

<p>1 (Wednesday, 9 April 2025) 2 (10.00) 3 THE CHAIRMAN: Good morning to you all 4 once again. As it has turned out, the final 5 farewell which I gave last June was premature. 6 Since then the Inquiry has received extensive 7 further disclosures from the RGP mainly in the 8 form of Whatsapp messages which Mr 9 McGrail engaged with Mr Richardson and 10 with Mr Ullger. It has also become clear that 11 many other messages passing between them 12 are now no longer available. 13 So, I have convened this further hearing to 14 give Mr Yeats, who has investigated these 15 matters on behalf of the RGP, Mr McGrail, Mr 16 Richardson and Mr Ullger the opportunity to 17 give evidence to explain in public how it has 18 come about that these exchanges were not 19 disclosed before the main hearing and how 20 other exchanges have been lost. Mr Santos, as 21 counsel for the Inquiry and others will have 22 the opportunity to challenge those 23 explanations and the witnesses will have the 24 opportunity to answer those challenges. The 25 hearing is therefore necessarily directed</p> <p style="text-align: center;">Page 1</p>	<p>1 inquiry hearing, but I will allow some inquiry 2 into matters genuinely arising from any fresh 3 material disclosed since the main hearing. 4 Once again, on behalf of us all can I thank the 5 staff of the Garrison Library for 6 accommodating us, this time at short notice. I 7 hope that the coverage of the Inquiry has given 8 favourable publicity to the Library and its 9 facilities, and I very much hope that they have 10 not been too much inconvenienced. 11 Finally, in order to minimise costs, we have 12 but three days to conduct our business. We 13 must therefore keep to a strict timetable. The 14 time I have allowed for my short introductory 15 remarks is now up and I hand over to Counsel 16 to the Inquiry, Mr Santos, to explain in rather 17 more detail how these issues have arisen and 18 how we are to proceed. Yes, Mr Santos, thank 19 you. 20 MR SANTOS: Good morning, sir. As you 21 have already referred to, this hearing has 22 become necessary as a result of additional 23 disclosure received from the RGP and Mr 24 Richardson in September 2024, November 25 2024 and December 2024 following the main</p> <p style="text-align: center;">Page 3</p>
<p>1 towards the disclosures made or not made by 2 the RGP. It is intended to balance the 3 challenges made at the main hearing, 4 particularly against Mr Picardo and Mr 5 McVea. If these issues of disclosure by the 6 RGP and its officers had been apparent at the 7 time of the main hearing last year they would 8 have been dealt with then, but they were not, 9 hence this hearing is necessary to correct the 10 position. 11 I make very clear that the Inquiry was set up to 12 investigate the circumstances in which Mr 13 McGrail retired. The disclosure problems to 14 which I have referred may be relevant to some 15 of the issues arising from Mr McGrail's 16 retirement but they are only part of the means 17 by which I am seeking to find the truth about 18 these matters; they are not an end in 19 themselves and I do not see them as such. An 20 incidental advantage of this hearing is to 21 consider such new material as has been 22 disclosed, which I see as supplemental to the 23 evidence given at the main hearing. I will not 24 permit anyone to reopen matters which have 25 already been properly covered at the main</p> <p style="text-align: center;">Page 2</p>	<p>1 hearing. This disclosure consists mostly of 2 Whatsapp messages between Mr McGrail and 3 Mr Ullger and between Mr McGrail and Mr 4 Richardson. The RGP disclosed these 5 messages after the main inquiry hearing when 6 the inquiry team wrote seeking disclosure of 7 messages between RGP officers, although it is 8 worth noting that the Inquiry had already 9 requested the disclosure of Whatsapp 10 messages in 2022. Since December 2024 the 11 inquiry team has sent a series of further 12 requests for clarification to the RGP to ensure 13 that the Inquiry is in the best possible position 14 to understand the disclosure that has been 15 provided and what still remains outstanding. 16 The purpose of the hearing is therefore 17 twofold: first of all to allow the RGP, Mr 18 McGrail and Mr Richardson to address alleged 19 gaps, delays and failures in the disclosure they 20 have provided to the Inquiry prior to the main 21 hearing; and second, to examine the contents 22 of that new evidence where it may shed light 23 on the reasons and circumstances leading to 24 Mr McGrail's early retirement in June 2020. 25 As we have said in our written submissions,</p> <p style="text-align: center;">Page 4</p>

<p>1 the newly disclosed messages are relevant to 2 various topics identified by the Inquiry's list of 3 issues, including: issue 3, the incident at sea; 4 issue 5, Operation Delhi; issue 6, the 5 Federation complaints; and issue 8, the 29 6 May letter. Four individuals will be called to 7 give evidence at this hearing: Assistant 8 Commissioner Yeats, who did not give 9 evidence at the main inquiry hearing but has 10 provided six witness statements in total, four 11 of which address the RGP's disclosure process 12 in this inquiry which he has overseen; and 13 three witnesses who did give evidence at the 14 main inquiry hearing and who will be 15 questioned on matters emerging from the 16 newly disclosed evidence, namely 17 Commissioner Ullger, Mr McGrail and Mr 18 Richardson. 19 Before introducing the issues very briefly I 20 want to repeat the two overarching principles 21 set out in paragraph 4 of our written 22 submissions, which should be on the Inquiry 23 website now if the public wishes to access 24 them. Principle A is a reminder that your 25 terms of reference require us to inquire into the</p> <p style="text-align: center;">Page 5</p>	<p>1 that has been received from Mr McGrail, Mr 2 Richardson and the RGP remains subject to a 3 number of gaps. For example, we have no 4 messages sent between RGP work phones, we 5 have no messages sent between RGP work 6 phones and personal devices belonging to RGP 7 officers, although it is not clear that messages 8 were sent between those devices so there may 9 have been no messages to disclose. 10 With specific regard to messages between Mr 11 McGrail and Mr Richardson, while we have 12 messages between their personal devices we 13 have no messages dating between 30 April and 14 22 May 2020, whether on their personal or 15 their work devices. This gap covers a crucial 16 period in the Inquiry's investigation and the 17 Inquiry has received evidence from both Mr 18 McGrail and Mr Richardson, for example, that 19 Mr Richardson sent a message to Mr McGrail 20 on 12 May 2020 when he was about to execute 21 the warrant at Hassans, but we have not seen a 22 copy of that message. 23 Finally, we have no messages from the senior 24 management team or SMT group chat from 25 2019 or 2020.</p> <p style="text-align: center;">Page 7</p>
<p>1 reasons and circumstances leading to Mr 2 McGrail's early retirement. This is not an 3 inquiry into data management or phone usage 4 policies at the RGP, and those matters are only 5 relevant if and only to the extent that they 6 either: (a) have prevented or impinged upon 7 relevant evidence being disclosed to the 8 Inquiry; or (b) shed light as to the credibility 9 of a CP to the extent that it is an issue. 10 Principle B is that the matters to be addressed 11 at this hearing must be considered in the 12 overall context of the evidence at the main 13 inquiry hearing, in which some seventeen 14 witnesses gave evidence over nineteen days, 15 and inevitably the issue in focus at this hearing 16 will be the RGP's and Mr McGrail's 17 disclosure, but that does not mean that the 18 issue is the Inquiry's sole or even main focus 19 at this stage. As you put it in your ruling, sir, 20 the fact that you have reconvened a hearing to 21 deal with these points does not invest in them 22 any special importance. 23 So looking at the disclosure details in more 24 detail, while there has been some disclosure 25 since the main inquiry hearing, the disclosure</p> <p style="text-align: center;">Page 6</p>	<p>1 The public can view our written opening 2 submissions on the Inquiry website, as I just 3 said, at the end of that document there is a 4 table which sets out what messages have and 5 have not been disclosed between different 6 phone numbers. We hope that that document 7 will assist the public to follow the questioning, 8 given that numerous different work and 9 personal devices will be covered in that 10 questioning. 11 The gaps in disclosure are mainly attributable 12 to three overlapping factors which will each 13 need to be explored at the hearing. First, there 14 is the RGP's policy of wiping mobile phones 15 and not preserving their contents when an 16 officer retires. This is put forward by the RGP 17 as one of the reasons for the lack of any 18 disclosure or messages between senior RGP 19 officers' work devices. That would include the 20 12 May message between Mr McGrail and Mr 21 Richardson, according to their evidence, as 22 well as the absence of disclosure from the 23 SMT Whatsapp group. 24 Second, we have the transition of senior 25 officers work phones from Samsung to iPhone</p> <p style="text-align: center;">Page 8</p>

<p>1 devices in November 2020, which we are told 2 resulted in all Whatsapp data on Mr Ullger's, 3 Mr Yeats's and Mr Richardson's phones being 4 lost. We consider it surprising that no efforts 5 were made to preserve Whatsapp data prior to 6 that transition, particularly given the 7 announced inquiry and the live prosecution of 8 Cornelio, Perez and Sanchez who were 9 charged only two months previously. This 10 transition is again put forward by the RGP as 11 one of the reasons for the absence of messages 12 between senior officers' work phones and from 13 the SMT Whatsapp group. 14 Third, Commission Ullger has lost access to 15 relevant Whatsapp messages on his personal 16 device and believes this is due to purchasing a 17 new device in June 2020. However, the RGP 18 has been able to disclose the messages 19 between Mr McGrail and Mr Ullger's personal 20 phones because they were preserved in an 21 image of Mr McGrail's phone taken by Senior 22 Investigating Officer John McVea as part of 23 his criminal investigation into the Inquiry data 24 breach. 25 It does not presently appear that targeted</p> <p style="text-align: center;">Page 9</p>	<p>1 explanation for this is that they did not feature 2 in his mind as relevant at the time. Second, 3 there is the RGP's failure to disclose any 4 Whatsapp messages on any topic until 5 September 2024. The RGP maintain that, with 6 a few exceptions, this disclosure is not relevant 7 to the Inquiry's list of issues, and this is 8 another matter that will be explored in 9 questioning. 10 The government parties and the former 11 Operation Delhi defendants invite you to view 12 the issues I have outlined in the light of other 13 events in the inquiry, including, for example, 14 the loss of Mr McGrail's day books and 15 desktop computer, Mr McGrail's destruction 16 of hard copy documents after his retirement 17 and the lack of data recovered from Mr 18 McGrail's laptop. This is undeniably relevant 19 context but these matters were already 20 explored at the main inquiry hearing and we 21 therefore do not intend to take up substantial 22 time at this hearing asking further detailed 23 questions about them. 24 As I have said, the second and incidental 25 purpose of this hearing is to explore the</p> <p style="text-align: center;">Page 11</p>
<p>1 deletions of Whatsapp messages are a further 2 factor contributing to significant gaps in 3 disclosure, with clarification having been 4 received from DC Garcia of the RGP that the 5 references in his extraction reports to deleted 6 chats were to entire chats as opposed to 7 individual messages and that he has seen no 8 evidence of deleted messages between Mr 9 McGrail and Mr Richardson or between 10 Superintendent Wyan and Mr Richardson 11 during the relevant period. There are some 12 isolated deletions in messages between Mr 13 McGrail and Mr Ullger, one of which we will 14 be looking at in questioning, and there is an 15 apparent difference between theWhatsapps 16 recovered from Mr Richardson's personal 17 device and those obtained from the image of 18 Mr McGrail's personal phone, which we will 19 also explore in questioning. 20 In addition to the gaps in disclosure there have 21 also been delays, two of which will be 22 addressed in questioning. First, there is Mr 23 McGrail's failure to disclose his Whatsapp 24 messages with Mr Ullger and Mr Richardson 25 when asked for disclosure in April 2022. His</p> <p style="text-align: center;">Page 10</p>	<p>1 substantive matters which emerge from the 2 new disclosure. There are four areas which we 3 intend to explore with questioning. The first is 4 Mr McGrail's decision to retire, and at the 5 main inquiry hearing Mr McGrail's evidence 6 was that his preference as at 29 May was to 7 remain in post and that he wanted to see his 8 career through, but that he had a lot going 9 through his head at the time. The government 10 parties place particular reliance on newly 11 disclosed messages on this topic, submitting 12 that they show that Mr McGrail had, at least 13 by 29 May and probably as early as 20 May - 14 THE CHAIRMAN: Mr Santos, I hesitate to 15 interrupt you. I am told I have got ink on my 16 face. I think it would be more dignified if I 17 remove (inaudible). 18 MR SANTOS: Sir, perhaps we will take a 19 short break. 20 THE CHAIRMAN: I think it must have 21 leaked in the plane on the way over. 22 (Adjourned for a short while) 23 THE CHAIRMAN: Sorry about that. Thank 24 you for your indulgence and assistance. Yes. 25 MR SANTOS: Sir, I think I will start again</p> <p style="text-align: center;">Page 12</p>

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<p>1 with the matters that arise from the new 2 disclosure. As I said, there are four areas 3 which we intend to explore with our 4 questioning. The first is Mr McGrail's 5 decision to retire. At the main inquiry hearing 6 Mr McGrail's evidence was that his preference 7 as at 29 May, when his lawyers sent a letter to 8 the GPA, was to remain in his post and that he 9 wanted to see his career through but that he 10 had a lot going through his head at the time. 11 The government parties place particular 12 reliance on newly disclosed messages on this 13 topic, submitting that they show that Mr 14 McGrail had, at least by 29 May and probably 15 as early as 20 May, resolved to retire, and 16 thereafter he worked to ensure that he would 17 be allowed to do so on the best financial terms. 18 Mr McGrail disputes this, arguing that the 19 messages do not show that he had resolved to 20 retire but rather that he was agonising over 21 what decision to take because he saw how 22 difficult his position as becoming and that he 23 ultimately but progressively reached the 24 decision to retire on 5 June 2020. Mr McGrail 25 also asserts that the new disclosure does not</p> <p style="text-align: center;">Page 13</p>	<p>1 documents we had already seen at the main 2 inquiry hearing. 3 Finally, we have the incident at sea. There are 4 a handful of messages which shed further light 5 on internal exchanges at the RGP in the 6 immediate and later aftermath of the incident 7 at sea, which we intend to explore in 8 questioning of Mr McGrail, Mr Ullger and Mr 9 Richardson. 10 In conclusion, sir, this hearing is an important 11 step in addressing several matters emerging 12 from Mr McGrail's, the RGP's and Mr 13 Richardson's disclosure exercises and the 14 Inquiry believes that questioning these four 15 individuals is a necessarily exercise as part of 16 the public process of identifying the reasons 17 and circumstances leading to Mr McGrail's 18 decision to take early retirement. 19 Those are my opening remarks, sir, and I now 20 seek to call our first witness, Assistant 21 Commissioner Cathal Yeats. 22 THE CHAIRMAN: I see you have injured 23 your leg, have you not? 24 ASSISTANT COMMISSIONER YEATS: I 25 have, sir.</p> <p style="text-align: center;">Page 15</p>
<p>1 reveal anything that we did not already know, 2 pointing to examples of messages that were 3 available to the Inquiry at the main inquiry 4 hearing which show that he was contemplating 5 leaving his post even as early as 13 May 2020. 6 The second topic to be explored is Operation 7 Delhi. The government parties submit that the 8 newly disclosed Whatsapp messages between 9 Mr McGrail and his senior colleagues do not 10 contain any references to alleged interference 11 in the Operation Delhi investigation. Mr 12 McGrail submits on the other hand that the 13 new disclosure does not alter the overall 14 position as it stood at the main inquiry hearing. 15 The next topic is the HMIC report. The newly 16 disclosed Whatsapp messages provide 17 additional insight into Mr McGrail's reaction 18 to the findings of the HMIC report and his 19 efforts to address its recommendations. Again, 20 the government parties submit that the new 21 disclosure shows the extent of Mr McGrail's 22 concern with criticism by HMIC, whereas Mr 23 McGrail submits that the newly disclosed 24 exchanges do not alter the position, 25 particularly given the contemporaneous</p> <p style="text-align: center;">Page 14</p>	<p>1 THE CHAIRMAN: Are you comfortable 2 there? 3 ASSISTANT COMMISSIONER YEATS: I 4 am, sir. 5 THE CHAIRMAN: Can we do anything to 6 help you? 7 ASSISTANT COMMISSIONER YEATS: I 8 am fine as I am, sir. 9 THE CHAIRMAN: Okay, but if there is 10 anything do mention it. You did not give 11 evidence before so you had better take the 12 oath. 13 ASSISTANT COMMISSIONER CATHAL 14 YEATS, sworn 15 Questioned by MR SANTOS 16 MR SANTOS: Good morning, Mr Yeats. 17 A. Morning, Mr Santos. 18 Q. Can I first of all take you to your 19 statements, the ones that you have given to this 20 Inquiry thus far, and as the Chairman says, you 21 are yet to give evidence so I think the first step 22 is to ask you to confirm the contents of those 23 statements. I am not sure whether they have 24 been provided in a bundle. They are appearing 25 on screen I am told, yes. Excellent. For each</p> <p style="text-align: center;">Page 16</p>

