

**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

Wednesday 08 February 2023

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**

**Charles Simpson: Solicitor to the Inquiry, Triay, Gibraltar**

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

**Caoilfhionn Gallagher KC, Doughty Chambers**

**Adam Wagner, Doughty Street Chambers**

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

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

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

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

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

**Sir Peter Caruana KC, 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 KC, TSN**

**Shane Danino, TSN**

**Lawyers representing current members of Gibraltar Police:**

**Nicholas Cruz, Cruzlaw**

**Arcelia Hernandez Cordero, Cruzlaw**

**Lawyers representing Gibraltar Police Federation:**

**Gilbert Licudi KC, Hassans**

**Charles Bonfante, Hassans**

**PROCEEDINGS**

**DAY 3**

<p>1 (Wednesday 08 February 2023) 2 (10.49am) 3 THE COMMISSIONER: Yes, good 4 morning to you all and welcome to this 5 further preliminary hearing. I hope that you 6 managed to get some sleep last night after 7 your nocturnal exchanges. Yes, Mr Santos. 8 MR SANTOS: Good morning, sir. First of 9 all, as is customary, I should introduce the 10 parties. I appear with my junior Hope 11 Williams as counsel to the inquiry, instructed 12 by Charles Simpson of Triay. Sir Peter 13 Caruana KC, Chris Allana and Philip Dumas 14 appear for the government parties. 15 Caoilfhionn Gallagher KC and Adam 16 Wagner appear for Mr McGrail, instructed by 17 Charles Gomez of Gomez &amp; Co. James 18 Neish KC and Shane Danino appear for the 19 Gibraltar Police Authority. Nick Cruz and 20 Arcelia Hernandez Cordero appear for the 21 Royal Gibraltar Police. Gilbert Licudi KC 22 and Charles Bonfante appear for the 23 Gibraltar Police Federation. I also received a 24 note last night from Patrick Gibbs KC on 25 behalf of Mr Paul Richardson which I have</p> <p style="text-align: center;">Page 1</p>	<p>1 for short. On 19 December last year, just 2 before Christmas, Mr McGrail's legal team 3 helpfully sent a letter to the Inquiry which 4 informed us that Attias &amp; Levy were 5 instructed by the defendants in the case of 6 Kingstar UK Ltd &amp; Another v Hassans &amp; 7 Others, the judgment in which was handed 8 down on 7 December last year. That was the 9 first time that anyone at the Inquiry learned 10 of A&amp;L's instruction in that case, which they 11 have not disclosed to us. I immediately 12 instructed counsel urgently to investigate the 13 background, which he did. 14 Although I accept that there was no nexus 15 between the subject matter of Kingstar and 16 the Inquiry, it is clear to me that some of 17 A&amp;L's clients in the Kingstar matter are also 18 likely to be concerned with some of the 19 issues under inquiry. It would not be 20 appropriate for me at this stage to go into 21 further detail since it might risk prejudicing 22 the issues under inquiry, and I am anxious to 23 give those concerned the opportunity of 24 dealing with those issues so I have 25 deliberately chosen my words with some care</p> <p style="text-align: center;">Page 3</p>
<p>1 asked to be circulated to the parties, so I 2 would ask that any core participants who 3 have not received that note, let us know if 4 that is not the case. 5 I believe the first thing we are going to deal 6 with is a short statement by the 7 Commissioner on the change of solicitor, so I 8 will give way. 9 THE COMMISSIONER: Yes, thank you. I 10 regret that the Inquiry has been deflected 11 from its focus on its core business by events 12 and circumstances, one of which has caused 13 me to terminate the appointment of Attias &amp; 14 Levy as the Inquiry Solicitors, upon which I 15 now make a short statement. The other is the 16 data breach at Attias &amp; Levy, about which 17 Counsel to the Inquiry will speak in due 18 course. 19 This is my short statement on the 20 circumstances which made it necessary to 21 dispense with the services of Attias &amp; Levy. 22 Mr Catania was appointed as Solicitor to the 23 Inquiry on 28 March of last year and was 24 assisted in that role by Mr Chandiramani and 25 other junior lawyers at Attias &amp; Levy, A&amp;L</p> <p style="text-align: center;">Page 2</p>	<p>1 and I would urge counsel and anyone 2 reporting these proceedings to do the same. 3 However, having considered all the 4 circumstances, I was satisfied that the fair 5 minded and informed observer would have 6 serious concerns about A&amp;L's ability to 7 perform these two roles simultaneously and 8 this risked creating a perception that the 9 Inquiry lacked independence. Without going 10 through a detailed timetable, which of course 11 I could do, in my opinion the Inquiry 12 responded to this issue as expeditiously as 13 possible whilst at the same time taking 14 proper care to establish the facts and 15 providing A&amp;L with reasonable time to 16 address my concerns and to make proposals 17 for its possible resolution, which ultimately 18 they were unable to do. So I concluded that 19 A&amp;L could not remain as Solicitors to the 20 Inquiry without there being a risk of losing 21 public confidence in the independence of the 22 Inquiry, which of course I am determined to 23 retain. 24 So I need therefore to engage new solicitors 25 and logically it would seem to me that a good</p> <p style="text-align: center;">Page 4</p>

<p>1 place to start today's proceedings is with that 2 issue. Miss Gallagher, of course I have read 3 your submissions on this point and I invite 4 you to address me on that issue if you want 5 to do so.</p> <p>6 MS GALLAGHER: Thank you, sir. 7 Commissioner, as you of course know, I am 8 making submissions on behalf of Mr 9 McGrail, and as you know I am appearing 10 with Mr Wagner and instructed by Charles 11 Gomez, Nick Gomez and Daniel Benyunes 12 of Charles Gomez &amp; Co. We are very 13 grateful for the Inquiry's skeleton argument 14 which has provided us with some useful 15 detail that we did not know at the time we 16 prepared our written submissions and we are 17 grateful for the opportunity to address some 18 of the points made by Mr Santos and Miss 19 Williams.</p> <p>20 I do want to make some short introductory 21 comments and then I will turn to the specific 22 point, because those introductory comments 23 contextualise our submissions on both this 24 agenda item, Commissioner, but also on 25 other agenda items. It may be helpful to take</p> <p style="text-align: center;">Page 5</p>	<p>1 core participants. A central point which we 2 make is that a number of the difficulties 3 which have arisen were predictable and 4 indeed predicted by Mr McGrail's legal team 5 from very close to the outset of these 6 proceedings. We submit it is imperative that 7 today the Inquiry takes robust and decisive 8 action. We are reassured to an extent by 9 some of the additional information we have 10 now received in the written submissions 11 which we did not know, about what had 12 occurred since our letter of 19 December, but 13 we remain extremely concerned for a number 14 of reasons that I will come to.</p> <p>15 We say at the outset it is important not to 16 lose sight of the importance of this Inquiry, 17 for Mr McGrail of course but also for the rule 18 of law in Gibraltar. The context to the 19 submissions I am about to make is that we 20 have in our written submissions reiterated 21 some of the international anti-corruption 22 conventions which apply to Gibraltar, the 23 importance that those conventions place on 24 protecting whistleblowers, ensuring that 25 public authorities support police personnel</p> <p style="text-align: center;">Page 7</p>
<p>1 that at the outset and then turn specifically to 2 the issue about the team. I make these 3 remarks with due regard to the need to avoid 4 straying into territory which may cause 5 difficulties with ongoing criminal 6 investigations, as you have indicated 7 yourself, Commissioner, at the outset. So we 8 are careful to avoid providing factual detail 9 which we have been asked to sidestep but 10 which is of course known to you, 11 Commissioner.</p> <p>12 The Inquiry has of course suffered a number 13 of recent setbacks, particularly the data 14 breach which we will be coming to as item 2 15 on the agenda, the knock on impact of this 16 upon the Inquiry's substantive work and just 17 last week the dismissal and provisional 18 replacement of the Solicitor to the Inquiry. 19 You will know from the written submissions 20 that we have made that we are extremely 21 concerned by what has occurred in recent 22 months and regrettably, Commissioner, we 23 consider there to be shortcomings in the 24 Inquiry's approach and in particular the 25 Inquiry's timings and communication with</p> <p style="text-align: center;">Page 6</p>	<p>1 who are subject to ill-founded accusations 2 concerning their duties. I do not go into that 3 in any detail, you have our written 4 submissions.</p> <p>5 The simple contextual point we make at the 6 outset is that it is Mr McGrail's case that this 7 Inquiry is investigating allegations of 8 corruption and our submission is that Mr 9 McGrail is a whistleblower who needs to be 10 protected, and indeed ...</p> <p>11 MR SANTOS: I am sorry to interrupt but I 12 did not understand the Commissioner's 13 question to be an invitation for a lengthy 14 speech on general matters, because I have not 15 had the opportunity of introducing these 16 matters. What I understood it to be was a 17 rather specific question as to the appointment 18 of a new solicitor and whether there were any 19 observations that Mr McGrail's team had on 20 that, so I would ask Mr McGrail's counsel to 21 engage with that question and we can deal 22 with these other points when they are raised 23 as far as the agenda is concerned.</p> <p>24 MS GALLAGHER: Commissioner, the 25 confusion has arisen because when we spoke</p> <p style="text-align: center;">Page 8</p>

2 (Pages 5 to 8)

<p>1 to your team beforehand we were informed 2 that the running order of these issues today 3 would be first of all there would be the 4 opening statement, then we would be turning 5 to items 2 and 4 on the original agenda to be 6 introduced by Mr Santos, update on the data 7 breach and the Inquiry's investigation and the 8 issue of IT services, and then we would be 9 turning to the composition of the Inquiry 10 team. So we had anticipated that these 11 contextual points would already have been 12 dealt with at the outset. The reason they are 13 important is because they go to the 14 importance of the issue about conflict of 15 interest. So we had not intended to take them 16 in this order, I am adjusting to the new 17 position, which is contrary to the position we 18 had discussed with your team prior to the 19 hearing. I am in your hands but if I am to 20 address this issue about the composition of 21 the team I do need to put it in context. I am 22 happy to take it later in the hearing if that 23 would be preferable to Mr Santos, which I 24 know was his original intention, and we are 25 quite happy to fit with Mr Santos's original</p> <p style="text-align: center;">Page 9</p>	<p>1 we had an agreement in terms of what would 2 be dealt with and what does not have to be 3 dealt with today. It may be that the 4 government parties wish to respond to what 5 has been said thus far, and if they wish to do 6 so and they consider that the agreement has 7 not been kept to, then that is a matter for 8 them. 9 But just to start on the matters that I intended 10 to address, can I first of all, Commissioner, 11 set out the agenda for today. First, I intend to 12 give a general update on the Inquiry's work 13 since PH2. Second, I will address the data 14 breach that was brought to our attention in 15 November and related IT matters. Third, I 16 will turn to the issue raised by Mr McGrail, 17 namely the composition of the Inquiry team 18 and I am certainly happy for my learned 19 friend Miss Gallagher KC to address the 20 matter that she was addressing just now in 21 terms of Mr Simpson's appointment as part 22 of that item. Yes, if anybody wants to say 23 anything in relation to what you have just 24 said, sir, as to the change of solicitor I would 25 invite them to do so at that stage. Then</p> <p style="text-align: center;">Page 11</p>
<p>1 intention. 2 THE COMMISSIONER: You will have a 3 full opportunity of making your submissions 4 but in due course. 5 MS GALLAGHER: I am very grateful and I 6 understand why Mr Santos does not want us 7 to necessarily start with these issues ... 8 THE COMMISSIONER: Yes. 9 MS GALLAGHER: ... when he has not 10 introduced them. 11 THE COMMISSIONER: Exactly. 12 MS GALLAGHER: If we take it in Mr 13 Santos's other order, it may be more 14 convenient for you, Commissioner. 15 THE COMMISSIONER: Okay, I entirely 16 agree. 17 MS GALLAGHER: Thank you. 18 THE COMMISSIONER: Yes, Mr Santos. 19 MR SANTOS: I am grateful. What I was 20 going to say, although that has been 21 somewhat superseded by what counsel for 22 Mr McGrail has said, is that I understood 23 there to be an agreement that there were 24 certain matters that would not be addressed 25 orally, and I was under the impression that</p> <p style="text-align: center;">Page 10</p>	<p>1 finally, we will address the Inquiry timetable 2 through to the main hearing due to take place 3 from 25 September to 20 October. 4 Turning to the general update, the second 5 preliminary hearing, or as I refer to it, PH2, 6 took place on 20 September 2022. During 7 the remainder of September, throughout 8 October and the first half of November the 9 Inquiry continued with its work, receiving 10 witness statements and disclosure from 43 11 individuals or bodies. Evidence is also 12 expected very shortly from at least nine other 13 individuals or bodies. Unfortunately our 14 work has been affected by two significant 15 events since late October: first, the data 16 breach affecting the Inquiry's documents 17 which, as I say, was brought to our attention 18 in November 2022 and with which we have 19 been dealing ever since; and second, as you 20 have explained, sir, the decision to terminate 21 the engagement of Mr Catania of Attias &amp; 22 Levy as Solicitor to the Inquiry. 23 We as counsel are acutely aware of the 24 gravity and seriousness of both of those 25 events and I think it is only right to say that</p> <p style="text-align: center;">Page 12</p>

