

IN THE MATTER OF THE UK COVID-19 INQUIRY
MODULE 2C

FACT FINDING INVESTIGATION ON BEHALF OF THE HEAD OF THE CIVIL SERVICE

1. The Covid Inquiry is currently sitting in Belfast for Module 2C and on 30 April 2024 it received an opening statement from Ms Clair Dobbin KC, Counsel to the Inquiry, which outlined the issue central to this investigation. In summary, the issue raised relates to the provision (or late provision) to the Inquiry of handwritten notes of Executive meetings in 2020. In particular, the issue surrounds the erroneous representations that were made over the course of 2022-2024 to the Inquiry that the notes were not held/ in existence.

2. The specific notes in question, those of 02 July 2020, are of interest to the Inquiry, as they relate to the first Executive meeting after the funeral of Bobby Storey.

3. Ms Dobbin KC, outlined to the Inquiry, how *“despite those notes having been found and despite the sheer number of requests having been made, despite the fact that the TEO in fact told the Inquiry that those notes weren’t held, and despite the very specific that the Inquiry asked about the precise circumstances in which notes like this could go missing, they weren’t provided until after the opening had been given”*.

4. Dr Jayne Brady, Head of the Civil Service (HOCS), in her evidence to the Inquiry, indicated that she would ask “*DSO to undertake an investigation in terms of what has happened in that specific case*”.
5. I have been instructed by HOCS, to conduct a fact-finding investigation with a particular focus on the (late) provision of the handwritten notes of 02 July 2020 and the representations that were made to the Inquiry during the disclosure process.
6. In addition to this general Term of Reference (TOR), the Inquiry wrote to the Departmental Solicitors Office (DSO) by a letter dated 7th May setting out 8 questions, which form the basis of the TOR to this fact-finding investigation. I have set out these specific questions further below.

APPROACH TO THE FACT-FINDING INVESTIGATION

7. Firstly, it is necessary to outline my approach to this investigation. I have been provided with 5 bundles of documents apparently containing all the relevant paper work relating to this issue. The papers run to thousands of pages. I also set aside two days (Monday 13 and Tuesday 14 May) to meet and interview 10 key people, who were readily identifiable from the papers.

8. Those witnesses have attended voluntarily in order to assist in this investigation, for which I am grateful. They are:

- Maria Hannon (Grade 7 TEO Covid Team)
- Jane Holmes (Grade 5 TEO Covid Team)
- Karen Pearson (Grade 3 TEO Covid Team)
- Chris Stewart (Grade 3 Executive Secretariat)
- **NR - Person B** (Deputy Principal- TEO Covid Team)
- Caroline Gillan (Grade 5 Executive Secretariat)
- Neill Jackson (Grade 5 Executive Secretariat)
- **NR - Person A** (Grade 7 Executive Secretariat)
- **NR - Person C** (Senior Principal Legal Officer)
- Eugene O'Loan (Grade 5 DSO).

9. I am instructed the issues regarding disclosure arise out of the Covid-19 Inquiry – Module 2C, relate to the provision or non-provision of notes (handwritten) relating to a number of Executive Meetings over the period of Covid, in particular 2020. In assessing this matter and in conducting my fact-finding investigation I have approached the matter in a number of timeframes:

- November 2022 – 3rd August 2023
- 3rd August 2023 – 10th January 2024
- 11th January 2024 – 30th April 2024

10. These time frames are specifically selected as they deal with relevant points in time in this process where the issue and provision of the notes crystallise.

TERMS OF REFERENCE

11. As referenced in paragraph 6 above the TOR of this investigation are particularised below:

- An explanation of what steps were taken to locate the Notes and why the Notes were not located in response to the Inquiry's original rule 9 directed to TEO dated 22 September 2022.

- What steps were taken to locate the Notes in response to the follow up requests made by the Inquiry outlined by the CTI namely;
 - a. 8 February 2023;
 - b. 9 March 2023
 - c. 11 April 2023;
 - d. 1 June 2023;
 - e. 2 June 2023;
 - f. 16 June 2023; and
 - g. 6 July 2023.

- Why TEO confirmed to the Inquiry in the document dated 20 June 2023 containing the comment that "E (M) (20) 41 on 02/07/2020- notes not held- confirmed by Exec Sec" that the Notes were "not held".