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<p>1 of these statements, and we can take them 2 together but you will be shown each one and 3 the signature page on each one, I would ask 4 you to please confirm that it is your signature 5 on the final page, that it is your statements to 6 this Inquiry and finally that you confirm that 7 they are true to the best of your knowledge, 8 information and belief, please.</p> <p>9 A. Sorry, you are going to show me all of 10 them together or do you want me to go 11 through -</p> <p>12 Q. I think you will be shown one by one ...</p> <p>13 A. Right, so ...</p> <p>14 Q. You need not say it for every single one. I 15 think once you have been shown every single 16 one you can just confirm that, please.</p> <p>17 A. Thank you. (Pause) Sorry, that's Mr 18 Ullger's statements on screen.</p> <p>19 Q. Yes, sorry, we will just get your fifth 20 statement up. That is your sixth one, and then 21 we will show you your fifth one. (Pause) That 22 is your fifth one. (Pause) Can I ask you to 23 confirm that those are your signatures and that 24 the contents of those statements are true to the 25 best of your knowledge, information and</p> <p style="text-align: center;">Page 17</p>	<p>1 counsel in September 2022 we developed and 2 thought through a disclosure process with the 3 former STI. At that point it naturally fell to 4 me to lead that process, although on reflection 5 I am not sure, until the Inquiry pointed out that 6 I had taken the lead, that it was ever formally 7 described in that way but, as I say, that is what 8 naturally occurred, and more myself and Mr 9 Wyan, but certainly I was the senior officer, 10 directed the disclosure and the appointment of 11 the disclosure team at that time to provide the 12 Inquiry with, in our view, the full and 13 comprehensive disclosure that we have 14 provided.</p> <p>15 Q. Based on your fourth and fifth witness 16 statements, the Chairman stated in his ruling to 17 reconvene the Inquiry that you supervised the 18 disclosure process. Would you accept that as 19 an accurate description?</p> <p>20 A. Yes, I suppose so, to the extent that 21 decisions or discussions between our internal 22 RGP team and with Mr Wyan in particular 23 were referred to me for a decision, and in 24 conversation with counsel that is what we then 25 followed through - or not, as the case would</p> <p style="text-align: center;">Page 19</p>
<p>1 belief.</p> <p>2 A. I can confirm that those are my signatures 3 and I can confirm that the information is the 4 truth to the best of my knowledge and belief.</p> <p>5 Q. Thank you. Mr Yeats, as you have not - I 6 am just experiencing a bit of feedback. I do 7 not know whether it is your mic or mine but ... 8 Maybe it is mine. I will just move mine away. 9 I think that is better. Mr Yeats, as you did not 10 give oral evidence at the main Inquiry hearing 11 can I please ask you to state your current rank 12 at the RGP.</p> <p>13 A. So I am the Assistant Commissioner of 14 Police.</p> <p>15 Q. What rank did you hold in May/June 2020, 16 please?</p> <p>17 A. I was a Superintendent in May and June of 18 2020.</p> <p>19 Q. A key purpose of this hearing, as I just 20 explained, is to examine the disclosure 21 provided by the RGP to the Inquiry. What role 22 did you play in that disclosure process?</p> <p>23 A. So following the requests for disclosure 24 and evidence from the Inquiry, with the 25 Commissioner Mr Wyan and our appointed</p> <p style="text-align: center;">Page 18</p>	<p>1 have been.</p> <p>2 Q. It probably goes without saying but just to 3 be clear, that does not mean that you carried 4 out the forensic tests that have been carried out 5 yourself.</p> <p>6 A. Absolutely not. That should be made very 7 clear.</p> <p>8 Q. As part of your role in supervising the 9 process did you instruct or encourage other 10 officers to review their Whatsapp messages?</p> <p>11 A. So again I can't remember that being a 12 consideration in November 2022 to the extent 13 that I directed - and this would have really 14 been Mr Wyan and Ullger, there was nobody 15 else that I can recall at that stage in 16 conversation that would have been captured by 17 that category. As I say, I don't recall doing 18 that specifically, I think what happened was, 19 almost as a matter of evolution, we were asked 20 for our evidence in the form of witness 21 statements and I think it is worth explaining 22 slightly that we sort of saw this in two 23 different ways: one was providing disclosure 24 with regard to our own evidence to support our 25 own witness statements, which we did</p> <p style="text-align: center;">Page 20</p>

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<p>1 obviously; and then the secondary process of 2 assisting the Inquiry with RGP material and 3 documentation that we had and we could 4 disclose. So I think, thinking back on it now, 5 that it was almost a natural - we prepared our 6 own statements, we looked at our own 7 disclosure, so there wasn't a direction: let's 8 check Whatsapps and let's disclose what we 9 have. It was more we each looked at the 10 material that we thought was relevant in the 11 context of the requests made by the Inquiry 12 and we prepared our statements in that regard. 13 Q. You do accept though that the requests that 14 were sent to the RGP did specifically refer to 15 disclosure of relevant Whatsapp messages. 16 A. That's correct, and relevance I think being 17 the key point. 18 Q. What are the methods that senior RGP 19 officers use to communicate about and discuss 20 cases? 21 A. So I think, with respect, there has been an 22 accelerated importance given to Whatsapp 23 messages in that context. I think the first point 24 is that we are all in the same building 25 essentially, so there are ample opportunities</p> <p style="text-align: center;">Page 21</p>	<p>1 involved in supervising an investigation. So as 2 I say, the layout of the building also is 3 conducive to frequent communication. 4 Without describing people's bathroom habits 5 but, you know, the corridor leading from the 6 Commissioner's office, the Assistant 7 Commissioner's office to the bathroom leads 8 past my office, Mr Richardson's office, which 9 was the second/third one along - Mr Tunbridge 10 was the first one - so it was common and 11 frequent for Mr McGrail, Mr Richardson, Mr 12 Ullger to walk past numerous times a day and 13 pop in and say whatever and walk on. So I 14 think there were ample opportunities for 15 communication. Of course then there are the 16 more formal methods of communication that 17 we would use, and primarily that is email, 18 whether the email itself contains the 19 communication, in other words the content of 20 what wants to be conveyed, or as attaching 21 documents, and that would be what I would 22 suggest would most commonly be used in 23 terms of communicating formal investigative 24 steps or (inaudible). 25 Q. If we can go now to E920, please. This is</p> <p style="text-align: center;">Page 23</p>
<p>1 throughout the course of any day to 2 communicate, whether in personally or in a 3 more formal briefing or even through 4 landlines, phones that we have at our disposal. 5 The second point is that it is uncommon in my 6 experience, and has been for the last four or 7 five years, for senior officers to be involved in 8 investigations in the way that perhaps has been 9 described in the context of this inquiry. So I 10 certainly have not been involved in any 11 investigation at all in my time as Assistant 12 Commissioner in the sense of directing that 13 investigation or being an investigating officer. 14 I have of course been briefed on ongoing 15 investigations, I have been updated, there has 16 been consequence management: this is going 17 to happen, you need to know about it as a 18 senior officer. So there isn't a: "We are going 19 to arrest somebody tomorrow" between the 20 senior officers, this is what we do and we 21 communicate in that way. I think Operation 22 Delhi was not the norm, it was unique in the 23 circumstances that Mr Richardson as a 24 superintendent was leading it; it was not 25 common for officers of that rank to be directly</p> <p style="text-align: center;">Page 22</p>	<p>1 a Royal Gibraltar Police Force order dated 18 2 July 2019 - it is a set of orders. If we go over 3 the page, there is a heading: 4 "2. Use of personal devices for work 5 purposes." 6 I just want to pick out a few passages from 7 this. The first two lines read: 8 "The Commissioner and the Command Team 9 have for some time now been debating the 10 appropriateness of continuing to allow the use 11 of personal mobile devices for work 12 purposes." 13 Then if we go down another six or seven lines, 14 just halfway down that paragraph there is a 15 sentence that says: 16 "Unfortunately recent events have led the 17 Commissioner to conclude that the use of 18 personal mobile devices for work related 19 purposes will have to cease forthwith." 20 Then the final paragraph on that page starts: 21 "Unfortunately we are once again having to 22 provide explanations to the Data Protection 23 Commissioner following what appears to be a 24 breach of the Data Protection Act by an officer. 25 In this case the issue lies with the use of a</p> <p style="text-align: center;">Page 24</p>

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<p>1 personal device for work purposes." 2 Then finally over the page at the very end in 3 bold is the following: 4 "As a result of a change in Force policy and in 5 order to safeguard the organisation and 6 officers alike on data protection breaches, the 7 use of mobile phones or other personal 8 electronic devices for work purposes will 9 cease forthwith. This includes using said 10 devices for taking of photographs, video 11 recordings or dissemination of personal data 12 via Whatsapp or other media platforms. This 13 is not an exhaustive list. The use of the latter 14 media platforms will be restricted to 15 administrative purposes only, such as 16 requesting officers to come into work, offering 17 overtime, informing of change of hours, etc." 18 Then finally if we can go to two pages on we 19 can see that it was signed by then Acting 20 Commissioner Ullger. Were you part of the 21 senior command team in July 2019? 22 A. I was. 23 Q. Did you cease using your personal phone 24 for all work-based communication pursuant to 25 that order?</p> <p style="text-align: center;">Page 25</p>	<p>1 security. And what drove that forcible entry 2 and would cause a debate was that data breach 3 that is alluded to in the forcible entry, where 4 an officer with the best of intentions to secure 5 CCTV over a traffic collision took some video 6 on his own phone of that collision, transmitted 7 it to a WhatsApp group within his response 8 team and then that unfortunately got shared 9 beyond that and went viral. So clearly that 10 was not acceptable and that was not behaviour 11 that we could accept or encourage. But it 12 clearly would have been a significant difficulty 13 to completely prevent, especially senior 14 officers, from communicating in any way, 15 shape or form through their personal devices. 16 Q. Was your experience that the majority of 17 work-related communications did change over 18 to work devices or did they remain on personal 19 devices? 20 A. I think I will go back to the point I made 21 earlier. I am not sure that there was a majority 22 ... that there were many work-related 23 communications on these devices anyway. 24 Um, I think you will have seen from my own 25 disclosure that my intents of the messages that</p> <p style="text-align: center;">Page 27</p>
<p>1 A. So, no, clearly not. And I think, um, in 2 hindsight we should have taken a different 3 approach. I mean, it was impossible really to 4 do so at that point because we hadn't yet gone 5 through the process of obtaining alternative 6 RGP 7 (10.40) 8 or corporate phones to replace them. Um, I 9 think the biggest issue we faced was the fact 10 that most of our contacts, people we knew, had 11 mobile phones, numbers, that, you know, they 12 were familiar with and had in their contacts 13 list. In hindsight, it may have been that we 14 should have just gone further and eventually 15 when we had the replacement phones enacted 16 a policy where personal devices had to be 17 locked away during working hours and work 18 phones were only to be used. That presents 19 a whole host of issues across a force of almost 20 300 individuals, including police officers and 21 civilian staff, civil servants. There would have 22 no doubt been resistance to preventing the use 23 of phones in that respect. 24 I think the other point to make here is that this 25 was really about data breaches and operational</p> <p style="text-align: center;">Page 26</p>	<p>1 I exchanged with Mr McGrail occur outside 2 working hours. So clearly it points to the fact 3 that during working hours there were 4 alternative means of communication. And as I 5 have explained, most of that was face to face, 6 in-person meetings, briefings, or whatever. 7 Um, I mean, I am not sure that it would be 8 right to say that most of our communications 9 moved from one device to the other once we 10 obtained them in September. Um, I think it's 11 clear that, you know, the SMT WhatsApp 12 group was transferred to the work devices. It 13 was used primarily just to communicate, you 14 know, issues around, you know, road traffic 15 collision, can anybody brief me on what's 16 happening? That then led to direct 17 communication between whoever was asking 18 the question and the individual. It wasn't 19 necessarily, um, explored or developed in that 20 group. That's my recollection of what that was 21 primarily used for. Um ... 22 Q. Do you consider that your use of your 23 personal phone was consistent with that order? 24 A. So, we had said in that order that we could 25 use it for administrative purposes. How that is</p> <p style="text-align: center;">Page 28</p>

