

# Response to Rule 9 Request for Evidence Reference M02C-TEO-002

Witness Name:

Statement No.:

Exhibits:

Dated:

## UK COVID-19 INQUIRY

### WITNESS STATEMENT OF JAYNE BRADY

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I, Jayne Brady, Head of the Northern Ireland Civil Service (HOCS), will say as follows:

1. This witness statement has been drafted with the assistance of colleagues within the department (The Executive Office). In this statement I aim to set out The Executive Office's position and understanding, as best it can be at this stage, regarding the issue of communication via informal means by Ministers, special advisors, and senior civil servants in the Executive Office during the specified period (11 January 2020 – 15 February 2022).
2. TEO has provided more than 270 Senior Civil Servants' (SCS) strings of WhatsApp messages. These messages show how platforms such as WhatsApp facilitated swift information exchange and a useful coordination tool. The Inquiry will be aware that I have also provided WhatsApp strings from my Northern Ireland Civil Service (NICS)-issued mobile phone that I was involved in. Some of these strings provided by SCS colleagues and me were between officials and Ministers and officials and SpAds and go some way to providing data that may have been lost because of mobile devices allocated to former Ministers and SpAds being reset or passcodes not being available. Denis McMahon, TEO Permanent Secretary during the relevant period, informs me that he used his personal mobile phone, not an NICS supplied one. He has provided all his work-related informal communication strings to the Inquiry.
3. The Inquiry is aware that some mobile devices that had been allocated to former Ministers and Special Advisers (SpAds) in the Executive Office have been reset. I have, therefore, taken steps to ensure that any data that can be retrieved from the devices, will be.
4. I commissioned an independent technical analysis of the 44 mobile devices that were allocated to former Ministers and SpAds (which were retrieved by NICS Internal audit Services during their investigation). The IT Assist team collected the mobile devices for former TEO Ministers and SpAds on 21 December 2023 for this purpose. An existing contract with NIHon Cyber Defence (NCD), the digital investigation specialists was utilised.

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5. The analysis was a two-staged process - first stage was to triage the devices to determine if any data was on them, and second stage was to extract any data from devices determined to have data on them. Further information on the outcome of the technical analysis of the devices allocated to former TEO Ministers and SpAds is provided at paragraph 137 below.
6. There were 24 devices across the NICS that were not retrieved by the NICS Internal Audit Services due to them being reset before either being reallocated or destroyed in line with NICS Mobile Device Security Policy. Section 3 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.*'
7. I used a NICS supplied mobile device and did not use messaging on mobile devices for decision making. As borne out by the messages provided, it was predominantly used rather for engagement with officials and SpAds in managing the logistics of meetings.
8. This statement details the status of TEO devices.

### ROLES OF HEAD OF THE CIVIL SERVICE AND THE PERMANENT SECRETARY

9. The Head of the NI Civil Service (HOCS) is the most senior official in the NICS. It is a critical role, with significant responsibility for providing leadership to more than 23,000 civil servants, including nine Permanent Secretaries, who operate in a diverse, constantly changing, resource constrained and complex political environment. The HOCS relationship with Permanent Secretaries is not characterised by hierarchical *command and control* governance and management arrangements. I do not exercise day to day management or control of individual Departments, or their agencies or arm's length bodies nor do I hold an Accounting Officer role for any part of the NICS. The Executive Office's corporate statement for module 2C sets out further details at paragraphs 9-28. I am accountable to the First Minister and deputy First Minister and as their principal policy adviser provide advice to them across all the issues of government, the exercise of their functions as joint Chairs of the Executive Committee, and to all Ministers on matters relating to the role and conduct of the Executive Committee and its business. As Secretary to the Executive Committee, I am its chief advisor and the only official permitted to speak as of right at its meetings (other officials may be invited to speak).
10. During the current period when there is no Executive, my role, in addition to the continuing oversight of the NICS as described above, is to:

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- provide advice to, and work with, political parties to support them in preparing to form an Executive;
- liaise with the UK Government, primarily through the Secretary of State and Northern Ireland Office officials on matters relating to the governance of Northern Ireland; and
- represent NI at a UK level in the absence of First Minister and deputy First Minister, including attendance at Intergovernmental ministerial meetings to provide factual updates. Subsequently, during the period of no First or deputy First Ministers and in the absence of an Executive from February to October 2022, I briefed the remaining Ministers on these matters.

11. The Permanent Secretary of each Department is accountable to the Minister for that Department for the performance of the Department's functions. Additionally, as Accounting Officer, each Permanent Secretary is directly accountable to the Assembly, as set out in Chapter 3 of the Department of Finance's (DoF) guidance Managing Public Money Northern Ireland (MPMNI) [Exhibit JB/1 INQ000409592].

12. Permanent Secretaries and their officials ordinarily work under the direction and control of Ministers. However, in the absence of Ministers and an Executive Committee, they can take decisions in relation to departmental functions which would in normal circumstances have been brought to Ministers. This is pursuant to the Northern Ireland (Executive Formation etc) Act 2022, which enables a department, in accordance with guidance published by the Secretary of State, to exercise functions in the absence of Ministers if a senior officer is satisfied that it is in the public interest to do so. Within each department it is the Permanent Secretary's ultimate decision as to whether the particular function should be exercised or deferred until a Minister is appointed.

13. The role of HOCS was formerly also combined with that of the Permanent Secretary of TEO but did not fulfil the Accounting Officer role for the department. Until July 2021 the Accounting Officer role in TEO had been held by a senior officer at NICS Grade 3 level but in July 2021 a new Permanent Secretary role was created within TEO to lead the policy agenda and programme delivery and to act as Accounting Officer. Dr Denis McMahon was appointed to the role.

14. In September 2023, Dr McMahon took up a new post as Permanent Secretary for the Department of Infrastructure leaving the post of TEO Permanent Secretary vacant. Gareth

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Johnston, an officer at Grade 3 level in TEO, is currently fulfilling the role of Accounting Officer on a temporary basis.

### NICS COVID-19 PUBLIC INQUIRY OVERSIGHT AND ASSURANCE FRAMEWORK

15. I would like to refer to our general governance arrangements for Covid-19 Public Inquiry issues and compliance. In June 2022, the NICS Covid-19 Inquiry Oversight and Assurance Framework document [Exhibit JB/2 INQ000409593] was agreed. This document included the establishment of three groups: HOCS Reference Group [Exhibit JB/3 INQ000409594], an NICS Public Inquiry Compliance and Assurance Group [Exhibit JB/4 INQ000409595] and a NICS Preparedness and Coordination Group [Exhibit JB/5 INQ000409596]. TEO also has an Inquiry Preparedness Group [Exhibit JB/6 INQ000409597] attended by all business areas.
16. The HOCS Inquiry Reference Group receives a NICS-wide highlight report in advance of each meeting which reports on progress, key issues, risks and milestones. On 31 July 2023 [Exhibit JB/7 INQ000409598], the following was included:

*"WhatsApp Messages: The High Court ruling of 6 July 2023 in relation to the Cabinet Office on unredacted WhatsApp messages may have wider reaching impacts in relation to document provision. TEO has received a Rule 9 in relation to release of WhatsApp Messaging. The UK Covid Inquiry agreed that this Rule 9 could be shared with all Departments via DSO."*

17. The TEO Preparedness Group prepares TEO-specific highlight reports that feed into the NICS-wide highlight reports [example provided at Exhibit JB/8 INQ000409599].

### ACTION TAKEN TO ENSURE RECORDS WERE RETAINED

18. To ensure relevant records were retained for the Inquiry, a number of actions were taken:
- My predecessor, Jenny Pyper, and I issued directions to all departments in relation to ensuring that all records relevant to the Inquiry were retained. The intention of these directions was to supplement the normal operation of information management policies in order to ensure that materials related to the Inquiry would be retained. More detail on each direction is provided at paragraph 15.
  - DSO provided virtual training across all departments on eight occasions between 7 June 2022 and 12 June 2023 in relation to the Inquiry, an important element of which focused on



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retention of records. These were attended by 564 officials and covered Inquiry matters - generally, including disclosure, with the final session covering disclosure only.

- The TEO and cross-departmental Inquiry preparedness groups established under the NICS Covid-19 Inquiry Oversight and Assurance Framework referenced above also had a key focus on record retention. These groups, established in June 2022, initially met weekly in preparation for the Inquiry. Examples of minutes from those meetings are provided at **[Exhibit JB/9 INQ000409600 to Exhibit JB/10 INQ000409630]**.

19. Messages issued by me to Permanent Secretaries were shared within TEO through the then Permanent Secretary's Office on behalf of Dr Denis McMahon [for example see **Exhibit JB/11 INQ000409644**].

### COMMUNICATIONS ON RECORD RETENTION

20. There were ongoing communications to Permanent Secretaries initially by my predecessor Jenny Pyper and then by me about the Inquiry and retaining records for the purposes of the Inquiry. This is set out in a timeline below. Permanent Secretaries were responsible for ensuring these notes were shared with staff in their departments. Denis McMahon issued the notes to all Directors in TEO, who then ensured they were shared with staff in their directorates. Examples of communications on record retention for the Inquiry are provided at **Exhibit JB/12 INQ000409654** and **Exhibit JB/13 INQ000409658**.

- 14 June 2021: letter from Darren Tierney, Director General, Propriety and Ethics, Cabinet Office, dated 10 June 2021 regarding record retention for the Covid-19 Independent Inquiry issued from Ms Pyper to Permanent Secretaries, advising that the contents of the letter apply equally in the NICS. A copy of this letter and the email to Permanent Secretaries are exhibited at **[Exhibit JB/14 INQ000409662, Exhibit JB/15 INQ000409663]**.
- 17 June 2021 – Ms Pyper raised the issue of record retention at the Permanent Secretary Stocktake meeting on 18 June **[Exhibit JB/16 INQ000409664]** and asked Chris Stewart, as TEO Accounting Officer, to reinforce the message on record retention within TEO. I have been informed by Jane Holmes, Head of Covid Strategy, Recovery, and Inquiry Division, based on information provided to her by business areas that at that stage the focus of officials on Retention of Records was on material held within the NICS Records Management System, Content Manager and Knowledge Network.

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- 25 June 2021: Chris Stewart issued advice based on his personal experience of a previous public inquiry to some TEO colleagues regarding retention of relevant documents, emails, text messages, etc. [Exhibit JB/17 INQ000409665]. Mr Stewart provided advice on the importance of gathering evidence and the need to be thorough.

### RELEVANT MILESTONES DURING MY TENURE AS HEAD OF THE CIVIL SERVICE (HOCS)

21. The following section sets out a chronology of significant dates in my tenure as HOCS, including political developments and actions relating to the response to the Covid Inquiry.

