

Witness Name: John Swinney

Statement No.: 3

Exhibits: JS3

Dated: 16 November 2023

UK COVID-19 INQUIRY

WITNESS STATEMENT OF JOHN SWINNEY

In relation to the issues raised by the Rule 9 request dated 27 October 2023 in connection with Module 2A, I, John Swinney, will say as follows: -

A: Government issued and personal devices

1. Please list all the Government issued and personal devices (such as mobile phones, tablets, laptops and computers) used by you between January 2020 to April 2022. In respect of each device, please provide the mobile telephone number (where possible), the period in which such device was used and whether the device was Government issued or a personal device.

I started using a Scottish Government laptop during this period – just at the start of lockdown – as it was likely I would not be able to continue my previous practice of handling physical papers in my daily Ministerial box.

I used an iPhone during that whole period which was my personal device. Its number was Irrelevant & Sensitive It had a Blackberry App, which gave me access to my Scottish Government email account, john.swinney@gov.scot.

2. We note from a summary table produced to the Inquiry by the Scottish Government dated 24 October 2023 that you did not use the Government issued mobile telephone. Is that correct? Why was that so?

I had used a blackberry earlier in my term as a Minister but ceased to use this long before Covid-19. It was more convenient for me to have the Blackberry App on my mobile phone which meant I only had the one device to use.

Towards the end of my time in Ministerial Office, around March 2023, Scottish Government emails were no longer going to be accessible on the Blackberry app on my personal device due to an upcoming change in the software. My Private Office had ordered a Scottish Government mobile phone for me to be prepared for the upcoming change, however, because I was about to depart Ministerial office, I chose instead to only access my Scottish Government emails through my Scottish Government laptop. My Private Office kept the Scottish Government mobile phone and it was never in my possession.

Scottish Government IT have confirmed that this is the only mobile phone that has been ordered in my name.

3. In the circumstances, which of your devices did you use (either exclusively or on occasion) to conduct Government business, such as matters relating to the management of the pandemic in Scotland?

I used the Scottish Government laptop exclusively to conduct Government business.

I used Microsoft Outlook on that laptop to communicate with my Private Office on all matters relating to my Government responsibilities. I would respond to submissions and requests through Outlook and also submit questions and instructions for my Private Office to pursue with civil servants and others. I would use email to advise my Private Office of any information that needed to be added to the corporate record of the Scottish Government. I would use Microsoft Word to amend speeches or documents and then send them back to my Private Office for processing.

I used my personal mobile phone to take telephone calls, send and receive text messages, use WhatsApp and to access my emails through the Scottish

Government Blackberry App when it was not possible for me to conveniently access my Scottish Government laptop (for example when I was moving around my constituency). I would use the Blackberry App to feed any relevant information to my Private Office.

4. Which of these devices do you still have in your possession?

I returned the Scottish Government laptop when I left office in March 2023. I still have the personal iPhone but I no longer use it as the Scottish Parliament has issued me with a new iPhone.

5. If any of these devices are now not in your possession, where are they now?

The Scottish Government laptop is in the possession of the Scottish Government.

6. Did you change your Government issued or personal devices between January 2020 and April 2022? If so, please explain what you did with any devices which you no longer used.

As noted at Question 4, I changed my iPhone in April 2023 to a handset issued by the Scottish Parliament but I still have the original iPhone (which was my personal phone) in my possession.

7. Did you lose any Government issued or personal devices between January 2020 and April 2022? If so, please explain the circumstances.

No I did not lose any Government issued or personal device in that period.

8. If you lost any Government issued or personal devices between January 2020 and April 2022, did you report the loss? If so, to whom and when?

I did not lose any device so I did not report any loss.

B: Backing up data

9. Did you back up the data on your Government issued and/or personal devices? If so, how did you back up such data?

I did not personally back up the data on my Government issued laptop but I assume that as I was using a Government laptop this process of backup was happening on a constant basis due to the Government IT approaches.

I have iCloud backups switched on through my iPhone. I have automatic chat backup switched on in WhatsApp and that is set to backup daily.

10. If so, can data (such as your messages) from January 2020 to April 2022 still be accessed via the back up system? If not, why not?

As set out in at paragraph 18 of my witness statement of 3 October 2023, any discussions I was involved in using informal means of communication that involved any decisions being taken would have been reported to other meetings that would have been minuted, or included in Scottish Government communication to either the Scottish Parliament or a Media Conference. I do not retain communication of this type, as the corporate record fully accounts for my actions and decisions. I therefore deleted the material from my devices or I use an autodelete function.

