

**In the Matter of the Commissions of Inquiry Act 1888 & 2005**

**and**

**In the Matter of an Inquiry into the retirement of the former Commissioner of Police  
convened by a Commission issued by HM Government of Gibraltar on the 4th February 2022  
in Legal Notice No 34 of 2022 ("the Inquiry")**

Gibraltar Garrison Library  
2 Library Ramp  
Gibraltar

22 - 23 June 2022

Before

**SIR CHARLES PETER LAWFORD OPENSHAW, DL**  
**Commissioner of the Inquiry**

**Maurice Turnock: Secretary to the Inquiry**

**Julian Santos: Counsel to the Inquiry, 5RB Chambers**

**Hope Williams: Junior Counsel to the Inquiry, 5RB Chambers**

**Stephen Catania: Solicitor to the Inquiry, Attias & Levy**

**Sunil Chandiramani: Solicitor to the Inquiry, Attias & Levy**

**Jemma-Louise Emmerson: Solicitor to the Inquiry, Attias & Levy**

**Lawyers representing Mr Ian McGrail, Former Commissioner of Police:**

**Caoilfhionn Gallagher QC, Doughty Chambers**

**Adam Wagner, Doughty Street Chambers**

**Charles Gomez, Charles A. Gomez & Co, Gibraltar**

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**Lawyers representing The Hon. Fabian Picardo QC MP, Chief Minister,**

**Nicholas Pyle OBE, Deputy Governor of Gibraltar, and**

**Michael Llamas CMG QC, Attorney General for Gibraltar:**

**Sir Peter Caruana QC, Peter Caruana & Co**

**Chris Allan, Peter Caruana & Co**

**Philip Dumas, Peter Caruana & Co**

**Lawyers representing Dr Joseph Britto, Head of the Gibraltar Police Authority:**

**James Neish QC, TSN**

**Shane Danino, TSN**

<p>1 (Wednesday, June 22, 2022)  2 (10.01am)  3 THE COMMISSIONER: Good morning  4 everyone. This is the first preliminary  5 hearing of the Inquiry into the retirement of  6 the former Commissioner of Police, Mr Ian  7 McGrail. I would first like to extend my  8 thanks to the team here at the Garrison  9 Library for making it available to the Inquiry  10 and for their assistance in ensuring that  11 everything was ready for today's hearing.  12 The agenda for today's hearing has been  13 circulated to the parties in advance. It has  14 been placed on the Inquiry's website. There  15 are some printed copies available. It is a  16 preliminary hearing. It is intended only to be  17 an introduction to the Inquiry and its work  18 and to identify matters of procedure and  19 administration which will need to be sorted  20 out. I do not propose today to give any  21 rulings of law or even procedure, still less to  22 hear evidence or to make any findings of  23 fact. It is a Public Inquiry. It is open to all  24 which, subject to the availability of space,  25 anyone may attend. In the unlikely event of</p> <p style="text-align: center;">Page 1</p>	<p>1 Government does not have access. It is, I  2 stress, an independent inquiry not a  3 Government inquiry.  4 The usual procedure will be for statements  5 and documents to be uploaded onto the  6 Inquiry website as and when they are relied  7 on. After discussion with the parties, I will  8 need to produce a protocol dealing with such  9 matters. I recognise of course that I might  10 also permit the disclosure of some statements  11 or documents in a redacted or amended form.  12 I hope and intend that, with the assistance of  13 the parties, the protocol will set out the  14 principles upon which redaction may be  15 allowed in the absence of agreement. I will  16 obviously have to rule on a case by case  17 document on each statement or document as  18 it arises after allowing representation on the  19 point.  20 In exceptional cases or circumstances which  21 have not arisen and may never arise, I might  22 have the power to make an order restricting  23 publication of some part of the evidence and,  24 indeed, upon the representations upon that  25 evidence, but I would only make such an</p> <p style="text-align: center;">Page 3</p>
<p>1 there being difficulty in allocating seating,  2 one of the Inquiry staff will sort that out.  3 Being a Public Inquiry, the proceedings may  4 be fully reported. The press are free to send  5 contemporaneous and accurate reports from  6 the Inquiry electronically if they want. For  7 example, by way of Tweets or text, provided  8 that is done without causing distraction or  9 interference, otherwise I would ask that  10 during the hearing, you turn your mobile  11 phones off or at least put them on silent.  12 I make clear that the taking of photographs,  13 whether by still or moving images or the  14 making of sound recordings is not permitted  15 and might conceivably amount to a criminal  16 offence. Any device so used may be liable to  17 seizure.  18 The proceedings are being officially  19 recorded. Transcripts of the day's business  20 will be provided within a day or two and  21 perhaps earlier. The transcripts will be  22 uploaded onto the Inquiry website. I make  23 clear that it is an Inquiry website; it is not a  24 Government website. The Inquiry has its  25 own secure email systems to which the</p> <p style="text-align: center;">Page 2</p>	<p>1 order on the narrow grounds permitted by  2 law on compelling grounds of public policy  3 and, even then only after giving the parties  4 (and indeed the press) the right to make  5 representations.  6 As you can see from the agenda, today's  7 hearing is intended to identify to the parties  8 and to members of the press and the public  9 the purpose, structure and format of the  10 Inquiry. After this my opening statement, Mr  11 Santos, counsel to the Inquiry, will then  12 address the Inquiry on the issues relating to  13 representation and to funding, on the  14 proposed procedural format to be adopted for  15 the main hearing and the proposed timetable  16 for the Inquiry. I encourage everyone to  17 contribute to this process and discussion. I  18 hope that at least the general shape of the  19 protocol can be resolved in informal  20 exchanges, but in the absence of agreement, I  21 may need to hear and determine any  22 contentious issues as, of course, I would need  23 to resolve any point on the application of the  24 protocol to any particular issue.  25 I will then address any other matters raised</p> <p style="text-align: center;">Page 4</p>

<p>1 by the parties. Before I describe very briefly 2 how the Inquiry came into being and its 3 terms of reference and provide an update on 4 the progress to date, let me make some 5 introductions. I am Sir Peter Openshaw, the 6 Commissioner of the Inquiry. If you want to 7 know something of my background, I was 8 called to the Bar in England and Wales as 9 long ago as 1970. I was appointed a Queen's 10 Counsel in 1991. In 1999 I was appointed a 11 Senior Circuit Judge and Recorder of the 12 City of Preston. I was appointed a High 13 Court Judge in September 2005. Between 14 2008 and 2012 I was the Presiding Judge on 15 the North Eastern Circuit. By statute, I 16 retired as a full-time judge in 2017, but I 17 remain authorised to sit as a Judge of the 18 High Court and as an additional judge of the 19 Court of Appeal as and when required to do 20 so. 21 I have never been to Gibraltar before I was 22 appointed to this role. I visited Gibraltar in 23 early May when I took an oath before a 24 Justice of the Peace in order formally to take 25 up my role and I familiarised myself to some</p> <p style="text-align: center;">Page 5</p>	<p>1 themselves and who they represent. I make 2 clear they will have an opportunity of making 3 opening representations in writing at the full 4 hearing of the Inquiry which they may then 5 supplement with a short oral address, which I 6 might timetable. I intend at this stage only 7 that they introduce themselves. I do not 8 know what order anyone is going to 9 introduce themselves. I will leave that up to 10 you. Somebody better go first. 11 SIR PETER CARUANA: My name is Peter 12 Caruana and I appear with Chris Allan and 13 Philip Dumas and we represent the Chief 14 Minister, Mr Picardo, the Deputy Governor 15 Mr Pyle and the current Attorney General 16 Michael Llamas. 17 THE COMMISSIONER: Thank you very 18 much. Yes, you had better go next. 19 MS GALLAGHER: Thank you, I think I 20 will go next, unless you wanted to hear from 21 the others? 22 THE COMMISSIONER: No, no. 23 MS GALLAGHER: I am Caoilfhionn 24 Gallagher QC of Doughty Street Chambers 25 in London, and I represent Ian McGrail,</p> <p style="text-align: center;">Page 7</p>
<p>1 extent with Gibraltar. 2 Maurice Turnock is the Secretary to the 3 Inquiry. He was admitted and enrolled as a 4 barrister of the Supreme Court. He spent 5 nine years in private practice before being 6 appointed Clerk to the Magistrates' Court and 7 Deputy Registrar of the Supreme Court in 8 2010. 9 I also have a team of lawyers to assist me in 10 conducting the Inquiry. Counsel to the 11 Inquiry, Mr Julian Santos, of 5RB Chambers 12 in Gray's Inn London, has practised in 13 Gibraltar and London for nearly 14 years. 14 He is assisted by his junior, Hope Williams, 15 also of 5RB Chambers. The solicitor to the 16 Inquiry, Mr Stephen Catania, a partner in 17 Attias &amp; Levy, he is assisted by Mr Sunil 18 Chandiramani, also a partner in that firm and 19 Jemma-Louise Emmerson, a lawyer at the 20 same firm. 21 Several other lawyers are present here today, 22 appearing for various individuals or 23 organisations. It might help everyone, it 24 certainly would help me, if I asked the 25 counsel present briefly to introduce</p> <p style="text-align: center;">Page 6</p>	<p>1 along with Adam Wagner and with Charles 2 Gomez and Nick Gomez. 3 THE COMMISSIONER: Thank you. 4 MR NEISH: May it please you, my name is 5 James Neish QC. I appear for Dr Joey Britto 6 and the Gibraltar Police Authority and I 7 appear with Mr Shane Danino as my junior. 8 THE COMMISSIONER: Anyone else here? 9 No, okay. Thank you very much indeed. As 10 I will make completely clear, you will all 11 have a full opportunity to have your say in 12 due course. I turn then to provide some 13 remarks, brief remarks on the background to 14 the Inquiry. 15 Mr Ian McGrail was appointed 16 Commissioner of Police in Gibraltar on 1 17 May 2018. On 11 June 2020 he took early 18 retirement. This attracted a significant level 19 of media attention and speculation. On 28 20 July 2020 he called for the Government to set 21 up an independent judicial inquiry into the 22 circumstances of his retirement. On 31 July 23 2020, speaking the Gibraltar Parliament, the 24 Chief Minister, Mr Picardo, indicated that the 25 Government was minded to convene such an</p> <p style="text-align: center;">Page 8</p>

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<p>1 inquiry. Because of the Covid restrictions 2 then applying here and in the United 3 Kingdom, the Inquiry was not formally 4 established until 4 February this year by the 5 Governor of Gibraltar, His Excellency Vice 6 Admiral Sir David Steel, at the request of the 7 Chief Minister. 8 The issue of Commission establishing the 9 Inquiry is available on the Inquiry's website. 10 It sets out the Inquiry's terms of reference 11 which is to inquire as I "shall in my absolute 12 discretion think fit into the reasons and 13 circumstances leading to Mr McGrail ceasing 14 to be Commissioner of Police in June 2020 15 by taking an early retirement". These are 16 broad terms of reference which require the 17 Inquiry to explore a broad range of 18 circumstances and events in the lead-up to 19 Mr McGrail's retirement. With the assistance 20 of the parties, I will seek later to refine or 21 define the particular issues, events or 22 circumstances into which I think it fit to 23 inquire. 24 It is very important at the outset to emphasise 25 that the purpose of the Inquiry is to ascertain</p> <p style="text-align: center;">Page 9</p>	<p>1 relating to these matters, nor had I read any 2 press report relating to the matter and, as I 3 have made clear, I had not even visited 4 Gibraltar previously. I therefore approach 5 this task as an entirely objective and 6 independent outsider. 7 Although several of the key participants in 8 these events hold or held positions within the 9 Government of Gibraltar, I make clear that 10 the Inquiry will be conducted quite 11 independently from the Government. My 12 findings will be made public. They will not 13 be and are not subject to approval by the 14 Government. 15 The law has required me to make 16 recommendations to the Government as to 17 the nature, extent and indeed the amount of 18 public funding available to the parties and in 19 particular to those representing Mr McGrail. 20 Those have been considered by members of 21 the Government who, so far as I am aware, 22 played no material part in the events which I 23 am to consider. To put it another way, those 24 who played or are alleged to have played any 25 such part, have not been involved in</p> <p style="text-align: center;">Page 11</p>
<p>1 the facts and report to the Government on the 2 terms of reference. My role is not to conduct 3 a criminal or a civil trial nor to make legal 4 judgments as to anything that took place; it is 5 simply to ascertain the facts. I am also not 6 required or indeed even permitted by the 7 terms of reference to make 8 recommendations, for example, as to any 9 legal or political reform or indeed for 10 anything else for that matter. 11 The Inquiry was established and will operate 12 under the Commissions of Inquiry Act 1888. 13 There are no procedural rules made under 14 that Act as I have already hinted and with 15 your assistance, I will have to draft a protocol 16 to make good the submission so as to ensure 17 the fair, efficient and dispatch of the business 18 of the Inquiry. 19 I make clear that I come to this duty with an 20 entirely open mind. I have not previously 21 met Mr McGrail nor any of the other person 22 who played or are alleged to have played any 23 part in these events. Prior to being appointed 24 as the Commissioner of the Inquiry, I have 25 not read any statements or documents at all</p> <p style="text-align: center;">Page 10</p>	<p>1 considering, still less in fixing, the nature, 2 extent or indeed the amount of that public 3 funding. 4 It might help if I was to provide a brief 5 update on the work that we have done so far. 6 Section 34(1) of the Police Act provides that: 7 "The Gibraltar Police Authority may call 8 upon the Commissioner to retire in the 9 interests of efficiency, effectiveness, probity, 10 integrity on independence of policing in 11 Gibraltar, after consultation with the 12 Governor and Chief Minister and with the 13 agreement of either of them, before seeking 14 the approval of the Governor and the Chief 15 Minister, the Gibraltar Police Authority is 16 required to give the Commissioner an 17 opportunity to make representations." That 18 is provided in section 34(2). 19 Section 13(1)(f) provided that: 20 "The Government may suspend the 21 Commissioner from duty or call for his 22 resignation where the Gibraltar Police 23 Authority has failed to discharge or perform 24 a responsibility imposed upon it by the Police 25 Act."</p> <p style="text-align: center;">Page 12</p>

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<p>1 By section 13(2): 2 "The Governor is required to keep the Chief 3 Minister informed of any exercise of power 4 under this section." 5 Under section 8 of the Commissions of 6 Inquiry Act, the Inquiry may require any 7 person whose evidence may be material to 8 the subject matter of the Inquiry to attend and 9 give evidence and to produce documents as 10 may appear necessary for arriving at the truth 11 of all matters. 12 In April of this year, the Inquiry commenced 13 this process and used the power under section 14 8 to seek evidence from the four persons, 15 each of whom had a role in Mr McGrail's 16 retirement in that the offices or post they 17 occupied were expressly referred to in the 18 Police Act which governs the circumstances 19 in which the Commissioner of Police may be 20 called upon to retire. Those were the former 21 Commissioner of Police, Ian McGrail, the 22 Chief Minister, Fabian Picardo, the Deputy 23 Governor, who was the Acting Governor at 24 the relevant times, Nick Pyle, and the Head 25 of the Gibraltar Police Authority, Dr Joseph</p> <p style="text-align: center;">Page 13</p>	<p>1 contact the Royal Gibraltar Police shortly 2 and will also issues a general public 3 invitation to individuals and organisations to 4 submit representations and evidence relevant 5 to the circumstances into which I am 6 inquiring. 7 A more general public invitation will be 8 issued after the list of issues has been 9 finalised at the second preliminary hearing. 10 Mr Santos, counsel to the Inquiry, will 11 shortly provide further information on the 12 details of the upcoming hearings. However, 13 it might be appropriate to give some 14 indication of the likely timetable. I am 15 acutely aware of the importance of the 16 Inquiry to those directly affected by it, and 17 there is of course a high public interest in 18 investing the process with a sense of 19 urgency. But the public rightly expects 20 inquiries to be thorough and achieving that 21 takes time. Undue haste and hurry tends to 22 superficiality omission and even error, all of 23 which of course I am anxious to avoid. 24 I had originally hoped to hold the main 25 hearings in September of this year, but I am</p> <p style="text-align: center;">Page 15</p>
<p>1 Britto. 2 Having received their statements, it became 3 clear that two further persons are likely to be 4 able to provide evidence to the Inquiry, 5 namely Michael Llamas, the Attorney 6 General for Gibraltar, and Christian Rocca, 7 the Director of Public Prosecutions. The 8 Inquiry has therefore requested evidence 9 from both of them and we are awaiting their 10 response. 11 Mr McGrail's statement was only received on 12 Monday of this week. I neither make nor 13 imply any criticism of that, which has 14 resolved from a need to resolve the complex 15 and important issues surrounding funding of 16 his representation but we have not yet had 17 the opportunity fully to consider his evidence 18 in detail. However, I expect that arising from 19 what he said, we will need to seek evidence 20 from other persons to whom he referred. 21 In due course, the Inquiry will cast the net 22 wider by seeking evidence from anyone else 23 who is likely to be able to contribute 24 information or documents to the Inquiry. To 25 give but one example, the team intends to</p> <p style="text-align: center;">Page 14</p>	<p>1 now quite sure that no-one will be ready by 2 then and, indeed, no-one suggests that I 3 should proceed in September. 4 Furthermore, as I have already said, the 5 Inquiry is continuing to gather evidence from 6 other persons. The fact is that there simply is 7 not enough time to complete the evidence 8 gathering process and for everyone to 9 consider and respond to that and be ready in 10 September, particularly with the holidays 11 approaching. In the interests of ensuring that 12 the progress of the Inquiry continues to go 13 forward, a second preliminary hearing will be 14 held on 19 and 20 September at which list of 15 issues for the Inquiry will be discussed and 16 finalised. The agenda or a preliminary 17 agenda for the second preliminary hearing 18 was circulated with this agenda, in order to 19 give the parties an understanding of the 20 issues and matters to be considered at the two 21 different hearings. Whereas the business of 22 today's hearing is, as it seems to me, entirely 23 procedural and administrative, I recognise 24 that I may need to hear and determine more 25 substantive issues of the second preliminary</p> <p style="text-align: center;">Page 16</p>