- What steps were taken in response to the Inquiry's letter dated 31 July 2023 which led to the discovery of the Notes and in what ways those steps were different to the previous, unsuccessful, steps.
- Once the Notes were located and identified by TEO and/or DSO on or about 3 August 2023, why the Notes were not provided to the Inquiry immediately. Such explanation should include who had sight of the Notes and the email of 3 August 2023, what discussions or meetings were held to discuss the discovery of the Notes and what advice (if any) was received concerning the disclosure of the Notes to the Inquiry.
- Why it took so long for the Notes to be disclosed to the Inquiry after their location, including whether the position of the Notes was reviewed at any point/s subsequent to their discovery and before their eventual disclosure and if so, by whom.
- How paragraph 71 of the statement of Karen Pearson came to be drafted to confirm inaccurately that all extant Notes had been disclosed, taking account of the fact that the paragraph is based upon the email of 3 August in which the location of the Notes had been confirmed.
- How the same table referred to in (3) above, the comment that "*E (M) (20) 41 on 02/07/2020- notes not held- confirmed by Exec Sec*" in which

it is confirmed that the Notes were not held, came to be recirculated to the Inquiry by TEO/s Counsel via email on 21 December 2023.

GENERAL POINTS

12. It is clear from my investigation that there were repeated requests from the UK Covid-19 Inquiry team to the TEO for not only generalised disclosure but also specific disclosure. Module 2C and the disclosure responsibilities including the provision of various statements from senior officials, came at the same time that other work on other Modules was being undertaken. I was informed by a number of witnesses that, in relation to Module 2C, throughout the relevant period of time (2022-2024) that approximately 25,000 – 30,000 documents were being handled by the TEO Covid team.

13. I was informed by a number of witnesses that in order to upload to Egress, approval would be required by a more senior member of staff. Undoubtedly this was because issues of privilege or redactions may arise.

CHRONOLOGY & FACTUAL BACKGROUND

22nd September 2022 – 3rd August 2023

14. On the 22nd September 2022 a Rule 9 request came from the UK Covid Inquiry to TEO. On the 23rd September 2022 Maria Hannon emailed the relevant business areas in TEO, including the Executive Secretariat, indicating that disclosure was being requested and that there was a deadline of noon on the 14th October. In addition, Ms Hannon indicated that documents that fell within the scope should be recorded on an attached Schedule Log.

15. One request for the Executive Secretariat related to the Minutes of the Executive meetings. During October and November 2022, the Executive Secretariat responded to the requests. Upon receipt of the Minutes, the UK Module 2C Inquiry expressed surprise on the brevity and asked if any handwritten notes could be provided.

16. In assessing this matter, I was informed by a number of witnesses that the usual method of minuting at the Executive meetings was largely left to one member of staff NR - Person D. It was apparently NR - Person D's customary practice to take comprehensive handwritten notes of each Executive meeting and thereafter translate those into a typed formal Minutes document for circulation and approval by the Executive. Those handwritten notes were then retained in a filing cabinet within the Executive Secretariat Office on Level Two Stormont Castle.

17. I have been informed by a number of witnesses that the existence of manuscript notes is attributable solely to the decision of the customary minute taker to retain these in a hard copy format. There is no requirement for the retention

or filing of manuscript notes of Executive meetings after the formal agreement to the Minutes. The formal Minutes record the following for each agenda item; the recommendations agreed by the Executive; details of any vote taken on these recommendations; the position of individual Ministers on those recommendations or on any other issue where they formally request that this be recorded; and any other agreed conclusions or action points.

18. I was informed by NR - Person A, who I found to be a very open and credible witness, that he had instructed two of his junior members of staff to scan the handwritten notes that were requested by the Inquiry on to an email that would then be forwarded to the TEO Covid Team. NR - Person A at the relevant time, was temporarily promoted to a Grade 7 within the “Executive & Central Advisory Division”. The handwritten notes in question, I am instructed, were contained in roughly twenty A4 notepads and amounted to over 1,750 pages.

19. The scanning process took place on the 7th – 8th November 2022 and was as follows:

- The pages with handwritten notes were first extracted from the notebooks in which they were contained.
- Upon scanning the machine emailed a copy of the scan (as a pdf file) to the member of staff’s email Inbox.

- The member of staff saved the pdf file, with the relevant date of the Executive meeting, into a dedicated Folder on CM9 (EO15/2/10/0000047: Providing Executive Support – Operation of the Executive – Political Issues – Covid Inquiry – Minutes – handwritten)
- Scans of the handwritten notes were forwarded to the TEO Covid Inquiry team for onward transmission to the UK Module 2C Inquiry Team. It is anticipated that this occurred in or around November 2022.
- On completion of the scanning process the original handwritten notes were returned to the secure filing cabinet. Following this scanning exercise, it was highlighted there were a number of Executive meetings for which there appeared to be no corresponding handwritten note taken by the customary minute taker. These meetings were 3rd February 2020, 2nd July 2020, 6th August 2020 and 13th August 2020.