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<p>1 interpreted is perhaps for debate. But I don't 2 see that communicating with a personal device 3 with another senior officer saying, you know, 4 "Come and see me now," or "What do you 5 know about this", was necessarily in breach of 6 that. Our concern was mostly around personal 7 data and that being disclosed or being exposed. 8 Q. In September 2019 when ... just bear with 9 me. (Pause). It is correct to say, is it not, that 10 when this force order was brought into action, 11 not all officers had work devices. It was just 12 the senior officers at that stage who had been 13 issued with work devices. 14 A. Well, not ... so when the force order entry 15 was 19 July, nobody had work devices at that 16 stage. So what the position was at that point 17 was that some of us had our own personal 18 devices, which the organisation paid for the 19 contracts. So the work devices, which were 20 obtained in, they told us, September of 2019, 21 where for senior officers and I think around 50 22 officers, if I remember correctly, and those 23 were essentially inspectors and above, so 24 senior officers from inspecting ranks upwards, 25 and key posts which are just required phones, I</p> <p style="text-align: center;">Page 29</p>	<p>1 phone? 2 A. I cannot recall. It is possible, but I 3 couldn't say one way or another. 4 Q. Did you ever exchange messages between 5 your work phone and Mr McGrail's work 6 phone? 7 A. I mean, it's likely that that would have 8 occurred, perhaps, as I have explained earlier, 9 as a result of an SMT or a query about some 10 point or other. But I can't recall or give you 11 an example of when that would have occurred, 12 no. 13 Q. But the Inquiry's understanding is that 14 these messages, if they existed, are no longer 15 available on your work phone due to the 16 transition from Samsung to iPhone in 17 November 2020. Correct? 18 A. That is correct, yes. 19 Q. If we can go to E877 now, please. In 20 paragraph 12 of your sixth witness statement 21 you explain: 22 "In November of 2020 a small number of 23 telephones were changed to Apple devices. 24 This included telephones for Commissioner 25 Ullger, Superintendent Richardson and I. The</p> <p style="text-align: center;">Page 31</p>
<p>1 think. There is an appendix to the force order 2 entry that lists those posts and officers that had 3 phones issued to them. 4 Q. Now turning to some questions about your 5 work phone, can we go to E1069, please. This 6 is DC Garcia's statement to the Inquiry, his 7 first statement. And at paragraph 12, he says: 8 "On 16 December 2024, DC Caruana handed 9 to me a portable hard drive with several files. 10 He explained that one of the files was the PSN 11 i.e. UFDR of Mr McGrail's personal phone. [I 12 think that means the image taken of 13 Mr McGrail's phone.] After opening the UFD 14 I tagged the following messages between 1 15 January 2020 and 30 June 2020." 16 The final subparagraph (f) says: 17 "No messages tagged between Mr McGrail 18 and Mr Yeats." 19 Am I correct that the number that is displayed 20 there is your work number at the time? 21 A. The 902, correct, yes. 22 Q. Yes. 23 A. It still is. 24 Q. Did you ever exchange messages between 25 your work phone and Mr McGrail's personal</p> <p style="text-align: center;">Page 30</p>	<p>1 phones were again set up by RGP officers. 2 The phones are Apple iPhone SEs, running the 3 Apple IOS system. The Apple phones were 4 linked to an Apple iCloud email account 5 created for the purpose of setting up each 6 device. Both Mr Ullger and I still have use of 7 these devices. An email discussing this with 8 the then Senior Executive Officer is provided. 9 In December 2020 I wrote to the Higher 10 Executive Officer informing her that 11 Mr Ullger, Mr Richardson, another officer and 12 I had returned our Samsung phones and had 13 been issued Apple iPhones. The RGP serial 14 numbers of the phones are included. There is 15 an error." 16 There is no need to go into that. Then you say: 17 "A search for the Samsung devices bearing 18 these serial numbers has located two of them. 19 Both are in use by officers. One is the Crown 20 Sergeant's phone and in use in the control 21 room and the other was in use with the Victim 22 Support Unit. Both phones are now with our 23 digital forensics unit for forensic 24 examination." 25 And then if we can go to 26, which is a couple</p> <p style="text-align: center;">Page 32</p>

<p>1 of pages on, you say: 2 "I now realise, having reviewed all disclosure 3 matters, that neither the RGP nor Mr Ullger, 4 Mr Richardson or I have access to any 5 WhatsApps held on RGP devices since 6 November 2020. This includes the SMT chat. 7 This is because when the change of phones 8 occurred from the Samsungs to the iPhones 9 different email accounts were used to set up 10 the phones. As I said in paragraph 11, 12 and 11 13, the relevance is that any WhatsApp 12 backups on the Samsung devices would have 13 backed up to the associated Google Gmail 14 email accounts. Therefore when the iPhones 15 were first set up with the Apple iCloud email 16 account, the WhatsApp application was unable 17 to restore any messages. This is because 18 WhatsApp backups are stored in the associated 19 email account linked to the phone." 20 Can I ask first of all, why did the RGP make 21 the transition from Samsung to iPhone among 22 those four officers, including yourself? 23 A. Simply a preference for a different user 24 interface. There is no ... nothing further than 25 that.</p> <p style="text-align: center;">Page 33</p>	<p>1 in the previous paragraph. The situation as I 2 describe it had been confirmed to me by DC 3 Garcia." 4 Did the RGP attempt to restore the messages 5 through Gmail? 6 A. Correct. 7 Q. Yes. 8 A. So, just to give that some context, if I may. 9 I mean, I think it was obviously ... obvious to 10 us that we didn't have the messages or any 11 messages on the phones back in 2022, 12 whenever we carried out the disclosure 13 exercise and we looked at our own phones. So 14 that was obvious then. Um, I'm not sure at 15 what point we realised or I realised that it was 16 because of the change of phones that those 17 messages may have gone. Um, the realisation 18 of the importance of the Gmail account, 19 because if I explain, we tried various ways of 20 identifying the phones that may have been in 21 use by the relevant officers at the time. We 22 used the SIM card and the number of the 23 device, so we tried first identifying those 24 numbers that pertained to Mr McGrail at the 25 time, myself, my sergeant, we looked at those</p> <p style="text-align: center;">Page 35</p>
<p>1 Q. As you say, the Samsungs were set up with 2 Google email accounts and the iPhones were 3 set up with Apple iCloud accounts. Does that 4 mean that, just to be clear, that any WhatsApp 5 message from before November 2020 would 6 have backed up to the Gmail accounts? 7 A. That is my understanding. Assuming that 8 they would have been backed up, yes, that 9 would have been the case. 10 Q. And what happened to those backups? 11 A. Well, I'm not sure that there were backups 12 is the first point I would make to that question. 13 And we have attempted to recover them as we 14 describe, I think I describe in my statement 15 and Mr Garcia does in his own evidence, and 16 there were no backups to be recovered. 17 Q. If we can go to paragraph 27, the next 18 paragraph, you say: 19 "I realised that this was the case in February of 20 2025 on considering how to comply with the 21 ruling and the Inquiry's disclosure request. It 22 occurred to me we should try and restore 23 WhatsApp backups to obtain the requested 24 data. It immediately became clear that this 25 was not possible for reasons I have explained</p> <p style="text-align: center;">Page 34</p>	<p>1 phones. The one that we thought was 2 Mr McGrail's we took for examination, which 3 is why we disclosed the message which we 4 then had to correct and say actually it was not 5 the right phone. 6 We then, um, looked at trying to identify the 7 serial numbers that are native to the device 8 itself. That didn't work either. That didn't 9 help us. And eventually what we relied upon 10 was an RGP serial number that had been stuck 11 on the device and a list of 2021 identified, that 12 was created in 2021, helped to identify the 13 serial numbers that we think were the phones 14 that were used by us at the time. And that's 15 what I relate to in my previous paragraph 16 where I say the Victim Support Unit and the 17 control room had two of the phones that were 18 in use by Mr Richardson and myself at the 19 time. The phone that Mr Ullger had at the 20 time was in a box with inoperable phones with 21 the Senior Executive Officer. That was also 22 taken down for forensic analysis and there 23 were no phone ... no messages recovered. 24 That phone is also inoperable and it seems it 25 has been inoperable for a significant amount of</p> <p style="text-align: center;">Page 36</p>

1 **time.**
 2 Q. And did you attempt in putting those Gmail
 3 accounts into other Samsung phones to see
 4 whether --
 5 **A. So, my understanding is this was all done**
 6 **by DC Garcia. He was asked to do all this and**
 7 **my understanding is that he accessed the**
 8 **Google drive itself to try and identify whether**
 9 **the backups existed and, um, I mean, I'm not**
 10 **sure whether there was any backup in any of**
 11 **those accounts, or whether all accounts were**
 12 **accessible, because remember that we stopped**
 13 **using those accounts effectively in 2020. So it**
 14 **may be that Google has shut down those**
 15 **accounts and made them inaccessible anyway,**
 16 **I'm not sure. So yes, there was an attempt to**
 17 **identify whether the backups were still**
 18 **available, um, again, assuming that they had**
 19 **been backed up in that form. But they were**
 20 **not and nothing has been recovered.**
 21 Q. Just in fairness to you, can I take you to
 22 E1071, which is where DC Garcia sets out the
 23 findings of his attempts to access the backups.
 24 I was just wondering whether you could help
 25 us with interpreting this. He says:

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1 "On 13 February 2025 I was instructed to
 2 access the Gmail accounts of every officer
 3 from CI rank and above to establish whether
 4 any WhatsApp backups were available. I
 5 obtained the following information."
 6 As you say, some of those, they refer to
 7 account unavailable and others say backup, no
 8 backup available. Is there a difference
 9 between that, that on the one hand when it says
 10 "account unavailable" it could not access the
 11 account itself, and that the other one, with that
 12 backup unavailable, they actually managed to
 13 access the account but there was no backup?
 14 **A. That is my understanding, yes.**
 15 Q. And then there are two, well, there is one
 16 example at least ... so, sorry, there two
 17 examples, G and I, of backups where the
 18 oldest chat goes up to 2024. Does that mean
 19 that those individuals were using Samsung
 20 devices until 2024?
 21 **A. So, I think that is a demonstration of the**
 22 **policy in operation. Because the policy**
 23 **intended various things. One of them was that**
 24 **the phone should be, um, with the post, not the**
 25 **individual in that post. So if there was**

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1 **a change of person in a particular post, then**
 2 **that phone should be available to the new**
 3 **individual coming in, not the data in the**
 4 **phone. And perhaps we will come to that later,**
 5 **but that was what the intention was. So, again,**
 6 **we were setting these phones up as laymen.**
 7 **We have no IT support to guide us through**
 8 **such a process. So what those two, G and I**
 9 **think I is the other one referred, are indicative**
 10 **of is that the phone was probably used by**
 11 **a different officer at the time. The phone was**
 12 **repurposed when the individuals in that post**
 13 **changed. It would have been wiped of all its**
 14 **data and reissued to the new incumbent. And,**
 15 **you know, backups obviously were created but**
 16 **they related to the use of ... the use by, rather,**
 17 **the second officer.**
 18 Q. Understood. At the time of making the
 19 transition from Samsung to iPhone, did you
 20 realise that this would result in your previous
 21 messages being lost?
 22 **A. No. As I said, Mr Santos, I have, in terms**
 23 **of the phones and the effect that this would**
 24 **have, the experience that a normal layperson**
 25 **would have. I just did not know. I mean, I'm**

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1 **not sure that anybody realised the**
 2 **consequences.**
 3 Q. Was there no consultation with the IT, with
 4 someone in IT within the RGP?
 5 **A. No. So, I mean, I think I explained this in**
 6 **my witness statement, or maybe Mr Ullger**
 7 **did, I forget now. We have support from the**
 8 **government's IT of the department. At that**
 9 **time in 2019/2020, their view was that that**
 10 **was not something that they would support.**
 11 **They supported the network, the infrastructure,**
 12 **in terms of the physical IT, but not the mobile**
 13 **phones. I think we were, and still probably**
 14 **are, unique as a public sector organisation,**
 15 **Gibraltar, having RGP or corporate phones.**
 16 **It's not my understanding that any other or**
 17 **many other, if any, government departments or**
 18 **public sector bodies have the same practice.**
 19 Q. It sounds from your answer that you did
 20 not make any inquiries about how to backup or
 21 transfer the messages before that transition. Is
 22 that correct?
 23 **A. Yes.**
 24 Q. Given the fact that by that stage the Inquiry
 25 had been announced by the Chief Minister in

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<p>1 Parliament, why did you not seek to at least 2 preserve your messages with Mr McGrail from 3 that device? 4 A. So, I think the answer is because it was in 5 nobody's mind at all. It just wasn't in our 6 minds. Um ... 7 THE CHAIRMAN: (Inaudible)? 8 A. Well, no. 9 THE CHAIRMAN: That is right, is it not? 10 A. I think two things, sir. One is we didn't 11 think that we lost, until of course they were 12 lost, but also that I'm not sure that anybody 13 was particularly thinking that those WhatsApp 14 messages would be particularly important. I 15 am not going to use the word relevant. You 16 know, I described how we mostly 17 communicated. Um, we certainly didn't have 18 any idea of what would transpire and why we 19 would be here today considering these 20 WhatsApps in such detail. 21 MR SANTOS: Can I now take you, please, to 22 E278. This is your witness statement, your 23 fifth witness statement, in which you answered 24 a number of questions put to you by the 25 Inquiry, and the question there, above</p> <p style="text-align: center;">Page 41</p>	<p>1 by Mr McGrail and Mr Richardson remain in 2 use within the RGP but with different 3 telephone numbers. A forensic examination of 4 every phone in the RGP would be required to 5 determine whether the RGP has messages in 6 its possession or control from Mr McGrail's 7 and Mr Richardson's work phones in 2020." 8 Are those two phones that you refer to, first of 9 all, in 17, are those the same ones that Police 10 Sergeant Connor had previously examined? 11 (Pause). I can take you to 272 where this is 12 mentioned, perhaps in fairness to you. 13 (Pause). This is a witness statement of Police 14 Sergeant Martin Connor and in paragraph 4 he 15 says, well, at paragraph 3 he says that: 16 "Superintendent Wyan requested his assistance 17 in carrying out a physical check of a mobile 18 device." 19 And then in paragraph 4 he says that the 20 phone, he was informed that the phone was 21 previously used by ex Commissioner McGrail. 22 Is that what you are referring to in your 23 statement? 24 A. Yes, correct, and at that stage we were still 25 assuming, incorrectly as it turned out, that the</p> <p style="text-align: center;">Page 43</p>
<p>1 paragraph 17, is: 2 "An express answer to the question in our 3 email of 25 November, namely, as from 12 4 May in particular can the RGP please confirm 5 whether it has in its possession or control, 6 whether or not the messages are relevant to the 7 list of issues?" 8 And then we set out specific, for example, one 9 example is below these two paragraphs: 10 "Outgoing messages from IM's work phone." 11 As an preamble you say the following, in 17 12 and 18: 13 "Following the request for additional 14 disclosure and a widening of the time 15 parameters from 12 May 2020 to 9 June 2020, 16 to 1 January 2020 to 30 June 2020, the phones 17 believed to have been in possession of 18 Mr McGrail and Mr Richardson were sent to 19 the RGP's digital forensic unit for analysis and 20 the extraction of messages. An analysis of 21 both phones has revealed that neither of the 22 phones now believed to have been in the 23 official of Mr McGrail and in the possession of 24 Mr Richardson were in fact in use by them at 25 the time. It is possible that the phones in use</p> <p style="text-align: center;">Page 42</p>	<p>1 SIM cards and the numbers pertaining to those 2 SIM cards were with the phone that they had 3 originally been back in 2020. It turned out not 4 to be the case, as I mentioned earlier. 5 Q. Can we now go to E877, please. 6 Paragraph 12 at the bottom of this page, we 7 have already looked at it, but the final five 8 lines of that paragraph, over the page, just to 9 recap, you say: 10 "A search for the Samsung devices has located 11 two of them. Both are in use by officers. One 12 is the Crown Sergeant's phone in use in the 13 control room and the other was in use with the 14 Victim Support Unit. Both phones are now 15 with our digital forensics unit for a forensic 16 examination." 17 I think you were saying earlier that they have 18 now been examined and that nothing has been 19 found on those devices. 20 A. Correct, and beyond those two we also 21 identified the one that Mr Ullger had in use at 22 the time and the same result. 23 Q. Thank you. 24 A. (Overspeaking). 25 Q. Sorry.</p> <p style="text-align: center;">Page 44</p>

