

Witness Name: Nick Vamos

Statement No.: NPV001

Dated: 13 October 2023

COVID INQUIRY

WRITTEN STATEMENT OF NICK VAMOS

I, Nick Vamos, Partner at Peters & Peters Solicitors LLP will say as follows: -

1. I am a Partner at Peters & Peters Solicitors LLP ("**P&P**"). I act for Mr Boris Johnson in respect of his participation as a witness in the Covid Inquiry. I have overall responsibility for the matter and am assisted by two associates and a paralegal with the day-to-day management of the matter.
2. On 4 October 2023, Inquiry Legal Team for Module 2 ("**ILT**") requested P&P to provide a statement in respect of the disclosure of relevant WhatsApp materials from Mr Johnson's 'old phone' ("**the Device**"). Specifically, P&P has been asked to address the following matters:

"1. In high level terms, a chronology of the steps taken to extract data from your client's Device, including the engagement of any third parties (and the scope of their instruction);

2. The result of the extraction process and any limitations as to the materials which were recoverable from the Device. This should specifically include detail surrounding the 'time gap' identified to the Inquiry by email on 6 September 2023; and

3. The approach taken to the relevance assessment conducted on the extractable content from the Device."

3. In addition, ILT has asked for the statement to be supported by a technical report from the third party contractor consulted, which provides confirmation of the 'time gap'; what was established from examination of the Device and the absence of data during this period; steps taken to establish the cause for the absence of data; and whether any further actions can be proposed to locate the WhatsApp communications sent and received during this time.

4. I provide this statement and exhibit NPV/1 in response to these requests.

High Level Chronology

5. By way of background, P&P has been instructed on this matter since 30 May 2023. Before that, Mr Johnson was represented by the Government Legal Department (“**GLD**”) under an ‘umbrella’ arrangement for senior members of the Government who had been asked to appear as witnesses in the Inquiry.
6. On 1 June 2023, the Cabinet Office issued a claim seeking a judicial review of the Section 21 notice issued on 28 April 2023 (“**the Notice**”) requiring the Cabinet Office to provide, *inter alia*, “*Unredacted WhatsApp communications dated between 1 January 2020 and 24 February 2022 which are recorded on device(s) owned / used by [Mr Johnson] and which:*
- a. *Comprise messages in a group chat established, or used for the purpose of communicating about the UK Government’s response to Covid-19 (“group messages”); or*
 - b. *Were exchanged with any of the individuals listed in Annex B (“individual threads”).*”
7. I set out below a high-level chronology of the steps taken to extract the WhatsApp data from the Device, in order to identify messages responsive to the Notice.

2 June 2023	Mr Johnson writes to the Chair of the Inquiry to explain that he wished to provide WhatsApp messages on the Device but had “ <i>previously been told [he could] no longer access [the Device] safely</i> ” but wished to “ <i>test this advice, which came from the security services.</i> ”
2 June 2023	The ILT writes to the Cabinet Office to request that they liaise with Mr Johnson to secure access and extraction of potentially relevant material from the Device.
9 June 2023	The Government Chief Security Officer (“ GCSO ”) writes to P&P offering to meet Mr Johnson or his representatives to discuss attempting to securely access messages on the Device.
12 June 2023	P&P responds to GCSO agreeing to a meeting as soon as possible.

19 June 2023	GCSO and P&P meet to discuss facilitating an attempt to access the Device with the help of a trusted third-party contractor, CCL Solutions Group (“CCL”).
19 June – 6 July 2023	Correspondence and discussions between GCSO, P&P and CCL to agree terms and logistics. The scope of instruction is for CCL to attempt to retrieve all WhatsApp messages on the Device between 1 January 2020 and 24 February 2022.
7 July 2023	<p>A CCL employee attends P&P’s office to attempt to access the Device securely using a PIN provided by Mr Johnson. However, because Mr Johnson is not certain it is the correct PIN, CCL advise that there is a small risk, which cannot be discounted, of data deletion if the wrong PIN had previously been entered onto the Device prior to it being turned off.</p> <p>In light of CCL’s advice, no attempt is made to access the device using the PIN. P&P notifies the ILT and GLD, and seeks further guidance from the GCSO. The Device is stored securely at P&P’s offices.</p>
12 July 2023	The GCSO advises that P&P should seek further advice from CCL. P&P seeks advice from CCL on alternative approaches which do not risk deleting data from the Device.
13 July 2023	CCL advises on an appropriate alternative approach which requires the GCSO’s permission and for the Device to be taken to CCL premises.
14 July 2023	P&P updates the ILT.
17 July 2023	The ILT agrees to P&P’s proposed approach.
17 July 2023	CCL collect the Device.
18 July 2023	CCL unlock the Device using the alternative approach and the PIN provided by Mr Johnson, which turns out to be the correct PIN.
19 July 2023	CCL return an encrypted USB to P&P with all the retrievable WhatsApp messages on the Device having applied a date range of 1 January 2020 to 24 February 2022.

