

INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

SUBMISSIONS BY COUNSEL TO THE INQUIRY FOR THE THIRD PRELIMINARY HEARING ON 8 FEBRUARY 2023

1. These are submissions by Counsel to the Inquiry ('CTI') in advance of the Third Preliminary Hearing ('PH3') on 8 February 2023.

Introduction

2. The Second Preliminary Hearing ('PH2') took place on 20 September 2023. At PH2, two of the Core Participants delivered short factual statements, the Inquiry's policy documents were finalised, and the Provisional List of Issues and a timetable was put in place for future progress of the Inquiry.
3. During the remainder of September and October 2022, the Inquiry continued its work, receiving witness statements and disclosure from several witnesses.
4. At this moment, the Inquiry has received witness statements and/or disclosure from 43 individuals or bodies. Evidence is also expected very shortly from at least 9 further individuals or bodies.
5. Unfortunately, the Inquiry's work has been affected by two events since late October 2022, namely:
 - a. a data breach affecting the Inquiry's documents which was brought to the Inquiry's attention in November 2022 ('**the Data Breach**'); and
 - b. the decision to terminate the engagement of Mr Stephen Catania of Attias and Levy ('**A&L**') as Solicitor to the Inquiry and instruct a new Solicitor ('**the Change of Solicitor**').
6. CTI are acutely aware of the gravity and seriousness of these events and have been working tirelessly behind the scenes (alongside the Commissioner and Secretary to the Inquiry) to respond to both issues, while also seeking to progress the Inquiry's substantive work. The suggestion that the "*Inquiry has not taken seriously enough*" the Data Breach or Change of Solicitor Issue, or that there has been a "*delay in grappling*

*with serious issues*¹ is rejected and unsupported by the full factual background. These are extremely complex issues requiring careful and measured responses, which take time. The timing of the Inquiry's response has also been impacted by factors such as:

- a. The conduct of the independent forensic investigation into the Data Breach;
 - b. The parallel criminal investigation into the Data Breach, which for example delayed the forensic investigator's access to certain hardware;
 - c. The need to accord procedural fairness to the former Solicitors to the Inquiry, before the Commissioner could decide whether to terminate their instructions;
 - d. The need to scope out appropriate replacement solicitors, including associated matters such as conflict checks and agreement of a fee structure;
 - e. The fact that the Data Breach and Change of Solicitor, which are both complex, needed to be addressed simultaneously by CTI and the Commissioner; and
 - f. The Christmas/New Year break, which fell during the key events.
7. The Data Breach and Change of Solicitor issue have occupied the majority of CTI's capacity since mid-November, and therefore undeniably slowed the Inquiry's progress. However, now that new solicitors have been appointed (and given assurances to the Inquiry as to their information security²), CTI are eager to return their focus to the Inquiry's substantive work and thereby ensure that the Main Hearing can proceed in September. Of course, they will continue to advise and update the Inquiry in relation to the Data Breach – a matter which will continue to require considerable attention and urgency.
8. The following items fall to be addressed at PH3:
- a. Updates on the Inquiry's investigation into the Data Breach and provision of IT services by His Majesty's Government of Gibraltar ('**HMGoG**').
 - b. Update on the Change of Solicitor (this is not listed on the Agenda for PH3 given that it only took place last Tuesday).
 - c. The Composition of the Inquiry Team (a matter raised by Mr McGrail's representatives).
 - d. Update on the Inquiry timetable.

A. The Data Breach, the Inquiry's information security, and provision of IT by HMGoG

¹ Submissions on behalf of Ian McGrail, 2 February 2023 at [3] and [20].

² See paragraph 18(a) below.

9. Three issues arise under this heading: (i) the Data Breach; (ii) the suggestion of a “*security review*”; and (iii) the provision of IT services to the Inquiry by HMGoG.