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<p>1 we have been working tirelessly to respond 2 to both issues while also seeking to progress 3 the Inquiry's substantive work. Any 4 suggestion that we have not taken these 5 matters seriously or that we have 6 unreasonably delayed grappling with them is 7 simply incorrect and is unsupported by the 8 full factual background that we have tried to 9 set out as far as possible in our skeleton 10 argument. These are extremely complex 11 issues requiring careful, measured responses 12 and they have taken up a huge amount of our 13 time. 14 By way of illustration, the following matters 15 have had an impact on the time frame for 16 responding. Firstly, there was a need to 17 conduct an independent forensic examination 18 into the data breach. Secondly, there is a 19 parallel criminal investigation into the data 20 breach which, for example, meant that it took 21 some time to obtain access to certain 22 hardware. Thirdly, in terms of the change of 23 solicitor, we needed to accord procedural 24 fairness to the former Solicitor to the Inquiry 25 and allow the team enough time to respond to</p> <p style="text-align: center;">Page 13</p>	<p>1 to bear that in mind and cooperate as far as 2 possible in achieving that main aim. 3 After those introductory remarks, I now turn 4 to the data breach in a bit more detail. It is 5 uncontroversial that the security of the 6 Inquiry's information is fundamental to its 7 success and, as I have said, we are acutely 8 aware of the seriousness of the data breach 9 and wish to assure the core participants and 10 the public that we have been in regular 11 communication with the Commissioner on 12 this issue since as soon as it was brought to 13 our attention. I do not propose to go into the 14 details of how it came to our attention and I 15 would ask that we do not go into that matter, 16 but the Inquiry has been since then in regular 17 contact with the RGP and the Gibraltar 18 Regulatory Authority from the outset. 19 This hearing was originally scheduled on the 20 assumption that we would be in a position to 21 share more details with the core participants 22 in advance of the hearing so that everybody 23 could address the issue in written 24 submissions first but unfortunately that has 25 not been possible for two main reasons.</p> <p style="text-align: center;">Page 15</p>
<p>1 requests for information before you, sir, 2 could decide how to proceed. There was also 3 a need to scope out appropriate replacement 4 solicitors and that involved conducting 5 conflict checks, for example. It is also worth 6 noting that both of these matters were 7 unfolding at the same time and also over the 8 Christmas and New Year period with the 9 inevitable delays that that brings. 10 It is fair to say that these two issues have 11 occupied the majority of our time since mid- 12 November and unquestionably unfortunately 13 impacted the progress of the Inquiry. 14 However, now that new solicitors have been 15 appointed we are eager to return to and get 16 on with our main task of progressing this 17 matter to a timely hearing in September. Of 18 course we will continue to advise and update 19 the Inquiry and participants in relation to the 20 data breach and that is a matter which we 21 will continue to give considerable attention 22 and urgency, but I believe what the public 23 really wants is for us to continue and 24 progress this matter to a main hearing and I 25 would therefore ask for the core participants</p> <p style="text-align: center;">Page 14</p>	<p>1 First, the forensic investigation remains 2 ongoing and despite our consistent attempts 3 to progress matters, we simply do not yet 4 have the necessary information to provide a 5 useful update. While we have received 6 several reports from the IT firm 7 investigating, these have so far been very 8 brief indeed and do not contain conclusive 9 findings. More forensic investigation is 10 undoubtedly required. 11 Second, and just as importantly, we are 12 limited in the information we can share due 13 to the live criminal investigation being 14 conducted by the RGP which has brought in 15 a senior investigating officer from the Police 16 Service of Northern Ireland to lead the 17 investigation. As we explained in our 18 communication to the parties last week, we 19 were informed by the RGP that it was 20 concerned that providing a detailed update or 21 discussion of the initial findings of the 22 forensic investigator would seriously risk 23 undermining the criminal investigation, and 24 that is something that we certainly do not 25 wish to do. What I would like to do,</p> <p style="text-align: center;">Page 16</p>

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<p>1 however, is reassure the public and the core 2 participants that, having recognised right 3 from the outset the significance of this 4 breach, we have sought at all stages to 5 progress the investigation and a full timeline 6 is set out in our written submissions, which I 7 do not propose to go through but I would 8 submit that a careful reading of that timeline 9 can leave no reasonable doubt in anyone's 10 mind that we have acted with great urgency 11 in our response. 12 Just to pick up on a few points in that 13 timeline, however, for example, having been 14 informed of the breach on Friday 11 15 November I discussed the matter with your, 16 sir, on the very next business day and 17 reported the matter through the RGP on the 18 following day. We also reported the matter 19 to the Gibraltar Regulatory Authority on the 20 Thursday of the same week and instructed 21 the forensic investigator very soon after that. 22 It is also evident from the timeline that over 23 the entire month of November we continued 24 to deal with the data breach on a daily basis 25 and we continued to enquire about progress</p> <p style="text-align: center;">Page 17</p>	<p>1 the Inquiry. But on the other hand I am 2 prepared to consider that procedure and 3 writing to parties and seeking affidavits for 4 confirmation of that just for good order, so 5 that is something that we are prepared to look 6 into. 7 The other point that we have made in our 8 written submissions is that we would only 9 wish to proceed in that way, however, if the 10 RGP's senior investigating officer was 11 satisfied that it would not interfere with that 12 criminal investigation and we are happy to 13 involve the RGP in the process. 14 I do not propose to address the security 15 review point raised by Mr McGrail in his 16 written submissions as we have done so at 17 length in our written submissions in 18 response, but would be happy to address that 19 in reply if necessary. 20 Finally, in respect of broader IT security, the 21 new solicitors Triay have expressly assured 22 the Inquiry that they will adopt appropriate 23 security measures in line with the documents 24 policy, having regard to the sensitivity of the 25 matters being enquired into. So, for</p> <p style="text-align: center;">Page 19</p>
<p>1 very frequently in January. 2 As for our GDPR obligations, as I have said 3 we have been in regular contact with the 4 GRA and we intend to meet with the GRA 5 this week or early next week. We are well 6 aware of our obligations under the GDPR 7 and are liaising with the GRA to ensure that 8 we comply with them. Again, we are 9 inhibited by what we can inform data 10 subjects of, given the limited conclusive 11 findings to date and the ongoing police 12 investigation, but we will continue to update 13 the GRA and we will provide information to 14 data subjects as soon as we are in a position 15 to do so. 16 I also want to respond to the proposal by Mr 17 McGrail's team that other core participants 18 should be asked to confirm by affidavit 19 whether they have come into possession of 20 any documents via the leak. I think it is fair 21 to say that the Inquiry should be entitled to 22 assume that any core participant who does 23 come into possession of leaked documents 24 should immediately be informing the Inquiry 25 and should not be required to prompting by</p> <p style="text-align: center;">Page 18</p>	<p>1 example, other than publicly available 2 documents only specific persons within the 3 firm who are working on the Inquiry will 4 have access to the Inquiry documents, and a 5 secure cloud based storage system will be 6 employed. For obvious reasons I am not 7 going to go into the detail of the security 8 systems and measures in place. 9 There is a separate issue as to IT services 10 being provided by the IT and Logistics 11 Department of the government. At PH2 Mr 12 McGrail's representatives raised an issue that 13 the ITLD provides services to the Inquiry, 14 namely that it hosts the email accounts used 15 by the Commissioner and the Secretary to the 16 Inquiry on government servers. It was this 17 that the Commissioner pledged to investigate 18 at PH2 and the Inquiry has investigated that 19 issue and can provide the following update, 20 although I should say that we have already 21 updated Mr McGrail on this by letter. 22 The director of the ITLD has confirmed to 23 the Inquiry that: firstly, only one systems 24 administrator can access those mailboxes; 25 secondly, no-one else can access those</p> <p style="text-align: center;">Page 20</p>

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<p>1 mailboxes without that administrator 2 granting access; thirdly, that administrator 3 will not access the mailboxes or grant access 4 to anyone without first seeking the 5 authorisation of the Inquiry; and finally, that 6 no other administrator will be given access to 7 Inquiry mailboxes. 8 When the Inquiry received these 9 confirmations we concluded that it would be 10 preferable to avoid switching to an external 11 IT provider, which would of course introduce 12 great extra costs and other potential security 13 issues, and that the proportionate solution 14 would be to seek a written undertaking from 15 that administrator that they have not accessed 16 or tried to access the contents of the 17 mailboxes, do not know of anyone else doing 18 so and will not access or grant anyone else 19 access to them without first seeking written 20 authorisation from the Inquiry. If that 21 undertaking were to be breached then you, 22 sir, would be able to refer the matter to the 23 Supreme Court to be addressed as if it were a 24 contempt of court. We therefore consider 25 that this will provide an adequate degree of</p> <p style="text-align: center;">Page 21</p>	<p>1 therefore ask that anyone speaking today 2 takes considerable care not to disclose any 3 information that they may hold about the data 4 breach which might have the potential to 5 interfere with the criminal investigation. 6 Should, however, any comment of that sort 7 be made inadvertently I have the power, 8 which of course I will consider using, of 9 imposing a reporting restriction preventing 10 the reporting of that comment. I hope that 11 will not arise but the power is there if 12 necessary. I do not know who wants to kick 13 off? 14 MS GALLAGHER: If convenient, 15 Commissioner, I am happy to go next. 16 SIR PETER CARUANA: Just before my 17 learned friend continues with her address and 18 just by way of clarification so that we are all 19 clear on what has been agreed and not been 20 agreed, my learned friends and I have not 21 spoken directly about this, this has been done 22 through the good offices -- 23 THE COMMISSIONER: Intermediary. 24 SIR PETER CARUANA: ... of an 25 intermediary.</p> <p style="text-align: center;">Page 23</p>
<p>1 security to the mailboxes against any 2 theoretical, I must stress, attempted access 3 from within government. I should stress that 4 there is no evidence as far as we have seen of 5 any such attempt. We wrote to the 6 government proposing this way forward and 7 I am pleased to say that such an undertaking 8 has now been provided to us. 9 So that is what I propose to say on the data 10 breach. As I say, I have not gone into the 11 details of the notification and I would ask 12 that no other party deal with that because it is 13 not something that I think should be dealt 14 with in open, given the live criminal 15 investigation. 16 THE COMMISSIONER: Yes, but perhaps I 17 ought to stress that the criminal investigation 18 in this matter is ongoing. The RGP and its 19 senior investigator have both expressed 20 concerns that providing a detailed update of 21 or discussion of the data breach and the 22 forensic investigator's findings, either 23 privately or in a public hearing, might 24 seriously risk undermining the criminal 25 investigation into the data breach and I will</p> <p style="text-align: center;">Page 22</p>	<p>1 THE COMMISSIONER: Yes. 2 SIR PETER CARUANA: As it was 3 explained to me - I do not think I 4 misunderstood it but my learned friend may 5 have misunderstood my other learned friend's 6 position and inadvertently miscommunicated 7 it to me, and that is the clarification that I 8 seek from Miss Gallagher - that there would 9 be no oral reference to what there has already 10 been oral reference to when my learned 11 friend first stood up. If that is not her 12 understanding of what she has agreed with 13 Mr Santos, so be it, I just ask for clarification 14 so that we are all clear about what we have 15 done. 16 MS GALLAGHER: (Inaudible), 17 Commissioner, is that it has been agreed we 18 will not make reference to the matters in 19 paragraphs 12 and 13 of our written 20 submissions orally, and I believe that is 21 agreed. 22 SIR PETER CARUANA: So that is - sorry - 23 so on that basis let me say that there has been 24 a disagreement, there has been a 25 misunderstanding of the agreement that has</p> <p style="text-align: center;">Page 24</p>

<p>1 been communicated to me. What has been -  2 perhaps Mr Santos could clarify, it does not  3 matter, it has been done already, so whatever  4 had been agreed it is too late - what had been  5 explained to me is that the agreement was  6 around no oral reference to what my learned  7 friend mentioned before. But it is done and  8 there is no retracting it now.  9 THE COMMISSIONER: (Inaudible).  10 MR SANTOS: I should clarify. My  11 understanding was that there were elements -  12 the first section of Mr McGrail's skeleton that  13 it was considered by the government party  14 did not need to be dealt with at this hearing,  15 and my understanding of the agreement was  16 that, to avoid there being a situation where  17 the matter was being raised and then a  18 rebuttal would have to be raised, that it  19 would not be raised and I have to confess I  20 may have misunderstood but I was taken by  21 surprise by my learned friend delving into  22 those matters because I thought we had  23 agreed that we did not have to deal with them  24 today. But it seems as though my learned  25 friend has taken the view that, whether just</p> <p style="text-align: center;">Page 25</p>	<p>1 item 2, the update on the data breach  2 investigation, responding to Mr Santos's  3 submissions. Commissioner, your Inquiry  4 document policy states at paragraphs 40 to  5 42, rightly, that the security of information  6 that the Inquiry gathers, holds and has access  7 to is fundamental to its integrity. It will also  8 assist in delivering the success of the Inquiry  9 and therefore information must be protected  10 and kept secure. CTI, Mr Santos and Miss  11 Williams, in paragraph 10 of their written  12 submissions recognise the gravity of this data  13 breach issue and indeed its centrality to the  14 integrity of the Inquiry, reflecting that  15 principle in paragraphs 40 to 42 of the  16 document policy. At their paragraph 10 they  17 say:  18 "Counsel to the Inquiry, CTI, agree that the  19 security of the Inquiry's information is  20 fundamental to its success. To that end, CTI  21 are acutely aware of the seriousness of the  22 data breach,"  23 and Mr Santos has rightly referred to that  24 principle again today. Of course, without  25 going into any detail, we are discussing a</p> <p style="text-align: center;">Page 27</p>
<p>1 because it has happened, that he does not  2 intend to deal with the matter any further.  3 But, yes, I should only as a matter of record  4 say that that was my understanding.  5 MS GALLAGHER: Just to be clear, we  6 remain of the view we expressed in our  7 written submission last night, sent very  8 shortly after receiving the government  9 submission. We understood from  10 discussions with Mr Santos and Miss  11 Williams there was no dispute about that.  12 We are not delving into background facts but  13 it is essential that we can refer, when we  14 come to later agenda items, to the context  15 which includes legal submissions about the  16 framework in respect of anti-corruption. But  17 we have referred to that, I do not intend to go  18 back to it again.  19 THE COMMISSIONER: I have read it all  20 and ...  21 MS GALLAGHER: I am grateful.  22 THE COMMISSIONER: ... none of it was  23 unknown to me.  24 MS GALLAGHER: I am grateful. Thank  25 you, Commissioner. May I turn to agenda</p> <p style="text-align: center;">Page 26</p>	<p>1 data breach and the appearance that  2 information has neither been protected nor  3 kept secure, and as is correctly identified in  4 the documents policy and by Mr Santos and  5 Miss Williams, this potentially impacts on  6 the integrity of the very Inquiry. We set out  7 in our written submissions provided last  8 week our concern that, despite the data  9 breach coming to light in November 2022,  10 we did not consider on the information which  11 we had available that the Inquiry had taken  12 sufficient steps to promptly investigate and  13 provide information to core participants on  14 its impact.  15 I start by saying we are very grateful for the  16 further detail that has now been provided in  17 CTI's written submissions, particularly in  18 relation to the steps that have been taken  19 since the data breach was identified and we  20 very much understand that the ongoing  21 police investigation parallel to the Inquiry's  22 own enquiries complicates matters. But we  23 do remain concerned, two matters. First, the  24 additional information which we now have  25 was provided by CTI only two days before</p> <p style="text-align: center;">Page 28</p>