<p>1 A. No, I'm just finishing off the sentence. 2 Q. If we can go to E881, please, paragraph 29. 3 Can I just read this paragraph: 4 "Notwithstanding this and in an abundance of 5 caution, an exercise to establish whether any 6 of the over 50 mobile telephones that the RGP 7 has today could be one of those in the 8 possession of Mr McGrail, Mr Ullger, 9 Mr Richardson or myself in early 2020 has 10 been conducted. The intention is to have any 11 such device identified and then forensically 12 examined by the DFU in the extremely 13 unlikely event that any relevant data can be 14 recovered. This exercise will be completed 15 not later than 31 March and the Inquiry will be 16 immediately informed if the exercise yields 17 any relevant data, although, as I say, I 18 understand this to be extremely unlikely." 19 Presumably we have not heard from you 20 because nothing has been found for that 21 exercise. 22 A. Correct. And it is also, um, I think 23 appropriate to say that we have very few the 24 Samsung A10 phones that were bought in 25 2019 remaining in the force. Many have had</p> <p style="text-align: center;">Page 45</p>	<p>1 most of it that I recall and certainly is the case 2 now is some ... a senior officer, often the 3 Commissioner, inquiring about a particular 4 issue. And it may be at a weekend asking, you 5 know, "Who is the senior officer on call?" 6 Once that response is given the 7 communications usually tended to then move 8 on to the direct communication between the 9 two around whatever issue was going to be 10 explored. That really is my sense and 11 experience of what that chat was used for. 12 Q. When you say little, if you can assist 13 a little further. For example, is it used daily, 14 weekly, monthly? 15 A. I mean, it would depend. I mean, on 16 occasion it has even been about, you know, 17 a retired officer having passed way, for 18 example, being communicated through that 19 means. But it would depend on the 20 circumstance. I wouldn't be able to say. 21 Certainly not daily. Whether there were 22 occasions when there were daily messages, 23 that's absolutely not my experience at all. 24 Q. And would you say that the rate of usage 25 was similar in 2020?</p> <p style="text-align: center;">Page 47</p>
<p>1 to be replaced because they have just ... um, 2 wear and tear and the like. 3 Q. At this stage, is there any realistic prospect 4 that further relevant messages will be 5 recovered through these processes? 6 A. I don't think so, no. 7 Q. Can we now turn to the SMT group chat. 8 Am I correct that in the transition from 9 Samsung to iPhone that the messages that you 10 lost from your work phone would have 11 included the SMT group chat? 12 A. So, do you mean in November 2020 or -- 13 Q. Yes. In the transition from Samsung to 14 iPhone. 15 A. Yes, of course, yes. 16 Q. I think you have already explained that the 17 SMT group chat was ... well, let me just ask it 18 to you in an open way. What was the SMT 19 group chat used for? 20 A. So, it was a chat which included the 21 command team. Um, we currently also have 22 an SMT group chat. I happen to have checked 23 through the chats on my current phone in the 24 days preceding today and there is little 25 communication in there. As I said earlier,</p> <p style="text-align: center;">Page 46</p>	<p>1 A. It's difficult to cast your memory back to 2 that time, but I suppose so. 3 Q. Would that group have included messages 4 about Mr McGrail and the events that occurred 5 in May and June 2020? 6 A. I cannot discount it, so I cannot say yes or 7 no. Um, but as I explained earlier, it would 8 have been unlikely that we would have been 9 communicating on issues around that, um, on 10 the SMT chats when (a) we were all in the 11 same building most of the time for eight hours 12 a day, and (b), as I explained earlier, you will 13 have seen that nine-tenths of the 14 communication on my personal phone with 15 Mr McGrail was outside working hours. So it 16 would be highly unlikely. We were dealing 17 with a number of issues at that time, not least 18 Mr McGrail's predicaments, and we would 19 have been discussing them in person. 20 Q. These communication patterns, would they 21 have been the same during May and 22 June 2020, given the Covid pandemic? 23 A. Again, I think we were in a unique 24 position. As the RGP, a law enforcement 25 body, we were clearly working so we were</p> <p style="text-align: center;">Page 48</p>

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<p>1 able to communicate in person because most 2 of us were in the office. It is true that on 3 occasion we worked from home, um, but you 4 have reminded me of a message that may have 5 been shared, I think, on that WhatsApp chat of 6 an empty beach as an example of the 7 regulations being applied. But I can't really 8 recall much more than that. 9 Q. If we can now turn to E880, please, 10 paragraph 23. You refer to the fact that there 11 were five members of the SMT group chat, the 12 Commissioner, Assistant Commissioner and 13 three superintendents. Could you just remind 14 us, please, who were the holders of those 15 offices? We know that obviously there was 16 Mr McGrail, Mr Ullger and you were one of 17 the three superintendents. Can you remind us 18 who the other two were? 19 A. Superintendent Richardson and 20 Superintendent Tunbridge. 21 Q. Thank you. Has it been possible to recover 22 the SMT group chat from any of those five 23 members? 24 A. No, it hasn't. 25 Q. Now, can we now turn to 881 and</p> <p style="text-align: center;">Page 49</p>	<p>1 evidence on the strength of what DC Garcia 2 said is that it does not mean that there are 3 deletions in 4 (11.10) 5 the chat between Mr McGrail and 6 Mr Richardson. And in fact GC Garcia says 7 that he has seen no evidence of such deletions 8 for the relevant period. 9 A. Correct. What happened was that we 10 received the request for the widened date 11 range on 9 December, I remember, and we 12 were asked to provide the disclosure by the 13 20th. It was obviously a difficult period. We 14 complied with the request as is evidenced and 15 perhaps with more time we could have realised 16 the implication of what we were providing and 17 provide an explanation to it. In hindsight that 18 should have been the case. It wasn't and we 19 appreciate that it has caused confusion, which 20 -- I think we applied by. Mr Garcia is clear 21 that that is what that means. 22 Q. Now, just looking at the messages found 23 on the forensic image of Mr McGrail's phone, 24 these are at 883 -- I am sorry, 833, the first of 25 many misreadings of a reference, no doubt.</p> <p style="text-align: center;">Page 51</p>
<p>1 paragraph 31 of your statement. You confirm 2 there the position in terms of potential 3 deletions of messages between Mr McGrail 4 and Mr Richardson and you explain that there 5 was initially a potential misunderstanding in 6 interpreting the extraction reports prepared by 7 DG Garcia because there were references there 8 to deleted chats. And what you have pointed 9 out on the strength of what DC Garcia has 10 explained to you is that the reference to 11 deleted chats is to entire chats rather than 12 individual messages within a chat. Is that 13 correct? 14 A. That is correct and I think what is ... 15 perhaps it is worth explaining in the simplest 16 terms possible what we mean by a chat in this 17 context. And that is if I, for example, send you 18 a WhatsApp message, um, and you reply, that 19 constitutes a chat. So it is, you know, that chat 20 may take place over a number of days, 21 a number of weeks, a number of months. It is 22 the deletion of that entire set of messages that 23 is referred to as a deleted chat. 24 Q. Yes. And it is also right to say that DC 25 Garcia has in his evidence that ... sorry, your</p> <p style="text-align: center;">Page 50</p>	<p>1 We can see there that the first message 2 extracted from the image of Mr McGrail's 3 phone is dated 5 June 2020. If we turn now to 4 the messages recovered from Mr Richardson's 5 phone ---- this is in the C bundle at 7007 -- we 6 can see that towards the bottom of the screen, 7 the message of 5 June is there but we have 8 before that many messages predating 5 June. 9 There is 27 May, 26 May, 23 May, 22 May, 10 and so on. Well, then it jumps back to 30 11 April. We asked DC Garcia to address this 12 apparent inconsistency in the previous days, as 13 you know, and he served a further witness 14 statement last Friday, 4 April, and he gives two 15 possible reasons for the failure of those 16 messages to appear on the image of Mr 17 McGrail's phone. The first relates to whether 18 Mr McGrail was using a different device at the 19 time and we will take that up with Mr 20 McGrail, but the second possible explanation 21 is the limitations of the forensic process, and I 22 would like to ask you just a few questions 23 about that. Mr McGrail's phone was imaged 24 by Mr McVea's forensic team at the time of 25 the investigation into the inquiry data breach;</p> <p style="text-align: center;">Page 52</p>

<p>1 is that correct?</p> <p>2 A. So, what I think happened -- I wasn't</p> <p>3 involved in that at all -- is that the phone was</p> <p>4 taken from Mr McGrail but it was taken to</p> <p>5 Northern Ireland, to the Police Service in</p> <p>6 Northern Ireland and it was imaged, or the</p> <p>7 data was extracted by the PSNI forensics unit -</p> <p>8 -</p> <p>9 Q. Yes.</p> <p>10 A. -- not by anybody in Gibraltar, so they</p> <p>11 created the image of that phone, which is why</p> <p>12 there is reference to DC Newsom[?] in one of</p> <p>13 the reports.</p> <p>14 THE CHAIRMAN: Mr McVea having</p> <p>15 previously been a senior officer in Northern</p> <p>16 Ireland and he used, effectively, his own staff</p> <p>17 back in Northern Ireland?</p> <p>18 A. Correct, sir.</p> <p>19 THE CHAIRMAN: Yes.</p> <p>20 MR SANTOS: Is it correct to say that the</p> <p>21 phone as a whole was imaged through that</p> <p>22 process?</p> <p>23 A. So, again I'm not the person that did this.</p> <p>24 Q. But is it your understanding -- sorry?</p> <p>25 A. But my understanding from DC Garcia is</p> <p style="text-align: center;">Page 53</p>	<p>1 analysis of the chat. Do you know what his</p> <p>2 basis for that conclusion is?</p> <p>3 A. I think the answer is that because the</p> <p>4 system does identify deleted messages when it</p> <p>5 picks them up and I suppose depending on</p> <p>6 how a deletion would have occurred but they</p> <p>7 would have appeared on Mr Richardson's --</p> <p>8 potentially in one circumstance they would</p> <p>9 have appeared on Mr Richardson's thread as a</p> <p>10 deleted message too, which it did not, so that</p> <p>11 sort of takes away that element of that, but no,</p> <p>12 I can't go beyond that. I'd be speculating if I</p> <p>13 were to try and explain.</p> <p>14 Q. Can we now turn to E319, please? This is</p> <p>15 the mobile device policy that was approved by</p> <p>16 then Commissioner McGrail on 22 October</p> <p>17 2019. The aim of the policy is stated to be to</p> <p>18 set out guidelines for the use of mobile devices</p> <p>19 at work and it is approved in October 2019. I</p> <p>20 presume you were aware of this policy when it</p> <p>21 was introduced?</p> <p>22 A. Correct. Just to give you some context, Mr</p> <p>23 Santos, it is the practice for senior officers to</p> <p>24 generally have sight of policies before they are</p> <p>25 approved so I would have seen it at the time,</p> <p style="text-align: center;">Page 55</p>
<p>1 that there are different methods of extracting</p> <p>2 data from a mobile device. There's a full bit</p> <p>3 by bit -- as I describe it -- image, which takes</p> <p>4 everything and then there is a full file</p> <p>5 extraction, which I understand is what</p> <p>6 occurred in this case. That is a decision for the</p> <p>7 forensic analyst to decide what's best, which</p> <p>8 approach is best for what he is asked to</p> <p>9 provide or analyse.</p> <p>10 Q. Are you aware of any difficulties</p> <p>11 encountered at the extraction stage in relation</p> <p>12 to that phone?</p> <p>13 A. No, I'm not.</p> <p>14 Q. It is right to point out, is it not, that we</p> <p>15 seem to have recovered messages exchanged</p> <p>16 with the other senior police officers so that, for</p> <p>17 example, the messages in Mr McGrail's phone</p> <p>18 match those in exchanges between him and</p> <p>19 you and exchanges -- well, we are not able to</p> <p>20 check Mr Ullger's phone, but in your example,</p> <p>21 for example, the messages seem to match up.</p> <p>22 A. Yes, that's correct, yes.</p> <p>23 Q. In paragraph 15 of his later statement, DC</p> <p>24 Garcia maintains that there were no deletions</p> <p>25 detected within the relevant period during his</p> <p style="text-align: center;">Page 54</p>	<p>1 yes.</p> <p>2 Q. If we can go to E321 now and the bottom</p> <p>3 of that page, please, paragraph 3.2 says, "A list</p> <p>4 of officers and police support staff eligible for</p> <p>5 an RGP mobile device and number is</p> <p>6 appended at the end of this policy. The mobile</p> <p>7 devices are issued to the postholders and are</p> <p>8 associated with the post as per appendix 1.</p> <p>9 Thus, when an officer/support staff member</p> <p>10 moves from his relevant post the officer/</p> <p>11 support staff member, will, with the assistance</p> <p>12 of the RGP IT technician, ensure that his/her</p> <p>13 work-issued mobile device is wiped of all</p> <p>14 personal data and is handed over to the person</p> <p>15 taking over their role." Can you please</p> <p>16 explain why the RGP's policy is to wipe</p> <p>17 phones of all personal data before it is handed</p> <p>18 over to the new user?</p> <p>19 A. Yes, and there are two reasons for that.</p> <p>20 One is the straightforward data protection</p> <p>21 elements of that. Clearly, it's not right for</p> <p>22 others to have processed that data once they</p> <p>23 have taken over the phone, and two because</p> <p>24 we were repurposing the phone, so the</p> <p>25 intention was to give the new postholder a</p> <p style="text-align: center;">Page 56</p>

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<p>1 clean device. We didn't apply our minds to the 2 consequences of that at the time in the context 3 of what wiping would mean but I think it's 4 clear and remains clear to me that there is little 5 affected by it. Clearly, WhatsApps are, and 6 that is obviously now an issue, but email, 7 which is what we would have been using that 8 phone most for would have remained on the 9 RGP servers managed by ITLV so there would 10 have been a record of all of that. So, the 11 reference to personal data there is not delete a 12 name and address. It is actually the data that I 13 hold as the phone -- and it could have been 14 better worded, I accept that, but, you know, 15 there's no way that we could hand over a 16 phone with some deletions to a new officer. 17 That, in my mind wouldn't be right, and I'm 18 not sure how that would be achieved anyway, 19 how practically we would selectively delete 20 some of the content of the phone, for example, 21 in a WhatsApp chat, but not all of it to hand it 22 over to somebody else.</p> <p>23 Q. If we can go to 879, which is your 24 statement again, at paragraph 19 you address 25 this point and it is fair to point out that you</p> <p style="text-align: center;">Page 57</p>	<p>1 device in its entirety. That does not appear to 2 be what current policy is for most forces that 3 we have been able to research in the UK is at 4 the moment. It presents a different set of 5 problems from a data protection perspective. 6 For example, carrying out a search in response 7 to a data access request from an individual 8 would be highly problematic if we backed up 9 the phones forensically as we've already done, 10 because how do we then -- how does the 11 person responding to that request identify 12 whether there is data on that device? So, the 13 practice and the best practice that we are 14 seeing from colleagues in the UK at the 15 moment is that, and this aligns with the 16 College of Policing principles, risk principles, 17 where they talk about professional judgment 18 having to be taken about what is recorded and 19 what isn't, and I think that makes sense 20 because the point there is that if there is a 21 communication, a decision, that is relevant or 22 important in the context of day-to-day 23 business, then it should be recorded, and it 24 should be recorded on a force system that is 25 not the device and that, again, as I repeat what</p> <p style="text-align: center;">Page 59</p>
<p>1 identify a number of manners in which the 2 shortcomings in the phone usage policy have 3 been addressed recently, giving the example of 4 Superintendent Field having his data extracted 5 and retained when he departed in May 2020. 6 Do you know why the policy was silent on the 7 issue of backing up data before a phone was 8 wiped?</p> <p>9 A. As I said in my earlier answer, I think, Mr 10 Santos, simply because we knew that emails 11 weren't an issue and we didn't consider that 12 any of the other data that was held on that 13 device was going to be a problem in the 14 context that it has now potentially become. 15 So, yes, that is a straight answer to that, and --</p> <p>16 Q. I -- sorry, go on.</p> <p>17 A. I was going to say I can discuss the steps 18 we have taken, if you wish. In fact I --</p> <p>19 Q. I am very happy for you to do so, to give 20 you the opportunity to do so.</p> <p>21 A. So, I think the situation isn't as clear as 22 perhaps I even made out in my statement in 23 terms of this being the best practice, and I note 24 that the Chairman himself and others have 25 commented about the need to back up the</p> <p style="text-align: center;">Page 58</p>	<p>1 we have seen, is the practice that most forces 2 in the UK that we have been able to research 3 are doing. So, in our case it would be an email 4 or our Cyclops Record Management System. 5 That's where I think we should be encouraging 6 officers to record decisions in the future. 7 Whether some form of back-up needs to be 8 taken or not is still under consideration, up for 9 debate, but I am not sure that regular back-ups 10 of devices is best practice or practical, and I 11 think in terms of further explanation, the point 12 about making notes on an appropriate system, 13 Mr Wyan, for example, has evidenced his 14 notes during Operation Delhi. There are, I 15 think, 120 pages of notes which record 16 decisions made in an investigation, so I would 17 suggest that if a communication by WhatsApp, 18 if it occurred, was transmitting a crucial piece 19 of information, it's likely that that then would 20 have been transposed on to those notes. That, 21 again, seems to be, I repeat for the third time, 22 what colleagues in the UK are doing in terms 23 of best practice.</p> <p>24 Q. It is fair to say that although the policy 25 requires the phone to be wiped, it is silent, as</p> <p style="text-align: center;">Page 60</p>