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<p>1 hearing on which the parties will be invited 2 to make written submissions in advance, 3 supplemented of course by oral argument on 4 the day. 5 In order to allow sufficient time for the 6 evidence to be gathered and for preparations 7 to take place, I presently intend to hold the 8 main hearings as early as possible in 2023 9 next year. The earliest viable date, taking 10 into account the availability of the Garrison 11 Library, which has other calls upon its time, 12 is the three week window between 7 and 25 13 March next year. I invite the parties to 14 identify if they have any insuperable 15 problems with those dates, but it is my clear 16 provisional intention that we should proceed 17 on those dates and indeed, between those 18 dates. I will later issue a timetable to ensure 19 that the public hearings are completed within 20 the time allocated. 21 Before I invite Mr Santos to address us on 22 issues relating to representation, funding and 23 procedure, I finally note that the Inquiry 24 website is up and running. A number of 25 important documents have already been</p> <p style="text-align: center;">Page 17</p>	<p>1 Further, section 13 allows the Chairman to 2 make recommendations to the Government 3 as to expenditure, including legal costs. The 4 section states that "The Commissioners", or 5 in this case the Commissioner: 6 "... shall have the power to include in the 7 expenses of giving effect to the provisions of 8 this Act, any reasonable sum which they may 9 think fit to recommend by certificate under 10 their hand to be paid to any witness for his 11 expenses and loss of time and which may be 12 approved by the Government." 13 Section 14 states that: 14 "The expenses of carrying this Act into effect 15 and of all matters and proceedings under this 16 Act are hereby charged upon the 17 Consolidated Fund." 18 To give effect to these provisions, the Inquiry 19 has developed and published a protocol 20 relating to legal representation at public 21 expense, which can be found in tab 4 of 22 today's bundle. This protocol outlines the 23 circumstances in which the Commissioner 24 may make recommendations under section 25 13 that reasonable sums be paid to witnesses</p> <p style="text-align: center;">Page 19</p>
<p>1 uploaded there. The website address is 2 readily available. It will be continually 3 updated with relevant documentation as the 4 Inquiry progresses and, as I have said, 5 transcripts of the hearings, including of 6 today's hearings, will be uploaded as and 7 when they are available. 8 Thank you. Yes, Mr Santos? 9 MR SANTOS: I am very grateful, sir. First 10 of all, I would like to make some brief 11 remarks on representation and funding as you 12 have invited me to do. It is plainly in the 13 public interest that participants with a core 14 role in the Inquiry have access to adequate 15 legal representation, both in terms of (a) 16 serving the interests of justice and fairness to 17 the relevant participants; and (b) placing the 18 Inquiry in the best possible position to carry 19 out its terms of reference through the 20 assistance of counsel. Accordingly, section 21 11 of the Commissions of Inquiry Act 22 provides that: 23 "A person whose conduct is the subject of the 24 Inquiry is entitled to representation by 25 counsel."</p> <p style="text-align: center;">Page 18</p>	<p>1 for their legal expenses and for these to be 2 charged upon the Consolidated Fund in 3 accordance with section 14. The protocol is 4 available on the Inquiry website. It was 5 recommended and certified by the 6 Commissioner and approved by the 7 Government under section 13 of the Act. It 8 sets to criteria for eligibility, the principles 9 upon which the Inquiry will grant and 10 consider funding awards, mechanics for 11 applications and the process for payment. It 12 endeavours to set out a transparent and fair 13 process for the determination of these issues 14 which balances the importance of legal 15 representation against the need to ensure that 16 the Inquiry remains a proportionate and 17 reasonable use of public funds. 18 The protocol is substantially based on the 19 Funding Protocol which was adopted during 20 the Dr Giraldi Home Inquiry. It utilises the 21 format adopted in previous public inquiries 22 in Gibraltar and notably the Dr Giraldi 23 Inquiry and the Tribunal into whether the 24 Honourable Mr Justice Scofield should be 25 removed from the office of Chief Justice of</p> <p style="text-align: center;">Page 20</p>

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<p>1 Gibraltar, whereby the Commissioner 2 recommends whether a legal funding award 3 should be made and an appropriate person 4 withing Government agrees or disagrees with 5 such a recommendation. It is up to the 6 Government whether it ultimately approves a 7 recommendation. However, it is not the case 8 that participants in the Inquiry will apply 9 directly to the Government to obtain legal 10 funding. 11 As the protocol is available on the Inquiry 12 website, I am sure everyone will thank me 13 for not going through every provision today, 14 but I do want to draw attention to four 15 matters of importance. 16 First, we have the eligibility criteria. Clauses 17 2 to 4 set out eligibility for public funding 18 and the criteria for determining whether a 19 funding award should be made. 20 Clause 2 states that: 21 "A person is eligible to be considered for a 22 Legal Expenses Funding award only if [they 23 are]: 24 (a) a person attending the Inquiry to give 25 evidence or to produce any document or</p> <p style="text-align: center;">Page 21</p>	<p>1 were any doubt about funding and payment 2 of the same and there were no other means of 3 such funding. (4), it is fair, necessary, 4 reasonable and proportionate to make a 5 funding award to the applicant and such an 6 award is inappropriate use of public funds. 7 Second, public funding is available for 8 recognised legal representatives, which is 9 defined in clause seven of the protocol to 10 mean a qualified lawyer who has been 11 approved, admitted and enrolled as a barrister 12 or solicitor under the provisions of the 13 Supreme Courts Act 1960. Therefore any 14 counsel who is not admitted and enrolled in 15 Gibraltar will need to arrange such admission 16 for the purpose of the inquiry. Third, the 17 procedure for making an application for legal 18 funding is set out in Clause 12. Applications 19 are to be made to the solicitors to the inquiry, 20 Stephen Catania of Attias &amp; Levy, and 21 should address the list of matters set out in 22 that Clause after the Commission has 23 determined the application it will fall upon 24 Attias &amp; Levy as solicitors to the inquiry to 25 approve budgets relating to the applicant's in</p> <p style="text-align: center;">Page 23</p>
<p>1 other thing; or 2 (b) a person who, in the opinion of the 3 Chairman, has such particular interest in the 4 proceedings or outcome of the Inquiry as to 5 justify such an award." 6 Clause 3 states that the Commissioner will: 7 "... when determining an application for ... 8 Funding ... take into account: whether 9 making a Legal Expenses Funding award is 10 in the public interest." 11 Clause 4 states that the Commissioner 12 envisages that a Funding award will normally 13 only be made in cases where four criteria are 14 satisfied, namely that (1) the conduct of the 15 applicant is the subject of inquiry; or the 16 applicant is in any way implicated or 17 concerned in the matters under inquiry; (2) 18 either significant criticism of the applicant 19 may be inferred from the material contained 20 in the Inquiry Bundle or the applicant may be 21 subject to significant criticism in the course 22 of the Inquiry whether during the 23 proceedings or in its final or any interim 24 report; (3) the applicant will be prejudiced 25 from seeking legal representation if there</p> <p style="text-align: center;">Page 22</p>	<p>1 respect of legal expenses at monthly intervals 2 and bills relating to the applicant's legal 3 expenses also at monthly intervals. The 4 protocol also addresses the procedure for 5 payment. Finally, the maximum hourly rates 6 for public legal representation are set out in 7 Clause 12(E). These are the same rates as 8 those used in the Dr Giraldi inquiry funding 9 protocol and have been retained on the basis 10 that they remain reflective of the market rate. 11 In particular in setting these rates, the inquiry 12 had regard to the rates for legal funding in 13 public inquiries being conducted currently or 14 very recently in the UK including the 15 Grenfell Inquiry and the independent inquiry 16 into child sexual abuse. 17 The inquiry so far has received and processed 18 only one application for a legal expenses 19 award, namely that of Mr McGrail. The 20 Commissioner's recommendation should 21 hopefully be available on the inquiry's 22 website shortly. It is in tab 6 of today's 23 bundle, but in short the Commissioner 24 recommended and the Government approved 25 that it would be in the public interest for the</p> <p style="text-align: center;">Page 24</p>

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<p>1 Government to fund Mr McGrail's legal 2 representation. He is a key participant in the 3 inquiry. His evidence will be of central 4 importance to the terms of reference. The 5 Commissioner considered that if Mr McGrail 6 lacks proper legal representation this will 7 impact upon his ability to effectively 8 participate in the inquiry and, further, upon 9 an assessment of Mr McGrail's means, the 10 Commissioner concluded that he would not 11 be in a position to fund his legal team 12 without undue difficulty. 13 As to the extent of funding of Mr McGrail's 14 legal representation, the Commissioner 15 concluded that public funding should extend 16 to preparation by his local legal team Gomez 17 and Co and two specialist UK legal counsel 18 with work divided between junior and senior 19 counsel on an 80/20 basis and senior 20 counsel's attendance at the substantive 21 hearing being limited to three days. This was 22 more cost-effective than senior counsel being 23 instructed to complete the entirety of the 24 work. Any further applications for funding 25 by other participants will, of course, be</p> <p style="text-align: center;">Page 25</p>	<p>1 hearing will be to hear oral evidence. We 2 have considered the different models for 3 hearing oral evidence that have been 4 followed in inquiries and they broadly fall 5 into three categories. First, at one end of the 6 spectrum there is what is sometimes referred 7 to as the traditional model which permits 8 questioning of all witnesses by all 9 representatives of other participants. Second 10 and at the other end of the spectrum, is the 11 restrictive model where all questions are to 12 be put by counsel to the inquiry with no 13 opportunity for questioning by any other 14 representatives. Finally, there are hybrid 15 models which fall somewhere in between. 16 The preliminary view of the inquiry team is 17 that a hybrid model would be appropriate 18 whereby the default position is that 19 questioning a witness should firstly and 20 principally by counsel to the inquiry. If any 21 party or representative would like to have 22 any questions put to a particular witness, then 23 those questions should be put forward in 24 writing to the solicitor to the inquiry before 25 the witness gives evidence, and provided that</p> <p style="text-align: center;">Page 27</p>
<p>1 decided in accordance with the protocol. 2 I now turn to the next item on the agenda, 3 which is the procedure for the main hearing, 4 and in doing so I would like to, first of all, 5 stress two things. (A), rather than seek to 6 reinvent the wheel, we are likely to base the 7 procedure of this inquiry very much upon the 8 procedure of the Dr Giraldi home inquiry 9 while also cross-checking against recent 10 inquiries in the UK such as those I have 11 already mentioned. (B), I am merely setting 12 out today our current thinking as to the 13 appropriate procedure for the inquiry and the 14 hearing and it is very much subject to 15 submissions made by counsel for the 16 participants either orally today or in written 17 submissions in the coming days. The 18 Commissioner will take on board any 19 contributions before arriving at a final 20 decision on these matters. 21 Returning to the procedure, the inquiry is 22 likely to invite opening statements in writing 23 and supplemented by short oral statements 24 from all four participants at the start of the 25 main hearing. The main purpose of the main</p> <p style="text-align: center;">Page 26</p>	<p>1 the inquiry team considers that such 2 questions are appropriate, I will put those 3 questions to the witness. Once I have 4 completed questioning a witness, that 5 witness's representative may be offered the 6 opportunity to ask any questions in brief re- 7 examination. Also, although, as I say, there 8 generally is no cross-examination, if there is 9 good reason for a representative of one of the 10 parties to ask a question or series of 11 questions of a particular witness, then a 12 request for permission to do so or 13 explanation of the reason why it is 14 appropriate should be submitted to the 15 Chairman, normally in advance. That 16 questioning will most likely be the subject of 17 time limits. 18 I do need to stress that, unlike legal 19 proceedings, this is not an adversarial process 20 and there would not normally be full cross- 21 examination by other parties in the way that 22 one would normally see, say, in a criminal 23 trial. The purpose of the questioning is to 24 elicit information and there is also no need 25 for any party to put its case to a witness as it</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)



<p>1 would expect to have to do in a criminal 2 court hearing. We consider that it is 3 important in terms of the effectiveness of the 4 inquiry and the ability of the public to 5 participate in and inform itself of the matters 6 addressed for as much information as is 7 reasonably possible to be made available 8 online. To this end, as the Commission has 9 already announced, there is an inquiry 10 website onto which e-documents to date will 11 be there, already have been uploaded or 12 hopefully be uploaded very shortly. 13 Our initial view is that the witness statements 14 and exhibits submitted by participants and 15 witnesses, along with any submissions, 16 should be uploaded to the inquiry website on 17 commencement of the main hearing subject, 18 of course, to any valid objections being made 19 as to specific documents or parts of them, on 20 the usual grounds on which derogations from 21 open justice are permitted in court. 22 We intend in due course to prepare a 23 redactions principle which will address such 24 scenarios, and any objections to publication 25 will be dealt with on merit on a case-by-case</p> <p style="text-align: center;">Page 29</p>	<p>1 arriving at a financial- at a financial- a final 2 position. I am optimistic, sir, that these are 3 matters which can be resolved or at least 4 narrowed through correspondence between 5 the parties, and there is no need for a lengthy 6 debate on those today, less still for any 7 determination on the matters by you, but, of 8 course, the other participants are entitled and 9 welcome to make oral submissions today. 10 I should explain that we started this process 11 with no knowledge, information or 12 documents at our disposal about the matters 13 which we are investigating and which the 14 Commissioner will ultimately be provided a 15 report upon. We started purely with the 16 terms of reference set out in the legal notice 17 and we have been entirely dependent on 18 receiving information and documents from 19 participants in order to learn about the 20 matters which we are required to look into. 21 It was not possible, based on the short terms 22 of reference alone, to devise all procedures 23 and policies for the inquiry immediately and 24 therefore, as you have outlined, sir, the 25 inquiry prioritised commencing its evidence-</p> <p style="text-align: center;">Page 31</p>
<p>1 basis. Similarly, transcripts of this hearing, 2 the next preliminary hearing and the main 3 hearing will be prepared on a daily basis and 4 uploaded to the website and, of course, it 5 goes without saying that the Commissioner's 6 final report will also be published on the 7 inquiry website. 8 At this stage I should acknowledge that we 9 received submissions two days ago from Ms 10 Gallagher QC and Mr Wagner on behalf of 11 Mr McGrail with constructive proposals on 12 the procedure of the inquiry going forwards, 13 and particularly proposing a number of 14 policies which it is suggested that the inquiry 15 should put in place. We are grateful for these 16 proposals which we are still considering in 17 detail given the timeframe, and we have also 18 circulated them to the other current 19 participants for their thoughts. But what I 20 will say is that subject to of course any 21 submissions which any other participant 22 might wish to make, we do not anticipate 23 having any objections in principle to most of 24 the proposals. We will give the other parties 25 the opportunity to respond to them prior to</p> <p style="text-align: center;">Page 30</p>	<p>1 gathering by approaching the four parties 2 who, according the Police Act 2006, would, 3 or at least could, have played a statutory role 4 in Mr McGrail's retirement. These are Mr 5 McGrail himself, of course; the Governor at 6 the time; the Chief Minister and the 7 Chairman of the Gibraltar Police Authority. 8 I refer to these in shorthand as "the statutory 9 participants". 10 For reasons which I need not go into and 11 without intending any criticism of anyone, 12 we only received the last of those full 13 statements on Monday of this week and so 14 have not had the opportunity to consider 15 them in great detail, but now that we have all 16 four accounts from the statutory participants 17 it is possible to start the process of defining 18 issues for determination and also drafting 19 viable procedural policies alongside that 20 process. Needless to say, we are willing to 21 take on board any submissions on those 22 policies, but just briefly the policies that have 23 been proposed by Mr McGrail's team are (A) 24 an information management policy 25 addressing the inquiry's compliance with the</p> <p style="text-align: center;">Page 32</p>

8 (Pages 29 to 32)

<p>1 Gibraltar GDPR including the basis upon 2 which the inquiry will process, first of all, 3 data and the usefulness to which this data 4 will be put. (B), a redactions policy 5 progressing redactions that will be applied to 6 certain parcels of information or documents. 7 We anticipate that this policy will involve a 8 mechanism for parties to challenge those 9 redactions on a case-by-case basis. (C) a 10 policy relating to protective measures for 11 witnesses and for participants, for example 12 allowing potential witnesses to give evidence 13 anonymously or for other protective 14 measures to be put in place should they be 15 necessary. I should make clear I am not 16 suggesting that it should or should not be 17 necessary in any case. What I can say is that 18 so far we have received no requests for such 19 measures. (D) and fourthly, there is a court 20 participants policy which sets out how the 21 status of all participants will be designated 22 and how individuals can apply to the inquiry 23 if they wish to obtain that status. At this 24 stage, without prejudging the contents of that 25 policy, our preliminary view is that each of</p> <p style="text-align: center;">Page 33</p>	<p>1 ones, so I do not propose to say anything 2 further on that. 3 Having made these opening remarks, I am 4 happy to give way to any representatives or 5 participants who might wish to make 6 submissions on this item of the agenda. 7 THE COMMISSIONER: I invite you to go 8 first if you want to say anything. I quite 9 understand if you do not. I make it 10 abundantly clear that I think we can sort a 11 great deal out in informal exchanges, and I 12 am open to receive such exchanges at any 13 time really between now and the final 14 determination, but you might want to say 15 something and I would welcome your 16 observations. 17 MS GALLAGHER: I am very grateful, sir. 18 May I make a suggestion on the way 19 forward? 20 THE COMMISSIONER: Of course. 21 MS GALLAGHER: We do wish to make 22 oral submissions today. We also wish to 23 supplement them with written submissions to 24 follow. In light of the fact that we have 25 learned certain proposals today, I think we</p> <p style="text-align: center;">Page 35</p>
<p>1 the statutory participants will be designated 2 to court with participant status due to their 3 statutory role but that there will be provision 4 and criteria for parties beyond those four to 5 apply for full participant status if they are of 6 the view that this would be appropriate. 7 Finally, there is, (E), there is a proposal for a 8 conflict-of-interest policy applicable to the 9 inquiry and other legal representatives 10 appearing before the inquiry. 11 The other issue that has been raised is the 12 question of live-streaming of these hearings. 13 We are happy to take on board any 14 submissions from the other parties as to their 15 views on this and propose to make this an 16 item on the agenda for final determination if 17 not agreed at the second preliminary hearing 18 in September. 19 In due course we propose to set out our 20 position on each of these matters and invite 21 comment from the statutory participants for 22 comments prior to the matters being 23 finalised. 24 Finally, sir, we have already addressed the 25 reporting of this hearing and the forthcoming</p> <p style="text-align: center;">Page 34</p>	<p>1 will assist you greatly, sir, if we can consider 2 those and provide written submissions within 3 a timetable that you direct. 4 I do want to address you orally today, and 5 may I request that we do that in two parts. 6 There are some submissions which I can 7 briefly make immediately and there are some 8 other submissions on which I would like to 9 take some brief instructions in light of the 10 fact that we have learned some matters in 11 respect of the process today. 12 THE COMMISSIONER: We are not under 13 any pressure of time today, so you break as 14 you think fit, and if you want to consult with 15 Mr McGrail or anyone else, by all means do 16 so. 17 MS GALLAGHER: I am very grateful. I 18 am in your hands, sir, as to whether you want 19 me to start and then take a break, or whether 20 it may be more efficient to take a ten-minute 21 break now and I can address you completely 22 in one go. 23 THE COMMISSIONER: That seems quite 24 sensible. 25 MS GALLAGHER: I am very grateful. If</p> <p style="text-align: center;">Page 36</p>