I have not been able to retrieve this material from my phone. I have checked on the iCloud and have taken advice from Scottish Government IT in relation to the recovery of deleted messages. I do not see my messages backed up in the iCloud and the technical advice I have received indicates that the deleted iMessages cannot be retrieved, because the messages were deleted over 30 days ago. Scottish Government IT advised that WhatsApp messages which had been deleted some time ago would also not be retrievable as the backup would be from the previous day's data, for example.

11. If you did not back up your data on your devices, why not?

Please see my answers to Questions 9 and 10.

12. Did you ever receive advice, guidance or instruction on whether such devices ought to be backed up? If so, (a) from whom (b) when and (c) what was the advice, guidance or instruction received?

I am not aware of receiving any such advice.

13. If you have received such advice, guidance or instruction, did you follow that advice, guidance or instruction? If you did not follow that advice, guidance or instruction, why not?

Please see my answer to Question 12.

C: Usage of one-to-one informal communications relating to the management of the pandemic in Scotland

14. We note from your previous witness statement that you communicated using informal methods (such as WhatsApp and text messaging) with Nicola Sturgeon, Humza Yousaf and Jeane Freeman, Fiona Hyslop, Kate Forbes, Aileen Campbell, Dr Gregor Smith, Professor Jason Leitch, Paul Johnston, Ken Thomson, Graeme Logan, Liz Lloyd and Colin McAllister to discuss matters around the progress of the pandemic and the nature of decisions that the Scottish Government might have to take in response. Are there any other Cabinet Secretaries, Ministers, senior civil servants, Special Advisers, other advisers and/or counterparts in the UK Government or the other devolved administrations with whom you had such one-to-one informal communications? If so, please identify them.

I do not have anything further to add to the contents of my written statement dated 3 October 2023 in this respect. To the best of my recollection I did not have any other one to one informal communications with any other Cabinet Secretaries, Ministers, senior civil servants, special advisers or other advisers or counterparts in the UK Government or other devolved administrations to discuss matters around the progress of the pandemic and the nature of decisions that the Scottish Government might have to take in response.

15. In respect of each of those additional individuals (if any), what methods of informal communications were used?

Please see my answer to Question 14.

16. We note from your previous witness statement that you would have such one-to-one informal communications with Nicola Sturgeon, Humza Yousaf and Jeane Freeman on a regular basis. In respect of each individual (including those named in your previous witness statement), how regular were your informal communications? For example, did you communicate with that individual using informal communications (i) multiple times daily; (ii) once or twice a day; (iii) a few times a week but not daily; or (iv) less than the above?

All of the people listed in Question 14 would have participated in formal meetings in which I was involved a number of times each week. Informal communications, that is in person conversations, would have taken place in the margins of those meetings. Aside from those meetings, my contact would have been as follows:

Nicola Sturgeon – our contact tended to be in person conversations or by telephone, and there would likely be a text message exchange to arrange a conversation. I do not believe we ever communicated by WhatsApp,

Jeane Freeman – infrequent text messages would be exchanged and I have found one WhatsApp exchange,

Humza Yousaf – reasonably frequent WhatsApp exchanges,

Kate Forbes – infrequent text and WhatsApp messages would be exchanged,

Fiona Hyslop – infrequent text messages would be exchanged,

Aileen Campbell – infrequent text messages would be exchanged and I have found one WhatsApp exchange,

Graeme Logan – infrequent text messages would be exchanged,

Colin McAllister – contact by telephone most days and infrequent text and WhatsApp messaging,

Liz Lloyd – contact by telephone most days, and infrequent text and WhatsApp messaging,

Jason Leitch – infrequent text messages and telephone calls,

Paul Johnston – contact by telephone most weeks and infrequent text messages,

Ken Thomson – infrequent text and WhatsApp messages and telephone calls, and

Dr Gregor Smith – infrequent telephone calls.

17. In respect of each individual (including those named in your previous witness statement), please state the period of time during which you had informal communications relating to the management of the pandemic in Scotland. For example, did you informally communicate with that individual during the whole period between January 2020 and April 2022?

Generally I would communicate with those individuals in both formal and informal settings throughout the pandemic although that would have ceased with Jeane Freeman when she left office in May 2021.

18. In respect of your informal communications with each individual (including those named in your previous witness statement), did you and the individual: (i) discuss matters around the progress of the pandemic in Scotland; (ii) comment upon the advice received in relation to the pandemic in Scotland; (iii) comment upon the nature of decisions that the Scottish Government might have to take; (iv) make any decisions about the Scottish Government's response to the pandemic; and/or (v) comment upon the decisions which the Scottish Government had taken? Please state which, if any, of the categorisations (i) - (v) describe the contents of your informal communications with each individual.

All of my discussions were focused on taking forward the direction that had been set by Cabinet and addressing practical issues that arose as a consequence. Many of these informal discussions would be by telephone and if there was any relevant information that was required to be placed on the corporate record, this would be undertaken by me issuing an email to my Private Office or an Official recording the necessary information.