20. The Executive Secretariat had responded to the Covid Inquiry Team (TEO) and informed them that there were no Minutes for those meetings. It appears that despite repeated requests from the UK Covid Inquiry Team for clarification and confirmation in relation to this, at no stage did the Covid Inquiry Team (TEO) go back to the Executive Secretariat on those specific grounds and ask them to double check for those Minutes. It appears from my interviewing of the relevant witnesses that a generalised and vague request was issued to all business areas asking them *“to ensure that all relevant disclosure had been provided”*.

21. It is quite clear from my review of the documents and from discussions with the relevant witnesses that the UK Covid Inquiry team had on numerous occasions – the 11th April 2023, 2nd June 2023, 16th June 2023 and 26th June 2023 sought further details regarding the provision of the notes. Attached to these emails was a schedule containing a list of documents which from the perspective of the UK Covid 19 Inquiry Team remained outstanding. On numerous occasions a document entitled “M2C Note on Further Materials Required from TEO” was provided to the Covid Inquiry Team (TEO). From my discussions with **NR - Person A** **NR - Person A** he readily admits that he should have, but did not, double-check the existence of the handwritten notes. It seems that **NR - Person A**, like all of the other witnesses, I have interviewed was operating on the assumption that the original action was comprehensive and complete. The original action being the obtaining and scanning of the handwritten notes.

22 **NR - Person A** informed me that despite what was originally understood, the customary minute taker was actually present for the 2nd July 2020 meeting and their handwritten notes were in fact contained in one of the notebooks the contents of which were scanned during the November 2022 exercise. However, the member of staff doing the scanning failed to successfully scan the 2nd July 2020 Minutes at this time. I was informed that this was a genuine oversight.

23. It appears to me that this failure to scan all of the documents and the assumption that the process was conducted properly perpetuated the

erroneous position that all handwritten notes had been provided. This was the case until the 31st July 2023 when a furthermore comprehensive request was sent from the UK Covid Inquiry team to Mr McMahon (Permanent Secretary to the Executive Office) detailing further requests. A large amount of this document is outside of the scope of my remit, and I am focused solely on the issue about handwritten notes of the Executive meetings. Contained within this letter of the 31st July 2023, on page 4, is specific reference to the issue about handwritten notes and once again the four outstanding handwritten notes are referenced.

24. There was a request to TEO on the 8th February 2023 from the Module 2C Solicitors indicating that further disclosure/clarification was required. As a result of that it appears that, in particular, in relation to the handwritten notes of the Executive meetings, the TEO Covid Team reached out to the Executive Secretariat once again on the 14th February 2023 asking for the draft Executive Notes of the 3rd February 2020 (one of the outstanding minutes).

25. A further request was received on the 9th March 2023 from Module 2C solicitors to the TEO Covid team. As a result of that request **NR - Person E** (Covid Inquiry Team (TEO)) once again reached out to **NR - Person A** (Executive Secretariat) on the 14th March 2023. In this email **NR - Person E** asked again if the Executive Secretariat could check for handwritten notes highlighted "*below in red*". In the body of this email, **NR - Person E** set out a table, some of the entries were in red and some were in yellow. Those in red were ones that were deemed not to have been held by the Executive Secretariat. Of particular note is the

meeting of the 2nd July 2020. **NR - Person A** replied later that day and indicated that there were no extant handwritten notes for those meetings. **NR - Person A** did not double check this and was operating on the assumption that the original action of uploading the handwritten notes was complete and extensive.

26. There was a further email from **NR - Person A** on 6th April 2023 to Ms Holmes where he set out that the original note taker of the Executive meetings was on annual leave on the 3rd February 2020 and therefore any handwritten notes would have been taken by Mr Jackson. If there were any handwritten notes, they were no longer extant.

27. A further reminder/request was made by Module 2C Solicitors on the 11th April 2023. This request was again forwarded to the Covid Inquiry Team (TEO) by DSO Solicitors. This request was repeated on the 19th April, which was again sent to the Covid Inquiry Team (TEO) to action. At this point it appears Ms. Hannon emailed **NR - Person E** and requested that he forward her a copy of the Executive handwritten meeting notes of the 1st October 2020 and 25th January 2021. Later that day **NR - Person E** replied and indicated that those had not been provided to the Inquiry yet. Thereafter there was some discussion with **NR -** **NR - Person A** on or around the 20th April 2023 about those Minutes.

