

Witness Name: Sue Gray

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Exhibits: 17

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UK COVID-19 INQUIRY

WITNESS STATEMENT OF SUE GRAY

INTRODUCTION

1. I, Sue Gray, formerly Permanent Secretary of the Department of Finance (DoF) in Northern Ireland, will say as follows:
2. This witness statement has been drafted with the assistance of colleagues in DoF and with advice from my legal representative in the Departmental Solicitors Office.
3. Having served in the Cabinet Office to April 2018 as Director General, Propriety and Ethics, I took up post from then as the Permanent Secretary of DoF on secondment from the Cabinet Office. I left that post in May 2021 to take up the role of Second Permanent Secretary in the Cabinet Office with responsibility for the Union and Constitution Directorate.
4. By virtue of being Permanent Secretary, I was Accounting Officer of DoF and in my role I had responsibility for ensuring that DoF functioned effectively in relation to governance, decision making and financial management. I signed the Department's accounts, Annual Report and Governance Statement in accordance with Managing Public Money NI (MPMNI) section 3.3.1. MPMNI, published by DoF, sets out the main principles for dealing with resources used by public sector organisations in Northern Ireland. **[SGR1/INQ000099783, SGR2/INQ000099784].**
5. I was the most senior civil servant in DoF. I served the Finance Minister and, like all civil servants in DoF, I was required, in accordance with the Departments (Northern Ireland) Order 1999 Article 4(1), to act under the supervision and control of the Minister

(when in office). I did not, nor was I legally entitled to, give advice to other Ministers or Departments or to the Executive. On 11 January 2020 the Assembly was restored, and the First Minister (FM) and deputy First Minister (dFM) took up office. The Executive was then formed through nominations of Ministers by eligible parties. As regards DoF, Conor Murphy of Sinn Féin became Finance Minister and remained so during my time as Permanent Secretary.

6. Having left my DoF post in May 2021, I ceased to have involvement in Northern Ireland Civil Service (NICS) matters although my responsibilities within UK Government included Northern Ireland matters as they related to my Union and Constitution responsibilities.
7. As with all NICS Permanent Secretaries, the Head of the Civil Service (HOCS) was my line manager. However HOCS could not instruct me to take any particular action, only my Minister could do so. This is for important constitutional reasons unique to Northern Ireland which are explained later in this statement.
8. In accordance with sections 1.4.1 and 1.4.2 of MPMNI, DoF's role is to set the ground rules for the administration of public money and account to the Assembly for doing so; and the Assembly looks to DoF to make sure that departments use their powers only as intended and that revenue is raised, and the resources so raised spent, only within agreed limits. DoF therefore had no direct role in devising a response to the pandemic, save where it was required to provide appropriate financial governance and to implement financial assistance schemes for affected businesses.
9. As DoF Permanent Secretary I was chair of the DoF Departmental Board. The Departmental Board manages the Department within the strategic policies and resources framework set by the Minister. It supports the Permanent Secretary by providing collective leadership and taking ownership of the Department's performance. The Board comprises executive members (i.e. civil servants) and non-executive members (who are from outside the civil service). There is no mention of the pandemic in Board minutes of January 2020. There were no meetings of the Board from then until June 2020. After that point the Board met regularly.
10. There were no formal meetings of the DoF Board from February 2020 until June 2020 as this period was just after Ministers had returned to office and the start of the pandemic. It was therefore a very busy and challenging time. While there were no

formal DoF Board meetings during this time, I had meetings with key senior officials and the Finance Minister to address issues arising and take timely decisions. The issues arising were time sensitive and dynamic. Given the unprecedented circumstances, the disparate nature of DoF's responsibilities and the time pressures I engaged directly with the respective Grade 3 (senior officials) on specific areas of priority, for example, Ian Snowden for grants and financial support, Sharon Smyth for procurement in relation to PPE, Paul Duffy in relation to digital services and support, Bill Pauley in relation to targeted support for services like the hospices and airports.

THE ROLE OF THE CIVIL SERVICE IN NORTHERN IRELAND

The absence of power sharing arrangements in Northern Ireland

11. The Executive and Assembly ceased to function, and Ministers left office, on 16 January 2017 as a result of a dispute between the two main parties which could not be reconciled. This situation lasted to 11 January 2020. As Permanent Secretary of DoF from April 2018 to May 2021, I led the Department during part of that period without ministers. I continued to fulfil my leadership responsibilities in terms of day-to-day management of DoF and its budget and provided leadership of the department and oversight of its agencies and arm's-length bodies. I was also the main spokesperson for the department, in the absence of a Minister.
12. The legal position of the NICS in the absence of Ministers was established in the Court of Appeal decision in Buick's Application, [2018] NICA 26, (6 July 2018). The Court held (paragraph 56) that "any decision which as a matter of convention or otherwise would normally go before the Minister for approval lies beyond the competence of a senior civil servant in the absence of a Minister." In addition (paragraph 58) a decision that was crosscutting (i.e. affected the responsibilities of more than one department), significant or controversial could not be taken by a Department in the absence of Ministers; such a decision could only be taken by the Executive. Therefore, like all Permanent Secretaries, I and my Department could only take decisions which would not normally fall to a Minister or which were not crosscutting, significant or controversial.
13. During this time, Parliament intervened, when necessary, to ensure the continuity of public services in Northern Ireland. An example for DoF is Parliament providing authority for expenditure by Northern Ireland departments and other bodies through

the Northern Ireland Budget Acts for 2017-18 and 2018-19, made at Westminster. That legislation was drafted and brought forward by the Northern Ireland Office (NIO); DoF was consulted but the content of the Acts was a matter for the NIO and outside DoF control.

14. The NI (Executive Formation and Exercise of Functions) Act 2018 was made on 1 November 2018 and provided at section 3 that the absence of Northern Ireland Ministers and the Executive did not prevent a senior officer of a Northern Ireland department from exercising a function of the department if the officer was satisfied that it was in the public interest to do so. An officer was required to take into account guidance published by the Secretary of State **[SG3/INQ000438239]**. That guidance stated at paragraph 9 that “Some decisions should not be taken in the absence of Ministers. NI Departments should therefore first consider the public interest of having locally elected, accountable Ministers taking decisions. Any major policy decisions, such as the initiation of a new policy, programme or scheme, including new major public expenditure commitments, or a major change of an existing policy, programme or scheme, should normally be left for Ministers to decide or agree.”