<p>1 we could have, say, ten minutes or 2 potentially 15, we would be grateful for that. 3 THE COMMISSIONER: Sure. Do you 4 want to say something? 5 SIR PETER CARUANA: My learned friend 6 cannot see me, so I offer to stand while she is 7 on her feet. But I do not know to what extent 8 my learned friend intends to refer orally this 9 morning to her written submissions of last 10 night, or at least we received them last night. 11 Just to say this. I was going to submit after 12 her and therefore rise to interrupt her because 13 otherwise it might be too late after her, but 14 there are -- 15 THE COMMISSIONER: You had better ask 16 her what she is going to say. Not now. 17 SIR PETER CARUANA: If my learned 18 friend is not going to cover the factual part -- 19 THE COMMISSIONER: You can try to sort 20 it out between you. 21 SIR PETER CARUANA: Okay. 22 MS GALLAGHER: I can give an indication 23 immediately that we were intending to refer 24 to the factual summary and indeed we have 25 raised as an injustice issue, our view is that</p> <p style="text-align: center;">Page 37</p>	<p>1 having more difficulty hearing you than 2 hearing me. 3 MS GALLAGHER: I think the difficulty is 4 that those of us who are advocates are facing 5 you. 6 THE COMMISSIONER: Yes, I understand. 7 I cannot do anything with the nature of the 8 equipment but for the full hearing I will 9 make sure that everyone can clearly hear 10 what is going on. 11 MS GALLAGHER: I am very grateful. 12 There has been a request for speakers for 13 amplification, and I think because we have a 14 loud fan which is necessary for comfort 15 reasons -- 16 THE COMMISSIONER: Well, it is a 17 genuine complaint. I will sort it out, but the 18 only remedy at the moment is everyone just 19 speaking rather more loudly. 20 MS GALLAGHER: If you find me shouting, 21 because I am right in front of you -- 22 THE COMMISSIONER: No, I understand 23 entirely. 24 MS GALLAGHER: And may I just suggest 25 that if any members of the press or public or</p> <p style="text-align: center;">Page 39</p>
<p>1 our written submissions should be provided, 2 the written submissions to which we intend 3 to refer, and if there is an objection to that it 4 may be sensible to deal with that matter first. 5 SIR PETER CARUANA: That is why I rose, 6 before she articulates the very things that we 7 -- 8 THE COMMISSIONER: I understand 9 entirely. I will give you the opportunity to 10 talk it through, and tell me when you are 11 ready. You are under no pressure of time. 12 MS GALLAGHER: I am very grateful. 13 (10.49) 14 (A short adjournment) 15 (11.25) 16 MS GALLAGHER: Sir, I am very grateful 17 for the time. May I first just deal with a very 18 practical issue, which is I have been 19 informed that it is exceptionally difficult for 20 people at the back of the room to hear any of 21 us speaking because the microphones are for 22 recording rather than amplification, so I am 23 sorry I am shouting a lot but it is because of 24 the difficulty with sound. 25 THE COMMISSIONER: I believe they are</p> <p style="text-align: center;">Page 38</p>	<p>1 indeed affected persons who are sitting in the 2 public gallery have a difficulty with hearing 3 anyone, that they give you an indication, 4 because we cannot see them. 5 THE COMMISSIONER: No I understand 6 that. 7 MS GALLAGHER: Sir, I am just going to 8 address you very briefly for now, because the 9 issue now is that I think we are going to have 10 to have, first of all, legal submissions on a 11 discrete point and I am afraid, despite the 12 indication you gave earlier, it is likely that 13 we will need a determination on that legal 14 issue. It is an issue arising, that has been 15 raised by Sir Peter Caruana on behalf of the 16 Government, and then in light of that we may 17 need a further short break. I understand that 18 there is a request or an application from Sir 19 Peter Caruana on behalf of the Government - 20 he will address you in a moment - to (A) - 21 SIR PETER CARUANA: My Lord, may I 22 describe my own application rather than my 23 learned friend pre-empt it? 24 MS GALLAGHER: I am content to do it 25 that way. There was a reason I was raising</p> <p style="text-align: center;">Page 40</p>

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<p>1 this immediately. He has an application 2 which he will make; I will not summarise it. 3 We want to respond after he has made it, and 4 it is a legal argument which is, of course, 5 being made in open court, in open 6 proceedings, today, which is the way we 7 think it should proceed. If Sir Peter has an 8 alternative view as to the way in which this is 9 determined we would wish to hear it. I 10 should say right at the outset, however, that 11 you did make a direction, sir, for written 12 submissions from any of the participants to 13 be filed, if they wished to, by 10 a.m. on 14 Monday 20th June of this year, two days ago, 15 and Mr Ian McGrail -- 16 SIR PETER CARUANA: My learned friend 17 continues to reply to my application which 18 you have not yet heard except that, as a 19 matter of courtesy, I have acquainted her 20 with it a little bit during the adjournment. 21 MS GALLAGHER: I am not replying. I am 22 simply saying right from the outset, before 23 we hear the application, that all participants 24 had the opportunity to file written 25 submissions to ensure the good order of this</p> <p style="text-align: center;">Page 41</p>	<p>1 submissions. Those submissions released, as 2 it were, only because we gave undertakings 3 that we would not share her submissions with 4 anybody, then turn out to include 5 submissions that, as of this morning, she 6 should put the entire document in the public 7 domain, which is somewhat curious. Either 8 the submission were not, either the 9 undertakings requested were not appropriate, 10 or her submissions this morning are not 11 appropriate. Be all that as it my, Mr 12 Chairman, our position is that these 13 submissions should not be put into the public 14 domain either as a document by uploading 15 them at this stage, and in that respect I agree 16 with the submissions made by Mr Santos that 17 documents should be uploaded as our 18 submissions should be uploaded, as from the 19 start of the main hearing. Mr Chairman, you 20 yourself had expressed the view just before it 21 that the documents might be uploaded as and 22 when they were relied on - I think that was 23 your formulation. 24 THE COMMISSIONER: Yes. 25 SIR PETER CARUANA: Mr Santos said</p> <p style="text-align: center;">Page 43</p>
<p>1 hearing. One single participant did that, Mr 2 McGrail, and we are disappointed that an 3 issue has been raised in an open proceeding 4 off the cuff in this way which could easily 5 have been raised and should have been raised 6 in advance, and we say that at the outset. I 7 am content to hear the application and we 8 will respond. 9 SIR PETER CARUANA: Mr Chairman, it 10 will no doubt not have escaped your notice 11 that it is very difficult to respond on Monday 12 to a submission that was not received until 13 yesterday at ten to six in the evening. Much 14 as we tried to pre-empt matters, clairvoyance 15 is not possible. 16 Mr Chairman, you are aware, as I have just 17 said, that these written submissions were 18 received by us yesterday, and ironically they 19 were received by us yesterday only because 20 we had first agreed - otherwise presumably if 21 we had not chosen to give the undertaking 22 that my learned friend demanded for her 23 submissions to your Lordship being shared 24 with us - if we had chosen not to give those 25 undertakings, we would not yet have seen the</p> <p style="text-align: center;">Page 42</p>	<p>1 main hearing start. I would submit that that 2 is logical because of the main reason for our 3 objection, which is that if the document is 4 either uploaded, her submissions of 5 yesterday, and/or she is allowed to speak to 6 certain parts of it which we will identify for 7 your Lordship in a moment, but basically 8 Part B facts, paragraphs 7 to 17 and 9 paragraph 49, which contain Mr McGrail's 10 allegations, view of the facts, assessment of 11 facts -- 12 THE COMMISSIONER: It is essentially his 13 opening statement, is it not? 14 SIR PETER CARUANA: It is essentially an 15 opening statement, and that will be in the 16 public domain nine months before the 17 substantive hearing is scheduled to begin. 18 Conditioning public opinion which, given the 19 seriousness of the allegations made and the 20 persons against whom they are made, I 21 would submit to you, Mr Commissioner, is 22 wholly unfair unless the Government is 23 going to be taunted to engage in some public 24 battle of facts with Mr McGrail, which is not 25 its wish and would not, I think, be helpful to</p> <p style="text-align: center;">Page 44</p>

<p>1 Mr Chairman's job.  2 THE COMMISSIONER: At this stage.  3 SIR PETER CARUANA: At this stage. We  4 have not yet had these written submissions  5 for 24 hours. We have not been able to take  6 full and proper instructions on them.  7 Therefore, what we are asking is that, Mr  8 Chairman, you should not allow my learned  9 friend to allude to the facts in the paragraphs  10 that I have mentioned, nor that the  11 documents should be uploaded until after we  12 have had an opportunity to make detailed  13 written submissions in an appropriate period  14 of time which cannot be too short nor too  15 long, and that, Mr Commissioner, you will  16 then adjudicate, I would suggest, I would  17 submit, at the second hearing where the  18 Chair was himself careful in his own  19 summary of the facts when he opened these  20 proceedings, to studiously remain neutral so  21 as not to put in the public domain any version  22 of the facts which are not yet tested by him.  23 To allow my learned friend effectively now  24 to open on those facts under the guise of a  25 submission document in support of a CMC</p> <p style="text-align: center;">Page 45</p>	<p>1 whatsoever. In contrast, allowing her to do it  2 today will expose some of the highest office  3 holders in this place to rampant criticism by  4 those who will have simply consumed their  5 version of the facts, and I don't know by what  6 measure that can be thought to be fair or  7 reasonable when it is neither necessary for  8 the procedural stage at which we are nor  9 causes her client any injustice by delaying it  10 until September.  11 THE COMMISSIONER: Should these  12 matters even be considered in September  13 when the opportunity of a full opening  14 statement will be given at the full hearing in  15 March?  16 MR CARUANA: If after we have had an  17 opportunity to do the same, a proper  18 opportunity, if the Chair wants to say he is  19 happy for the parties to wax lyrical about  20 their version of events in public in  21 September, that is a matter for you, sir.  22 THE COMMISSIONER: Personally, I think  23 it is better to wait to have proper opening  24 statements at the commencement of the full  25 hearing.</p> <p style="text-align: center;">Page 47</p>
<p>1 hearing, the agenda for which does not invite  2 any submissions on the facts - we are here to  3 discuss procedural matters. You, Sir, and Mr  4 Santos, have already indicated that you  5 would be making decisions about publicity  6 and policies - by the way, there is not a  7 redaction policy so if I want to submit to  8 your Lordship that you should not redact,  9 there is not yet a redaction policy under  10 which you could do it.  11 THE COMMISSIONER: No, there isn't yet  12 but we need to set one up, obviously.  13 MR CARUANA: This is why I am saying at  14 the second hearing, when the Commission  15 will be making decisions on publicity, when  16 you will have adopted policies is the  17 appropriate time, is the earliest appropriate  18 time, in my respectful submission, for any of  19 the parties to use undetermined publicity  20 decisions and policies to put into the public  21 domain, prematurely by nine months, their  22 own version of facts in a way that can only  23 undermine the work of the commission and is  24 unnecessary, and not allowing her to do so  25 today will cause her client no injustice</p> <p style="text-align: center;">Page 46</p>	<p>1 MR CARUANA: That would be the  2 conventional thing.  3 THE COMMISSIONER: By that time we  4 will know precisely what everyone is saying.  5 MR CARUANA: Exactly, sir, that is my  6 position. There is one very particular matter,  7 which I will not allude to because I would be  8 shooting myself in the foot, but if I can invite  9 Mr Chair and those who have it before them  10 to refer to paragraph 14.  11 THE COMMISSIONER: I hadn't foreseen  12 that any of this was going to arise. It is much  13 easier for me, if anyone is going to refer to a  14 document to provide me with a hard copy.  15 (SAME HANDED) Thank you. One has  16 been given to me.  17 MR CARUANA: There is a matter referred  18 to at paragraph 14 involving a nolle prosequi.  19 THE COMMISSIONER: Yes. Obviously I  20 have read this but let me just familiarise  21 myself. Yes, paragraph ...  22 MR CARUANA: If the subject matter of  23 that paragraph entered the public domain at  24 this stage, Her Majesty's Attorney would be  25 put in very severe difficulty. This is an issue</p> <p style="text-align: center;">Page 48</p>

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<p>1 which he anticipated he might have to 2 explain to you but even then he would have 3 to do so upon a very special application to 4 you, Commissioner, because although the 5 insinuations contained in that paragraph are 6 severely disputed, indeed rejected and 7 denied, to articulate the reasons for his 8 actions then would defeat the very reasons 9 why he had to do it. 10 These are submissions that the learned 11 Attorney may want to make to the inquiry in 12 private and make an application to that 13 effect. 14 Finally, before I sit down, so I know you are 15 seised of the nature of our difficulty, it is 16 apparent from her submission document that 17 my learned friend seeks to rely on the 18 principles of open justice. I would just like 19 to say a couple of things about that. First of 20 all, the application of the principles of open 21 justice, not least as she describes them, are 22 themselves matters about which we need to 23 make detailed legal submissions to you. 24 THE COMMISSIONER: The principle is 25 clear.</p> <p style="text-align: center;">Page 49</p>	<p>1 before under constitution of this commission 2 that it would publish the document in full, so 3 my submissions are not about protecting the 4 government from findings of fact that you 5 may make. My submissions are about 6 protecting the government, the Chief 7 Minister, the Attorney General and the then 8 Governor from the public opprobrium that 9 attaches, despite the offices that they hold, to 10 public opinion being exposed prematurely to 11 one side's accusatorial allegations, versions 12 of those facts. I know of no principle of open 13 justice, nor of the rule of law that requires 14 any of those worthy principles to turn on a 15 party's right to prematurely vent their own 16 version of the facts. That is not what the 17 principle is about. 18 THE COMMISSIONER: I have got the 19 point. 20 MR CARUANA: Thank you, sir. 21 THE COMMISSIONER: Yes. 22 MS GALLAGHER: Thank you, sir. As we 23 understand the application that has been 24 made - and I hope those at the back of the 25 room can hear me - there are two aspects to</p> <p style="text-align: center;">Page 51</p>
<p>1 MR CARUANA: The application of the 2 principles and the manner of the principles to 3 proceedings of this nature is not clear and --- 4 THE COMMISSIONER: Well, there may be 5 exceptions. 6 MR CARUANA: It is the constitutional 7 principle. I can say this because we recently 8 had a case about this in the Supreme Court 9 and that is the authority that I would cite to 10 the Commissioner if given time to make the 11 submission. When my learned friend refers 12 to the constitutional principle she is referring 13 to the constitutional principle in the United 14 Kingdom which has no written constitution 15 and indeed the UK Court of Appeal has 16 described the open justice, common law 17 principles in the UK as "constitutional" in the 18 UK, unwritten. Gibraltar has a written 19 constitution which makes specific provisions 20 about this, and I just need to bring ... The 21 government, sir, let me hasten to add, is fully 22 committed to the principle of transparency in 23 this and does not seek to suppress any 24 established and found facts, hence the 25 government's own political commitment</p> <p style="text-align: center;">Page 50</p>	<p>1 it. the first is to impose a prior restraint in 2 effect on what we say ... I would be grateful 3 if my learned friend didn't interrupt me while 4 I am making submissions. 5 THE COMMISSIONER: I think he is 6 merely indicating that he couldn't hear you. 7 MR CARUANA: Thank you, sir. 8 MS GALLAGHER: You couldn't hear me? 9 MR CARUANA: No. 10 MS GALLAGHER: I will start again if I 11 may. 12 THE COMMISSIONER: By all means. 13 MS GALLAGHER: Thank you. As I 14 understand it there are two aspects to the 15 application made by the government to you 16 today, first, to effectively impose a prior 17 restraint on what we say orally in our 18 submissions to you today. I understand the 19 principal concern is about publication of 20 those remarks by the press, but he wishes not 21 only to constrain publication, for example in 22 the form of a reporting restriction, he also 23 seeks to constrain the submissions which are 24 made to you by Mr Ian McGrail, the former 25 Commissioner of Police. The second aspect</p> <p style="text-align: center;">Page 52</p>

<p>1 is that he wishes to prevent timely 2 publication of all written submissions for 3 today's hearing, and as I understand it, rather 4 than adopting the approach which we 5 understood you to be endorsing, sir, and with 6 which we agree, which is that documents as 7 they are referred to and relied upon, there 8 should be a presumption that they are 9 published, rather he is suggesting that it 10 should wait, uploading on the website at the 11 final hearing or potentially September. In 12 our submission, both of those applications 13 are misconceived. 14 May I start by dealing with the suggestion 15 that there is an irony in the submissions 16 having been received subject to an 17 undertaking and Mr McGrail relying heavily 18 upon the principle of open justice? There is 19 no irony or contradiction whatsoever, sir. 20 The process which we suggested, in the 21 absence of an existing redaction policy or an 22 existing document management policy, was 23 to follow the course which has been adopted 24 in every single one of the recent public 25 inquiries which has taken place in England</p> <p style="text-align: center;">Page 53</p>	<p>1 should not be entitled to make the 2 submissions we wish to make to you today. I 3 say at the outset --- 4 THE COMMISSIONER: These are 5 submissions of fact, Sir Peter would say. 6 MS GALLAGHER: That's not correct, sir. 7 May I address on what we wish to do? 8 THE COMMISSIONER: Yes. 9 MS GALLAGHER: We recognise and 10 agree, sir, that today's first preliminary 11 hearing, given the revised agenda, concerns 12 matters of procedure and administration and 13 that you will not at this stage be making a 14 determination of facts, nor do we ask you to 15 do that. What we intended to do today was 16 to give you a broad summary of the factual 17 context to the extent necessary to make 18 procedural submissions on a number of 19 issues before you, and that is entirely 20 standard and logical. The procedure in any 21 inquiry is, of course, coloured by the factual 22 backdrop, or the alleged factual backdrop. 23 By way of example, sir, you have got our 24 detailed submissions. One of the matters on 25 which I wish to address you in respect of</p> <p style="text-align: center;">Page 55</p>
<p>1 and Wales, including the independent inquiry 2 into child sexual abuse, referred to by my 3 learned friend counsel for the inquiry, the 4 Leveson inquiry, and indeed a number of 5 large scale inquests in England and Wales, 6 including Grenfell, Hillsborough and the 7 Manchester bombings inquests, and in all of 8 those cases there was an entirely routine 9 undertaking given by core participants or 10 interested persons to the effect that 11 documents provided to them would not be 12 released or published prior to them being 13 relied upon or published by the decision- 14 making body, and that shows respect for the 15 process and ensures, sir, that you ultimately 16 as the Commissioner, and, indeed, the sole 17 member of this Commission, as the sole 18 decision-maker, retain control over 19 documentation, and it is not, for example, 20 widely circulated prior to reliance being 21 placed on it in court and you determining 22 issues such as those which have arisen today, 23 so that was entirely proper and appropriate. 24 The suggestion that is made in relation to the 25 prior restraint argument is essentially that we</p> <p style="text-align: center;">Page 54</p>	<p>1 item 3 on the agenda, and, indeed, which 2 counsel to the inquiry has already addressed 3 you on, relates to our third proposed policy, a 4 policy relating to protective measures for 5 witnesses and/or core participants. The 6 factual context is essential for us to be able to 7 make the submission as to why such a policy 8 is needed. I am not going to address you on 9 it fully now but put shortly, as you will know 10 from my written submissions and a point 11 which we make is that at the heart of this 12 inquiry is a man, Mr McGrail, my client, 13 whose version of events, as you have seen, is 14 that he was placed under improper pressure 15 at the highest levels of government. He was 16 placed under improper pressure at the highest 17 levels of government in conducting his job 18 and --- 19 THE COMMISSIONER: I don't want you to 20 carry on making factual allegations when we 21 are deciding whether or not you should be 22 permitted to do so. 23 MS GALLAGHER: That is the only 24 sentence that I wish to say. 25 THE COMMISSIONER: Okay.</p> <p style="text-align: center;">Page 56</p>