Nicola Sturgeon (i) – (v) but any decisions taken were consistent with Cabinet direction and were always recorded in the corporate record

Jeane Freeman (i) – (v) but any decisions taken were consistent with Cabinet direction and were always recorded in the corporate record

Humza Yousaf (i) – (v) but any decisions taken were consistent with Cabinet direction and were always recorded in the corporate record

Kate Forbes (i) – (v) but not (iv)

Fiona Hyslop (i) – (v) but not (iv)

Aileen Campbell (i) – (v) but not (iv)

Graeme Logan only (i)

Colin McAllister (i) – (v) but not (iv)

Liz Lloyd (i) – (v) but not (iv)

Jason Leitch (i) – (v) but not (iv)

Paul Johnston (i) – (v) but not (iv)

Ken Thomson (i) – (v) but not (iv)

Dr Gregor Smith (i) – (v) but not (iv)

19. In respect of your informal communications with each individual (including those named in your previous witness statement), were there any particular communications which you can recall that were significant to the Scottish Government's response to the pandemic between January 2020 and April 2022? If so, what were those communications? When did those communications take place? What was the outcome of those communications?

As I have indicated in my original statement, I felt the dialogue I had with Nicola Sturgeon about the closure of schools with effect from 20 March 2020 was a significant matter and was the product of informal communication. The circumstances were deteriorating quickly, school attendance was falling, staff anxieties were growing and we needed to come to a definitive conclusion about whether schools should remain open. Nicola Sturgeon and I discussed the issue in person in the aftermath of Cabinet on 17 March and again on 18 March. We took a decision that she should say on 18 March the likelihood was that schools would close on Friday 20 March and I confirmed this closure would take place in a statement to Parliament on 19 March. Following those discussions, I fed this decision back to officials to take the necessary actions, which then informed my statement to Parliament. The outcome of those discussions was the closure of schools and that decision was communicated publicly by Nicola Sturgeon and confirmed by me in a Statement to Parliament.

20. Please provide all one-to-one informal communications between you and Cabinet Secretaries, Ministers, senior civil servants, Special Advisers, other advisers and/or counterparts in the UK Government or the other devolved administrations relating to the management of the pandemic in Scotland between January 2020 and April 2022.

I have been able to find WhatsApp messages on my iPhone with Jeane Freeman and Aileen Campbell which I have provided to the Inquiry. Following the public statement by the current First Minister that he had retained his messages, I asked to see any messages exchanged with me that he still held. I now only hold those messages as a result of that request and I have shared those with the Inquiry.

D: Usage of groups or group chats relating to the management of the pandemic in Scotland

21. Were you a member of any groups or group chats on messaging platforms (including but not limited to WhatsApp, Telegram, Signal, Slack, Viber, Microsoft Teams and Zoom) between January 2020 and April 2022 in which any members discussed the management of the pandemic?

I never used Telegram, Signal, Slack or Viber.

The only group chats I was party to were created on WhatsApp when specific groups were set up for a limited purpose such as for officials to support me during a parliamentary debate or committee appearance when they were not permitted to attend with me due to Covid-19 restrictions or I was handling the session remotely. The purpose of the group would be to enable officials to share relevant briefing points and information with me for use in handling questions or points from MSPs. This was a practical alternative to the system that exists in Parliament where officials are permitted to be present in the Parliamentary Chamber or Committee room and to pass physical notes to Ministers. I did not create any such groups and I was party to no other such groups.

22. If so, please list all of the groups or group chats of which you were a member including the group or chat name (if applicable) and the platform upon which that group or chat was hosted.

I have been able to identify the following groups which were set up for the purpose described in Question 21 :

Covid Bill Team, Scottish Parliament, 18 June 2021, WhatsApp

Covid Certification debate, Scottish Parliament, 9 September 2021, WhatsApp

Covid Recovery debate, Scottish Parliament 28 October 2021, WhatsApp

Self-Isolation Bill Stage 1, Scottish Parliament 20 January 2022, WhatsApp

Stage 1 X Bill, Scottish Parliament, 11 May 2022, WhatsApp

Covid-19 Committee, Scottish Parliament, 31 March 2022, WhatsApp

Strategic Framework debate, Scottish Parliament 15 March 2022, WhatsApp

I have no record of any other groups of which I was a part. I can state categorically that I was never part of a group chat involving Ministers, civil servants and officials that considered ongoing issues in relation to the pandemic.