15. It follows that until 1 November 2018 I, like all Permanent Secretaries, could not institute major new policies or policy changes. From that date I could do so, but only insofar as they were not decisions that ought, in a democratic society, to be left to Ministers. However this legislation did enable me and DoF colleagues to continue with the work of DoF. During this time I made 20 decisions under this legislation (see Annex 1).

16. In the period preceding EU Exit, a strategic level response was developed by the Executive Office (TEO), namely the C3 Contingency Programme, to ensure preparedness. DoF provided input to the TEO led C3 Contingency Programme. DoF set up its own Department Operation Centre (DOC) and developed Standard Operating Procedures aimed to provide guidance to the DoF DOC staff to effectively support the NI Hub and the Civil Contingencies Group (Northern Ireland) to mitigate and manage the impacts of EU exit from a DoF perspective. DoF provided support to the NI Hub regarding shared services which DoF provided including HR, IT and finance. On these issues, departments would go directly to the DoF business area in question, and I was not involved. These C3 structures were adopted at the start of the Covid-19 pandemic and used on a similar basis as had been envisaged with EU Exit. Staff who had completed the C3 Contingency Programme Training were able to staff

the DoF COVID-19 DOC. These contingency structures were then used in response to the Covid-19 pandemic including the use of situation reports.

17. As part of the operation of the DOC, a regular situation report was provided to the TEO central DOC in line with the required reporting schedule as with other departments. DoF and all other NI Departments put in place contingency structures and undertook training. This enabled effective coordination and responsiveness by DoF in obtaining direct line information to and from business areas, and similarly enabled the flow of information, through the situation reports, between DoF and the central contingency group and TEO.
18. The minutes of the DoF Board meeting of 25 June 2020 note that “Ian Snowden presented a paper on the Departmental Operations Centre. He noted the DOC operating model had been developed out of the Brexit No Deal preparations. Covid-19 had proved to be a rapidly evolving situation and provided a good test of the effectiveness of the arrangements.” *[SGR4/INQ000128646, SGR5/INQ000128647]*

Management of the Civil Service

19. It is worth noting the different arrangements that exist for management of the civil service in the UK:
20. In Great Britain, by convention the position of Minister for the Civil Service is held by the Prime Minister. Under Part 1 of the Constitutional Reform and Governance Act 2010 the Minister for the Civil Service has the power to manage the civil service, and so has made the Civil Service Management Code setting out civil servants’ terms and conditions of service. The Minister for the Civil Service must publish a code of conduct for the civil service and a code of conduct for special advisers.
21. By contrast, control of the NI Civil Service - which is a separate civil service, unlike the civil service working for the devolved governments in Scotland and Wales - lies not at the centre with TEO but with DoF. The Civil Service (Northern Ireland) Order 1999 provides that DoF shall be responsible for the general management and control of the NI Civil Service and may make regulations or give directions with respect to civil servants’ terms and conditions of service. Under that authority DoF has made the NI Civil Service Handbook setting out civil service terms and conditions and has published codes of conduct for civil servants and special advisers. As DoF was required to act

under the direction and control of its Minister, the Finance Minister (when in post) had control of the NICS.

Impacts of the absence of Executive and Ministers on day-to-day work of the DoF

22. As set out above, day to day work of DoF continued during the absence of Ministers. However without a Minister the department was unable to implement new policies or policy changes unless, from 1 November 2018, I or another senior official considered it was in the public interest, always taking into account the Secretary of State guidance that some major decisions were not to be taken in the absence of a Minister. Departments, including DoF, were able to implement the C3 Contingency Programme which provided structures that could be used in relation to the Covid-19 pandemic as it was in the public interest to do so even in the absence of Ministers.
23. The absence of an Assembly from 16 January 2017 to 11 January 2020 meant that Northern Ireland had no legislature and thus no ability to make primary legislation. However (as set out in section 5(6) of the Northern Ireland Act 1998) the power of the Assembly to make laws for Northern Ireland does not affect the power of Parliament to make laws for Northern Ireland. So for example the Coronavirus Act 2020, which was made by Parliament and which extends to Northern Ireland, could have been made even in the absence of an Assembly.
24. When the Assembly returned to work from 11 January 2020 there was of course a backlog of primary legislation that had not been made in the previous period. On 10 February 2020 FM and dFM made a written Ministerial statement to the Assembly on the proposed Legislative Programme during the remainder of the 2019-20 session up to the summer recess **[SGR6/INQ000391216]**. The only primary legislation for which DoF was responsible was the normal Budget Bills as part of the annual financial cycle. These were in due course made as the Budget Act (Northern Ireland) 2020, Budget (No. 2) Act (Northern Ireland) 2020, and Budget (No. 3) Act (Northern Ireland) 2020 to cover spending in the year to 31 March 2020 and the year to 31 March 2021.
25. The fact that on its return the Assembly dealt with only these pieces of primary legislation for which DoF was responsible indicates that the absence of an Assembly had not contributed to a backlog of legislation and therefore had arguably relatively

little impact for DoF. In the absence of an Assembly, legislation on budgets and rates was taken forward by the Northern Ireland Office (NIO).

26. As I have said, the absence of an Executive and Assembly meant that NICS, including DoF, was generally unable to implement new policies or policy changes. In addition, there was no Ministerial direction as to what new policy developments were to be pursued. In that situation there was inevitably a tendency for government, in the form of NICS, to be reactive rather than proactive. It was not until 25 January 2021 that the newly returned Executive published its consultation on a draft Programme for Government. This contained no particular actions for DoF, although DoF had an obvious oversight role as any such programme had to be underpinned by a budget and be subject to proper financial governance. So while the absence of an Executive to provide proactive planning on policy development may have impacted areas for which other departments were responsible, there was relatively little impact of that sort on DoF. My concern in the period prior to the return of the Executive was to ensure that DoF was ready to exercise control of the financial effects of policy developments in other departments. I do not believe that the absence of a power sharing NI government impacted the response to Covid-19. It is the case that that Ministers were picking up the reins of government just as the pandemic was taking hold. However the pandemic was unprecedented and it is unlikely that Ministers, had they been in office immediately before that time, would have taken additional steps beyond those the Civil Service had already put in place.

