

Witness Name: Mike Brennan

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Exhibits: 37

Dated: 12 February 2024

UK COVID-19 INQUIRY

WITNESS STATEMENT OF MIKE BRENNAN, FORMER PERMANENT SECRETARY, NORTHERN IRELAND DEPARTMENT FOR THE ECONOMY

I, Mike Brennan, of Adelaide House, 39/49 Adelaide Street, Belfast, BT2 8FD, former Permanent Secretary for the Northern Ireland Department for the Economy, will say as follows:

1. I was the Permanent Secretary for the Northern Ireland Department for the Economy (DfE) between December 2019 and 8 December 2023 and am duly authorised to make this statement on behalf of DfE. I was initially appointed as temporary Permanent Secretary in December 2019 and then permanently appointed to the role in December 2020. I was therefore the Permanent Secretary during the period identified by the UK Covid-19 Inquiry (the Inquiry) and with which this statement is concerned, namely between 11 January 2020 and 15 February 2022 (“the Specified Period”).
2. This is my third witness statement to the Inquiry on behalf of DfE.
3. Any documents exhibited to this statement can be found in the exhibit bundle attached to this statement, marked in accordance with the instructions provided by the Inquiry in its Annex A to the Inquiry’s Rule 9 (of the Inquiry Rules 2006) request letter of 21 November 2023 (the 21 November 2023 Inquiry request letter).
4. This witness statement endeavours to address, on behalf of DfE, the matters set out by the Inquiry in its Annex B to the 21 November 2023 Inquiry request letter.
5. Annex B to the 21 November 2023 Inquiry request letter contains 11 questions spanning 4 topics. This witness statement addresses each topic, with the intention of answering each of the questions posed in respect of each topic.

6. As requested by the Inquiry, the witness statement addresses the time period from 11 January 2020 to 15 February 2022, which the Inquiry has referred to as the “Specified Period”.

Relevant Policies and Practice Regarding the Use of Mobile Devices for Government Related Work or Business

7. IT Assist, within the Northern Ireland Department of Finance (DoF), provided and provides Digital Shared Services for all Northern Ireland’s departments. During the Specified Period IT Assist was asked to and provided DfE Ministers, Special Advisers (SpAds), Senior Civil Servants (SCS, i.e. Grade 5 and above) and other officials with government owned electronic mobile devices to facilitate their conduct of government related work or business. This is a centralised system. The electronic devices are provided by, and supported by, IT Assist. IT Assist also controls what functionality the devices have. IT Assist had and has policies for the provision and return of the electronic mobile devices, and the management of any content thereon.
8. However, during the Specified Period, there was no Northern Ireland Civil Service (NICS) wide policy, nor DfE specific policy, that expressly prohibited, for government related work or business, the use of personal/private electronic mobile devices, whether by Ministers, SpAds, SCS, or other officials. It was a generally acknowledged working practice across Northern Ireland departments, including DfE, that personal/private electronic devices were not to be used to conduct official business, but that there may be exceptional circumstances which would require their temporary and limited use. This position was formally confirmed in the “NICS Handling Information Securely Policy” **[Exhibit MB2/1 INQ000400972]** that was introduced in August 2022. The “NICS Handling Information Securely Policy” recognised and accepted that there could be exceptional circumstances when it was simply not possible to use NICS issued mobile devices, and official communication channels (such as the public sector shared network) to conduct necessary government related work or business. An example of this was for business continuity when official systems or channels were unavailable, and there was no other option but to use non-corporate channels.
9. There was no requirement for Ministers, SpAds, SCS, or other officials to seek permission from someone in DfE before using their personal/private electronic device for government related work or business. However, all government related communications were still subject to the applicable policies, and, as discussed below, the fact a personal/private

device was used to communicate did not remove the need for any relevant individual involved to create a permanent retained government record in respect of any matter where such a permanent government record was appropriate.

10. It is the case that in reality there were practical barriers to the use of a personal/private electronic mobile device for government business. For instance, personal/private mobile devices could not connect to the NICS network, and, therefore, were unable to connect to the official communication channels or document repository.

11. DfE notes that the Inquiry is already aware of various NICS-wide policies relevant to DfE Ministers, SpAds, SCS, and other officials, in respect of the use of electronic mobile devices, including personal/private devices, for government-related work or business. Most of the NICS-wide policies referenced by the Inquiry in its Annex B to the 21 November 2023 Inquiry request letter applied during the Specified Period. The NICS wide policies referred to by the Inquiry, in order to avoid duplication, are not exhibited to this statement. Rather, for completeness, they are listed below:

- a) Guidance for Ministers in the exercise of their official responsibilities;
- b) NICS HR Policy 6.11, 'Use of Electronic Communications';
- c) NICS Mobile Device Security Policy;
- d) NICS Code of Ethics;
- e) NICS Records Management Protocol for Special Advisers;
- f) NICS Records Management Policy;
- g) A Guide to Good Record Keeping;
- h) NICS Official Information held in Non-Corporate Communication Channels;
- i) NICS Retention and Disposal Policy and Policy Statement;
- j) NICS Email Management Policy.