<p>1 MS GALLAGHER: And the reason I wish 2 to say that is we cannot see how we can 3 make submissions about the importance of 4 protective measures for witnesses and/or core 5 participants without that backdrop, so, to be 6 clear, we have never intended to refer --- 7 THE COMMISSIONER: You haven't 8 identified the witnesses who need protection 9 have you? 10 MS GALLAGHER: No, but this does go to 11 a matter which was raised by counsel to the 12 inquiry in relation to a public call for 13 evidence, and we wanted to make 14 submissions on that. 15 THE COMMISSIONER: If and when that 16 arises we will consider it. We can no doubt 17 agree heads of policy to what people should 18 be given protection. 19 MS GALLAGHER: And we can address 20 you on that with a very limited factual 21 context, so, to be clear, we don't intend, or 22 we didn't intend to take you to paragraph 14 23 or to run through in detail paragraphs 7 to 17 24 of our submissions, which are the parts of the 25 submissions about which my learned friend</p> <p style="text-align: center;">Page 57</p>	<p>1 moment. 2 MS GALLAGHER: May I give an 3 indication about paragraph 49. 4 THE COMMISSIONER: You wrote 5 paragraph 49. You have just got to give me a 6 chance, I am a bit slower than ... 7 MS GALLAGHER: Of course. 8 THE COMMISSIONER: Yes. 9 MS GALLAGHER: May I address you on 10 paragraph 49 since you have it before you? 11 THE COMMISSIONER: Yes. 12 MS GALLAGHER: I am perfectly content 13 not to refer to paragraph 49 openly save for 14 the first sentence, but the remainder of 15 paragraph 49 I can understand the 16 submission that is made and the indication 17 you have given, and I am quite content not to 18 refer to that in open court today and to 19 address you on that more fully. I hope that 20 assists. 21 We would also be content to these 22 submissions being published with a redaction 23 if you saw fit of paragraphs 7 to 17 and that 24 section of paragraph 41 if considered 25 appropriate, and I appreciate you may wish</p> <p style="text-align: center;">Page 59</p>
<p>1 has a concern. 2 THE COMMISSIONER: It is headed 3 "Factual Background". 4 MS GALLAGHER: It is Factual 5 Background, section B, so paragraphs 7 to 13 6 and concern Mr McGrail's retirement, 7 paragraphs 14 to 17 concern events following 8 Mr McGrail's resignation, and we don't 9 understand the objection to paragraphs 18 to 10 20 which relates to the issues of commission, 11 and, indeed, was referred to --- 12 THE COMMISSIONER: Sorry. Just go 13 slowly. 14 MS GALLAGHER: It is page 8, paragraphs 15 18 to 20, so the core paragraphs of concern 16 seem to be paragraphs 7 to 17 as we 17 understand it, in section B, similarly, of 18 course, we don't necessarily need to refer to 19 paragraphs 18 to 20 if you were to direct us 20 not to but we simply can't understand the 21 concern. (SOTTO VOCE INTERJECTION) 22 I am just being told sotto voce here that there 23 is also this concern about paragraph 49, 24 which is outside section B, and --- 25 THE COMMISSIONER: Just give me a</p> <p style="text-align: center;">Page 58</p>	<p>1 to take some time to consider that, but may I 2 return to the first part of my learned friend's 3 submission which is a request or an 4 application to impose a prior restraint on 5 what we as counsel for Mr McGrail say 6 orally in our submissions to you today. We 7 do not seek, for the avoidance of doubt, any 8 prior restrictions on what participants say in 9 this open hearing which is, as you indicated 10 right at the outset, sir, and in words for which 11 we are very grateful, this hearing which is 12 independent of government and an entirely 13 independent inquiry. We entirely accept and 14 welcome, sir, that you are an entirely 15 objective and independent outsider and that 16 the inquiry is to be conducted quite 17 independently of government, but it is 18 surprising that a submission is now made by 19 the government today suggesting that Mr 20 McGrail's representatives should be 21 constrained in how they address you or what 22 they say. Are we to have prior approval and 23 pre-approved oral submissions via the 24 government? That seems to run against the 25 entire tenor and reason for this inquiry. The</p> <p style="text-align: center;">Page 60</p>



<p>1 context of this, of course is, that Mr McGrail 2 has remained silent about the underlying 3 causes of his retirement for over two years, 4 during most of which time he has been 5 waiting for this inquiry to commence. 6 As you will know from our written 7 submissions, and as others in court will know 8 from following parliament, that is not the 9 case for all participants here. Comments 10 have been made in parliament on 27 July 11 2020 by the Chief Minister, and you have 12 seen from our submissions that we take issue 13 with what was said, so it is not right to 14 suggest, sir, that every participant here before 15 you has come to you, has been silent on these 16 issues and has not presented a factual picture. 17 That is simply not correct, but the main 18 concern we have is in order to be effective in 19 making submissions to you today we do need 20 to make brief reference to the factual context 21 because it is impossible to divorce our 22 submissions on the process from the factual 23 context, and so we are quite content to do 24 that in a way that you see appropriate and we 25 suggest that paragraphs 7 to 17 and</p> <p style="text-align: center;">Page 61</p>	<p>1 the extent necessary to address the matters on 2 the agenda, and my learned friend is, of 3 course, entitled to respond, and ultimately if 4 there is a concern about the content of 5 anything which we say today ultimately my 6 learned friend can make an application for a 7 reporting restriction, or he can make an 8 application to vary the terms on which you 9 suggested today's hearing would proceed, 10 with live contemporaneous reporting and live 11 tweeting, for example, but it is not 12 appropriate for the tail to wag the dog and for 13 us to be told we are unable to refer in any 14 way to the factual context as our client sees 15 it. We appreciate at this stage it is untested, 16 of course, because of the stage we are at in 17 making procedural submissions to you, in 18 circumstances where there is no issue of 19 prejudice in respect of the decision-maker, so 20 in terms of the way forward on item A, the 21 proposed imposition of a prior restraint on 22 what we say orally in submissions to you 23 today, our proposed approach, sir, is that we 24 address you as we had intended to, with a 25 broad and brief indication of the factual</p> <p style="text-align: center;">Page 63</p>
<p>1 paragraph 49 save for the first sentence gives 2 a useful guide in light of the concerns that 3 have been raised, and we will hear from you 4 as to whether you take a similar concern 5 about paragraphs 18 to 20 which also fall 6 within section B. 7 We would also make clear, sir, at this stage, 8 that this is not a criminal trial with a jury or 9 an inquest with a jury. This is an 10 inquisitorial process; an inquiry with you as a 11 professional decision-maker from the highest 12 judicial office, so there simply isn't an issue, 13 sir, in our submission, about you being 14 prejudiced in terms of your ultimate 15 determination. We have no concern about 16 that. My learned friend's main concern 17 appeared to be the difficulty of press 18 reporting of today's hearing. 19 THE COMMISSIONER: He is concerned 20 about the effect of reporting one side will 21 have in the court of public opinion: that is his 22 concern. 23 MS GALLAGHER: Yes, but, sir, in respect 24 of that we are perfectly entitled, we submit, 25 to make submissions on the factual context to</p> <p style="text-align: center;">Page 62</p>	<p>1 context only to the extent necessary to make 2 the procedural submissions that we wish to 3 make. If we, sir, inadvertently stray into an 4 area that we shouldn't you as the 5 Commissioner are, of course, perfectly able 6 and should stop us in our tracks. You also 7 have mechanisms available to you if 8 something is said in open court and in open 9 proceedings today which raises any concern, 10 whether by me, by my learned friend for the 11 government or by anyone else, but what is 12 not appropriate is for the government to pre- 13 vet our submissions and prevent us making 14 the submissions which we need to make on 15 the agenda items. In our submission, there is 16 simply no legal basis for that, and this is not 17 an attempt to have an opening statement in 18 the first preliminary hearing, it is simply not 19 that. 20 My learned friend says in respect of open 21 justice that open justice is in itself a matter 22 on which detailed legal submissions could be 23 made, and our response to that is this is a 24 public inquiry. Your earlier indication of a 25 proposed agenda for this hearing was very</p> <p style="text-align: center;">Page 64</p>

<p>1 wide-ranging and it is now narrowed in 2 respect of it being split over two hearings, 3 but the government could and should have 4 done that in advance. There was a direction 5 for --- 6 THE COMMISSIONER: They didn't know 7 what you were going to say until yesterday. 8 MS GALLAGHER: On that point, in respect 9 of not knowing what we were going to say 10 until we filed our submissions, this is not an 11 issue which arises only from our submissions 12 because if the submission being made is that 13 Mr McGrail and his legal representatives 14 cannot refer to the factual context as he sees 15 it we could and should have been put on 16 notice of that matter, as indeed should you. 17 We could have ... I am so sorry, I am being 18 interrupted quite a lot while speaking. I just 19 ask, I did my learned friend the courtesy of 20 not interrupting him, could I just ask that I 21 not be interrupted while I am speaking. I 22 would be very grateful. I am getting giggling 23 and sniggering from behind me, I am not sure 24 --- 25 THE COMMISSIONER: I think that is</p> <p style="text-align: center;">Page 65</p>	<p>1 by Article 10 of the European Convention --- 2 THE COMMISSIONER: I am well aware of 3 the principles. 4 MS GALLAGHER: Of course, and it is 5 underpinned of course also by the Gibraltar 6 constitution and the pre-eminence which it 7 gives to freedom of expression. The 8 government has said in submissions to you 9 today that they are fully committed to the 10 principle of transparency and they don't seek 11 to suppress any established and final fact and 12 we were concerned by that phrase because 13 that suggests that during the preliminary 14 stages of this inquiry there may be a 15 difficulty with full transparency. We are 16 conscious there is also a submission to come, 17 which I will not address you on today, about 18 the final hearings being in private or in part 19 in private, which we will address you on in 20 due course, but that is not full commitment to 21 the process of transparency. 22 THE COMMISSIONER: If it arises. 23 MS GALLAGHER: Apologies, I am so 24 sorry, sir. 25 THE COMMISSIONER: If it arises.</p> <p style="text-align: center;">Page 67</p>
<p>1 overstating the position, but I take your point 2 and everybody has heard clearly what you 3 are saying. 4 MS GALLAGHER: Thank you. This is a 5 hearing proceeding before you. We just ask 6 that everyone shows all participants 7 appropriate respect. 8 These are submissions which could have 9 been made in advance, and I hope you have 10 seen, sir, that we have made, we hope, 11 constructive suggestions to ensure that going 12 forward at subsequent hearings --- 13 THE COMMISSIONER: The procedural 14 suggestions are exceedingly helpful, and I 15 have no doubt will form the basis of various 16 protocols. 17 MS GALLAGHER: I am very grateful. In 18 respect of open justice, we obviously had an 19 indication of what the government has said 20 right from the outset, that they wouldn't seek 21 to restrain what Mr McGrail would have 22 explored in this process, and the terms of 23 reference are, of course, very broad. 24 The open justice issue is a matter which is 25 common law principle; it is underpinned also</p> <p style="text-align: center;">Page 66</p>	<p>1 MS GALLAGHER: If it arises. Sir, I won't 2 address you on that today. In respect of the 3 first point, sir, our suggestion is we are 4 before a preeminent and extremely 5 experienced judicial officer who has had the 6 highest judicial office and who is 7 approaching this entirely correctly as an 8 independent objective decision-maker with 9 extensive experience of processes such as 10 these. We intend, as professionals, to refer 11 only to the factual context to the extent 12 necessary to address the agenda items. We 13 will not be running through in detail 14 paragraphs 7 to 17. We are content to omit 15 those, or the offending part of paragraph 49, 16 and we have dealt with that very quickly on 17 the hoof today, and we hope that addresses 18 the concern. 19 You will see that running through the 20 submissions, the submissions we make about 21 the underlying legal framework, the 22 relevance of legal standards about corruption 23 and whistle-blowing, the relevance of legal 24 standards about transparency and the 25 particular processes and policies which we</p> <p style="text-align: center;">Page 68</p>

17 (Pages 65 to 68)

<p>1 propose, there is an underpinning factual 2 basis to that so we simply seek to address 3 you on those matters insofar as we need to 4 address the agenda items. If, sir, we deal 5 with that inappropriately it can and should be 6 addressed at the time. 7 In relation to the second aspect of the 8 application which is made, that is to prevent 9 publication of our written submissions and 10 await uploading those until the final hearing, 11 as we understand it, our compromise 12 proposal, sir, is that instead those 13 submissions with the redactions sought, and 14 as directed by you, whether that is a 15 redaction to the entirety of section B, which is 16 paragraphs 7 to 20, and a redaction to the 17 entirety of paragraph 49, or, in our alternative 18 submission, a redaction of paragraphs 7 to 17, 19 and all of paragraph 49 bar the first sentence - 20 they can and should be published sooner. 21 There is extensive case law which, of course, 22 sir, you are very familiar with on the short 23 shelf life of news, and the delaying of the 24 publication of materials not aiding the public 25 understanding. We have referred in our</p> <p style="text-align: center;">Page 69</p>	<p>1 with appropriate redactions. Our primary 2 position is that the redactions should be only 3 the ones we have referred to - paragraphs 7 to 4 17, all of paragraph 49 bar the first sentence - 5 but, in the alternative, if you are persuaded by 6 my learned friend and you wish to redact the 7 entirety of section B and the entirety of 8 paragraph 49, we suggest that the submissions 9 be uploaded in that form. But we suggest that 10 it would not be appropriate to wait until 11 September, and even less to the final hearing, 12 for those submissions which relate to the 13 procedural matters before you today, to be 14 uploaded and made available publicly. If you 15 would just give me a moment? Just two short 16 points. I am very grateful to my learned 17 junior. In addition to the submission I have 18 just made to you about the immediate course 19 of action, we would also ask that the full 20 submissions be published in due course, and 21 our suggestion in respect of that is that that be 22 prior to the September 2022 second 23 preliminary hearing, but we can address 24 further ... 25 THE COMMISSIONER: By the full</p> <p style="text-align: center;">Page 71</p>
<p>1 submissions to the seminal case of Guardian 2 News and Media, on extradition proceedings, 3 in which legal representatives made reference 4 repeatedly to paragraph 17, paragraph 49 and 5 so on, of documents which the public did not 6 have before them, and, if I may put it this way, 7 it rendered a proceeding, which was in theory 8 open, in open court, closed to those who did 9 not have the documents. And the principle of 10 open justice applies to this hearing. This is the 11 first preliminary hearing, it is of the utmost 12 importance. You have indicated in your 13 opening today the importance of this process 14 within Gibraltar and you and your counsel and 15 referred to the importance of transparency with 16 the transcripts, and we are very grateful for 17 that. But the principle of open justice does 18 have at its core a recognition of the importance 19 of contemporaneous reporting and informed 20 reporting, and that principle that news is a 21 commodity with a short shelf life. So, our 22 alternative proposal is that our submissions be 23 published as soon as they can be, along with 24 other documents referred to today, which are 25 contained in the bundle that we have before us,</p> <p style="text-align: center;">Page 70</p>	<p>1 submissions, you mean the document in its 2 entirety? 3 MS GALLAGHER: Yes. 4 THE COMMISSIONER: Unredacted, yes. 5 MS GALLAGHER: But we can address that 6 perhaps further after your indication today. 7 The time sensitive issue as to what happens 8 today, in terms of the submissions that we 9 make, and what happens with the printed 10 submissions and whether they can be provided 11 to the public. And the second and final point 12 which I would make in summary is that 13 essentially the submission which has been 14 made to you is that the government's political 15 embarrassment should be a relevant factor 16 when you are deciding this issue, and there is 17 no principled basis for that. The principle of 18 open justice in national and international law is 19 of fundamental importance and it is subject to 20 a very high bar when it is to be departed from. 21 In our submission, the proposed course which 22 we have outlined would allow us to proceed 23 efficiently today. There is no jury to be 24 prejudiced. You have mechanisms available 25 to you if I inadvertently stray over the line,</p> <p style="text-align: center;">Page 72</p>

<p>1 which will protect others' interests, and to take 2 the course proposed by my learned friend 3 would cause substantial prejudice to Mr 4 McGrail. The submission was made that there 5 would be no prejudice whatsoever to Mr 6 McGrail if we were to be barred from referring 7 to the facts at all, and if the course of action 8 proposed by these submissions were to be 9 followed, i.e. for them not to be published for 10 many months, in our submission, there is a 11 substantial prejudice to Mr McGrail, and you 12 can see that when you read through our 13 submissions, because the factual context is 14 central to the submissions which we are 15 making on the issues of process. I hope the 16 suggestion that we have made of a 17 compromise approach makes a way through 18 and allows us to proceed today. We are 19 champing at the bit to answer and provide 20 further submissions on the agenda items, 21 which we anticipate will be relatively brief. 22 THE COMMISSIONER: That is procedure. 23 MS GALLAGHER: It is procedure and it is in 24 the context of us needing to have the factual 25 backdrop to it. Unless I can assist you further,</p> <p style="text-align: center;">Page 73</p>	<p>1 Commissioner to make a final determination 2 of the matters raised in Mr McGrail's team's 3 submissions at tomorrow's hearing." 4 THE COMMISSIONER: That is on 5 procedure. 6 MR NEISH: On procedure, yes. "But I want 7 to signal that there would be no major 8 opposition from us tomorrow on any 9 procedures proposed by Mr McGrail's team, 10 subject, of course, to consideration of any 11 submissions which any other participant might 12 make. What I propose to say tomorrow is that 13 we have received the proposals, which we are 14 grateful for, and have considered them, and we 15 will give the other parties the opportunity to 16 respond to them, either at the hearing or in 17 writing afterwards, prior to arriving at a final 18 decision. In the meantime, now that we have 19 received evidence from all four parties 20 identified as to the relevant statutory position, 21 and the issues ... we can also work on the 22 policies themselves. I hope that this assists 23 everyone in terms of preparation for 24 tomorrow. I should add that, for reasons out 25 of our control, the timetable proposed in the</p> <p style="text-align: center;">Page 75</p>
<p>1 sir, they are our submissions on this point. 2 THE COMMISSIONER: No, thank you. 3 MS GALLAGHER: Thank you. 4 THE COMMISSIONER: Does anybody else 5 want to say anything? 6 MR NEISH: Yes, if I may, Mr 7 Commissioner? 8 THE COMMISSIONER: Yes. 9 MR NEISH: I do not want to touch on the 10 issues upon which my learned friends have 11 touched, but I would address you on what I 12 consider to be a digression from what is for the 13 preliminary hearing. It is clear from the 14 agenda that today's hearing is basically very 15 much a preliminary hearing to establish 16 procedures. It is not even a hearing to 17 determine the procedures. It is a hearing to 18 consider how we should go forward in 19 determining those procedures. Counsel for Mr 20 McGrail have put forward a number of 21 procedural proposals and we received an email 22 from counsel to the inquiry, from which if I 23 may I would like to read, and this is not the 24 entire email, but part of it: "Given the 25 shortness of time, we do not propose for the</p> <p style="text-align: center;">Page 74</p>	<p>1 submissions is not viable, but we intend to 2 make progress on these matters as swiftly as 3 possible." Now, in my submission, those 4 observations by counsel to the inquiry are 5 entirely sensible and are consistent with the 6 purpose for which this hearing was convened 7 today; in other words, to discuss how we go 8 forward on the issues of procedure. It seems, 9 in my submission, that what Ms Gallagher is 10 trying to do is to expand the scope of this 11 preliminary hearing, as stated on the agenda, 12 and to take it beyond that, in ways which are 13 not necessarily helpful to the establishment of 14 the procedures and to the ascertaining of facts 15 by the inquiry. If I may say, it seems that Ms 16 Gallagher herself acknowledges the need for 17 procedures and protocols to be put in place 18 before we move forward. And on the 19 undertaking that we were required to give - 20 this is a letter to us: "Mr McGrail's team have 21 agreed to the submissions being shared with 22 you and your client" - in other words, the 23 submissions which Ms Gallagher wishes to 24 refer to open justice - "on the basis that you 25 undertake that you will only share them with</p> <p style="text-align: center;">Page 76</p>