28. On the 9th May 2023 Mr McMahon (Permanent Secretary) sent a Memo to all TEO Grade 3s and Grade 5s. The thrust of this Memo was to remind the business areas that relevant documentation should be provided in relation to the upcoming Module 2 and Module 2C.

29. There was a further email from the Covid Inquiry Team (TEO) to all relevant stakeholders including the relevant business area, including the Executive Secretariat, on the 10th May 2023. This email detailed the request for disclosure being made under Module 2C and also included the Memo from the Permanent Secretary.

30. There was a meeting on the 11th May 2023 between Ms Holmes, Ms Hannon and Ms Gillan (Executive Secretariat). According to an email from Ms Gillan to the relevant parties, including NR - Person A, she and Mr Jackson had met with the aforementioned people about what further documentation they needed to consider was relevant to the Inquiry. That meeting appears to have been followed up by an email from NR - Person B to Ms Gillan and Mr Jackson attaching the original Module 2C Rule 9 request plus a further two requests for additional information which were received from the Inquiry.

31. An email was sent following a meeting of the 1st June on the 2nd June 2023 to Ms Holmes, Ms Hannon and DSO Solicitors from the Module 2C Lead Solicitor Mr Hall. In this email he once again repeated his request to deal with the Schedule attached to his email of the 11th April regarding outstanding documents. Ms Hannon replied to that email directly on the 7th June 2023 wherein she referenced the meeting on the 1st June and indicated that she was aiming to complete the disclosure by 11th April, that coming Friday. In response to this email Mr Harrison, Module 2C solicitor, replied to Ms Hannon, on the 8th June 2023, indicating that he was grateful for her work on the

documents. He also indicated that he attached a Schedule of all documents and file notes that he had been provided with which showed the relevant numbers on the system.

32. A further email was sent by Mr. Hall on the 16th June 2023 in response to the 7th June email from Ms Hannon. In this email Mr Hall indicated that it still appeared they were missing some handwritten notes and around half of the briefing papers listed in the Schedule from the 11th April. On the 19th June 2023, NR - Person B emailed NR - Person A directly in relation to a number of documents; it does not seem these the documents concern this investigation.

33. On the 20th June 2023 Ms Hannon emailed Mr Harrison and indicated that on the 19th June they had uploaded outstanding Executive papers and handwritten notes to Egress. Ms Hannon also indicated that she had attached a Table providing a status update against the various items requested. To note, this is the same table that once again is recirculated to the Inquiry on the 21st December 2023 (which I deal with later in this report). This table indicated that the notes of the 2nd July 2020 were still outstanding.

34. On the 6th July 2023 Ms Jones, Module 2C Solicitor, emailed Ms. Hannon directly indicating that once again there were a few specific handwritten notes and Minutes that were outstanding. Once again, the dates of these missing Minutes were set out and again reference was made to those of the 2nd July 2020. In addition to the request for the Minutes a request was made that the client (a) advise whether handwritten notes existed for each of the dates in the

Table and (b) if yes, when the Inquiry might reasonably expect to receive copies of the handwritten notes (noting of course the TEO's many competing priorities in relation to provision of documents to the Inquiry)

35. On the 31st July 2023 a further request was sent from the UK Covid Inquiry Team detailing a number of issues as referenced previously in this report. As a result of that Ms Hannon emailed Ms Gillan, Mr Jackson and NR - Person
A on 1st August 2023. In this email Ms Hannon, once again referenced the handwritten notes of the Executive Minutes and listed the four outstanding handwritten minutes. Ms Hannon also requested that the relevant personnel answer a number of questions; (a) whether they could confirm the handwritten records are missing and that there are no copies of them and (b) explain where the records ought to be stored and (c) explain the process by which such records are stored and how it is possible to remove them from storage? And (d) could they explain what is known about the circumstances in which they have gone missing? Has there been an investigation into this?

36. The email of 31st July 2023 was shared by Covid Inquiry Team (TEO) with the Executive Secretariat. It was upon receipt of this email with the correspondence of the 31st July that NR - Person
A instructed his junior staff members to conduct another search in relation to the missing notes. This was done for the first time and the notes of the 2nd July 2020 were discovered in the filing cabinet along with the other handwritten notes. These Notes were then scanned and shared via email with the Covid Inquiry Team (TEO) on the 3rd August 2023.