Relevant DfE Policies and Practice Regarding the Use of Mobile Devices for Government Related Work or Business

12. In addition to the NICS-wide policies listed above, DfE, during the Specified Period, had a number of department specific policies, guidelines or protocols that related to the use of government issued electronic devices and to personal/private electronic devices. The following DfE specific policies, guidelines or protocols are exhibited to this statement:

- a) DfE Records Management Policy Statement [**Exhibit MB2/2 INQ000400983**].
- b) DfE Email Management Guidance [**Exhibit MB2/3 INQ000400998**]
- c) CM and you - why records management matters [**Exhibit MB2/4 INQ000401010**]
- d) DfE Retention and Disposal Schedule (Draft) [**Exhibit MB2/5 INQ000401011**]

13. These DfE specific policies, guidelines or protocols were largely reflective of their NICS-wide counterparts however, they had been updated to include specific references to DfE and provided the contact details of relevant DfE officials. There is no substantive difference in policy or approach between these documents and their NICS-wide counterparts in terms of the use of government-issued electronic devices or personal/private electronic devices. These policies focus on the handling of information and records, and the need to create and retain government records of importance. They are applicable to any information created in the course of government related business, regardless of the device used.

14. Other pandemic specific communications (over and above the generally applicable policies on document management and retention), which reminded of the need to create and maintain appropriate government records, were developed by DfE during the pandemic, and issued to its staff. These are detailed further in the section below covering the actions taken by DfE to preserve records for the Inquiry.

15. During the Specified Period, and in line with the long-established practice, officials provided Ministers with formal briefing submissions to inform their decision-making. This was the principal mechanism both for government decision making itself, and recording the making of those decisions by government. The process for recording correspondence and decisions in relation to such submissions, and retaining relevant records in relation to them, is set out in the policies provided below at paragraph 18 a-e. Ministerial decisions, during the Specified Period, about the pandemic related imposition or non-imposition of non-pharmaceutical interventions were all taken at Northern Ireland Executive meetings, and consequently recorded in the minutes of those meetings. DfE understands that The Executive Office (TEO) has submitted these minutes to the Inquiry on behalf of the Northern Ireland departments.

16. As per the long-established practice referred to above, Ministerial decisions were made in response to briefing submissions from officials. Written records of these Ministerial decisions are maintained. The custom and practice requirement for the appropriate

recording of Ministerial meetings and decisions was placed on a statutory footing from March 2021. Since March 2021, decisions made during the course of Ministerial/SpAd meetings, and which are attended by one or more civil servants, are governed by the provisions of the Functioning of Government (Miscellaneous Provisions) Act (Northern Ireland) 2021. That legislation provides for “an appropriate written record to be compiled” by a civil servant attending the “relevant meeting”. Similarly, the legislation provides that if an “official Ministerial decision” is made at a meeting which is not attended by a civil servant, an appropriate written record of the decision is to be compiled by a civil servant as soon as reasonably practicable after the decision is first communicated to a civil servant **[Exhibit MB2/6 INQ000401012]**.

17. DfE’s Ministerial Private Office itself also had procedures in place to deal with email correspondence from Ministers, including that which related to decision making, which were applicable regardless of the device used to communicate. Private Office also had procedures in place for the recording of the minutes of meetings.

18. Policies and procedures relevant to this standard method of government decision making include:

- a) Submissions – Registering on Knowledge Network **[MB2/7 INQ000401013]**
- b) Submission – Desk Aid **[Exhibit MB2/8 INQ000401014]**
- c) Executive Papers Process – Meeting Papers **[Exhibit MB2/9 INQ000401015]**
- d) Process Map – Submissions **[MB2/10 INQ000400973]**
- e) Guidance Note for Officials - Records of Meetings with Ministers and Presence of Civil Servants at Meetings **[Exhibit MB2/11 INQ000400974]**

Other NICS / Ministerial Policies and Practices

19. In addition to the NICS-wide and DfE policies, practices and guidance documents listed above, Codes of Conduct for Ministers and SpAds are also relevant to the use of electronic mobile devices, including personal/private devices, and how relevant records should be retained. These documents include:

- a) The Ministerial Code of Conduct **[Exhibit MB2/12 INQ000400975]**
- b) Code of Conduct for Special Advisers **[Exhibit MB2/13 INQ000400976]**
- c) NICS Guidance on Records Management for Special Advisers **[Exhibit MB2/14 INQ000400977]**

20. The documents referred to in the above paragraph are NICS-wide policies and do not fall within the policy remit of DfE. The Ministerial Code of Conduct falls within the policy remit of TEO, as does the enforcement process in respect of it (the enforcement process is detailed in the Enforcement of the Ministerial Code [Exhibit MB2/15 INQ000400978]. The Code of Conduct for SpAds, however, falls within the policy remit of DoF.