- On 10 June 2021, it was announced that I would become the Head of the Civil Service in Northern Ireland [Exhibit JB/18 INQ000409666].
- On 14 June 2021, Arlene Foster stood down as First Minister and Paul Givan succeeded as First Minister on 17 June 2021.
- On 1 September 2021, I took up this post. At this time, the role of Permanent Secretary for TEO was held by Dr Denis McMahon.
- On 12 September 2021, I advised colleagues that I had raised the issue of a letter to be sent to Permanent Secretaries regarding preparation for the Covid Inquiry with Special Advisers for First Minister and deputy First Minister [Exhibit JB/125 INQ000409667].
- On 16 September 2021, I wrote to all NICS Permanent Secretaries reiterating the need to take steps to assure themselves that Departments and Arm Length Bodies (ALBs) would be ready to meet their obligations to provide relevant records, information and data to the Inquiry [Exhibit JB/19 INQ000409668]. I stated:

*'to provide relevant records, information and data to an inquiry as it is requested. This includes ensuring that no material of potential relevance is destroyed. Given that the terms of reference are yet to be agreed this will require us to take the broadest interpretation of potential relevance'.*

I further stated my intention to establish a team within TEO to coordinate our work to support an inquiry.

Within the 16 September 2021 correspondence specific guidance was attached -

"DSO preliminary guidance in advance of any COVID-19 Public Inquiry" [Exhibit JB/20 INQ000409669] was attached. Section 4 stated:

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*"Although the Terms of Reference are yet to be published, it is very likely that all documents pertaining to COVID-19 may be relevant to the Inquiry. This will include:*

- *Hardcopy documents (e.g. draft minutes, notebooks, internal forms, handwritten notes, diaries); and*
- *Electronic documents (e.g. email and other electronic communications such as text messages, WhatsApp messages and voicemail, word-processed documents and databases, and documents stored on portable devices such as memory sticks and mobile phones)". (emphasis added)*
- *The document also states within this section that "If documents that are relevant are destroyed, the Inquiry can publicly criticise the department and may draw inferences from the fact that the Department did not take appropriate steps to preserve relevant documents are the earliest opportunity".*

It is my understanding that this was the first formal correspondence which referred to text messages and WhatsApp messages.

Guidance was also attached as an aide for potential witness **[Exhibit JB/21 INQ000409670]**.

- On 12 November 2021, I wrote to First Minister and deputy First Minister providing them with an update on the UK Government's planning for the UK Public Inquiry. My note provided details on preparatory steps being undertaken by NICS **[Exhibit JB/22 INQ000409671]**. The DSO guidance that issued to officials on 16 September was attached to this correspondence. I set out four key areas of action:
  - Ensuring robust and comprehensive records management;
  - Embedding systematic approaches to log key leavers, carry out exit processes and retain contact details;
  - Considering wellbeing support for staff who may have to provide evidence; and
  - Appointing a named inquiry lead.
- At midnight on 3 February 2022, First Minister Paul Givan resigned and as a result the Executive was unable to function in the absence of a First Minister as its joint Chair. The

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deputy First Minister also automatically lost office but was permitted under the terms of the Northern Ireland Act 1998 to continue to exercise a limited range of functions until the Assembly election on 5 May 2022. The Junior Ministers appointed by the First Minister and deputy First Minister also remained in office under the terms of the Determination for their appointment [Exhibit JB/23 INQ000409672]. In practice, they were no longer able to exercise their function of assisting the First Minister and deputy First Minister in the exercise of their functions in relation to the Executive Office but continued to receive briefings from officials on key departmental issues. This arrangement continued until 28 October 2022.

- From February to October 2022, in the absence of First Minister and deputy First Minister in The Executive Office, I chaired regular briefing sessions with remaining Ministers to provide factual briefings on emergent issues, such as Ukraine, management of refugees and the cost of living crisis. Some briefing sessions covered the Covid Inquiry and Working From Home guidance. For example, in the meeting note of 14 June 2022, specific reference is made to preparations for the Covid Inquiry [Exhibit JB/24 INQ000409673].
- On 5 May 2022, NI Assembly elections took place. As a result of a failure to appoint a Speaker to the Assembly, it was not possible to proceed to the appointment of a First Minister or deputy First Minister nor thereafter to the appointment of other departmental Ministers thus preventing the formation of an Executive Committee. However, those Ministers appointed in the previous mandate (other than the First Minister and deputy First Minister who had already ceased to hold office) continued in office under the provisions of the Northern Ireland Act 1998. Nichola Mallon lost her seat in the May 2022 Assembly election and was therefore unable to continue in office as a “caretaker” Minister for Infrastructure. SDLP decided to forego its entitlement to nominate another MLA to the office which then passed to Sinn Féin (John O’Dowd) under the provisions of the Act. At the same time, SDLP sought and were given recognition as the Official Opposition for the 2022-27 mandate for which it qualified by virtue of the proportion of seats it held in the Assembly as a result of the May 2022 election.
- In June 2022, new NICS guidance was introduced on Official information held in non-corporate communications channels which references specifically the use of personal devices [Exhibit JB/25 INQ000409674]. Paragraph 5 of the guidance states:

*‘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*

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*measure when official systems are unavailable, and there is no other option but to use non-corporate channels. These might include but are not limited to:*

- *Personal email accounts e.g., Hotmail, Gmail, ProtonMail or Yahoo Mail*
- *Private messaging accounts e.g., WhatsApp, Signal or Telegram*
- *Direct messages sent on apps such as Twitter or via Facebook messenger*
- *Personal mobile devices, including text messages on mobile phones and voice recordings*

*Technological changes mean that new messaging apps, platforms and channels are developed over time. Therefore, you should not assume that the above is a definitive list of non-corporate communications channels.'*

- In recognition of the complex constitutional arrangements in NI, in early June 2022, I established the NICS Covid Inquiry Oversight and Assurance Framework [**Exhibit JB/2 INQ000409593**]. The broad purpose of this Framework was to ensure coordinated approach in relation to:
  - Full compliance and participation;
  - A collaborative relationship;
  - Proper disclosure;
  - Effective preparation by witnesses; and
  - Adherence to the Inquiry's requirements on handling of documentation.
- The framework established three levels of oversight:
  - a HOCS Reference Group, chaired by myself,
  - a Public Inquiry Compliance and Assurance Group, chaired by Karen Pearson and
  - a NICS Preparedness and Coordination Group, chaired by Jane Holmes.

This framework sat alongside individual departmental teams established to monitor departmental preparedness for the Inquiry.

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- On 27 July 2022, I received a letter from Darren Tierney regarding record retention for the Covid Inquiry [Exhibit JB/26 INQ000409675].
- On 28 July 2022, I wrote to all NICS Permanent Secretaries, relating to the matter of whether departments should consider applying for designation as Core Participant (CP) status for Module 1 of the Inquiry [Exhibit JB/27 INQ000409676]. Mr Tierney's correspondence was attached to the covering email [Exhibit JB/28 INQ000409677].

### *Receipt of the TEO Rule 9 Request for a Corporate Statement*

- On 13 September 2022, TEO received a Rule 9 request for a corporate statement for Module 2C of the Inquiry. The Rule 9 request was shared with all TEO Senior Civil Service officials and the TEO Inquiry Preparedness Group on 14 September 2022 [Exhibit JB/29 INQ000409678, Exhibit JB/30 INQ000409680]. The TEO Covid Inquiry team met with the Module 2C legal team on 22 September 2022 to discuss the Rule 9 and seek clarity on various elements.
- On 26 September 2022, Karen Pearson and Jane Holmes met with Dr McMahon to discuss the Rule 9 request.
- The TEO Inquiry Preparedness Group met on 5 October 2022. At this meeting there was a lengthy discussion about the Rule 9 request [Exhibit JB/31 INQ000409685].
- The first draft of the TEO Module 2C corporate statement was submitted on 24 October 2022 [Exhibit JB/32 INQ000409686]. Our understanding at the time was that WhatsApp messages in relation to significant decision-making were being requested as per the Rule 9 request dates 13 September 2022:

*"To what extent was there informal or private communication about significant decision-making? For example, were there WhatsApp groups which Ministers or Civil Servants used to communicate about such decisions or to make such decisions?"*

- In the 24 October 2022 draft, the issue of WhatsApp was addressed as follows:

#### ***"Informal Communications***

*Informal communications were not used by officials in relation to significant decision-making but rather to keep each other informed.*

*Officials cannot comment on use of informal communications by Ministers."*

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- On 28 October 2022, I wrote a follow-up email to all NICS Permanent Secretaries reiterating the points from the September 2021 correspondence summarised above **[Exhibit JB/33 INQ000409687]**.
- In March 2023, TEO received 54 questions in relation to the 2C Corporate statement, which led to a significant redrafting of the statement, which was submitted in draft to the Inquiry on 29 September 2023.
- On 8 March 2023, Head of Branch, Covid Strategy and Recovery issued an email to Grade 5s heading up business areas in TEO reminding them of the need to retain records for the Covid inquiry **[Exhibit JB/34 INQ000409688]**.
- On 9 June 2023, Head of Branch, Covid Strategy and Recovery issued a further email in relation to the retention of material including text messages and WhatsApp to TEO and Cross Departmental Preparedness Groups **[Exhibit JB/35 INQ000409689, Exhibit JB/36 INQ000409690]**. This was precipitated by the increasing media attention on Cabinet Office WhatsApp messages and the Cabinet Office Judicial Review on provision of unredacted strings of messages to the Inquiry.
- On 4 August 2023, I received a verbal briefing from Michael Kennedy, the acting director of Civil Contingencies, Covid Recovery and Programme for Government (covering for Karen Pearson who was absent at the time) advising me that there was a problem in that some mobile devices for former ministers and SpAds had been reset. At this stage, officials in TEO had become aware that this was not just an issue for TEO. I requested Mr Kennedy to collate more information from departments and provide me with a written update. Mr Kennedy then provided me with a written briefing on 11 August 2023 **[Exhibit JB/37 INQ000409691]**. As a result, I convened and chaired a meeting of the HOCS Inquiry Reference Group on 17 August 2023 **[Exhibit JB/38 INQ000409692]**. This meeting was attended by Tracey McCavigan, Group Head of NICS Internal Audit Services, who was commissioned to develop Terms of Reference (ToR) for a Fact Finding investigation into the handling of mobile devices that had been allocated to former Ministers and SpAds on return to Private Offices and then undertake the fact finding investigation once the ToR were agreed.
- On 24 August 2023, I wrote to all NICS Permanent Secretaries advising them on the position of mobile devices for former Ministers and SpAds, sharing the draft ToR and requested their attendance at a specially convened meeting of Permanent Secretaries on