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<p>1 the hearing and prior to that we have had 2 only very brief updates with almost no 3 substantive information. This left us with no 4 choice but to highlight the apparent lack of 5 update and, by inference, progress. We and 6 other core participants were left almost 7 entirely in the dark on this issue. It is 8 obviously useful now to understand some of 9 the steps that have been taken and we 10 appreciate the sensitivities in providing 11 updates whilst not treading on the toes of an 12 ongoing criminal investigation. But we have 13 repeatedly raised the fact that it is unhelpful 14 to core participants and indeed, Commissioner, 15 to you to plan preliminary hearings where 16 CTI does not provide submissions well in 17 advance so that participants and their lawyers 18 know the lie of the land and can deal with 19 matters in advance rather than having a flurry 20 of late night emails in the 48 hours before the 21 hearing. 22 THE COMMISSIONER: This is a fast 23 developing situation, that is the reality. 24 MS GALLAGHER: Of course. 25 THE COMMISSIONER: I understand the</p> <p style="text-align: center;">Page 29</p>	<p>1 checking in today to take stock after a 2 number of winds have buffeted the Inquiry. 3 We appreciate the view that has been taken 4 in respect of that rather than delaying this 5 hearing, but we will come back at the 6 timetable stage to that point. 7 THE COMMISSIONER: The critical 8 urgency so far as I was concerned was the 9 change of solicitor, which of course is very 10 recent news. 11 MS GALLAGHER: Of course. I am 12 mindful, Commissioner, that you will of 13 course have in mind the importance of 14 maintaining public confidence in this Inquiry 15 process and that there has been speculation in 16 the media and so on. We very much 17 understand that. So that first issue, we are 18 where we are, and may we say we are very 19 grateful for the indication from CTI that this 20 will not be the practice going forward and 21 may we also say we are very grateful to Mr 22 Santos and Miss Williams for their 23 engagement with us and other core 24 participants in the immediate lead up to this 25 hearing, which I think has been helpful. But</p> <p style="text-align: center;">Page 31</p>
<p>1 difficulty that it has put you and everybody 2 in, but this is, as I say, a very fast moving 3 situation. 4 MS GALLAGHER: I am conscious of that, 5 Commissioner, and it is rather like painting a 6 moving train in some ways. 7 THE COMMISSIONER: Yes. 8 MS GALLAGHER: We are mindful of that. 9 May I also say in fairness to Mr Santos and 10 Miss Williams that we appreciate that they 11 were operating throughout this time with an 12 ongoing question mark in respect of the role 13 of their instructing solicitor, as you have 14 indicated at the outset, and it may be that this 15 was a form of perfect storm and it will not 16 recur. 17 THE COMMISSIONER: If the answer is to 18 have a further preliminary hearing when 19 these matters can be dealt with in a more - I 20 was going to say leisurely, I mean timely 21 way, then that may be one way forward. 22 MS GALLAGHER: I am grateful, 23 Commissioner. That is indeed something 24 that we think would be sensible and we 25 appreciate the view that has been taken about</p> <p style="text-align: center;">Page 30</p>	<p>1 that is the first point. 2 The second point is that, for reasons which 3 have been explained, no substantive update 4 has been provided in relation to the data 5 breach and it is now suggested that it may not 6 be possible to provide an update until the 7 criminal investigation and presumably, if 8 there are any, any criminal proceedings are 9 concluded. Now, whilst recognising the 10 reasons for that, it of course causes some 11 difficulty for the Inquiry's ongoing processes. 12 Bearing that in mind, we are concerned that 13 there may be no substantive update on the 14 data breach investigation for some time and, 15 as you will be aware, Commissioner, we 16 have also raised serious allegations about 17 other matters that are being investigated. 18 Those various enquiries could take weeks, 19 months or even years and it is important to 20 say that whilst the submissions made in 21 writing and orally by CTI refer to what we 22 will now do in a forward facing way with the 23 newly appointed Solicitors to the Inquiry, we 24 remain with a key blind spot, which is we do 25 not know if the integrity of the Inquiry has</p> <p style="text-align: center;">Page 32</p>

<p>1 been undermined, for example, by someone 2 such as a core participant or a witness having 3 access to Inquiry documentation that they 4 should not have. That does at least raise a 5 question mark as to whether the Inquiry can 6 proceed with confidence without knowing 7 more about these issues. 8 All we ask at this stage, Commissioner, is 9 that this matter is kept under urgent review, 10 that core participants are kept up to date on 11 the ongoing progress of the enquiries, to the 12 extent that they can be without undermining 13 ongoing criminal investigations, even if it is 14 a nil returns update explaining: "Much is 15 going on in the background, we cannot tell 16 you what it is." 17 THE COMMISSIONER: This has been a 18 matter of daily discussion between myself 19 and Mr Santos since the matter was brought 20 to our attention and he has been in frequent 21 communication with the police and will 22 continue to be so. 23 MS GALLAGHER: We are very grateful for 24 that indication and indeed for the additional 25 information provided in the written</p> <p style="text-align: center;">Page 33</p>	<p>1 and it is not suggesting any misdoing by any 2 particular individuals; it is simply a prudent 3 step which can provide some reassurance. 4 And to be clear, the proposal we make, and I 5 have explained this to Mr Santos and Miss 6 Williams, is that that should simply be an 7 incoming reassurance to you, so simply to you, 8 not circulated to others. 9 THE COMMISSIONER: You would expect 10 any core participants who has received such 11 material to have disclosed it, but I cannot see 12 any difficulty about it. Assuming that the 13 police are happy with that, but I cannot for the 14 time being see that that could possibly give 15 rise to any difficulties. 16 MS GALLAGHER: I am grateful, 17 Commissioner, and indeed I am conscious, on 18 timing, if there is a concern in respect of the 19 criminal investigation and the timing of this 20 needs to be reviewed, we very much 21 understand that and, to be clear, we note that 22 the government parties in their written 23 submissions appear to have taken offence at 24 this proposal, but it is not intended to be an 25 allegation of misconduct.</p> <p style="text-align: center;">Page 35</p>
<p>1 submissions. There is one specific matter 2 which we of course raised in our written 3 submissions and which is then addressed by 4 Counsel to the Inquiry in their paragraph 16, 5 and that is the proposal of affidavits. 6 THE COMMISSIONER: You are 7 suggesting that there might be affidavits from 8 core participants that they have not received 9 any documents as a result of the data breach. 10 MS GALLAGHER: Yes, so it is a 11 confirmation that people are not benefiting 12 from the fruit of a poisoned tree, and may I say 13 on that, Commissioner, that we do not intend 14 that to be anything more than a prudent step, 15 reflecting the practice of other inquiries which 16 have had this difficulty. May I give just two 17 examples? The first is the independent 18 investigation, independent inquiry into child 19 sexual abuse in the United Kingdom, when it 20 suffered a leak, took the step, asked core 21 participants to provide a reassurance that they 22 did not have this material. It is also akin to a 23 step which has been taken by a number of 24 courts, including the Supreme Court of the 25 UK, when an embargo judgment was leaked,</p> <p style="text-align: center;">Page 34</p>	<p>1 SIR PETER CARUANA: Chairman, with 2 respect, that is a complete mischaracterisation 3 of what the government parties have said 4 because my learned friend has this morning so 5 far mischaracterised even what her 6 submissions were in writing. Her submissions 7 were not in writing that this affidavit should be 8 limited to, "We have not received stolen 9 property" - bad enough, but never mind; that at 10 least is better than what she asks for in her 11 written submissions, which is that the 12 Commissioner should require the core 13 participants, that is to say the Chief Minister, 14 the government, the Attorney - and others - to 15 swear that they have not been involved in the 16 hacking: in other words, that they are not the 17 perpetrators of the criminal offence involved 18 in stealing information from the inquiry's 19 solicitors. That is the suggestion that we have 20 taken umbrage to and even though the Chief 21 Minister - all my clients have taken umbrage 22 to it - the Chief Minister, without departing 23 from the view that it is an outrageous 24 requirement, effectively asking people to 25 swear their innocence of criminal offences, has</p> <p style="text-align: center;">Page 36</p>

<p>1 nevertheless made clear in writing and has 2 instructed me to say publicly that no-one 3 should think that his principal objection to the 4 suggestion that she has not dared articulate 5 orally this morning is not because he wants to 6 conceal and avoid answering. He has offered 7 to do so, at any time - even her affidavit of 8 innocence of involvement in the hacking, 9 which she remains willing to do if the 10 Commissioner requires it, or does not think it 11 is inappropriate for him to do so. Thank you. 12 MS GALLAGHER: If I may respond to the 13 bombast and refer you to the written 14 submissions? That is simply not accurate. 15 You will see in paragraph 31 ... 16 THE COMMISSIONER: Everybody should 17 calm down. 18 MS GALLAGHER: Of course. I very much 19 agree. 20 THE COMMISSIONER: We are looking for 21 a way forward. 22 MR SANTOS: My client agrees and I think 23 the best way to proceed is for you, 24 Commissioner, to consider the matter. As I 25 say, it should not be necessary that the</p> <p style="text-align: center;">Page 37</p>	<p>1 involvement in the data breach means exactly 2 what it says. 3 MS GALLAGHER: Commissioner, I agree 4 entirely with the idea of taking the heat out of 5 this. There is no heat in paragraph 31 or 6 paragraph 32. I would be grateful, please, if I 7 am not interrupted. I am already, as you can 8 see, one of the very few women in this room 9 and on every occasion when I have addressed 10 this inquiry I have been interrupted by Sir 11 Peter Caruana. It is disrespectful and I ask that 12 he affords me the same respect that I afforded 13 him when he was making his submissions. 14 May I just, Commissioner, refer you ... 15 SIR PETER CARUANA: I only interrupt my 16 learned friend when she makes submissions 17 which are factually incorrect, which 18 mischaracterise what has been said and which 19 attributes erroneous submissions on my feet by 20 me about what she has said. 21 MS GALLAGHER: May I just refer you to 22 paragraphs 31 and to 32.2? You will see what 23 we say there. We do not accept that it is an 24 outrageous and inappropriate submission. It is 25 simply following a prudent course adopted in</p> <p style="text-align: center;">Page 39</p>
<p>1 Commissioner considers it appropriate or 2 necessary to see the affidavits. As I say, it 3 would be rather surprising if it were necessary 4 for the inquiry to require an affidavit to say 5 that these documents were received. I would 6 expect that would be something that would be 7 raised immediately, and the Commissioner 8 may wish to be reassured that all avenues have 9 been looked into, and I do not have any 10 objection it, and I would prefer to take the heat 11 out of this point. 12 SIR PETER CARUANA: I have no objection 13 to taking the heat out, but what is not 14 admissible is for the heat to be put in and then, 15 when the victim of the heat tries to answer, 16 everyone is asked to calm down. No, hang on. 17 With respect, sir, my learned friend has just 18 stood up and said that what I had suggested 19 was in her written submissions was wrong. 20 Paragraph 32 of her written submissions says 21 that, "The inquiry seeks assurances by 22 affidavit that none of the core participants has 23 had access to leaked documents or has had any 24 involvement in the data breach, including any 25 relevant knowledge prior to the ..." Well,</p> <p style="text-align: center;">Page 38</p>	<p>1 other processes. We are grateful for the 2 indication from Mr Santos and from you that 3 you are content with it, if the police have no 4 difficulty. 5 THE COMMISSIONER: Let's move on. 6 MS GALLAGHER: We are grateful. Thank 7 you. In respect of the security order, which is 8 a closely related issue, we referred in our 9 written submissions to the security review 10 committed to at the first of the hearings. Now, 11 we, of course, understood this to be relating to 12 email accounts, but we also understood, 13 Commissioner, that a detailed inquiry of the 14 position and the risks would necessarily have 15 to include consideration of the overall risk of 16 storing data on, for example, in folders which 17 may be shared or on servers which are 18 administered by an employee of the core 19 participants. We are grateful to CTI, at 20 paragraph 18(b) of their written submissions, 21 for agreeing that it would be beneficial to 22 conduct a forward looking audit of the inquiry 23 systems, and we request that this is undertaken 24 as soon as possible. This is agreement, not 25 violent agreement, Commissioner, if I may put</p> <p style="text-align: center;">Page 40</p>