Destruction of Records

21. In line with NICS records management policies, information or documents of importance should be saved to the Electronic Document and Record Management System (EDRMS) used by Northern Ireland departments. What constitutes information or documents of importance is not itself exhaustively defined in the policies (instead, example of records of importance are given), but it includes information or documents that have long-term administrative or historical value, information or documents that show the process of decision making (and the decisions themselves), information or documents drafted in consequence of policy or legislation, and information or documents that support government accountability. Any documents of these types, officials are under an obligation to ensure are saved to the approved repository for NICS documents and records management, Content Manager. This requirement is for this to happen at the earliest opportunity. This obligation, to save documents of importance, is applicable regardless of the device the information is originally created on. There is an element of judgment to be applied by individuals, as not every conceivable created record, email or message requires to be saved, but officials would understand that documents about decision making are clearly documents to be saved to Content Manager. When saved to Content Manager, information can then be appropriately managed as part of the DfE official record.
22. Departmental records of this type (records of importance that must be saved into and stored in the EDRMS) must only be disposed of in accordance with DfE's Retention and Disposal Schedule. However, since the Department's inception in 2016, DfE has never actually had an operational retention and disposal schedule. There is a draft DfE Retention and Disposal Schedule [Exhibit MB2/5 INQ000401011], but whilst it has been laid in the Northern Ireland Assembly, it did not progress through the required process (approval by negative resolution) before the Northern Ireland Assembly was dissolved in February 2022. The effect of there being no operative DfE Retention and Disposal Schedule is that there was, and remains, in DfE, no routine disposal of Departmental records from Content Manager. This may contrast with other Northern Ireland

departments which had an approved and operational Retention and Disposal Schedule (by reason of having received approval from the Northern Ireland Assembly). It is the case that up until June 2021 DfE did have a limited mechanism that could see some material, such as duplicate documents, deleted from Content Manager. However, this limited mechanism required specific approval from the DfE Information Branch (which was responsible for carrying out the deletion) before any documents could be deleted. As a result, DfE expects to have an extensive documentary record of decision making connected to the pandemic that it will be in a position to provide, as required, to the Inquiry.

Back-up of Data

23. As referred to above, IT Assist is the information technology shared service provider for the Northern Ireland departments. It is part of DoF. IT Assist manages the backup of information saved to Content Manager, the NICS document repository system which acts as the permanent documentary record of the Department.
24. Aside from Content Manager (into which emails of importance should be saved), IT Assist also manages the separate backup of the NICS email system. As far as DfE is aware, the emails on the NICS email backup system are retained for a period of three months.
25. The backup of either separate system is carried out by IT Assist as a contingency measure, primarily for the purposes of recovery in an emergency. IT Assist is likely to be best placed to provide a comprehensive explanation to the Inquiry as to how the backup arrangements functioned.
26. Individual electronic mobile devices, such as phones, laptops or iPads, whether government issued or personal/private, are not individually backed up by IT Assist (as opposed to the backing up of the electronic systems that may receive information or documents initially generated from those devices and subsequently saved to Content Manager).

Compliance / Enforcement

27. Ministers and civil servants are expected to be acquainted with the applicable policies that govern their activity, including in relation to document management and record keeping. This includes the obligation to create and maintain official records where relevant discussions and/or decisions take place, including those that are conducted, for whatever reason, outside of the official communication channels approved and supported by IT Assist.

28. Section 6 of the NICS Records Management Policy, which is headed “*Other Collaborative Systems*” states as follows: “*Whilst other systems capable of generating records are utilised across the NICS, such as Microsoft Office 365 or WhatsApp, it should be noted that these systems of software are not designed for use in record keeping and as such any records that are to be retained must be extracted and stored in the official EDRMS.*” The Records Management Policy acts as a reminder to those involved with government decision making of the need to take steps to make sure that if they do use a system or method of electronic communication that does not facilitate the type of record keeping expected in relation to government decision making, then specific steps need to be taken to ensure that a relevant record is subsequently made and saved into the EDRMS, which is presently Content Manager.
29. Also, the August 2022 NICS Handling Information Securely Policy [**Exhibit MB2/1 INQ0004000972**], confirms the generally acknowledged practice that personal/private devices were not to be used to conduct official business. It states at 13.3.2.: “*As a rule, civil servants should not be processing official information using anything other than official devices and official channels. It is however recognised that there may be exceptional circumstances when this is not possible, for example as a business continuity measure when official systems are unavailable, and there is no other option but to use non-corporate channels.*” Whilst the policy does provide flexibility in terms of communication, it similarly does not obviate or remove the obligation to ensure that an appropriate record is made of anything that should be appropriately recorded by those involved in government decision making.
30. At the start of each reporting year officials are also required to enter into Personal Performance Agreements (PPAs). PPAs include an undertaking to comply with the Department’s corporate governance rules, policies and procedures (including those related to the use of mobile electronic devices and the creation and retention of records). PPAs are formally reviewed at the mid-year and end-year point, and it is expected that officials and their line managers would address any compliance issues as part of that process. Ultimately, the primary objective is to promote and encourage, on an ongoing basis, compliance with the various policies, and DfE considers that the aforementioned arrangements help it to meet that objective.
31. As referred to above, Content Manager is the official repository for Northern Ireland departmental records, including those records belonging to DfE. The system is designed