Collective responsibility

27. The principle or convention of collective responsibility at Westminster provides that all Ministers are collectively bound by, and accountable to Parliament for, Cabinet decisions, that is decisions taken by the Prime Minister and other ministers collectively. Some decisions may be taken by Cabinet-level committees, who consider matters that are thought not to need consideration by full Cabinet. Cabinet decisions and Cabinet Committee decisions are equally binding on Ministers.

28. In the above way Cabinet and Cabinet Office (who co-ordinate the activity of Cabinet and Cabinet Committees) ensure not only collective responsibility but also a large degree of central control by making decisions which bind ministers.

29. This may be contrasted with the position in Northern Ireland where, by design, individual departments are not generally subject to central control. Each department is given a large range of powers and duties by statute, and are free to exercise those as they wish, subject to central control, when an Executive is in office, only on matters that are crosscutting, significant or controversial or which require a common position to be adopted. I believe that matters in the jurisdiction of a department were treated as matters for Executive consideration only exceptionally.

30. Under section 20 of the Northern Ireland Act 1998, the Executive has the functions set out in paragraphs 19 and 20 of Strand One of the Belfast Agreement, including agreeing a programme for government (PfG), described as “a programme incorporating an agreed budget linked to policies and programmes”. Such a programme would have to be observed by individual departments.

31. Since the establishment of the current Executive in 1998 there have been the following draft PfGs or agreed PfGs:

32. Draft PfG 2001–2002

33. Draft PfG 2002–2003

34. PfG 2008–2011

35. PfG 2011–2015

36. Draft PfG 2022-2025

37. The list above shows that there have been several periods without a PfG, or where a PfG has remained in draft but not agreed. That might be viewed as a lack of central control. However Ministers did have a degree of collective responsibility as part of the Executive. The Ministerial Pledge of Office, which all Ministers are obliged to take, requires them “to support, and to act in accordance with, all decisions of the Executive Committee and Assembly”. FM and dFM, as joint chair of the Executive, have a duty to seek to facilitate and encourage consensus within the Executive where possible (section 2.12 of the Ministerial Code [\[SGR7/INQ000262764\]](#)). While there was inevitably an element of silo working in Northern Ireland as mentioned above, on matters which were treated by the Executive as cross-cutting, significant or controversial or which required a common position (such as non-pharmaceutical and other responses to the pandemic), decisions were required to be agreed by the Executive which compelled Ministers to act collectively. Since Ministers were required to act collectively in relation to responses to the pandemic, there was no absence of

collective responsibility in that regard which would have caused difficulty. I have said elsewhere that in Northern Ireland, by design, individual departments are not generally subject to central control, and that by law civil servants must act under the direction and control of their Minister. In those circumstances it would not be consistent to require civil servants to serve the government of the day rather than their own Minister, and that inevitably led (as mentioned elsewhere) to an element of silo working

THE EFFECT OF POWER SHARING ARRANGEMENTS ON THE ROLES OF SENIOR CIVIL SERVANTS IN NORTHERN IRELAND

Permanent Secretary role in NICS compared to that in GB

38. The Civil Service Code applying in GB **[SGR8/INQ000438240]** provides that the civil service “supports the government of the day in developing and implementing its policies, and in delivering public services.” In Northern Ireland the Civil Service Code **[SGR9/INQ000262760]** provides that the civil service “supports Ministers in developing and implementing their policies, and in delivering public services” (my emphasis). This is an important distinction.

39. On all other matters the two Codes are very similar - to carry out their roles with dedication and a commitment to the civil service and its core values: integrity, honesty, objectivity and impartiality.

40. However as regards political impartiality, while the duties of civil servants under both codes of conduct are the same – whatever their political persuasion, to act to the best of their ability in a way which maintains political impartiality – those duties are owed to government under the Westminster code and to Ministers under the Northern Ireland code.

Effect of Ministers’ political views on NICS

41. Section 20 of the Northern Ireland Act 1998 requires matters which are cross-cutting, significant or controversial, or which require a common position to be adopted, to be brought to the Executive for agreement. The Executive is made up of several political parties (at the time of my involvement there were five parties in the Executive), whereas in recent times, with the exception of the Liberal Democrat-Conservative coalition of 2010 to 2015, government at Westminster is normally made up of one

political party. However while individual Ministers in Northern Ireland may be politically or ideologically opposed to each other, when gathered together as the Executive they must produce agreed policies for Northern Ireland which civil servants must implement. While working in a five party Executive, I was always conscious of the political context of my work, but my role was to deliver my Minister's priorities.

42. The role of a Permanent Secretary in Northern Ireland is to serve the Minister of his or her Department, not the Executive as a whole. Individual Ministers will of course require their civil servants to implement the agreed policies of the Executive.

43. NI Ministers and their Permanent Secretaries have different roles which are complementary, and not in conflict. Permanent secretaries do not have policy agendas of their own but rather they and the rest of the Civil Service exist to serve the priorities of their Minister, which include the priorities of the government of the day as set out in agreed Executive decisions.

44. It was my role as senior policy adviser in DoF to support the Minister of the day to develop and implement policy, much of which required Executive approval, due to the nature of the Department. I assisted the Minister in this process, including advising on any risks, raising any issues with colleagues in other Departments and seeking to ensure that Executive agreement would be forthcoming. I am aware that Sinn Féin Ministers would have preferred travel restrictions based on an all-Ireland model. I, and other DoF officials, did not advise on that as it was a political issue. The Finance Minister did not seek advice from me or other DoF officials although he did inform me of that view. I am not aware of any other issue on which support for any decision or policy was informed by the political affiliations of Ministers.