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<p>1 it that way. We agree with that proposal in 2 terms of the forward looking process, and I 3 believe we have also reached agreement in 4 terms of what has happened to date. 5 THE COMMISSIONER: The forward 6 looking proposal, that is a separate issue 7 concerning the systems in place, and we can 8 deal with that, and I think I can probably 9 reassure you on that. 10 MS GALLAGHER: I am grateful. May I just 11 very briefly then turn to agenda item 4, which 12 is closely related, the submissions on the 13 provision of IT services by the government? 14 THE COMMISSIONER: Yes. 15 MS GALLAGHER: You will be aware that 16 this is going back some months and that we 17 previously objected to the government of 18 Gibraltar, a core participant in the inquiry, 19 providing information technology services to 20 the inquiry, which includes an employee of the 21 government having access to inquiry systems, 22 and that is a systemic point, it is nothing 23 whatsoever to do with the individual 24 employee. The inquiry has answered our 25 concern by proposing that that particular</p> <p style="text-align: center;">Page 41</p>	<p>1 and we also, of course, proposed a server in 2 Gibraltar which does not involve maintenance 3 by an employee of a core participant. Either 4 option would remove, we say, the obvious and 5 avoidable risk generated by the current 6 proposed approach. We do not propose that 7 one is preferable to the other. But the second 8 point is, and again it may be that this is a 9 matter on which we can have agreement, we 10 simply ask that, given the gravity of this issue, 11 that you, Commissioner, keep this matter 12 under review and that you agree to reconsider 13 this matter, keep it under review as part of the 14 forward looking security review now proposed 15 by CTI, with which we agree. So, it does not 16 require a decision today but it is a matter 17 which is grave and serious and we think 18 prudence would suggest that it should be kept 19 under review. 20 THE COMMISSIONER: I might tell you that 21 there is a possibility of moving on from the 22 present arrangement, which is under active 23 discussion at the moment, and I will keep you 24 posted. 25 MS GALLAGHER: I am very grateful and,</p> <p style="text-align: center;">Page 43</p>
<p>1 individual in question signs an undertaking 2 that they will not share any information or 3 documents. We exchanged some 4 correspondence on this, Commissioner, about 5 two and a half months ago, we were concerned 6 that this remained unresolved. We understand 7 that, as of yesterday, that undertaking has now 8 been signed, so matters have moved on. May I 9 say for the record that this does not provide us 10 with sufficient reassurance given the serious 11 security breach which has occurred. Our view 12 is that the inquiry should not be taking any 13 such obvious risks and, particularly, no core 14 participant should have access to internal 15 inquiry systems, regardless of undertakings. 16 Our fall-back position as of two and a half 17 months ago was that, if you were against us on 18 that, an undertaking with tweaked wording 19 would be appropriate. So, I understand that 20 we are in that territory. May we just indicate 21 two things? First, for the record, the summary 22 of our submissions at paragraph 9.4 of the 23 government written submissions does not 24 represent our position. It suggests we 25 proposed a server should be set up in Gibraltar,</p> <p style="text-align: center;">Page 42</p>	<p>1 Commissioner, I do not need to press that any 2 further. All we are asking is that this be kept 3 under review because of its importance, and it 4 sounds as if that is well in hand. 5 THE COMMISSIONER: It is under review, 6 yes. 7 MS GALLAGHER: I am grateful. I do not 8 need to address you further on this topic. If 9 you would just give me a moment? Thank 10 you, Commissioner. 11 MR SANTOS: I have some very short 12 remarks to say in response, but I will first of 13 all give way to any other core participant who 14 wishes to address you. 15 THE COMMISSIONER: Perhaps you can 16 give your observations first? 17 MR SANTOS: First of all, I do accept, and I 18 think it was implied in what I said initially, I 19 do accept that on this occasion our 20 communication to the core participants was 21 later than was ideal, but it became impossible 22 to communicate any earlier because, first of 23 all, we did not receive information as to the 24 forensic investigation that was useful, that was 25 sufficiently conclusive to be able to pass on.</p> <p style="text-align: center;">Page 44</p>

<p>1 And, as my learned friend has fairly pointed 2 out, we were also at the time dealing with a 3 change of solicitor, and it would be noted that, 4 even through that period, we took the view, we 5 decided to adopt the unusual practice of 6 writing out ourselves, just to make sure that 7 things that had to be said were said as soon as 8 possible. I do endorse the proposal for timely 9 exchange of written submissions. The last 10 thing I can tell you that I want to receive, and I 11 am sure that the Commissioner wants to do, is 12 to receive a flurry of emails like we did last 13 night. I accept that on this occasion that may 14 have been more necessary because of the 15 lateness of the information that came out from 16 the inquiry, but ... 17 THE COMMISSIONER: It was regrettable 18 but I think it was unavoidable. 19 MR SANTOS: Exactly and I accept that and 20 no criticism is meant, but in future we have 21 proposed in the timetable going forwards 22 much lengthier time and I would ask that this 23 be kept and that those deadlines be kept to. 24 THE COMMISSIONER: We are not going to 25 be in the habit of receiving emails after</p> <p style="text-align: center;">Page 45</p>	<p>1 an undertaking to the inquiry that they will not 2 access the mail- boxes and not give access to 3 those mailboxes without first seeking ... 4 THE COMMISSIONER: It would be a senior 5 civil servant. 6 MR SANTOS: Yes. 7 THE COMMISSIONER: It is not just an 8 employee. He is a named senior, responsible 9 civil servant. 10 MR SANTOS: Yes, under threat of contempt, 11 the equivalent of contempt of court and 12 everything that comes with that, I would 13 submit that that is an adequate security 14 arrangement. 15 THE COMMISSIONER: I am satisfied with 16 the present arrangements, but we will keep 17 them under review. 18 MR SANTOS: We are keeping them under 19 review, as you say, sir. 20 THE COMMISSIONER: Yes. 21 SIR PETER CARUANA: I have only two 22 matters to deal with. I do not think that 23 anything that has been said, sir, requires me to 24 go into any great detail. Two. Firstly, and just 25 to dispose of it, on the basis of the</p> <p style="text-align: center;">Page 47</p>
<p>1 midnight. 2 MR SANTOS: No. As to substantively 3 updating the parties on the data breach, I do 4 not think that my learned friend was 5 suggesting it, but certainly from my 6 perspective, I am not necessarily saying that 7 we will not be giving an update until the 8 conclusion of the criminal investigation or the 9 criminal proceedings, but we will be guided by 10 the RGP as to what we can say and what we 11 cannot. 12 THE COMMISSIONER: We cannot wait 13 until the conclusion of the criminal 14 proceedings, which may be months away, or, 15 as Ms Gallagher rightly says, it could be years. 16 MR SANTOS: No, precisely. And then, 17 finally, one thing that I do disagree with from 18 my learned friend is that there is an obvious 19 risk in terms of the mailboxes being ultimately 20 held by a core participant. There is no 21 suggestion of any risk, there is no evidence of 22 any risk or threat from within government to 23 the documents, and with the assurances and 24 now the undertaking that only one individual 25 has access to those, and that individual giving</p> <p style="text-align: center;">Page 46</p>	<p>1 explanations that we have now had from CTI 2 in his written submissions, the government 3 parties do not recognise, in the events that 4 have happened and in the explanations that 5 have been given, the criticism that has been 6 levelled at the inquiry team in relation to the 7 data breach or the unfortunate incidents 8 involving the previous solicitor to the inquiry. 9 They are not matters for us, they are matters 10 for the inquiry team and for you, sir, and we 11 do not feel the need to comment on it, save to 12 say that we do not think that the criticisms 13 included, very considerable criticisms included 14 in the written submissions of my learned 15 friend, Ms Gallagher, are justified on the basis 16 of the very full explanation of the events as 17 they had in reality happened rather than as 18 they are set out elsewhere. So, the government 19 parties have no issue with that. My learned 20 friend - and this is the extent to which I am 21 going to deal with what I thought was an 22 agreement and it would not be referred to, but 23 it was referred to, and I will limit myself to 24 dealing with the fall-out of that by just the 25 following submissions about the reference,</p> <p style="text-align: center;">Page 48</p>

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<p>1 which, as the Chairman says, are not new, they 2 were already published, they are on the 3 inquiry's website already, unredacted and 4 rightly so: the material in international law and 5 Conventions and other European Conventions 6 in relation to corruption. And the position of 7 the government parties on that is that they 8 entirely agree with and support the content of 9 all that material about corruption but that it 10 simply does not arise in this case. And the 11 proof that the government parties agree with, 12 support and do not think to shy from this 13 international material in relation to corruption 14 is that it is the government itself that has 15 convened this inquiry. So, corrupt people who 16 do not think that corruption should be 17 investigated, or at least allegations of 18 corruption should be investigated, and thus try 19 to frustrate the application of all this 20 international legal material are not known for 21 doing as their very next act, convening a 22 statutory, independent public inquiry in which 23 we are now all involved. So, of course that 24 material exists, of course it is right that this 25 inquiry should investigate allegations of</p> <p style="text-align: center;">Page 49</p>	<p>1 only point I would make is that we must be 2 careful not to get into the Reds under the Bed 3 mentality and try to look behind every corner 4 to see wrongdoing. I would urge that the focus 5 be on getting the evidence as soon as 6 circumstances permit for all the participants 7 and then we can get on with the substance of 8 the inquiry rather than having a whole load of 9 satellite issues. 10 THE COMMISSIONER: Yes, with 11 everybody's involvement. 12 MR NEISH: Yes, and I must say that we have 13 confidence in the inquiry team and we have no 14 reason to cast any aspersion on them. 15 THE COMMISSIONER: Thank you. Do not 16 feel obliged to say anything. 17 MR LICUDI: Yes, sir. Good morning. There 18 was only one matter. As you know, I and Mr 19 Bonfante appear for the Gibraltar Police 20 Federation. We have a limited involvement in 21 this because we are only a core participant in 22 respect of issue 6 in this inquiry. There is only 23 one matter which has to do with the provision 24 of affidavits by core participants, and that 25 clearly effects our clients. We have</p> <p style="text-align: center;">Page 51</p>
<p>1 corruptions if they are made. That is why the 2 government has created this inquiry. 3 THE COMMISSIONER: You say it does not 4 arise on the facts. 5 SIR PETER CARUANA: We say it does not 6 arise on the facts, but it is right that they 7 should be looked into, which is why this 8 inquiry was convened, at considerable public 9 expense, by the very people accused of 10 perpetrating the corruption. And I am not 11 going to take up any more of the tribunal's 12 time - anyone ... 13 THE COMMISSIONER: I have got the point, 14 I understand the point. 15 SIR PETER CARUANA: Yes, so anyone 16 who may be interested in understanding why 17 the government takes the view that it does not 18 arise can refer, when it is published at the end 19 of this, to paragraph 9 of my own written 20 submissions, or our written submissions on the 21 20th of September last year, at the second 22 preliminary hearing, for the reasons why the 23 government is certain that these things do not 24 arise. Thank you, sir. 25 MR NEISH: I have nothing to say, sir. The</p> <p style="text-align: center;">Page 50</p>	<p>1 instructions to say that we have no difficulty at 2 all in confirming by affidavit whatever it is 3 that you, sir, as Commissioner, decide that is 4 appropriate. I must say that, when I read the 5 submissions by Mr McGrail's team, 6 particularly paragraph 32.2, which is what my 7 learned friend, Mr Caruana, has referred to, it 8 did cause me to raise my eyebrows as 9 something that went a little bit too far, for the 10 reasons articulated by Mr Caruana, KC this 11 morning, but other than that, we are in your 12 hands and I do have instructions to confirm 13 that we will be happy to provide whatever 14 reassurance is necessary to confirm that our 15 client has not received any leaked documents 16 or had any involvement whatsoever in this. 17 THE COMMISSIONER: I would expect, if 18 they had, they would have already confirmed 19 that. 20 MR LICUDI: Indeed. 21 MR CRUZ: Sir, if I may, I am clearly in a 22 slightly different position, appearing for the 23 RGP. We have cautioned and written an email 24 to my learned friend, Mr Santos, to say, 25 "Look, be careful about this criminal</p> <p style="text-align: center;">Page 52</p>

<p>1 investigation." I know we all want to jump up 2 and ventilate our views and do so in 3 submissions that are emotive, but there is a 4 criminal investigation, and so the RGP's 5 position is that it is not healthy to ventilate 6 things given that that is ongoing, and that does 7 not necessarily mean it needs to be completed 8 before more information can be given, but at 9 least the process needs to be at a stage where it 10 is safe to do so. So, I just raise that, and I also 11 raise the fact that, in the context of affidavits, 12 the RGP is in a slightly different position; as a 13 law enforcement agency investigating matters, 14 the ability to sort of say, "I have not seen 15 things that I am investigating" - and I just 16 leave it with you, that is all I do. 17 THE COMMISSIONER: That is a good point 18 and I will think that through. 19 MR CRUZ: That is the point in relation to 20 that. We will have things to say on other 21 matters in the agenda, on disclosure, which we 22 hope are helpful. 23 MR SANTOS: I take the point that my 24 learned friend makes on the RGP and I think 25 that is something for us to take away and</p> <p style="text-align: center;">Page 53</p>	<p>1 solicitor, and we set out in our written 2 submissions counsel to the inquiry's role in the 3 events giving rise to the change. Again, the 4 timeline provided serves to demonstrate that 5 this is a matter which we took extremely 6 seriously and acted upon extremely 7 expeditiously. Following your decision on the 8 30th of January 2023, we immediately started 9 the process of identifying and appointing a 10 new solicitor. Mr Simpson's appointment was 11 announced just three days later and, as we 12 have stated in our submissions, the identity of 13 the solicitor to the inquiry is a matter for you 14 as Commissioner, but we firmly agree that it 15 would not be preferable to engage UK 16 solicitors to solicitor to the inquiry, and indeed 17 it seems to us to be contrary to the regulatory 18 scheme in place in Gibraltar. There are, of 19 course, also clear practical benefits to 20 instructing a local firm, not least the cost 21 savings in doing so, but also the 22 correspondence with other firms and 23 regulators, evidence gathering, in person 24 meetings, liaising with the local press, making 25 logistical arrangements and general local</p> <p style="text-align: center;">Page 55</p>
<p>1 consider, but subject to that, and unless anyone 2 else has anything else to say, I do not propose 3 to say anything else on the data breach and I 4 would suggest that I move on to the next item 5 on the agenda. Very well. Just to remind 6 everyone, I am turning now to the joint issues 7 of the change of solicitor and the composition 8 of the inquiry team, and I propose to deal with 9 that now. What I would suggest, and by all 10 means anyone can say whether they object, but 11 what I would suggest is that once we have 12 dealt with this, that we perhaps pause at that 13 stage for lunch and give the parties the 14 opportunity as well to discuss the timetable 15 and return after lunch with a timetable in the 16 hope that progress can be made in terms of 17 agreeing the timetable. That would be my 18 proposal, but I am happy to hear what anyone 19 has to say about that before we break. I just 20 want to give advance notice of what I am 21 thinking in terms of practical arrangements. 22 Just dealing with the change of solicitor and 23 the wider issue, as I say, raised by Mr McGrail 24 as to the composition of the inquiry team: sir, 25 you have already addressed the change of</p> <p style="text-align: center;">Page 54</p>	<p>1 knowledge. As to the wider issue which has 2 been raised in terms of the composition of the 3 inquiry team, that issue was raised as an 4 agenda item by Mr McGrail's representatives 5 and, therefore, I propose that they address you, 6 sir, and I respond as necessary afterwards. But 7 one point that I would like to make as a matter 8 of housekeeping is that, for future hearings, we 9 would request that any core participant raising 10 an additional agenda item provide sufficient 11 information on that proposed agenda item so 12 that we and other core participants can 13 understand the issue and usefully engage on it 14 in written submissions. So, I would ask that in 15 future hearings all the parties bear that in 16 mind. I will now give way to my learned 17 friend, Ms Gallagher, KC, to deal with the 18 composition point that her client has raised. 19 THE COMMISSIONER: Yes. 20 MS GALLAGHER: Thank you very much to 21 Mr Santos. Commissioner, on the issue about 22 providing adequate information, we entirely 23 agree that going forward the timetable leading 24 up to preliminary hearings should differ. You 25 will be aware that when this was added to the</p> <p style="text-align: center;">Page 56</p>