23. In respect of each group or group chat, please list all of the other members known to you.

The groups would comprise the relevant officials who were involved in supporting me during each parliamentary occasion. Details I have access to are noted below:

Covid Bill Team, Scottish Parliament, 18 June 2021, WhatsApp

John Swinney MSP

Name Redacted (Private Secretary to Mr Swinney, DFM) [junior civil servant]

Other mobile numbers with no names attached therefore unidentifiable

Covid Certification debate, Scottish Parliament, 9 September 2021, WhatsApp

John Swinney MSP

Humza Yousaf MSP

Name Redacted (Private Secretary to Mr Swinney, DFM) [junior civil servant]

NR (Deputy Private Secretary to Mr Swinney, DFM) [junior civil servant]

NR (Deputy Private Secretary to Mr Swinney, DFM) [junior civil servant]

Richard Foggo

Jonathan Cameron

Elizabeth Sadler

Covid Recovery debate, Scottish Parliament 28 October 2021, WhatsApp

John Swinney MSP

Patrick Harvie MSP

NR (Deputy Private Secretary to Mr Swinney, DFM) [junior civil servant]

NR (Private Secretary to Mr Swinney, DFM) [junior civil servant]
Jane Moffat
NR [junior civil servant]
Julie Humphreys

Self-Isolation Bill Stage 1, Scottish Parliament 20 January 2022, WhatsApp

John Swinney MSP
NR [junior civil servant]
NR [no further detail held]
NR [junior civil servant]

plus an additional four members for whom I only have the mobile numbers

Stage 1 Bill, Scottish Parliament, 11 May 2022, WhatsApp

John Swinney MSP
NR [no further detail held]
Humza Yousaf MSP
NR [junior civil servant]
NR Coronavirus (Recovery and Reform) Bill Team Leader [junior civil servant]
Name Redacted [junior civil servant]
Name Redacted Head of Health Protection and Screening [junior civil servant]
NR [no further detail held]
NR [junior civil servant]

Plus an additional member for whom I only have the mobile number

Covid-19 Committee, Scottish Parliament, 31 March 2022, WhatsApp

John Swinney MSP
NR [no further detail held]
Humza Yousaf MSP
NR [junior civil servant]
NR [junior civil servant]
NR [junior civil servant]
NR Head of Health Protection and Screening [junior civil servant]
NR [no further detail held]
NR [junior civil servant]

Plus an additional member for whom I only have the mobile number

Strategic Framework debate, Scottish Parliament 15 March 2022, WhatsApp

John Swinney MSP

Dominic Munro

NR [junior civil servant]

NR [junior civil servant]

NR [junior civil servant]

NR [junior civil servant]

NR [junior civil servant]

24. In respect of each group or group chat, please state who set up that group or chat and/or was the administrator.

I have noted who created each group beside the title of the group below.

Covid Bill Team, Scottish Parliament, 18 June 2021, WhatsApp

Name Redacted (Private Secretary to Mr Swinney, DFM) [junior civil servant]

Covid Certification debate, Scottish Parliament, 9 September 2021, WhatsApp –

Name Redacted (Deputy Private Secretary to Mr Swinney, DFM) [junior civil servant]

Covid Recovery debate, Scottish Parliament 28 October 2021, WhatsApp –

Name Redacted (Deputy Private Secretary to Mr Swinney, DFM) [junior civil servant]

**Self-Isolation Bill Stage 1, Scottish Parliament 20 January 2022, WhatsApp –
Mobile number only so the creator of this group is not identifiable**

Stage 1 X Bill, Scottish Parliament, 11 May 2022, WhatsApp - Mel [no further detail held]

Covid-19 Committee, Scottish Parliament, 31 March 2022, WhatsApp – **NR**

NR (Private Secretary to Mr Swinney, DFM) [junior civil servant]

Strategic Framework debate, Scottish Parliament 15 March 2022, WhatsApp –

Name Redacted (Private Secretary to Mr Swinney, DFM) [junior civil servant]

25. In respect of each group or group chat, please state the period of time during which that group or group chat was used by members. For example, was that group or group chat active during the whole period between January 2020 and April 2022?

Any group chat I was involved in was usually for on-the-day communication to support me through a parliamentary event. It was set up for that purpose and activity within the chat would cease after that Parliamentary event had ended. I was not involved in any group chat that existed for the whole of the pandemic.

I have noted the specific duration of each group beside the title of the group below.

Covid Bill Team, 18 June 2021, WhatsApp (18 June 2021 to 24 June 2021)

Covid Certification debate, Scottish Parliament, 9 September 2021, WhatsApp (9 September 2021 and 29 September 2021 – for two separate Parliamentary debates)

Covid Recovery debate, Scottish Parliament 28 October 2021, WhatsApp (28 October 2021 only)

Self-Isolation Bill Stage 1, Scottish Parliament 20 January 2022, WhatsApp (20 January 2022 only)

Stage 1 X Bill, Scottish Parliament, 11 May 2022, WhatsApp (12 May 2022 only)

Covid-19 Committee, Scottish Parliament, 31 March 2022, WhatsApp (31 March 2022 only)

Strategic Framework debate, Scottish Parliament 15 March 2022, WhatsApp (15 March 2022 only)

26. In respect of each group or chat, please state the purpose or nature of that group or group chat. For example, why was it set up? Was that group or group chat used to discuss a specific subject-matter? If so, what was that?

