been identified as requiring relevance redactions. The proposed redactions in these groups are being reviewed by Anne Studd KC to provide a final level of assurance on relevance and then the redactions will be applied prior to disclosure. The issues of clean copies which you have raised with us appears to us to be a cross cutting issue which will take a little time to resolve, but we are prioritising it for a decision in the very near future.

We will provide access following this email to the groups that we currently hold that do not require relevance redactions or sensitivity review which are listed in the attached table. The groups that have been through the relevance and sensitivity process as set out above will be provided by 4pm on 22nd March 2023 [later identified as a typographical error, and intended as 23rd March 2023]. We will provide at that time an update on the position in respect of Henry Cook’s messages with individuals (which we refer to as “individual threads”) and any further groups.

For the avoidance of doubt, and bearing in mind the very low threshold we have applied for disclosure to the Inquiry, we anticipate there will be issues upon which the Cabinet Office will want to make representations prior to any onward disclosure to Core Participants of any content within the groups that the Inquiry assesses to be relevant.”

36. As indicated in the penultimate paragraph, GLD provided the Inquiry with access to 13 clean, unredacted WhatsApp groups from Mr Cook on 20 March 2023.
37. On 21 March 2023, the ILT sent an email to GLD with the following request:

“Cabinet Office to please confirm whether any of the materials provided to the Inquiry to date or any of the materials which are due to be provided by 31 March 2023 do, or are likely to contain WhatsApp communications redacted by the Cabinet Office legal team. Where this is the case, please provide the following by 10am on Thursday 23 March:

- 1. the name of the witness;*
- 2. the name of the group chat or thread recipient; and*
- 3. the basis for the application of any redactions or proposed redactions.”*

38. A response was received from GLD at 20:19 on 23 March 2023 as follows:

“In respect of the outstanding request listed as action 1 below, concerning WhatsApps messages, Brett Welch and I met with Martin Smith, Solicitor to the Inquiry, this morning.

In the meeting we touched on the subject of WhatsApp messages. We advised Martin that the Government was taking advice from Sir James Eadie KC on the issue of WhatsApp messages at the earliest opportunity early next week and asked that any action to be taken by the Inquiry on this to be paused until we could consider our position with the benefit of that advice. We advised that we hoped to come back to the Inquiry as soon as possible, likely in the middle of next week.

With regards this specific request, we will provide an update tomorrow.”

39. On 24 March 2023, the Inquiry sent a letter to GLD [CB/101-103] sent under cover of an email which stated as follows:

“Having discussed with Martin [Smith] and sought instructions from the Chair, please see attached further correspondence on this issue. You will note that we are not attaching a draft s.21 Notice as had been considered, but we did think it would be helpful to clearly set out our position in writing.”

40. The emails dated 21, 23 and 24 March 2023 appear at [DB/172-174]. The ILT’s letter dated 24 March 2023 set out the process adopted by the Inquiry in respect of the receipt, review and disclosure of materials. Recognising, however, that there was likely to be content in these materials which might fall to be redacted as ‘irrelevant and sensitive’ under the Inquiry’s own Redaction Protocol, the ILT proposed the following pragmatic solutions:

- a. Clean copies of all exports from relevant WhatsApp communications should be provided to the Inquiry alongside a note or indication provided by GLD of any content it considered irrelevant and sensitive. Such content would be considered for redaction by the ILT and the Claimant would have a further opportunity to identify additional content it asked to be redacted at the material provider review stage; and