37. It is noteworthy that this email (3rd August) was not simply sent to the General Inquiry email account but also to Maria Hannon (Head of Branch), Jane Holmes (Grade 5), Michael Kennedy (Acting Grade 3) and NR - Person
B. The content of the email is as follows: *“After a thorough search we have been able to locate handwritten notes for the meeting of the 2nd July 2020 (attached). Handwritten notes for the other three dates (3rd February 2020 at which the emergence of Covid is noted under Any Other Business; 6th August 2020 and the 13th August 2020) are not available.*

There is no requirement for the retention or filing of manuscript notes of Executive meetings after the formal agreement of the Minutes. These record the following for each agenda item; the recommendations agreed by the Executive; details of any vote taken on those recommendations; the position of individual Ministers on those recommendations or any other issue where they formally request these be recorded; and any other agreed conclusions or action points.

The existence of manuscript notes is attributable solely to the decision of the customary minute taker to retain these in hard copy format. It would appear that in relation to those meetings for which no manuscript records have been identified that the person may have been absent through leave or other arrangements on those dates and the minute taker for those meetings either did not make handwritten notes or if the handwritten notes were taken did not retain them.

The notes in question have therefore not been misfiled and every extant handwritten note of an Executive meeting taken by the usual minute taker has now been provided.”

38. In or around this time the corporate statement on behalf of Karen Pearson was being drafted and the issue regarding Minutes was dealt with in one of the paragraphs. The paragraph in question became Paragraph 71 of the version which was the official version served on the Inquiry. The paragraph however featured in various iterations of this document and was inserted for the first time, according to the tracked changes version, on the 6th August by Jane Holmes. Jane Holmes informed me that this was inserted directly as a result of the email from NR - Person A of the 3rd August 2023. The relevant sentence of all extant handwritten notes of an Executive meeting taken by the usual minute taker have been provided was inserted as it was understood by Ms. Holmes that in light of the 3rd August email the handwritten notes of 2nd July 2020 would be uploaded on to Egress and thereafter shared with the Inquiry.

39. Ms Pearson (Grade 3) who signed off the corporate statement was absent from the workplace from in and around mid-March 2023 until her return in mid-September 2023. Upon her return she read through the statement and took it at “face value” that all the notes had been provided. The final version of this statement was provided to the Inquiry in February 2024.

40. Ms Holmes instructs that in relation to the text of this paragraph she had lifted it from the 3rd August email and having been aware they had received the 2nd

July 2020 notes, she had no reason to doubt they had been uploaded by one of the team and to the Covid Inquiry Egress system. Regrettably nobody checked or double checked whether this was in fact served on the Inquiry.

41. Prior to the 1st August Mr McMahon the Permanent Secretary sent once again a Memo to all Grade 5's relating to disclosure and their obligations.

3RD August 2023 – 10th January 2024

42. It is quite clear from my investigations that despite the fact that the Covid Inquiry team (TEO) had been served or given the 2nd July 2020 handwritten notes on the 3rd August 2023 at no stage did anyone inform the Inquiry. No satisfactory explanation was provided to me as to why this was the case. Largely the case was made that it was because of workload and or human error.

43. There were a number of missed opportunities throughout this period of time where TEO could have checked or double checked what was being sent to the Inquiry. Regardless of this and regardless of the fact that steps could have been taken to inform the Inquiry I have not been sighted on anything that suggests this failure to immediately provide to the Inquiry was a deliberate action on the part of any of the officials or employees of the relevant Departments.

44. From the accounts provided to me it seems there were a number of issues that were distracting officials throughout this period of time. In addition, they were dealing with a large volume of documents, save as for the present tranche.

45. A common theme present was the fact that after the original schedule of discovery was completed, outlining what the relevant area held or did not hold, it was not updated at any stage or with any great regularity. The email from TEO's Counsel to the COVID-19 Inquiry legal team of the 21st December 2023 has the attachment of this schedule in the form of a worksheet/workbook which provides to the Inquiry an outdated position in relation to disclosure. Both Ms Holmes and Ms Hannon readily accept that they instructed Counsel to provide this workbook to the Inquiry. It seems neither of those officials or anyone else checked whether or not this was in fact an accurate reflection of the current position.

46. I pause at this point to note that the legal representatives for TEO were not informed of the existence of the notes of the 2nd July 2020 at any stage. The first time DSO seemingly became aware that they were in fact in existence was at the opening of the Inquiry on 30th April 2024.