to capture, manage, and secure business information in order to meet governance and regulatory compliance obligations. Officials in DfE's Information Management Unit also maintain a high-level overview of the usage of Content Manager by officials.

32. Ministers and SpAds are also expected to be aware of the requirements for good record keeping, as this is also detailed within their respective Code of Conducts. DfE is aware, through the experience of those civil servants who worked in the DfE Private Office, that Ministers and SpAds were regularly reminded, as a matter of routine, of the need to identify information to be saved and to pass that information on to officials for filing.

Actions Taken by DfE to Preserve Records for the Inquiry

33. DfE recognised that the Covid-19 pandemic was a significant event, unprecedented during the lifetime of relevant officials, and that recording DfE's actions during that period was a matter of specific public importance. DfE therefore took steps throughout the Specified Period, over and above its normal operational activity, to remind its officials of the importance of good record keeping.
34. On 25 March 2020, the DfE Departmental Information Manager wrote to all DfE officials to remind them of the already existing obligation to save emails of importance to the official repository. The DfE Departmental Information Manager also advised DfE officials that personal PCs or tablets, and personal/private email accounts, must not be used for departmental work **[Exhibit MB2/16 INQ000400979]**.
35. On 6 April 2020, DfE's Senior Information Risk Owner (SIRO) wrote to all DfE officials to remind them of the importance of corporate record keeping, the need to make a record of any relevant discussions, and to regularly save records **[Exhibit MB2/17 INQ000400980]**.
36. On 4 June 2020, the DfE Departmental Information Manager again wrote to all officials highlighting the SIRO's note of 6 April 2020, and reminding officials to record any transactions/decisions made via phone, or other platforms in the official repository. In this guidance, it was specifically stated that the use of WhatsApp was not recommended **[Exhibit MB2/18 INQ0004000981 and Exhibit MB2/19 INQ0004000982]**.
37. On 14 June 2021, the Head of the Northern Ireland Civil Service (HOCS), Jayne Brady, forwarded correspondence from the Cabinet Office dated 10 June 2021 to the Permanent Secretaries of the nine Northern Ireland departments. The Cabinet Office's letter of 10 June 2021 advised that the Prime Minister had announced that there would be a statutory

inquiry into Her Majesty's Government's handling of the Covid-19 Pandemic. The letter also asked Departments to assure themselves that they would be ready to meet their obligations to provide relevant records, information and data as requested and to ensure that no material of potential relevance to the Inquiry was destroyed [**Exhibit MB2/20 INQ000400984**].

38. Following receipt of the Cabinet Office letter, DfE placed a formal hold on the limited mechanism (described above in paragraph 22) that could result in the deletion of some records (such as duplicates) from its official document repository, Content Manager.

39. HOCS wrote to the Permanent Secretaries of the nine Northern Ireland departments again on 16 September 2021 to ask that departments take steps to assure that they, and their Delivery Partners (formerly referred to as Arm's Length Bodies), would be ready to meet their obligations to provide relevant records, information and data to an Inquiry, as requested, and to ensure that no material of potential relevance was destroyed [**Exhibit MB2/21 INQ000400985**].

40. DfE did not write to all staff as a direct result of the correspondence of 16 September 2021, as the letter from HOCS advised that *"We will be issuing a note to all staff to reinforce the importance of rigorously applying these processes in relation to issues which may be relevant to a COVID inquiry"*.

41. Whilst a note did not issue to all staff as a direct result of this correspondence, I, in my then capacity as DfE Permanent Secretary, circulated the correspondence from HOCS to my Leadership Team (DfE Grade 3 civil servants) upon receipt. The issue was also discussed at the next meeting of the DfE Leadership Team on 20 September 2021. DfE also established a working group to oversee its preparedness for the Inquiry and on 8 October 2021, wrote to its Delivery Partners, attaching the correspondence from HOCS, to remind them of the need to record and retain any appropriate material [**Exhibit MB2/22 INQ000400986**].