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29 August 2023 [Exhibit JB/39 INQ000409693]. This meeting on 29 August 2023 was attended by all Permanent Secretaries. It was agreed that:

- Permanent Secretaries would advise if they were content with the Terms of Reference for the fact finding investigation;
  - the fact-finding investigation would proceed as soon as possible; and
  - Ms McCavigan was to be provided with contact details in each department to liaise with. Contact details were provided to Ms McCavigan by Ms Holmes on 5 September 2023.
- On 7 September 2023, on receipt of confirmation from Permanent Secretaries, the ToR were formally approved [Exhibit JB/40 INQ000409694], and the Internal Audit Investigation team subsequently commenced their investigation.
  - Between 30 October and 21 November 2023, Internal Audit spoke with TEO Private Office staff in relation to the handling of mobile devices returned to Private Office by former Ministers and SpAds. Notes of these meetings are exhibited at Exhibit JB/41 INQ000409695, Exhibit JB/42 INQ000409696, Exhibit JB/43 INQ000409697, Exhibit JB/44 INQ000409698, Exhibit JB/45 INQ000409699, Exhibit JB/46 INQ000409700, and Exhibit JB/47 INQ000409701.
  - On 30 November 2023, Ms McCavigan issued the draft report of the Fact Finding Investigation TEO-M2C-IC-161– INQ0000000 to the HOCS Covid Reference Group, which was subsequently discussed at their meeting on the 5 December 2023 [Exhibit JB/48 INQ000409703].
  - The final report dated 7 December 2023 [Exhibit JB/49 INQ000409705] was shared with the Module 2C Inquiry Legal Team on 8 December 2023 [Exhibit JB/50 INQ000409704]. I wrote to all Permanent Secretaries on 8 December 2023 [Exhibit JB/51 INQ000409706] requesting that mobile devices that had been allocated to their former Ministers and SpAds should be collected and examined by departments to ascertain their status. TEO devices were charged and switched on to determine their status i.e. if asking for passcode or if phone reset. This showed that eight devices displayed a set up process when turned on and 13 devices were asking for passcode [Exhibit JB/52 INQ000409707]. On 12 December 2023, I attended the Covid inquiry for the third Module 2C Preliminary Hearing. At this the issue regarding mobile devices allocated to former Ministers and SpAds was highlighted.

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At this stage, the devices were being interrogated by departments [Exhibit JB/53 INQ000409706]. The stated position of NI Bereaved Families for Justice at the Preliminary Hearing emphasised the need for an independent third-party examination of the devices. In order to provide further assurance, I commissioned the examination of the devices by an external contractor. I wrote to Permanent Secretaries advising them that I had taken this step [Exhibit JB/54 INQ000409708]. DoF, using a call off contract commissioned the services of NIHon Cyber Defence (NCD), a digital investigation specialist on behalf of all departments.

22. In addition, related matters were regularly discussed by the Permanent Secretary group and NICS Board meetings on the dates below. Issues such as retention of relevant disclosure and challenges in meeting Inquiry deadlines for statements were discussed.

- June 4 2021 [Exhibit JB/55 INQ000409709].
- 11 June 2021 [Exhibit JB56 INQ000409710].
- 3 September 2021 [Exhibit JB/57 INQ000409711].
- 17 September 2021 [Exhibit JB/58 INQ000409712].
- 11 February 2022 [Exhibit JB/59 INQ000409713].
- 29 April 2022 [Exhibit JB/60 INQ000409714and Exhibit JB/61 INQ000409715].
- 8 April 2022 [Exhibit JB/62 INQ000409716].
- 20 May 2022 [Exhibit JB/63 INQ000409717].
- 24 June 2022 [Exhibit JB/64 INQ000409718].
- 22 July 2022 [Exhibit JB/65 INQ000409719and Exhibit JB/66 INQ000409720]. 25 November 2022 [Exhibit JB/67 INQ000409721and Exhibit JB/68 INQ000409722].
- 13 January 2023 [Exhibit JB/69 INQ000409723].
- 5 May 2023 [Exhibit JB/70 INQ000409724].
- June 2023 [Exhibit JB/71 INQ000409725].
- 17 November 2023 [Exhibit JB/72 INQ000409726].

23. A summary of the discussions is provided at Exhibit JB/73 INQ000409727. I have set out these contextual issues for background information. The remainder of this statement looks specifically at the issues covered by the Rule 9 issued to me.

### RELEVANT POLICIES AND PRACTICE REGARDING THE USE OF PERSONAL AND PRIVATE DEVICES AND GOVERNMENT ISSUED DEVICES

#### Overarching Records Management Principles and Guidance

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24. Up to 2005, all NICS departments had a purely paper-based records management system. At this point, the NICS moved to using an Electronic Document and Records Management System (EDRMS) to capture, store, manage, and retrieve documents and records. The NICS initially selected Tower Records Information Management (TRIM) as the software platform for its corporate EDRMS. TRIM subsequently became Content Manager (CM) after the software was acquired by Microfocus. The term "CM" will be used throughout this statement to refer to TRIM or CM.

### Relevant Policies in Place

25. There are various policies, guidance and codes of practice that apply to Ministers, SpAds and officials in carrying out their duties. The following section sets out those that are relevant.

26. During the specified period, i.e., from 11 January 2020 to 15 February 2022, there were no policies for Ministers, SpAds and officials explicitly prohibiting the use of personal devices, phone calls and informal communications for official business. However, the overarching policy is that all relevant official records must be saved on CM.

27. Section 3.2 of the of the Fact Finding Investigation report dated 7 December 2023 [**Exhibit JB/74 INQ000409705**] provides a review of the relevant policies in place from January 2020 to March 2022, the period covered by Module 2C of the Covid-29 Inquiry. Annex B of the report lists 39 relevant policies, guidance, procedures and processes that were reviewed by the Investigation team.

### Ministers

#### *NI Executive Guidance for Ministers in the Exercise of their Responsibilities*

28. There was NI Executive Guidance for Ministers in the Exercise of their Responsibilities. This guidance, issued in March 2020 [**Exhibit JB/75 INQ000409728**], [**Exhibit JB/76 INQ000409729**], sets out the procedures to be followed by Ministers in the effective exercise of their duties and responsibilities and in circumstances where those duties and responsibilities may engage with personal, party political or business interests. The guidance was revised during 2019 and was ready for incoming Ministers to approve, as was the Code of Ethics.

29. The guidance applies to all members of the Executive Committee and to Junior Ministers. The guidance states at paragraph 7.1 that "*Ministers must at all times adhere to the rules regarding the management of official information*" and further states at paragraph 7.3 that:

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*"Ministers must use official email systems for all communications relating to official business. Exceptionally, where this is not possible, the Minister must copy any message to their official email account. Information generated in the course of government business must be handled in accordance with the requirements of the law (including the Freedom of Information Act 2000 (Fol), the Environmental Information Regulations 2004 (EIR), GDPR and Public Records Act (NI) 1923), regardless of how it is communicated."*

### *Ministerial Code*

30. All Ministers (including the First Minister, deputy First Minister and Junior Ministers) are under a statutory obligation to act in accordance with the provisions of the Ministerial Code [**Exhibit INQ000147493**] which sets out the rules and procedures for the exercise of the duties and responsibilities in relation to the Executive Committee. Section 1 of the Ministerial Code includes the Pledge of Office and a Ministerial Code of Conduct setting out the standards of behaviour and propriety to which Ministers are expected to adhere, including the seven principles of public life (the 'Nolan Principles') [**Exhibit JB/77 INQ000409731**]. Before they can take office, Ministers are required to affirm the Pledge of Office, which includes a commitment to comply with the Ministerial Code of Conduct.

### *Functioning of Government (Miscellaneous Provisions) Act NI 2021 (also SpAds)*

31. Furthermore, Ministers and SpAds are subject to the Functioning of Government (Miscellaneous Provisions) Act NI 2021 [**Exhibit JB/78 INQ000409732**] passed by the NI Assembly on 02 February 2021, which received Royal Assent on 22 March 2021. The Act contains important provisions regarding records of relevant ministerial meetings and the presence of civil servants at meetings that Ministers and Special Advisers may have with people outside the department.

### *Guidance Note for Ministers and Special Advisers on Records of Relevant Meetings (also SpAds)*

32. Guidance was issued to Ministers and SpAds by HOCS in March 2021 [**Exhibit JB/79 INQ000409733, Exhibit JB/80 INQ000409734, Exhibit JB/81 INQ000409736**]. Of particular note are paragraphs 3 and 4 of the Guidance Note for Ministers and Special Advisers on records of relevant meetings [**Exhibit JB/82 INQ000409736**] which states: *"Ministers and Special Advisers should actively facilitate the recording of meetings and decisions. All relevant*

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*meetings must be recorded by a civil servant and the written record retained in line with the Department's retention and disposal schedule. Permanent Secretaries will be provided with assurance from the Private Secretary that arrangements are in place for this work to be completed."*

33. The document goes on to state in paragraph 7 that: *"The arrangements must additionally ensure that all ministerial decisions in respect of official business are recorded properly, whether taken in a pre-arranged meeting or not."*

34. This policy also applies to SpAds.

*NICS Mobile Device Security Policy (version 1.4)*

35. A NICS Mobile Device Security Policy [**Exhibit JB/83 INQ000409737**] has been in place since 2012 and was most recently updated in June 2023. The version in place during the relevant period is version 1.4. The policy applies to all NICS approved and supported mobile devices (this includes smartphones and tablets) issued by the NICS and all users of these devices must comply with the policy. The policy is primarily focused on the security of these devices and in the Introduction section the policy states:

*"This security policy provides the reasoning and processes for minimising the risk associated with handling (accessing, storing, processing, transmitting, discussing or recording) Official information on mobile devices. Its purpose is to ensure that staff members are fully aware of the security required to protect assets, in particular sensitive or personal information."*

36. Section 3 clearly states the personal responsibilities for users of NICS issued mobile devices. These include:

- Users are responsible for the physical security of all mobile devices provided for work purposes, AND for the information stored on them;
- The mobile device remains the property of the NICS and must only be used in accordance with official guidelines;
- 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; and

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- In exceptional circumstances there may be a requirement for a mobile device to be reallocated to another member of staff within a Branch.....It is also their responsibility to ensure that this is recorded in an auditable, business process and that IT Assist are informed.
- The transfer or storage of data is only permitted on approved devices using approved methods.
- IT Assist may monitor the use of mobile devices for purposes of security and administration.

37. It is important to state that not all NICS staff, Ministers or SpAds are supplied with mobile devices. Devices are offered to people for usage related to their official business, however an individual is neither compelled to accept the offer nor to use the device supplied.