The ‘Missing Messages’

8. During the review of the WhatsApp messages retrieved from the Device which were identified as potentially responsive to the Notice and/or the Rule 9 request addressed to Mr Johnson dated 3 February 2023 (“**the r9 Request**”), it became apparent that

there was a 'time gap' in messages across all of the responsive group messages and individual threads from late January to early June 2020.

9. On 2 August 2023, P&P wrote to CCL noting that the issue of missing messages seemed to have affected messages across WhatsApp on the Device and to request advice *"as to the possible technical causes for this missing data (whether caused by the owner's use of the device / app, the imaging / extraction process or otherwise)."* [NPV1/1-2].
10. Further, in the course of the review, P&P identified reference in the WhatsApp messages to Mr Johnson's use of Signal. Under the same letter, P&P requested that CCL export all Signal messages for the period 1 January 2020 to 24 February 2022 (inclusive) for P&P's review.
11. Mr Nathan Barker of CCL set out his findings in a report dated 23 August 2023 (**"the Report"**) [NPV1/3-14]. The Report concluded that:
 - a. no user generated messages were found on the Device during the period 31 January to 7 June 2020 (**"the Period"**), i.e. the 'time gap' was an application-wide issue. [5]-[6] & [11] of the Report, [NPV1/3-14]; and
 - b. all of the retrievable messages had been successfully extracted from the Device. [11] & [36] of the Report [NPV1/3-14], i.e. there were no messages during the 'time gap' that could be retrieved from the Device.
12. Mr Barker also set out a number of possible explanations for the 'time gap' but noted that it was not possible to definitively identify the actual cause. He was able to rule out some potential causes: [12]-[15] of the Report [NPV1/3-14].
13. Mr Barker identified that a backup of the Device was created on 30 January 2020, shortly before a factory reset of the Device the same day. Separately, P&P had identified two Signal messages sent by Mr Johnson on 8 June 2020 in which he referred to his WhatsApp being *"down"*. These Signal messages have been provided to the Inquiry on 11 October 2023.
14. P&P formally notified the ILT of the 'time gap' issue by email on 6 September 2023, having previously notified the ILT on a phone call that P&P had identified a potential technical issue with the retrieval of the data.

15. Given the coincidence of the two events immediately before and after the Period, referred to in paragraph 13, above, P&P sought a supplemental report from Mr Barker by letter dated 29 September 2023 [NPV1/15-17]. P&P put to Mr Barker a set of propositions that may explain the cause of the missing messages, based on P&P's understanding of the Report and the surrounding circumstances. P&P asked Mr Barker to "*address whether or not in your expert opinion, the propositions set out [below] are consistent with the data identified on the device and understanding of the WhatsApp application.*"¹

16. The propositions were, as follows:

- a. *"The user created a backup on 30 January 2020 of the WhatsApp messages before the factory reset of the device on 30 January 2020 at around 11:34.*
- b. *These messages were restored to the device on 30 January 2020 at around 11:52 from that backup.*
- c. *The user continued to use the device in the Period and to send/receive WhatsApp messages from the device.*
- d. *The user experienced an issue with the WhatsApp application on 8 June 2020 which resulted in the deletion of WhatsApp messages – e.g., by the application crashing and/or having to uninstall and then reinstall the application.*
- e. *The messages from the 30 January 2020 backup were then restored to the device.*
- f. *The user continued to send/receive WhatsApp messages from 8 June 2020 onwards."*

17. Mr Barker returned a "**Supplemental Report**" dated 9 October 2023, in which he responded to each proposition. To summarise, he concluded that this "*may be a possible explanation as to why there are no messages recovered between 31/01/2020 and 07/06/2020*" and "*Any messages that may have been sent/received after 30/01/2020 and prior to restoring the WhatsApp messages would be lost and unrecoverable. The effect of this restore would be returning WhatsApp to the state it was in when the backup was made on 30/01/2020.*" [21]-[22] of the Supplemental Report [NPV1/18-25].