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<p>1 agenda the previous solicitors were in place.  2 THE COMMISSIONER: It was very  3 unfortunate.  4 MS GALLAGHER: Precisely. Exactly, and  5 we are where we are, and it seems clear that  6 we have agreement going forward that we  7 need to approach these matters differently, and  8 you have indicated, Commissioner, the  9 particular reason for today's hearing being  10 essential, given the upheaval that had just  11 occurred and the concern about public  12 confidence. May I say at the outset, just to set  13 aside any red herrings, we do not take issue  14 with the points that are made about the value  15 and importance of instructing a local firm, we  16 do not take any issue with that, and we take no  17 issue with that principle that has been set out.  18 Our concern is the overall composition of the  19 inquiry team, and what we ask today,  20 Commissioner, is that essentially you keep this  21 matter under review and you look at whether it  22 is possible to inject some expertise missing  23 from the inquiry team as it was previously  24 constituted and missing from the inquiry team  25 as it is now constituted - that absolutely none</p> <p style="text-align: center;">Page 57</p>	<p>1 inquiry in which, as we understand it, there  2 were two Silks appointed, one local and one  3 UK. So, we do not presume to suggest,  4 Commissioner, how you deal with this issue.  5 It may be - there's a number of ways to skin a  6 cat. It could be, for example, that this is a  7 situation in which you may consider it  8 appropriate to look at an external Kings  9 Counsel providing consultancy type services,  10 but not necessarily involved in every single  11 day of a final hearing. Maybe you will look at  12 an additional junior solicitor who has been a  13 junior solicitor running a public inquiry and as  14 a solicitor to the inquiry team. There is a  15 range of ways of doing it. Our concern is that  16 overall, and it is not a, we are not targeting any  17 individual and making any criticism of Mr  18 Santos specifically or Ms Williams or with Mr  19 Simpson, that is not the point of the  20 submission. The point of the submission,  21 Commissioner, is simply that the overall  22 composition of the inquiry team gives cause  23 for concern and it has given cause for concern  24 from the outset. Those concerns have been  25 compounded by the serious data breach,</p> <p style="text-align: center;">Page 59</p>
<p>1 of the inquiry team, solicitor or counsel, as we  2 understand it, has ever had any experience of  3 running a public inquiry. The first day on  4 which any of them will be involved in running  5 a substantive hearing in a public inquiry will  6 be day 1 of this inquiry.  7 THE COMMISSIONER: I think actually Mr  8 Santos was involved in the earlier ...  9 MS GALLAGHER: Not in running an  10 inquiry. I think he was involved for a  11 participant in the Dr Giraldi inquiry, but we  12 may be wrong about that. No-one has told us  13 of anyone from the inquiry team having ever  14 been involved in being on an inquiry team.  15 MR SANTOS: Just for assistance, I think both  16 of you are correct in the sense that I have  17 experience, I worked in an inquiry but I was  18 not running the inquiry. I think that is the  19 distinction that my learned friend is drawing,  20 and it is correct.  21 THE COMMISSIONER: Yes.  22 MS GALLAGHER: We have learnt that he  23 played a role in the Dr Giraldi inquiry, not  24 running it and, as I understand it, not involved  25 in the final hearings. And, of course, that is an</p> <p style="text-align: center;">Page 58</p>	<p>1 dismissal of the inquiry solicitor in the last  2 number of days and the increasing complexity  3 of the inquiry, in terms of the issues being  4 considered, the number and range of the core  5 participants, the overall challenging  6 environment which indeed you see every time  7 at these hearings, which are caused by the  8 contentious subject matter, in combination  9 with the fact that Gibraltar is a small  10 jurisdiction where individuals often have  11 multiple overlapping personal and professional  12 relationships, making the risk of conflict of  13 interest more acute. And that is why from the  14 outset we have been raising these matters and  15 raising concern, and it is not something which  16 we expect any individual to take personally, it  17 is simply a reflection of where we are, and it is  18 why we are very troubled by what has  19 unfolded. You will be aware that at a very  20 early stage we raised concerns because it  21 appeared to us from information that was  22 publicly available that counsel to the inquiry  23 had been selected by and appointed by the  24 government, which raised immediate concerns  25 for us regarding the independence and the</p> <p style="text-align: center;">Page 60</p>



<p>1 appearance of independence, and we also 2 raised a specific conflict of interest issue 3 which was ultimately resolved, but it was not, 4 in our submission, treated with the expected 5 level of sensitivity or urgency given the 6 subject matter of the inquiry, and we consider, 7 putting it frankly, that this is a reflection of 8 lack of experience and may have contributed 9 to the major issue which ultimately arose and 10 which you have referred to at the outset. To be 11 clear, and one specific point we raise, the 12 concern was that at first Mr Santos refused to 13 recuse himself from Gibraltar FA duties, 14 despite the fact that the GFA is chaired by 15 Michael Llamas, KC, a key witness to the 16 inquiry. We are grateful the decision was later 17 reversed, but I can confirm that the reference 18 in our written submissions to the concern 19 about the level of sensitivity and urgency was 20 that initial refusal, which was later reversed. 21 Again, we do not need to delve into that in any 22 detail, it is part of the background picture 23 which causes us concern. I want to give two 24 other examples. The first relates to a conflict 25 of interest policy, and I will give you some</p> <p style="text-align: center;">Page 61</p>	<p>1 lengthy those submissions were, 2 Commissioner, as you may remember - we set 3 out our proposal that there should be a 4 conflicts of interest policy. We said, 5 "Gibraltar is a small jurisdiction, there is often 6 significant cross-over between the personnel 7 of different institutions. In order to avoid the 8 likelihood of conflict of interest issues, and 9 potentially applications for recusal arising later 10 in the process, we submit that a policy should 11 require each member of the inquiry staff to 12 declare a potential conflicts of interest; for 13 example, professional or personal relationships 14 between staff and potential witnesses, if they 15 exist, whether and, if so, how potential 16 conflicts will be mitigated, and for such 17 declarations to be published on the inquiry 18 website or, at a minimum, provided to the core 19 participants. In addition, to addressing 20 potential issues of actual bias [we said then]. 21 This would also tackle the question of 22 perception of bias. This is a matter of 23 fundamental importance. The inquiry and all 24 aspects of its operations must be seen to be 25 scrupulously independent of those involved in</p> <p style="text-align: center;">Page 63</p>
<p>1 cross-references. At the hearing on the 22nd 2 of June 2022, it is page 111 of the transcript, 3 we said this, Commissioner - these were 4 submissions by me in June 2022, and we said, 5 because we were seeking a policy relating to 6 conflicts of interest in the inquiry team - we 7 said, "Then there is the policy relating to 8 conflicts of interest in the inquiry team. 9 Again, we are grateful that this has been 10 looked at. Key in respect of that matter, of 11 course, is, as we say in the final sentence of a 12 paragraph in our submissions: "The inquiry and 13 all aspects of its operations must be seen to be 14 scrupulously independent of those involved in 15 the process, specifically the government." 16 And, of course, that was reflected, 17 Commissioner, in your very powerful opening 18 remarks at that hearing in June of last year, 19 when you made clear that this is an entirely 20 independent process and that that should be 21 reflected in its policy. So, we made reference 22 to the need for a conflicts of interest policy, 23 and in our written submissions relating to the 24 conflict of interest policy - that was paragraph 25 55(v), and I am afraid that indicates how</p> <p style="text-align: center;">Page 62</p>	<p>1 the process." We then received, on the 27th of 2 July 2022, a letter from Attias &amp; Levy 3 rejecting on behalf of the inquiry our proposal 4 that there should be a conflicts of interest 5 policy, and that was the only policy 6 submission or suggestion that we made which 7 was not taken up. And the reason for that 8 rejection was set out in the letter of July 2022 9 and it said this: "A conflict of interest policy 10 was also proposed. No precedent of such a 11 policy has been provided to the inquiry team 12 by any of the statutory participants ..." and it 13 went on to say, "In any event, as legal 14 professionals the inquiry team is subject to the 15 regulatory obligations set out in the BSB 16 handbook in the SRA Code of Conduct, both 17 of which contain specific provisions dealing 18 with potential conflicts. In the circumstances, 19 we do not propose to take this matter further. 20 However, the Commissioner and all members 21 of the inquiry team will continue to monitor 22 their position throughout the inquiry and 23 address any conflicts appropriately should they 24 arise in the future." We now that, re-reading 25 that letter carefully now, that Attias &amp; Levy</p> <p style="text-align: center;">Page 64</p>

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<p>1 did not confirm whether or not they considered 2 they had any conflicts of interest. They did 3 not answer those key questions that we set out 4 in our written submissions or in our oral 5 submissions on the 22nd of June. We have 6 pressed CTI on whether any written 7 confirmation was required by the inquiry and 8 provided by Attias &amp; Levy that they did not 9 have any conflicts of interest, and we await 10 confirmation of the same, but at this stage we 11 say that, had our June 2022 suggestion been 12 taken up rather than rejected, and had Attias &amp; 13 Levy been required to confirm in writing that, 14 amongst other things, they had no professional 15 relationships with potential witnesses, they 16 would have had to confirm the affirmative and 17 the huge detriment to the inquiry caused by 18 their dismissal seven months later could 19 potentially have been avoided, or could at least 20 have been less damaging as it would have 21 happened far earlier in the inquiry process. 22 And we do not raise that to rake over old coals, 23 we raise it because it is indicative of a concern 24 about lack of experience right from the outset. 25 And the second point we wanted to make as a</p> <p style="text-align: center;">Page 65</p>	<p>1 what has occurred over the last number of 2 weeks may be a surprise and a shock to the 3 inquiry team, it comes against the backdrop of 4 us raising security, conflicts of interest and 5 document management issues from the very 6 outset, and I am afraid it was not quite the 7 surprise to our team as it may have been to 8 others. And that is why we make the 9 suggestion that you, Commissioner, review 10 ways in which expertise in running an inquiry 11 could be injected into this team. We do not 12 make a suggestion about how precisely that 13 could be done. We recognise that is a matter 14 for you, and if, Commissioner, you were to say 15 today, "No, never" to that request, our 16 submission is, particularly given the backdrop, 17 that that would not be a rational or a 18 reasonable one, and we simply ask it be kept 19 under review. We are mindful of multiple 20 other factors, including cost effectiveness, we 21 are mindful of the factors referred to by Mr 22 Santos about the preference to having a local 23 team - of course, it is not an entirely local team 24 currently, with Ms Williams' accent betraying 25 that she perhaps is not from Gibraltar. So, we</p> <p style="text-align: center;">Page 67</p>
<p>1 more general one, reflecting a point we made 2 in our written submissions, and it is very 3 fundamental: at a very early stage we raised 4 serious concerns regarding rudimentary 5 matters, and you will recall, Commissioner, 6 that I made written and oral submissions on 7 this issue at the June hearing, including that 8 disclosure was being requested prior to there 9 being basic policies in place, such as a 10 document management policy, a process for 11 addressing redactions and anonymity. We 12 were surprised that those policies were not in 13 place at an early stage, and indeed that they 14 appeared to be novel suggestions when we 15 raised them with the solicitors to the inquiry. 16 We then provided assistance and pointers to 17 the solicitors to the inquiry and counsel to the 18 inquiry in that regard, including directing them 19 to examples of such policies in other inquiries. 20 So, from the outset it has been clear to us that 21 that his is going to be a steep learning curve 22 for both the solicitors and counsel team given 23 their lack of prior experience or expertise in 24 conducting and running public inquiries. And 25 regrettably, that is why we say that, whilst</p> <p style="text-align: center;">Page 66</p>	<p>1 recognise that, but we do ask that this is kept 2 under review, and this is now a pivotal point in 3 the inquiry and our suggestion is that it would 4 be a false economy to take the view that the 5 team as constituted and only as constituted 6 does the job for you. We think you need to 7 consider expertise in running inquiries, fitting 8 within the inquiry team in some way, and we 9 are happy to discuss that further if we need to, 10 or to consider any suggestions if we need to 11 offline after this hearing. The point of 12 principle is the overall composition of the team 13 does not give us, and we suggest should not 14 give you, the reassurance that you need as we 15 head into a very difficult stage of the inquiry 16 and with a very challenging timetable, and I 17 emphasize that is not to criticise Mr Santos, 18 Ms Williams, Mr Simpson or any other 19 individual, that is not the point of this 20 submission. Could you give me a moment? 21 THE COMMISSIONER: Yes. 22 MS GALLAGHER: Unless I can assist 23 further, Commissioner, they are our 24 submissions. 25 THE COMMISSIONER: Thank you very</p> <p style="text-align: center;">Page 68</p>