- b. The ILT and Cabinet Office would both have secure mechanisms for arranging electronic access to clean copies in a controlled way and that access could be limited to particular members of the ILT.
41. The ILT also said it was concerned about the efficiency of the process being adopted by the Claimant. It noted that notwithstanding the 7 February 2023 deadline for disclosure of Mr Cook's materials and an indication having been given that his outstanding, redacted WhatsApp materials would be provided by 4pm on 23 March 2023 [see paragraph 35 above], that the Inquiry had not yet been supplied with a complete set of his WhatsApp materials.
42. The letter concluded as follows:
- "...we require confirmation from the Cabinet Office by 4pm on Thursday 30 March that clean, unredacted copies of exports from all potentially relevant WhatsApp communications will be provided for the Inquiry's consideration. In the absence of confirmation by this date, I am instructed that the Chair will issue a s.21 Notice to compel disclosure from all individuals who have confirmed they hold relevant materials."*
43. As set out at paragraph 50 below, the first set of Mr Cook's redacted WhatsApp materials was provided to the Inquiry on 21 April 2023. Further copies of some of those materials, with their redactions revised, were provided to the Inquiry on 12 and 15 May 2023, after the s21 Notice was issued.
44. A response to the ILT's letter was received on 30 March 2023 [CB/104-107].
45. On 30 March 2023, GLD wrote to the ILT regarding the identification and review of Mr Johnson's notebooks; the same having been requested as part of the rule 9 request issued on 3 February 2023 [DB/175-176]. In its email, GLD said:

"We write to update you on progress in response to the rule 9 request to the Rt Hon Boris Johnson MP dated 3 February 2023 and updated on 1 March 2023.

Mr Johnson is engaged with the process and, despite the very substantial scale of the exercise, the draft witness statement is well advanced. We continue to work at pace, though two issues make it likely that we will need to seek a reasonably modest extension in advance of the 17 April 2023 deadline:

Work is taking place to review a large quantity of Mr Johnson's notes from the period. It is likely that the presence of National Security material within these notes may delay the process. The timeframes for this exercise are presently unclear though we will update you as soon as we can (and in any event by 13 April 2023)."

The email correspondence did not at this stage indicate that any redactions would be applied on the basis of relevance.

46. On 6 April 2023, the ILT wrote to GLD [**CB/108-111**]. The letter set out that:

“In the case of whole WhatsApp group communications (ie. the export from a group of messages), it is plainly not possible for the Inquiry to be able to reach a view as to the potential relevance of any WhatsApp message, without considering them in context... Only if the documents are provided in clean, unredacted form can the Inquiry be in a position to determine whether the document, or part thereof, is indeed relevant (and therefore will be disclosed to the core participants) or irrelevant... Only in this way can confidence in the Inquiry, including on behalf of the core participants, be maintained, especially given the particularly significant nature of governmental WhatsApp messages.”

47. It concludes as follows:

“I would be grateful for your express confirmation by 18 April 2023 that the Cabinet Office will abide by the terms of the Rule 9 requests, as set out above, namely by providing clean, unredacted copies of the documents which have been identified as responsive. In the event that such confirmation is not forthcoming, it is likely that the Chair will issue section 21(2)(b) notices in respect of this material. The Cabinet Office may then make claims under section 21(4) for the notices to be revoked on the grounds that they require the Cabinet Office to produce documents that are in whole or in part irrelevant. It will then be for the Chair ultimately to determine the validity of such claims under section 21(4).”

48. On 12 April 2023, GLD sent an email to the ILT regarding the review of Mr Johnson’s notebooks [**DB/177-178**]. This included the following:

“As we flagged in our previous letter, Mr Johnson has located 24 large notebooks of handwritten notes covering the period of his statement (January 2020 to February 2022). Junior counsel have now conducted a review to ascertain whether this material is relevant and have concluded that it is likely to be relevant; we are therefore taking steps to prepare it for disclosure. This material is shortly to be reviewed by HMG security teams but due to other commitments, this work cannot start until the week commencing 17 April and it is unclear how long it will take. The handwriting is not always legible. Thereafter, the material will need to be scanned, reviewed and redacted for relevance before counsel review it to add anything material to the statement. Matters will be further delayed because, as we mentioned previously, Mr Johnson is currently out of the country on holiday. He returns on 18 April but is also away during much of May. We would therefore ask for an extension of six weeks until 29 May 2023.”

This was the first occasion on which the ILT had been informed that it was proposed that redactions ‘for relevance’ would be applied to Mr Johnson’s notebooks.