47. This is yet another example of a missed opportunity which the TEO could have taken to inform the Inquiry of the existence of these notes. No satisfactory explanation was provided as to why an inaccurate representation was made to the UK Covid – 19 legal team in relation to documents that were held or not

held by the relevant business area. Once again workload and/or human error was advanced as the explanation.

11th January 2024 – 30th April 2024

48. On the 9th January 2024 an email was sent from **NR - Person F** (TEO) to **NR - Person A**. The content of this email related to the finalisation of David Sterling's statement for the Covid Inquiry. In that email **NR - Person F** referenced the fact there was discussion in Mr Sterling's statement about the Executive meeting of the 2nd July ("the Storey meeting"). **NR - Person F** indicated that they had the agreed Minutes, but he was looking for any handwritten Minutes. He asked whether **NR - Person A** would be aware if they existed in the first place. **NR - Person A** responded to indicate that he had attached the handwritten Minutes of the 2nd July 2020 to his email.

49. This matter then came to the attention of Ms Hannon on the 11th January 2024 wherein she informed **NR - Person B** that the notes were in their possession. **NR - Person B** then emailed **NR - Person A** on the 12th January 2024 indicating that this causes "a little bit of an awkward situation". **NR - Person B** indicated that they were going to provide the notes of the 2nd July to the Inquiry, and he expected this would raise the issue of the other three outstanding meetings. **NR - Person A** responded to **NR - Person B** on the 12th January indicating that he had previously provided the 2nd July notes on the 3rd August and attached that email to his January email.

50. Ms Hannon, when interviewed, candidly indicated she was aware from the 3rd August that these Minutes were available. However, she indicated that she had expected another staff member to upload these to Egress. Ms Hannon accepted she did not check that this had been done. Ms Holmes likewise, in her interview, indicated she was aware they had the Minutes from August and had also expected someone else to upload them to Egress. This was why Ms Holmes amended Ms Pearson's corporate statement to include the statement that all extant handwritten notes had now been provided, for at the stage the amendment was done (6th August) the handwritten Minutes were in their possession.

51. It is my assessment of **NR - Person B** that he was genuinely surprised that they had not been uploaded or provided to the Inquiry when he received the email from **NR - Person A** in January 2024 (albeit he was a recipient of the email of 3rd August).

52. All of the witnesses indicated the first time they were aware the notes of the 2nd July 2020 had not been provided to the Inquiry was when Ms. Dobbin KC made her opening statement to the Inquiry on the 30th April 2024. It is my assessment that the witnesses were genuine in this account to me.

53. However, that being said, there were a number of missed opportunities in my opinion throughout this process which could have been avoided this situation. The picture painted to me of the disclosure process and indeed the workload

under which the staff members were working is one of a “chaotic” system. It is difficult to see how anyone could be satisfied with any degree of certainty what documents were provided and when they were provided to the Inquiry.

54. It is my overall opinion, having met the witnesses and interviewed them over the course of two days and having read thousands of pages of documents in order to undertake this investigation, that the failure to disclose the notes of the 2 July 2020 and the misrepresentations to the Inquiry, were down to errors and mistaken belief on the part of the relevant staff members rather than any overarching conspiracy. It is my view that the failure to provide was not a deliberate act rather it is reflective of the system under which the Inquiry teams were working.

THE QUESTIONS POSED BY THE INQUIRY

55. I turn now to the 8 questions posed by the Inquiry in relation to this matter as follows:

56. An explanation of what steps were taken to locate the Notes and why the Notes were not located in response to the Inquiry’s original rule 9 directed to TEO dated 22 September 2022.

Upon receipt of the Inquiry’s original Rule 9 request the Covid Inquiry Team (TEO) approached the relevant business areas, in this case, the Executive

Secretariat, NR - Person
A (Head of Branch) instructed two junior members of staff to locate the handwritten notes of the Executive meetings. The handwritten notes were stored in a locked filing cabinet in Castle Buildings. The junior members of staff extracted the notes from A4 notepads and manually scanned them onto the computer. They were then sent for onwards transmission. It appears that a junior member of staff missed the notes of 2nd July 2020 during this process, which involved 20 A4 notebooks and circa 1,750 pages of handwritten notes. This was the first error in the catalogue of errors in relation to this matter and was the building block upon which the erroneous assumptions thereafter were built.

