

# INDEPENDENT QC INVESTIGATION

## RETENTION STATEMENT

### INTRODUCTION

This statement is about the permanent record of the Independent QC Investigation into the (then) First Minister's actions and decisions in relation to Carl Sargeant's departure from his post as Cabinet Secretary for Communities and Children and thereafter.

2. It comprises sections on:

1. the Investigation and the events that affected its course
2. information held by the Investigation
3. the Investigator's approach to the creation of the permanent record
4. information forming the permanent record
5. information that is being destroyed by the Investigation.

3. This statement will appear in the introduction to the permanent record and also on the Investigation's website.

### 1 THE INVESTIGATION AND THE EVENTS AFFECTING ITS COURSE

4. On 3 November 2017 Mr Carl Sargeant AM was dismissed from his position of Cabinet Secretary for Communities and Children. Mr Sargeant died on 7 November.

5. On 10 November 2017 the (then) First Minister of Wales, Mr Carwyn Jones AM, announced his intention to appoint a senior barrister to carry out an investigation into his actions and decisions in relation to Carl Sargeant's departure from his post and thereafter. On 25 January 2018 Dame Shan Morgan, the Permanent Secretary to the Welsh Government, advised Assembly Members that Mr Paul Bowen QC had been appointed to be the Investigator<sup>1</sup>.

6. Following the set-up of the Investigation, including a number of changes to the Operational Protocol, Mr Bowen QC issued a public call for evidence on 14 June 2018, saying that he hoped to complete the Investigation by the end of the year. On 18 June Mr Sargeant's family announced that they were considering seeking a judicial review of the Operational Protocol set for the Investigation by the Welsh Government. As part of this, they also questioned the timing of the oral hearings due to take place in September because the family's barrister would be unavailable. On 26 July the family confirmed that they would not be proceeding with its challenge against the Investigator in the light of his decision to vacate the hearing dates in September and to arrange alternative dates. As the family's action against the Welsh Government was continuing, Mr Bowen QC, following consultation with the Core Participants, suspended the Investigation on 5 September 2018, initially for six months, until the

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<sup>1</sup> As the events discussed in this statement took place before the change in the name of the National Assembly for Wales to Senedd Cymru – Welsh Parliament on 6 May 2020 (one consequence of which was that AMs became MSs), this statement uses the terms that were in place at the time.

outcome of the judicial review was known on the grounds that a successful challenge might lead to changes in his powers and/or the procedures to be followed by the Investigation. Judgement was handed down on 27 March 2019, allowing the claim for judicial review on the grounds of Mr Jones's unlawful involvement in the setting of the Operational Protocol. On 2 April the Investigator noted the judgement, commenting that he and his team were ready to resume work and looked forward to receiving proposals from the Welsh Government for taking forward the Investigation.

7. On 4 April 2019 Mr Mark Drakeford, who had become First Minister on 13 December 2018, announced that Mr Jonathan Jones QC (the Treasury Solicitor and Head of the UK Government Legal Department) would review the Operation Protocol. The review was completed on 3 July 2019.

8. On 8 July 2019 Mr John Gittins, H.M. Coroner for North Wales (East and Central), resumed the Inquest proceedings. He completed them on 11 July, recording a formal verdict of suicide and issuing a "prevention of further deaths report" to the Welsh Government. (The Coroner had opened and adjourned the Inquest on 13 November 2017, opened it again on 26 November 2018 and heard evidence until 30 November, when he adjourned the proceedings, until 8 July 2019.)

9. On 11 July 2019 the First Minister announced a "period of reflection" following the conclusion of the Inquest in order to conduct a consultation with interested parties regarding the Investigation's next steps. On 24 July Mr Bowen QC decided to continue the suspension of the Investigation pending the First Minister's decision on its future direction. Given the time that had elapsed since Mr Sargeant's death, Mr Bowen QC asked that decisions were reached on the key questions as soon as reasonably practicable and that the Welsh Government set out an indicative timetable for the decision-making process.

10. On 5 September 2019 the First Minister published his response to the Coroner's "prevention of further deaths report", setting out the measures he would put in place.