49. On 18 April 2023, GLD wrote to the ILT [**CB/112-114**].
50. On 21 April 2023, GLD wrote to the ILT [**CB/115**] and disclosed four further WhatsApp groups from Mr Cook, in unredacted form. It also provided redacted copies of communications from seven WhatsApp groups, alongside ‘redaction tables’ which purported to set out the basis for each redaction applied, from the following seven WhatsApp groups:
- a. A Team_Redacted
 - b. Certification_Redacted
 - c. Covid No 10 coordination_Redacted
 - d. Numberten action_Redacted
 - e. Onwards_Redacted
 - f. Outer Office_Redacted
 - g. PM Updates_Redacted

GLD confirmed that redactions had been applied to “unambiguously irrelevant material”.

51. On 26 April 2023, the ILT received further correspondence regarding the review of Mr Johnson’s notebooks by the GLD [**DB/179-181**]. GLD confirmed:

“We are pleased to advise that on 2 May 2023 we anticipate to disclose approximately 5,000 pages of material exhibited to Mr Johnson’s statement. However, due to the presence of National Security material within Mr Johnson’s notebooks (‘notebooks’) and Cabinet Office security processes concerning the handling of such material, we regret to advise that there is no prospect of the notebooks being ready for disclosure by the 2 May deadline. We are therefore seeking an extension of the disclosure deadline for the notebooks until 29 May 2023, at the very earliest.

As previously indicated, the preliminary security assessment of the notebooks by HMG security teams commenced at the first available opportunity on 17 April 2023. The preliminary security review concluded that the notebooks did contain sensitive material and as a result, they could not be uploaded onto Relativity (which had been planned for 19 May). It also meant that any relevance review would need to be undertaken by suitably cleared personnel. In order to save time, it was decided that the relevance review would take place before a detailed security review in order to limit the amount of material that needs to be considered for sensitivities.

The first relevance review of the notebooks was undertaken on 24 April 2023 by Georgina Wolfe and Richard Boyle of Counsel, and Lesley Paton of GLD. Shortly prior

to the review commencing, it became apparent that a further two possible reviewers originally considered appropriate for the review were unable to assist as their security clearance (which was underway) had been delayed. During the review on 24 April 2023, the team managed to complete the review 8 of 22 notebooks for relevance over the course of 6 hours. The handwriting is extremely difficult to read in places. For the purpose of the relevance review, when in doubt as to the relevance of a page, the team flagged any such pages as relevant and will continue to do so in subsequent review sessions. As you will appreciate, this is a time consuming process and the team will continue to work at pace with further relevance reviews scheduled for Thursday 27 April 2023 and Friday 28 April 2023.

We advise that following the completion of the relevance review stage, all notebook pages tagged as relevant will need to undergo a comprehensive security assessment by HMG security teams prior to scanning. Once all national security and similar issues have been checked, the material will be scanned (with redactions if necessary) and uploaded onto Relativity. At this present time, due to the unclear volume of relevant material, we cannot yet provide a clear indication as to how long the security assessment may take.

Matters will be further delayed due to the nature of the scanning process. It is not straightforward and requires specialist expertise. We understand our scanning partner Epiq may not have suitably cleared personnel at their disposal to handle the notebooks. This will present a major problem at the scanning stage as the notebooks must not only be scanned but also must have their dates accurately recorded in the metadata (for example, if page 1 of a notebook contains the date but is not relevant and page 2 contains the relevant meeting notes but not the date, when page 2 is copied and uploaded, the scanner must carefully label the page with the date and necessary metadata also ensure that everything is scanned carefully in order, with notebooks being linked together). We do not consider that it would be realistic for a non-specialist scanner to carry out these tasks, and as such we will need the additional time to make the necessary arrangements to ensure the notebooks are handled securely, under supervision, and by those with the appropriate technical expertise.

Accordingly, we consider the current 2 May deadline for the disclosure of notebooks to be unachievable. We would therefore kindly ask for an extension to the disclosure deadline until 29 May 2023. Whilst we cannot guarantee that we will be in a position to have the notebooks ready for disclosure by this date, we will undertake our best endeavours to achieve disclosure by this date. In order to address any concerns the Inquiry may have with the delays associated with the disclosure of the notebooks, we undertake to provide weekly progress updates to the Inquiry with respect to their disclosure status.