The only group chats of which I was a part were set up to provide support to me during parliamentary debates or committee appearances as outlined above.

27. In respect of each group or group chat, did group members comment upon matters around the progress of the pandemic in Scotland? Did group members comment upon advice received in relation to the pandemic in Scotland? Did group members comment upon the nature of decisions that the Scottish Government might have to take? Did group members make any decisions about the Scottish Government's response to the pandemic in that group or chat? Did group members comment upon the decisions which the Scottish Government had taken? Please state which, if any, of these categorisations describe the contents of the communications within each group or group chat.

The purpose of the group chats would be to provide me with data, factual information or points of existing Scottish Government policy during committee appearances or debates in the Scottish Parliament.

The groups were not used for comment on advice or the nature of decisions relating to the pandemic in Scotland. The groups were not for the purposes of making any decisions about the Scottish Government's pandemic response or to pass comment on the decisions taken by the Scottish Government in relation to the pandemic. They were not a discussion forum but a mechanism by which a number of officials could provide me with briefing in a live context which was not possible at that time due to Covid-19 restrictions.

28. In respect of each group or group chat, were there any particular communications that you can recall which were significant to the Scottish Government's response to the pandemic between January 2020 and April 2022? If so, what were those communications? When did those communications take place? What was the outcome of those communications?

There were no significant communications in these chats. They were a routine, practical alternative to enable officials to support me on parliamentary business when they were restricted from doing so due to the limitations and restrictions experienced during Covid-19.

29. In respect of each group or group chat, please provide all group messages (including those sent by others within the group) relating to the management of the pandemic in Scotland between January 2020 and April 2022.

I have three WhatsApp Groups containing messages still in my possession (Covid Bill Team 18 June 2021, Covid Certification debate 9 September 2021 and Strategic Framework debate 15 March 2022) which I will provide for the inquiry. I have other threads which show the title of the group but have no contents, which I have noted earlier in my statement from Q22 onwards for completeness

E: Recording, retention and deletion of informal communications relating to the pandemic

30. If you used one-to-one informal communications and/or groups or group chats to discuss the management of the pandemic between January 2020 and April 2022, did you record and/or retain such communications?

In my earlier answers I have set out the very limited nature of any groups I was involved in, which were set up, often for a short period, to provide me with a channel of communication to address any points made in a parliamentary or committee debate. Any record keeping of these groups would be the responsibility of the administrators.

In general, I would have written down some notes from the group while I was participating in the Parliamentary event as I was dealing with particular issues but once I had completed addressing that particular question, I would have disposed of the notes securely.

With regards to one-to-one communications, as set out about at Question 18, all of my discussions were focused on taking forward the direction that had been set by Cabinet and addressing practical issues that arose as a consequence. Many of these informal discussions would be by telephone and if there was any relevant information that was required to be placed on the corporate record, this would be undertaken by me issuing an email to my Private Office or an Official recording the necessary information.

As set out above in my answer to Question 10 and in my statement of 3 October 2023, any discussions I was involved in using informal means of communication that involved any decisions being taken would have been reported to other meetings that would have been minuted, or included in Scottish Government communication to either the Scottish Parliament or a Media Conference. I do not retain communication of this type, as the corporate record fully accounts for my actions and decisions. I therefore deleted the material from my devices or I use an autodelete function.

31. If so, how and by whom were those communications recorded and/or retained?

My interactions on the pandemic were overwhelmingly carried out in formal meetings that would have been minuted by relevant civil servants who were responsible for such steps. If there was any material relevant from any communication that needed to be recorded, I would submit an email to my Private Office detailing the nature of that point and asking for appropriate action to be taken. This would form part of the corporate record of the Scottish Government.

32. If you recorded and/or retained such communications but you are unable to provide those communications to the Inquiry in response to this request, please explain where such communications can be found now; and how the Inquiry would be able to access such communications.

Any example of the arrangements set out in response to Question 31 will be held by the Scottish Government as part of the corporate record.

33. If you did not record and/or retain such communications, why not?

I would have recorded any relevant information by communication with my Private Office in all circumstances and it will therefore be held in the corporate record of the Scottish Government.

34. If you did not record and/or retain such communications, did you do so pursuant to any Scottish Government issued policy or guidance?

I followed Scottish Government policy by recording any relevant information emerging from informal communications by email to my Private Office who

would have recorded the information on the Scottish Government corporate record.