38. Section 12 states:

*"In line with NICS Policy, information should be stored on Content Manager, the approved repository for NICS documents and records management. Therefore, there must be a justified business need and careful consideration before information is stored directly onto a laptop or mobile device."*

39. Section 13 deals with the return of devices and states,

*"When a member of staff leaves an organisation or moves to a new post their line manager must contact IT Assist (see next paragraph) to arrange for the return of all NICS equipment they hold, and to ensure that email and network accounts are amended or disabled as appropriate."*

40. Compliance with this policy is not monitored. The responsibility for ensuring that devices and equipment are collected from an individual leaving a department lies with line managers. Ministers of course do not have a line manager in NICS. The responsibility for the management and conduct of special advisers, including discipline, rests with the Minister who made the appointment in accordance with the Code of Conduct for Special Advisers [Exhibit JB/84 INQ000409738].

41. This policy also applies to SpAds and officials.

### Relevant Policies – Special Advisers

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### *Code of Conduct for Special Advisers*

42. Special Advisers are appointed in accordance with the statutory Code issued under Section 8 of the Civil Service (Special Advisers) Act (Northern Ireland) 2013 [Exhibit INQ000147492]. Special Advisers (SpAds) have the status of temporary civil servants but can give political advice and support that would be inappropriate for the civil service to provide and are subject to the Code of Conduct for Special Advisers 2020 [Exhibit JB/85 INQ000409738]. The Code states the following:

*“Special Advisers must keep accurate official records, including minutes of relevant meetings, and handle information as openly and transparently as possible within the legal framework. Special Advisers must use official email systems for communications relating to official business. Exceptionally, where this is not possible, the Special Adviser must copy any message to their official email account. Information generated in the course of government business must be handled in accordance with the requirements of the law (including the Freedom of Information Act (Fol), GDPR and Public Records Act), regardless of how it is communicated.”*

### *NICS Records Management Protocol for Special Advisers 2020*

43. The protocol, NICS Records Management Protocol for Special Advisers (2020) [Exhibit JB/86 INQ000409740] sets the guidelines around transparency and record keeping that SpAds must adhere to and references the Code of Conduct for Special Advisors (see below). The protocol clearly states that SpAds must keep accurate official records and the focus of the guidance in the protocol is mainly in relation to email and the use of CM. However, the Protocol states at paragraph 11 that *“Use of private email accounts are an exceptional basis as provided for in the Code of Conduct, or other media used for official business will still form part of the official record and be subject to Fol, etc.”*.

### *Official Information Held on Non-Corporate Channels*

44. New guidance was introduced in June 2022 on Official information held in non-corporate communications channels which specifically references the use of personal devices [Exhibit JB/25 INQ000409674].



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45. There is no policy that prevents Ministers, SpAds or NICS staff from using their personal devices for government business in relation to phone calls and use of informal communications. However, in accordance with the June 2022 NICS guidance on Official Information Held in Non-Corporate Communications Channels, officials should do so only in exceptional circumstances. The NICS platform/network however, cannot be accessed using personal devices.
46. Personal devices cannot be connected to the NICS network or a NICS issued device, such as a laptop, due to the risk associated with unknown content and potential malicious software inadvertently infecting the NICS network. The function of using a USB or other connection to connect a mobile device to the NICS network is also disabled. This prevents the use of USB sticks / storage devices to transfer data into and out of the NICS network. This point is established in the NICS Mobile Device Security Policy which states:
- “Only NICS devices may be connected to your NICS laptop/PC. If the device required is not available in the IT Assist catalogue, discuss the requirement with the business owner and your Departmental ITSO/ Security Adviser and seek approval from your Grade 7.”*
47. There are no compliance checks or monitoring undertaken for the use of personal mobile devices by anyone in NICS. There is, however, the overarching data retention policy mandating that records defined as *“recorded information, in any format, created or received and maintained by an organisation in the transaction of business or the conduct of affairs which provide evidence of actions taken and decisions made”* should be stored in the official records management system where possible, or on paper or other approved shared drive storage.
48. The policy mandates that information relating to departmental business should be recorded on Content Manager (the NICS records management system) and makes clear that erasing, destroying, or concealing information with the intention of preventing its disclosure in response to a request under the Freedom of Information Act 2000, may be a criminal offence. It also stipulates that civil servants should not normally process official information using anything other than official devices and official channels. Where this is not possible, the official information must be saved onto corporate systems as quickly as possible, e.g., Outlook or Content Manager, and removed as quickly as possible from non-corporate channels.
49. Official devices have access to NICS-work related content such as emails through the Blackberry UEM Client – a proprietary software package that provides secure, restricted access to NICS systems. When this is activated on a NICS device, the device is associated with

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BlackBerry UEM and is granted access to work data, such as emails, calendars and contacts, and this also allows for a backup of information sent and received by email to be retained.

50. Other apps, such as WhatsApp, operate outside of this designated work application and are standalone by nature. They also do not require access to the network, operating over cellular network or Wi-Fi, transmitting end to end independently and are therefore not subject to automatic back-up of content.

51. This policy also applies to officials.

### Relevant Policies – Officials (including Senior Civil Servants within TEO)

#### *NICS Code of Ethics*

52. Following the Renewable Heat Incentive Inquiry, the NICS Code of Ethics [**Exhibit INQ000262760**] was revised and reissued in February 2020.

53. This Code sets out a number of standards focused around NICS core values of integrity, honesty, objectivity, and impartiality. Of particular interest is section 8 which states “*You must... keep accurate official records, including minutes of ministerial meetings, and handle information as openly and transparently as possible within the legal framework.*”

54. By way of background to the review of the NICS Code of Ethics, during the course of the RHI Inquiry, a number of points arose in the evidence sessions that pointed to the need for a review of the ethical framework for civil servants, SpAds and Ministers. A key point arising was that the NICS Code of Ethics made no reference to the requirement to keep an accurate record, whereas the equivalent codes in the UK Civil Service did contain that reference. As a result, a review was undertaken within DoF, which began in January 2019.

55. The revision of the Ministerial, SpAds and NICS Codes were included in the talks process leading to the New Decade, New Approach document. The commitments that emerged from that process appear in Annex A to that document.

56. The revised draft NICS Code of Ethics was taken to the Executive in February 2020 prior to consultation [**Exhibit JB/87 INQ000409742, Exhibit JB/88 INQ000409743**].

57. Agreement of the NICS Code is a matter for the Minister of Finance, and Minister Murphy signed off the final revised version in October 2021, following consultation. It was launched within the NICS in February 2022 [**Exhibit JB/89 INQ000409744**].

#### *NICS Staff Handbook Standards of Conduct*

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58. Paragraph 32.3 of the NICS Staff Handbook Standards of Conduct [Exhibit JB/90 INQ000409745] states *"On resignation or retirement from the NICS, you must return your security/official identity passes, together with any other official property that was issued to you."* This document also restates the requirements of the NICS Code of Ethics.

59. This policy also applies to SpAds who have the status of temporary civil servants.

### *NICS Records Management Policy*

60. The use of CM as the EDRMS has been codified in a number of policies, the most relevant being the NICS Records Management Policy V2.0 [Exhibit JB/91 INQ000409746] (covering the period November 2020 to November 2023). This is a NICS strategic policy and applies to the management of all documents and records, in all formats or media, created or received by NICS Departments in the conduct of their business activities. It also applies to all staff, contractors, consultants and third parties who may be given access to NICS documents and records and information processing facilities.

61. The policy states that *"all employees of the NICS (permanent and temporary), contractors, consultants and secondees must ensure that the records for which they are personally responsible are complete and accurate. They must also ensure that records are maintained and disposed of in accordance with the Departmental records management policies and procedures."*

62. Within this policy, CM is the mandated corporate repository for the majority of information created and received by each NICS department in the course of their duties. The NICS single dataset database contains nearly 90 million records held and is increasing at a rate of approximately 1 million records per month.

63. Within TEO, Knowledge Network, a bespoke in-house case management system, is also used by Private Offices to record information relating to ministerial decisions. Furthermore, the NICS Records Management policy requires that any records created by other collaborative systems identified for retention must be extracted and retained on CM (examples of collaborative systems are Microsoft 365 or WhatsApp).

### *TEO Records Management Policy*

64. TEO also has a Records Management Policy [Exhibit JB/92 INQ000409747] to be read in conjunction with the NICS Records Management Policy and sets out more detail on records

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management requirements in TEO. For example, the document provides detail on the departmental file plan and naming conventions for TEO documents.

### *NICS Record Retention and Disposal Policy*

65. This NICS-wide Retention and Disposal Policy describes the retention and disposal process for all records, regardless of format, held by departments in the Northern Ireland Civil Service (NICS), including Executive Agencies. The policy underpins the Retention and Disposal Schedule of each of the NICS departments [Exhibit JB/93 INQ000409748].

### *TEO Retention and Disposal Schedule*

66. TEO Retention and Disposal Schedule [Exhibit JB/94 INQ000409749] identifies the retention and disposal arrangements for all records which fall within the responsibility of the Executive Office. The Schedule complies with the requirements of the Public Records Act (NI), 1923 and the Disposal of Documents Order (S.R. & O. 1925 No.167). The Executive Office is committed to ensuring that the records it creates will be well maintained whilst in the custody of the Department.

67. The actions stated in the Schedule are applied irrespective of format. For the purpose of this Schedule the term:

- 'record' applies to both documents held within registered paper files and electronic documents within containers which have been finalised; and
- 'file' applies to registered paper files and electronic CM containers.

68. The Schedule sets out roles and responsibilities for all TEO staff, the Departmental Information Manager, the Information Management and Central Advisory Branch, Local Information Managers and RM8 Power Users and Information Asset Owners.

69. A table in section 5 of the Retention and Disposal Schedule sets out in detail the retention period in years for different types of documents. It also sets actions to be taken once the retention period has expired, those being to destroy or appraise. The appraisal process allows for certain documents to be retained for a period beyond the retention period if required.

### **Records Management Infrastructure**

70. IT Assist is a shared service across the NICS provided by the Department of Finance and is part of Enterprise Shared Services (ESS), which is a Directorate within the Department of Finance. ESS brings together responsibility for Information Technology (IT), Digital Shared

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Services, Finance Shared Services, the Network & Information Systems Competent Authority and Regulator for NI and the Integr8 Programme. The primary function of ESS is to deliver efficient and effective, customer-focused, shared services primarily to the Northern Ireland Civil Service (NICS).