<p>1 your client and that your client undertakes not 2 to share them any further. In order to ensure 3 that the submissions can be circulated as 4 quickly as possible, and pending ..." - and I 5 emphasize these words - "... and pending any 6 future submissions on the issue of publicity 7 and the development of an inquiry policy on 8 this issue. Can you please provide such 9 undertaking in order that we may share the 10 submissions with you?" We gave the 11 undertakings, on the basis that it seemed 12 sensible that, before anything was released 13 publicly, that there should be inquiry policies 14 established on this issue. Thank you, and that 15 is all that I have to contribute to that. 16 THE COMMISSIONER: Yes. Mr Santos. 17 MR SANTOS: Sir, just some brief words. It 18 does sound to me as though we are circling 19 around a sensible compromise here. We will 20 have to hear from Sir Peter Caruana on this. I 21 recognise, as Ms Gallagher, Q.C. has said, that 22 Mr McGrail's team will have to refer to the 23 facts as necessary to make the procedural 24 submissions that they may wish to make, but 25 obviously the question, of necessity, is: what is</p> <p style="text-align: center;">Page 77</p>	<p>1 background ... 2 THE COMMISSIONER: Ms Gallagher 3 referred to "broad and brief" factual 4 submissions. 5 MR SANTOS: Yes, and I do not see that there 6 should be any ... 7 THE COMMISSIONER: This is not a 8 criticism, but that is a pretty vague ... 9 MS GALLAGHER: Of course. 10 THE COMMISSIONER: I might just invite 11 you to think about that and refine it - even 12 define it. 13 MS GALLAGHER: I can address you on that 14 quickly if it would assist? 15 THE COMMISSIONER: No, I would much 16 prefer that you thought it through really. 17 MR SANTOS: Just for what it is worth, my 18 understanding is that the paragraphs that she 19 seeks to redact are the information that she 20 does not propose to refer to in her oral 21 submissions, and if that is what she is 22 proposing, I think, speaking for myself, that 23 that is a sensible way forward. Just a few 24 background points that are important to 25 mention, in fairness to everyone. It is correct</p> <p style="text-align: center;">Page 79</p>
<p>1 necessary to be referred to? I am also grateful 2 for Ms Gallagher, Q.C.'s indication as to what 3 she deems necessary by reference to 4 paragraphs of the skeleton argument, namely 5 paragraphs 7 to 17 and 49, save for the first 6 sentence of the skeleton argument. I for 7 myself see no issue with the remaining 8 paragraphs of section B or the first sentence of 9 paragraph 49 remaining unredacted and being 10 capable of being referred to, but we should 11 obviously hear Sir Peter Caruana, Q.C. on that. 12 THE COMMISSIONER: You mean now? 13 MR SANTOS: On that, yes. Now, those 14 paragraphs are what I understand the 15 government have an issue with in any event. 16 Obviously, the general underpinning factual 17 basis and the general tenor of Mr McGrail's 18 case does need to be mentioned, and it already 19 has been mentioned, and I also agree that 20 political embarrassment cannot be a factor that 21 dictates how this inquiry proceeds. But I do 22 appreciate that there are some items, for 23 example, paragraph 15, which could be a 24 sensitive issue which will require submissions, 25 without prejudging that at all. Just a few</p> <p style="text-align: center;">Page 78</p>	<p>1 that submissions were sought by 10 a.m. on 2 Monday, but it is also correct to make the 3 point that, on the 14th of June, we wrote to all 4 the parties and asked for any issues to be 5 raised with us by Thursday of last week. Mr 6 McGrail's team raised the issues of procedures 7 and policies. They are permitted to do so, it is 8 on the agenda. We have benefited from their 9 submissions, we have mostly, almost entirely 10 accepted what they have proposed. However, 11 there was no suggestion on Thursday that they 12 wanted to make factual opening submissions, 13 and it was not anticipated that there would be 14 an opening statement on the facts, other than 15 generally setting out the case. Nobody, it is 16 fair to say, had advance warning of that, and 17 there was no signal to us or the other parties 18 that that would be dealt with. Then we 19 received the submissions on Monday, which 20 were disclosed subject to undertakings. We 21 agreed to proceed on that basis, which meant 22 that they were only provided to the other 23 participants yesterday at around 6 p.m. The 24 undertaking that was sought by Mr McGrail's 25 team, it is fair to say, was indefinite and open-</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 ended, there was no suggestion when that 2 undertaking was proposed that they would be 3 seeking publication of the document 4 immediately this morning, and indeed we went 5 further than what was sought, because it 6 seemed prudent to us to do so, focusing on Mr 7 McGrail's submissions as to publication, and 8 said that they would not be published without 9 further submissions. So, it was only when I 10 was told shortly before the hearing today that 11 Mr McGrail in fact wished for them to be 12 published that I first learned of that. This is a 13 procedural and administrative hearing, there 14 are parties who are addressed in the factual 15 submissions who have not filed evidence and 16 who are not represented today, and there is no 17 need, in my submission, and it is not helpful, 18 for detailed factual positions to be advanced 19 today. The main hearing will be entirely open 20 and subject to the exceptional circumstances 21 that you have alluded to, if they arise, and 22 opening submissions will be permitted by all 23 participants. Everything will be aired at the 24 appropriate time. The proposals, if I may say 25 so in conclusion, by my learned friend, Ms</p> <p style="text-align: center;">Page 81</p>	<p>1 by, first of all, calling this inquiry at Mr 2 McGrail's request, which it had no legal 3 necessity to do, and then by committing, 4 before it had even started, to publish the report 5 in full. So, I do not think that my clients are 6 open to the criticism that they wish to suppress 7 anything, let alone impose a prior restraint on 8 what she can say. But procedure is sequential 9 and when the CPR says that you cannot do this 10 until that stage, or that until that other stage, 11 no-one is suggesting that anyone is being 12 gagged. Simply, that there is a timely 13 sequence of events for matters to be allowed 14 and to occur at the appropriate stage of the 15 procedure, and that is not imposing restraint on 16 anybody. Secondly, by "political 17 embarrassment", I suppose she is referring to 18 the Chief Minister. May I remind the inquiry 19 that Mr Nicholas Pyle is not a politician and he 20 is not prone or apt to political embarrassment. 21 He was at the time Her Majesty's 22 representative in Gibraltar. And that Mr 23 Llamas is also not a politician apt to political 24 embarrassment. He is Her Majesty's Attorney 25 General for Gibraltar and, therefore, her most</p> <p style="text-align: center;">Page 83</p>
<p>1 Gallagher, Q.C., seem sensible and I propose 2 that the inquiry should accept her proposal that 3 she be permitted to make submissions while at 4 the same time respecting the matters which are 5 set out, not being mentioned. She is, of 6 course, extremely experienced counsel, I think 7 we can trust counsel not to refer to matters 8 which they have already identified they will 9 not be doing, and in terms of the written 10 submissions, I agree that it is proper for these 11 submissions to be published as soon as 12 practically possible, subject to the redactions 13 that have been identified. Those are my 14 submissions by way of assistance. 15 SIR PETER CARUANA: Mr Chair, if you 16 will permit me just a few minutes, very briefly, 17 if you will permit me just three or four 18 minutes, very briefly? 19 THE COMMISSIONER: Yes, of course. 20 SIR PETER CARUANA: Without repeating 21 any of my opening original submissions, my 22 Lord, the first thing I need to correct are some 23 of the less helpful submissions that my learned 24 friend has made. Look, the government has 25 demonstrated its commitment to transparency</p> <p style="text-align: center;">Page 82</p>	<p>1 senior law officer in this place. Neither of 2 them are exposed to political embarrassment 3 but both are exposed to very considerable 4 unfairness and personal prejudice, including 5 the loss of status of their officers, by the 6 premature exposure, not, as my learned friend 7 says, by being barred from referring to facts, 8 but from being barred temporarily, deferring to 9 the appropriate moment, from referring not to 10 facts but to their spin on facts. They are not 11 the same thing. No-one seeks to deny my 12 learned friend the ability to refer to facts, but 13 her client's untested, unchallenged and 14 unchallengeable allegations are not fact, yet 15 that is what she wants in the name of open 16 justice to be allowed to refer to today. If I 17 could just say - and I am trying to make my 18 submissions, sir, without referring to law 19 because this is not what today was about; your 20 Lordship is not prepared for it, we are not 21 prepared for it. But in terms of open justice, 22 and without therefore suggesting any desire to 23 restrain or to curtail or to suppress, simply so 24 that this tribunal proceeds in accordance with a 25 proper understanding of the law of Gibraltar,</p> <p style="text-align: center;">Page 84</p>

<p>1 we would have made, and will still make, if it 2 remains relevant, submissions about that. I 3 will refer the tribunal to s.8(9) of the Gibraltar 4 Constitution, which is the constitutional 5 provision in Gibraltar for open justice here, 6 and the open justice that is applied in 7 Gibraltar. And it refers only to court 8 proceedings and to, " ... any other proceedings 9 where there is a determination of the existence 10 of civil rights and obligations." It is not the 11 case, and I do not want to make - unsupported 12 by law and including local jurisprudence - I do 13 not want to make submissions on law to your 14 Lordship, to the Chair on that. I have not got 15 the authorities to provide to you, but we do not 16 concede the premise of her submission, which 17 is that your Lordship is required to do as she 18 submits by the application in Gibraltar, on the 19 principles of open justice. 20 THE COMMISSIONER: Well, you can argue 21 that in due course. 22 SIR PETER CARUANA: We would argue 23 that in due course, but on my version of what I 24 am inviting Mr Commissioner to decide on 25 this, I would include all these in my written</p> <p style="text-align: center;">Page 85</p>	<p>1 MS GALLAGHER: That is not at all too 2 early. We have in mind, if it assists, three or 3 four sentences. 4 THE COMMISSIONER: That is what I had 5 in mind as well. 6 MS GALLAGHER: It can be provided to you 7 very quickly. 8 THE COMMISSIONER: Yes. 9 SIR PETER CARUANA: Five minutes? 10 THE COMMISSIONER: No, five minutes, 11 that is going too far. It is better to take time 12 and get it right than do it immediately and get 13 it wrong. 14 MS GALLAGHER: May I suggest, we do 15 have to take brief instructions, which will take 16 in the region of 10 minutes ... 17 THE COMMISSIONER: I completely agree. 18 MS GALLAGHER: ... in relation to other 19 matters, and if we do it over lunch ... 20 THE COMMISSIONER: If you get out a 21 draft and show it to Sir Peter - a possible 22 answer, of course, is allowing him the 23 opportunity to make a broad and brief factual 24 refutation. 25 MS GALLAGHER: Could we suggest that</p> <p style="text-align: center;">Page 87</p>
<p>1 submissions. 2 THE COMMISSIONER: But in attempting to 3 persuade us that the principles of open justice 4 do not apply, I might just alert you to the fact 5 that you have got a pretty steep climb. 6 SIR PETER CARUANA: Fine, and I 7 understand that, but the position right now is 8 that I have been denied the opportunity even to 9 do that. 10 THE COMMISSIONER: I have got the point. 11 SIR PETER CARUANA: In terms of the 12 search for the middle way forward, well, the 13 difficulty with the version of the middle is that 14 it is being suggested right now that we do not 15 know ... 16 THE COMMISSIONER: What I am 17 suggesting is, and Ms Gallagher might even be 18 doing it as we are proceeding - I really need to 19 ask her to particularise what she means by 20 broad and brief factual summary. I do not 21 mean immediately now. It is half past 12. 22 What about 2 o'clock, or is that too early? 23 MS GALLAGHER: Is that a question to me? 24 I am so sorry, sir. 25 THE COMMISSIONER: Yes, it is, sorry.</p> <p style="text-align: center;">Page 86</p>	<p>1 we show the proposal to you and your team? 2 THE COMMISSIONER: In the first instance, 3 yes. 4 MS GALLAGHER: We are content to do 5 that. We can do that immediately, in the next 6 few minutes. 7 THE COMMISSIONER: The principles of 8 open justice might suggest that the government 9 should have it as well. 10 MS GALLAGHER: Of course, but we are 11 content to show it to your team ... 12 THE COMMISSIONER: Yes, first. 13 MS GALLAGHER: ... and to all core 14 participants. 15 THE COMMISSIONER: Yes. 16 MS GALLAGHER: But it is very broad and 17 brief, and in relation to the other matters, the 18 reference to, "Untested, unchallenged and 19 unchallengeable allegations of fact", that is 20 simply not our compromise proposal, and so 21 just to be clear, we are absolutely not going to 22 refer to paragraph ... 23 THE COMMISSIONER: You only need to 24 say things once. I have got the point. 25 MS GALLAGHER: I am grateful. We can do</p> <p style="text-align: center;">Page 88</p>

<p>1 that quickly. It may be convenient, if it were 2 to suit you, sir, for us to take an early lunch 3 because we could deal with this matter behind 4 the scenes. 5 THE COMMISSIONER: We can take a break 6 now for an hour and a half, until 2 o'clock. 7 MS GALLAGHER: We are content to do 8 that. 9 THE COMMISSIONER: Yes. 10 MS GALLAGHER: I am grateful. 11 THE COMMISSIONER: I will just let you 12 get on with it, that is the most helpful thing to 13 do. Thanks very much. 14 (12.30) 15 (The short adjournment) 16 (14.09) 17 THE COMMISSIONER: Yes, Mr Santos? 18 MR SANTOS: Sir, I think that the break has 19 served a very useful purpose and that we 20 have agreed between the parties a way 21 forward on the issues that were addressed to 22 you this morning, and therefore I think what 23 we can now turn to is any submissions that 24 any of the other parties might wish to make 25 on items for the agenda. I believe that Ms</p> <p style="text-align: center;">Page 89</p>	<p>1 and then a fourth which we proposed, and 2 which Mr Santos has addressed you on. 3 There is (a), the proposed procedure for the 4 final hearing, (b) the proposed approach to 5 oral evidence for the final hearing -- 6 THE COMMISSIONER: Yes. 7 MS GALLAGHER: -- (c) publicity and 8 reporting of the inquiry proceedings. 9 THE COMMISSIONER: Yes. 10 MS GALLAGHER: And then (d), our 11 additional items, policies and protocols 12 which counsel to the inquiry has introduced 13 as a topic to you, and to everyone else, in his 14 very helpful submissions. 15 THE COMMISSIONER: Yes. 16 MS GALLAGHER: It seems to us that Items 17 (a) and (b), relating as they do to the final 18 hearing only, are not only matters which you 19 do not need to determine today. But we also 20 think that any view that is taken between 21 now and September on those issues is 22 necessarily going to have to be, in our 23 submission, provisional because those issues 24 -- 25 THE COMMISSIONER: Yeah, I am sure</p> <p style="text-align: center;">Page 91</p>
<p>1 Gallagher in particular has something to say 2 about that. 3 THE COMMISSIONER: Yeah, sure. 4 MR SANTOS: And the others will have as 5 well, I daresay. 6 THE COMMISSIONER: Yes. 7 MS GALLAGHER: Thank you, sir, and we 8 are grateful for the time, and as you 9 envisaged in fact a degree of compromise 10 and agreement was reached. 11 THE COMMISSIONER: Yeah. 12 MS GALLAGHER: And thank you for the 13 time to enable that to happen. I hope 14 everyone can hear me? In relation to Agenda 15 Item 3, may I just set out what I intend to 16 cover? 17 THE COMMISSIONER: Yeah. 18 MS GALLAGHER: And I will not stray into 19 items which are going to arise in relation to 20 Agenda Item 4, on which we have yet to hear 21 Mr Santos, counsel to the inquiry. 22 THE COMMISSIONER: Yeah. 23 MS GALLAGHER: So in outline, there are 24 four headings under Agenda Item 3. There 25 are three that were on the agenda previously</p> <p style="text-align: center;">Page 90</p>	<p>1 that is right. 2 MS GALLAGHER: Those issues, it seems 3 to us, may well need to be readdressed at a 4 later stage following disclosure, inward to 5 you, outward to others, determination of the 6 provisional list of issues, determination of the 7 witness list. So we will make some very 8 brief submissions on points (a) and (b). But 9 if I may, it seems to us that, in cart and horse 10 terms, they are matters which are much later 11 down the line. 12 THE COMMISSIONER: Yeah. 13 MS GALLAGHER: So we can give an 14 initial view today and we will provide some 15 further brief submissions in writing, but our 16 view is that you do not need to determine 17 those issues at this stage and any 18 determination would necessarily need to be 19 provisional and may need to be revisited 20 later. Items (c) and (d), however, are more 21 building block issues, if I can put it that way, 22 because they relate to the inquiry 23 proceedings overall, and they do require 24 earlier determination. So I am going to 25 address on those matters also.</p> <p style="text-align: center;">Page 92</p>



<p>1 2 We are very grateful to your team for the 3 very constructive and helpful document in 4 writing over the last number of days, and to 5 counsel to the inquiry, Mr Santos, for his 6 very helpful oral submissions on this topic. 7 And as you will know from our written 8 submissions there is broad agreement on the 9 issues and we are happy to assist further on 10 these matters in the coming weeks to enable 11 you, and your team, to do your job as 12 efficiently as possible. So we are here to 13 help, if I can put it that way, and I hope that 14 our written submissions made that clear. 15 16 So I intend to run through Items (a) and (b) 17 very briefly with those caveats, then turn to 18 (c) and (d) relatively briefly, and then finally 19 I am going to address one short point which 20 arises from the opening remarks simply in 21 respect of your power to make 22 recommendations. And I will address that 23 further in writing later but it is something 24 that has just arisen today -- 25 THE COMMISSIONER: Yeah.</p> <p style="text-align: center;">Page 93</p>	<p>1 2 The second point relating to the proposed 3 procedure for oral evidence, again we are 4 making very brief points at this stage only 5 and they are heavily caveated. We agree 6 with Mr Santos about there being, broadly, a 7 spectrum with three different types of 8 approaches. The "restrictive model," where 9 only counsel to the inquiry asks questions -- 10 THE COMMISSIONER: Well I do not find 11 that attractive. 12 MS GALLAGHER: Neither do we. So we 13 are grateful for the indication. We agree with 14 Mr Santos that is not an approach which 15 should be adopted, particularly when we look 16 at the reasons for this inquiry, the 17 background and -- 18 THE COMMISSIONER: An open door. 19 You can -- 20 MS GALLAGHER: Precisely. And then on 21 the other two categories, at the other end of 22 the spectrum was what was described by Mr 23 Santos - I can see there has been a fan related 24 incident. 25 THE COMMISSIONER: Yeah.</p> <p style="text-align: center;">Page 95</p>
<p>1 MS GALLAGHER: -- and we thought it 2 sensible to just give an indication of our 3 position today and we will follow it up in 4 writing. 5 6 On the first issue then, (a), the outline of the 7 proposed procedure for the final hearing; we 8 are grateful to Mr Santos for his indication of 9 his current thinking subject to review. We do 10 think it is helpful to air that now so we are 11 aware of it. The proposal to invite opening 12 statements from core participants in writing 13 and orally is not controversial. We entirely 14 agree. The same approach can be adopted in 15 respect of closing statements, and the nuts 16 and bolts of how that works and whether 17 those time estimates, or time limits, all of 18 those matters can be determined much 19 further down the line. There is nothing 20 controversial in what Mr Santos said there, 21 from our perspective. That is entirely 22 appropriate and a process with which we 23 would agree, and a well trodden path for 24 inquiries of this nature in this jurisdiction and 25 elsewhere.</p> <p style="text-align: center;">Page 94</p>	<p>1 MS GALLAGHER: I will just give Mr 2 Santos a moment. 3 MR SANTOS: Apologies. Thank you. 4 MS GALLAGHER: No problem. At the 5 other end of spectrum that what he referred 6 to as the "open traditional model," and then 7 there is the "hybrid model." Now within the 8 hybrid model there is a wide range of 9 different approaches. The approach which 10 Mr Santos had referred to is a little closer to 11 the restrictive model on the spectrum than we 12 would like. I do not need to address you on 13 it in detail now, but at this stage -- 14 THE COMMISSIONER: I mean it may be 15 we have to consider different models for 16 different witnesses. 17 MS GALLAGHER: Precisely, and that is -- 18 I was going to make two points. The first is 19 that ultimately the time to make the decision 20 on the appropriate model is when you have a 21 much clearer picture of what precisely you 22 are enquiring into, what the scope and 23 parameters are, and indeed just practical 24 matters such as how much time has been set 25 aside, how long is the witness list, for</p> <p style="text-align: center;">Page 96</p>