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<p>1 you say, on whether there should be a back-up 2 or not? 3 A. Correct. 4 Q. It does not preclude a back-up? 5 A. It doesn't, and it may be that some officers 6 had set the phone to back-up and others did 7 not. I don't know. 8 Q. That is exactly what I was going to ask 9 you, but are you aware of any phones being 10 backed up at the time? 11 A. I am not, and I know that mine backs up 12 now, but that is because I've set it that way but 13 there has been no direction to officers. 14 Q. Is your understanding -- 15 THE CHAIRMAN: Presumably, when 16 officers surrender their phones for various 17 reasons, no officer asked for the data to be 18 backed up, probably because they did not 19 realise that it was going to be lost? 20 A. That could be one of the reasons, sir, yes. 21 THE CHAIRMAN: So, it was a bad question 22 -- there were two, really. Nobody did ask for 23 their -- 24 A. Not that I am aware of, no. 25 THE CHAIRMAN: And one obvious reason</p> <p style="text-align: center;">Page 61</p>	<p>1 A. No. 2 THE CHAIRMAN: But it was just a general 3 practice, so you are assuming that it was done 4 because it was done with all phones? 5 A. Effectively, sir, yes. 6 THE CHAIRMAN: Yes. 7 MR SANTOS: And the same would apply to 8 Mr Tunbridge's phone and Mr Richardson's 9 phone, or do you have any personal knowledge 10 in relation to their fate? 11 A. I do not, no. I mean, I don't even have 12 personal knowledge with regards to my phone. 13 I can't recall whether I was the one that wiped 14 it -- I don't think so, but I don't know -- or 15 whether I just returned it as I said and 16 explained in the emails that I attached to my 17 statement. 18 Q. When you returned it, who did you return 19 yours to? 20 A. I'm not sure that I mentioned it in my 21 email but I emailed the Higher Executive 22 Officer, I think, but I think I mentioned I 23 returned them to the Senior Executive Officer, 24 I think. I can't quite remember, and I can't 25 remember whether that's what actually</p> <p style="text-align: center;">Page 63</p>
<p>1 is that they did not realise it was going to be 2 lost? 3 A. Well, I think officers will have understood 4 that the phone would be wiped. What was 5 happening with the data, I think, sir, that -- 6 I've mentioned this already on a number of 7 occasions -- I'm not sure that anybody was 8 particularly alive to the relevance or relative 9 importance of WhatsApp message, which 10 essentially is what is being lost because the 11 emails were being backed up to the RGP email 12 server, so those were retained and are retained. 13 THE CHAIRMAN: Yes. 14 MR SANTOS: Is your understanding that Mr 15 McGrail's phone was wiped in this way after 16 he retired? 17 A. I mean, it's in my understanding but I 18 cannot say definitively; I just don't know. I 19 imagine that the phone would have been 20 handed in to our senior executive officer or 21 one of his team and that is what would have 22 occurred and it did, months later, when I 23 returned my phone. 24 Q. So, are you not aware of who wiped it and 25 under whose instruction it was wiped?</p> <p style="text-align: center;">Page 62</p>	<p>1 occurred. I think the email clarifies that. 2 Q. Can we go to E324, please? This is 3 another official policy -- sorry, it is the same 4 policy -- about mobile phone usage, and it is 5 paragraphs 11.1 and 11.2 I want to focus on. 6 They say, "Use and disclosure of records: the 7 RGP may use and disclose any records arising 8 out of or in connection with the use of an RGP 9 mobile device, including where that use or 10 disclosure is (a) for a purpose related to the 11 employment of any officer; (b) use or 12 disclosure in connection with an offence, or (c) 13 use or disclosure in connection with legal 14 proceedings". 11.2: "An officer and a police 15 support staff member is taken to have 16 consented to the use and disclosure of any 17 record arising out of or in connection with the 18 use of an RGP mobile device." How would 19 the RGP user disclose records from RGP work 20 phones in legal proceedings relating to retired 21 officers? 22 A. I think the answer to that is what I 23 explained earlier, that the expectation would 24 have been that an officer, if he formed the 25 professional judgment that something on the</p> <p style="text-align: center;">Page 64</p>

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<p>1 phone should be recorded, that they should 2 have transferred it on to a force system. 3 Clearly, we cannot go back and undo what has 4 been done and if the issue arises post that 5 person's retirement, or post that person's 6 phone, then you are right; it would be 7 impossible to do but that, I think, is what we 8 are intending with that paragraph. 9 Q. You agree, of course, that the RGP is under 10 a duty to disclose relevant documents in 11 relation to prosecutions? 12 A. Of course. 13 Q. Did the RGP take any steps to preserve 14 materials on these phones given that the 15 retiring officers were involved in ongoing 16 investigations? 17 A. Well, again I suppose a straight answer to 18 that is "no", but that would just be restricted to 19 WhatsApp. There wouldn't be anything else 20 beyond that that I can think of now that would 21 have been relevant. Emails would have been 22 preserved, as I've said, and again it's on the 23 presumption that there would have been 24 WhatsApp exchanges that hadn't been 25 recorded elsewhere on a particular</p> <p style="text-align: center;">Page 65</p>	<p>1 might be necessary or that it might be the case 2 that there was. 3 Q. What about materials that were relevant to 4 this inquiry which Mr Picardo first announced 5 in July 2020? Were there any checks on the 6 phones just to ascertain whether there were 7 any materials relevant to this inquiry at the 8 time? 9 A. No, there were not and I'm not sure that 10 we were as alive to the fact that the inquiry 11 was going to occur at that point anyway. It 12 was in January and February 2022 when the 13 instrument was issued that it became obvious 14 that the inquiry was occurring. At that point -- 15 this may be Parliamentary announcements -- 16 but that is what that was. 17 Q. Can we now turn to E99, please? This is a 18 letter from Mr McGrail to Mr Ullger on 15 19 November 2022 and I just want to read a 20 couple of passages from here starting with the 21 fourth paragraph, which reads as follows: 22 "Arising from concerns I had relating to the 23 manner in which Mr Picardo KC and Mr 24 Llamas, KC, were reacting to the investigation 25 and the need to protect myself and the RGP, I</p> <p style="text-align: center;">Page 67</p>
<p>1 investigation. And I think, Mr Santos, that 2 I've not been involved in many investigations 3 myself in the latter part of my career where I 4 have been an investigating officer, but I'm not 5 sure I'm aware of disclosure -- WhatsApps 6 being the subject of a disclosure exercise in 7 criminal cases either. I'm just -- I'm not. 8 Q. You mean WhatsApps between police -- 9 RGP officers? 10 A. Correct. 11 Q. In particular, did the RGP take any steps to 12 preserve WhatsApps on Mr McGrail and Mr 13 Richardson's phones relating to the Operation 14 Delhi investigation? 15 A. No, for the reasons that I've explained. 16 Q. Could the wiped phones have contained 17 disclosable materials in any of the RGP's 18 investigations? 19 A. That would be speculating if I answer the 20 question you raise. 21 Q. Were any steps taken to confirm whether 22 they contained any relevant material before the 23 phones were wiped? 24 A. No, and again I mention -- certainly, I am 25 not sure if it was in anybody's mind that that</p> <p style="text-align: center;">Page 66</p>	<p>1 asked Cathal whether he could back up my 2 emails and reports on an external hard drive. I 3 could not afford any data going astray because 4 of any technical glitches with the servers 5 holding the RGP data, something which at the 6 time was not abnormal, or indeed, because of 7 any outside interference with the RGP's IT 8 system. Cathal kindly did this for me over two 9 days", and then skipping about four lines: "In 10 preparing for my departure, I began to pack all 11 my belongings into several boxes. This 12 included an external hard drive and some data 13 relating to Operation Delhi, namely 14 correspondence I had been exchanging with 15 Hassans. The last thing I had in my mind was 16 the data which Cathal had backed up for me. 17 These boxes were delivered to my residence 18 the following day, 10 June 2020, by Duncan 19 who assisted me to place them into storage." 20 That is Mr McGrail's account to Mr Ullger. 21 Did Mr McGrail ask you to back up his emails 22 and reports on an external hard drive? 23 A. So, Mr Santos, my understanding is that 24 this remains a live issue, so I will take 25 direction from the Chairman, but I'm not sure</p> <p style="text-align: center;">Page 68</p>

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<p>1 that --</p> <p>2 Q. Well, if it does remain a live issue, then I</p> <p>3 think we should perhaps take stock about that</p> <p>4 because I had not considered that it was still</p> <p>5 live. Perhaps I will just skip over this for the</p> <p>6 time being and then we will consider that in</p> <p>7 due course. Can I just ask you this: without</p> <p>8 going into what is referred to in that letter or</p> <p>9 the hard drive, at that time were you asked by</p> <p>10 Mr McGrail to back up his WhatsApp</p> <p>11 messages?</p> <p>12 A. I have no recollection of that, no.</p> <p>13 Q. And did the RGP at that time consider</p> <p>14 backing up his WhatsApp messages?</p> <p>15 A. No.</p> <p>16 Q. Would you accept that the RGP has been</p> <p>17 unable to disclose a large amount of material</p> <p>18 that was potentially relevant to the inquiry</p> <p>19 because it has either been deleted or lost?</p> <p>20 A. No, I don't, because we have disclosed</p> <p>21 what we have when we have been able to</p> <p>22 obtain it and when we have been requested for</p> <p>23 it, so we just cannot disclose what we do not</p> <p>24 have. To say that we have lost material is</p> <p>25 speculating that the material exists in the first</p> <p style="text-align: center;">Page 69</p>	<p>1 A. There are. Certainly in my case they occur</p> <p>2 outside working hours, which again is</p> <p>3 indicative of what I've just said. I'm not sure</p> <p>4 whether Mr Ullger has conducted that analysis</p> <p>5 himself but maybe that it is similar, maybe not,</p> <p>6 but --</p> <p>7 Q. In terms of other material the RGP has</p> <p>8 been unable to disclose, there is Mr McGrail's</p> <p>9 daybooks, his desktop, the work phones, the</p> <p>10 WhatsApps predating the transition from</p> <p>11 Samsung to iPhone. Do you accept that those</p> <p>12 sources will potentially have contained</p> <p>13 relevant information?</p> <p>14 A. I think potentially, but again the</p> <p>15 importance of the laptop I think is minimised</p> <p>16 by the fact that access is to the servers, the</p> <p>17 ITLV server containing the email and the</p> <p>18 network shares that would have contained the</p> <p>19 data, and I'm not sure -- it may be the case, but</p> <p>20 I am not sure that there would be any data that</p> <p>21 would be native to the laptop and not be</p> <p>22 backed up on the server or email server. It's</p> <p>23 possible, perhaps, but that's my experience of</p> <p>24 how certainly I work and most of us work.</p> <p>25 Most of our work is on the servers.</p> <p style="text-align: center;">Page 71</p>
<p>1 place so no, I am not sure I can accept that. I</p> <p>2 understand why you say it, but I don't accept</p> <p>3 it.</p> <p>4 Q. Well, for example there is the message</p> <p>5 between Mr Richardson and Mr McGrail on</p> <p>6 12 May, which has never been located despite</p> <p>7 being referred to by both individuals in their</p> <p>8 evidence. Would you accept that that has been</p> <p>9 lost?</p> <p>10 A. Assuming that that evidence is correct and</p> <p>11 it was indeed sent as they did, yes.</p> <p>12 Q. And then there is the SMT WhatsApp</p> <p>13 group messages. I think your position is you</p> <p>14 query whether there was any relevant</p> <p>15 information in that group?</p> <p>16 A. Yes, because I cannot think why, when we</p> <p>17 were meeting almost daily for Covid matters</p> <p>18 and other matters, that we would have been</p> <p>19 exchanging WhatsApps on the issues at hand,</p> <p>20 whether that was a collision at sea, the</p> <p>21 Operation Delhi search warrant and what fell</p> <p>22 out of that, the ongoing Covid matters.</p> <p>23 Q. It is fair to point out that there are</p> <p>24 messages in relation to the issue between</p> <p>25 individual devices.</p> <p style="text-align: center;">Page 70</p>	<p>1 Q. In fairness, Mr McGrail did refer at the</p> <p>2 main inquiry hearing to a file that he saved</p> <p>3 locally, which we have been unable to locate.</p> <p>4 A. Yes, correct.</p> <p>5 Q. Although again in fairness, he has</p> <p>6 subsequently suggested that he may have</p> <p>7 saved it within the drafts mailbox of his email</p> <p>8 account.</p> <p>9 A. Yes, I think I address this point in my</p> <p>10 fourth witness statement. I'm not sure I can</p> <p>11 add much more to it.</p> <p>12 Q. No, no, I just want to point that out, in</p> <p>13 fairness. So, do you maintain the position in</p> <p>14 your witness statement that the RGP has given</p> <p>15 comprehensive disclosure at all times?</p> <p>16 A. I think, Mr Santos, if you take it as a</p> <p>17 whole, I think we have. You will know that</p> <p>18 when the call for evidence came in July 2022,</p> <p>19 we engaged with the previous solicitors for the</p> <p>20 inquiry. There were discussions around how</p> <p>21 to approach the volumes of RGP material that</p> <p>22 we have, how to apply the relevance test to</p> <p>23 that. We were uncomfortable with that</p> <p>24 position because we didn't know what KC was</p> <p>25 being advanced by the other parties. We</p> <p style="text-align: center;">Page 72</p>