71. Monitoring of official communication systems and records management systems is primarily focused on security.
72. The NICS operates a 90-day retention period on e-mail accounts. The purpose of this retention period is to aid compliance with NICS policies and with our legal obligations under Information Law, by requiring staff to save relevant business information into CM and putting the onus on all staff to use CM as the official repository. Guidance on the 90-day rule is provided at **[Exhibit JB/95 INQ000409750]**.
73. The rule was implemented because Outlook is an email and calendar management tool and not a records management system. Since the introduction of CM as the official document and records management system for the NICS, any email that needs to be kept longer than 3 months should be transferred to CM. Three months has been deemed a suitable period to determine whether the information contained in an email is required for business purposes. If the information is required, then the email should be transferred to CM. If not, it can be deleted manually or deleted under the 3-month rule. This has been agreed by the Records and Information Managers Group, i.e., all Departmental Information Managers.
74. In terms of ability to retrieve emails after 90 days, IT Assist has advised that departments are required to have robust retention schedules in place to reduce the risk that information becomes irrelevant, excessive, inaccurate or out of date. This is essential if departments are to meet their legislative responsibilities under General Data Protection Regulation (GDPR) and Data Protection Act (DPA) 2018. To ensure the mail system server is protected against any immediate loss or availability, it is backed up by IT Assist daily for the purpose of recovery of the mail system. Mail system backups are not retained for the purpose of archiving data, but as contingency for the mail servers. IT Assist considers three months retention of the mail system backup as sufficient to satisfy this requirement. The mail system backup is not a structured and accessible archive system for the retrieval of emails deleted from staff mailboxes, either manually by staff or as part of the 3-month rule. There is no facility to carry out an email document restore. Staff must therefore effectively manage their mailbox accordingly, ensuring emails required to be retained are saved into CM at the earliest point to

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avoid auto-deletion. A mail account restore must only be carried out in line with any disaster recovery process or if a user's mailbox is corrupted and not for any other purpose.

### *Oversight of Information Management Responsibilities*

75. All officials are responsible for ensuring they manage information in accordance with policies.

Training on various aspects of information management is provided.

Course name	Type	Mandatory	Aimed At	Description
Applying Redactions to an FOI or EIR response	e-Learning	No	All staff	Guidance on how and when to apply redactions under the Freedom of Information (FOI) Act 2000 and Environmental Information regulations (EIR) 2004
Basic Digital Skills	e-Learning	No	All staff	Basic digital skills.
Content Manager (CM) Power user	e-Learning	Yes - For CM Power users	All new Power users and as refresher training for existing power users	Training for new Content Manager (CM) power users.
Cyber Security Awareness	e-Learning	Yes	ICT end users	Learning on potential cyber threats and to assist staff with staying safe online.
Data Protection Essentials	e-Learning	Yes	All staff	Handling personal data and complying with data protection legislation.
Digital Awareness	e-Learning	No	All staff	Understanding why government services are moving toward digital options.
Drafting an FOI or EIR response - disclosing or withholding information	e-Learning	No	All staff	Guidance on disclosing and withholding information when preparing a response under FOI or EIR.

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Course name	Type	Mandatory	Aimed At	Description
Freedom of Information and Environmental Information Regs. Essentials	e-Learning	Yes	All Staff	Awareness and understanding of the Freedom of Information (FOI) Act 2000 and Environmental Information Regulations (EIR) 2004
Gathering information in response to an FOI or EIR request	e-Learning	No	All Staff	Guidance on identifying information for a request under FOI or EIR.
Going Digital - What to Consider	e-Learning	No	All Staff	Use of delivering services digitally.
HPRM Advanced Search	e-Learning	No	All Staff	How to carry out advanced searches within HPRM.
Introduction to Content Manager (CM)	e-Learning	Yes	All Staff	Skills and knowledge for using content manager system.

76. On joining TEO, new officials undergo induction to help familiarise them with the Department and as an initial training. This is provided through a TEO Induction Manager To Do List ([Exhibit JB/96 INQ000409751] and an online induction package for the new start [Exhibit JB/97 INQ000409603]. Information management is a key element of the induction process.

77. NICS staff are required to have a Personal Performance Appraisal (PPA), which is generated at the start of the reporting year in April. Through these, aims and objectives are agreed with line managers. These are reviewed formally after 6 months and at the end of the reporting period but can also be changed throughout the year if someone's role changes. The formal reviews are used to discuss performance against objectives and policies if issues arise. Regular and ad hoc one-to-one meetings between line managers and staff also take place throughout the year to discuss ongoing performance and business requirements as well as providing opportunities to check on the wellbeing of staff.

78. Grade 5s and 3s are also required to complete quarterly Assurance Statements, which include confirmation of compliance with Freedom of Information and Data Protections legislation. Compliance with information management policies within business areas is required in order



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provide this confirmation. An Assurance Template is provided at **[Exhibit JB/98 INQ000409604]**.

### *New Ways of Working*

79. The impact of the pandemic and the immediate establishment of working from home for civil servants and Ministers resulted in a reduction of interpersonal contact, formal and informal.
80. When Ministers returned in January 2020, Executive meetings were conducted in person in Stormont Castle. Between the start of 2020 to the point at which the First Minister resigned in February 2022, there were 138 Executive meetings. Of these 28 were in person and 110 were virtual.
81. There were 13 in person Executive meetings before the first online meeting was held on 3 April 2020. This was the first time Executive meetings had not been held in person and represented a significant change in format of the meetings. There were in person meetings on 11 and 25 June 2020 and on 22, 23 and 30 July 2020 before returning to online format on 6 August. In person meetings resumed in the main on 23 September 2021 with a series of online meetings from 22 December 2021 to 20 January 2022 while there was an increase in Covid cases due to the Omicron variant.
82. At the start of the first lockdown, not all NICS staff initially had access to a work laptop or mobile phone. Efforts were made to roll out equipment to those working from home as quickly as possible, and until that happened, teams kept in contact using other means, such as their personal mobiles.
83. Sir David Sterling in his statement **[Exhibit JB/99 INQ000409605]** confirms this position, noting the establishment of a WhatsApp group;

*"I did not encourage the use of WhatsApp messaging in the SCS and was not part of any NICS WhatsApp groups before 17 March 2020 although I did exchange WhatsApp messages with a small number of colleagues on an individual basis. However, as the scale of the pandemic became apparent, I created a WhatsApp group that day for the top tier of the NICS to communicate with each other rapidly. This was useful in the early days of the pandemic but as it progressed, we came to rely on more traditional means of communications such as email for communication between groups of people. Nonetheless, I did*

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*use SMS and WhatsApp where I needed fast communication with individuals or small groups of two or three people."*

84. Given the unprecedented scale of the task to roll out equipment to those required to work from home, not all NICS staff were initially able to be in immediate possession of the devices required to carry out their official duties. In these circumstances ultimately the use of informal communication outside of NICS supplied devices would have increased substantially out of necessity. When lockdown was first introduced and the majority of NICS staff were told to remain at home, line managers needed a means of communicating with their teams that did not rely on the use of laptops. The use of WhatsApp groups provided a means by which regular daily contact could be maintained to help prevent staff becoming isolated and to monitor staff welfare. For example, whilst the exercise to provide all NICS staff with a laptop progressed, WhatsApp group and one-to-one video calls were used over and above phone calls so that colleagues could see each other and keep in touch.
85. The use of informal communications, such as text messages and WhatsApps, continued on a day-to-day basis because it is a convenient means by which to quickly convey information.
86. Cisco Jabber is a communications tool used by the NICS to enable real time collaboration between officials. It is used to make calls and exchange messages. A Frequently Asked Questions (FAQ) document is available in the use of Cisco Jabber [Exhibit JB/100 INQ000409606]. The FAQ document advises that *"It was a stipulation of NICS Information Managers that Instant Messaging (IM) sessions should not be recorded and, therefore, when all parties close the chat window the Instant Messaging conversations are not retained as an official record. Any decisions made or information shared during an IM session must be properly documented and recorded in TRIM later, as appropriate (similar to a telephone conversation).*
87. The chat functions in Zoom, MS Teams, WebEx and other online meeting apps are also used on occasion during the course of online meetings. Such chat strings are not routinely saved. MS Teams is now the official NICS platform for online meetings [Exhibit JB/101 INQ000409607].

### USE OF MOBILE DEVICES WITHIN TEO

88. The increased use of mobile phone messaging including the use of WhatsApp by government officials during the Covid-19 pandemic can be attributed to its convenience for quick

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communication, real-time updates and its secure/encrypted messaging capabilities. To date, TEO Covid Inquiry team have provided over 270 strands of messages to the Inquiry. These messages show how platforms such as WhatsApp facilitated swift information exchange and a useful coordination tool.

### RECORDING MINISTERIAL DECISIONS

89. The First Minister and deputy First Minister were nominated to office on 11 January 2020. Arlene Foster, the First Minister, resigned on 14 June 2021 and was succeeded by Paul Givan on 14 June 2021. He resigned from office on 3 February 2022. While this latter resignation also caused the deputy First Minister to cease to hold her office, she was entitled to continue to exercise limited functions of her office, in accordance with the Northern Ireland Act 1998, until the Assembly election on 5 May 2022.
90. At the time of Arlene Foster's resignation in June 2021, the Special Advisers whom she had appointed also left their posts. Any NICS-owned IT Equipment including mobile phones and tablets that Minister or SpAds had in their possession were returned to Private Office.
91. As a result of First Minister Paul Givan MLA leaving office on 2 February 2022, in accordance with terms and conditions of employment of Special Adviser, the appointment of his Special Advisers terminated automatically on the same date and equipment was returned in accordance with normal procedures. Although the employment of Special Advisers within The Executive Office terminated at this time, they continue to be bound by legal provisions protecting official information. The rules on these are set out in the Standards of Conduct Policy in the NICS Handbook [Exhibit JB/102 INQ000409745] in section 15 "*The Use of Official Information and Related Activities*".
92. Within TEO, Private Offices for First Minister and deputy First Minister make use of a bespoke in-house case management system, known as Knowledge Network (KN).
93. The system is used to track, and record Ministerial papers including submissions from officials, correspondence cases from external organisations, invitations received and Executive papers for consideration by the NI Executive and record related decisions. Whilst only Private Office staff can access and use KN, they also make use of CM.
94. Once a paper has been received it is registered and allocated a specific reference number. The paper is then issued to both the First Minister and deputy First Minister to consider. When Ministers convey their position in relation to the paper, this is recorded on the system. Only

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once there has been agreement by both Ministers, will the system be updated to show joint agreement has been reached and therefore a decision has been made and only at this point will officials be advised of the decision. Ministers may jointly agree a different approach to that laid out in the submission which would then be communicated to officials as the joint decision.

95. Ministers relay their individual position relating to cases to their own Private Office who utilise the system to record and notify the other Private Office accordingly. Only when both positions are agreed, is the point of an actual 'Ministerial decision' achieved.