(i) The Data Breach

10. CTI agree that the security of the Inquiry’s information is fundamental to its success. To that end, CTI are acutely aware of the seriousness of the Data Breach and wish to assure CPs and the public that they have been in regular communication with the Commissioner on this issue since November.
11. This hearing was scheduled on the assumption that the Inquiry would be in a position to share details with the CPs in advance, allowing both CTI and the CPs to address the issue in skeleton arguments. However, this has not been possible for two main reasons:
- a. First and foremost, the forensic investigation commissioned by the Inquiry remains still ongoing. As Mr Santos informed the CPs in his letter of 31 January 2023, despite CTI’s consistent attempts to progress matters, the Inquiry simply does not have the necessary information to provide a comprehensive update. While CTI has received several reports from the IT forensics firm (as set out in paragraph 12 below) these have been very brief indeed and do not contain conclusive findings. As we explain below, further forensic investigation is still required.
 - b. Second, and in any case, the Inquiry is limited in the information that it can share due to the live criminal investigation being conducted by the Royal Gibraltar Police (which has brought in a senior investigating officer from the Police Service of Northern Ireland to lead the investigation). Last week (after Mr Santos’s letter to the CPs on 31 January 2023), CTI were informed that the RGP was concerned that providing a detailed update of, or discussion of, the forensic investigator’s initial findings with the CPs either privately or in a public hearing seriously risks undermining the criminal investigation into the Data Breach.
12. CTI wishes to reassure the public and CPs that they have always sought to progress investigations into the Data Breach, in recognition of its significance. This is illustrated by the timeline below:
- a. CTI [REDACTED] of the possible Data Breach after close of business on Friday 11 November 2022.

- b. CTI discussed this issue with the Commissioner on the next business day (Monday 14 November 2022). Despite [REDACTED], [REDACTED], CTI and the Commissioner quickly formed the view that it was necessary to report the matter to the RGP.
- c. The next day (Tuesday 15 November 2022), the Inquiry reported the matter to the RGP.
- d. The next day (Wednesday 16 November 2022), the RGP made 2 arrests, as reported in the media. That day, members of the Inquiry team also met with the RGP and the Governor, and informed the Gibraltar Regulatory Authority ('GRA') and CPs about the breach.
- e. The next day (Thursday 17 November 2022), further detail was provided to the GRA. Members of the Inquiry team again met with the RGP.
- f. The next day (Friday 18 November 2022), CTI and the Commissioner received a report from A&L's IT provider.
- g. The next business day (Monday 21 November 2022), an external forensics IT firm was commissioned to investigate the breach.
- h. The next day (Tuesday 22 November 2022), CTI prepared a letter of engagement for the IT firm with detailed terms of reference. The Inquiry also sent letters to three persons thought to be involved in the Data Breach, which put them on notice that the documents had been obtained unlawfully, requesting delivery up of the documents, and reserving the right to commence legal proceedings.
- i. On Friday 25 November 2022, CTI received a preliminary report from the IT forensics firm. The Inquiry was in contact with the GRA.
- j. The next business day (Monday 28 November 2022), the Inquiry confirmed to the RGP that it maintained its criminal complaint. A&L sent an update to the GRA.
- k. The next day (Tuesday 29 November 2022) CTI sent a list of questions to the Solicitor to the Inquiry for the forensic investigator.
- l. On Thursday 1 December 2022, CTI and the Commissioner received a further brief report from the IT forensics firm.