<p>1 became CPs around that date in October 2022, 2 so we were querying what other people might 3 think was relevant to the inquiry. I actually 4 did some correspondence, and you no doubt 5 will be aware of it. We set up a team to 6 conduct a review of all RGP material, 7 categorising the material, though I think at one 8 point we reported in the preliminary hearing 9 we had reviewed over 900,000 documents and 10 there were 600,000 still to review. Almost 11 30,000 hard copy documents were reviewed, 12 and that's not including emails so, you know, 13 we have conducted, in my view, a very 14 thorough, very comprehensive search of 15 disclosure. When the issues with the 16 whistleblowing statements and the allegations 17 around the disclosure process then arose, you 18 had already taken a decision to take over the 19 disclosure process prior to that which I 20 remember from the Dr Giraldi inquiries what 21 actually occurred then. We were given by the 22 STI -- I had the misfortune or fortune of being 23 asked to get into both inquiries. We were 24 asked by the inquiry to carry out searches 25 based on search terms identified by</p> <p style="text-align: center;">Page 73</p>	<p>1 inspector was also tasked to check whether the 2 other IT devices were in use by Mr McGrail 3 prior to his retirement. None of them were. I 4 attach email correspondence in relation to 5 this." Then DC Alfred Garcia examined the 6 laptop located by Inspector Rodriguez to 7 determine whether it was in use by Mr 8 McGrail at the time of his retirement and 9 whether the draft of the email of 12 May 2020 10 was contained within. DC Garcia has 11 confirmed that the laptop was in use by Mr 12 McGrail in May 2020, but had been unable to 13 find the email of 12 May 2020." If we can 14 now skip to page 48, please, this is the report 15 that is prepared by DC Garcia in June 2024. 16 This was on the back of questions that had 17 been asked in the main inquiry hearing and I 18 just want to take you to a couple of passage 19 from this. The first is the first paragraph: 20 "This is my report containing my findings in 21 relation to an email sent to me by Assistant 22 Commissioner Yeats with questions which he 23 wanted me to answer for him regarding the 24 examination of devices with regard to the 25 Public Inquiry of Ian McGrail", and then if we</p> <p style="text-align: center;">Page 75</p>
<p>1 yourselves. We did that. We provided you 2 with all the material. We then had discussions 3 around -- and I think it was virtually 4 unnecessary around whether any public 5 interest considerations were to be taken around 6 those subsequent documents and eventually I 7 think you disclosed around 2300 documents to 8 all core participants. So, taken as a whole, I 9 think the WhatsApps become a very minor 10 part of the disclosure process that the RGP has 11 gone through hand in hand, in my view, with 12 the former STI, the current STI and yourself. 13 Q. Turning to my penultimate topic, Mr 14 McGrail's laptop, which was located after the 15 main inquiry hearing, if we can go to E4, 16 please, this is your fourth witness statement 17 and I just want to refer to paragraphs 16 and 18 17. You say: "On 8 May 2024 Inspector 19 James Rodriguez reported that he had located 20 a laptop which he believed to have belonged to 21 Mr McGrail. The laptop was amongst other IT 22 devices that were being cleared out of an 23 office used by the now retired Inspector Paul 24 Barker. The laptop was secured for 25 examination by DC Garcia on his return. The</p> <p style="text-align: center;">Page 74</p>	<p>1 can jump to page 52, please, the second 2 paragraph under section 2: "Although the Ian 3 McGrail profile has not been registered as 4 having been used in a long time, there clearly 5 is plenty of user activity after 20 August 2018. 6 Therefore, I cannot explain why the last log-in 7 for this profile is registered as that date when 8 clearly there is evidence showing that the 9 profile was being used well after that date. For 10 example, there is evidence of user activity on 11 23 June 2020 at 1547 hrs with the deletion of 12 an audio file with the following file name: 13 'Meeting with AG and DPP 20 May M4A'. 14 This audio file is auto deleted a further two 15 times, once also on 23 June 2020 at 1546 16 hours and another one at an earlier date of 4 17 June 2020 at 0701 hours. There is also a 18 further deleted work document in the recycle 19 bin", not that that is really relevant to our 20 purposes. And then the following paragraph 21 says: "All artefacts which I've analysed to 22 answer these questions have been created by 23 the profile Ian McGrail." Is your 24 understanding from reading this report that 25 files on Mr McGrail's laptop were deleted</p> <p style="text-align: center;">Page 76</p>

<p>1 after the day of his retirement?</p> <p>2 A. That's what he appears to be saying, yes</p> <p>3 Q. Have you discussed with DC Garcia</p> <p>4 whether he has suggested any possible</p> <p>5 explanation for this deletion?</p> <p>6 A. No.</p> <p>7 Q. Has any further investigation taken place</p> <p>8 in relation to these deletions?</p> <p>9 A. No, there hasn't.</p> <p>10 Q. And then finally, I just want to take you to</p> <p>11 one final point, which is Operation Delhi.</p> <p>12 Your evidence is that you were not involved in</p> <p>13 Operation Delhi; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. Did Mr McGrail keep you apprised of his</p> <p>16 meetings with the Attorney General and the</p> <p>17 DPP about Operation Delhi on the 13th, 15th</p> <p>18 and 20 May?</p> <p>19 A. There would have been discussion of those</p> <p>20 meetings. I think we may not have been</p> <p>21 meeting daily at that time due to Covid issues,</p> <p>22 but perhaps we were and there would have</p> <p>23 been discussions of those meetings.</p> <p>24 Q. By what method of communication would</p> <p>25 those discussions have taken place: in person,</p> <p style="text-align: center;">Page 77</p>	<p>1 You have spoken about the process of the</p> <p>2 RGP's disclosure, and how you seemed to ease</p> <p>3 into the leadership of that and - I am not quite</p> <p>4 sure how - but is it true to say that the inquiry</p> <p>5 has not made, in 2022 - had not made, any</p> <p>6 request to the RGP as an entity for disclosure;</p> <p>7 that the disclosure letters had been addressed</p> <p>8 individually to individual officers?</p> <p>9 A. It is my understanding and recollection,</p> <p>10 yes.</p> <p>11 Q. Yes. So, what you are doing, would you</p> <p>12 agree, is assisting these individual officers in</p> <p>13 complying with their obligations under the</p> <p>14 letters?</p> <p>15 A. Well, I think it became pretty clear from</p> <p>16 the beginning that the RGP was going to hold</p> <p>17 a lot of information that was relevant to the</p> <p>18 inquiry. So, as I explained earlier this took on</p> <p>19 two dimensions. One was the disclosure as</p> <p>20 witnesses to assist the inquiry. The other one</p> <p>21 was the preparation of all the other potential</p> <p>22 (inaudible) category of useful relevance for the</p> <p>23 inquiry.</p> <p>24 Q. Okay. All right. Let me just clarify at the</p> <p>25 outset, Mr McGrail - I beg your pardon, Mr</p> <p style="text-align: center;">Page 79</p>
<p>1 phone calls or messages?</p> <p>2 A. In person in his office.</p> <p>3 MR SANTOS: That is the conclusion of my</p> <p>4 questions for you, Mr Yeats. There is that one</p> <p>5 small point that we passed over. Perhaps if I</p> <p>6 can ask the Chairman for a short break, of say</p> <p>7 five minutes --</p> <p>8 MR CHAIRMAN: Yes we will have a short</p> <p>9 morning break now and we will resume</p> <p>10 afterwards, I think to consider this position.</p> <p>11 MR SANTOS: And we will discuss as a team</p> <p>12 and perhaps approach Mr Cruz over that issue</p> <p>13 and it may or may not be that I will have</p> <p>14 further questions for you, Mr Yeats.</p> <p>15 A. Thank you.</p> <p>16 THE CHAIRMAN: Okay. A short break, not</p> <p>17 an extended coffee break.</p> <p>18 (11.43)</p> <p>19 (Adjourned for a short time)</p> <p>20 (11.55)</p> <p>21 THE CHAIRMAN: Yes. Sir Peter.</p> <p>22 QUESTIONED BY SIR PETER CARUANA</p> <p>23 Q. Good morning, Mr Yeats.</p> <p>24 A. Good morning, Sir Peter.</p> <p>25 Q. So, can we just clear up one thing quickly?</p> <p style="text-align: center;">Page 78</p>	<p>1 Yeats - that our interest in putting questions to</p> <p>2 you is because you have spoken for the RGP.</p> <p>3 We have no issues with your own personal</p> <p>4 disclosure of your own personal WhatsApp</p> <p>5 messages, just to make that clear from the</p> <p>6 outset. So, I think your evidence has been</p> <p>7 clear, have I correctly understood it that you</p> <p>8 continue to believe that the RGP has made full</p> <p>9 and comprehensive disclosure on a timely</p> <p>10 basis. I think that is what you said this</p> <p>11 morning.</p> <p>12 A. That is what I said and we have complied</p> <p>13 with the requests as and when it has been</p> <p>14 made and we (inaudible).</p> <p>15 Q. But is that correct? Do you accept that</p> <p>16 your disclosure obligations arose not in June</p> <p>17 2024 but in July 2022?</p> <p>18 A. You mean in the context of the WhatsApp</p> <p>19 messages and not in everything else?</p> <p>20 Q. Yes. Sorry.</p> <p>21 A. So, simply because, in my case, I had</p> <p>22 assessed the relevance and I had concluded</p> <p>23 that my messages were not relevant. In terms</p> <p>24 of the case of Mr Ullger and Mr Wyan, they</p> <p>25 have explained in their own evidence about</p> <p style="text-align: center;">Page 80</p>

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<p>1 when they had possession and availability of 2 those messages and what they could do about 3 that. And in terms of the RGP devices, it was 4 evident that we did not have the messages to 5 disclose. So, we couldn't disclose what we did 6 not have or what we did not think was 7 relevant. 8 Q. Okay, but to be clear: the obligation, you 9 understand and do you accept, that the 10 disclosure obligations arose in July 2022? 11 A. Yes, they did but -- 12 Q. Okay. That is it. Thank you. 13 A. -- the obligation was to disclose -- 14 Q. All right. 15 A. - reasonable -- sorry, relevant -- 16 Q. Whatever it is, whatever the obligations 17 were, they arose then. 18 A. (No audible response). 19 Q. Okay. Therefore - sorry, sir, I am going to 20 tiptoe. I have to exclude things that have been 21 covered by my learned friend that I have not 22 had notice of. I will try and do that quickly on 23 my feet. That obligation arose - well, can you 24 say, is it your evidence that - you need to be 25 clear when you are speaking in behalf of the</p> <p style="text-align: center;">Page 81</p>	<p>1 examined WhatsApps, not a single RGP 2 officer considered they had a single relevant 3 WhatsApp message on their iPhones - on their 4 mobile device? 5 A. So, I will draw the distinction that you 6 asked me to do earlier. In my case, that is my 7 position and it will be a matter for the 8 Chairman whether he agrees with me or not, 9 but my view is that in the 300 messages that I 10 have disclosed to the Inquiry between 1 11 January 2020 and 30 June 2020, there are no 12 messages that I consider relevant. And I have 13 disclosed every message -- 14 Q. Yes. 15 A. -- that I have in that time period. I have 16 not disclosed only those that I consider 17 relevant because ergo I would have disclosed 18 any if I had applied the relevance test in the 19 way that I understood it. In terms of Mr 20 Ullger and Mr Wyan, their evidence in their 21 witness statements - and again, Mr Ullger will 22 address this later, but as far as Mr Wyan is 23 concerned, his phone was not operable at the 24 time of whenever he made that disclosure, 25 analysis, consideration -- or whenever that was</p> <p style="text-align: center;">Page 83</p>
<p>1 RGP and when you are speaking on behalf of 2 yourself and I do not mind you drawing that 3 distinction. But are you saying that you, and 4 to your knowledge, your fellow RGP officers 5 all addressed the question of their WhatsApps 6 and whether they had any relevant ones, in 7 2022, in response to the July letter. 8 A. That is my understanding, yes. 9 Q. You did it? 10 A. Correct, yes. 11 Q. It is your understanding that your fellow 12 officers also did it? 13 A. I am referring to Mr Ullger and Mr Wyan 14 in this context and nobody else. 15 Q. Yes. I am only speaking to you about 16 people that remained in the RGP whilst you 17 were doing this process. Correct. You also 18 accept, do you, that the RGP has not disclosed, 19 as has been said to you this morning, a single 20 WhatsApp message. Is that because there was 21 nothing relevant? You have spoken about 22 relevance being the key when my learned 23 friend Mr Santos posed a similar question to 24 you and you said: yes, relevance is the key. Is 25 it therefore your evidence, that having</p> <p style="text-align: center;">Page 82</p>	<p>1 -- November 2020 or around that time, and it 2 was only the focused requests that arose 3 following your own, sir, questions to the 4 Inquiry solicitors on 24 June 2020 that focused 5 our minds to considering how we could go 6 around obtaining those messages to assess 7 them for relevance. So, that is how that 8 occurred. 9 Q. Well, yes. 10 A. Sorry -- 11 Q. Your mind had been focused specifically 12 by the inquiry in the July 2022 letter. 13 A. Mmh. 14 Q. I did not do any focusing of minds in June. 15 A. Well, by implication you did, because you 16 asked for a confirmation that we had - whether 17 we had disclosed any messages and that led to 18 the STI writing to us on 27 June. 19 Q. Yes. 20 A. And with regards to the work phones, Mr 21 Caruana, as I have explained, access to those 22 WhatsApps went in November 2020 and we 23 just don't have the ability to - and we have 24 tried, quite comprehensively as I have said -- 25 Q. We will come to that.</p> <p style="text-align: center;">Page 84</p>