42. HOCS' correspondence of 16 September 2021, and earlier correspondence of 14 June 2020, referenced, in general terms, record keeping/management. However, issues around mobile devices and WhatsApp messages were not identified to or by DfE as a key or specific issue over and above the overall message of good records management (which should have meant that anything of relevance to government decision making was

saved into the EDRMS, Content Manager, regardless of the device used to communicate).

43. On 8 February 2022, HOCS forwarded further correspondence from the Cabinet Office that provided an update on the appointment of the Chair to the Inquiry and a reiteration of the points raised in earlier correspondence in relation to the retention of records **[Exhibit MB2/23 INQ000400989]**.
44. The above correspondence received from Cabinet Office or HOCS did not specifically advise that electronic devices, such as mobile phones (and all the data they contained), should themselves be preserved and retained for future provision to, or inspection by, the Inquiry. Moreover, the status of electronic devices was not an identified issue within DfE, as its focus was on the retention of relevant information in Content Manager, as the official repository, rather than on any electronic devices on which content may have originally been created.
45. On 9 February 2022, DfE's SIRO wrote to DfE's SCS about the retention of records for the Inquiry. DfE SIRO's correspondence noted that the majority of records should already be in Content Manager, but she then detailed the steps required to give the Department assurance that there would be no unintentional deletions. This included the retention of information in a variety of mediums, including WhatsApp, texts and portable devices, such as memory sticks or mobile phones **[Exhibit MB2/24 INQ000400990, and MB2/25 INQ000400992]**. On 14 February 2022, DfE's SIRO also forwarded this correspondence to DfE's Delivery Partners **[Exhibit MB2/22 INQ000400986]**.
46. On 30 June 2022, DfE's Covid-19 Inquiry Manager wrote to DfE staff at Grade 7 and above **[Exhibit MB2/26 INQ000400993]** and DfE's Delivery Partners **[Exhibit MB2/27 INQ000400994]** to notify them that the Inquiry was live at that point, and to remind them of the need to identify and retain relevant records, including those that may be held in a variety of formats.
47. Following correspondence from HOCS on 8 August 2022 **[Exhibit MB2/28 INQ000400995]** DfE's Covid-19 Inquiry Manager wrote, on 16 August 2022, to DfE's Delivery Partners to notify them of the commencement of the Inquiry's Module 1 and to remind them that no records of potential relevance to the Inquiry should be destroyed **[Exhibit MB2/29 INQ000400996, and Exhibit MB2/30 INQ000401001]**.

48. On 27 October 2022, DfE's Covid-19 Inquiry Manager wrote to DfE staff at Grade 7 and above on the need to identify and retain records that may be of relevance to the Inquiry and to ensure corporate memory was not lost **[Exhibit MB2/31 INQ000401002]**.
49. On 28 October 2022, HOCS wrote to all Northern Ireland Permanent Secretaries and circulated a letter from Cabinet Office, dated 20 October 2022, which reinforced the need for all relevant records to be retained should they be required for disclosure to the Inquiry **[Exhibit MB2/32 INQ000401003]**. On 31 October 2022 DfE's Covid-19 Inquiry Manager wrote to all DfE staff at SCS and shared HOCS' letter of 28 October 2022 **[Exhibit MB2/33 INQ000401004]**.
50. On 27 September 2023 a reminder issued from DfE's Covid-19 Inquiry Manager to DfE's SCS **[Exhibit MB2/34 INQ000401005]** stating that:
- information which is of potential relevance to the Inquiry must not be deleted or disposed of before the Inquiry has completed its work; and
 - informal communications that in any way discussed or considered the response to the pandemic be downloaded from mobile devices in preparation for provision to the Inquiry.
51. On 17 November 2023 DfE's Covid-19 Inquiry Manager also wrote to DfE officials at Grade 7 and above in order to highlight correspondence from HOCS dated 14 November 2023 which advised of the need to retain mobile devices that may have relevant information **[Exhibit MB2/35 INQ000401006, and Exhibit MB2/36 INQ000401008]**.
52. DfE can say that at all times during the Covid-19 pandemic, and both prior to and post the commencement of the Inquiry, it was the intention of DfE that there should be a full and complete DfE record created and maintained relating to the pandemic, and which would be available for any required scrutiny by the Inquiry.
53. DfE accepts it did not consider whether it was also necessary to retain and preserve government provided or personal electronic devices, and specifically any content thereon conducted over messaging platforms (that did not otherwise fall to be transferred across into Content Manager by relevant individuals as part and parcel of the normal course and proper operation of official business). In not considering the above, there was no intention on behalf of DfE to cause the Inquiry to have less than an entirely full and complete picture of DfE decision making during the pandemic.