35. If so, please identify that policy or guidance and the date upon which it was issued.

I considered my actions were consistent with the Records Management Policy of the Scottish Government which was in place at the time of the pandemic. The various iterations of this policy and associated documents have been supplied to the Inquiry by the Scottish Government. I understand the current version of the Records Management Policy dates from February 2021.

36. If so, please identify any relevant parts of that policy or guidance that formed the basis of your decision not to record and/or retain such communications.

Please see my answer to Question 35. As stated in the Records Management Policy, all information which may form a record of business should be stored and managed in eRDM and not on network drives or other ungoverned repositories. Any information held in such repositories which is identified as a record of business should be transferred to eRDM and deleted from the original store.

37. Did the Scottish Government communicate with you regarding your compliance with any policy or guidance about the recording and/or retention of such communications between January 2020 and April 2022?

I did not personally receive any communication from the Scottish Government during the period referred to about my compliance with the policy.

38. If so, how and when did the Scottish Government communicate with you about your compliance with such policy or guidance? What communication took place in that regard?

Please see my answer to Question 37.

39. Have you ever sought advice, guidance or instruction on whether informal communications (including on both Government issued and personal devices of

any kind whatsoever) between you and Cabinet Secretaries, Ministers, senior civil servants, Special Advisers, other advisers and/or counterparts in the UK Government or the other devolved administrations relating to government business ought to be recorded and/or retained? If so, when and from whom? What advice, guidance or instruction did you seek and why?

The guidance I have always followed, which I believe is consistent with the Record Keeping Policy of the Scottish Government, is that any information relevant to the official record of Scottish Government activity that came to me through any other channel should be shared with my private office for entry into the corporate record. I followed that at all times by communicating any information in the form of an email to my Private Office. That guidance was explained to me when I became a Minister in 2007 and I have followed that guidance on a consistent basis ever since.

40. Have you ever received (whether you sought it or not) advice, guidance or instruction on whether informal communications (including on both Government issued and personal devices of any kind whatsoever) between you and Cabinet Secretaries, Ministers, senior civil servants, Special Advisers, other advisers and/or counterparts in the UK Government or the other devolved administrations relating to government business ought to be recorded and/or retained?

Please see my answer to Question 39.

41. If so, (a) when did you receive such advice, guidance or instruction (b) who gave you such advice, guidance or instruction (c) what was the advice, guidance or instruction received and (d) did you follow that advice, guidance or instruction?

I received that advice when I became a Minister in 2007 from officials in my private office. As set out in my answer to question 39, that advice was that any information relevant to the official record of Scottish Government activity that came to me through any other channel should be shared with my private office for entry into the corporate record and I have followed that advice consistently through my term in office.

42. If you did not follow that advice, guidance or instruction, why not?

I followed that guidance throughout my term of office as a Minister.

43. Have you deleted any communications relating to the management of the pandemic in Scotland from any Government issued or personal devices?

The only information which I have not retained is information that I did not believe was relevant to the official record of my actions as a Minister, after having reviewed the content and taken steps to ensure any relevant information would be recorded on the Scottish Government system.

44. If you instructed someone else to delete such communications, whom did you instruct and when?

I instructed nobody to take any action in relation to my personal device. Once I had considered and responded to items sent to my john.swinney@gov.scot inbox by my Private Office, I am certain that as a consequence of routine inbox management, they will have deleted completed items from my Inbox,. This is because the email back from my Private Office to the organisation confirming my feedback or decision became the official record.

45. If you have deleted any communications relating to the management of the pandemic in Scotland from any Government issued or personal devices, why were such communications deleted?

The only reason for which I would not have retained information is that I did not consider the contents to be relevant to the record of the management of the pandemic, as I followed an approach that submitted any relevant information to the Scottish Government for inclusion in the corporate record via my private office.

46. Did you manually delete any one-to-one communications and/or groups or group chats relating to the management of the pandemic in Scotland from any such devices?

I did delete information consistent with the Record Management Policy of the Scottish Government, but only after completing the checks above to ensure that any relevant information would be recorded on the corporate record.

47. If so, please list all of the one-to-one communications and groups or group chats relating to the management of the pandemic in Scotland that you manually deleted from any such devices.

I would find it impossible to recall the specific material that I deleted, but any such actions would have been consistent with the Record Management Policy of the Scottish Government.

48. If so, when did you manually delete such communications and/or groups or group chats? Please provide specific or estimated date ranges where possible.

I would have deleted material on an ongoing basis during the pandemic.

49. Did you delete such communications and/or groups or group chats from your devices on a regular basis? If so, how often would you manually delete your communications from your devices? For example, did you delete such communications and/or groups or group chats (i) daily; (ii) weekly; (ii) monthly; or (iv) at another interval?

I am not sure of the exact timescales but I would delete material routinely over the duration of the pandemic.