<p>1 much indeed. Yes.  2 MR SANTOS: Thank you, sir. I do have to  3 respond to a number of points made there.  4 The criticism as to lack of experience, I do not  5 think it is appropriate for me to stand up here  6 and defend my record or to sell my CV at this  7 hearing. All I would say is that I would not  8 have taken on this role if I did not think that I  9 was sufficiently qualified and experienced to  10 fulfil it in a satisfactory manner. But  11 ultimately it is a matter for you as  12 Commissioner whether you are satisfied with  13 your team and, obviously, if you take the view  14 that changes are needed, well, that is a matter  15 entirely in your discretion. I just want to go  16 back on the GFA issue because I have to say  17 that I was surprised by the recent allegations  18 made for the first time in my learned friend's  19 skeleton argument, despite me asking my  20 learned friends beforehand to explain any  21 issues they had with the team in advance of  22 the skeleton arguments and them declining to  23 do so. The reality is that the initial complaint  24 that was brought to our attention as to my  25 position with the GFA was based on several</p> <p style="text-align: center;">Page 69</p>	<p>1 learned friend on every occasion and that  2 instead we simply be permitted to focus on  3 our main job, which is progressing this to a  4 conclusion.  5 That is all I propose to say on those points.  6 MS GALLAGHER: I make one thing very  7 clear; I hope it was clear from my  8 submissions. We are not suggesting anyone,  9 including Mr Simpson, be dismissed or not  10 proceeded with. We are suggesting  11 supplementing the team, not replacing or  12 dismissing anyone. I hope that that is clear,  13 and I can address any further points that arise  14 if I need to.  15 THE COMMISSIONER: I was going to  16 clarify. You have no difficulty with the  17 appointment of Triay Solicitors or, as Mr  18 Simpson as the solicitor who has been --  19 MS GALLAGHER: We are not raising that.  20 Within the context of a team which had  21 expertise. Our concern is expertise.  22 THE COMMISSIONER: I understand the  23 point entirely.  24 MS GALLAGHER: I am grateful. And  25 also, if I may say, Commissioner, I am</p> <p style="text-align: center;">Page 71</p>
<p>1 misunderstandings as to the facts, and when  2 it was raise we wrote back the very next day  3 confirming the true position and correcting  4 some of the factual misunderstandings, and  5 purely on the basis of prudence I decided to  6 step away from my position on the  7 governance and strategy board. So the  8 suggestion that it was not treated with the  9 expected level of sensitivity or urgency is not  10 borne out by the facts. More pertinently,  11 however, it was stated in writing to us three  12 months ago on 11 November that the inquiry  13 had, and I quote, "appropriately addressed  14 the concerns that were raised as conflicts."  15 That is why it took me very much by surprise  16 that this matter was being raised in a  17 different way in this skeleton argument.  18 Now, obviously my learned friend is entitled  19 to make whatever submissions she might  20 wish to make but I would ask, I would plead,  21 that we do not have this issue of the  22 composition of the inquiry team and the  23 criticism and attacks on the inquiry team at  24 every hearing that we hold and with the  25 inquiry team coming under pressure from my</p> <p style="text-align: center;">Page 70</p>	<p>1 conscious that there was correspondence on  2 the particular issue referred to by Mr Santos  3 last summer in July and that at the time you  4 took a particular view. Since then there has  5 been a lot of water under the bridge and that  6 is why we raise the issue again. The  7 concerns which we had previously have been  8 reinvigorated by what has happened and we  9 go back to our initial concerns and we think  10 we were right to have those concerns and that  11 is why we raise it again. We agree with Mr  12 Santos it would be good to deal with this and  13 to address it and we think we have to deal  14 with it and address it in a timely way and that  15 is why we ask for consideration to be given  16 now at this key point when you have new  17 solicitors on board to looking at the overall  18 composition of the team and how to ensure  19 you have the expertise you need in the team  20 supporting you in what is a very difficult task  21 in a very tight timeframe.  22 THE COMMISSIONER: Okay, thanks.  23 Yes.  24 SIR PETER CARUANA: Mr Chairman,  25 what can I say? I suppose it would be trite to</p> <p style="text-align: center;">Page 72</p>

<p>1 remind ourselves that we are in Gibraltar, 2 that this is a Gibraltar public inquiry 3 convened under Gibraltar legislation and 4 that, to quote the now, I suspect, immortal 5 words of my learned friends, we are a 6 jurisdiction of the nature that we are. But the 7 fact of the matter is, Mr Chairman, that the 8 Government just cannot agree that Gibraltar 9 does not have the ability - and this is implicit 10 in what my learned friend is saying - does 11 not have the capacity and that the legal 12 profession in Gibraltar does not the necessary 13 expertise to run a Gibraltar public inquiry in 14 Gibraltar and that Mr Chairman is being ill- 15 served unless expertise is imported from that 16 place which I know believes it has an endless 17 supply of it, the Bar in London. I am sorry: 18 this is a view of life which is now antiquated. 19 We are the community that we are and we 20 run the thing with the resources that we have 21 available, and the resources available locally 22 in terms of the legal profession to this inquiry 23 are more than capable - and this is the 24 Government view - of supporting you, sir, in 25 this inquiry. I mean, let us face it: it is not</p> <p style="text-align: center;">Page 73</p>	<p>1 firm." Sir, you were there talking about the 2 solicitor, not counsel, but the principle is the 3 same. If there was no expertise, if there was 4 no competent - I mean, the suggestion that 5 Mr Santos - and he has been elegant in 6 defending himself and elegant also in not 7 defending himself in areas in which he 8 should not - but the suggestion that Mr 9 Santos does not have the professional ability 10 to be counsel to the inquiry in this inquiry is 11 not one that any of the clients that I represent 12 - and really now I am only speaking to the 13 Government that has this view of an 14 obligation to stand up for the integrity and 15 for the ability of the jurisdiction to conduct 16 its own affairs - have this very clear view. 17 Of course, something has been said and 18 therefore I need to deal with it just briefly 19 about the way in which Mr Santos was 20 originally appointed and for that matter I 21 think the original solicitors Attias &amp; Levy. 22 Of course, in the United Kingdom, where I 23 suppose such concerns do not need to be 24 broached, the solicitor - this is according to 25 Mr Beer; I did not know this - the solicitors</p> <p style="text-align: center;">Page 75</p>
<p>1 really rocket science, is it? I mean, Mr Beer 2 has written this quite brief book which tells 3 even the most inexperienced lawyer how to 4 do it. It is almost a fool's guide. We do not 5 need lawyers from London to know how to 6 run an inquiry regardless of whether we have 7 had previous experience of doing so or not. 8 On that basis, I suppose we would have to 9 rely on the Bar in London indefinitely since 10 no one will ever get the required experience 11 of running an inquiry. 12 Of course, these are matters for you and, Mr 13 Chairman, you can always put requests to the 14 Government for funding under the Act and 15 they will, I am sure, give them due 16 consideration. But the Government's 17 position is that it agrees entirely with the 18 view that, sir, you yourself expressed when 19 you wrote to the core participants on 3 20 February 2023, just a few days ago: "I am 21 firmly of the view that in a public inquiry 22 involving matters of public and political 23 significance to Gibraltar citizens it is 24 preferable and indeed may be required from a 25 regulatory perspective to instruct a local</p> <p style="text-align: center;">Page 74</p>	<p>1 to the inquiry are advertised internally 2 usually within the Treasury Solicitors 3 Department, a department -- Most public 4 inquiries in England relate to some 5 governmental issue or other. Well, the 6 solicitor to the inquiry in England is initially 7 advertised internally within the Treasury 8 Solicitors Department, a department of the 9 government, and, when appointed, is 10 employed and engaged by the Treasury 11 Solicitors Department. God help us if we 12 had done anything similar. And then that 13 inquiry solicitor, who may be a Treasury 14 Solicitor employee, then, according to Mr 15 Beer, will also be closely involved in 16 advising the Chairman in relation to the 17 appointment of counsel. Well, I just do not 18 see how that fits with some of the 19 submissions we have heard this morning 20 intended to be critical about how the 21 appointments here have been made, but these 22 are entirely a matter for you, sir. 23 With those thoughts, I simply say that as far 24 as the Government parties are concerned, 25 they have every confidence in your</p> <p style="text-align: center;">Page 76</p>

<p>1 Lordship's ability, if your Lordship thinks he 2 needs to supplement Mr Santos that is a 3 matter entirely for you, but it should not be 4 for reasons that you cannot satisfy your 5 reasonable needs from local businesses. 6 MR NEISH: May it please you sir, when I 7 rose earlier I expressed confidence in the 8 inquiry team. I would just like to reiterate 9 that and to say that I have every confidence 10 in the integrity and the ability of Mr Santos 11 to be counsel to the inquiry and, in fact, find 12 it quite sad that this should at all be 13 questioned without there being any good 14 reason or any factual reason for this to be 15 questioned. I would just like to reiterate that 16 support and make it very, very clear. 17 MR LICUDI: Sir, we similarly have 18 confidence in the inquiry team, and I just 19 reiterate the words that Mr Neish has just put 20 to the inquiry. 21 MR CRUZ: Sir, in the appointment of the 22 new solicitors, we have engaged with them 23 already, raised an issue which was addressed. 24 We have every confidence that both the 25 solicitors and counsel to the inquiry can</p> <p style="text-align: center;">Page 77</p>	<p>1 Williams have done with us previously. It is 2 simply not our submission that Mr Santos 3 should be dismissed, that Mr Simpson should 4 not be proceeded with. That is not our 5 submission. We have been very careful and 6 scrupulously careful to make clear that we do 7 not propose today a particular solution, and 8 we do not propose a solution focused on UK 9 or Gibraltar. What we are asking is that 10 sufficient expertise is in the inquiry team as a 11 whole and that that is something you give 12 regard to at this pivotal point when you now 13 have a new solicitor, and a reflection of some 14 of the air of unreality is the suggestion that 15 somehow Jason Beer King's Counsel's book, 16 excellent as it is, 12 years old as it is, 17 referring to Treasury Solicitors as it does, an 18 entity which was abolished in 2015, eight 19 years ago, treating that 12-year-old book 20 which has not been updated since as a bible, 21 including a paragraph which simply does not 22 reflect the position in 2023 in respect of 23 solicitors to the inquiry is not helpful. It is 24 not rocket science, as Sir Peter put it, but the 25 description which has just been given there</p> <p style="text-align: center;">Page 79</p>
<p>1 address all the needs. We are all 2 practitioners, we all have experience in this 3 court, the Court of Appeal, Privy Council, in 4 complicated matters, and I join Sir Peter in 5 his thoughts that I do not think that an 6 inquiry of truth challenges us beyond what 7 we are capable of doing. All of us have been 8 involved in the Giraldi Home Inquiry in 9 some capacity or other, we have experienced 10 that, so I share the confidence on behalf of 11 the police. 12 MS GALLAGHER: Can I just say 13 something very brief in response? It is very 14 short. 15 THE COMMISSIONER: Yes. 16 MS GALLAGHER: Our submission is there 17 is an air of unreality to some of the 18 submissions which are being made with the 19 "business as usual" approach, given the 20 gravity and severity of what has happened 21 over the last number of months. To be clear, 22 we are simply not making an attack on Mr 23 Santos. We echo many of the compliments 24 which are paid to Mr Santos and we are 25 grateful for the work that Mr Santos and Ms</p> <p style="text-align: center;">Page 78</p>	<p>1 reflects precisely why you need to have up- 2 to-date expertise on the team. We are acutely 3 conscious that in the Dr Giraldi Home 4 inquiry a solution in that case was that there 5 were two Silks appointed - there was Mr 6 Robert Englehart QC; Mr Keith Azopardi 7 QC (as they then were); there was a local and 8 a UK Silk working on the Inquiry. You have 9 a range of options open to you. We simply 10 ask that you and Mr Simpson as the newly 11 appointed solicitor look at this issue and 12 consider the position so that we do not end 13 up having a repeat of the extremely 14 unfortunate circumstances we have had in the 15 last number of weeks and months, and so that 16 this stays on track and we do everything we 17 possibly can to have the inquiry proceeding 18 in September, which is something which you 19 want, Commissioner, and which we want and 20 which we know your team wants. Of course, 21 if that expertise can be found locally, that is 22 even better. 23 THE COMMISSIONER: Okay. What are 24 the outstanding items on the agenda, Mr 25 Santos?</p> <p style="text-align: center;">Page 80</p>

<p>1 MR SANTOS: As I understand it, the only 2 outstanding item is the inquiry timetable and, 3 as I -- 4 THE COMMISSIONER: That might be a 5 good time to break. Will you be able to sort 6 that out between yourselves, do you think? 7 MR SANTOS: What I would suggest is that 8 we resume at two o'clock and, if more time is 9 needed at two, then we can always take a bit 10 more time. 11 THE COMMISSIONER: So that you can 12 sort it out, not so that you can have a 13 particularly leisurely lunch. 14 MR SANTOS: One point that has been 15 raised with me is that the RGP do want to 16 make some statements about the disclosure 17 process. I am happy for them to deal with it 18 now if they would like to. I think something 19 else is being raised with me. Would you bear 20 with me one second? (Pause) Another issue 21 has been raised with me but that is something 22 I would propose to deal with over the course 23 of the break. 24 THE COMMISSIONER: Yes, okay. Do 25 you want to deal with it?</p> <p style="text-align: center;">Page 81</p>	<p>1 technical problems, are they? 2 MR CRUZ: Well, they are not just technical. 3 They are just the fact that there have been 4 quite a lot of delays accessing the resources 5 that are necessary to complete the disclosure 6 exercise, including the fact that this particular 7 department was on strike for a period of time. 8 That has all had -- 9 THE COMMISSIONER: I am quite familiar 10 with that. 11 MR CRUZ: Well, coming from the UK I 12 think almost anything is - not everything in 13 London is great; a few things in Gibraltar are 14 better perhaps even. But what I would say is 15 that that is a reality and so what we have - 16 and I invite you, sir, to perhaps keep this in 17 mind - is the possibility I think of largely 18 meeting timescales, but there will be legacy. 19 So in the case of the RGP, and no doubt 20 others may have their own contribution, for 21 example we have done a substantial amount 22 of work; I would say that probably we could 23 say that maybe as much as sort of 50 per cent 24 or 60 per cent of the review has been done 25 but there remains 50 per cent to be done.</p> <p style="text-align: center;">Page 83</p>
<p>1 MR CRUZ: It might be helpful just because 2 it might inform others. It appears really that 3 to some extent the RGP for obvious reasons 4 are at the heart of a lot of disclosure issues, 5 and I think it would be helpful, maybe as a 6 sort of precursor to lunch, just to understand 7 that obviously we have had a setback as 8 everybody else has in terms of the events that 9 have now been discussed a lot about the date 10 breach, and so on. The disclosure exercise is 11 well underway but we do have some 12 concerns about what we consider still to be 13 the relatively ambitious timescales of 10 14 March and 4 May. This is because although 15 there is very substantial progress, there are 16 considerable issues with regards to accessing 17 certain data because of the ITLD issues -- 18 THE COMMISSIONER: The? 19 MR CRUZ: The ITLD, the Government 20 department, the IT Department. 21 MR SANTOS: The IT and logistics 22 department. 23 MR CRUZ: Of the Government. As we 24 know -- 25 THE COMMISSIONER: These are</p> <p style="text-align: center;">Page 82</p>	<p>1 That is because we have not had the 2 necessary support and ability to complete 3 that process. Now, we expect that although 4 50 per cent in terms of volume -- 5 THE COMMISSIONER: Support from 6 whom? 7 MR CRUZ: From the relevant ITLD 8 Department. So, for example, to give 9 specific examples, we have considered in 10 terms of network folders nine out of 15 that 11 are relevant to our disclosure process. So we 12 have gone through about approximately a 13 million pages of documents but there remain 14 half a million to review. We have gone 15 through about 14 lever arch files of hard 16 copy files; there remain quite a considerable 17 number to do, in excess of 30. There is five 18 out of 14 email accounts that have been 19 considered but there remain others, some of 20 these which we still do not have access to. It 21 is true that a lot of the information, as you 22 can imagine, that is in one email folder will 23 be replicated in another, so if you have, for 24 example, two individuals who are copied into 25 a document, the same document appears. So</p> <p style="text-align: center;">Page 84</p>