- m. Whilst awaiting the report from the IT forensics firm, the Inquiry updated the GRA on 5 and 12 December 2022.
- n. On Wednesday 14 December 2022, the Commissioner and CTI received a lengthier report from the IT forensics firm. CTI remained concerned that the report did not go into sufficient detail or address all necessary avenues.
- o. The next day (15 December 2022), CTI communicated their concerns to the then Solicitor to the Inquiry, sent a list of questions for the investigator, and arranged to meet with the forensics investigator on the following day.
- p. The next day, on 16 December 2022, CTI met with the forensics investigator to ask the questions sent in writing and suggested further lines of inquiry.
- q. That afternoon, CTI sent a list of action items arising from the meeting to the then Solicitor to the Inquiry for the forensic investigator.
- r. CTI and the Commissioner received a further addendum report on 21 December 2022. CTI remained of the view that further avenues needed to be explored and made recommendations to A&L as to further lines of work and requested that they seek quotes.
- s. On 22 December 2022, CTI was informed that the RGP had provided the forensic investigator access to key hardware.
- t. Work continued on the forensic investigation, although CTI was informed that the forensic investigator would be away from work over the Christmas holiday period.
- u. CTI enquired about the progress of the forensic investigation on several occasions including 21 December 2023, 19 January 2023, 23 January 2023, 25 January 2023, 26 January 2023 and 30 January 2023.
- v. Whilst awaiting the report from the IT forensics firm, the Inquiry updated the GRA on 19 December 2022, 9 January 2023, 16 January 2023 and 23 January 2023. On 30 January 2023, CTI and the Commissioner received a further short report from the IT forensics firm. Unfortunately, the report contains very little concrete information and demonstrates that a lot more work is required in terms of investigation.
- w. As set out above, the decision to terminate A&L's engagement as Solicitors to the Inquiry occurred that same day. Since that date, CTI and Mr Turnock have continued to cooperate with the RGP.

13. We also wish to respond to the three related points raised by Mr McGrail about the Data Breach. First, as to the Inquiry's obligations under the Gibraltar General Data Protection Regulation ('GDPR'):
- a. The Inquiry notified the GRA of the Data Breach pursuant to Article 33 of the Gibraltar GDPR, and has been in weekly contact with the GRA through A&L. Triay can now continue this regular communication.
 - b. The Inquiry is also keenly aware of its obligations under Article 34 to notify individuals affected by the Data Breach. However, Recital 86 of the GDPR provides the nuance that: "*Such communications to data subjects **should be made as soon as reasonably feasible and in close cooperation with the supervisory authority, respecting guidance provided by it or by other relevant authorities such as law-enforcement authorities.** For example, the need to mitigate an immediate risk of damage would call for prompt communication with data subjects whereas the need to implement appropriate measures against continuing or similar personal data breaches may justify more time for communication.*" (Emphasis added). As a result, once the Inquiry is in possession of enough information to provide an accurate and reliable notification to affected data subjects, we submit that the RGP's views should be taken into consideration prior to notification.
14. Second, Mr McGrail's representatives have expressed concern that "*submissions on its findings on the data breach may be in writing only*", and that this conflicts with the Commissioner's ruling on open justice.³ This arose from the statement in CTI's letter of 31 January 2023 that "*Once the Inquiry is in a position to report concrete findings on the data breach to the Core Participants, an opportunity will be provided to make further submissions (either in writing or at a future hearing).*" Mr McGrail's position is not understood. As has been the case since PH1, written submissions by the CPs are published on the Inquiry's website. In the circumstances there is no basis for asserting that this would conflict with the principles of open justice. In any event, the reference to written submissions in CTI's letter was only intended as a possible option, to reassure participants that they would be heard on this issue. There was no suggestion in the letter that oral submissions would not be permitted if a participant wished to make them, and CTI is amenable to a further preliminary hearing on this issue (see paragraph 32c below).

³ Submissions on behalf of Ian McGrail, 2 February 2023 at [30].

15. CTI certainly agree that this issue should be addressed, including at a future hearing if the CPs wish to do so, but only when it no longer poses a risk to the live criminal investigation.
16. Third, we note Mr McGrail's suggestion that other CPs should be asked to confirm by affidavit whether they have come into possession of any documents via the leak.⁴ We welcome this suggestion and urge the Commissioner to consider it. However, if the Commissioner was minded to take this course of action, it would only be possible if the RGP's senior investigating officer is satisfied that it would not interfere with the live investigation.