The Resetting of Devices

54. As previously indicated, there were a number of policies, procedures and guidance, set out earlier in this statement, which were in place throughout the Specified Period. Those policies were to ensure that communications of importance involving Ministers, SpAds, SCS, and indeed all DfE officials, were preserved, ultimately through the EDRMS (Content Manager).
55. While DfE took steps to advise staff of the need to retain information and records that may be of relevance to the Inquiry, the focus was on saving this information to Content Manager. This is because Content Manager is the place for the long-term preservation of communications of importance to government decision making. The retention and preservation of electronic devices themselves (so as to have access to any content on them, including all content from messaging platforms) is not normal practice within DfE. This is because, if information is identified and saved appropriately to Content Manager by the relevant individual, there should be no need to retain the device on which the information was created, or its content. Rather, the retained information should sit within the official repository and could be managed accordingly.
56. The approach to devices in DfE, and which DfE expects to be similar across all Northern Ireland departments, was based on the NICS Mobile Device Security Policy. It mandates the return of mobile devices when they are no longer required by the original recipient. Paragraph 2.14 of the policy states: *"Where a mobile device is no longer required by its original recipient, it must be returned to IT Assist for secure erasure, reloading of software, re-encryption and redeployment. It must not be retained by the Branch as a spare"*. This NICS- wide policy is owned by IT Assist.
57. As noted above, DfE officials operated in line with this policy. The government-issued electronic devices that were provided to DfE's former Ministers and SpAd were, as a matter of routine, returned to IT Assist in line with this policy, and it is the understanding of DfE that the devices were subject to a standard reset by IT Assist before being returned to DfE (who have contracts in respects of the devices) for potential alternative allocation.
58. DfE can confirm that the government issued electronic devices provided to the former DfE Ministers and SpAd, were returned by those individuals to officials in DfE's Ministerial Private Office when each of the DfE Ministers and SpAd left their positions. Officials within DfE's Ministerial Private Office then returned the devices to IT Assist to be reset and

reallocated, in line with NICS policy. DfE does not hold exact dates of when each electronic device was returned to IT Assist, however, this would have been shortly after each of Minister Dodds, Minister Frew, Minister Lyons and SpAd left their positions – resulting in IT Assist resets in and around June 2021 (Minister Dodds), July 2021 (Minister Frew) and October 2022 (Minister Lyons and Alastair Ross) respectively. DfE cannot say whether or not any of the electronic devices were themselves reset by any of the former DfE Ministers and SpAd prior to their return to DfE officials, as officials did not attempt to access content on these devices when they were returned by Ministers and SpAd. This was in keeping with the NICS Mobile Device Security Policy, section 10, which advises that “*You must never disclose your password/PIN to anyone (including IT Support staff, your manager or a colleague)*”. Put simply, officials did not hold the pin/password to allow them to access content on the returned electronic mobile devices. In some instances, an electronic device used by an outgoing Minister was reallocated to the incoming Minister, post resetting by IT Assist. In other instances, a returned device was reallocated to a DfE official, post resetting by IT Assist.

59. As the potential need to preserve content on the actual devices (in addition to the transfer to Content Manager of material of importance) has now been identified, the government issued devices I used in my role as Permanent Secretary during the Specified Period have been retained by DfE and have not been subject to a reset. The Inquiry will have access, as required, to any content on the devices I utilised.
60. The government issued devices that were allocated to, and used during the Specified period by, SCS who are still in post in DfE have not been subject to a reset. The Inquiry will have access to all available content on those devices as required. However, some government issued electronic devices, that had been used by SCS, were returned to IT Assist at either the useful end of life of the electronic device, or upon the SCS leaving the Department. DfE believes those devices will have been subject to the standard reset by IT Assist, in line with the NICS Mobile Device Security policy.
61. As government issued electronic devices were reset in line with the NICS Mobile Device Security policy, DfE would not itself have sought specific consent from former DfE Ministers, SpAd or SCS in order for a reset to be performed.
62. DfE does not believe that officials specifically advised former DfE Ministers or SpAd that the government issued devices provided to them were to be reset on return. Rather, it

was a matter of routine practice for all IT Assist issued electronic devices across the NICS, in line with the applicable policy.