57. What steps were taken to locate the Notes in response to the follow up requests made by the Inquiry outlined by the CTI namely;

- h. 8 February 2023;*
- i. 9 March 2023*
- j. 11 April 2023;*
- k. 1 June 2023;*
- l. 2 June 2023;*
- m. 16 June 2023; and*
- n. 6 July 2023.*

From my chronology and factual background as set out in this report, the Covid Inquiry Team (TEO) repeatedly requested clarification from the Executive Secretariat in relation to the specific handwritten notes. In addition, there were

generalised requests reminding them of their disclosure obligations. However, nothing was done to “double check” the existence of the handwritten notes until after the letter of 31st July 2023. No explanation was provided for this save as for the fact that it appears the original error, from November 2022, was not discovered until a “thorough search” was eventually conducted after 31st July 2023. The assumption being that all the handwritten notes that were in existence were provided in the November 2022 exercise.

58. Why TEO confirmed to the Inquiry in the document dated 20 June 2023 containing the comment that “E (M) (20) 41 on 02/07/2020- notes not held-confirmed by Exec Sec” that the Notes were “not held”.

The simple answer is that this is what the TEO believed to be the case at the time as that was the assurance given by the Executive Secretariat at that time. The carelessness and error emanated from the Executive Secretariat in not “double checking” the existence of the handwritten notes at the time. The assumption being the original November 2022 exercise was above reproach.

59. What steps were taken in response to the Inquiry’s letter dated 31 July 2023 which led to the discovery of the Notes and in what ways those steps were different to the previous, unsuccessful, steps.

Upon receipt of the Inquiry’s letter of 31st July 2023, which raised many issues quite apart from that relating to handwritten notes, Ms Hannon wrote to Ms Gillan and Mr Jackson of the Executive Secretariat and quoted specifically the

questions posed by the Inquiry. It appears that this encouraged, for the first time, an instruction to be given to junior members of staff, to “double check” the filing cabinet. It was at this stage that the notes of 2nd July 2020 were discovered and scanned in an email to TEO Covid team.

60. Once the Notes were located and identified by TEO and/or DSO on or about 3 August 2023, why the Notes were not provided to the Inquiry immediately. Such explanation should include who had sight of the Notes and the email of 3 August 2023, what discussions or meetings were held to discuss the discovery of the Notes and what advice (if any) was received concerning the disclosure of the Notes to the Inquiry.

The notes were emailed by NR - Person A (Executive Secretariat) on 3rd August 2023, to Ms Hannon (TEO Covid Team), Ms Gillan and Mr Jackson (Executive Secretariat), the general TEO Covid Inquiry mailbox, Ms Holmes (G5 TEO Covid Team), Mr Kennedy (G3) and NR - Person B (TEO Covid Team). DSO were not sighted on this email, and I heard from Mr O’Loan (G5) and NR - Person C (G6) that neither were aware of the existence of these notes until the issue arose at the outset of the opening of Module 2C of the COVID-19 Inquiry on 30th April 2024.

Ms Gillan, Mr Jackson and NR - Person A, understandably, all indicated that it was their belief that having emailed the Covid Inquiry Team (TEO), that this matter

would be actioned and that the handwritten notes of 2nd July 2020 would be provided forthwith to the Inquiry.

Ms Hannon and Ms Holmes indicated that it was their belief that a more junior member of staff would action the upload onto the Egress system. Neither checked whether this was done, nor did they seemingly communicate this expectation directly or indirectly to this member of staff. Nothing was done on foot of this email and a fulsome explanation was not provided to me, save as for pressures of work and/or an apparent extensive volume of emails in or around that time.

All, however, readily accept that the handwritten notes of 2nd July 2020, should have been provided immediately to the Inquiry. This, although perhaps symptomatic of the workload of those involved, was yet another error in this catalogue of errors which compounded the overall matter.

61. Why it took so long for the Notes to be disclosed to the Inquiry after their location, including whether the position of the Notes was reviewed at any point/s subsequent to their discovery and before their eventual disclosure and if so, by whom.

After the oversight or mistaken belief by the Covid Inquiry Team (TEO) that the notes were provided to the Inquiry it seems that nothing further was done until the issue of the handwritten notes relating to 2nd July 2020 arose as a result of the drafting of Sir David Sterling's statement.

From the documents and the information provided to me by the relevant witnesses, it seems that in or around 9th January 2024, **NR - Person F** contacted **NR - Person A** about an exhibit to Sir Sterling's statement. The exhibit in question was the typed notes of the Executive meeting of 2nd July 2020. **NR - Person F** was seeking to clarify whether there were handwritten notes in existence of this meeting given this was the meeting that the Storey funeral was discussed. **NR - Person A** emailed **NR - Person F** indicating that he had already provided the notes to TEO Covid team.