We would be grateful if you could please confirm your agreement to the extension of time sought for Mr Johnson's notebooks."

The section 21 Notice dated 28 April 2023

52. On 28 April 2023, the Defendant issued a Notice under section 21 of the Inquiries Act 2005 to the Claimant (the “Notice”) [CB/44-48]. It was sent under cover of a letter of the same date [CB/116-117].
53. The Notice sets out the materials it required the Claimant to produce in two annexes. Annex A(i) required the disclosure of unredacted WhatsApp communications dated between 1 January 2020 and 24 February 2022 recorded on device(s) owned / used by Henry Cook and Mr Johnson. The requests were subdivided into requests for:
- a. messages in a group chat established, or used for the purpose of communicating about the UK Government’s response to Covid-19 (“group messages”); and
 - b. one-to-one messages, or ‘threads’ exchanged with a number of specified individuals who were listed in Annex B to the Notice.
54. While the rule 9 requests issued to Mr Johnson and Mr Cook did not distinguish between group chats and threads (see paragraph 22 above), the ILT’s understanding of these two categories had developed since the rule 9 requests were issued, partly as a result of discussions with GLD. GLD had clarified in discussions that in addition to relevant ‘group’ messages, the Inquiry would receive threads exchanged between the recipient witnesses and any other Cabinet Office witness (the list of which was known to GLD).
55. The list included at Annex B of the Notice was purposely broader, allowing for the inclusion of witnesses from other government departments, such as The Rt Hon. Rishi Sunak MP (represented by HM Treasury in Inquiry proceedings) and key advisers including the Chief Medical Officer and Chief Scientific Adviser. All individuals listed had either been issued with a rule 9 request requiring the disclosure of WhatsApp communications with the Prime Minister and/or his advisers or had been identified by the ILT to be individuals of particular significance to the core UK political and administrative decision-making conducted in response to the pandemic. The Inquiry did not seek to limit the request for these threads any further than by time period. Any messages exchanged by these individuals during the time period within which Module 2 is focused were considered by the Defendant to be potentially relevant to the Inquiry’s investigation and it was not possible, without allowing for a process by which the Cabinet Office would be permitted to remove content from threads on the basis of irrelevance, to define the disclosure request further.
56. Annex A(i) listed Mr Johnson’s unredacted diaries. Although the disclosure of these had not been subject to specific correspondence between the Claimant and the Defendant, by the date the Defendant issued the Notice, the Claimant had provided extracts from Mr Johnson’s diary which were partially redacted. Accordingly, the

Inquiry expected the Claimant would redact information it considered irrelevant from his full diary.

57. Annex A(ii) to the Notice required the disclosure of Mr Johnson's notebooks, which were understood at the time to number 24, but are now believed to number 27. GLD informed the Defendant (see [DB/175-176] and [DB/177-178]) that these notebooks required a review for national security sensitivities before they could be provided to the Inquiry. The ILT was content to allow a process of review to identify national security sensitive material to be undertaken before the materials to it as these require special handling arrangements. For this reason, the Defendant allowed a later deadline for the disclosure of these materials, than the materials listed in Annex A(i).

Challenge to the Notice

58. Following a request by the Cabinet Office, the Chair extended time for the making of a s.21(4) application concerning the Annex A(i) documents to 4pm on 15 May 2023. This was the date set in the Notice for the making of such a request in respect of the Annex A(ii) documents.

59. On 15 May 2023, the Cabinet Office made an application under s.21(4) of the Act to revoke the entirety of the Notice [CB/49-58]. Unredacted copies of a selection of Mr Cook's WhatsApps were attached to the application.

60. On 22 May 2023, the Chair issued her ruling under s.21(4) dismissing the Cabinet Office's application ("the Ruling") [CB/59-66]. She extended the time by which the documents listed in Annex A(i) and Annex A(ii) needed to be produced until 4pm on 29 May 2023. Following a request by the Cabinet Office, this deadline was further extended to 4pm on 1 June 2023.