45. I do not believe that the Civil Service code requirements of impartiality and objectivity caused me any issues in delivering in my role.

THE POWER-SHARING CONTEXT

Effect of the power-sharing context

46. The power-sharing context (and any disagreements that may have arisen in the Executive) did not make my role more difficult for the reasons set out below.

47. In general, I believe the Executive worked effectively, given the significant challenges, to respond to the global pandemic. Different Ministers in the Executive may have had different opinions on various matters, but that was no different to the position in Westminster as seen in the evidence the Inquiry has already gathered.
48. In May 2020, the NI Executive agreed and published the document called 'Coronavirus: Executive Approach to Decision-Making'. This document looked ahead and set out the approach that the NI Executive agreed to adopt in the regular reviews of the Coronavirus Regulations. The document was informed by the provision and consideration of advice from public health guidance, the CMO, CSA and Department of Health. The Executive as a whole agreed to take the best medical and scientific advice available into account in reaching the judgements required, but also stated that decisions reached would require judgements that balanced the need to control the spread of infection, with the impacts the restrictions had on health, well-being, the economy and way of life.
49. The Inquiry will note that the Finance Minister provided 114 responses, either as written responses, verbally at meetings or as a noted response, to Covid related Executive papers tabled by other government departments. As each non-pharmaceutical intervention (NPI) was presented, DoF officials considered the content and provided the Finance Minister with advice at that time, relevant to his responsibilities as Finance Minister. The Executive as a whole then made a decision on the paper. In general, the Minister was in agreement with the approach of Ministerial colleagues but did express a specific view in respect of 31 papers. The Minister's comments were primarily directed to papers tabled by TEO and the Ministers of Health and Economy. His comments focused on the need to fully consider financial implications of initiatives collectively across all Executive priorities and within public expenditure limits; the need to ensure that the advice and guidance of the Chief Medical Officer (CMO) and Chief Scientific Adviser (CSA) was followed as agreed in 'Coronavirus: Executive Approach to Decision-making' published in May 2020 **[SGR10/INQ000267748]**; and the requirement for clarity in messaging of information to the public. He expressed a specific concern in correspondence to the Minister of Health on 21 December 2020 that steps were not being taken immediately to restrict movement between Great Britain and Northern Ireland and asked him to reconsider his approach. The Minister also requested further information be provided, where necessary, to facilitate fuller consideration of financial impacts by DoF or to inform more detailed discussions by the Executive.

50. This ensured that the Finance Minister, as a member of the Executive, could be guided by an agreed approach.

THE ABSENCE OF POWER SHARING ARRANGEMENTS PRIOR TO JANUARY 2020

51. During my time in DoF, TEO led on civil contingency policy and I believe that the only significant civil contingencies policy matters relevant to the pandemic that arose during the period when there was no Executive in place, were the C3 arrangements mentioned above and the proposed development of the UK-wide Pandemic Influenza Bill.

52. I have noted that the C3 arrangements were developed in the absence of Ministers and provided a template that was used in response to the pandemic. The Pandemic Influenza Bill was likewise able to progress in the absence of Ministers. The Bill was to become a UK wide Act and I believe that officials in Northern Ireland's Department of Health, with assistance from their legal advisors, were involved in its development.

53. If Ministers had been in post then the extension of the Bill to cover Northern Ireland would have been referred to the Health Minister, and to the Executive by TEO, for consideration. In addition, the Northern Ireland Assembly would have been invited to approve a Legislative Consent Motion, under the Sewel Convention. That convention is that UK Parliament does not normally legislate on matters within the competence of a devolved administration without the consent of that administration. The matter is provided for in Assembly Standing Order 42A. Whilst the proposals regarding the scope of the Bill would have been circulated to all Executive Ministers for comments, it is unlikely that DoF would have stepped beyond what was being proposed by Department of Health, the Department responsible for the policy area.

54. I believe that, in the context of the pandemic, the sole practical effect of the absence of Ministers and the Assembly up to 11 January 2020 was as described by Sir David Sterling in his letter of 13 December 2017 to Sir Jeremy Heywood **[SGR11//NQ000185059]**: i.e. arrangements could be developed but the public might perceive a deficit in democratic accountability which should be provided by elected representatives. However where, as with the Pandemic Influenza Bill, matters are

developed on a UK wide basis, that deficit is much reduced in that responsibility lies with the UK's elected representatives at Westminster.

55. In terms of a pandemic response in Northern Ireland, matters fell largely to Department of Health and TEO, and ultimately to the Executive, not to DoF itself.. DoF would be involved where proposals were developed and then required to be considered in the context of the Northern Ireland budget, as DoF had responsibility for ensuring that the Northern Ireland budget was properly supervised. However UK government provided financial support ringfenced for pandemic response purposes which diminished greatly the difficulties in this regard.
56. In summary, any onus for policy development prior to January 2020 in relation to a potential pandemic fell to UK government (in relation to the UK as a whole, for example the Pandemic Influenza Bill) and to the devolved Department of Health (in relation to Northern Ireland).

THE EXECUTIVE COMMITTEE

57. As Permanent Secretary, my role was to serve, and act under the direction and control of, my Minister. I and my Departmental colleagues provided advice to the Finance Minister in relation to Executive papers insofar as they fell within the DoF remit and assisted in the drafting and submitting of papers to the Executive from DoF when necessary. I did not attend Executive meetings.
58. I am not aware of any particular decisions or periods of time that presented specific challenges to the Executive as a whole, or individual Ministers, or which meant that they were not able to work together effectively or at all.
59. In my view, the Executive worked well collectively and the range of representation of communities and experience added to better decision making. You will be aware the Finance Minister raised concerns with Executive papers tabled by TEO and the Ministers of Health and Economy. His comments focused on the need to fully consider financial implications of initiatives collectively across all Executive priorities and within public expenditure limits; the need to ensure the advice and guidance of the CMO and CSA was followed as agreed in the 'Coronavirus: Executive Approach to Decision-making' published in May 2020; and the requirement for clarity in messaging of information provided to the public. He expressed a specific concern in correspondence

to the Minister of Health on 21 December 2020 that steps were not being taken immediately to restrict movement between Great Britain and Northern Ireland and asked him to reconsider his approach. The Minister also requested further information be provided, where necessary, to facilitate fuller consideration of financial impacts by DoF or to inform more detailed discussions by the Executive.