50. Did you use auto-delete to delete any one-to-one communications and/or groups or group chats from your devices?

I did not set up any group chats, so if the auto-delete function was applied, that was within the construction of the group. I applied the auto-delete function to some one-to-one discussions but always observed the obligation to fulfil the requirement to pass any relevant information to the Scottish Government official record.

51. Was auto-delete applied to any such communications and/ or groups or group chats by someone else (for example the administrator of the group or group chat)? If so, provide details.

Please see my answer to Question 50.

52. If so, please list all of the one-to-one communications and groups or group chats relating to the management of the pandemic in Scotland for which you or someone else used or applied the auto-delete function on any such devices.

The auto-delete function is applied to the Stage 1 Bill group, Covid-19 Committee group and Self-Isolation stage 1 debate.

53. If so, what was the auto-delete function used or applied? For example, was it set to a particular time period?

I do not know the answer to this question.

54. If so, when did you first start to use the auto-delete function/ when was it first applied?

I cannot recall when I first used this function.

55. Have you ever discussed the deletion of communications relating to the management of the pandemic in Scotland from your devices with anyone else other than for the purpose of responding to this Inquiry or the Scottish Inquiry's requests?

No. I would also make clear that I am handing over material I hold to the Inquiry and I have never discussed or carried out deletion of materials in order to prevent them from being handed over to either the UK or the Scottish Inquiry.

56. If so, with whom did you discuss the deletion of such communications? Please list the names of all individuals with whom you have had such discussions.

Please see my answer to Question 55.

57. If so, (a) when was this discussed and (b) what was the outcome of those discussions?

Please see my answer to Question 55.

58. On 3 August 2021, Ken Thomson and Lesley Fraser (DG Corporate) sent an email to Scottish Government officials with the subject "Covid-19 Independent Inquiry - Record Retention". In that email, Mr Thomson and Ms Fraser advised recipients that:

"...it is a matter of judgement about what material will be relevant to the work of any inquiry. If in doubt, you should assume that material may be relevant and ensure that it is retained and is accessible in eRDM. This includes ensuring that no material of potential relevance to either inquiry is destroyed. You should also obtain similar assurances from any relevant arm's length bodies. We know that well-established records management processes are in place across the Scottish Government and that all of you are aware of the need to keep a full and clear record of our part in responding to Covid-19 and our other work in eRDM. This includes the decisions we take, the process by which those decisions were reached, the reasons for those decisions and the evidence and data used to support them, and applies whatever the format in which that information is held and on whatever device or system. Please do continue to follow these important processes both with COVID-19 information and with all other Scottish Government information."

A similar message was sent again by Ms Fraser to Scottish Government officials by email on 7 March 2022. Did you receive either or both of these emails instructing against the deletion of material relating to the management of the pandemic in Scotland?

I do not believe I was personally sent that email but I do believe my actions were consistent with the terms of that email.

59. If you did not receive either or both of these emails, did anyone within the Scottish Government bring the contents of these emails or the instruction to your attention? If so, who brought this to your attention and when?

I do not recall anyone specifically bringing this communication to my attention. I believe the contents of the email explained the approach I was taking in

ensuring material was transferred to the corporate record through my communication with my Private Office.

60. If you did become aware of the contents of these emails or the instruction not to delete materials relating to the management of the pandemic in Scotland, what actions did you take? In particular, did you stop manually or auto-deleting informal communications relating to the management of the pandemic from your devices?

I felt I was already following that policy as I was submitting any relevant material to the Corporate Record.

61. If so, when did you take that action?

Please see my answer to Question 60.

62. If you did not take any action, why not?

Please see my answer to Question 60.

63. Do you consider the deletion of your communications relating to the management of the pandemic in Scotland from your devices to be appropriate, given the public nature of the role which you were performing at that time? Please explain your answer.

I believe I was acting in a way that was consistent with the Record Management Policy of the Scottish Government which was to submit relevant material to the corporate record. I was also conscious that I was holding material related to Scottish Government business on an iPhone that did not carry the same security as, for example, my Scottish Government laptop. I therefore judged it appropriate to transfer material from that device to the official Scottish Government corporate record and thereafter to delete it promptly from my iPhone.

F: Retrieval of communications relating to the management of the pandemic in Scotland

64. What steps have you taken to retrieve any communications relating to the management of the pandemic in Scotland from your devices in response to this Inquiry's requests?

I assume that all of the necessary material that was placed on the official record of the Scottish Government through my responses to emails and other records of actions and decisions I took is available to the Inquiry. I have referenced particular documents in my original statement but there will be a comprehensive distillation of my actions during the pandemic held by the Scottish Government. I will also provide the Inquiry with the communications I have referred to at Questions 20 and 29 above. I have sought advice from the Scottish Government IT Service about technical support to try to retrieve messages. They have advised me they do not believe there is a means of so doing. However, as I have noted within this statement, I believe anything of relevance to the Inquiry will already have been transcribed to the Scottish Government corporate record, in line with Scottish Government records management policy.