61. On 1 June 2023, the Cabinet Office issued this claim for judicial review.

Inspection of materials offered by Mr Johnson

62. On 1 June 2023 (shortly before the Cabinet Office issued its claim), Mr Johnson wrote to the Inquiry stating that he was "more than happy to hand over the relevant WhatsApps and notebooks that [the Chair had] requested in unredacted form". [DB/256]. By this date Mr Johnson was no longer legally represented by GLD and had obtained independent legal advice.

63. After the Cabinet Office published its application for judicial review, Mr Johnson wrote again to the Inquiry [DB/257]. His letter dated 2 June 2023 stated that he did not wish to allow his material to become a 'test case for others' when he was perfectly content for the Inquiry to see it. He made three proposals:

- a. He would provide the Inquiry, in unredacted form, all WhatsApp communications he had previously provided to the Cabinet Office [which it was understood by this time dated from September 2021 only];
- b. He wished to do the same with any material that might be on an older phone which he had been advised he could no longer access safely. Mr Johnson made clear that in view of the urgency of the Inquiry's request, he had asked the Cabinet Office for assistance in turning this phone on securely so that he could assist in identifying any relevant materials from within it, which he would disclose to the Inquiry; and
- c. He had previously handed his notebooks to the Cabinet Office but had now asked for them to be returned to him, and he proposed in turn to provide them to the Inquiry.

64. While Mr Johnson stated that the above materials were being provided 'today' (i.e. 2 June 2023), the ILT assessed that, in light of potential concerns about national security sensitivities, it would be preferable for Mr Johnson to retain the materials, and for the ILT to inspect them. It conveyed such a message to Mr Johnson's legal team to delay the transfer or delivery of these materials accordingly.

65. On 2 June 2023, the ILT wrote to the Cabinet Office, with Mr Johnson's legal team in copy [DB/258-260]. That letter confirmed receipt of redacted copies of Mr Johnson's WhatsApp communications [post September 2021] and diaries from the Cabinet Office, which had been received shortly beforehand. It stated:

"As you will be aware, Mr Johnson has written to the Inquiry this morning confirming that he will provide the materials, in clean and unredacted form, to the Inquiry directly. We are liaising with Mr Johnson's office about that but, mindful of the potential national security sensitivities of holding these materials on a low-side electronic system, we propose instead to make arrangements to inspect these materials in clean form next week. In doing so, we will be able to make an assessment of the redactions applied by the Cabinet Office and satisfy ourselves, or otherwise, of their appropriateness. This pragmatic, practical process has of course been something we previously proposed to the Cabinet Office."

66. It also made the following requests:

- a. by 12 June 2023 those with appropriate technical capability within HMG obtain the "older" phone from Mr Johnson and confirm in writing to the Inquiry the process which must be undertaken to access the relevant data and a date by which it is anticipated Mr Johnson will be given access.
- b. by 12 June 2023 the Cabinet Office take a copy of the notebooks Mr Johnson had provided and return them to him, as requested, to allow him to facilitate the Inquiry's proposed inspection of them in unredacted form.

67. On 6 June 2023, the Inquiry's Module 2 Preliminary hearing took place. Following an exchange between the Chair and Counsel for the Cabinet Office, the Chair made

directions requiring, by 4pm on 9 June 2023, confirmation of the Cabinet Office's position in relation to (a) the return to Mr Johnson of, and access for the Inquiry to, his unredacted notebooks in its possession; (b) to the return to Mr Johnson of his diaries and (c) providing support to Mr Johnson to facilitate unredacted access to the Inquiry to Mr Johnson's 'old' phone.

68. At 16:48 on 9 June 2023, GLD wrote in response to the Chair's directions [DB/261-262]. Its letter stated:

"In light of the imminent expedited Judicial Review, the Cabinet Office's position is that it would not be appropriate for the Government to take steps that are not consistent with the very position that it has raised in the Judicial Review. That is to say to either provide or facilitate the production of such material unredacted for unambiguously irrelevant material to the Inquiry before conclusion of that Judicial Review.