### THE RESETTING OF DEVICES

#### *Alert to the Potential Loss of Data – May 2023*

96. During a meeting in early May 2023, Ms Holmes was made aware by Deirdre Griffith, Principal Private Secretary to the First Minister, that the mobile phone returned to Private Office by Dame Arlene Foster when she stood down as First Minister had been reset and allocated to her because her phone was broken. A note of this meeting was not taken as it was an ad hoc internal discussion. Further information on this device and others returned to the former First Minister's Private Office is provided at paras 115 below.

97. On 9 May 2023, The Covid Strategy, Recovery, and Inquiry Head of Branch emailed Deirdre Griffith and Carol Morrow, the Principal Private Secretaries in First Minister and deputy First Minister Private Offices [Exhibit JB/103 INQ000409608] noting her understanding that Ministerial and SpAds' electronic devices (Phones, iPads Laptops) had been reset and requesting confirmation as to who had provided the instructions to do so. The email said the following:

*"Carol and Deirdre*

*I understand that Ministerial and SpAD's electronic devices (Phones, Ipads Laptops) have all been wiped.*

*Can you confirm who instructed and completed the striping of these devices? Did Ministers and SpADs return Ipads and phones reset?*

*We will need to inform the UK Covid Inquiry team of the status of these if wiped why that exercise was carried out.*

*Can you also advise me of the position of officials working within Private Office electronic devices is e.g. Are all WhatsApp messages available?*

*Regards"*

*[Name]*

98. On the same day, Ms Griffith and Ms Morrow, the Principal Private Secretaries in First Minister and deputy First Minister Private Offices respectively, responded [Exhibit JB/103 INQ000409608] to the request providing information on the status of the devices as following:

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From Ms Morrow:

*"Obo the former dFM Office - iPhone & iPad- Both dFM & JMKs phones have been reset, as have Stephen's and Johns. They were returned to us reset. Dara's iPhone we believe is reset, we need her log in details to confirm this. ( I have asked her for these log in details to confirm this but no response yet. Her iPad has been reset. All laptops are reset but as I understand it this is an IT issue as the accounts would have been closed automatically. We all hold WhatsApp messages with Ministers/Spads but these are primarily diary related or zoom related messages."*

From Ms Griffith:

*"Phones, computers and ipads are ready for incoming Ministers and SPADS and therefore were all reset some time ago. This would also have been the case when Ministers or SPADS left during the mandate. I don't have any WhatsApp's with Ministers or Spads. Whatsapps were used primarily for logistical purposes. Any Ministerial decisions in electronic format ie emails would have been saved in KN for the record. [Junior officials] are both on leave so it will be next week before I can confirm final position. Deirdre"*

99. The Compliance and Assurance Group established within the NICS Covid-19 Inquiry Oversight and Assurance Framework referenced above **[Exhibit JB/2 INQ000409593]** met on 11 May 2023 and noted the position of TEO former Ministers and SpAd phones **[Exhibit JB/104 INQ000409609]**. The note of the meeting was circulated and agreed at the following meeting on 18 May 2023 **[Exhibit JB/105 INQ000409610]**. In the course of the preparation of this statement, I was informed that there was disagreement between the DSO solicitor in attendance at the meeting and some of the officials about the recollection of the meeting on 11 May as to whether and in what terms this issue was raised. Accordingly, I asked Ms McCavigan to look into the matter. She provided a report on 24 January 2024 **(Exhibit JB 106 INQ000409611)**. Ms McCavigan had obtained previous revisions of the note of the meeting held in CM and provided a timeline of the revisions. Earlier revisions show the following wording:

*"Noted that WhatsApp messages from Former Ministers phones have been wiped as the phones have been returned to a factory reset position. Maria is discussing this issue so that we can inform the Inquiry that all reasonable steps have been taken in relation to this information."*

100. I have been informed that this paragraph had been edited to a more concise wording for the purpose of the final minute because officials were aware that this was a sensitive issue that

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they knew little about. The decision was made by Jane Holmes to amend the text on this but to make sure the issue was also recorded in the system.

101. Jane Homes has advised me that she and her team initially knew little about the issue and officials were keen to find out more before notifying me and the Inquiry as information was still being clarified. This was an evolving situation against a backdrop of also working on a range of high priority competing workstreams for the Inquiry. The TEO Covid Inquiry Team was preparing for Module 1 public hearings whilst also working to draft the TEO corporate statement for Module 2C, complete disclosure and manage a range of cross-cutting issues. The TEO Covid Inquiry Team is a small team that was under significant pressure during summer 2023 with multiple urgent workstreams ongoing. The team was supporting business areas in completing Module 1 disclosure, which at this stage was critical given public hearings were imminent. They were also heavily involved in preparing Dr McMahon for providing evidence at the Module 1 public hearing on 6 July 2023. My officials have advised me there was no decision made not to update the Inquiry Legal Team. During this period this remained a live issue but other timebound issues came in on an almost daily basis that meant this issue was not dealt with when it should have been.
102. Denis McMahon advises that he was told in or around 13 June 2023, while attending Inquiry hearings in London, of the issues raised at the meeting of May 11, 2023. Dr McMahon has advised that he was told that work was underway by the TEO Inquiry Team to determine what had happened and that an update would be provided when this information was available [Exhibit JB/107 INQ000409629].
103. On 22 May 2023, guidance issued from TEO's Data Protection Officer to all TEO staff on NICS Policy NICS policy on official information held in non-corporate channels and how to save WhatsApp chats [Exhibit JB/108 INQ000409631, Exhibit JB/109 INQ000409634].
104. UK Module 2C Legal Team attended an in-person meeting with TEO Covid Inquiry Officials and TEO's Legal representatives on 1 June 2023 [Exhibit JB/110 INQ000409635]. At that meeting, I understand a number of issues were discussed including the disclosure of material by TEO including messages from mobile devices. Jane Holmes confirmed at the meeting that there were relevant WhatsApp Groups for the period under consideration and that material was being gathered.
105. UK Module 2C Legal Team met with TEO Covid Inquiry Officials and TEO Legal representatives again on 31 July 2023 when informal communications were discussed and



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following that meeting a letter issued from the UK Covid Inquiry dated 31 July 2023 requesting information on those communications **[Exhibit JB/111 INQ000409636]**.

106. Jane Holmes subsequently emailed Deirdre Griffith and Carol Morrow on 1 August 2023 highlighting that it was important to gain a full understanding of what had happened and the possibility that the information held on former Ministers' and SpAds' phones and other mobile devices would fall within the definition of potentially relevant information **[Exhibit JB/112 INQ000409637]**.

107. On 4 August 2023, I received a verbal briefing from Michael Kennedy, the acting director of Civil Contingencies, Covid Recovery and Programme for Government (covering for Karen Pearson who was absent at the time) advising me that there was a problem in that some mobile devices for former ministers and SpAds had been reset. At this stage, officials in TEO had become aware that this was not just an issue for TEO. I requested Mr Kennedy to collate more information from departments and provide me with a written update. Mr Kennedy then provided me with a written briefing on 11 August 2023 **[Exhibit JB/113 INQ000409691]**.

### **RESETTING OF DEVICES GENERALLY**

108. Returned devices are routinely reset by IT Assist for use by another person unless a device is at end of life. The onus is on the individual using the devices to ensure information on them is saved into CM should it require to be retained for official business purposes. However, in the operation of Ministerial Offices, if a Minister or SpAd wants information to be saved into CM, the task of saving that information is carried out by the Principal Private Secretary or as appropriate, another team member in Private Office.

109. For devices which are to be or have been returned to officials in the event of a Minister leaving, or an official retiring, there is a leavers checklist **[Exhibit JB/114 INQ000409640]** which covers the handing in of devices in their possession, including phones, laptops and other items provided to fulfil the role. Officials have advised that the use of the checklist is not, however, routinely used.

110. It is not uncommon for a person leaving a department to not provide devices to their supporting division, but rather return the devices directly to IT Assist and in those circumstances the status of the device in terms of record retention and operability would be unknown.

111. Where a device has been returned to IT Assist (DoF), The Executive Office would not hold any record of when a device is reset, repurposed, or recycled / destroyed.



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112. In terms of the devices that have been reset and those which have been returned requiring passcodes, TEO officials collected the devices from the NICS Fact Finding Investigation Team, and they were subsequently interrogated as far as was possible, to determine their status, on 11 December 2023. Further efforts were made to obtain passcodes and contact was made with former Ministers' Legal Representatives. The passcodes that were provided unfortunately did not unlock the devices. Four mobile devices returned by Ministers or SpAds were reset by TEO for reallocation to staff in Private Office. These devices were, therefore, not recovered by the Internal Audit Investigation team.
113. Digital, Security and Finance Shared Services (DSF) in the Department of Finance have collected the mobile devices issued to former Ministers and SpAds from each departmental contact. TEO devices were collected on 21 December 2023. NIHON Cyber Defence (NCD) who are digital investigation specialists will extract any communication data held on the devices covering the period January 2020 to June 2022. This data will be made available to each Departmental Covid Inquiry Team.
114. I am unable to comment if the auto delete function was used or if informal communications were routinely manually deleted by former Ministers and SpAds during the relevant period.
115. There was no instruction given by me or my office to advise Ministers, officials or SpAds to delete any informal communications on NICS devices. In contrast, the note that I issued on 16 September 2021 with guidance attached in relation to ensuring relevant information should be retained specifically advised that electronic documents, such as WhatsApp, should be retained [Exhibit JB/20 INQ000409669].
116. A table showing the status and decisions made in relation to mobile devices allocated to former Ministers and SpAds [Exhibit JB/20INQ000409641] shows that any devices reset after my direction regarding the importance of retaining all relevant information for the Inquiry on 16 September 2021 had been reset before they were returned to TEO.
117. In my view, my direction to retain relevant information was clear.
118. It is not possible to tell if data on government-issued devices was backed-up (i.e., saved to CM); and specifically in relation to devices allocated to former Minister and SpAds which we are aware have been reset, that is within the knowledge of the Minister or SpAd concerned.
119. The resetting of personal devices is not a matter for TEO as these are not government issued devices, therefore TEO has no power or control over same.