60. However, given the challenging backdrop, the significant range of views and the fast pace required in the decision-making process, the 5 party Executive appeared to be able to find consensus on the majority of issues.

61. Since in Northern Ireland there must be power sharing, the Executive is the most effective structure to respond to a pandemic. Any decision which was cross-cutting, significant or controversial, or which required a common position to be adopted, had to be brought to the Executive and agreed. Such matters could not be decided by individual Ministers.

CAPACITY WITHIN NICS

Capacity of the civil contingencies structures

62. I was unaware of observations made within TEO in 2019 and 2020 about the capacity of the civil contingencies structures to respond to a pandemic, as they were internal matters within TEO. Nor was I aware of any earlier concern about insufficient resources and expertise in Northern Ireland to respond to a pandemic from January 2020.

63. The NICS Human resources business area (NICSHR) was, and remains, a part of DoF. It was responsible broadly for staffing the NICS in accordance with requests from departments, either through the transfer of staff internally or recruitment of staff externally. It was also responsible for providing training on areas which applied across all departments such as equality and data protection. However it was open to individual departments such as TEO to make their own arrangements for the transfer of staff within a department. Individual departments were also responsible for training specific to them, such as on dealing with civil contingencies. Neither DoF nor NICSHR would normally be aware of any lack of staff or lack of expertise unless that had been brought to their attention, which I do not recall being the case.

Capacity within DoF

64. From mid-March 2020 civil servants were directed to work from home as far as possible. This resulted in compliance with regulation 5 of the Health Protection (Coronavirus, Restrictions) Regulations (Northern Ireland) 2020, requiring that from 28 March 2020 no person leave the place where they are living without reasonable excuse, including working from home if it was reasonably possible to do so. To facilitate this it was necessary for IT Assist (part of DoF) to obtain very large supplies of laptops and other mobile devices. This was at a time when employers, both public and private, and both here and abroad, were seeking such supplies. That proved to be an exercise that was successfully completed and indicates that in this regard NICS had the requisite expertise.

65. I referred to that exercise at the DoF Board meeting of 11 June 2020: “Sue praised the efforts of IT staff in facilitating people being able to work from home in such a quick period.” **[SGR12/INQ000446236]**

66. The development and operation of financial assistance schemes for business affected by Covid-19 restrictions fell to Land and Property Services (LPS), a division of DoF. I believe that the successful implementation of those schemes is evidence of the expertise within DoF. The DoF Board minutes of 26 November 2020 note “that a new webpage will be available to help those businesses [i.e. those applying for financial assistance] provide information in the correct manner”. The minutes also reflect the efforts of staff and indicate that it is probably the case that insufficient staff were available for this great task – “more than 100 LPS staff were working 7 days a week to implement and deliver schemes the Executive were agreeing to”. **[SGR13/INQ000128651]**

67. Further indications of expertise available appear in the DoF Board minutes of 14 December 2020 which note that DoF had developed a support package for local airports, and in the Board minutes of 27 January 2021 which note work done to implement better facilities for applications for business support to be made online. **[SGR14/INQ000128652 and SGR15/INQ000128653]**

68. The Innovation Lab (iLab) is a division of DoF, established in 2014 by the then Minister for Finance to improve public policy and services through research, co-creating ideas, testing prototypes and refining concepts with citizens, civil servants and stakeholders. There is significant expertise across many disciplines in this group. At the DoF

Departmental Board meeting on 28 April 2021 I received an update on the work of the iLab Covid Task Force, and its Behaviour Analysis Team's analysis of social distancing. iLab was also noted to be discussing the possibility of more frequent attitude surveys with Northern Ireland Statistics and Research Agency (NISRA).

69. NISRA is an Agency of DoF and is therefore at arm's length from government. It likewise contains staff with significant expertise, in their case in the field of statistics. It works closely with the Office of National Statistics. During the course of the pandemic it contributed greatly to the understanding of Covid-19's effects by providing:

- weekly provisional death statistics, counting all deaths where COVID-19 was mentioned on the death certificate;
- a report on International Perceptions of NI's response to COVID-19;
- from 20 April 2020, a Coronavirus Opinion Survey designed to measure how the COVID-19 pandemic was affecting peoples' lives and behaviour in Northern Ireland. This is a weekly survey with the questionnaire being refreshed every four weeks and results published periodically;

70. NISRA statisticians outposted to other bodies produced:

- a daily dashboard of statistics relating to COVID-19, covering a range of issues of public interest during the pandemic;
- findings and analyses from the COVID-19 Infection Survey in Northern Ireland, which included the latest antibody data for Northern Ireland;
- Vaccination status of deaths and hospitalisations;
- COVID-19 mobility reports (how visits and length of stay at different places have changed on given days compared to a baseline);
- Coronavirus related health inequalities;
- Northern Ireland children's social services data during COVID-19;
- statistics on Personal Protective Equipment issued to Health and Social Care Services in Northern Ireland;
- weekly management information on attendance in schools;
- statistics on the Northern Ireland High Street Scheme (which provided those aged 18 and over in Northern Ireland with a pre-paid card worth £100 to spend in local businesses);
- statistical publications on the labour market with comparisons of current data against pandemic and pre-pandemic trends;
- the Quarterly Business Survey providing early indicators of the output of the Northern Ireland economy and how this was impacted by the pandemic;

71. NISRA also provided analysis of:

- COVID-19 related deaths, including age-standardised rates of COVID-19 related deaths;
- excess mortality (deaths above expected levels) and COVID-19 related deaths
- COVID-19 related deaths and pre-existing conditions
- equality group, health and socio-demographic characteristics of COVID-19 deaths in Northern Ireland

72. At the DoF Board meeting of 28 April 2021 we noted NISRA's work on expanded lateral flow device testing. **[SGR16/INQ000128656]**

73. All of the above point to high levels of expertise in DoF which enabled it to assist in significant ways in dealing with the pandemic. I remain very proud of DoF colleagues who stepped up in an exceptional way to deliver a range of support in the most challenging of times. I am unable to speak to any specific problems other departments may have encountered regarding staffing or expertise. My view that Northern Ireland was not behind other parts of the UK in terms of ability to respond to the pandemic relates only to C3 structures. I believe that sufficient staff were made available within DoF to operate the C3 structures when they were required in the pandemic. I can comment only on the position in DoF where I believe sufficient staff were available.