11. On 15 January 2020 the First Minister wrote to Mr Sargeant's family and Mr Carwyn Jones (with copies to Mr Bowen QC) saying that he had invited Sir Brendan Barber (the Chair of ACAS but acting in a personal capacity) to take on a mediating role and to explore with Mr Sargeant's family and Mr Jones whether common ground could be established on the most appropriate way forward. Following discussions with all the interested parties, including the Investigator, Sir Brendan wrote to Mr Drakeford AM on 14 April 2020 recommending the closure of the Investigation, though he added that this implied no adverse comment of any sort in its handling up to that point. He said, "in my judgement, however, the actions and decisions of FFM have now been extensively scrutinised and questioned through the public processes of the Coroner's Inquest. I do not consider that the additional significant level of public expenditure that would need to be devoted to the IQCI would be justified. Perhaps just as importantly I do not consider that the additional time needed to complete such an investigation (estimated by Paul Bowen QC to be 12 months) would be in anyone's interest". He confirmed that his view on terminating the Investigation was supported by both Mr Sargeant's family and Mr Jones AM. The First Minister accepted the recommendation (and a second one on the payment of the family's costs in relation to the Inquest) and issued a public statement to this effect on 21 April.

12. On 20 April 2020 Dame Shan Morgan wrote to the Investigator thanking him for his work, notifying him that the Investigation would not be proceeding further and was duly terminated, and asking him to take the necessary steps to close down the Investigation. On 22 April Mr Bowen QC

announced that the Investigation was now closed following the agreement reached between the Welsh Government, the Sargeant family and Mr Carwyn Jones AM.

## **2 INFORMATION HELD BY THE INVESTIGATION**

13. During the course of the Investigation, the Investigator and his team received or created information under the following broad types: correspondence with Core Participants; correspondence with other third parties; and internal communications within the team. The Investigation also held information about its governance; its policies and protocols; and its management.

### **Correspondence with the Core Participants**

14. This comprised correspondence with:

- the Welsh Government about the setting up of the Investigation, including discussions about the composition of the team, the governance of the Investigation including the Operating Protocol, timescales, the suspension of the Investigation and its possible resumption, the judicial review process, the Jones review of the Operating Protocol, the Barber mediation process and the closure of the Investigation. Correspondence was in the main conducted with the First Minister (Mr Carwyn Jones AM), the Permanent Secretary (Dame Shan Morgan), the Director of Governance (Mr David Richards) and the Director of Legal Services (Mr Jeff Godfrey). More recently, correspondence has largely been with the Departmental Records Officer (Emma Harvey-Woodason).
- Mr Sargeant's family about setting up the Investigation, including the Operating Protocol, and the suspension of the Investigation and its possible resumption. Correspondence was generally conducted with Hudgell Solicitors on the family's behalf, though in the early months correspondence also took place with Bowden Jones Solicitors who were representing Mrs Sargeant.
- Mr Carwyn Jones AM after he stepped down as First Minister about the possible resumption of the Investigation.

### **Correspondence with other third parties**

15. These were:

- Mr John Gittins, H.M. Coroner for North Wales (East and Central).
- Individuals consulted about the setting up of the Investigation, including in the Cabinet Office.
- Individuals seeking Core Participant status.
- Individuals seeking public funding to participate in the Investigation (and their legal representatives).
- Witnesses or potential witnesses.
- Sir Brendan Barber on his mediation exercise.
- The National Archives on the creation of the Investigation's permanent record.
- Others, such as the BBC on obtaining transcripts of interviews.

16. The Investigation also corresponded with:
- Ms Gillian Body, who was appointed by the Welsh Government to provide independent oversight of the Investigation's costs, about the team's expenditure, including its fees, and other financial issues.
  - the Government Legal Department, who represented the Investigator in the judicial review process.
  - the Investigation's suppliers, for example, of its IT systems.

#### **Internal communications within the team**

17. This included: background papers; briefing documents; Counsel's legal advice; emails which recorded conversations with third parties; notes of team meetings; notes of other meetings; and day-to-day email exchanges between team members on a range of matters.

#### **Governance of the Investigation**

18. This included drafts and final versions of: the Investigator's terms of appointment; the terms of reference; the operational protocol; and the indemnity provided to the Investigator and his team by the Welsh Government. It also included the independent auditor's expenditure analyses of the Investigation's work.

#### **Investigation's policies and protocols**

19. This included drafts and final versions of: the Investigation's Communications Protocol; Document Management Policy; Information Management Policy; Privacy Notice; and Welsh Language Policy.