(ii) Security review

17. Mr McGrail's representatives have requested that "*the Inquiry communicates to the Core Participants the outcome of the security review which was promised by the Commissioner at the June hearing*".⁵ However, as is clear from the transcript of PH2, the Commissioner's pledge to undertake a "*detailed inquiry of the position and the risks*" quite clearly related to the provision of email accounts by the IT & Logistics Department of HMGoG ('**the ITLD**') to the Commissioner and Secretary. There was no commitment by the Commissioner to undertake a general security review (nor can the Commissioner's statements reasonably be interpreted that way in their proper context). The relevant passage reads as follows:⁶

Mr Santos: As far as the IT point is concerned, my understanding is that we benefit – not me, not anyone in the Inquiry team – the Commissioner and the Secretary use email addresses provided by the Government. Whether that potentially could be open to access by a Government employee, I do not know the answer to. That is something we can check. Again, we are constrained by what is practically possible in Gibraltar. We have said to the parties that we are willing to consider alternatives, but without any real information as to a threat to the integrity of our documents, we certainly do not think that we should be embarking on looking into alternative IT solutions. We have considered the obvious ones. We do not consider that the obvious ones would be any more acceptable to the core participants that what we currently have in place, but we are willing to continue the conversation and –

⁴ Submissions on behalf of Ian McGrail, 2 February 2023 at [31].

⁵ Submissions on behalf of Ian McGrail, 2 February 2023 at [32(iii)]. We understand the reference to "June" to mean to September, ie to the PH2, as discussed in [26] of Mr McGrail's submissions.

⁶ Transcript of PH2 p102-103: <https://coircomp.gi/wp-content/uploads/2022/09/Transcript-Inquiry-PH2-20.09.22-revised-front-sheet.pdf>.

The Commissioner: *I will tell you what. Let us undertake to make a detailed Inquiry of the position and the risks, and we will let you know precisely what we find, and if there are concerns we will let you know and we will address them.*

18. The results of the Inquiry's investigation into the email server issue are set out in part (iii) below. However, in respect of broader IT security:
- a. Triay has expressly assured the Inquiry that it will adopt appropriate security measures in line with the Documents Policy, having regard to the sensitivity of the subject matter. For example, other than documents which are publicly available on the Inquiry website, only specific persons within Triay who are working on the Inquiry have access to Inquiry documents, and Triay uses a secure cloud-based storage system. As CPs will appreciate, it would not be sensible for security reasons to provide further detail on these systems.
 - b. However, we are in agreement with Mr McGrail's team that it would be beneficial for the confidence of all witnesses to conduct a forward-looking audit of the Inquiry's systems, and urge the Commissioner to consider this.

(iii) IT services by HMGOG

19. As explained above, at PH2, Mr McGrail's representatives raised as an issue that the ITLD provides services to the Inquiry in that it hosts the email accounts used by the Commissioner and Secretary on Government servers. The Commissioner pledged to investigate the position and the risks.
20. The Inquiry has investigated the issue, and can provide the following update (noting that it has already updated Mr McGrail's representatives on this issue in correspondence).
21. The Director of the ITLD has confirmed to the Inquiry that:
- a. Only one systems administrator ('**the Admin**') can access the mailboxes.
 - b. No one else can access the mailboxes without the Admin granting access.
 - c. The Admin will not access the mailboxes or grant access to anyone without first seeking authorisation from the Inquiry.
 - d. No other mailbox administrator will be given access to coircomp.gi mailboxes.
22. Upon receiving these confirmations, the Commissioner concluded that it would be preferable to avoid switching to an external IT provider (which would introduce great additional expenditure and potential security issues) and that a proportionate solution would be for the Admin to provide a written undertaking to the Inquiry that they:

- a. have not previously accessed or tried to access any of the contents of the two mailboxes;
 - b. do not know of anyone else who has accessed or tried to access any of the contents; and
 - c. will not access any of the mailboxes in the future, or grant access to anyone in the future, without first seeking written authorisation from the Inquiry.
23. If the Admin were to breach that undertaking, the Commissioner would be able to refer the matter to the Supreme Court of Gibraltar to be addressed as if it were a contempt of court: **Commissions of Inquiry Act 1888**, s12(c). It is submitted that this will provide an adequate degree of security to the Inquiry's email system against any theoretical attempted access from within HMGoG (and there is no evidence of any such attempt at present).
24. The Inquiry wrote to HMGoG proposing this way forward and at the time of drafting this skeleton argument awaits a substantive reply, and since being instructed Triay has followed up with this issue. It is hoped that a further update can be provided at the hearing.