63. The resetting of government issued electronic devices within the NICS was raised as a potential issue by the Inquiry in July 2023. This was the point at which DfE became aware that the routine resetting of DfE utilised electronic devices returned to IT Assist may have resulted in content of potential relevance to the Inquiry not being available. However, DfE hopes that the combination of the content of Content Manager, into which all important government information and documentation was to be transferred on an ongoing basis, together with the content from those electronic devices that have not been reset, will be sufficient to provide the Inquiry with a complete picture of decision making during the pandemic.
64. As indicated above, additional consideration was not given by DfE to the need to preserve all data on all DfE electronic devices used during the Specified Period, or the electronic devices themselves, for the purposes of the Inquiry. This was because NICS and DfE policy required information of importance, regardless of the device it was created on, to be transferred into the EMDRS, Content Manager. Accordingly, DfE focus was on the retention of relevant information in Content Manager, as the official repository, rather than on any electronic devices on which content may have originally been created.
65. DfE has made enquiries to ascertain whether information that would have been contained on the government issued electronic devices of relevant former DfE Ministers, SpAd and SCS, but which have been reset, may be available from alternative sources. The alternative sources are other officials potentially involved in the same informal communications over the likes of messaging platforms, but whose electronic devices have not been subject to a reset. Whilst certain material can be produced by this means, DfE is unfortunately unable to say with certainty whether, when taken together, that, which it has been possible for it to identify as available to provide, constitutes the totality of the material that may have been held on the devices that were reset.
66. For example, DfE has been able to identify text messages during the Specified Period between my government issued mobile device and that of each of the DfE Ministers and SpAd. The Inquiry will be able to have access to this material as necessary.

67. DfE has also identified communications over messaging platforms between each Private Secretary's government issued electronic mobile device and that of each of the DfE Ministers and SpAd. The Inquiry will be able to have access to this material as necessary.
68. As noted above, a number of the government issued electronic devices that were issued to the former DfE Ministers and SpAd (4 phones and 2 iPads), post reset by IT Assist, were returned to DfE and reallocated to DfE officials. Whilst those devices are readily identifiable, they have been subject of both an IT Assist reset, and subsequent use (using their own accounts) by the officials to whom they were reallocated. The devices can be made available, as required, for forensic examination in order to ascertain whether content from a previous users messaging platforms can be recovered. Four of five potentially relevant SIM cards, which would have been used in the devices when they were in the possession of former DfE Ministers and SpAd, also remain available. They were preserved for contact number continuity. However, the fifth SIM card, relating to the SpAd's first mobile phone, was not retained and is not available. It is considered unlikely that SIM cards will themselves contain content from messaging platforms, but the four that are available can be assessed as required.
69. DfE does not hold the government issued devices that were previously issued to SCS, which, when due for renewal, or when an official was leaving DfE, were returned to IT Assist to be reset in line with established policy. DfE cannot say whether any information could be recovered from these devices, should they be traceable by IT Assist. However, DfE has endeavoured to establish whether other DfE officials, who may have engaged in informal electronic communications with the SCS whose government issued devices were returned to IT Assist for reset, may have relevant content on their electronic devices from their side of any messaging. Any relevant content will be provided to the Inquiry.
70. It is my understanding that government issued mobile phones were not the predominant mobile phones used by the former DfE Ministers and SpAd to conduct government business. Minister Dodds, Minister Lyons and SpAd are known to have all predominantly used their personal/private mobile phones for informal communications, including any messaging.
71. It is recognised that government Ministers will have constituency work and receive numerous phone calls and emails in that regard via their personal/private phones. It is, perhaps, unsurprising that they should also utilise their personal/private phone for

departmental business, as that assists in the management of both aspects of their responsibilities.

72. It may be that the personal/private devices utilised by former Ministers and SpAd still contain relevant informal communications. The Inquiry may wish to engage with the former Ministers and SpAd on this issue.

Informal Communications Using Electronic Devices

73. As indicated above, it is normal practice for government issued electronic devices to be provided to Ministers, SpAds, Permanent Secretaries and members of the SCS (and indeed other officials) to be used in the conduct of official government business.

74. There is no policy prohibiting Ministers, SpAds, or members of the SCS using what the Inquiry has described in its letter of 21 November 2023 as “informal communications”, such as messaging platforms like SMS (commonly referred to as text messages), iMessage, or WhatsApp. However, in the June 2020 correspondence issued to all staff, DfE did not recommend the use of WhatsApp [**Exhibit MB2/18 INQ000400981**]. Although, it is recognised that these electronic methods of “informal communications” can assist with efficiency of government business, the use of these electronic methods of “informal communications” does not obviate the need for the appropriate transfer to a permanent record (in DfE’s case, saved into Content Manager) of any piece of government business or decision making that merits such a permanent record. However, it is acknowledged that it is not the case that there would need to be a permanent record of all “informal communications” conducted over messaging platforms, just as there is no need for a permanent record of all communications carried out by the spoken word.

75. The Inquiry has asked for a table addressing the extent to which the various DfE Ministers, SpAd and SCS used messaging platforms to communicate about the management of the pandemic. DfE has endeavoured to create such a table drawing on the information it can presently provide. The table has been marked “Table 1 – Table of Informal Communications” and can be found at exhibit [**Exhibit MB2/37 INQ000401009**] in the exhibit bundle.

76. From the work DfE has undertaken to date, and as indicated in Table 1, none of the messaging platforms utilised between DfE Ministers, SpAd, and SCS, were forums for decision making, whether in relation to the pandemic or otherwise.

