

**RULING FOLLOWING THE FOURTH PRELIMINARY HEARING
HELD ON 19 JULY 2023**

1. During the course of the hearing, I was able to deal with many of the issues in passing, as the transcript will bear out.
 - (a) Thus I approved the principle of live broadcasting, subject to agreeing a Protocol (we will issue a draft for comment shortly).
 - (b) I will shortly issue a Procedure for questioning witnesses, which – as I readily recognise – cannot be applied rigidly; it must be flexible so as to provide fairness.
 - (c) I approved the timetable, but I recognise that that must remain subject to change required by developments and circumstances.
 - (d) I also encouraged the preparation of a List of Agreed Facts. Mr Wagner, on behalf of Mr McGrail, helpfully undertook to produce a first draft, which he will circulate to the other Core Participants (“CPs”) by 3 August 2023. CPs will then provide amendments and comments on the agreed facts by 17 August 2023. Then CTI will review the draft. If facts on the schedule cannot be agreed, it would still be helpful to set them out as a Chronology, indicating which parts are agreed and which are not.
 - (e) I know that items 8 and 9 remain to be dealt with, as I took the view that I could not properly do so at that hearing.
 - (f) I know that I must hear argument and give a ruling on the extent to which, if at all, the Attorney General can be asked about the discontinuance of the prosecution of the three defendants. A proposed list of questions has already been circulated to the CPs for comment. Once we have finalised the questions to ask, I will ask for skeleton arguments. I will then try to arrange a further [Virtual] hearing for these matters to be argued; following which I will give a Ruling.
2. However, one matter on which a Ruling is now required is the submission by Mr Cruz on behalf of the RGP that the Provisional List of Issues should be amended to reduce the Issues currently identified. These issues were canvassed at length at the Second Preliminary Hearing, and in correspondence between CPs and the Inquiry prior to that hearing, on 20 September 2022. The List was then described as ‘Provisional’ because it was recognised that some amendment may be necessary, in the light of developing

circumstances. It is right to point out that the RGP were not represented at that hearing, and disclosure had not then taken place; Mr Cruz submits that in the light of these changed circumstances, I should review the Provisional List.

3. Mr Cruz submits that I should strike out all the paragraphs except paragraph 3 (the Collision at Sea), paragraph 4 (the Report of HM Inspectorate) and paragraph 5 (known by the shorthand description The Conspiracy Investigation).
4. I accept that the shorthand description of paragraph 5 is misleading, because the focus of the inquiry under this paragraph is on the three sub-paragraphs 5.1, 5.2 and 5.3. I make very clear that the Inquiry is not embarking on a wide ranging general inquiry into the conduct of the investigation of Operation Delhi by the RGP. However, among the issues which are plainly relevant are: what Mr McGrail discussed with the Attorney General or the DPP, what he knew of the application for the search warrant to be executed at the office and home of Mr Levy QC (as he then was); what (if any) directions he gave about the application for, and execution of, the search warrant and what he told the Chief Minister and the Attorney General about the application for, and the execution of, the search warrant. Furthermore, I agree with Mr Wagner, who submitted on behalf of Mr McGrail that it is necessary to have some evidence of the context in which the application was made, I hope to give Mr Cruz some comfort by making clear that I have no intention, and probably no authority, to engage in a wide ranging inquiry into the general course of the investigation by the RGP into Operation Delhi.
5. Mr Cruz objects to the inclusion of the other paragraphs on the Provisional List of Issues. He points out that some of them, in particular Issue 1 (the Airport Incident), Issue 2 (the Assault on the Helicopter Pilot) and Item 7 (the Alcaidesa Incident) occurred before Mr McGrail was even appointed as the Commissioner of Police, a process in which Mr Pyle was personally engaged. He says that it cannot be lawful, under section 13 or 34 of the Police Act 2006 for the Interim Governor, or the Chief Minister, to rely on Mr McGrail's actions before he was appointed.
6. He points to various different contemporaneous explanations or reasons given by both the Chief Minister and the Interim Governor, which do not mention many of the matters on which they now rely.

7. Items 1 – 7 of the Provisional List of Issues were based, and remain based, on the evidence before the Inquiry, of the various different reasons which were given at the time, by the Chief Minister, and the Interim Governor, explaining why they had lost confidence in Mr McGrail and for the Interim Governor using his powers under section 34 of Police Act 2006 (or, in the case of the Assault Investigation, identified by the Interim Governor at the outset of the Inquiry as having contributed to his loss of confidence). Items 8 to 10 of the Provisional List relate to the circumstances by which this process transpired.
8. Since I am required to consider ‘the reasons and circumstances’ leading to Mr McGrail’s resignation, I will receive any relevant, admissible, evidence directed to consider whether the reasons given were the true reasons, whether those reasons were sufficient or adequate and whether – as Mr McGrail contends - there were other reasons causing them – or certainly the Chief Minister - to act as they did.
9. As it seems to me, the criticisms made by Mr Cruz of the Provisional List of Issues are really arguments to the effect that – as he contends – many of the reasons given will not stand up to challenge and examination. In my opinion, his argument therefore goes to the weight that I should attach to the reasons given. In my opinion, the safeguard to the RGP is that the reasons given will be examined and, if necessary, challenged at the Inquiry. Mr Cruz can participate in that process; he can – if permitted to do so – cross-examine witnesses himself; he can disclose to the Inquiry other evidence which he can suggest is relevant and should be called, and he can present such arguments as he thinks fit. If, as he contends, some or all of the reasons do not withstand challenge, then I will so find; in the same way, I will find if some or all of the reasons are made out.
10. Mr Cruz further submits that challenging all these reasons places an unreasonable burden on the RGP, but I think that the answer to that is that the underlying facts of many of these events are not controversial and can readily be covered by agreements of fact, on which he can base his submissions that the reasons given were inadequate, or unlawful.
11. I have well in mind the submission by Mr Wagner, on behalf of Mr McGrail that I should focus on Issue 5 (arising out of Operation Delhi), and that I should not be deflected by other, less important matters, and I will not be.

12. But, in my judgment, it is not appropriate now to remove from our Provisional List of Issues any of the reasons upon which the Chief Minister and the Interim Governor said they were relying at the time, or in one instance now stated by the Interim Governor to have contributed to the loss of confidence, just because the RGP submits that those reasons are inadequate or insufficient.

13. I will keep however keep this under review.

Sir Peter Openshaw DL

26 July 2023.