65. Where such communications are no longer retained or have been deleted, have you sought technical assistance to assess whether these communications can be retrieved? If so, please specify (a) from whom (b) when and (c) the outcome of that request for technical assistance?

I have asked for technical assistance from the Scottish Government in this respect following receipt of the Inquiry's request and I have been advised that there is no practical way in which deleted text and WhatsApp messages can be retrieved.

66. If the communications could not be retrieved, what is the reason why the communications could not be retrieved?

I have so far not been able to identify a technical means of retrieving those communications.

F: Contemporaneous diaries, notebooks and notes (including of telephone calls)

67. Did you keep any contemporaneous diaries, notebooks or notes (whether in hard copy or electronic format) relating to the management of the pandemic in Scotland between January 2020 and April 2022?

I took handwritten notes when I was dealing with a particular subject to remind me of actions to take as a result of any discussion. Beyond these notes, I did not keep any contemporaneous diaries, notebooks or notes (whether in hard copy or electronic format) relating to the management of the pandemic in Scotland.

68. Did anyone else keep any contemporaneous diaries, notebooks or notes (whether in hard copy or electronic format) on your behalf relating to the management of the pandemic in Scotland between January 2020 and April 2022?

Civil Servants acting on my behalf, either in my Private Office or across the policy areas for which I had responsibility, would have taken notes of the discussions I was having for the formal record.

69. If the answer is yes to either of the questions above, please provide all contemporaneous diaries, notebooks and notes which you made or which others made on your behalf relating to the management of the pandemic in Scotland between January 2020 and April 2022.

I have asked the Scottish Government to supply the Inquiry with all relevant notes that are held by the Scottish Government. I disposed of any hand written notes I had taken once I had completed the actions that were required, which would invariably mean communicating any such message with my Private Office who would translate that material onto the Corporate Record.

70. If you are unable to provide such diaries, notebooks and notes in response to this request, please explain where such diaries, notebooks and notes can be found now; and how the Inquiry would be able to access such diaries, notebooks and notes.

Any information relevant to the Inquiry that is held in this respect by the Scottish Government should be available to the Inquiry. When I had finished following up any handwritten notes I disposed of these notes securely.

71. If you no longer retain such diaries, notebooks and notes, why not?

Please see my answers to Questions 69 and 70.

72. If such diaries, notebooks or notes have been destroyed, when and how were they destroyed, by whom/ on whose instructions?

Any handwritten notes I had I disposed of securely when I had completed any tasks that arose.

73. If so, were they destroyed pursuant to any Scottish Government issued policy or guidance? If so (a) please identify that policy or guidance and the date upon which it was issued and (b) please identify any relevant parts of that policy or guidance that formed the basis of the decision to destroy such diaries, notebooks or notes.

I believed I was following the Record Management Policy of the Scottish Government that requires all relevant material to be submitted to the Corporate Record and the original material deleted. The Records Management Policy states that information which may form a record of business should be stored and managed in eRDM and not in other ungoverned repositories. Any information held in such repositories which is identified as a record of business should be transferred to eRDM and deleted from the original store.

74. Did the Scottish Government communicate with you regarding your compliance with any policy or guidance about the recording and retention or, alternatively, destruction of contemporaneous diaries, notebooks and notes between January 2020 and April 2022? If so, how did the Scottish Government communicate with you regarding your compliance with such policy or guidance?

The Scottish Government did not communicate with me during this period about compliance for the reason I can only assume that I was following the policy approach to the handling of relevant information.

75. Have you ever sought advice, guidance or instruction before April 2022 on whether your contemporaneous diaries, notebooks and notes relating to the management of the pandemic in Scotland ought to be recorded and/or retained or, alternatively, destroyed? If so, when and from whom?

I had been aware of my obligations in relation to the management of information and believed I was fully adhering to those obligations by submitting material to the corporate record.

76. Have you ever received advice, guidance or instruction on whether your contemporaneous diaries, notebooks and notes relating to the management of the pandemic in Scotland ought to be recorded and/ or retained or, alternatively, destroyed? If so, please specify (a) when you received such advice, guidance or instruction (b) who gave you such advice, guidance or instruction (c) what the advice, guidance or instruction was which was received?

Please see my response to Questions 73, 74 and 75.

77. If so, did you follow any such advice, guidance or instruction? If you did not, please specify why not?

I believed I was following the guidance that had been available to me during my term in office as a Minister.

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 statement of truth without an honest belief of its truth.

Signed

Personal Data

Dated: 16 November 2023