Effect of C3 structures

74. I do not believe that Northern Ireland was behind other parts of the UK in terms of ability to respond to the pandemic. The C3 structures having been established, DoF needed to identify staff resource to support the structures and to ensure agreement with management that staff would be released from their current posts. However, this was advantageous to the Department, as it meant that a range of grades of staff were trained in dealing with emergency responses when the pandemic began. This created resilience in the teams and a transferable skill for future posts.

RELATIONSHIP WITH UK GOVERNMENT

Dependency on lead of UKG

75. Following the UK lead was the practical course for Northern Ireland to take for the following reasons:
76. Northern Ireland, as part of the UK, shares numerous structures and processes with the other UK jurisdictions.
77. The UK has a single body, Border Force, a part of the Home Office, responsible for control of entry into the UK by air or sea. In relation to international travel restrictions it was sensible for Northern Ireland to apply similar regulations to those applying elsewhere in the UK for enforcement by that single body.
78. In relation to medicines (including vaccines), Northern Ireland is governed, as with the rest of the UK, by Medicines and Healthcare products Regulatory Agency (MHRA), responsible for clinical trials and investigations, enforcement, licensing, marketing authorisations and guidance.
79. Northern Ireland is bound by judgements of the UK Supreme Court. Judgements in other UK jurisdictions, particularly appeal decisions, are not binding but are highly persuasive. On the contrary Northern Ireland courts are not bound by any decision made in ROI courts, nor would such decisions generally be referred to or considered persuasive. Regulations made elsewhere in the UK, especially those that have been considered by the courts of the UK, are more easily adopted by Northern Ireland than are regulations made in ROI.
80. I am aware that on 12 March 2020, a Situation Report (SitRep) records “a view that all NIE Ministers, including FM and dFM, are relying heavily on CMO and Scientific Advisory Group for Emergencies (SAGE) advice as their guidance for decisions - hence no major push for alignment with the ROI” [SGR17/INQ000083097]. That SitRep noted the view of the Ministers in the Executive. It did not call on Permanent Secretaries or their departmental officials to take action.

Communications with UKG

81. DoF's primary focus during the pandemic, given its role as guardian of Northern Ireland's finances, was with HM Treasury. It follows that DoF's main lines of communication were through established channels with HM Treasury at both

ministerial and civil service level. The working relationship was strong, constructive and valued.

Information sharing with UKG and involvement of NI in decision making

82. UK government information sharing and consultation with Northern Ireland on the Coronavirus, the spread of Covid-19, pharmaceutical developments and non-pharmaceutical interventions were matters that were dealt with by others, principally Department of Health and TEO. My own department, DoF, had interactions mainly with HM Treasury. There was a good working relationship at both official and ministerial level, and arrangements worked well.

83. Where decisions need to be made quickly in an environment that is rapidly changing, there will inevitably be less opportunity for timely information sharing and consultation, but that is a difficulty for government generally, not a consequence of devolved government.

84. It follows from what is set out above, from my perspective as Permanent Secretary of DoF, that it would always have been helpful to be involved earlier in development of policies, which would ensure more effective policies, but I also recognise the pace at which UKG was working, and my working relationship with HMT in particular was very good.

85. There exist sufficient formal and informal channels for the sharing of information between UK government and the devolved governments.

NORTH/SOUTH MINISTERIAL COUNCIL

86. I am aware of the Finance Minister's view that the North/South Ministerial Council (NSMC) was overly bureaucratic. I had little involvement in the workings of the NSMC, and TEO who sponsored the body may be in a better position to comment on this.

COOPERATION WITH THE REPUBLIC OF IRELAND

87. DoF did not carry out collaborative work in relation to pandemic planning with the Republic of Ireland. These arrangements are managed by TEO and DoH who lead on this and any cross-border working. I am therefore not in a position to express an

opinion on the adequacy of arrangements for co-operation with the Republic of Ireland. I am not aware of any issues as regards the timing of announcements by the Republic of Ireland or of any particular barriers to obtaining cooperation between Northern Ireland and the Republic of Ireland.

COMMUNICATION VIA ELECTRONIC DEVICES

88. As Permanent Secretary of the Department of Finance, I was issued with an NICS mobile phone, laptop and iPad for use throughout the term of my appointment. I have always done the vast majority of work communications, even the most urgent, by email. The NICS, post the Renewable Heat Incentive Inquiry, was encouraged to do the same and that was my standard practice anyway. I used WhatsApp and texts for routine administrative matters such as meeting times, checking people agreed with lines to take or sharing a breaking news development. These were not saved on Content Manager (the NICS document storage system) as they were not the sort of messages that require permanent storage.

89. I used both my official and personal phones for day-to-day administration.

90. I do not know if Ministers' NICS-supplied mobile devices or personal mobile devices were used for informal messaging (including WhatsApp).

91. My NICS-supplied mobile phone and other devices were returned to Private Office on the day I ceased to be Permanent Secretary and I completed the 'Employee Leaving Checklist', as per the HR policy. I do not know what became of them. I did not reset the phone. I do not retain the personal mobile phone I used during the relevant time as I have upgraded it since leaving NICS but I retain the phone number.