B. The Change of Solicitor

25. On Tuesday 31 January 2023, the Commissioner terminated the engagement of Stephen Catania of A&L as Lead Solicitor to the Inquiry (and thus the services of A&L). The Commissioner will address the PH3 on the reasons for that decision. CTI do not consider it necessary or appropriate to comment on this point, other than to address the suggestion (by Mr McGrail's representatives) of unreasonable delay on the part of the Inquiry.⁷ The timeline of events was as follows:
- a. On Monday 19 December 2022, Mr McGrail's solicitors raised an issue with CTI about A&L's independence. CTI (and the Commissioner) were not aware of the facts underlying the issue prior to being informed by Mr McGrail's solicitors.
 - b. The Commissioner and CTI discussed this issue on Thursday 22 December 2022 and resolved to seek further information from A&L. A draft letter to A&L was prepared the next day (23 December 2022), which was settled by the Commissioner after Christmas (28 December 2022).

⁷ Submissions on behalf of Ian McGrail, 2 February 2023 at [20].

- c. On 3 January 2023, the first working day after the Christmas/New Year period, the Commissioner sent the letter to A&L. The letter sought detailed information from A&L on the instruction and highlighted the seriousness of the issue as far as the Commissioner was concerned.
 - d. A&L provided a lengthy response on 11 January 2023.
 - e. The Commissioner considered this response and discussed the matter with CTI over the next week (despite Mr Santos being on vacation at the time). On 18 January 2023, the Commissioner wrote to A&L requesting proposals as to a viable solution to the issue.
 - f. A&L considered the matter for a further week, and CTI chased a response to the Commissioner's letter on 26 January 2023, requiring a response by close of business on 27 January 2023.
 - g. An urgent meeting between Mr Santos, the Secretary to the Inquiry Maurice Turnock and A&L was held on the morning of Friday 27 January 2023 in a final attempt to find a satisfactory solution to the issue.
 - h. No satisfactory solution having been found, the Commissioner made the decision to terminate Mr Catania's appointment on Monday 30 January 2023, and communicated his decision to A&L that afternoon. The termination was formalised on the morning of Tuesday 31 January 2023.
26. This timeline demonstrates that the Inquiry responded as quickly as possible in the circumstances, which included: (a) the need to ascertain the full factual background to the issue, (b) the need to raise the concern with A&L and permit them a fair opportunity to respond, (c) the periods during which the Inquiry was awaiting A&L's response, and (d) the timing of the Christmas/New Year break, during which CTI and Commissioner were on leave at various points.
27. Following the Commissioner's decision on 30 January 2023, which was formalised on 31 January 2023, the Inquiry immediately started the process of trying to identify and appoint a new Solicitor. Triay's appointment was announced only three days later, during which time various matters such as conflict checks and fee negotiations needed to be conducted.
28. It is helpful to set out the full text of the letter sent by the Commissioner to the Core Participants on 3 February 2023, as follows:

"As I hope you will appreciate, the decision to terminate Attias & Levy as Solicitors to the Inquiry has generated significant upheaval and additional work for the other

members of the Inquiry team. We are grateful for your patience as we deal with this issue. I will provide a short statement at the Third Preliminary Hearing on the reasons for this decision. You will also appreciate that the process of exploring who should be appointed as the new Solicitor to the Inquiry also took time, and that it was not appropriate to propose names to Core Participants prior to an agreement on matters such as fees and resourcing being reached.