Subsequent to this, on or around 11th January Ms Hannon discussed the matter with **NR - Person B**. Ms Hannon indicated to me that she then instructed him to upload the notes "again". There is a direct conflict between the witnesses on this point.

Both **NR - Person B** and Ms Hannon indicated that they were surprised that the notes had not been provided to the Inquiry by this point. Both accepting, as they must, that the Notes had been sent to them and they had seen the email of 3rd August 2023.

Nothing appears to have been done to either upload the notes in question to Egress, or to highlight to the Inquiry their existence. A satisfactory answer was not provided to me. I was informed that it was "assumed" that this was a human error due to workload. Whilst I recognise that this is an extremely challenging working environment, due to the pressures and volume of documents being dealt with, it must have been clear to the relevant people that the Inquiry were

very interested in these handwritten notes. In addition, there had already been a very notable error by the Executive Secretariat in the original failure to find and upload them in November 2022 which caused a delay of the production of these Notes until August 2023.

I have not seen any documentation which suggests that the position of the Notes was reviewed by any person. The evidence provided to me indicates a complete lack of action or review of the notes by anyone involved in this process. This was another error in the stream of errors that have emerged.

62. How paragraph 71 of the statement of Karen Pearson came to be drafted to confirm inaccurately that all extant Notes had been disclosed, taking account of the fact that the paragraph is based upon the email of 3 August in which the location of the Notes had been confirmed.

I have been provided with 4 iterations of the Corporate Statement that was signed by Ms Pearson. The first version appears to have been in existence before 3rd August email. On 6th August 2023 Ms Holmes inserts the (now) paragraph 71.

Ms Holmes' explanation for this and the wording used, in particular the use of the phrase that "all extant handwritten notes of the Executive meetings" had been provided after 3rd August, was that she assumed the handwritten notes of 2nd July 2020 had been provided and therefore this was accurate. Ms Holmes, again readily accepts that she did not fact check this statement and assumed

that a more junior member of staff (despite no evidence of a direct instruction to do so) had actioned it.

Ms Pearson returned from absence in mid-September and took this statement at “face value”. This paragraph remained in the following versions of the statement and as highlighted by the Inquiry, remained in the final version provided.

63. How the same table referred to in (3) above, the comment that “E (M) (20) 41 on 02/07/2020- notes not held- confirmed by Exec Sec” in which it is confirmed that the Notes were not held, came to be recirculated to the Inquiry by TEO/s Counsel via email on 21 December 2023.

I was informed and provided with the emails relating to this issue. TEO’s junior Counsel had emailed, on 21st December 2023 a workbook which dealt substantively with the issue relating to phones and WhatsApp messages. However, this workbook also contained a worksheet which was “outdated” (although this would not have been immediately apparent to the reader) and related to the position of disclosure and what was or was not held. This worksheet had not, apparently, been updated since 20th June 2023 (i.e. before the email of 3rd August 2023) and therefore reflected the position, as it was believed, at that time. However, it was clearly incorrect in December 2023 which had the effect of misleading the Inquiry as to the position regarding disclosure.

Ms Hannon and Ms Holmes, those who had provided the workbook to junior Counsel, readily accepted that they should have checked it and removed the worksheet in question. It is important to note that junior Counsel did not know that the handwritten notes of 2nd July 2020 were in existence at this stage. This was a matter that was not shared with DSO/Counsel, it appears because no advice was required on the Notes, due to the immediate acceptance by TEO that they should be provided to the Inquiry.

It appears that this was, yet another, mistake in this process which again was explained away on the basis of human error and/or workload. This is not an entirely satisfactory response given the, very obvious, interest by the Inquiry in these matters.

GENERAL OBSERVATIONS

64. It is my view that all of the witnesses I spoke to over the course of the 2-day period were acting in good faith. I have not seen any evidence that the failure to provide the handwritten notes and the misrepresentations made to the Inquiry were a deliberate act. Rather there were errors and mistakes made along the way which were entirely avoidable had the proper care and attention been taken in dealing with these matters.

65. In conclusion, undoubtedly there were failings in this process. The cause of those failings is out with the scope of this investigation, save as to say, it was abundantly clear to me that the workload of those involved is extensive, often

beyond breaking point, and as a result there is no guarantee that these mistakes would not occur again.

RACHEL BEST KC

BAR LIBRARY

15 MAY 2024