92. The WhatsApp groups of which I was a member and those with whom I communicated in those groups, as a means of quick communication on administrative matters, are set out below:

PSS (Covid 19) WhatsApp group	PSS WhatsApp group	Sue and Mark WhatsApp group
David Sterling	Andrew McCormick	Mark McLaughlin
Hugh Widdis	Katrina Godfrey	Ciarri Conlon
Jill Minne	Tracy Meharg	

Derek Baker	Denis McMahon	
Michael McBride	Mike Brennan	
Peter May	Derek Baker	
Denis McMahon	Richard Pengelly	
Mike Brennan	Hugh Widdis	
Andrew McCormick	Peter May	
Katrina Godfrey	Denis McMahon	
Chris Stewart	Jenny Pyper	
Chris McNab	Mark Browne	
Karen Pearson		
Anthony Harbinson		
Tracy Meharg		
Mark McLaughlin		
Richard Pengelly		
Neill Jackson		
Mark Browne		
Brenda King		
Roisin Coleman		

EAT OUT TO HELP OUT

93. Neither I nor DoF was informed or consulted about the “eat out to help out” scheme. Those businesses availing of the scheme dealt directly with HMRC. I understand the ‘eat out to help out’ scheme was not brought to the Executive for consideration.

FUNDING FROM CENTRAL GOVERNMENT

94. The Executive’s spending on public services is largely financed by a core Block Grant from Westminster, which is derived using the Barnett Formula. This is set out in the UK Treasury Statement of Funding Policy in that when the UK Government increases spending in the rest of the UK on services for which the Executive is responsible in NI, the Block Grant rises by broadly the same amount in pounds per head of NI population.

95. In normal circumstances, the in-year monitoring process provides the NI Executive with three opportunities each year to assess and review NI departmental budgets and address emerging risks and issues by directing available resources appropriately. Any changes agreed by the Executive through the in-year monitoring process are detailed in statements to the Assembly by the Finance Minister.

96. The number of in-year financial exercises can be increased to take account of emerging issues such as health emergencies. Should additional funding be provided centrally from UK Treasury, it is included in the next appropriate financial exercise. Departments then have an opportunity to submit bids to DoF for additional funding, including for their arm’s length bodies and other entities for which they have funding responsibility. The amount of that funding and its timing was a matter for UK Government. My role in DoF was to ensure that it was allocated in accordance with the wishes of the Executive. It was for UK government to account to Parliament for its decisions around funding allocations and timing.

97. This was the case during the Covid pandemic when 14 additional exercises were carried out to allocate additional funding received from UK Treasury. This provided an agile, responsive and effective process for the Executive to respond swiftly to changing needs. The UK Treasury annually publish Block Grant Transparency documents which shows a breakdown of changes in the devolved administrations’ block grant funding.

LOCKDOWNS AND ASSESSMENT OF COVID-19 BY SCIENTIFIC/MEDICAL ADVISERS

98. Decision-making in relation to the imposition or non-imposition of non-pharmaceutical interventions (NPIs) such as lockdowns was taken by the NI Executive, which the Finance Minister was part of. The Department and Finance Minister did not propose any NPIs.
99. I am not aware whether Ministers or the Executive considered in early 2020 having a Northern Ireland-specific response to the pandemic.
100. Any advice to the Minister in relation to the assessment of Covid-19 by scientific/medical advisers would have been a matter for the Department of Health primarily and, following their proposals, for the Executive.
101. A similar approach would have applied in relation to increasing rates of Covid-19.
102. Decision-making in relation to the imposition or non-imposition of non-pharmaceutical interventions (NPIs) including lockdowns, local restrictions, working from home, reduction of person-to-person contact, social distancing, the use of face coverings and border controls was taken by the NI Executive, which the Finance Minister was part of. It should be noted that none of the NPIs were proposed by the Finance Minister. Regarding the responses to these proposals, the Minister was, in general, in agreement with the NPIs being proposed. I recall he did express specific views on the need to consider financial implications, the advice and guidance of the CMO and CSA, restrictions on movement and the requirement for clarity in messaging of information to the public.
103. Proposals for restrictions or changes to restrictions were developed mainly by the Department of Health and The Executive Office with appropriate supporting information included, and decisions on the restrictions were taken by the Executive. The Executive was responsible for making decisions in relation to the response to the pandemic. My Department did not carry out any assessment of those decisions.
104. The Finance Minister, as a member of the Executive, was required to be involved in Executive meetings at which the response to the pandemic was discussed and agreed. I did not attend meetings of the Executive. The Minister was provided with

briefing by DoF officials in relation to Executive papers relevant to DoF responsibilities (principally ensuring proper financial governance).

105. I was not provided with information from SAGE, the CMO, the CSA or other experts, or asked to consider such information. I am aware that the Finance Minister requested clarity from the CMO on particular areas by letter of 10 November 2020, co-signed by the Justice Minister, highlighting the need for advice on appropriate action and noting the regulations deadlines **[SGR18/INQ000438238]**. Any issue relating to the supply and uptake of vaccines was for the Department of Health. The Executive was responsible for making decisions in relation to the response to the pandemic. Once the Executive made a decision, I supported the Minister in implementing actions allocated to the Finance Department and ensuring that funds were applied according to the decisions made.
106. I was not involved in considering or designing the response to the pandemic and so am unable to say if there were aspects of the circumstances in Northern Ireland which made it relatively easier to respond to the pandemic. Being behind the rest of the UK in terms of infection rates may have been beneficial in that NI was able to take more time to consider matters and learn from what UK government was doing.
107. All of these matters lie outside my professional competence and others are better placed to provide opinion. I am therefore not in a position to assess whether a lockdown in early 2020 was inexorable or necessary, whether this lockdown might have been avoided if earlier interventions had been adopted, nor do I know if consideration was given, at this point, to Northern Ireland developing its own or a Northern Ireland-specific response to the pandemic. For the above reasons I am also not in a position to comment on what happened in August 2020 and onwards, or on the actions of the Executive in that period. However I believe that NI would not have had the capacity or capability to produce its own response on the time scales we were working too. For the same reasons I am not in a position to assess the position at 8 October 2020, what factors had contributed to the increase in transmission rates up to that point, or whether the decision taken on 16 October 2020 to implement a 'circuit breaker' was the correct decision or taken at the right time. Finally, and for those same reasons, I am unable to comment on any decision made in October 2020, on the management of the response to the pandemic by the Executive in autumn 2020, or on any decisions or any part of the strategic response in that period.