*In the interim, the Inquiry proposes to appoint Charles Simpson of Triay Lawyers as the new lead Solicitor to the Inquiry. Mr Simpson is an experienced litigator whom I consider to be amply experienced to take up this role. He will be assisted by two other lawyers at Triay. **I am firmly of the view that in a public inquiry involving matters of public and political significance to Gibraltar citizens, it is preferable (and indeed may be required from a regulatory perspective) to instruct a local firm.***

Triay have conducted a full conflicts check and confirmed that they are able to act. Mr Simpson has also provided written confirmation that he is not aware of any matter which may give rise to a perception of lack of independence on the part of the Inquiry. However, in an abundance of caution and to be as open as possible, he has declared that he belongs to the same friendship circles as John Perez (a witness to the Inquiry). He assures me, however, that he does not have (and has never had) any professional dealings with Mr Perez. I am pragmatic about the realities of life in Gibraltar, a jurisdiction of 30,000 people, in which such associations cannot be avoided and are regularly managed in the context of litigation. Mr Simpson has further indicated that he will distance himself socially from Mr Perez, which I consider to be a satisfactory way of preventing any potential perception of lack of independence.

As it is essential for the Solicitor to the Inquiry to be present at the Third Preliminary Hearing, I consider that the best course of action is for Triay to be appointed as Solicitors to the Inquiry for that purpose, with their ongoing appointment to be confirmed subject to any submissions from the parties.” (Emphasis added)

29. The identity of the Solicitors to the Inquiry is a matter of the Commissioner: *Beer on Public Inquiries* at [4.52]. *Beer* does not suggest that the ordinary practice is for the participants to make submissions on the identity of the Solicitor. However, as the Commissioner has indicated that he is willing to hear submissions on this point, we take the opportunity to agree that it would not be preferable, nor acceptable from a regulatory perspective, to engage UK solicitors as Solicitor to the Inquiry. There are also clear practical benefits of instructing a local firm, for example in terms of correspondence with other local firms and regulators, evidence gathering, attending in-person meetings, liaising with the local press, and making logistical arrangements (eg liaising with the Garrison).

C. Composition of the Inquiry team

30. This issue was raised as an additional agenda item by Mr McGrail's representatives. For future hearings, CTI requests that any CP raising an additional agenda item should provide sufficient information on the proposed agenda item so that other CPs can understand the issue and usefully engage on it in their written submissions.

31. Mr McGrail's written submissions on this topic raise two issues, which are address briefly in turn below:

- a. First, Mr McGrail seeks that a KC be appointed to supplement the CTI team as "*none of the [Inquiry] team appears to have any experience of acting in, let alone running public inquiries*".⁸ Mr McGrail has already raised this issue in correspondence with the Inquiry, and was informed in reply that "*The Commissioner is satisfied that the composition and expertise of the Inquiry team is appropriate*".⁹ Mr McGrail's solicitors replied that "*the Commissioner's satisfaction ... is reassuring*".¹⁰ In these circumstances, the matter has already been addressed by the Commissioner. CTI do not consider it appropriate to comment further.
- b. Second, Mr McGrail's representatives submit that "*a specific conflict of interest issue*" raised with CTI was not "*not ... treated with the expected level of sensitivity or urgency*".¹¹ We understand this to be a reference to Mr Santos's decision to step away from his position on the Governance and Strategy Board of the Gibraltar Football Association for the duration of the Inquiry, given that Attorney-General Michael Llamas QC is President of the Association. This decision was communicated to the CPs on 27 July 2022 "*purely on the basis of prudence and to avoid any appearance of bias or lack of independence*". In our submission, the timeline below demonstrates that Mr Santos responded to this issue with the utmost urgency and sensitivity:
 - i. On Monday 20 June 2022, two days before the First Preliminary Hearing ('PH1'), Mr McGrail's representatives wrote to the Solicitor Inquiry raising this issue for the first time. Mr Santos discussed the matter with the Commissioner that afternoon.

⁸ Submissions on behalf of Ian McGrail, 2 February 2023 at [20].