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<p>1 A. -- to --</p> <p>2 Q. We will come to that.</p> <p>3 A. -- to recover those.</p> <p>4 Q. Yet, WhatsApps have subsequently been</p> <p>5 disclosed, despite your collective relevance</p> <p>6 assessments.</p> <p>7 A. So, which ones do you mean?</p> <p>8 Q. Well, the WhatsApps that we have now.</p> <p>9 For example, the ones that you disclosed, the</p> <p>10 ones that everybody else has disclosed after</p> <p>11 June, after the hearing.</p> <p>12 A. So, in terms of my messages, that was in</p> <p>13 consultation with counsel and the view was</p> <p>14 that we should be transparent and that we</p> <p>15 should provide all messages and cooperate</p> <p>16 with the Inquiry in that way.</p> <p>17 Q. Not because you thought that they were</p> <p>18 relevant. Simply, you say: here, have it all.</p> <p>19 A. Well, I have, as I have said, I have</p> <p>20 disclosed 300 messages between 1 January and</p> <p>21 30 June.</p> <p>22 Q. Yes.</p> <p>23 A. I think in the December disclosure, Mr</p> <p>24 Caruana, there are 15 messages that are</p> <p>25 identified as relevant.</p> <p style="text-align: center;">Page 85</p>	<p>1 2025, did you not?</p> <p>2 A. No, I think I explained earlier, Mr Caruana,</p> <p>3 that it was obvious to us because we had</p> <p>4 reviewed our phones and devices back in</p> <p>5 2022. We didn't have the messages or the</p> <p>6 WhatsApps. What we didn't understand fully</p> <p>7 was the reasons for that and why that had</p> <p>8 occurred until February 2025. So, I think --</p> <p>9 Q. Well, you are going to have to - time</p> <p>10 permitting which I hope it will - we will have</p> <p>11 to come back to that, I am afraid. So, turning</p> <p>12 to the evidence that you have given this</p> <p>13 morning, so I am not going to take you to the</p> <p>14 policy again, because it has been put at length,</p> <p>15 but I was interested that when you were giving</p> <p>16 evidence this morning, you said that how you</p> <p>17 interpret "administrative" - you know, when</p> <p>18 my learned friend established that the senior</p> <p>19 command team that had made this force order</p> <p>20 prohibiting the use of personal phones for</p> <p>21 work, continued to do precisely that</p> <p>22 indefinitely thereafter, you then said: how one</p> <p>23 interprets - "How do you interpret</p> <p>24 'administrative'?" Do you remember saying</p> <p>25 that?</p> <p style="text-align: center;">Page 87</p>
<p>1 Q. Yes.</p> <p>2 A. It is 15 or 16, by the --</p> <p>3 Q. As I said to you at the outset, Mr Yeats, we</p> <p>4 have no issue with your own personal</p> <p>5 disclosure. I think you have in your 6th</p> <p>6 witness statement, but do you agree that you</p> <p>7 have accepted that disclosure obligations are</p> <p>8 continuing obligations. In other words, it is</p> <p>9 not "once and for all". You have got an</p> <p>10 obligation to, as the inquiry goes along; is that</p> <p>11 how you understand the continuing disclosure</p> <p>12 obligations?</p> <p>13 A. Yes.</p> <p>14 Q. So, even if RGP officers may initially have</p> <p>15 thought that WhatsApps between them were</p> <p>16 not relevant -- whether in consultation with</p> <p>17 counsel or on their own initiative, it matters</p> <p>18 not -- did it not become apparent to the RGP in</p> <p>19 the months leading to the hearings, and indeed,</p> <p>20 during the hearings themselves, that</p> <p>21 WhatsApps may well be relevant?</p> <p>22 A. I think that this supposes that we have the</p> <p>23 WhatsApps and they are available for</p> <p>24 consideration. We did not.</p> <p>25 Q. But you only discovered that in February</p> <p style="text-align: center;">Page 86</p>	<p>1 A. I do.</p> <p>2 Q. Okay. The order itself says: "... such as</p> <p>3 requesting officers to come to work, offering</p> <p>4 overtime and changes of hours." Would you</p> <p>5 agree that at least the WhatsApp exchanges</p> <p>6 between Mr McGrail and Mr Ullger do not fall</p> <p>7 into that category?</p> <p>8 A. I do, and I also think that that Force order</p> <p>9 entry was trying to capture a different audience</p> <p>10 in that it was applied to the entire force.</p> <p>11 Whether there is some more latitude applicable</p> <p>12 to some officers or not is perhaps a matter for</p> <p>13 debate.</p> <p>14 Q. Mmh. Are you not suggesting that all the</p> <p>15 other WhatsApps that other officers have now</p> <p>16 disclosed after the end of the hearing, you are</p> <p>17 not suggesting that they have - from mobile</p> <p>18 phones, personal ones - you are not suggesting</p> <p>19 that they fall into administrative categories?</p> <p>20 A. (No audible response).</p> <p>21 Q. Okay. In your witness statement you said</p> <p>22 that Mr Ullger lost his messages with Mr</p> <p>23 McGrail on his personal phone when he later</p> <p>24 changed to a new personal phone. He has</p> <p>25 given evidence himself, subsequently, but you</p> <p style="text-align: center;">Page 88</p>

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<p>1 said it for him originally. Do you remember?</p> <p>2 You said that: for reasons which he could not</p> <p>3 disclose them to the -- and therefore he could</p> <p>4 not disclose them to the inquiry for that</p> <p>5 reason. In other words, he had a personal</p> <p>6 phone, he swapped to another one and he lost</p> <p>7 some messages in that way.</p> <p>8 A. (No audible response)</p> <p>9 Q. Did the RGP, and you say that you were in</p> <p>10 the lead, so to speak, in this process - did the</p> <p>11 RGP offer Mr Ullger any technical support to</p> <p>12 retrieve them from his phone or even from the</p> <p>13 now famous Cloud?</p> <p>14 A. I don't think so. I think --</p> <p>15 Q. No, well did he ask?</p> <p>16 A. You will have to ask him that, sir.</p> <p>17 Q. But did he ask you?</p> <p>18 A. Not that I can recall, no.</p> <p>19 Q. No. Are you aware whether he asked Mr</p> <p>20 Garcia, for example?</p> <p>21 A. No.</p> <p>22 Q. Look, I have changed phones; I have been</p> <p>23 asked to... I have lost them; can you help me</p> <p>24 retrieve them? You have no recollection of</p> <p>25 that?</p> <p style="text-align: center;">Page 89</p>	<p>1 Q. The investigation was being conducted by</p> <p>2 the RGP, albeit by officers brought into the</p> <p>3 RGP for it.</p> <p>4 A. Correct. So, it is the only way, under the</p> <p>5 Police Act, that we can establish a --</p> <p>6 Q. Of course. Of course.</p> <p>7 A. -- transparent investigation that is as</p> <p>8 removed as possible from the Force.</p> <p>9 Q. But this was not an investigation by the</p> <p>10 Police Service of Northern Ireland. It was an</p> <p>11 investigation by the RGP.</p> <p>12 A. Correct.</p> <p>13 Q. Okay. So, did Mr McGrail bring to your</p> <p>14 attention the fact that he had lost access to his</p> <p>15 mobile phone WhatsApps when you returned</p> <p>16 the phone to him? Not you personally, sorry,</p> <p>17 the RGP.</p> <p>18 A. Not that I am aware, no.</p> <p>19 Q. No. So, is it fair to say that the RGP has</p> <p>20 remained silent on this problem of the loss of</p> <p>21 Mr McGrail's - the corruption for want of a</p> <p>22 term - sorry, I am not very technically minded</p> <p>23 - whatever happened to his phone whilst it</p> <p>24 was in the hands of the police for seven</p> <p>25 months that resulted in him not being able to</p> <p style="text-align: center;">Page 91</p>
<p>1 A. Nope. I think it goes back to the point I</p> <p>2 made earlier that --</p> <p>3 Q. Okay. For his part, Mr McGrail says that</p> <p>4 when the RGP, in respect of his personal</p> <p>5 phone, that when the RGP seized his phone in</p> <p>6 connection with a separate inquiry, it had all</p> <p>7 his WhatsApps on it, and we know that is true</p> <p>8 because Mr McVea was able to take his image,</p> <p>9 but then when he got it back, it was all - he</p> <p>10 could not access his WhatsApps. Do you have</p> <p>11 any view about why the seizure of a phone by</p> <p>12 the RGP might result in access to WhatsApps</p> <p>13 being lost on it?</p> <p>14 A. I don't. As I explained earlier to Mr</p> <p>15 Santos, that phone, as far as I understand it,</p> <p>16 was seized from Mr McGrail; it was</p> <p>17 transported to Northern Ireland; analysed by</p> <p>18 the PSNI, brought back and presumably</p> <p>19 returned at some point to Mr McGrail.</p> <p>20 Q. Yes. The investigation was an RGP</p> <p>21 investigation, notwithstanding that it was</p> <p>22 conducted by a sworn officer. Mr McVea and</p> <p>23 his colleagues were sworn constables in the</p> <p>24 RGP, were they not?</p> <p>25 A. Correct.</p> <p style="text-align: center;">Page 90</p>	<p>1 access his phone, why has the RGP never</p> <p>2 made a statement about that in all the witness</p> <p>3 statements that you have made?</p> <p>4 A. I'm not sure we were aware of that until it</p> <p>5 was brought to our attention by Mr McGrail.</p> <p>6 Q. Were you not aware the he did not have</p> <p>7 access? Were you not aware that he had not</p> <p>8 disclosed his information.</p> <p>9 A. That - there are two... That is a different</p> <p>10 question. You asked me whether I was aware</p> <p>11 that the phone had been returned with no</p> <p>12 WhatsApps. That, certainly - or with no</p> <p>13 access by Mr McGrail -- that certainly I have</p> <p>14 learned of when Mr McGrail gave his witness</p> <p>15 statement to that effect.</p> <p>16 Q. DC Garcia(?) of the RGP Forensic Unit</p> <p>17 has given two witness statements and a report</p> <p>18 in relation to Mr McGrail's laptop. Could he</p> <p>19 not have been asked just to verify this</p> <p>20 phenomenon of corruption due to possession</p> <p>21 by the RGP of Mr McGrail's phone?</p> <p>22 A. Do you mean since Mr McGrail has...</p> <p>23 Q. Yes.</p> <p>24 A. I presume if somebody had thought that</p> <p>25 that was necessary and relevant that could</p> <p style="text-align: center;">Page 92</p>

<p>1 have been done.</p> <p>2 Q. Exactly.</p> <p>3 A. But, Mr Caruana, that goes for a number of</p> <p>4 phones that have been subject to questioning</p> <p>5 in this Inquiry.</p> <p>6 Q. I understand. So, the initial Inquiry request</p> <p>7 in 2022 had no date range. When the Inquiry</p> <p>8 reminded you, in June 2024, they placed this</p> <p>9 date range: 1 January to 30 June, but the</p> <p>10 original had no date range. I am just asking</p> <p>11 you whether you are aware whether that means</p> <p>12 that there could therefore be undisclosed</p> <p>13 relevant chats prior to 1 January 2020 in</p> <p>14 relation to issues of interest to the Inquiry, for</p> <p>15 example, the airfield incident in 2017, the</p> <p>16 assault investigation in 2017, the conspiracy</p> <p>17 investigation which had already been</p> <p>18 underway long before, the attendance of Mr</p> <p>19 McGrail, you know, Issue 4, the HMIC report.</p> <p>20 These all pre-date 1 January 2020.</p> <p>21 A. Yes.</p> <p>22 Q. Could there be, in your phones,</p> <p>23 information about that?</p> <p>24 A. So, I said that I have disclosed what I</p> <p>25 thought was - well not what I thought was</p> <p style="text-align: center;">Page 93</p>	<p>1 constable who has..." - and you have said</p> <p>2 similar things this morning - "... who was</p> <p>3 directed to do so. The government's</p> <p>4 Information Technology and Logistics</p> <p>5 Department (ITLD) had been asked to set up</p> <p>6 the phones for the RGP and had refused to do</p> <p>7 so, arguing that their remit was limited to the</p> <p>8 RGP's computer networks and services and</p> <p>9 devices." Why did you say this and why have</p> <p>10 you repeated it this morning? What was your</p> <p>11 purpose in doing so?</p> <p>12 A. Because that is what occurred.</p> <p>13 Q. But lots of things have occurred. To put it</p> <p>14 in, it must be of some purpose. Is it because</p> <p>15 you are suggesting, therefore, that ultimately it</p> <p>16 is the government that is responsible for the</p> <p>17 RGP's loss of data because if they had helped</p> <p>18 you set them up properly, it might not have</p> <p>19 happened. Is that the purpose?</p> <p>20 A. No, I am just explaining that the situation</p> <p>21 we are in is that we have - and I explained that</p> <p>22 we were acting as laymen in this process of</p> <p>23 setting up phones and subsequently of</p> <p>24 repurposing them. We did ask the ITLD to</p> <p>25 support that process. They were unable to or</p> <p style="text-align: center;">Page 95</p>
<p>1 relevant. There was no relevance as far as I</p> <p>2 am concerned. So, no. I don't think so.</p> <p>3 Q. But your personal disclosure aside, as you</p> <p>4 have spoken for the RGP and you have</p> <p>5 asserted that the RGP has made full disclosure</p> <p>6 and that you have made a thorough</p> <p>7 investigation, etc, etc. That full and thorough</p> <p>8 investigation surely would have included</p> <p>9 searching phones prior to 1 January for all</p> <p>10 these other issues.</p> <p>11 A. So, the answer to that question is what we</p> <p>12 have provided is what we have been asked for</p> <p>13 by the STI in June of - or June was 12 May to</p> <p>14 9 June, and then the expanded date range from</p> <p>15 1 January to 30 --</p> <p>16 Q. But the July 2022 requirement was not date</p> <p>17 range limited.</p> <p>18 A. But at that point, obviously we did not</p> <p>19 have the access to those devices.</p> <p>20 Q. Okay. Well, actually I think we will have</p> <p>21 time to come to that. So, these office phones,</p> <p>22 therefore, were issued to 51 - your memory is</p> <p>23 very good. You said about 50 to 51 officers.</p> <p>24 In your 6th witness statement at paragraph 8,</p> <p>25 you say: "The phones were set up by an RGP</p> <p style="text-align: center;">Page 94</p>	<p>1 they did not do so.</p> <p>2 Q. Okay, so you were acting as a layman. Mr</p> <p>3 Yeats, are you not a qualified engineer by</p> <p>4 profession?</p> <p>5 A. I'm not sure I am qualified. I read</p> <p>6 engineering at university.</p> <p>7 Q. You are a graduate engineer.</p> <p>8 A. Yes.</p> <p>9 Q. Yes. Does your RGP profile on the RGP</p> <p>10 website not rightfully boast of the fact that you</p> <p>11 are the first RGP officer to have qualified in</p> <p>12 computer forensics?</p> <p>13 A. In 2001. Correct.</p> <p>14 Q. Right. So, do you think that you are a</p> <p>15 layman, for these purposes?</p> <p>16 A. I am not sure mobile phones existed in</p> <p>17 2001 in the way that they exist today.</p> <p>18 THE CHAIRMAN: He is not an expert.</p> <p>19 SIR PETER CARUANA: No. Okay, but the</p> <p>20 RGP forensic unit that is now held up as an</p> <p>21 expert in this Inquiry, does it not have the</p> <p>22 technical - did it not have the technical ability</p> <p>23 in December 2020 - November December -</p> <p>24 to set up mobile phones without losing data, or</p> <p>25 transferring mobile phones without losing</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 data?</p> <p>2 A. It is possible that they would have done.</p> <p>3 The problem with that approach is that it</p> <p>4 prevents them from carrying out their primary</p> <p>5 function and that is developing and</p> <p>6 investigating analysis of phones that are</p> <p>7 required in criminal investigations, and we</p> <p>8 have put if I might say, quite a lot of pressure</p> <p>9 and stress on them in the last few weeks and</p> <p>10 months, precisely to assist the Inquiry, which</p> <p>11 have diverted their attention away from routine</p> <p>12 investigations that are clearly --</p> <p>13 Q. So, the RGP does have, internally, the</p> <p>14 capacity to swap mobile phones without losing</p> <p>15 all the WhatsApps? Yes? No?</p> <p>16 A. Potentially it could.</p> <p>17 Q. Right.</p> <p>18 A. At the expense of investigations.</p> <p>19 Q. I see. Well, can I ask why you all, that is to</p> <p>20 say yourself, Mr Richardson and Mr Ullger</p> <p>21 decided to change from Samsung to iPhones?</p> <p>22 You have said, to remind you, this morning:</p> <p>23 user interface.</p> <p>24 A. That's correct. Yes.</p> <p>25 Q. You had been using the phone already -</p> <p style="text-align: center;">Page 97</p>	<p>1 Q. Yes. I am sorry. I do not have time to</p> <p>2 remind you of everything that you had said.</p> <p>3 What data protection reason arises, and what</p> <p>4 operational difficulties arises with WhatsApps</p> <p>5 if after all - that do not also arise with emails,</p> <p>6 that you quite rightly reminded us this</p> <p>7 morning, you did keep on the server. Why is</p> <p>8 there something special about WhatsApps</p> <p>9 which does not arise with emails, which is</p> <p>10 relevant to the question of why it is sensible</p> <p>11 not to keep them?</p> <p>12 A. The easiest answer to that is that one</p> <p>13 category, the emails, are much easier to search</p> <p>14 through than WhatsApps, and it would depend</p> <p>15 on how we carry out that backup, what the</p> <p>16 backup actually contains. I mean, remember</p> <p>17 that - and my understanding of this is that the</p> <p>18 email... Again, I don't want to suggest, Mr</p> <p>19 Caruana, that I am trying to defer blame to the</p> <p>20 government but ITLD manage our email</p> <p>21 server and metric server.</p> <p>22 Q. Okay.</p> <p>23 A. They - I am assuming, because I do not</p> <p>24 know this for a fact - carry out incremental</p> <p>25 back ups of the data, so there is a record of the</p> <p style="text-align: center;">Page 99</p>
<p>1 you had been using the phones already for 15</p> <p>2 months. Correct?</p> <p>3 A. Yes. That would be right.</p> <p>4 Q. Yes, and why did you all decide to change</p> <p>5 them at the same time?</p> <p>6 A. Because that's how it naturally occurred. I</p> <p>7 presume there was nothing more than a</p> <p>8 discussion between perhaps Mr Richardson or</p> <p>9 I or Mr Ullger and I, and we thought it was --</p> <p>10 Q. So, 15 months after you were happily</p> <p>11 using these Samsungs, you all decide together,</p> <p>12 two months after the key date in - you all</p> <p>13 decide to change these phones together, and</p> <p>14 you all individually lose the WhatsApps on</p> <p>15 transfer. Is that how it happened?</p> <p>16 A. That was the effect of what occurred, yes.</p> <p>17 Q. Yes. What my learned friend Mr Santos</p> <p>18 asked you this morning about the practice of</p> <p>19 not retaining WhatsApps, you said that other</p> <p>20 UK forces did not have the same practice and</p> <p>21 that it was principally caused by data</p> <p>22 protection -- to avoid data protection. Do you</p> <p>23 remember that evidence?</p> <p>24 A. I think I said more than that but you have -</p> <p>25 -</p> <p style="text-align: center;">Page 98</p>	<p>1 change. That would not be possible, as far as I</p> <p>2 understand it, with the WhatsApps.</p> <p>3 Q. Okay. So, going back to the swap of</p> <p>4 WhatsApps from Samsung to iPhones; is this</p> <p>5 correct? Is it correct that on your evidence -</p> <p>6 the effect of your evidence is this: that on one</p> <p>7 day in November or December 2020 you all</p> <p>8 had - each of you had a Samsung mobile</p> <p>9 phone full of your historical WhatsApps.</p> <p>10 Correct?</p> <p>11 A. Correct.</p> <p>12 Q. And on the same day, when you were given</p> <p>13 the iPhone, none of you had any WhatsApps</p> <p>14 on your iPhone.</p> <p>15 A. Correct.</p> <p>16 Q. A fact that you would have noticed</p> <p>17 immediately, surely. I mean, if I get a new</p> <p>18 telephone and there are no WhatsApps on it</p> <p>19 despite having hundreds of chat groups, do</p> <p>20 you not notice that immediately?</p> <p>21 A. It is possible that it was noticed but I'm not</p> <p>22 sure that it was in anybody's minds as being</p> <p>23 particularly important at the time.</p> <p>24 Q. But did you not attach any importance to</p> <p>25 preserving your historical WhatsApp chat</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 groups? I mean, after all - well yes, that is a 2 question. You might want to answer that. 3 A. So, I explained that this morning in answer 4 to Mr Santos. It is not - and I think the issue 5 of WhatsApps and their role in communication 6 between the officers -- 7 Q. Yes. 8 A. -- has been given a prominence that is not 9 realistic, in my view. 10 Q. All right, but that is not my point. I am not 11 anchoring it in this inquiry. My point is - the 12 point that I am trying to put to you, and put it 13 to you fairly, so that you give your views on it, 14 is that if I am right in putting to you that it 15 would have been obvious to each of you 16 immediately on being handed the new phone 17 that it was a desert of WhatsApps, you would 18 have noticed it and you would, there and then, 19 have said: hang on don't wipe my Samsung, 20 because I have no WhatsApps on my iPhone. 21 Did any of you do that? Or were you all glibly 22 carefree about the fact that none of you had 23 any WhatsApps of any kind with anybody on 24 your mobile phone? 25 A. So, again, as I explained earlier to Mr</p> <p style="text-align: center;">Page 101</p>	<p>1 Q. But the wiping, the wiping by the person 2 for the repurposing, that would not have been - 3 - 4 A. No, no, no. That would have happened 5 subsequently. 6 Q. So, there was opportunity, was there not, to 7 interrupt the wiping -- 8 THE CHAIRMAN: I have got the point of 9 your submission. 10 SIR PETER CARUANA: You have? Thank 11 you. (To the witness) My learned friend Mr 12 Duma(?) is telling me I have two minutes -- 13 THE CHAIRMAN: I get the point as soon as 14 you make it. 15 SIR PETER CARUANA: (To the witness) 16 Did you look for your iPhones -- for your 17 WhatsApps on your phone? 18 A. Sorry, in which phone, Mr Caruana? 19 Q. On, well, in 2022 you have given evidence 20 this morning that you looked. Can we just 21 look at paragraphs 26, 27 and 28 of your 22 witness statement. E880. Sorry, that is your 23 6th witness statement. Paragraph 26: "I now 24 realise, having reviewed all disclosure matters, 25 that neither the RGP nor Mr Ullger, Mr</p> <p style="text-align: center;">Page 103</p>
<p>1 Santos, I am not sure that anybody thought 2 that that was a particularly important issue. I 3 don't know when I, for one, realised that 4 WhatsApps were no longer on my phone that 5 had been on the previous phone. I can't speak 6 for Mr Ullger and Mr Richardson, so you 7 describe the position and you characterise it in 8 a certain way. I am not sure it occurred in the 9 way that you describe it. 10 Q. Well, how did it? So, presumably you did 11 not give up your Samsung until you had the 12 new one. None of you were without phones 13 for any period of time. 14 A. We may have been on the day, we may not 15 have been. It may be that we were given one 16 phone and just handed the other one back in. 17 Q. Right, and how long would it have taken 18 you - the swiping and the handing over of 19 your phones to a new officer would not have 20 been five minutes after you had got your new 21 phones and saw that you had no WhatsApps. 22 Surely? 23 A. It may have been a straight swap. I may 24 have been given the new phone and handed in 25 the other one --</p> <p style="text-align: center;">Page 102</p>	<p>1 Richardson or I have had access to any 2 WhatsApps held on RGP devices since 2020." 3 "I now realise." "I realised that this was the 4 case in February of 2025 when considering 5 how to comply with the ruling and the 6 Inquiry's disclosure request." At paragraph 7 28: "It is now clear that by the time the letter 8 requesting evidence and disclosure from the 9 then STI were received in July 2022, that 10 neither the RGP nor its senior officers with 11 Apple devices had access to the SMT chat or 12 other WhatsApp messages on RGP mobile 13 phones for the relevant period (1 January 2020 14 to 20 June 2020)." Does that not necessarily 15 mean that you never looked at the time, back 16 in 2022? 17 (12.25) 18 A. No, it doesn't. All it means is that -- and 19 we're approaching this from the point of view 20 of -- we examine what we have, we look at 21 what we have, we make a reasonable search 22 for material and we assess for relevance, 23 obviously relevance, can comment to it as 24 we've already addressed this morning. So, all 25 I'm saying, all I'm trying to say in those</p> <p style="text-align: center;">Page 104</p>