<p>1 example. They are all relevant matters in the 2 exercise of your discretion about what the 3 appropriate model is, and that is why we say 4 you can give a broad provisional indication 5 of what your current thinking is. But 6 ultimately this is a matter, we think, that 7 needs to be revisited later. At this stage -- 8 THE COMMISSIONER: Witness, by 9 witness? 10 MS GALLAGHER: Yes. So the first point 11 is about addressing it at a later stage overall, 12 and the second point is -- precisely as you 13 have indicated, sir -- that it may well be, as it 14 happened in certain other enquiries, that there 15 is good reason for something closer to the 16 traditional model to be adopted with 17 particular witnesses. For example, where 18 credibility is an issue or whether there is 19 another reason -- 20 THE COMMISSIONER: Yeah, well that 21 may well be right. 22 MS GALLAGHER: We are very grateful. 23 But within the hybrid model may we just 24 give an indication at this stage, with those 25 heavy caveats, that it seems to us that some</p> <p style="text-align: center;">Page 97</p>	<p>1 knowing whether you are going to have large 2 screens for the documents to be brought up -- 3 THE COMMISSIONER: Yeah, I -- 4 MS GALLAGHER: -- or whether the 5 document management system would be 6 completely irrelevant. 7 THE COMMISSIONER: Well I, I am -- 8 MS GALLAGHER: But these are relevant 9 factors. 10 THE COMMISSIONER: -- I am hoping that 11 we will, because it is very difficult for other 12 people to follow if we do not do that. 13 MS GALLAGHER: We agree, and we are 14 conscious about something that is on the 15 agenda for later -- 16 THE COMMISSIONER: Yeah. 17 MS GALLAGHER: -- and again we are 18 happy to discuss in the background and 19 indeed we raised with your team our 20 willingness to assist and to have discussions - 21 - 22 THE COMMISSIONER: I am urged also to 23 bear in mind the cost, which is something 24 that does not trouble counsel too much. But 25 that is a relevant factor obviously.</p> <p style="text-align: center;">Page 99</p>
<p>1 matters of case management within a hybrid 2 model, which are sensible to consider, 3 involve rather than someone simply turning 4 up on the day and asking questions with no 5 one -- including you, sir -- having an advance 6 indicated of what is likely to be covered in 7 the traditional model, it does seem to us that 8 an advance indication from core participants 9 of topics, likely documents which they may 10 wish to bring up on screen -- for example if 11 you are using, as well as the document 12 management system, a way of displaying 13 documents in court and time estimates - are 14 sensible and, in our view, proportionate case 15 management tools. 16 THE COMMISSIONER: Well and indeed 17 necessary. It is elementary that whoever is 18 screening the documents needs to know in 19 advance what documents to identify, to have 20 ready. 21 MS GALLAGHER: Precisely. I am also 22 conscious, just from other inquiries, you of 23 course are assisted here today by a number of 24 individuals who are dealing with the 25 technology. We are not yet at the stage of</p> <p style="text-align: center;">Page 98</p>	<p>1 MS GALLAGHER: We are very conscious 2 of that, and Mr Santos used the phrase about 3 not reinventing the wheel and we have 4 suggested -- I hope it is helpful -- that in a 5 number of the inquiries which I and Mr 6 Wagner have been involved in the United 7 Kingdom or indeed in Malta and elsewhere, 8 we have experience of some aspects of 9 process which may simply save time. 10 THE COMMISSIONER: Yes. 11 MS GALLAGHER: So we are very happy to 12 assist in that way. 13 THE COMMISSIONER: Yeah, I mean just 14 referring to hard copies is incredibly time 15 consuming. It takes about two and a half or 16 three minutes to find -- for everyone to find a 17 document. 18 MS GALLAGHER: I entirely agree and I 19 am very conscious that we have a Venn 20 diagram overlap in respect of Hillsborough, 21 for example, where in the inquest very good 22 use was made of technology which allowed 23 witnesses to be taken through evidence 24 relatively quickly. But also both following 25 the proceedings online or via audio, or in the</p> <p style="text-align: center;">Page 100</p>

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<p>1 court itself, they were able to readily see the 2 point that was being made. Instead of 3 references to documents people do not -- 4 THE COMMISSIONER: The same applied 5 in the criminal proceedings of which I have 6 some familiarity. 7 MS GALLAGHER: I am very conscious of 8 that. So again we just make that indication 9 now, but we are very happy to assist on that. 10 And broadly speaking it seems to us that the 11 hybrid model which covers a broad spectrum 12 is an appropriate place to be considering for 13 an overall approach. It may be that with 14 some witnesses the open traditional model -- 15 to use Mr Santos' phrase -- is appropriate. 16 But generally it seems to us that a version of 17 the hybrid model which has a lighter touch 18 intervention from counsel to the inquiry is 19 likely to commend itself to our team. But we 20 can address you on that more fully at a later 21 stage. 22 THE COMMISSIONER: Yeah. 23 MS GALLAGHER: I hope it is helpful to 24 just give a broad indication -- 25 THE COMMISSIONER: No, no, it --</p> <p style="text-align: center;">Page 101</p>	<p>1 2 We appreciate entirely that you are likely to 3 receive further written submissions on this 4 issue following this hearing and that you are 5 not determining the matter today, and we are 6 happy to respond to any additional 7 submissions in writing and indeed if there is 8 any particular matters on which you would 9 be assisted in hearing from us further in 10 writing, we are content to do it. But the 11 broad principle that we have set out in those 12 paragraphs is, given the principles that we 13 have summarised in the written submissions, 14 given that the background factual context 15 relates in part, as it does, to as we say in 16 paragraph 52, allegations of corruption, given 17 the constitutional importance of unearthing 18 corruption, protecting whistleblowers as set 19 out in the international standards earlier in 20 our submissions, it is imperative that the 21 inquiry is held in public and that there is 22 maximum transparency. 23 24 We are very grateful to counsel to the 25 inquiry, Mr Santos, for his indication of a</p> <p style="text-align: center;">Page 103</p>
<p>1 MS GALLAGHER: -- of our current 2 thinking. 3 THE COMMISSIONER: That is very 4 helpful. 5 MS GALLAGHER: Now the third point 6 then is about publicity and reporting of the 7 inquiry proceedings, and bearing in mind that 8 we have given you quite detailed written 9 submissions on this point -- and as I 10 understand it there now is not a dispute about 11 those being published subject to the 12 redactions that we have raised -- I do not 13 need to take you through that in full detail. 14 THE COMMISSIONER: No. 15 MS GALLAGHER: But our overall position 16 in respect of publicity and reporting of the 17 inquiry proceedings is -- as we have set out 18 in those submissions -- the key paragraphs 19 for you are from paragraphs 49 to 53. Given 20 that, as for the first sentence of paragraph 49, 21 "The probity of Gibraltar's institutions is at 22 issue in this inquiry," and given the factual 23 context our submission is that the 24 constitutional principle of open justice needs 25 to be considered in that context.</p> <p style="text-align: center;">Page 102</p>	<p>1 guiding principle that as much as possible 2 should be online, and we agree with that 3 guiding principle. That should be the 4 touchstone. There should be a strong 5 presumption in this process of open justice 6 and maximum transparency, and I raise that 7 now because I appreciate this issue is likely 8 to be -- according to your indication earlier -- 9 on the agenda for September. But this is also 10 an issue for the September hearing itself and, 11 as we made clear in paragraph 53(c), our 12 proposal in respect of live streaming is not 13 only a live streaming proposal for the final 14 hearing. It is also a proposal that there be 15 live streaming for preliminary hearings. 16 17 Now bearing in mind the current agenda, the 18 working agenda for the September hearing, 19 the second preliminary hearing, it seems to 20 us from that working agenda that that -- 21 THE COMMISSIONER: Live streamed to 22 whom? 23 MS GALLAGHER: Well our proposal is 24 that it be live streamed in the same way as 25 other inquiries so it can be viewed not only</p> <p style="text-align: center;">Page 104</p>

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<p>1 nationally but also internationally, and that 2 can be done with a time delay, as in other 3 inquiries, if there is any difficulty with that. 4 And I appreciate it is not going to be decided 5 today -- 6 THE COMMISSIONER: But there are not 7 any rules in Gibraltar about -- to protect the 8 integrity of what is being -- 9 MS GALLAGHER: I am so sorry, I could 10 not hear. 11 THE COMMISSIONER: There are not any 12 rules in Gibraltar to protect the integrity of 13 what is streamed, whereas there are in the 14 UK. 15 MS GALLAGHER: Now we can address 16 you more fully on that in writing, and I am 17 conscious that this is an issue which is to be 18 explored. 19 THE COMMISSIONER: Yeah. 20 MS GALLAGHER: So we are very happy to 21 do that. My main concern at this stage, sir, is 22 just timing. That if this is left as an issue 23 solely to be determined at the September 24 hearing, it necessarily will mean the 25 September hearing will not be as open as we</p> <p style="text-align: center;">Page 105</p>	<p>1 until September. 2 THE COMMISSIONER: No, that is entirely 3 sensible if I may say so. 4 MS GALLAGHER: We are very grateful. 5 And as we have seen today we think 6 addressing these issues in good time so that 7 there is a clear position, and everyone knows 8 where we stand in relation to submissions for 9 example, that by this time -- by the time of 10 the September hearing we will have the 11 redactions policy -- we are grateful for the 12 indication that a redactions policy will be 13 coming -- and there will be a process 14 whereby people who wish to make a 15 submission to say, "These written 16 submissions for this hearing should be 17 redacted or should not be published at this 18 time," you can have those indications in 19 writing in advance if necessary. I hope it 20 will not be necessary. We can provide you 21 with any clear authorities and we can have an 22 efficient and timely way of dealing with that 23 issue in September. We indicate that now 24 because we do not want to carry over the 25 open justice issue until September. There are</p> <p style="text-align: center;">Page 107</p>
<p>1 are asking it to be. 2 THE COMMISSIONER: Okay. Well the 3 answer to that is that if we can agree a 4 timetable for the submission of argument I 5 will determine it -- well I was going to say 6 administratively. I do not mean that. I mean 7 judicially. 8 MS GALLAGHER: Yes. 9 THE COMMISSIONER: Not in the course 10 of an open hearing. 11 MS GALLAGHER: That was going to be 12 our request, sir. We are very grateful. So 13 our request would be for this to be 14 determined on the papers --THE 15 COMMISSIONER: Yes. 16 MS GALLAGHER: -- in advance of the 17 September hearing. And of course it may be 18 that that determination is against us and the 19 September hearing is not live streamed, and 20 it may be that this remains a substantive topic 21 in respect of the final hearing at the 22 September hearing. 23 THE COMMISSIONER: Yes, you are -- 24 MS GALLAGHER: We just wanted to 25 indicated -- we do not want it all to be parked</p> <p style="text-align: center;">Page 106</p>	<p>1 some steps to be taken in the meantime. 2 THE COMMISSIONER: No, I agree. 3 MS GALLAGHER: Thank you. The fourth 4 issue then concerns policies and protocols. 5 Mr Santos has given a brief outline of the 6 five policies which we propose. Again you 7 have the submissions in full. Mr Santos has 8 summarised them so I do not need to spend 9 much time on this issue. I do need to make 10 some short points on the third policy that we 11 propose in particular. So for your reference, 12 sir, it is paragraph 54 onwards, so 54 and 55. 13 THE COMMISSIONER: Yeah. 14 MS GALLAGHER: At pages 18 and 19. 15 THE COMMISSIONER: Yeah. 16 MS GALLAGHER: Yeah. So first the 17 information management policy and 18 secondly the redaction policy, we understand 19 that they are underway. We appreciate we 20 made a proposal in respect of timing of 21 publication of those policies, which will not 22 be possible for good reason. We are content 23 to liaise with other, with other core 24 participants and with your inquiry team on 25 those issues if we need to.</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 THE COMMISSIONER: Yeah.</p> <p>2 MS GALLAGHER: But our understanding</p> <p>3 is the process is now underway on drafting</p> <p>4 the information management policy and the</p> <p>5 redactions policy, and we are grateful for</p> <p>6 that. And we hope that should avoid some of</p> <p>7 the difficulties which we would otherwise</p> <p>8 experience, and the sooner they can be done</p> <p>9 the better. It is also important when other</p> <p>10 individuals are approached to provide you</p> <p>11 with evidence, or to provide you with</p> <p>12 disclosure, that they have a clear</p> <p>13 understanding of what the position is in</p> <p>14 respect of GDP or redactions document</p> <p>15 management. So we are grateful that that is</p> <p>16 underway and we await directions in respect</p> <p>17 of the timetable.</p> <p>18 THE COMMISSIONER: Yeah, well I am</p> <p>19 confident that could be sorted out.</p> <p>20 MS GALLAGHER: We hope so. We hope</p> <p>21 that this - they will not to be addressed</p> <p>22 orally.</p> <p>23 THE COMMISSIONER: No, no, but it does</p> <p>24 need to be sorted out and it needs to be sorted</p> <p>25 out in a timely way.</p> <p style="text-align: center;">Page 109</p>	<p>1 point is that the sooner it is there and people</p> <p>2 are invited, and then they will have to explain</p> <p>3 if they make an application late when there</p> <p>4 has been a public call for them to make an</p> <p>5 application at an earlier stage. So that seems</p> <p>6 to us sensible and efficient, and to avoid</p> <p>7 reinventing the wheel, there are many</p> <p>8 examples of the core participants' policy</p> <p>9 from other inquiries which can be drawn up</p> <p>10 and should be helpful.</p> <p>11 Then there is the policy relating to conflicts</p> <p>12 of interest in the inquiry team. Again, we are</p> <p>13 grateful that this is being looked at. Key in</p> <p>14 respect of that matter, of course, is, as we say</p> <p>15 in the final sentence of that paragraph, the</p> <p>16 inquiry and all aspects of its operations must</p> <p>17 be seen to be scrupulously independent of</p> <p>18 those involved in the process, specifically the</p> <p>19 Government, and that was reflected, sir, in</p> <p>20 your very powerful opening remarks where</p> <p>21 you made clear that this is an entirely</p> <p>22 independent process, and that should be</p> <p>23 reflected in the policy.</p> <p>24 May I turn back to the third policy, just</p> <p>25 jumping back to the bottom of page 19. We</p> <p style="text-align: center;">Page 111</p>
<p>1 MS GALLAGHER: Precisely. Before I</p> <p>2 come to the third policy, there are the fourth</p> <p>3 and fifth ones, which I will take briefly.</p> <p>4 THE COMMISSIONER: Yeah.</p> <p>5 MS GALLAGHER: So the fourth is the core</p> <p>6 participant policy, setting out the basis for</p> <p>7 core participants, or participant status to be</p> <p>8 assigned and what that status means in</p> <p>9 practice. You have the point, sir, from our</p> <p>10 submissions that we do not have an</p> <p>11 equivalent of the very detailed 2006 Rules in</p> <p>12 the United Kingdom. So we have a slightly</p> <p>13 different position which means essentially</p> <p>14 that you are having to craft a policy on this</p> <p>15 issue within the very broad framework set by</p> <p>16 the Act. So a core participant policy at an</p> <p>17 early stage would help.</p> <p>18 We also have in mind that we want to avoid a</p> <p>19 situation where, for example, we have</p> <p>20 someone applying for core participant status</p> <p>21 at a very late stage, close to the time of the</p> <p>22 March hearing, and it potentially causing</p> <p>23 disruption to the timetable. So the sooner</p> <p>24 there is a clear policy and people can be</p> <p>25 encouraged to make the application. The key</p> <p style="text-align: center;">Page 110</p>	<p>1 have requested a policy relating to protective</p> <p>2 measures for witnesses and/or core</p> <p>3 participants, and the reason for this is, given</p> <p>4 the sensitive subject matter of the inquiry, it</p> <p>5 stands to reason that there may be potential</p> <p>6 witnesses who wish to give evidence</p> <p>7 anonymously. There may be witnesses who</p> <p>8 will require reassurance at an early stage</p> <p>9 about the putting in place of protective</p> <p>10 measures including protective measures at</p> <p>11 the ultimate hearing such as, for example, the</p> <p>12 availability of special measures such as</p> <p>13 screening, redaction of transcripts or</p> <p>14 published documents, any other measures</p> <p>15 which you in your absolutely discretion, sir,</p> <p>16 consider to be appropriate. In our</p> <p>17 experience, bearing in mind some other</p> <p>18 examples such as, for example, the</p> <p>19 independent inquiry into child sex abuse in</p> <p>20 the United Kingdom --</p> <p>21 THE COMMISSIONER: But that raises</p> <p>22 very different problems.</p> <p>23 MS GALLAGHER: Very different.</p> <p>24 THE COMMISSIONER: That was</p> <p>25 vulnerable witnesses.</p> <p style="text-align: center;">Page 112</p>

28 (Pages 109 to 112)

<p>1 MS GALLAGHER: Of course. I wanted to 2 give you three examples. There is, first of 3 all, independent inquiry into child sexual 4 abuse, and the reason I give that as an 5 example is you have very different factual 6 contexts but you have vulnerable adult 7 witnesses who come forward, who may wish 8 at an early stage to probe what the potential 9 options are to protect them if they wish to 10 come forward. So it is important, it seems to 11 us, that this policy grapples with the idea that 12 people need to be made to feel comfortable if 13 they wish to approach the inquiry, that there 14 is a way in which they can make inquiries 15 about the processes which will be entirely 16 confidential.</p> <p>17 THE COMMISSIONER: I entirely agree 18 that vulnerable witnesses need protecting. I 19 do not encourage people to give a guarantee 20 of anonymity which I think is far less likely 21 to be granted, and there have been many 22 occasions when over-enthusiastic police 23 officers have promised anonymity which is 24 just completely impossible.</p> <p>25 MS GALLAGHER: I am very mindful of</p> <p style="text-align: center;">Page 113</p>	<p>1 MS GALLAGHER: We agree entirely. The 2 background to that, of course, is that at the 3 heart of this inquiry is a man, Mr McGrail, 4 my client, whose version of events is that he 5 was placed under improper pressure at the 6 highest levels of Government in conducting 7 his job. His core allegations, as you know, 8 sir, are that (A) he was put under 9 inappropriate pressure respect of the conduct 10 of a criminal investigation; and (B) he was 11 subsequently put under pressure by the same 12 individuals to request early retirement against 13 his will, pressure to which he ultimately 14 succumbed. Bearing that factual context in 15 mind, it is imperative that other witnesses, 16 including, for example, police witnesses who 17 may still be in service, know that there is a 18 way and a process whereby they can say: If I 19 am going to stick my head above the parapet 20 and provide the inquiry with information in 21 relation to this matter, there is a way in 22 which I can potentially be protected and I do 23 not come under pressure. I put it that way. 24 And we are happy to deal with that further in 25 writing if we need to.</p> <p style="text-align: center;">Page 115</p>
<p>1 that. I have in mind some of the cases where 2 - I am thinking of some of the taser cases, for 3 example, in England where there is an early 4 guarantee of anonymity which, of course, 5 cannot withstand closer scrutiny. So we do 6 not propose that.</p> <p>7 THE COMMISSIONER: And conflicts with 8 open justice, for one thing.</p> <p>9 MS GALLAGHER: Precisely. The key 10 point is that there is clear processes in place 11 and at the time when, sir, you indicated 12 earlier in your opening remarks that the 13 intention in light of the material you have 14 received is to go to the Royal Gibraltar 15 Police in respect of further evidence but also 16 to cast the net wider, I think was the phrase 17 used, in respect of a public call for any 18 relevant material, and it seems to us sensible 19 that at the time that a public call for any 20 relevant material is made, that there is a clear 21 policy reassuring people that if they wish to 22 come forward there are protective measures.</p> <p>23 THE COMMISSIONER: But in an 24 appropriate case if necessary protective 25 measures will be available. I entirely agree.</p> <p style="text-align: center;">Page 114</p>	<p>1 That deals with items (A) to (D) on the list 2 for agenda item three, I do not need to 3 address you on one matter we thought we 4 might need to deal with, and we are very 5 grateful for that, which is the process for the 6 next preliminary hearing. We agree entirely 7 with Mr Santos's proposal about sequential 8 submissions so we can narrow and crystallise 9 the issues in advance and I hope provide you 10 with as much assistance as possible at that 11 hearing.</p> <p>12 The final matter I just need to deal with 13 arises from a point that was made a little 14 earlier, and I think I may have also fallen 15 victim to a document blowing off the screen. 16 I have it here. Sir, in your opening remarks 17 you referred to, as we understood it, not 18 being permitted to make recommendations.</p> <p>19 THE COMMISSIONER: I did, yes.</p> <p>20 MS GALLAGHER: May I just give an 21 indication that on behalf of Mr McGrail's 22 legal team, we take a different view in 23 respect of recommendations. Now, this is a 24 very narrow point. We are not asking and we 25 are not making submissions for you to make</p> <p style="text-align: center;">Page 116</p>