<p>1 whilst we --</p> <p>2 THE COMMISSIONER: That is the first</p> <p>3 problem.</p> <p>4 MR CRUZ: Indeed, so whilst we, of course,</p> <p>5 point to the fact that we are only sort of 50</p> <p>6 per cent of the way in terms of gigabytes or</p> <p>7 volumes, of course, we expect to see the</p> <p>8 same document repeatedly in relation to, for</p> <p>9 example, I do not know, any of the issues -</p> <p>10 Operation Cram. There will be a reference to</p> <p>11 the same document, we will all have seen it</p> <p>12 and therefore the reviews that we need to do</p> <p>13 now will take a lot less than the previous</p> <p>14 ones.</p> <p>15 THE COMMISSIONER: Yes.</p> <p>16 MR CRUZ: But I am flagging the fact that</p> <p>17 as it stands at the moment the targets to have</p> <p>18 completed the disclosure exercise by 10</p> <p>19 March are just not going to be possible.</p> <p>20 Huge resources have been employed since</p> <p>21 this exercise started - and when I say "huge</p> <p>22 resources", relative to the jurisdiction. We</p> <p>23 have had over 218 days of police officers</p> <p>24 doing disclosures on this matter, but there is</p> <p>25 still a lot more to do. That is four people</p> <p style="text-align: center;">Page 85</p>	<p>1 done by 10 March and it can be following on</p> <p>2 during the course of March, but the sort of</p> <p>3 last full stop and comma in the last exercise</p> <p>4 probably will not be completed until mid-</p> <p>5 April. Now, that may impact on this 4 May</p> <p>6 deadline, so what we are going to be</p> <p>7 proposing to the inquiry solicitors in a</p> <p>8 meeting we are due to have tomorrow is that</p> <p>9 we, as quickly as we can, get as much as we</p> <p>10 can to them so they can start their process,</p> <p>11 but inevitably I think it is important to flag</p> <p>12 today --</p> <p>13 THE COMMISSIONER: You need to do the</p> <p>14 impossible.</p> <p>15 Mr CRUZ: Well, this is why I raise it,</p> <p>16 because it is very difficult for us to give a</p> <p>17 specific date but the latest information I have</p> <p>18 is that middle of April is the most ambitious</p> <p>19 target if what is left is delivered by 13</p> <p>20 February and the resources and more</p> <p>21 resources are applied. But, like I say, I do</p> <p>22 not want you to think that it needs us to get</p> <p>23 all the boxes ready and then deliver them. It</p> <p>24 is not like that. It is an ongoing process.</p> <p>25 THE COMMISSIONER: It can be a</p> <p style="text-align: center;">Page 87</p>
<p>1 full-time since we had access to information,</p> <p>2 that is the beginning of November, despite</p> <p>3 having requested it as early as the beginning</p> <p>4 of August, 1 August, but in practical terms</p> <p>5 by 10 March it will just simply be impossible</p> <p>6 for the RGP to say its exercise has been</p> <p>7 completed.</p> <p>8 THE COMMISSIONER: What is the</p> <p>9 realistic date?</p> <p>10 MR CRUZ: What I am told is that some of it</p> <p>11 will depend on the information that we get</p> <p>12 from ITLD. The latest update as of this</p> <p>13 morning is that the remaining information</p> <p>14 that we seek will be provided by Monday 13</p> <p>15 February. That is missing PDS files, in</p> <p>16 other words email accounts, some networks</p> <p>17 shared, some drives. We will not get that</p> <p>18 until 13 February. The estimate at the</p> <p>19 moment is with a fair wind and getting that</p> <p>20 information we are looking at the completion</p> <p>21 of the exercise as probably somewhere in the</p> <p>22 middle of mid-April. That does not mean</p> <p>23 that the process cannot start, in other words</p> <p>24 you can start within a document. The</p> <p>25 majority of it or a large amount of it can be</p> <p style="text-align: center;">Page 86</p>	<p>1 continuing process.</p> <p>2 MR CRUZ: A continuing process. I mean,</p> <p>3 we are very well advanced and we are --</p> <p>4 THE COMMISSIONER: I have the point.</p> <p>5 MR SANTOS: This has been flagged with</p> <p>6 me today and I am very grateful for the</p> <p>7 clarity and the honesty that we are being</p> <p>8 given. The suggestion of providing us what</p> <p>9 they have when they have it I think is a good</p> <p>10 one. Obviously we are not going to be - a</p> <p>11 point that my learned friend made to me</p> <p>12 earlier - able to disclose every single</p> <p>13 document the first day that we get</p> <p>14 everything, so it will take time for us to work</p> <p>15 our way through those documents as well. A</p> <p>16 rolling process can be accommodated, but</p> <p>17 very much firmly with the September date in</p> <p>18 mind and everything that has to be achieved</p> <p>19 by September in mind. So what I would</p> <p>20 suggest is that I meet with my learned friend,</p> <p>21 we agree a way forward and then we inform</p> <p>22 the parties as to how we are going to achieve</p> <p>23 what we need to achieve and what I am</p> <p>24 determined to achieve. What my learned</p> <p>25 friend says actually echoes a suggestion that</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 has come from Mr McGrail's representatives 2 which I think is a good one, which is that we 3 are already in possession, as I have said, of 4 plenty of witness statements, plenty of 5 documents, and we would probably be in a 6 position to disclose those earlier than the date 7 that we have identified for disclosure to 8 participants, so in a way of speeding up the 9 process and allowing the parties to begin 10 with their responsive witness statements 11 sooner, we can give them that disclosure and 12 it is not necessary for us to receive the RGP 13 disclosure in order to provide that, so that is 14 something that hopefully will smooth the 15 process. 16 The other point I would make is that in terms 17 - because there is a concern about responsive 18 witness statements, but we are not expecting 19 - and in terms of witness statements I do take 20 some guidance from the CPR - responsive 21 witness statements to be going through every 22 single disclosed document and explaining 23 why it assists somebody's case or not. That 24 is what written submissions are for. The 25 evidence is supposed to be an account of the</p> <p style="text-align: center;">Page 89</p>	<p>1 for example, Mr Richardson, but I think you 2 are going to hammer out some kind of - 3 MR CRUZ: I am pleased to say, and it was 4 only this morning that it was confirmed to 5 me that the arrangements to allow for those 6 police officers to access their information are 7 in place. Thankfully, those are not in the 8 kind of legacy or they are not ones that 9 remain a problem, so I think those can 10 probably take place next week in terms of 11 them accessing the information. They have 12 been given a priority and, like I say, it was 13 only this morning that ITLD confirmed to the 14 police that that set-up is there. 15 THE COMMISSIONER: Well, I raised that 16 because King's Counsel who has made 17 written submissions was very keen that - 18 MR CRUZ: I have not seen those. 19 THE COMMISSIONER: Well, he 20 summarised what he said rather more 21 elegantly. 22 MR CRUZ: I am glad to say, and I think in 23 the case of those ones we do not have to wait 24 until 13 February. 25 THE COMMISSIONER: Thank you.</p> <p style="text-align: center;">Page 91</p>
<p>1 person's experience, obviously with reference 2 to documents. I think that work on 3 responsive witness statements can begin 4 pretty quickly once - well, they already have 5 the accounts of most other core participants 6 but once they have the witness statements 7 that we provide them with, then I think work 8 on witness statements can begin 9 immediately. Anything that has to be 10 tweaked or amended or added in the light of 11 new disclosure can be done, and obviously if 12 any disclosure comes particularly late and it 13 becomes necessary to address that, well then, 14 there is always the opportunity to do so. We 15 are not going to prevent people from dealing 16 with things and having sufficient time to deal 17 with things, so I think that the short point is 18 that we will meet tomorrow and we will 19 work on a timetable which we can then share 20 with everybody else. 21 THE COMMISSIONER: There may be a 22 particular point arising in relation to 23 tomorrow's meeting in relation to those 24 retired officers who, of course, do not have 25 access to the police information, particularly,</p> <p style="text-align: center;">Page 90</p>	<p>1 MS GALLAGHER: May I just make one 2 brief reference before lunch on the rolling 3 disclosure issue, Commissioner. If you are 4 minded to agree in principle to us exploring 5 that, I think it would be helpful to have that 6 indication. We raised that as a proposal with 7 the CTI Team from other inquiries rather 8 than disclosure being sequential, so waiting 9 until you have everything in and then 10 releasing it all at once. 11 THE COMMISSIONER: I completely 12 agree. 13 MS GALLAGHER: I am very, very grateful. 14 We think that would mitigate a number of the 15 concerns that we have about the timetable 16 and everything stacking up in the last six 17 weeks, which we think is a recipe for 18 disaster. 19 THE COMMISSIONER: I am also very 20 anxious that we develop some policy by 21 which documents can be given the same 22 reference number, because otherwise we 23 never find anything because everybody gives 24 it a different reference. It is most acute in, 25 for example, the affidavits from the members</p> <p style="text-align: center;">Page 92</p>