⁹ Letter from A&L to Gomez & Co, 18 July 2022.

¹⁰ Email from Gomez & Co to A&L, 1 August 2022.

¹¹ Submissions on behalf of Ian McGrail, 2 February 2023 at [20].

- ii. The next morning (Tuesday 21 June 2022), the Solicitor to the Inquiry sent Mr McGrail's solicitors a detailed reply setting out the full factual background, notwithstanding that the Inquiry team was deep in preparation for PH1 on the following day.
- iii. Mr McGrail's team responded two weeks later on 6 July 2022 (at which time the Commissioner was on leave). The next day (7 July 2022), Mr Santos circulated his response to the letter to the Inquiry team. The Commissioner returned from leave on 11 July 2022 and Mr Santos discussed the matter with him that morning. A further detailed response was sent to Mr McGrail on 18 July 2022, stating that Mr Santos would suspend his activities on the Governance and Strategy Board until the conclusion of the Inquiry.
- iv. Mr McGrail's solicitors responded two weeks later on 1 August 2022, confirming that the matter had been settled to Mr McGrail's satisfaction.
- v. In a subsequent letter, Mr McGrail's representatives stated that the Inquiry had "*appropriately addressed*" this concern.

D. Update on Inquiry timetable

32. CTI has proposed the following timetable for the future progress of the Inquiry in correspondence with CPs:

- a. **4pm 10 March 2023:** Longstop date for provision of witness statements and disclosure (that has already been requested) to the Inquiry.
- b. **By 4pm 4 May 2023:** Inquiry to notify providers of documents which documents the Inquiry intends to disclose to the Core Participants – para 22, Documents Policy.
- c. **By 4pm 18 May 2023:** Providers of documents to indicate which part or parts (if any) of the documents it seeks to have redacted – para 22, Documents Policy.
- d. **By 4pm 25 May 2023:**
 - i. Core Participants to provide any objections to proposed redactions – para 23, Documents Policy.
 - ii. Inquiry to disclose all relevant witness statements and disclosure (except those the subject of redaction requests) to Core Participants.

- iii. Inquiry to make any requests for further disclosure to providers of documents.
 - e. **By 4pm 16 June 2023:** Inquiry to disclose any documents subject to redaction requests to Core Participants.
 - f. **By 4pm 7 July 2023:** Core Participants (or any other witness invited to make a responsive statement) to provide responsive witness statements to the Inquiry.
 - g. **By 3pm 19 July 2023:** Core Participants to file any skeleton arguments (if so advised) for Fourth Preliminary Hearing.
 - h. **26 – 27 July 2023:** Fourth Preliminary Hearing.
 - i. **15 September 2023:** Core Participants to file skeleton arguments for Main Inquiry Hearing.
 - j. **21 – 22 September 2023:** Designated (remote) reading days.
 - k. **25 September – 20 October 2023:** Main Inquiry Hearing.
33. In response to the submissions by Mr McGrail on the draft timetable:
- a. **Timing of responsive witness statements:** As the Statutory Participants (and the Attorney General) all exchanged witness statements and exhibits some time ago, in our submission the preparation of responsive statements should be well underway. Under the proposed timetable, CPs will receive all further disclosure on 25 May 2023. This disclosure will include documents which are the subject of redactions (albeit in redacted form). CPs will then have until 7 July 2023 (a further 6 weeks) to finalise responsive statements. The only additional documents that CPs will receive at a later stage – on 16 June 2023 – are any documents which were either redacted or withheld by a provider of disclosure for reasons set out in the Documents Policy, and subsequently ordered to be unredacted or disclosed by the Commissioner. To date there has only been one application to redact or withhold documents under the Documents Policy. The three-week period should therefore suffice for CPs to consider any unredactions and additional documents, and amend their responsive evidence accordingly. Needless to say, if further time is reasonably required (for example if a large number of documents are unredacted or disclosed at that stage), we submit that the Inquiry should consider any reasonable applications for extensions of time.