<p>1 any recommendations. We want to give an 2 indication that, on the narrow question of 3 whether you have a power to make 4 recommendations, we take a different legal 5 view, and we can provide this detail in 6 writing. We fully appreciate it has only 7 arisen today; people will not be able to deal 8 with it off the cuff, but may I just give you 9 the headline points? The Commission, the 10 terms of reference, state that you are to 11 inquire as "he" - if you will excuse me using 12 the third person - "shall in his absolute 13 discretion consider appropriate into the 14 reasons and circumstances leading to Mr McGrail 15 ceasing to be Commissioner of Police. The 16 Commissioner is to ascertain the facts and 17 report to the Government on the above 18 matters." 19 The reference to "ascertaining the facts" is 20 relatively narrow, but in my submission the 21 report needs to be read in light of the word 22 "inquire" early in the phrase. 23 THE COMMISSIONER: No, surely that 24 means reporting to the Government on the 25 facts that I have ascertained.</p> <p style="text-align: center;">Page 117</p>	<p>1 coming further. We can provide those 2 submissions to you as soon as you need, but 3 to avoid any doubt, we, of course, are not 4 jumping the gun and making any 5 submissions at this stage about what 6 ultimately you should do. That is a matter 7 for much, much further down the line. At 8 this stage our view is that you do, in fact, 9 have that power, and we want to provide you 10 with legal submissions as to why you have 11 that power. 12 THE COMMISSIONER: If I turn out to 13 have been wrong on that I shall be the first to 14 concede the point. 15 MS GALLAGHER: I think all the other 16 issues are likely to be raised specifically in 17 relation to the timetable in respect of item 18 four. I should say just before I sit down on 19 the item three issue that from our perspective 20 the key task for the inquiry, if we may be so 21 bold at this stage, is to focus on what you are 22 inquiring into, so the disclosure process. 23 Inward disclosure to you on the disclosure 24 and that timetable. We know that is going to 25 arise in respect of item four and we will</p> <p style="text-align: center;">Page 119</p>
<p>1 MS GALLAGHER: We can make further 2 submissions as to why we take a different 3 view and we can give you some authorities. 4 THE COMMISSIONER: It may not arise 5 but you have flagged it up. We will sort it -- 6 MS GALLAGHER: I simply want to flag it. 7 THE COMMISSIONER: No, you have done 8 that. 9 MS GALLAGHER: And we think, sir, we 10 can assist you on this matter with reference 11 to the text on inquiries from Jason Beer QC, 12 some material from the Institute for 13 Government, and some examples of other 14 cases. 15 THE COMMISSIONER: Okay. 16 MS GALLAGHER: In which an inherent 17 power to make recommendations is 18 contained in the phrase "inquire", but we can 19 make those submissions in writing; we just 20 thought it appropriate, given that it arose 21 today -- 22 THE COMMISSIONER: No, that is very 23 helpful. 24 MS GALLAGHER: If I may say, it is a 25 place(?) order for submissions which are</p> <p style="text-align: center;">Page 118</p>	<p>1 make brief submissions then. I do not 2 address that matter now. 3 THE COMMISSIONER: We are probably 4 going to have to come to some provisional 5 list of issues in order to identify what people 6 have been asked to disclose. 7 MS GALLAGHER: May we address you on 8 that matter when we have heard the proposals 9 on item four from counsel to the inquiry? 10 THE COMMISSIONER: Yes. 11 MS GALLAGHER: Can I assist you any 12 further in relation to item three? 13 THE COMMISSIONER: No, that has been 14 very helpful. 15 MS GALLAGHER: Thank you. 16 THE COMMISSIONER: Thank you. Yes, 17 go ahead. 18 SIR PETER CARUANA: Thank you. 19 Commissioner, on the substance of what my 20 learned friend has had to say, I think you 21 know that the position is that we have not 22 had time to properly consider the detailed 23 written submissions on procedure and all the 24 procedural aspects, nor indeed to take 25 instructions properly, and therefore we are</p> <p style="text-align: center;">Page 120</p>

<p>1 going to reserve our rights to submit written 2 submissions on that, as indicated in -- 3 THE COMMISSIONER: That is entirely 4 sensible. 5 SIR PETER CARUANA: Yes, except to 6 indicate that in terms of the absence of rules 7 in Gibraltar equivalent to the 2006 rules, we 8 entirely support the proposal that your 9 counsel should draw up drafts, and one 10 possibility is that he -- 11 THE COMMISSIONER: In collaboration 12 with everybody else. 13 SIR PETER CARUANA: Yes. The 2006 14 UK rules is not a bad start, basis. 15 THE COMMISSIONER: No, it is not a bad 16 starting point. I agree. 17 SIR PETER CARUANA: In a slight 18 variation of what I think my learned friend in 19 front of me has suggested, that it should be 20 circulated to us and that we might get the 21 opportunity to make written submissions 22 about that and then on the papers you will 23 announce your decision at the second 24 hearing. 25 THE COMMISSIONER: I think that is</p> <p style="text-align: center;">Page 121</p>	<p>1 I am going to take the unusual step of reading 2 my next 30 seconds' worth of submissions, 3 only because they are an agreed text. 4 THE COMMISSIONER: No, that is entirely 5 sensible. Indeed, it would be, if I may say 6 so, foolish not to do so. 7 SIR PETER CARUANA: An agreed text, 8 and I would not wish to slip in the tongue. 9 THE COMMISSIONER: It is agreed in the 10 sense that it is agreed that you can read it. It 11 is not agreed in the sense that -- 12 SIR PETER CARUANA: It is not agreed. 13 They take the view that we were asked, I 14 suppose, by counsel, your counsel, to say, to 15 prepare an equally short and broad - which 16 we did, we submitted. It is acceptable to 17 your counsel. It is not objected to but we 18 take the view that it is therefore -- 19 THE COMMISSIONER: In the same way 20 that Ms Gallagher gave what she called a 21 broad-and-something summary, it is only 22 right that you should have the opportunity of 23 doing precisely the same. 24 SIR PETER CARUANA: Exactly. I was 25 just apologising in advance for reading it.</p> <p style="text-align: center;">Page 123</p>
<p>1 precisely what was intended. 2 SIR PETER CARUANA: So we will get the 3 opportunity. That is perfectly adequate, I am 4 sure. 5 THE COMMISSIONER: Yes. 6 SIR PETER CARUANA: And the Dr 7 Giraldi inquiry is perfectly good precedent 8 on the procedure that was there, which was 9 effectively that one. We will be making 10 submissions, written submissions, on some of 11 the points that have been made but that is for 12 another day. 13 The only other point that I would like to 14 make is in the context of the resolution by 15 agreement between us of the references to 16 disputed allegations at today's hearing, but 17 that has been resolved on the basis that we 18 have accepted Mr McGrail's legal team's 19 proposals for the redactions of that and the 20 language that they should (not?) be allowed 21 to refer to, and that has been satisfactorily 22 resolved. Coupled with that, it would be the 23 redactions in paragraphs 7 to 17 and 49, and 24 that is an entirely satisfactorily agreed 25 outcome.</p> <p style="text-align: center;">Page 122</p>	<p>1 THE COMMISSIONER: No, no. 2 SIR PETER CARUANA: So the 3 Government -- 4 MS GALLAGHER: I hesitate to interrupt 5 and I am so sorry to my learned friend. His 6 summary is entirely correct. I just want to 7 make clear that our view is it is simply not 8 for us to agree or disagree with the wording. 9 We have no objection, he is quite right, and 10 we are quite content for him to proceed in the 11 way he has suggested. 12 THE COMMISSIONER: When he spoke of 13 an agreement I intervened. 14 MS GALLAGHER: We are very grateful; 15 thank you. Yes, go ahead. You had better 16 read it slowly. 17 SIR PETER CARUANA: "The Government, 18 the then Governor Mr Pyle, the Chief 19 Minister Mr Picardo, and the Attorney 20 General Llamas, deny that Mr McGrail was 21 at any time or by any of them put under 22 improper or any pressure in the conduct of 23 his job or the conduct of any criminal 24 investigation. It is my client's position that 25 Mr McGrail chose to retire because he knew</p> <p style="text-align: center;">Page 124</p>



<p>1 that, having lost the confidence of the 2 Governor and the Chief Minister, his position 3 would become untenable and that, had he not 4 retired, His Excellency the then Governor 5 intended to exercise his powers under section 6 13 of the Police Act 2006, to call publicly for 7 his resignation on the grounds that he had 8 lost confidence in Mr McGrail." 9 THE COMMISSIONER: Okay, thank you 10 very much indeed. Do you want to say 11 anything? 12 MR NEISH: I have very little to add. My 13 position is the same as when I walked in this 14 morning at ten o'clock, when I looked at Mr 15 Santos's (inaudible) -- 16 THE COMMISSIONER: Well, you have 17 been admirably consistent. 18 MR NEISH: The other point, if I may be 19 pedantic, how would you, sir, like to be 20 addressed? 21 THE COMMISSIONER: I hesitated because 22 I have been called a variety of things. I am 23 perfectly happy with "sir". I do not insist on 24 it. 25 MR NEISH: So be it, sir.</p> <p style="text-align: center;">Page 125</p>	<p>1 SIR PETER CARUANA: We cannot refer to 2 you as "sir". 3 THE COMMISSIONER: No, no. 4 SIR PETER CARUANA: This is the 5 problem. 6 THE COMMISSIONER: Okay. 7 MR SANTOS: I appreciate the difficulty 8 that he is alluding to and it is one that we 9 have been grappling with, but we were not so 10 bold as to depart from the statutory, but I am 11 happy to do it all together so that nobody -- 12 THE COMMISSIONER: Okay. 13 MR SANTOS: -- by anyone else doing it. 14 THE COMMISSIONER: Yes. 15 MR SANTOS: So, Mr Chairman, just to 16 pick up on a couple of new points very 17 briefly. Closing statements: I should have 18 addressed them in my opening submissions. 19 We believe that, just as is the case with 20 opening statements, there should be closing 21 statements from the core participants. 22 THE COMMISSIONER: In writing, 23 supplemented by short oral submissions. 24 MR SANTOS: That would be my 25 preference.</p> <p style="text-align: center;">Page 127</p>
<p>1 SIR PETER CARUANA: You cannot say 2 "Mr Sir". 3 THE COMMISSIONER: No, no, no. You 4 called me "Mr Chairman", so I am not sure 5 that is even correct. 6 SIR PETER CARUANA: Yes. May I 7 suggest that whilst statutorily-speaking you 8 are the Commissioner to the inquiry, because 9 statutorily-speaking "the Chairman" only 10 arises when there is more than one 11 Commissioner on a panel, that that is not an 12 impediment to us all agreeing with your 13 leave just to call you "Mr Chairman". It does 14 not have to be statutorily set in stone but we 15 are allowed to do that, and it makes it much 16 easier to refer to you. 17 THE COMMISSIONER: It is not one of the 18 burning issues. 19 SIR PETER CARUANA: No, it is not, and I 20 for one find it much easier to know that I can 21 refer to you as "Mr Chairman" when I am 22 talking about you. 23 THE COMMISSIONER: You can do that, 24 yes. You can hardly refer to me in the 25 absence of "sir". That would be absurd.</p> <p style="text-align: center;">Page 126</p>	<p>1 THE COMMISSIONER: Yes. 2 MR SANTOS: And I also agree that all of 3 these understandings and our view can only 4 be provisional and subject to anything that 5 comes to our attention subsequently and to be 6 reviewed in September if necessary. 7 On questioning, again, I whole-heartedly 8 agree that the hybrid model overall is 9 appropriate to a disposal with, in some cases, 10 perhaps something closer to a traditional 11 model depending on the witness may be 12 appropriate, and again that is something that 13 we are happy to have under review and we 14 are happy to have input from the participants 15 on. 16 Where there is questioning by core 17 participants and advance indication of topics 18 and documents and time estimates, time 19 estimates seems to me not only to be sensible 20 but necessary so that the inquiry itself can 21 keep control of proceedings from an 22 administrative, if nothing else, perspective. 23 But it does seem to me a good way of 24 managing the case. 25 On the electronic document platform, I agree</p> <p style="text-align: center;">Page 128</p>

<p>1 that it is a necessity. We have already made 2 inquiries with some parties but we are willing 3 to accept any proposals or suggestions in 4 terms of particularly the appropriate parties 5 or point products that we can consider. 6 THE COMMISSIONER: With an eye to 7 cost. 8 MR SANTOS: With an eye to cost, of 9 course. 10 Publicity. I appreciate you are going to be 11 receiving submissions on this. It sounds like 12 we are going to be receiving them from at 13 least two of the core participants so I do not 14 propose to say any more than I have already 15 said on that. 16 Similarly with live-streaming, we have said 17 we were willing to take on submissions. I 18 think that determining the question on paper 19 sufficiently in advance of the September 20 hearing is settled. 21 THE COMMISSIONER: And, as Ms 22 Gallagher pointed out, that determination 23 would apply to the September hearing, but it 24 is open to short re-argument. 25 MR SANTOS: Yes. On the topic of the</p> <p style="text-align: center;">Page 129</p>	<p>1 help everyone, there have been many 2 references to written submissions. I for one 3 have completely lost track now of what each 4 party is proposing to make written 5 submissions on. What I would suggest is that 6 if each team could identify at the end of 7 today - I think we will finish today - the 8 matters on which they propose to write 9 written submissions and proposals as to when 10 they -- 11 THE COMMISSIONER: With a proposed 12 timetable. 13 MR SANTOS: I think that we can agree, or 14 hopefully we should be able to agree not just 15 the proposals but responsive submissions in 16 an orderly fashion. I think it would be 17 beneficial for all submissions to come in at 18 the same time on all the topics and then for 19 there to be responsive submissions. Not 20 everyone has to address every single point 21 but they may wish to do so, and/or response. 22 That is all I propose to say on three. 23 Turning to item four on the agenda, unless, 24 sir, there is anything that you like to say -- 25 THE COMMISSIONER: No, no, carry on.</p> <p style="text-align: center;">Page 131</p>
<p>1 terms of reference and the submission that, in 2 fact, we are limited to make 3 recommendations, I am interested to hear the 4 basis upon which that is made and we 5 welcome submissions. Our preliminary view 6 is what we have set out. I think it is clear to 7 everyone now that we are willing to take on 8 board proposals. 9 THE COMMISSIONER: I had not 10 researched that, and if I am wrong I will say 11 so. 12 MR SANTOS: The process that we have 13 described on policies, just to give a little bit 14 more meat on the bone, we are starting work 15 on those immediately and we are willing to 16 circulate the policies as we see them and seek 17 input on them from the other parties once we 18 have drafts. Similarly, I suspect that it will 19 take at least a couple of weeks to put those 20 together. If anyone wants to provide input in 21 advance of the preparation of policies, that 22 too is something that we would be happy to 23 take on board. 24 Finally, and this is not really item three but I 25 want to flag it up now because I think it will</p> <p style="text-align: center;">Page 130</p>	<p>1 MR SANTOS: The proposed timetable. 2 THE COMMISSIONER: Yes. This is the 3 overall timetable. 4 MR SANTOS: I apologise. 5 MS GALLAGHER: May I just give an 6 indication? I am happy to address this at the 7 conclusion of the proposal under item four. 8 It was just while I my learned friend Sir Peter 9 Caruana was making submissions there was 10 an indication that following written 11 submissions on the policies you may 12 announce your decision at the second 13 hearing. I may have misheard but we wanted 14 to just give an indication that in our view 15 ideally those policies will be dealt with 16 earlier on the papers. 17 THE COMMISSIONER: Yes, to be in place 18 before the second -- 19 MS GALLAGHER: Precisely. And, to put 20 it simply, you cannot deal with disclosure, 21 for example, without having the document 22 management system and the redactions 23 policy in place, so we do not want to wait 24 until September. We think that would place 25 the March hearing in jeopardy if we were to</p> <p style="text-align: center;">Page 132</p>

<p>1 do that.</p> <p>2 THE COMMISSIONER: The answer is that</p> <p>3 - yes. I mean, if it can be agreed obviously it</p> <p>4 can be dealt with before September. If there</p> <p>5 is disagreement it may be that I shall have to</p> <p>6 determine it in advance.</p> <p>7 MS GALLAGHER: We are on the same</p> <p>8 page. That is precisely what we thought and</p> <p>9 we just wanted to ensure that we had not</p> <p>10 misunderstood --</p> <p>11 THE COMMISSIONER: No.</p> <p>12 MS GALLAGHER: -- when the reference</p> <p>13 was made to the September hearing. We are</p> <p>14 very grateful; thank you.</p> <p>15 MR SANTOS: Mr Chairman, I would add</p> <p>16 that if the policies themselves are going to be</p> <p>17 resolved and resolved on the papers, which is</p> <p>18 fine, it is perfectly viable, but as we are</p> <p>19 exchanging submissions on the same day,</p> <p>20 that we should each have the opportunity</p> <p>21 within, say, a further seven days --</p> <p>22 THE COMMISSIONER: I think Mr Santos</p> <p>23 said precisely that.</p> <p>24 MR SANTOS: I probably was not clear</p> <p>25 enough, but what I envisage is deadlines for</p> <p style="text-align: center;">Page 133</p>	<p>1 that. As I indicated earlier, we are yet to set</p> <p>2 the inquiry's policies on information sharing</p> <p>3 and redaction, but once these policies are in</p> <p>4 place and as soon as possible we will be in a</p> <p>5 position - it may be that this can be achieved</p> <p>6 through agreement between the parties on</p> <p>7 this specific issue, but I am anxious to share</p> <p>8 each of the core participants', statutory</p> <p>9 participants' statements with the other</p> <p>10 statutory participants at the very least in the</p> <p>11 first instance, and if, for example, the</p> <p>12 information sharing policy is being held up</p> <p>13 by dispute, well, then it may be that we seek</p> <p>14 to enter into an agreement with all the parties</p> <p>15 purely in respect of the witness statements</p> <p>16 and exhibits.</p> <p>17 THE COMMISSIONER: Yes, subject to the</p> <p>18 usual undertakings.</p> <p>19 MR SANTOS: Subject to the usual</p> <p>20 undertakings, subject to any necessary</p> <p>21 redactions, which, for obvious reasons, we</p> <p>22 will resolve as soon as possible. We</p> <p>23 anticipate that there will be any core</p> <p>24 responsive witness statements by some or all</p> <p>25 of the statutory participants once they have</p> <p style="text-align: center;">Page 135</p>
<p>1 all parties address all items that the parties</p> <p>2 today identified for submissions, and for</p> <p>3 responsive submissions, and also in relation</p> <p>4 to the policies it may be that --</p> <p>5 THE COMMISSIONER: You did say that.</p> <p>6 MR SANTOS: Thank you. Unless there is</p> <p>7 anything further, let us move to four, which I</p> <p>8 hope...</p> <p>9 THE COMMISSIONER: Yes, four.</p> <p>10 MR SANTOS: I hope this should be briefer.</p> <p>11 Sir, you have already explained at the outset</p> <p>12 that the intended timetable for the inquiry has</p> <p>13 been adjusted to account for the</p> <p>14 unanticipated delays and that we are looking</p> <p>15 to hold the main hearing in March of next</p> <p>16 year, with a second preliminary hearing in</p> <p>17 September. We have now received the</p> <p>18 witness statements of four statutory</p> <p>19 participants and we will set deadlines in</p> <p>20 correspondence with other parties to ensure</p> <p>21 that any further witness statements from</p> <p>22 other parties and exhibits are received</p> <p>23 sufficiently in advance of the second</p> <p>24 preliminary hearing to be useful, and unless</p> <p>25 obviously exceptional circumstances prevent</p> <p style="text-align: center;">Page 134</p>	<p>1 received the statements, but it is probably</p> <p>2 sensible for this to take place after the</p> <p>3 disclosure process takes place, which I will</p> <p>4 address briefly in a moment.</p> <p>5 Prior to the second preliminary hearing, we</p> <p>6 are hoping to at least settle on a provisional</p> <p>7 list of issues which can guide the disclosure</p> <p>8 process, as you alluded to earlier, sir. The</p> <p>9 deadline that was proposed by Gomez &amp; Co</p> <p>10 is 5th September 2022, but we want to start</p> <p>11 that process as quickly as possible. The</p> <p>12 sooner we agree issues, the sooner that</p> <p>13 everything else really can start moving, so</p> <p>14 the sooner the better, as far as we are</p> <p>15 concerned, and now that we have all four</p> <p>16 statements, we are in a position to start work</p> <p>17 on that.</p> <p>18 However, the finalisation of the list of issues,</p> <p>19 even if the provisional one has been agreed</p> <p>20 previously, will, I think it is fair to expect, be</p> <p>21 the agenda item at the second preliminary</p> <p>22 hearing.</p> <p>23 Also prior to the second preliminary hearing</p> <p>24 we will invite written submissions from the</p> <p>25 core participants which will be shared with</p> <p style="text-align: center;">Page 136</p>