<p>1 of, for example, of the Gibraltar Police 2 Authority. They will all produce the same 3 document, which has resulted in a bundle 4 250 pages long. That is the problem. I will 5 leave it to your -- 6 MS GALLAGHER: We are very happy to 7 discuss that further. I know we had 8 originally had some discussions with Attias 9 &amp; Levy about document management 10 systems, and there is a cost issue, but we can 11 discuss that. 12 THE COMMISSIONER: Well, they got 13 completely deflected. Okay. I will see you 14 again at two o'clock. Thank you very much 15 indeed. 16 (12.37) 17 (The short adjournment) 18 (14.09) 19 (Judgment handed down - please see separate 20 document) 21 (14.12) 22 THE COMMISSIONER: Yes, now? 23 MR SANTOS: Yes, sir. The final item on 24 the agenda is the inquiry timetable. Now, as 25 we have heard this morning from the helpful</p> <p style="text-align: center;">Page 93</p>	<p>1 agreeing to any particular dates, we send out 2 in the coming days our proposals in terms of 3 a timetable for disclosure of the documents 4 that we already have, and then a separate 5 timetable that will apply to the documents 6 that we receive from the RGP, both of them 7 working towards, of course, the hearing in 8 September. The proposal of rolling 9 disclosure I am grateful for and I believe is a 10 good one and it is something that we are 11 prepared to do, and therefore I would hope 12 that that means that work on responsive 13 witness statements can start, particularly 14 once the core participants are in receipt of the 15 many witness statements that we have, the 16 relevant ones. 17 Just a couple of points that we can deal with 18 to an extent today. The proposal of a fourth 19 preliminary hearing: we have listened to 20 what everyone has said and we would be 21 prepared to agree to having a fourth 22 preliminary hearing. The date that we have 23 identified but only as a pencilling-in date 24 because I have not been able to run it by all 25 of the core participants and, of course, I</p> <p style="text-align: center;">Page 95</p>
<p>1 update and information provided by Mr Cruz 2 on behalf of the RGP, the disclosure 3 timetable is going to be largely dependent 4 upon agreeing a timetable with the RGP for 5 receipt of documents and, as he said, we are 6 due to meet him tomorrow in order to discuss 7 each side's aims and needs and hopefully 8 work out a timetable as far as that is 9 concerned. I am grateful for his indication 10 that this can be done on a rolling basis and 11 hopefully tomorrow we will be able to get a 12 better idea in terms of what is achievable and 13 when it is by. Hopefully we can say some 14 helpful things to him as well as far as that 15 process is concerned. 16 The other thing that we also need to do is to 17 discuss the matter with our new team. We 18 have not had the chance to discuss this in any 19 depth at all because we have been dealing 20 with the matters that were being dealt with 21 today. We will no doubt sit down with Mr 22 Simpson and our new team in the coming 23 days, and what I would suggest is that now 24 that we have an overall scheme that is largely 25 agreed in principle by the parties without</p> <p style="text-align: center;">Page 94</p>	<p>1 know that you, sir, also will have to check 2 that this works with your diary, but what we 3 have identified, we have pencilled that in for 4 12 April. Then the fifth preliminary hearing, 5 again we have taken on board what has been 6 said about that being very close to the end of 7 July and we would be prepared to move that 8 forward to 19 July. Pencilling that in, 9 obviously we will send this out and if anyone 10 has any issues with those dates please do let 11 us know in the next couple of days and we 12 will make sure that we find a workable date 13 for those two points. 14 Just bear with me one second. (Pause) I 15 think that is all I would propose to say at this 16 stage on those points. Everything else has 17 been dealt with in submissions, and I am 18 grateful for the constructive proposal we 19 have had from the participants on this. 20 MS GALLAGHER: I can be very brief in 21 light of the discussion that we have had over 22 lunch, but just in case there is any difficulty I 23 just want to support the proposal by Mr 24 Santos and just underline why we think the 25 two preliminary hearings between now and</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 the summer break are important. The 2 September hearing dates are very important 3 to our client; I know they are very important 4 to you, Commissioner, also. That is seven- 5 and-a-half months away and we now have a 6 new team and a new solicitor and a lot to do. 7 There are a number of key steps which have 8 to happen before then, including disclosure 9 and responsive witness statements as 10 reflected in the submissions made by CTI, 11 but also, of course, as this is an inquisitorial 12 process, not civil litigation, it is possible that 13 one of two things, or indeed both, may 14 happen post-disclosure. It is possible that 15 when you have disclosure to core participants 16 it may raise the possibility of additional lines 17 of enquiry or indeed it is possible that it may 18 narrow the issues from the existing list of 19 issues. You will remember we have referred 20 -- 21 THE COMMISSIONER: I think that is quite 22 right. 23 MS GALLAGHER: I am grateful. You will 24 remember that in earlier hearings we have 25 referred to that phrase from the Lewis case in</p> <p style="text-align: center;">Page 97</p>	<p>1 THE COMMISSIONER: I have taken that 2 on board. 3 MS GALLAGHER: So we are very grateful 4 for that, and that is important for case 5 management, particularly in an inquisitorial 6 process when some issues may be narrowed, 7 there may be some agreement or some 8 additional issues may arise. 9 The other point to make about the 10 preliminary hearing is just underscoring the 11 proposal and supporting what is an agreed 12 proposal with at least some of us about a 13 fourth preliminary hearing in about eight 14 weeks' time, around 12 April, so just after the 15 Easter break, and a fifth preliminary hearing 16 in mid-July, two and a half months before the 17 hearing date, with the proposed date of 19 18 July. We agree with both of those dates and 19 support them. Just to put that in context, if a 20 fourth preliminary hearing takes place in 21 about eight weeks' time, two months from 22 now, that will still be five months from the 23 hearing and it still gives us time, if there are 24 difficulties arising with the timetable, to take 25 stock and to shift to still ensure that the</p> <p style="text-align: center;">Page 99</p>
<p>1 an inquest context about the overall list of 2 issues in an inquisitorial process being like a 3 funnel, and as you get through the process it 4 can narrow. 5 For all of those reasons, it is important that 6 we take stock sufficiently early that if issues 7 can be narrowed or if issues fall away, we 8 can identify that and we do not have your 9 team and core participants spending time on 10 issues which may fall away, or if new issues 11 are raised, there is sufficient time to address 12 them. 13 THE COMMISSIONER: It may become 14 clear that many of the facts are agreed but the 15 inferences to be drawn remain outstanding. 16 MS GALLAGHER: Yes, we very much 17 have that in mind. So bearing that in mind, 18 we are very grateful that the suggestion of 19 rolling disclosure has been taken up, because 20 that maximises the opportunity to ensure we 21 have sufficient time in the timetable. We 22 were very worried the existing timetable 23 meant essentially six weeks before the 24 hearing, just before the August break we are 25 getting a huge volume of material.</p> <p style="text-align: center;">Page 98</p>	<p>1 September date is viable. Then the fifth 2 preliminary hearing in mid-July, two and a 3 half months before the hearing date, still 4 allows sufficient time before many people 5 will disappear over August, to ensure that we 6 can keep the September date on track. 7 So we strongly support both of those 8 proposals and for fixing the dates now rather 9 than keeping the possibility of a floating 10 hearing, and as we have seen from looking at 11 diaries over lunch there are many busy 12 diaries to juggle. So we strongly support it, 13 we think it is prudent to approach it in that 14 way and we think that that gives us the best 15 possible chance, along with rolling 16 disclosure, of ensuring that we can in fact 17 retain the September dates and be effective 18 and fair with those September dates. Unless 19 I can assist further. Thank you. 20 THE COMMISSIONER: Anyone else 21 anything? 22 SIR PETER CARUANA: (Inaudible) agree 23 it as well. 24 THE COMMISSIONER: Excellent. Is there 25 anything else that anyone wants to say, about</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 anything?  2 SIR PETER CARUANA: About anything,  3 just to put the marker down, it is not in the  4 timetable and I do not think it ought to be put  5 in now or still less dates attached to it, but the  6 one thought that I have in relation to the  7 construct of the agenda generally is that at  8 some point we are going to have to fit in the  9 opportunity for core participant, or for that  10 matter other witnesses, to seek redaction of  11 other people's witness statements and  12 material. It could arise - it is unlikely to arise  13 in the case of private participant - in the case  14 of PII and things like that it could arise. Mr  15 Chairman knows, the Commissioner knows  16 that we have already given notice of one or  17 two such potential matters. So the question  18 is: is there scope for reflecting the agenda,  19 that when we get other people's witness  20 statements there may be material that others  21 think should be redacted from public  22 consumption. Obviously not kept from the  23 other core participants.  24 THE COMMISSIONER: As I remember,  25 the protocol, the provision was that witness</p> <p style="text-align: center;">Page 101</p>	<p>1 out an application for a restriction, that is in  2 hand.  3 THE COMMISSIONER: We are all aware  4 that the problem exists and that is really all  5 we can do at this stage.  6 SIR PETER CARUANA: Okay, sir, thank  7 you.  8 MR SANTOS: I should say the documents  9 protocol does envisage such a process and it  10 will have to be accommodated within the  11 timetable. But we will have that in mind  12 when amending the timetable, and if we can,  13 we will provide a timeline for that process to  14 take place as well.  15 THE COMMISSIONER: Agree with ...  16 MR SANTOS: Mr Wagner is raising the  17 extant application and we will have to decide  18 that. What I have been trying to avoid is --  19 THE COMMISSIONER: (Inaudible)  20 application that we effectively stalled some  21 many months ago.  22 MR SANTOS: What I would like to avoid is  23 deciding one and then having others come. I  24 would rather decide them together unless  25 there is a good reason to decide it sooner.</p> <p style="text-align: center;">Page 103</p>
<p>1 statements would usually be circulated after  2 the witness has given evidence.  3 SIR PETER CARUANA: It will be  4 published ...  5 THE COMMISSIONER: It will be  6 published, yes.  7 SIR PETER CARUANA: So we would have  8 them, we will all have seen them ...  9 THE CHAIR: Correct.  10 SIR PETER CARUANA: There may then be  11 - people may wish to say: "Well, fine, but for  12 publication ..." it is just a theoretical  13 possibility at the moment.  14 THE COMMISSIONER: Yes.  15 SIR PETER CARUANA: It can be raised  16 later, I am not suggesting it needs now --  17 THE COMMISSIONER: It could turn into a  18 very practical problem because I do not want  19 to spend the greater part of the hearing day  20 deciding what parts of statements should be  21 redacted.  22 SIR PETER CARUANA: Exactly so, and  23 certainly we intend to give the earliest  24 possible notice of the one or two issues - and  25 I have an outstanding request to further flesh</p> <p style="text-align: center;">Page 102</p>	<p>1 But we have not forgotten about it, I can  2 assure everybody.  3 MS GALLAGHER: We have two short  4 points and your counsel team is aware of this.  5 The first just is - there is no ask to this, it is  6 just a supplementary point to underscore the  7 submissions we made this morning about the  8 data breach issue, so there is not an ask, there  9 is no further request, but it is to underline the  10 importance of those submissions we made  11 before lunch.  12 As you know from material before you, our  13 client's physical security is to an extent  14 bound up in the security of the Inquiry  15 systems and when he and others make  16 sensitive disclosure they need to know it is  17 not in the wild and will be managed securely.  18 Just to be clear, in the submissions we made  19 this morning we recognise, as I know you do,  20 Commissioner, that this is an unusual  21 relationship you have with your counsel and  22 your solicitor team. You are not a client  23 instructing a solicitor team with them in turn  24 instructing a counsel team. Ultimately you  25 are the data controller and responsibility for</p> <p style="text-align: center;">Page 104</p>

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<p>1 ensuring that systems are secure and that 2 processes are adequate rests with you. We 3 make that submission because we recognise, 4 and we are grateful for the gravity with 5 which it was treated by your counsel team 6 this morning, these are extremely serious 7 issues and we must get it right going forward. 8 The other point which I raise because it has 9 not arisen yet and I know Mr Santos has 10 alerted you to the fact that we are having to 11 deal with it, unfortunately in submissions we 12 received late last night the Chief Minister 13 threatened our client and indeed myself, Mr 14 Wagner and Mr Gomez with the potential of 15 defamation proceedings for presenting 16 factual allegations against him. As we have 17 made clear to your team, we deprecate that 18 approach in the strongest terms. We consider 19 it to be both inappropriate and continuing 20 intimidatory and victimising conduct. We 21 have asked for that threat to be withdrawn. 22 Regrettably that has not happened. We 23 request, Commissioner, that that conduct is 24 discouraged. If left unchallenged, it may 25 serve to intimidate other individuals who</p> <p style="text-align: center;">Page 105</p>	<p>1 making the threat that was made to us late 2 last night in the way that it was. 3 We also bear in mind of course that from an 4 early stage, Commissioner, you have rightly 5 reflected in the Vulnerable Witnesses Policy, 6 particularly at paragraph 2(c), that the 7 process of being a witness does not begin 8 once sitting in the witness box but includes 9 preparing for, making, editing and approving 10 any formal statement, and indeed nor does 11 the process end once leaving the witness box. 12 You made clear in that Vulnerable Witnesses 13 Policy at paragraph 5 that the definition of 14 vulnerability includes substantial fear or 15 distress related to testifying about matters 16 relevant to the Inquiry. 17 It is regrettable we did not get an apology or 18 withdrawal, I hope we will not see 19 defamation threats made again against core 20 participants and their lawyers for doing their 21 job. Thank you. 22 SIR PETER CARUANA: Sir, I am afraid I 23 do not recognise the reality in any of that. 24 First of all, dealing with the law, the law is 25 clear. You, sir, as Commissioner and all the</p> <p style="text-align: center;">Page 107</p>
<p>1 may not have legal teams with media law 2 expertise from raising allegations to the 3 Inquiry. As a core participant, more simply 4 as a key witness to this Inquiry, Mr McGrail 5 and indeed his legal team simply should not 6 be presented with such threats. We note that 7 the Chief Minister, speaking in Parliament on 8 31 July 2020, stated: 9 "We will not seek to exclude anything that 10 Mr McGrail might wish the Inquiry to 11 review. We will not seek to cover anything 12 up, neither will we tolerate any attempt by 13 anyone else to cover anything up." 14 It is most regrettable that last night it was his 15 own legal team which threatened to gag and 16 to silence Mr McGrail and his own lawyers. 17 Now, we have very much in mind the 18 defence of qualified privilege in defamation 19 law and indeed of the effect of section 10 of 20 the Commissions of Inquiry Act and I know 21 you will also have that in mind, 22 Commissioner. But members of the public 23 need to be reassured and we do ask that 24 consideration is given by the Chief Minister 25 and his legal team to the appropriateness of</p> <p style="text-align: center;">Page 106</p>	<p>1 witnesses and potential witnesses that my 2 learned friend says she is concerned about 3 also enjoy absolutely privilege as witnesses 4 under the Act. That is the reality of the law. 5 You are protected by section 2 and the 6 witnesses are protected by section 10 and 7 they can say whatever they like, they can 8 make whatever allegations they like, the law 9 gives them absolutely immunity and people 10 who do not like what they say will just have 11 to lump it. 12 This is an inquisitorial process. You are 13 making findings of fact. You should not 14 have been faced, in our respectful and 15 persistent submissions, with a witness 16 making at every procedural stage serious 17 allegations of criminal impropriety against 18 high ranking officials in Gibraltar. The 19 suggestion is not one that I can agree with 20 that people who only enjoy qualified 21 privilege, which is everybody else other than 22 you, your staff and witnesses, who are 23 witnesses, should in the name of this Inquiry 24 be at liberty to say whatever they please, 25 about whomever they please, however they</p> <p style="text-align: center;">Page 108</p>

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<p>1 please, outside of the processes for which the 2 law gives them absolutely immunity, and 3 then come and complain that people who feel 4 that their rights have been injured and who 5 claim certain rights should not be allowed 6 even to reserve them to liberate, to free 7 people who do not have the right, because 8 they only have qualified privilege, can wax 9 lyrical to their heart's content. That is not a 10 legal construct which I have ever heard 11 suggested before. 12 There is no threat. The reservation of rights 13 is supposed to be helpful. It is not a threat. 14 It is only a threat if my learned friend or her 15 client believes that they are not entitled to the 16 defence of qualified privilege. That is a 17 matter entirely for their judgment. We are 18 saying that the Chief Minister reserves his 19 rights such as the law gives him. No more 20 and no less. I have never heard it argued 21 before that a simple recourse to their rights 22 by somebody is objectionable in the face of 23 the alleged rights of somebody to whom the 24 law specifically does not give it, because if 25 the law took the view - as indeed it now does</p> <p style="text-align: center;">Page 109</p>	<p>1 both parties have had ample opportunity to 2 express themselves and to make the points 3 they wish to make, so I think that that is 4 probably enough for today. 5 THE COMMISSIONER: I do not entirely 6 agree with that. 7 MR SANTOS: You do not agree with ...? 8 THE COMMISSIONER: What you have 9 just said. 10 MR SANTOS: I see. 11 THE COMMISSIONER: Because I think 12 that the threats of defamation were 13 misplaced. People must be allowed to make 14 their submissions and witnesses must not be 15 deterred from giving evidence or making 16 submissions to the Inquiry, and as I say I 17 regret that that threat was made. 18 MR SANTOS: I am grateful for that 19 indication. Sir, I do not think there is 20 anything further and if that is the case then 21 thank you very much, thank you to everyone 22 in the gallery and thank you to all the core 23 participants to contributing. 24 THE COMMISSIONER: Okay, thank you. 25 I will see you on, whenever it is, 12 April, if</p> <p style="text-align: center;">Page 111</p>
<p>1 in England, sir, in England under the 2005 2 Act everybody, not just witnesses, everybody 3 involved in the process has the same rights 4 and protections as in civil litigation. That is 5 not the law here and therefore if the law does 6 not give somebody a right they cannot pray it 7 in aid to frustrate somebody else's right. 8 So I just cannot accept, first of all that my 9 learned friend is entitled to complain about 10 this position in the language that she has. 11 Secondly it was made in the context of 12 publication or threatened publication, she 13 says for reasons of pragmatism - that is fine, 14 we have agreed that the objectionable 15 material is not going to be published now. 16 As far as I am concerned, that is it, and my 17 learned friend feels she needs to say what she 18 has just said, she obliges me to say what I 19 have just said. 20 MR SANTOS: Both core participants have 21 experienced counsel, they have made their 22 point. They have both been heard, to the 23 extent that they wanted to speak, and I would 24 suggest that we leave it at that and that there 25 is no need to take the matter further. I think</p> <p style="text-align: center;">Page 110</p>	<p>1 that turns out to be convenient. Okay.</p> <p>2 (The Inquiry adjourned at 14.33 hours)</p> <p>3 1</p> <p>4</p> <p style="text-align: center;">Page 112</p>

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