#### **Management of the Investigation**

20. This included: project plans; staffing; and task lists.

21. While the Investigation was being set up the information was held on the work or private IT systems of the Investigator and members of his team. In June 2018 the Investigation's IT system came into operation and, from then, new information was in the main held on it.

22. The Investigation team worked digitally both in terms of creating documents and transmitting them; very few hard copies were produced apart from the drafts of some documents as part of the editing process. The Secretary took a manuscript note of the team's meetings before writing up the formal (digital) record.

### **3 THE INVESTIGATOR'S APPROACH TO THE CREATION OF THE PERMANENT RECORD**

23. In terms of its handling of information, the Investigation set out a number of principles in its Information Management Policy (available on the Investigation's website). These were:

- "Only to collect, process and retain information that is necessary for the conduct of the Investigation;
- To ensure that the information we hold is as accurate as possible;
- To keep information no longer than is necessary;

- To maintain an accurate record of the data we process;
- To ensure that information is processed in a way that ensures the security of any personal data; and
- To create a permanent record pursuant to the Investigation’s duties under the Public Records Act”.

24. The Information Management Policy also stated: “any information which is provided to the investigation under express conditions of confidentiality will not be disclosed to others or published without the individual’s consent” and “...the Investigation will not do anything which provides a means of identifying a complainant in relation to the conduct of Carl Sargeant unless they have given their prior consent to the disclosure”.

25. In terms of the creation of the permanent record, the Public Records Act 1958 and the Operational Protocol produced by the Welsh Government in relation to the Investigation confirm that it fell to Mr Bowen QC to determine which documents produced in undertaking the Investigation were appropriate for public retention and to pass those documents to the Welsh Government. In undertaking that selection, Mr Bowen QC was obliged by the Public Records Act to act “under the guidance of the Keeper of Public Records”, including The National Archives Public Inquiry Guidance 2017 (TNA Guidance) and The National Archives Retention Schedule for the Records of Inquiries 2012 (TNA Retention Schedule). He also took into account any potential duties of disclosure of retained records under the Freedom of Information Act 2000 and the Code of Practice on Freedom of Information published by the Secretary of State (the Code of Practice).

26. Mr Bowen QC took the view that, in deciding whether to retain, return or destroy information, the following factors were of particular relevance:

- (a) the need to “protect personal or sensitive information” (TNA Guidance).
- (b) the need to retain such documents, including those which are “personal or sensitive”, as are “crucial to provide future accountability for [any] findings” made by the Investigation (TNA Guidance).
- (c) the need to retain “such administrative records as can demonstrate effectively the independence of the inquiry process” (TNA Guidance).
- (d) the need to explain, and, if necessary, justify, past actions in the event of an audit, public inquiry or other investigation (Code of Practice). This included, in his view, the need to demonstrate value for money.
- (e) the need to comply with relevant statutory obligations, notably those under the Data Protection Act 2018 and the Freedom of Information Act 2000.

27. Under the Operational Protocol, any retained documents were to be passed to the Welsh Government as Welsh Public Records for permanent preservation and would be held securely and solely for the purpose of cataloguing the documents and transferring them to The National Archives. Given the particular nature of this Investigation, the Investigator reached an agreement with the Welsh Government before launching his public call for evidence in June 2018 that, as set out in the Investigation’s Information Management Policy, “after the Investigation concludes, a record of the

Investigation including key evidence will be placed in a secure archive in order to comply with the Investigator's duties under the Public Records Act 1958. Neither current nor future Welsh Ministers nor their Special Advisers will have access to the Investigation's record". The secure archive will be under the control of the Departmental Records Officer.

28. The application of the Investigator's approach to the types of information held by the Investigation will be discussed below, but for the present it is worth noting, as described in section 1, that the Investigation did not get beyond the stage of setting up and collecting some (but not all) relevant evidence before the Investigator decided to suspend the Investigation pending judicial review proceedings brought by Mr Sargeant's family. Once those proceedings were completed the First Minister (Mr Drakeford AM) decided that the Investigation should be discontinued before it resumed its work. Accordingly, the Investigation did not gather all relevant documentary evidence; no hearings were conducted; no relevant findings were made; and no report was issued. It followed that there are no documents that are "crucial to provide future accountability for [any] findings of the Investigation".