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### **NOTIFICATION TO THE UK COVID INQUIRY REGARDING POTENTIAL LOSS OF DATA AND EXPLANATION OF DELAY**

120. On 31 July 2023, the Inquiry issued correspondence to Dr McMahon [**Exhibit JB/115 INQ000409636**] regarding the use of informal communications by senior civil servants, Ministers or their advisors as part of the decision making process. The Inquiry also sought a clear understanding about the devices used by senior civil servants, Ministers and their advisors and any means of informal communication used by them pursuant to their role in responding to the Covid-19 pandemic. This letter brought the issue in relation to mobile devices into sharp focus.
121. On 11 August 2023, a response to the 31 July letter from the UK Module 2C legal team issued providing a positional report for NICS supplied phones of the First Minister and deputy Minister [**Exhibit JB/116 INQ000409642**]. This provided an initial audit of the status of all other NICS supplied mobile devices to former Ministers and SpAds.
122. I have been specifically asked about the Minister for Finance not being issued with a NICS work mobile phone. I am not aware of which device, personal or otherwise, for example, a phone issued by his political party, Mr Murphy would have used for government business. As previously stated above, there is no policy in place that prevents the use of personal or otherwise mobiles for government business. Whether Ministers or SpAds used mobile devices for government work that were not issued by NICS even when they had been issued with a government phone is not a matter that is controlled by NICS. This is primarily a matter to be raised with them.
123. I acknowledge that some time elapsed before advising the Module 2C Legal Team of the loss of data from mobile devices that had been allocated to former Ministers and SpAds. This is regrettable and should not have happened.
124. I acknowledge the position outlined by officials and the TEO Permanent Secretary regarding the delay in notifying the Module 2C legal team of the issues in relation to former Ministers' and SpAds' mobile devices. The circumstances outlined do not however excuse the delay in notifying the Inquiry and will need to be factored into lessons learned.

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### SOURCING INFORMATION ON THE STATUS OF THE MOBILE DEVICES ALLOCATED TO FORMER MINISTERS AND SPADS

125. The information below is summarised in a table entitled "Table showing status and decisions made in relation for mobile devices allocated to former Ministers and SpAds" exhibited at Exhibit JB/117 INQ000409641.

#### *TEO Covid Inquiry Team*

126. Following the investigation by Tracey McCavigan described in paragraph 16, the TEO NICS Ministerial and SpAds electronic devices were returned to the TEO Covid Strategy, Recovery and Inquiry Team. They were subsequently charged and switched on by two officials on 11 December 2023 to verify what TEO had been told regarding their status.

#### *Information from Private Offices*

127. The paragraphs below describe discussions between Officials within TEO Covid Inquiry team and officials within Ministerial Private Offices:

##### A. First Minister's Office

128. Deirdre Griffith, Principal Private Secretary to First Minister has provided the following information in relation to what was done with mobile devices allocated for former Ministers and SpAds in First Ministers office through a statement taken for the purpose of informing this statement [Exhibit JB/118 INQ000409643]. Extracts are provided in italics below.

*"As would be custom and practice in the First Minister's Private Office, drawing on the NICS Mobile Device Security Policy, on the departure of the Minister or SPADS, officials would ensure that the devices are prepared for use by the incoming Minister or SpAd or returned to IT Assist for replacement or disposal.*

*Where a mobile device was held for reuse, preparation and/or resetting of the device was made by returning it to IT Assist for action or by the Private Office under the direction of IT Assist. This was in line with the NICS Mobile Device Security Policy which allows for the reallocation of devices. Retained devices were kept in a secure cupboard pending the return of Ministers and SPADS.*

*Generically, the decision to reset or prepare devices is made to facilitate reallocation. The account below relates to the specific iPads and mobile phones.*

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- **Arlene Foster** - Mrs Foster left office in June 2021. She returned her mobile phone shortly after but retained her iPad. To facilitate the retention of the iPad, it was sent to IT Assist for removal of NICS applications, in and around June 2021, before being returned to Mrs Foster. Mrs Foster's mobile phone was also sent to IT Assist for reset in an around summer/autumn 2021. This phone was subsequently returned to the Private Office and reallocated to a member of staff.
- **Paul Givan** – Mr Givan took up office in June 2021 and was allocated new mobile devices. He left office in February 2022. On departure, he returned his phone and iPad which were held in Private Office for allocation to the next Minister. The Principal Private Secretary cannot recall if the mobile phone was reset immediately or is being held for reset upon the return of a Minister.
- **Kim Ashton** – Ms Ashton left office in May 2020. Ms Ashton's devices, on return to the Private Office, were sent to IT Assist to prepare for reuse in the Private Office. They were reallocated to Mr Lee Reynolds (SPAD) upon his appointment.
- **Lee Reynolds** – Mr Reynolds left office in June 2021. Following the return of his mobile phone, it was reset and reallocated to a member of staff.
- **Emma Little-Pengelly** – Ms Little-Pengelly left office in June 2021. Following the return of her mobile phone, it was reset and allocated to Mr Richard Bullick when he took up office.
- **Richard Bullick** – Mr Bullick changed his phone during his tenure. This mobile phone was reset by IT Assist and reallocated to a member of staff. A new mobile device was issued to Mr Bullick which was returned upon his departure in February 2022. When this mobile phone was returned, it had already been reset. This was then kept in the secure cabinet in the Private Office.
- **Phillip Weir** – Dr Weir left office in June 2021 but was reappointed in the same month. He retained his phone. He subsequently left office in February 2022 and returned his devices. The devices were held in a secure cabinet in the Private Office.

It was decided that the devices should be reset for reallocation within the Private Office. Deirdre Griffith, Principal Private Secretary in the Office of the First Minister, having

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*responsibility for the Office, in line with custom and practice devised from NICS Mobile Device Security Policy, requested the reset of mobile devices in preparation for reallocation.*

*As the mobile devices are the property of the NICS, there was no communication with those they had been allocated to about resetting them as they were no longer in office and because this is standard procedure. Consent was not required to reset the devices.*

*The Minister and SPADs were aware of the need to ensure that records were maintained on the Content Management and Knowledge Network systems and would pass information, if required, to Private Office to arrange retention. SPADs were required by the Code of Conduct for Special Advisers 2020 to keep accurate information. The Guidance for Ministers in the Exercise of their Official Responsibility agreed by the Executive in March 2020 and the Functioning of Government Act Guidance Notes for Ministers provided some guidance. In addition, the NICS Record Management Policy provides advice for officials to ensure that all relevant information is extracted and retained in official repositories.*

*The mobile devices were not returned to TEO for the purposes of being reset but were returned mostly because the users had left office. The devices were returned to TEO between May 2020 and February 2022.*

*The resetting was led by IT Assist either by direct reset or reset by Private Office staff under the direction of IT Assist. Except for Mr Richard Bullick who returned his device in a reset state. Whilst the Private Office has Mr Givan's and Dr Weir's former devices, it is unclear if they have been reset. The devices were reset shortly after they were returned to Private Office."*

### **B. Deputy First Minister's Office**

129. Private Office staff within the former deputy First Minister's Office have confirmed that on receipt of the devices returned by former Ministers and Special Advisors, they were placed immediately into secure storage with the exception of the iPad used by Michelle Canning, which was allocated to a member of staff in the deputy First Minister's Private Office.
130. Resetting the remaining devices was not considered and there was no action taken by Private Office to reset these devices. Neither were the devices examined.
131. No NICS officials in the deputy First Minister's Private Office reset any devices.
132. In November 2022, on the arrival of new Principal Private Secretary, Carol Morrow, in preparation for incoming Ministers, the devices were charged and switched on to see if they

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were still working. No information on the status of the phones was recorded at that time. Nothing further was done with the devices except periodically charging to see if they were still working.

### *Personal Devices*

133. The resetting of personal devices is not a matter for TEO as these are not government issued devices, therefore TEO has no power or control over same.

### *Engagement with Legal Representatives for Former Minister and SpAds*

134. TEO legal representative contacted the legal representatives for TEO former Ministers and SpAds requesting information from them on the status of the mobile devices when returned to Private Offices [Exhibit JB/119 INQ000409648, Exhibit JB/120 INQ000409649]. The information provided below is a summary of their responses [Exhibit JB/121 INQ000409650 and Exhibit JB/122 INQ000409651].

### *Ministers*

- Dame Arlene Foster, through her solicitor, confirmed that whilst she was allocated a NICS mobile phone she did not make use of it, this includes no WhatsApp messaging or other informal means of communication. Following her resignation, the device was returned to Private Office in mid-July 2021.
- Gordon Lyons was Junior Minister within The Executive Office from January 2020 until 17 June 2021. He was provided with laptop, mobile phone and iPad. He has confirmed that he returned all devices on his last day in office to his Private Secretary. He does not recall ever downloading or using any instant messaging apps or using NICS issued devices for any informal means of communication.
- Paul Givan also had mobile phone, iPad and laptop issued to him during his time in office. When he resigned, he returned the devices to his Private Secretary. It is his recollection that if he had made use of text messaging, WhatsApp on the NICS device it would have been very limited, and he confirmed that he did not routinely use the NICS provided device.
- Michelle O'Neill, former deputy First Minister confirmed through her solicitor that she was issued with a mobile phone and an iPad device for business purposes by the NICS, from January 2020. She has confirmed that she did not use her NICS devices for WhatsApp or

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informal communication on pandemic matters. From memory she notes that her phone and iPad were returned to the Private Office at the start of 2023. Ms O'Neill advised that *"The devices were reset as was my normal practice in returning devices which had been used for official or sensitive communication."*

- Declan Kearney was a Junior Minister for the Executive Office from January 2020 to May 2022. Mr Kearney has confirmed through his solicitor that when appointed as Junior Minister to The Executive Office he was supplied with a mobile phone and an iPad device for business purposes by the NICS. He kept these devices from January 2020 until his term of office ended in May 2022. A WhatsApp system was downloaded onto these devices. This was used for routine, and informal communications about office administrative and logistical matters, such as travel arrangements, meetings, etc. He notes that the established practice for managing information and communications relating to policy and decisions concerning the pandemic was through formal records kept by departmental officials. Both devices were returned in May 2022 to his Private Secretary in the deputy First Minister's office. It is his understanding that upon the return of this equipment in May 2022, data would have been deleted due to end of his time in post.

### *Special Advisers*

135. As a result of First Minister Paul Givan MLA leaving office on 2 February 2022, in accordance with terms and conditions of employment of Special Adviser, the appointment for Special Advisers became automatically terminated on the same date. Although Special Advisers within The Executive Office employment ended at this time, they continue to be bound by the provisions of the law that protects official information. The rules on these are set out in the Standards of Conduct Policy in the NICS Handbook

- Philip Weir was First Minister Special Advisor and during his time in post was provided with both an iPad and iPhone. He returned these devices to Private Office during the first week of February 2022 to Private Secretary. He states *"The overwhelming use of both ipad and phone was for email. Neither device was used for WhatsApp messaging. It is possible I may have accessed Twitter via the phone. There would have been a small number of text messages on the phone, likely to have been instigated by others, as I generally tended to use email. I could not be certain whether any of these texts would have related to the Covid pandemic. The iPad was also used for Zoom, Webex, and Microsoft Teams meetings;"* Mr Weir has provided two possible passcodes to unlock the iPhone.