34 (Pages 133 to 136)

<p>1 other core participants. We will require 2 those submissions to be filed sufficiently in 3 advance of the hearing. At the moment the 4 deadline I propose, subject to anything 5 anyone wishes to say, is 4 p.m. on 9th 6 September 2022. Then the inquiry team 7 would prepare responsive submissions by 8 15th September 2022. If any of the 9 participants wishes to respond, then I would 10 suggest that 15th September 2022 can also be 11 the deadline for that.</p> <p>12 One of the items, as I have said, for the 13 agenda for the second preliminary hearing is 14 disclosure, and it is evident, based on the 15 witness statements and documents received 16 thus far, that there will need to be a proper 17 disclosure exercise so that all parties have 18 access to relevant documents. This again is 19 something which we will engage with 20 participants before finalising the process. As 21 I say, key to that is identifying issues for 22 disclosure, which we are starting work on 23 immediately. But if it cannot be agreed then 24 it will be decided upon by you as soon as 25 possible and by the latest at the second</p> <p style="text-align: center;">Page 137</p>	<p>1 identify principles, and, indeed, if there is a 2 particular principle it is helpful if it can be 3 highlighted so I know what I am looking for 4 because I have got many hundreds of pages 5 to read as it is. I am not going to be attracted 6 to read European judgments of hundreds of 7 pages, particularly when I think the 8 principles are pretty well known.</p> <p>9 MR SANTOS: Everyone hears what you 10 say. We will also hopefully be in a position 11 to circulate a preliminary version of the 12 inquiry bundle.</p> <p>13 THE COMMISSIONER: Now that is very 14 important.</p> <p>15 MR SANTOS: Yes.</p> <p>16 THE COMMISSIONER: Because we need 17 to have a standard reference for each 18 document. It is no good each party referring 19 to their own internal identification which 20 again is going to cause delay in people 21 finding it, so the inquiry bundle does need to 22 identify the relevant documents with an 23 exhibit notation which we can all use.</p> <p>24 MR SANTOS: That, as I say, is on the 25 electronic platform.</p> <p style="text-align: center;">Page 139</p>
<p>1 preliminary hearing.</p> <p>2 Just to clarify, I think I am being asked to 3 clarify whether the submissions that I have 4 given deadlines for are general or whether 5 they are for the purposes of the issues. I 6 anticipated that being for the agenda of the 7 second preliminary hearing. In terms of 8 issues, I think that is something that we 9 would probably invite for correspondence 10 once we have prepared our first draft of the 11 list of issues. I would like to start that 12 process well in advance of the second 13 preliminary hearing, and, if possible, finalise 14 the process well in advance of the second 15 hearing.</p> <p>16 If an authorities bundle is required, then we 17 would propose to try and finalise that by 14th 18 September 2022, subject to any additions that 19 have to be made as a result of responsive 20 submissions.</p> <p>21 THE COMMISSIONER: There is a 22 tendency for authorities bundle to have got 23 completely out of control. Authorities 24 bundles which are hundreds of pages is not 25 helpful. The authorities are helpful to</p> <p style="text-align: center;">Page 138</p>	<p>1 THE COMMISSIONER: That presumably is 2 standard practice.</p> <p>3 MR SANTOS: Yes. I am almost done. As I 4 say, we are currently engaging with 5 contractors to ensure that there is a workable 6 electronic platform.</p> <p>7 THE COMMISSIONER: Then, of course, 8 they need to know the index notations as 9 well.</p> <p>10 MR SANTOS: Yes, and finally the dates of 11 the main hearing, I think there was reference 12 to 7 to 25 March but we double-checked that 13 and the Monday of that week is 6 March. I 14 don't think there would be any issue with 15 commencing on 6 and finishing on the 24 16 March, which is the Friday, just to be clear. 17 It is 6 to 24 March, I believe. That is all I 18 propose to say on timetabling and I am happy 19 to allow the other participants to have their 20 say.</p> <p>21 MS GALLAGHER: Sir, or Commissioner or 22 indeed Mr Chairman.</p> <p>23 THE COMMISSIONER: I am very happy 24 with "sir".</p> <p>25 MS GALLAGHER: We had understood</p> <p style="text-align: center;">Page 140</p>

<p>1 earlier that "sir" was acceptable. I have to  2 say, as someone who regularly has  3 difficulties with my own name, as you may  4 be able to see from the heading, at first sight  5 it looks rather than an extract from an  6 optician's wall chart on one view, as many  7 Irish names do, so I am sympathetic to  8 concerns about names and what one is called,  9 and I am afraid some people in the room  10 know that in the 7/7 inquest I was rather  11 unfortunately referred to by one journalist as  12 Barrister Cauliflower Gallagher. As long as I  13 am not called "Cauliflower" I am content,  14 and I will avoid that term for you, sir, too.  15 On this issue, we are in support of the  16 proposal from counsel to the inquiry, and in  17 particular the impetus towards attempting to  18 deal with these issues as promptly as possible  19 so we can make the second preliminary  20 hearing as effective as possible. We all have  21 in mind that ideally the second preliminary  22 hearing will be able to deal as fully as  23 possible with all the matters on the  24 provisional agenda which we have in the  25 bundle, and if we haven't made good</p> <p style="text-align: center;">Page 141</p>	<p>1 early stage, but, of course, it may need to be  2 refined later post further discussion.  3 THE COMMISSIONER: That often  4 happens.  5 MS GALLAGHER: Precisely. From our  6 perspective, it seems to us that if we were in  7 a position to get the disclosure process  8 underway at an early stage it may avoid the  9 need to keep revisiting the list because the  10 more we have the more informed  11 submissions can be made at an earlier stage.  12 In respect of the question about the  13 authorities bundles, we agree entirely with  14 the difficulty with authorities bundles often  15 being completely out of control. We agree  16 with you in respect of the principle. We  17 hope that a course such as that we have  18 adopted in our written submissions where we  19 give you the relevant abstract you probably  20 don't need sight of the authorities.  21 THE COMMISSIONER: That is all I need.  22 MS GALLAGHER: We are very grateful.  23 We suggest that if there is any difficulty,  24 which we hope there will not be, we suggest  25 a process akin to that adopted by the Court of</p> <p style="text-align: center;">Page 143</p>
<p>1 progress with matters such as disclosure,  2 provision of additional materials to you and  3 the policies by that time we will inevitably  4 have to have a third preliminary hearing, so  5 we have that very much in mind. So, we are  6 supportive of the proposal. We would like to  7 get as much done as possible in advance so  8 that by the time we get to the hearing in  9 September issues will have crystallised, and  10 when it comes to the provisional list of issues  11 it is less provisional than it would otherwise  12 be.  13 There is a cart and horse issue about  14 disclosure and the provisional list of issues.  15 In many inquiries, of course, the disclosure  16 process is well under way by the time the  17 provisional list of issues is determined; in  18 some other inquiries it isn't approached in  19 that way. Given the very broad nature of  20 your terms of reference, and given the fact  21 that the four statutory participants, as  22 described by counsel to the inquiry, had  23 provided their witness statements, we will be  24 in a position to make provisional submissions  25 on that provision list of issues of issues at an</p> <p style="text-align: center;">Page 142</p>	<p>1 Appeal in England and Wales where counsel  2 have to justify why they are saying this is a  3 reasonable index.  4 THE COMMISSIONER: That is all very  5 well but the problem is most acute in the  6 Court of Appeal.  7 MS GALLAGHER: Yes, so we raise that  8 simply because we hope this can be dealt  9 with sensibly, collaboratively and by  10 agreement. If we hit any difficulties we  11 suggest that those who are proposing that you  12 have bundles and bundles of authorities  13 which may only be relevant for a single  14 sentence, or not relevant at all, justify their  15 approach, but you have an inquiry team and  16 we have total faith in your inquiry team to  17 deal with that aspect of matters. I hope we  18 will have agreement and this won't cause a  19 problem.  20 In relation to the preliminary version of the  21 inquiry bundle, we are conscious that you  22 have underway currently discussions about  23 the document management system, for  24 example, if a document got into the system  25 such as relativity or another were to be</p> <p style="text-align: center;">Page 144</p>

<p>1 adopted it, of course, is internal references so 2 what may work is for those simply to be used 3 in the way we have done in other inquiries, 4 but we are happy to discuss that further. 5 THE COMMISSIONER: What I am anxious 6 to avoid is the same document having four 7 different references, which is the position we 8 have at the moment. 9 MS GALLAGHER: We agree, and we want 10 to avoid that. It causes difficulty. It won't in 11 seven months time and ultimately it is not 12 just Mr McGrail who has funding from the 13 public purse, everyone involved in this 14 process, including your team, has funding 15 from the public purse in one form or another 16 and we need to be proportionate, sensible and 17 efficient in the way forward and we agree 18 entirely with that. We will do what we can 19 behind the scenes to make that work. 20 In terms of the timetable, we are content in 21 relation to the proposal that the witness 22 statements be shared with other statutory 23 participants at an early stage subject to the 24 usual undertakings and with the 25 undertakings, rather than reinventing the</p> <p style="text-align: center;">Page 145</p>	<p>1 them on the papers where we need to so that 2 the matters which come before you orally at 3 the hearing in September are those in relation 4 to which you would be most assisted in 5 respect oral submissions. 6 THE COMMISSIONER: Yes, by which 7 time the issues that I have to hear and 8 determine will have been defined. 9 MS GALLAGHER: Yes, and for the 10 avoidance of doubt, we have proposed 11 simply to get the ball rolling a proposed 12 timeline in our submissions in light of the 13 updates that we have had, we don't rely on 14 paragraph 57, so no-one needs to respond to 15 you on that. 16 THE COMMISSIONER: It is probably a 17 good idea to resolve the timeline before we 18 all leave today isn't it? That can probably be 19 done can't it? 20 MS GALLAGHER: We would be grateful, 21 and may I make one short point on that? 22 THE COMMISSIONER: Yes. 23 MS GALLAGHER: I am conscious that 24 there was a reference to this general call for 25 evidence and we have proposed that a</p> <p style="text-align: center;">Page 147</p>
<p>1 wheel, there is a standard undertaking which 2 has been used in many other inquiries which 3 may be sensible here, and we are happy to 4 discuss that further. We don't envisage that 5 to be controversial. 6 We support the proposal from counsel to the 7 inquiry of a provisional list of issues being 8 circulated at as early a stage as possible so 9 that written submissions which are then made 10 can be adequately informed. We have no 11 difficulty with the timetable of 4.00 p.m. on 12 9 September and then responsive 13 submissions from counsel to the inquiry by 14 15 September, we are happy with that. 15 We are mindful that we are approaching July 16 and August when there may be some delays 17 with people being away and we are grateful 18 for the indication that regardless of that 19 background the timetable will then involve 20 submissions going in in September. Overall, 21 we support the impetus towards progressing 22 matters as quickly as possible, making the 23 September hearing as efficient as possible 24 and attempting, to the extent that we can, to 25 deal with matters by agreement or resolving</p> <p style="text-align: center;">Page 146</p>	<p>1 general call for evidence, a public call for 2 evidence be made as soon as possible, at the 3 same time as that policy on whistleblower 4 protections, anonymity redactions and so on. 5 We hope that that can be achieved prior to 6 the September hearing. It may be that it is 7 not possible to achieve it prior to the 8 September hearing. We raise it simply 9 because we are conscious that, to use the 10 phrase from Lewis, you are likely to be in a 11 follow-up situation where you receive 12 material based on your provisional list of 13 issues and the matters narrow over the 14 coming months, but the period between 15 September and March is not very long so we 16 are conscious that if this isn't underway by 17 the time we hit September we don't want to 18 end up having a difficulty with the March 19 dates. 20 Finally on this topic and overall in relation to 21 agenda item 4, may I just say on behalf of 22 Mr McGrail that the processes which are 23 followed ultimately need to be in support of a 24 full, fair and fearless investigation, to adopt 25 the phrase famously endorsed by Lord</p> <p style="text-align: center;">Page 148</p>

<p>1 Bingham in respect of coroners' inquests in 2 the case of Middleton, those three Fs, full, 3 fair and fearless investigation, and we need 4 to ensure that we do things as early as 5 possible, in as efficient a way as possible to 6 enable you and your team to conduct that 7 full, fair and fearless investigation, and 8 independent investigation in line with your 9 opening remarks today and the remarks by 10 Mr Santos, counsel to the inquiry today. 11 On behalf of Mr McGrail's legal team, we are 12 keen to assist as much as we can in enabling 13 you and your team to do that job, so as well 14 as being participants we want to assist as 15 much as we can behind the scenes and we 16 make that clear today because we are all 17 committed to the same thing here, which is 18 ensuring that the hearing in March is full, fair 19 and fearless, is independent and runs as 20 efficiently and proportionately as possible. 21 THE COMMISSIONER: That is 22 exceedingly helpful. Thank you very much. 23 I am very grateful to you. 24 I don't think you need reply to that but you 25 can do if you want to.</p> <p style="text-align: center;">Page 149</p>	<p>1 more focused public appeal in due course, 2 but in general terms I make that abundantly 3 clear now. 4 MR SANTOS: I am grateful. I don't 5 propose to say anything else. What would be 6 useful, it may be difficult to do it now but if 7 they want to let us know by, say, 5.00 or 6.00 8 today if they could identify the matters on 9 which they want to make written submissions 10 and how long they require we can set an 11 orderly timetable. 12 MR CARUANA: I can do that now. 13 MR SANTOS: I think they can do it now. 14 MR CARUANA: My written submissions, 15 as I have indicated, are going to be in the first 16 place in response to the submissions on the 17 issues as set out in my learned friend's 18 written submissions sent to us yesterday on 19 behalf of Mr McGrail, as supplemented by 20 her orally today, and that is I think all that we 21 have to submit for at this stage until we have 22 heard from Mr Santos, and I am very happy 23 to do that within 14 days if that is convenient 24 to the Chair. 25 THE COMMISSIONER: Okay. I made</p> <p style="text-align: center;">Page 151</p>
<p>1 MR CARUANA: It is only to say that we 2 too support Mr Santos's approach. It is very 3 helpful. 4 THE COMMISSIONER: Excellent, thank 5 you very much. No doubt you do as well. 6 I will let you get on with it. 7 MR SANTOS: I feel very supported. Very 8 quickly on the call for evidence, just to be 9 completely open about this, we had already 10 discussed prior to this hearing we took the 11 view that given the baldness of the terms of 12 reference the net might not gather everything 13 that we could possibly catch because I think 14 rather unusually in this inquiry more 15 definition of this division(?) may actually 16 assist probably widens the matters that 17 become relevant, so I would like to get the 18 call for evidence out as soon as possible, I 19 think doing it together with the 20 whistleblower, vulnerable witness protection 21 is not a bad idea. 22 THE COMMISSIONER: I will make it 23 absolutely clear that if anybody thinks that 24 they have a valuable contribution to make I 25 encourage them to make it. We will make a</p> <p style="text-align: center;">Page 150</p>	<p>1 contingency arrangements to sit tomorrow if 2 necessary but it doesn't seem to me that it is 3 necessary, do you all agree? 4 MS GALLAGHER: May we indicate, I hope 5 this is helpful, we are also content to comply 6 with the 14 day direction from today. We 7 need to respond in writing to the proposals 8 made by Mr Santos today to the extent that 9 we have not been able to deal with them 10 orally, and then there are some other brief 11 matters arising, including the point about 12 recommendations. We can address those 13 matters, so the agenda items today, the 14 recommendations point, we are content to do 15 within 14 days in line with the timetable 16 suggested by my learned friend, and then in 17 terms of responsive submissions, may we 18 request that there be 14 days thereafter? We, 19 of course, will be seeing detailed proposals in 20 response to our position which we put 21 forward in writing beforehand for the first 22 time in those written submissions. We are 23 grateful for the indication about responsive 24 submissions but could we suggest 14 days 25 and 14 days?</p> <p style="text-align: center;">Page 152</p>

1 MR SANTOS: I certainly have no objection  
 2 to that.  
 3 THE COMMISSIONER: No, that is fine.  
 4 MR CARUANA: I do not want to interrupt  
 5 Mr Santos.  
 6 THE COMMISSIONER: Go ahead.  
 7 MR CARUANA: I may have misunderstood  
 8 when you said they were going to submit  
 9 written proposals or not for the procedural  
 10 issues.  
 11 MR SANTOS: On a procedural issue, what I  
 12 suggested is that we are commencing work  
 13 on that; we are hoping to get documents  
 14 together over the next two to three weeks. I  
 15 can't bind us to that but I am happy for the  
 16 parties to either wait see those and give us  
 17 their views once they have seen the draft.  
 18 Similarly, when they know what the  
 19 timeframe is, if they want to get something in  
 20 beforehand and nudge us in whatever  
 21 direction they want to, we are willing to take  
 22 that as well, but parties can rest assured that  
 23 they will have the opportunity to consider  
 24 and comment on the drafts.  
 25 MR CARUANA: So we would have a

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1 deadline after you submit yours?  
 2 MR SANTOS: That's right.  
 3 THE COMMISSIONER: Okay. Thank you  
 4 all very much.  
 5 MR SANTOS: Apologies. There is a live-  
 6 streaming issue. I think it is probably best ---  
 7 THE COMMISSIONER: You can sort the  
 8 timetable out and I will give a ruling in  
 9 relation to the live-streaming issue before the  
 10 September hearing, as I have already said.  
 11 Thank you all very much indeed. I will see  
 12 you all in September  
 13 (15.15)  
 14 (Hearing adjourned until September 2022)

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