As you know, the Judicial Review is now listed, before a Divisional Court, on 30 June or as soon thereafter as the court can accommodate. In the circumstances, we do not consider that the Inquiry's work is likely to be materially disrupted by our position as set out above. We note that we have already provided the Inquiry with appropriately redacted copies of the notebooks and diaries and we will continue to provide relevant material to the Inquiry.

...We are aware of Mr Johnson's public comments on sharing information with the Inquiry and, for his own reasons, he takes a different position to that of the Cabinet Office. However, we consider that it is not appropriate for the Government to have to take steps that are not consistent with the very position that it has raised in the Judicial Review – and that would be the position were the Cabinet Office to provide unambiguously irrelevant material to Mr Johnson in the knowledge that he intended simply to provide it, without protection, on to the Inquiry.

Whilst the Chair's directions did not reference the WhatsApp's on the phone which Mr Johnson currently has access to (i.e. the new phone), for the reasons set out above we consider that the Inquiry should not be provided with unredacted copies of the messages on that phone ahead of the resolution of the JR. We have already provided the Inquiry with appropriately redacted copies of those messages."

69. On 12 June 2023, the Inquiry replied [DB/263-264], copying Mr Johnson's legal representatives. It stated:

"It is clear that Mr Johnson holds unredacted WhatsApps which are potentially relevant to the work of the Inquiry. Despite Mr Johnson's willingness to make these materials available for inspection by the Inquiry, the Cabinet Office has clearly stated that the Inquiry should not be provided with unredacted copies of the WhatsApp materials he holds ahead of the resolution of the judicial review. The letter is silent on

the return to Mr Johnson of his notebooks, though it is anticipated that the Cabinet Office would object to Mr Johnson providing access to the Inquiry, if in fact they were returned to him before the judicial review proceedings. Noting the provisions of s.35(2) of the Inquiries Act, we invite the Cabinet Office urgently to explain the legal basis for the objections raised.

The Inquiry would not wish to take any steps, or to encourage Mr Johnson to take any steps, which would undermine or frustrate the judicial review proceedings. However, the Inquiry is working at significant pace to ensure that its timetable is not affected by the legal challenge brought by the Cabinet Office. The date for the judicial review is yet to be fixed and judgment may be reserved to a later date. In the event, we may not have clarity on the point of principle for 4-6 weeks, which we consider does materially disrupt the Inquiry's work. It is of course also possible that the materials the Inquiry is being prevented from inspecting are relevant to the judicial review proceedings and it is unclear why access to them, in the limited way intended (and by Mr Johnson rather than the Cabinet Office), would frustrate the judicial review proceedings. Those proceedings are being brought to settle a point of legal principle between the Cabinet Office and the Inquiry, not as we understand it between Mr Johnson and the Inquiry. The Inquiry considers that now Mr Johnson is separately represented, he is a 'material provider' with access to potentially relevant material in his own right.

Whilst the Inquiry will ensure it takes no action that might be seen to frustrate the judicial review proceedings, the Cabinet Office is reminded that they have a duty not to frustrate the ongoing Inquiry proceedings."

70. Shortly after sending this correspondence, Mr Johnson's legal representatives wrote to the Inquiry [DB/265-266]. They confirmed:

"Mr Johnson regrets the Cabinet Office's position and urges the Cabinet Office to reconsider in light of the points made in your letter today.

As your letter recognises, Mr Johnson does not wish to take any steps which may undermine or frustrate the purpose of the judicial review. He must therefore, pending the outcome of the judicial review, suspend his offer to the Inquiry to inspect unredacted copies of this material."

71. At the date of filing this statement, the Cabinet Office has not lifted its objection to the Inquiry's request to inspect Mr Johnson's materials.