29. It is also worth noting that although the Investigator had the option to return information to those who provided it - a course of action that is sometimes used when hard copies have been provided - no such return has been made by the Investigation because all information was provided to it digitally.

30. Decisions on the information forming the permanent record and on the information that has been destroyed were taken by the Investigator and the Secretary following discussions with the Welsh Government and The National Archives in Autumn 2020.

31. The National Archives issue a Retention Schedule of the types of documents that they expect public inquiries to retain. An annotated version to reflect the decisions taken by the Investigation is attached as an Annex.

#### **4 INFORMATION FORMING THE PERMANENT RECORD**

32. The permanent record contains the following folders of information:

- Introduction
- Correspondence with Core Participants
- Correspondence with other third parties
- Internal communications within the team
- Governance of the Investigation
- Management of the Investigation
- The Investigation's policies and protocols.

##### **Correspondence with Core Participants**

33. The record comprises correspondence with the Core Participants – Mr Sargeant's family, the Welsh Government and Mr Carwyn Jones AM - apart from:

- covering emails to letters which said "please see the attached letter" or words to that effect, unless the email also made a point of substance in which case it has been included;
- emails arranging the dates and times of meetings or telephone conversations, unless the email also included a point of substance. Notes of the meetings and emails recording the

conversations have been included in the permanent record. (For the avoidance of doubt, exchanges with Core Participants about the dates of oral hearings have been included in the permanent record.)

34. The Investigator did not consider it necessary or proportionate to retain drafts of this correspondence.

#### **Correspondence with other third parties**

35. Correspondence has been included as follows:

- H.M. Coroner – all correspondence but not the evidence he provided to the Investigation.
- Individuals consulted about the setting up of the Investigation – all correspondence unless it was regarded as (potential) evidence.
- Individuals seeking Core Participant status – all correspondence.
- Individuals seeking public funding to participate in the Investigation – all correspondence but not the evidence which was supplied by them.
- Witnesses or potential witnesses - standard letters to individuals about (i) the retention of documents and (ii) inviting evidence. The Investigation wrote these letters to individuals whose names were in the public domain following media coverage of Mr Sargeant's departure from his post as Cabinet Secretary and his death four days later; the letters were not informed by any other knowledge held by the Investigation team. Any other correspondence with these individuals or with other potential witnesses who contacted the Investigation has not been included.
- Sir Brendan Barber – all correspondence.
- The National Archives – all correspondence.
- Others – all correspondence.

36. The reasons why some of the correspondence does not form part of the permanent record are set out in the next section – Information that is being destroyed by the Investigation.

37. In relation to the other third parties, the permanent record will include the following information:

- Ms Gillian Body - Ms Body produced regular summaries of the Investigation's expenditure to date, and these summaries form part of the permanent record. The Investigation's day-to-day exchanges with Ms Body, for example, on the team's monthly fee claims or its dealings with its suppliers do not appear in the permanent record. As the Welsh Government met the costs of the Investigation, they too have records of the expenditure. Financial records such as these need to be kept for seven years but do not normally appear in records which are passed to The National Archives. As the Welsh Government has confirmed to the Investigation that the records will be kept for the required period, the Investigation has not included its copies in the permanent record or sought to maintain them in a separate database. (For the same reason the Investigation has not included in the permanent record the detailed fee notes attached to the email from Hudgell Solicitors to the Investigation of 16 July 2018 about its legal costs.)

- the Government Legal Department – the GLD represented the Investigator in the judicial review process. The permanent record includes some early correspondence between the GLD and Mr Sargeant’s family and, separately, the Welsh Government in respect of the family’s letter before claim, but none after the formal judicial review proceedings were launched. The Welsh Government has confirmed to the Investigation that, as the Defendant in the case, it will keep its copy of the formal court documents, including pleadings and court bundles. For this reason there was no need for the Investigation to keep a separate copy. In respect of the Investigation’s legally privileged correspondence with the GLD about the approach the Investigator should take as an interested party in the judicial review proceedings – a watching brief and to answer any questions that the court might put to him – the Investigator has concluded that this was not relevant for any purposes for which the Investigation was established and so did not need to appear in the permanent record.
- Suppliers to the Investigation – none of this correspondence will form part of the permanent record. As the Welsh Government and / or Ms Body have records of all contract negotiations / renewals etc and the Welsh Government has confirmed that it will keep financial records for the required seven years, the Investigation has not included its correspondence in the permanent record or sought to maintain it in a separate database.