Statement of Truth

108. 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: 19/03/2024

Annex 1

Decisions Taken by DoF: November 2019

1. A decision was taken to provide finance approval for a 2019 Northern Ireland Prison Service pay award, allowing payment of the award to operational prison staff in Northern Ireland, with an effective date of 1 April 2019.
2. Decisions were taken to agree in-year public expenditure allocations to departments amounting to £33.8 million Resource DEL and £38.8 million Capital DEL; to allocate £125 million Resource DEL to be set aside to meet Pension Costs; and to provide £4.7 million Resource DEL and £2.6 million Capital DEL additional funding for EU Exit preparation costs.

Decisions Taken by DoF: October 2019

3. A decision was taken to determine Northern Ireland public sector pay policy for 2019/20 on 31 October 2019. This follows the approach set in 2018/19 of moving away from a cross-public sector pay policy of limiting average awards to one per cent and is in keeping with the overarching policy set by the UK Government.

Decisions Taken by DoF: September 2019

4. A decision was taken to direct the National Lottery Community Fund (under the Dormant Accounts and Building Society Accounts Act 2008), to establish a Scheme to utilise Dormant Accounts to benefit the third sector in Northern Ireland, through projects and work delivered primarily by Voluntary, Community and Social Enterprise organisations.
5. Working with officials in TEO and the Strategic Investment Fund a decision was taken to release a second tranche of £30m Financial Transactions Capital funding to the Northern Ireland Investment Fund to progress the Lisburn Square development in Lisburn; and the Merchant Square development and Grade A office accommodation linked to the McCausland car park development, both in Belfast.
6. A decision was taken to appoint two members to the Northern Ireland Buildings Regulations Advisory Committee commencing on 30 September 2019.

Decisions Taken by DoF: August 2019

7. A decision was taken to allocate additional funding to departments for No Deal Brexit preparation measures. Departments were notified and funding will be confirmed as part of the next 2019-20 financial exercise.

Decisions Taken by DoF: July 2019

8. Decision taken to agree in-year public expenditure allocations to departments amounting to £39.9 million Resource DEL and £27.1 million Capital DEL; and the allocation to departments of £4 million Resource DEL set aside in the Budget for initiatives under the Programme for Government Transformation Fund.

Decisions Taken by DoF: June 2019

9. A decision was taken to implement the NICS 2018 pay award.

Decisions Taken by DoF: May 2019

10. A decision was taken to make the Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2019 (SR 2019 No.76). These regularise the charging of fees for the lodgement of Energy Performance Certificates (EPC) and other documents onto the Northern Ireland domestic and non-domestic EPC registers.

11. Decisions were taken to appoint a chair to the Northern Ireland Building Regulations Committee (NIBRAC) for a period of 3 years from 15 April 2019; and to make two appointments to the Board of the Northern Ireland Authority for Utility Regulation, effective from 1 May 2019 for a term of 7 years.

Decisions Taken by DoF: April 2019

12. A decision was taken to make two annual Statutory Rules: the Pensions Increase (Review) Order (Northern Ireland) 2019, and the Public Service Pensions Revaluation Order (Northern Ireland) 2019. The making of these orders ensures that members of public service pension schemes have their pension income uprated from April 2019 in line with the annual change in the cost of living, as measured by published government indices for prices or earnings, and reflects corresponding legislation to uprate pensions for members of public service schemes in Great Britain.

13. A decision was taken to make a formal pay offer to Trade Union Side (TUS) in relation to industrial and non-industrial civil servants. The offer was made on 25 April 2019 in respect of the 2018 pay award i.e. retrospectively effective from 1 August 2018.

Decisions Taken by DoF: March 2019

14. A decision was taken to publish on 3 April 2019 the Registrar General's proposals for the 2021 Census in Northern Ireland. These outline policy proposals including the design and conduct of the census. The content of the census questionnaire has been subject to extensive consultation and publication of the proposals will enable continued detailed planning for the Census (including an October 2019 census rehearsal) to be undertaken by the Northern Ireland Statistics and Research Agency.

15. A decision was taken to agree to UK Government proposals to amend the Census (Northern Ireland) Act 1969 in line with amendments being made to the Census Act 1920. The amendments will dis-apply penalties for non-response to certain questions on the census questionnaire (if they are asked), making them in effect voluntary in nature. In Northern Ireland it is proposed to ask a new question on sexual orientation, but not on gender identity.

Decisions Taken by DoF: February 2019

16. A decision was taken to provide formal finance approval for a 2018 Northern Ireland Prison Service pay award. This allows payment of the award, with an effective date of 1 April 2018, to operational prison staff in Northern Ireland.

17. Following discussion with all departments, DoF agreed further in-year allocations to departments of £17 million Resource DEL and £22 million Capital DEL, as part of 2018-19 In-year Monitoring.

Decisions Taken by DoF: January 2019

None

Decisions Taken by DoF: December 2018

18. A decision was taken to extend the terms of two Board members of the Utility Regulator for a period of up to six months, effective from 1 January 2019. This decision will ensure appropriate Board membership / expertise and transition at an important juncture for the organisation, particularly in preparing the utility sector for leaving the EU.

Decisions Taken by DoF: November 2018

19. A decision to determine Public Sector Pay Policy for 2018/19 has been taken by the Department of Finance. This decision represented an extension of the previous Minister's approach of following national Public Sector Pay Policy and was in line with the budgetary decisions taken nationally and by the Secretary of State for Northern Ireland for 2018-19 [Northern Ireland Budget (Anticipation and Adjustments) Act 2018].

20. In-year monitoring reallocations affect numerous departments: final allocations were made and announced by DoF on 22nd November 2018 following discussion with senior officials from all of the NI departments. Previously, in year monitoring decisions were recommended by the Finance Minister and made by the Executive, given their cross-cutting nature.