- b. **Longstop date:** The purpose of the longstop is to provide a realistic final deadline for the receipt of disclosure. CTI are concerned that if this is reduced to two weeks rather than four, it may not be achievable and therefore require the entire timetable to be revised. CTI are particularly cognisant of the need for the Inquiry to provide sufficient time for retired police officer Mr Richardson to prepare his witness statement after reviewing materials provided by the RGP. Therefore, CTI submit that it should not be altered.
- c. **Preliminary hearing on the Data Breach:** CTI agree that it would be beneficial to have a further PH to address the Data Breach (indeed, that was the intention behind this hearing: see paragraph 11 above). However, given the ongoing criminal investigation, it is not currently possible to predict when it will be possible for the Data Breach to be discussed in detail at an open hearing. CTI proposes that, when the RGP and forensic investigator have concluded their inquiries and confirmed that a hearing on the Data Breach would not prejudice the criminal investigation, the Commissioner could list a hearing on shorter notice. To allow flexibility, the Commissioner could consider listing this as a remote (MS Teams) hearing.
- d. **July hearing:** While CTI do not object in principle to the final PH being held earlier than late July, if a further week is provided for responsive witness statements we do not consider that an earlier PH is realistic. In CTI's submission, it is essential for all evidence to have been filed before the final Preliminary Hearing.
- e. **CTI submissions:** CTI takes on board Mr McGrail's submission that it would assist the CPs if CTI circulated their skeleton argument prior to the deadline for CPs filing their own skeleton arguments.¹² That was CTI's intention prior to the PH3. Unfortunately, due to the exceptional events of the last fortnight, where the Data Breach and Change of Solicitor were still developing and it was not possible to provide a sensible update until CTI's letter of 31 January 2023. However, CTI has incorporated this into the timetable below for the next PH.
- f. On further consideration, CTI submits that the Inquiry should bring forward the proposed date for requesting further disclosure, to allow for the orderly progression of the timetable.

¹² Submissions on behalf of Ian McGrail, 2 February 2023 at [39].

34. Therefore, subject to submissions from any other participants, we propose the following revised timetable:

- a. **4pm 10 March 2023:** Longstop date for provision of witness statements and disclosure (that has already been requested) to the Inquiry.
- b. **By 4pm 4 May 2023:**
 - i. Inquiry to notify providers of documents which documents the Inquiry intends to disclose to the Core Participants – para 22, Documents Policy.
 - ii. Inquiry to make any requests for further disclosure to providers of documents.
- c. **By 4pm 18 May 2023:**
 - i. Providers of documents to indicate which part or parts (if any) of the documents it seeks to have redacted – para 22, Documents Policy.
 - ii. Providers of documents to provide any requested further disclosure.
- d. **By 4pm 25 May 2023:**
 - i. Core Participants to provide any objections to proposed redactions – para 23, Documents Policy.
 - ii. Inquiry to disclose all relevant witness statements and disclosure (except those the subject of redaction requests) to Core Participants.
- e. **By 4pm 16 June 2023:** Inquiry to disclose any documents subject to redaction requests to Core Participants.
- f. **By 4pm 7 July 2023:** Core Participants (or any other witness invited to make a responsive statement) to provide responsive witness statements to the Inquiry.
- g. **By 4pm 14 July 2023:** CTI to provide written submissions to Core Participants in advance of Fourth Preliminary Hearing.
- h. **By 4pm 21 July 2023:** Core Participants to file any skeleton arguments (if so advised) for Fourth Preliminary Hearing.
- i. **26 – 27 July 2023:** Fourth Preliminary Hearing.

- j. **15 September 2023:** Core Participants to file written opening statements¹³ for Main Inquiry Hearing.
- k. **21 – 22 September 2023:** Designated (remote) reading days.
- l. **25 September – 20 October 2023:** Main Inquiry Hearing.

**JULIAN SANTOS
HOPE WILLIAMS
5RB**

6 February 2023

¹³ CTI's letter referred to skeleton arguments instead of written opening statements.