38. The exceptions to information that appears in the permanent record which apply to correspondence with the Core Participants – that is, in relation to covering emails and the setting up of meetings / conversations – also apply to correspondence with other third parties.

#### **Internal communications within the team**

39. All correspondence will be included apart from:

- Email exchanges between team members on the grounds that TNA’s Retention Schedule does not require internal inquiry correspondence to be retained; moreover, all the key decisions made by the Investigation are properly reflected in the notes of team meetings, task lists and the final versions of communications with the Core Participants and other third parties, all of which are in the permanent record.
- Extracts from six notes of team meetings, and one chronology and one list of individuals to approach, which dealt with evidence or witnesses or potential witnesses – see the section on Information destroyed by the Investigation.

#### **Governance of the Investigation**

40. All drafts and final versions of the documents apart from one or two drafts that can no longer be found. Correspondence with the Welsh Government and Mr Sargeant’s family about these documents can be found in the relevant parts of the permanent record.

#### **Investigation’s policies and protocols**

41. All drafts and final versions of the documents apart from one or two drafts that can no longer be found.

#### **Management of the Investigation**

42. All documents.

## 5 INFORMATION THAT IS BEING DESTROYED BY THE INVESTIGATION

43. Although a public call for evidence was made before the Investigator suspended the Investigation in September 2018, limited witness evidence was received and none was provided by Core Participants. Save for the file received from H.M. Coroner, the evidence received was not processed as events overtook matters and it was not considered cost effective to carry out an evidential analysis at that stage. Some of the evidence received was provided subject to a request that it be kept confidential and some contained confidential information. The evidence also contained highly private information, the processing of which constituted “sensitive processing” within s 35 of the Data Protection Act 2018. Mr Bowen QC took the decision that all witness evidence he had received should be destroyed and should not form part of the permanent record, given that:

- (a) individuals specifically requested that evidence they provided should be kept confidential;
- (b) retention is not in the public interest because only limited evidence was collected, disclosure of which would give only a partial, and therefore potentially misleading, account of the relevant factual background; and
- (c) the evidence did not form the basis of any material findings.

44. In respect of the file of evidence provided by H.M. Coroner, Mr Bowen QC took the decision to destroy it because it was a matter for the Coroner to determine which documents he should retain.

45. For the same reasons, Mr Bowen QC decided to destroy any correspondence with witnesses or potential witnesses, save the generic requests that were sent to a number of individuals whose names were already in the public domain asking them to retain relevant documents and to provide evidence if they considered they were able to do so. For the avoidance of doubt, any correspondence from those individuals either before those requests were made or in response to them is being destroyed.

46. In applying this approach to the creation of the permanent record, the Secretary took the decision to destroy other information, as follows:

- (a) extracts from six of the notes of the team’s meetings which discussed evidence or which could lead to the identification of witnesses or potential witnesses.
- (b) a chronology which took into account the evidence provided by H.M. Coroner. (The previous version of the chronology is in the permanent record.)
- (c) a list of individuals to approach which also took into account the evidence provided by H.M. Coroner. (The previous version of the list is in the permanent record.)
- (d) a note of a meeting with the Cabinet Office during which the handling of other inquiries was briefly discussed.

47. Although the purpose of this statement is to set out decisions about the information that forms the permanent record and the destruction of sensitive and confidential information by the Investigation, we would like to confirm that, as a matter of course, once the permanent record has been transferred to the Welsh Government, any and all documents held by members of the Investigation team in relation to the Investigation will be destroyed.

## **NEXT STEPS**

48. As set out in the Operational Protocol, the Investigation's permanent record will now be transferred to the Welsh Government under the care of the Departmental Records Officer. It will be kept in a secure archive until such time as it is transferred to The National Archives under the Public Records Act 1958.

49. As soon as the Departmental Records Officer is content that she holds the full record and assumes responsibility for it, members of the Investigation team will destroy any and all documents that they hold in relation to the Investigation so as to fulfil the undertaking in paragraph 47.

50. Finally, a word about Crown copyright. All material generated by the Welsh Government and the Investigation is covered by Crown copyright and the content is available under the Open Government Licence v3.0 except where stated. The copyright in relation to material generated by third parties lies with them.

Paul Bowen QC

Investigator

20 October 2021

Jim Barron CBE

Secretary