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- Emma Little Pengelly was Special Advisor for Arlene Foster until June 2021. She has confirmed that she had a mobile phone and laptop and returned the devices to First Minister's Private Secretary before she left post. She confirmed that she made limited use of WhatsApp mainly for logistical information such as time of meetings, location of meetings or of team member. Submissions or other relevant information would have gone through formal procedures as set out in Departmental guidance and came usually in form of an email or in hard copy. Before returning the devices to the Department, Mrs Little Pengelly deleted any personal data and information.
- Lee Reynolds, Special Advisor to former First Minister Arlene Foster, confirmed through his solicitor that he believes he was issued with a mobile device, iPad and laptop for his work duties. He notes that *"it is my recollection that these were returned promptly upon my vacating my post and returned to the private office of the First Minister in The Executive Office. It is my recollection that their relevance to a future inquiry was communicated to me. It is my recollection that I would have used it for text messaging but do not recall using social media etc on them. It is my recollection that these were returned as was. I do not recollect resetting or erasing the devices."*
- Richard Bullick, Special Advisor to former First Minister Paul Givan confirmed through his solicitor that he was issued NICS iPhone. He does not believe that he used WhatsApp on the NICS phone. Richard Bullick has also recently provided his original pin for his iPhone.
- Stephen McGlade, Special Advisor to former deputy First Minister Michelle O'Neill, has confirmed through his solicitor that he was issued with a mobile phone and an iPad device for business purposes by NICS, which he held from January 2020 until early February 2022. He has confirmed that WhatsApp messenger was downloaded on these devices and used to communicate informally on routine office administrative/logistic matters only. Information and communications relating to decision points and policy formulation concerning the pandemic were formally recorded by departmental officials who have retained these records. Both devices were returned to Principal Private Secretary, Dónal Moran in the deputy First Ministers office on the 3 February 2022. Mr McGlade states *"Devices when returned at the start of February 2022 had data erased and my contract ended"*.
- John Loughran, a Special Advisor to former deputy First Minister Michelle O'Neill, has confirmed through his solicitor that in early February 2020 he was issued with a mobile phone, an iPad and laptop for department business purposes by the TEO Private Office. He used these devices until early February 2022. He has confirmed that WhatsApp was



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downloaded and used for routine office matters only. Information and communications relating to decision points and policy formulation concerning the pandemic were formally recorded by departmental officials who have retained these records. Mr Loughran states *“iPhone and iPad were reset and returned at the start of February 2022 to Private Office. The laptop was not reset.”*

- Dara O’Hagan, a special advisor to former deputy First Minister Michelle O’Neill, has confirmed through her solicitor that she had a phone and iPad supplied by the department. She did not use them for WhatsApp messaging or any other informal means of communication on pandemic matters. She has confirmed that she handed them back to Private Office when she left in February 2022 and that *“On returning the devices, all the data was erased.”*

### TECHNICAL EXAMINATION

136. On 19 December 2023, as a next step to the Fact Finding Investigation, I requested across the NICS Permanent Secretaries that recovered mobile devices allocated to former Ministers and SpAds were to be subjected to a technical examination to determine what information, if any, was on them and could be extracted for onward disclosure to the Inquiry [Exhibit JB/123 INQ000409652].

Unique Number	Device Allocated to:	Device type	Outcome of Analysis	Exhibit Number of Report
TEO-01-COVID	John Loughran	iPad	Data extracted	Exhibit JB/125 INQ000425395
TEO-02-COVID	Junior Minister FM	iPad	Data extracted	Exhibit JB/126 INQ000425396
TEO-04-COVID	Declan Kearney	iPhone	No data available - factory reset	Exhibit JB/127 INQ000425398
TEO-05-COVID	John Loughran	iPhone	No data available - factory reset	Exhibit JB/128 INQ000425399
TEO-06-COVID	Paul Givan	iPhone	No data retrieved – unknown pin	Exhibit JB/129 INQ000425400
TEO-07-COVID	Richard Bullick	iPhone	No data available - factory reset	Exhibit JB/130 INQ000425401
TEO-08-COVID	Philip Weir	iPhone	No data retrieved – unknown pin	Exhibit JB/131 INQ000425402
TEO-09-COVID	Stephen McGlade	iPhone	No data retrieved – locked to owner	Exhibit JB/132 INQ000425403
TEO-10-COVID	Michelle O’Neill	iPhone	No data available - factory reset	Exhibit JB/133 INQ000425404
TEO-11-COVID	Dara O’Hagan	iPhone	No data retrieved – permanently disabled	Exhibit JB/134 INQ000425405

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Unique Number	Device Allocated to:	Device type	Outcome of Analysis	Exhibit Number of Report
TEO-12-COVID	Michelle Canning	iPhone	No data available - factory reset	<b>Exhibit JB/135</b> INQ000425406
TEO-13-COVID	Michelle O'Neill	iPad	No data available - factory reset	<b>Exhibit JB/136</b> INQ000425407
TEO-14-COVID	Stephen McGlade	iPad	No data available - factory reset	<b>Exhibit JB/137</b> INQ000425408
TEO-15-COVID	Dara O'Hagan	iPad	Data extracted	<b>Exhibit JB/138</b> INQ000425409
TEO-16-COVID	Philip Weir	iPad	Data extracted	<b>Exhibit JB/139</b> INQ000425410
TEO-17-COVID	Lee Reynolds/Kim Ashton	iPad	No data available - factory reset	<b>Exhibit JB/140</b> INQ000425411
TEO-18-COVID	Junior Minister FM	iPhone	No data retrieved – unknown pin	<b>Exhibit JB/141</b> INQ000425412
TEO-19-COVID	Richard Bullick	iPad	No data retrieved – unknown pin	<b>Exhibit JB/142</b> INQ000425413
TEO-20-COVID	Declan Kearney	iPad	No data retrieved – unknown pin	<b>Exhibit JB/143</b> INQ000425414
TEO-21-COVID	Paul Givan	iPad	No data retrieved – unknown pin	<b>Exhibit JB/144</b> INQ000425415

137. As set out at the first bullet point under paragraph 128 above, the mobile device allocated to former First Minister, Arlene Foster, was returned to Private Office in June 2021. The device was sent to IT Assist for reset in an around summer/autumn 2021 and subsequently returned to the Private Office for reallocation to a member of staff. This device was, therefore, not submitted for technical analysis as the only information contained on it related to an official in Private Office.

### TEO SENIOR CIVIL SERVANTS

138. Senior Civil Servants (SCS) in TEO have provided information in relation to mobile devices used by them and informal communications. Details are provided at [**Exhibit JB/124 INQ000409653**].

139. An issue was brought to my attention on 15 February 2024 as to whether an identified member of the Senior Civil Service may have deleted WhatsApps and other messages from personal and NICS-issued mobile devices. This matter has been referred by TEO to the individual concerned for urgent consideration and clarification in order that the Inquiry can be fully appraised of the exact situation.

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140. TEO took steps to bring this matter to the attention of the Inquiry on 16 February 2024 and when I am in position to provide the necessary clarification to the Inquiry, I will do so as quickly as possible.

### **RESETTING OF DEVICES IN OTHER DEPARTMENTS**

141. As you will be aware from the TEO Corporate Statement for Module 2C, the Northern Ireland Executive is a coalition government, comprising the Ministers from the nine Executive Departments, each of which is a separate legal entity. In accordance with the individual Rule 9 requests, Departments will address the issues separately.

### **DISCLOSURE OF TEO INFORMAL MESSAGES**

142. Whilst TEO at this at the moment and pending the outcome of the external expert assessment of the devices is unable to recover messages from former Ministers and SpAds devices, over 270 strands of messages have been provided from TEO officials. Some of these message strands include messages to Ministers and SpAds. However, I am, as described above, taking steps to establish any relevant material potentially held on TEO devices allocated to former Minister and SpAds and that has not already been disclosed, might be recoverable.

143. The mobile devices used by former TEO officials Jenny Pyper and Andrew McCormick were returned to IT Assist following their retirement, both at the end of August 2021. Unfortunately, it has not been possible to locate them. However, Dr McCormick has been able to secure a backup of his WhatsApp messages, and these have been uploaded to Egress.

### **CONCLUSION**

144. Important lessons have been learned and I will ensure they are acted upon.

145. It would appear that there may have been a lack of certainty among staff and political representatives when considering what devices and communication channels are appropriate for use for official business, what resulting information should be saved and how it should be saved. It is clear too that a perceived failure to save information relating to official business impacts on public perceptions of the openness of those involved. Important lessons will have to be learned and acted upon. In particular I will as a priority attend to the recommendations of the Inquiry.

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146. For the present the following matters are those which appear to me to be ones that should be considered, and I will have my officials consider these and report back to me in advance of the Module 2C Public Inquiry hearings in April and May 2024.

- Policies on communications and the saving of information may require modification or suspension in an emergency or civil contingency. We need to understand what policies are affected and how this issue is to be addressed.
- Policies on the use of personal devices for ministers and whether aspects of the policy on the use of personal mobile devices for officials should be considered.
- How do we provide clarity on when it is appropriate to use informal communication channels and how the information generated is handled?
- Are there too many relevant policies and are they too difficult to absorb? What can be done to streamline the information that users need to comprehend?
- Consistency of approach is needed when devices are returned or repurposed. That can apply not only when a civil servant leaves employment but also on change of department; and this applies to when a political representative leaves office. It may be that a checklist is required to remind users to consider what information is stored on a device and how that information is to be saved if necessary and that use of that checklist is mandated. There should also be consideration of the extension of use of asset numbers for mobile devices such as phones and tablets.
- This Inquiry has demonstrated that where there is a need to provide warnings to staff and others on the retention of information, clear and consistent messaging across the service must reach each individual concerned. How is that to be achieved? How are we to ensure that we inform political representatives, including those who have left office?
- Does the fact that NICS operates as nine separate departments, with each entitled generally to decide its own policies on these matters, and that the Head of the Civil Service is unable to direct Permanent Secretaries present a concern, particularly under exceptional circumstances such as where civil contingency measures are in operation or in the absence of an executive and if so, how is that to be addressed?
- In relation to the delay in escalating the issue regarding the potential loss of data, it may be useful to remind colleagues of the various tools available for recording issues,

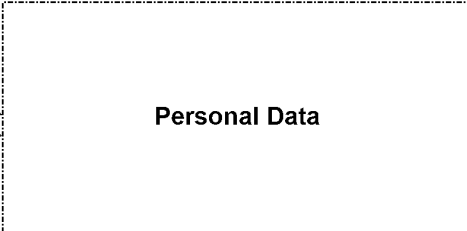
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actions, risks and best use of escalation routes. Would it be beneficial to have a short guide dedicated specifically to these? Is this perhaps a specialist or dedicated role in some contexts, and would a training package specifically on these be beneficial for those on large or high-risk projects?

147. I am committed to supporting the important work of the Inquiry to the best of my ability.

### Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief of its truth.

Signed:  Personal Data

Dated: 01.03.24