Documents supplied by other government departments in unredacted form

72. In response to the Inquiry's request for a corporate statement from the Cabinet Office, the Inquiry has received in excess of 3,000 documents relating to the government's

core political and administrative decision-making. These documents include minutes of COBR and Cabinet meetings. These materials are highly sensitive in nature and all were provided to the Inquiry without redaction by the Claimant. They included details of sensitive discussions regarding trade negotiations, national security and critical infrastructure which the Inquiry currently considers to be irrelevant to the lines of investigation it is pursuing (although they do also contain a considerable amount of other material that is relevant). This sensitive and irrelevant content has been identified by the ILT during its review of the documents, and/or raised by the Claimant during the material provider review. It has been redacted by agreement, prior to the disclosure of these materials to core participants.

73. The Defendant has also issued rule 9 requests for any informal or private communications about the UK Government's response to Covid-19 held by The Rt Hon Matt Hancock MP and/or other DHSC officials, including but not limited to informal groups (such as text messages and WhatsApp groups) or private messages or email communications with Ministers, senior civil servants or advisors. The Inquiry has received in excess of 26,000 documents from DHSC containing WhatsApp communications, including attachments to those communications. The significant majority of this material, though not all, has been provided by Mr Hancock. DHSC has not, to date, made any redactions on the basis of relevance and these materials have been provided in clean form. A particularly sensitive WhatsApp group held by Mr Hancock has been identified, named 'Crisis Management'. Following discussions between the ILT and DHSC it was agreed that, in the first instance, the messages contained in this group would be reviewed at DHSC's premises rather than being provided electronically to the Inquiry. That inspection has recently taken place and the ILT, having identified relevant content within it, has agreed to receive the material in such a way that it will be accessible only by named members of the ILT and that all irrelevant and sensitive content will be redacted.
74. A rule 9 request has also been issued to the Office of the Chief Medical Officer ('OCMO') requiring disclosure of WhatsApp, or other informal communications between the Chief Medical Officer ('CMO'), Deputy Chief Medical Officer ('DCMO') and senior private secretaries, with the Prime Minister/ No. 10, Ministers, Cabinet Office or senior advisors between 1 January 2020 to 26 March 2020. Following discussions between the ILT and OCMO legal team, it was agreed that the materials would be provided in unredacted form (save for LPP), with access to the material on the Inquiry's system limited to named individuals. Disclosure of these materials to the Inquiry has begun and no prior redactions have been applied on the basis of relevance.

Responses from Module 2 Core Participants

75. In preparation for and at a preliminary hearing in Module 2 held on 6 June 2023, Core Participants expressed strong objections to the Cabinet Office's current position which has led to these proceedings. Written submissions from the following Core Participants are included within the Defendant's Bundle: Covid-19 Bereaved Families

for Justice UK and Northern Ireland Covid 19 Bereaved Families for Justice [DB/202-205 at paragraphs 9-20], Scottish Covid-19 Bereaved Families for Justice [DB/238-239], Covid-19 Bereaved Families for Justice Cymru [DB/211-212 at paragraphs 8-9], Long Covid Organisations [DB/196-199 at paragraphs 23-38], Disabled People's Organisations [DB/219-223 at paragraphs 4.1-4.5], the Federation of Ethnic Minority Healthcare Organisations [DB/247-251 at paragraphs 3-11], Southall Black Sisters [DB/243 at paragraph 4], and the Trades Union Congress [DB/230-231 at paragraphs 5-9].

Conclusion

76. The process of seeking evidence involves a combination of formal written requests and subsequent discussion with the material provider to ensure that the inquest or inquiry can access the material it considers it needs in its search for the truth. Such discussions are useful to help the inquest or inquiry navigate the sensitivities in the documents which respond to the request, and to allow any legal issues to be worked through, to ensure that the inquest or inquiry obtains a full picture and all the evidence it needs.
77. I have certainly known occasions where the discussions to which I have referred between the inquest/inquiry team and the material provider have resulted in the inquest/inquiry not pressing for the disclosure of material that is said to be both irrelevant and sensitive. However, this instance is the only time that I have known a material provider decline to provide evidence formally sought by a statutory public inquiry because that material provider seeks to interpose its own view of the potential relevance of the documents requested (absent any legal rules such as legal professional privilege or RIPA issues requiring to be worked through).

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

[REDACTED]

Martin Smith

Solicitor to the Inquiry