¹ The propositions were theoretical, based on CCL's findings, rather than on Mr Johnson's instructions, save as referred to at paragraph 20, below.

18. The Report concluded that it was not possible to recover any WhatsApp messages from the Device which may have been sent/received on the Device during the 'time gap'. [36] [NPV1/3-14].
19. After the unsuccessful first attempt to access the Device on 7 July 2023, P&P had sought advice from CCL on "*whether it would be possible to access any backup of the WhatsApp messages via another device, if the phone number associated with the WhatsApp is out of use*". CCL provided three potential options, which could be explored if necessary. This was in the event that the Device could not be accessed. However, as set out in the chronology at paragraph 7, above, CCL were able to access the Device, so the possibility of accessing messages via a backup was not considered further.
20. In view of the Supplemental Report, it seems unlikely that any backup of the WhatsApp messages was created after 30 January 2020 which would contain some or all messages from the Period. If such a backup had been made, one would expect such messages would have been restored on 8 June 2020. Mr Johnson's instructions are that he has no recollection of making any further backups.
21. In our email of 6 September 2023, P&P noted that the vast majority of WhatsApp messages to and from Mr Johnson during the Period, which Mr Johnson was unable to provide to the Inquiry due to the 'time gap', should have been made available to the Inquiry by the other recipients or senders of these messages. P&P asked ILT to confirm whether that was the case. However, if this was not the case, Mr Johnson was very happy to seek further technical assistance to determine whether other backups were available, although he had no memory of making any other backup.
22. Mr Barker notes that in preparing the Supplemental Report, he no longer had access to the data extracted from the Device [5] [NPV1/18-25]. This is because the CO informed us that it had identified national security sensitivities within a small number of the WhatsApp messages, which have been redacted from the copies provided to the Inquiry, and had asked us to either delete all unredacted copies of the material or store them in accordance with their guidance. P&P accordingly asked CCL to delete its copy of the data. For the avoidance of doubt, the Device data remains accessible if required.

Relevance assessment

23. To identify messages potentially responsive to the Notice and r9 Request, P&P, assisted by counsel, adopted the following methodology:

- a. All individual threads and group messages on the Device extraction were identified in which an individual listed in Annex B to the Notice was a participant.
- b. All the responsive individual threads identified were reviewed, provided to the Cabinet Office for national security review, and then disclosed to the Inquiry.
- c. Responsive group messages were assessed for potential relevance by reference to the group name, participants, and either:
 - i. reviewing the entirety of a short group message; or
 - ii. for longer group messages, searching for and reviewing any references to 'C-19', 'Covid' or 'Coronavirus'.
- d. All of the potentially relevant group messages (except three, as I explain below), were then reviewed by counsel in their entirety to assess whether they were responsive to the Notice and/or r9 Request, before being provided to the Cabinet Office for national security review, and then disclosed to the Inquiry.

24. Adopting the above methodology, P&P identified three additional group messages which P&P did not review for potential relevance on grounds of proportionality. These group messages had: 76, 137, and 293 participants; and 695, 2143 and 17827 messages, respectively. As P&P explained to the ILT, given the volume of participants and messages (and their apparent subject matter based on the group names), it seemed unlikely that they would contain material discussions concerning the Government's response to Covid-19 between those individuals but, without having reviewed them, P&P could not rule out that they were potentially responsive to either the r9 Request or the Notice.

25. Prior to P&P's instruction, in searching his current device, Mr Johnson had identified (with the assistance of his counsel team and office):

- a. An additional four individuals with whom he recalled exchanging WhatsApp messages regarding the UK Government's response to Covid-19. Further searches were run to isolate all individual threads and group messages in which these individuals were a participant, and the same methodology set out at paragraph 23 above was followed.

- b. Two additional group messages, searches for which provided nil return on the Device extraction.

26. As noted at paragraph 10, CCL also extracted all of the retrievable Signal messages on the Device. The same methodology set out at paragraph 23 above was followed in respect of this material.

27. P&P has provided to the ILT indices of all the individual threads and group messages which P&P identified as responsive to the Notice and r9 Request.

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.

Signed: **Personal Data**.....

Dated: **13 October 2023**