77. For the assistance of the Inquiry, and from the work DfE has undertaken to date, it appears possible to say that:

- a) DfE Minister Dodds appears to have used, to a limited extent, her government issued electronic device to communicate informally with officials using messaging platforms. DfE is able to furnish the Inquiry with WhatsApp messages between Minister Dodds' government issued device and that of her Private Secretary. Text messaging was a means by which Minister Dodds and I informally communicated. From the records held by DfE, it would appear that Minister Dodds did also communicate informally with officials through messaging platforms using her personal/private device. DfE is able to furnish the Inquiry with the WhatsApp and text messages that it can access through officials, and that passed between them and Minister Dodds' personal/private device.
- b) DfE Minister Frew appears to have used, to a limited extent, his government issued device to communicate informally with officials using messaging platforms. DfE is able to furnish the Inquiry with the text messages that it can access through officials.
- c) DfE Minister Lyons appears to have used, to a limited extent, his government issued electronic mobile device to communicate with officials via messaging platforms. DfE is able to furnish the Inquiry with text messages between Minister Lyons' government issued device and my own government issued device. Text messaging was a means by which Minister Lyons and I informally communicated. However, from the records held by DfE, it would appear that Minister Lyons primarily used messaging platforms from his personal/private device to communicate with officials. DfE is able to furnish the Inquiry with the WhatsApp and text messages that it is aware of and can access through officials, and that passed between them and Minister Lyons' personal/private device.
- d) Alastair Ross, DfE SpAd, also appears to have used, to a limited extent, his government issued device to communicate informally with officials using messaging platforms. DfE is able to furnish the Inquiry with WhatsApp and text message exchanges that it is aware of and can access through the devices of officials involved in those communications. Text messaging was a means by

which SpAd and I informally communicated. From the records held by DfE, it would appear that SpAd primarily used his personal/private device to communicate informally with officials using messaging platforms. DfE is able to furnish the Inquiry with the WhatsApp and text messages that it can access through officials, and that passed between them and SpAd's personal/private device.

- e) In my role as Permanent Secretary of DfE, I did not use informal communications via messaging platforms for decision making. However, DfE is able to furnish the Inquiry with text messages from and to my government issued device as required. I was a member of some WhatsApp groups consisting of the Permanent Secretaries of each of the Northern Ireland departments, but I no longer have access to those groups and their messaging content, due to a WhatsApp malfunction on my phone. However, I consider it likely that other Permanent Secretaries will still have access to the groups' content on their phones, and I understand the Inquiry has been furnished with those records by other NICS departments.
- f) DfE's SCS appear to have availed of a low level of informal communications via messaging platforms in relation matters within the scope of Module 2C. DfE is able to furnish the Inquiry with text messages to and from SCS government issued devices. Personal/private devices were at times used by SCS for some informal communications over messaging platforms. DfE is able to furnish the Inquiry with these text messages also, having obtained them from the relevant SCS.

78. DfE is unable to say whether Ministers Dodds, Frew or Lyons, or SpAd, Alastair Ross, used auto-delete, disappearing messages or routinely manually deleted informal communications related to government work or business from messaging platforms on their government issued devices. I am also unable to say whether they applied those functions/processes to informal communications relating to government work or business undertaken on messaging platforms via their personal/private devices. The former Ministers and SpAd would be best placed to address this issue.

79. I can advise that I did not use auto-delete, disappearing messages or routinely manually delete informal communications related to government work or business from messaging platforms on my government issued device.

80. I am also informed and therefore believe that the SCS within DfE did not use auto-delete, disappearing messages or routinely manually delete informal communications related to government work or business conducted via messaging platforms from their government issued devices.

81. Neither NICS nor DfE policies advise staff to use auto-delete or disappearing messages or to routinely manually delete from their government issued devices informal communications related to government work or business conducted over messaging platforms.

82. Similarly, DfE did not issue guidance which instructed its former Ministers, SpAd, SCS or any other officials to delete messages or emails from their government provided mobile devices, save as in accordance with applicable NICS policies. For instance, the NICS Email Management Policy directs staff to save records such as emails, that need to be retained for the purposes of government business, to Content Manager, and thereafter delete those which are no longer required for business purposes. The NICS records management policies direct all staff to ensure records of importance are saved to Content Manager in a timely manner.

Closing Remarks

83. In closing, it is regrettable if any content, that may have been of potential relevance to the Inquiry, has been lost through the routine operation of the NICS wide electronic device reset policy. However, DfE has made every effort to recover and make available to the Inquiry any communications it can access that were conducted via messaging platforms, in addition to the official record contained in Content Manager.

Statement of Truth

84. I declare that the contents of this statement are true and accurate to the best of my knowledge and belief. 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 in its truth.

Signed: _____
Personal Data

Dated: 12 February 2024