<p>1 paragraphs is: we knew we didn't have 2 WhatsApp messages that we could disclose. 3 That was obvious, it had been obvious from 4 some time. What I am trying to describe there 5 is that we may not have understood why that 6 was the case and it was only once the Inquiry 7 made those additional requests for disclosure 8 that we applied our minds to thinking about 9 the process that had occurred back in 2020-- 10 Q. If you had looked in 2022 for your 11 messages, you would have discovered then 12 what you say in your sixth weekend statement 13 you discovered as some sort of eureka moment 14 in February - 15 A. Well, that -- 16 Q. - 2025, surely. These paragraphs make no 17 sense, otherwise. 18 A. It is - it is possible that that would have 19 occurred, but we were conducting what we 20 thought the time were reasonable searches for 21 information, and we didn't have it, we didn't 22 apply forensic tools that we have since applied 23 to recover messages. Uniquely applied 24 forensic tools, as (?) I say, to recover the 25 messages that we have been able to recover</p> <p style="text-align: center;">Page 105</p>	<p>1 prepare for the Inquiry and make disclosures if 2 he wanted to. Do you see that? 3 A. Correct. 4 Q. Can you cast your eye down to paragraph 5 D. And one of the things that the Inquiry 6 ordered the RGP to provide Mr McGrail 7 access to was WhatsApp communications of 8 the SMT chat group between July 2015 to 9 9 June 2020, "if those conversations were 10 conducted on RGP devices". And if you go to 11 the very last paragraph, paragraph four of the 12 document, "If the RGP does not have one or 13 more of the documents listed above in its 14 possession or control, the RGP will indicate 15 this in writing to Mr McGrail within seven 16 days of the date of this order. Is it fair, do you 17 think, for me to suggest to you that the fact 18 that Mr McGrail was demanding from the 19 RGP access to the SMT chat group, paragraph 20 D, suggests that at least he, as the 21 Commissioner of Police at the time, fully 22 expected to find relevant and helpful material 23 in it? 24 A. That is a question I think you need to ask, 25 Mr Grail, sir.</p> <p style="text-align: center;">Page 107</p>
<p>1 and disclose. 2 Q. Okay. I just have one more issue if, sir, 3 you could indulge me just for three minutes - 4 two minutes, perhaps, even. On the SMT 5 chats, which were also lost, all the SMT chats, 6 through the process that everyone is now 7 familiar with - I am not going to repeat it. Is it 8 fair to say, Mr Yeats, that this morning you 9 have made had a fair go at minimising the 10 likely reverence of chats in the SMT group? 11 A. I've described my recollection of what -- 12 Q. Yes. 13 A. -- was the case, I guess. 14 Q. Yes, and my question is: you have had a 15 fair go at minimising the likely relevance and 16 importance. Yes. 17 THE CHAIRMAN: Well, that is a comment, 18 really, is it not? 19 Q. Okay. Can we turn to E1047. Do you see 20 that? Do you know what it is? I can describe 21 it to you very quickly. This is an order that the 22 -- 23 A. Yes. 24 Q. -- Chairman made, requiring the RGP to 25 give access to Mr McGrail so that he could</p> <p style="text-align: center;">Page 106</p>	<p>1 Q. I am asking you whether it is fair for me to 2 suggest it to you in the light of your 3 minimisation of that likelihood this morning. 4 A. He will -- he will know why he asked that 5 question. 6 Q. And did you in fact disclose to Mr McGrail 7 in response, as directed by paragraph four, that 8 in fact you did not have any SMT chats? 9 A. My understanding is that we did. I can't 10 remember it specifically, but there were -- 11 Q. But you were in control of this process. If 12 it is not your understanding, who do I need to 13 ask? 14 A. The correspondence was being conducted 15 through counsel, but I'm pretty sure that we 16 did communicate and say that we do not have 17 those messages. 18 Q. To Mr McGrail? 19 A. Yes. 20 Q. And you still did not communicate it to the 21 Inquiry, that you had lost all these things? 22 That you once had these things but no longer 23 did? Thank you for your indulgence as to the 24 time. 25 Questioned by MR WAGNER</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 Q. Good afternoon. I am not sure where the 2 most comfortable place for me to stand is, but 3 excuse me if I am not looking at you 4 throughout the questions. You said that you 5 decided to replace the Samsung phones with 6 Apple phones in November 2020 because of 7 the user interface. Was it found by you and 8 others that the Samsung user interface was not 9 as easy to use as the iPhone interface? 10 A. That was my experience and it was my 11 preference. I have been an iPhone user since 12 I've had a smartphone, other than a brief 13 period when I had a HTC phone which I -- I 14 gave up use of within months. So -- so yes, it 15 was my experience. 16 Q. I want to ask you about discussions 17 between senior officers about the Op Delhi 18 investigation. Did senior RGP officers discuss 19 concerns about the Chief Minister, Attorney 20 General, DPP's actions relating to Op Delhi at 21 any time between 12 May 2020 and 9 June 22 2020? 23 A. Yes. 24 Q. In what forum was that? Would it have 25 been in person?</p> <p style="text-align: center;">Page 109</p>	<p>1 change in that approach. 2 Q. Because of the intervention on 12 May? 3 A. Correct. 4 Q. Do you recall Mr McGrail gathering 5 together the senior command team after the 6 exchange he had had with the Chief Minister 7 and the AG on 12 May? 8 THE CHAIRMAN: Do you mean on 22 May, 9 or on some other date? 10 Q. No, no, on 12 May or close to it. 11 A. I mean, I recall having a -- you know, 12 being called to Mr McGrail's office at some 13 point after that meeting, yes. 14 Q. Yes, and do you remember what happened, 15 in broad terms, at the meeting? 16 A. I remember Mr McGrail saying that it had 17 been a very difficult meeting and that there 18 had been... difficult exchanges that -- well, 19 you know, the Chief Minister was upset about 20 what -- what had occurred. 21 Q. And how did you feel about it, do you 22 recall? 23 A. I think worried is -- is the sentiment that I 24 describe, simply because we didn't understand 25 what the consequences of -- of that would be.</p> <p style="text-align: center;">Page 111</p>
<p>1 A. Yes. I think I've said earlier, we were 2 meeting regularly at the time for a number of 3 issues, Covid being one of them. So yes, the 4 conversations would have been taking -- 5 would have taken place in person, and the 6 likelihood is in Mr McGrail's office. 7 Q. And is it likely that those discussions 8 would have been predominantly in person? 9 A. Absolutely, yes. 10 Q. What concerns we discussed? 11 A. So, in very general terms, the effect that 12 12 May had had on everything, and -- and how 13 those subsequent meetings that have been 14 described at length in -- in the previous set of - 15 - of hearings and evidence had -- had taken. 16 Q. When you say the effect it had had: was 17 that a positive effect, a negative effect or 18 something else? 19 A. Well, I think it was a negative effect in the 20 sense that there had been an approach to a 21 particular investigation and that approach -- at 22 least, it seemed to me, even though I was not 23 involved in it, but from what I was hearing 24 reported back from, primarily, Mr McGrail and 25 Mr Richmond, was that there had been a</p> <p style="text-align: center;">Page 110</p>	<p>1 Q. Of what? 2 A. Well, of that meeting and what had 3 transpired. 4 Q. Yes. Were you worried about how you 5 were hearing the Chief Minister had behaved? 6 A. I was worried about the interest was being 7 displayed on the issue and what could then 8 follow, and the consequence that could follow 9 in terms of the investigation. At that state it 10 was really about the investigation and where 11 that was -- 12 THE CHAIRMAN: This does not arise out of 13 the new material, does it? 14 MR WAGNER: Well, it is because the 15 government parties' suggestion that if the issue 16 was not raised in WhatsApp then it is 17 implausible that it was a concern amongst the 18 senior officers. So, I am asking in broad 19 terms: was there concern and when was it 20 expressed. 21 SIR PETER CARUANA: Just for clarification 22 (inaudible) my learned friend, that suggestion 23 has been made by the government parties in 24 respect of the meetings of 13, 15 and 20; not in 25 respect of that meeting.</p> <p style="text-align: center;">Page 112</p>

28 (Pages 109 to 112)

<p>1 MR WAGNER: I mean, it is all... Actually, 2 the suggestion that is made is that if there was 3 such serious interference then it would have 4 been discussed in WhatsApp. 5 THE CHAIRMAN: That is the point we 6 canvassed originally. 7 MR WAGNER: Well, it is not a point that was 8 made originally, because the WhatsApps were 9 not available. I only have one more question 10 in relation to it, if I may, which is about the 11 WhatsApps. 12 THE CHAIRMAN: Yes. 13 Q. The government party suggest it is 14 implausible that, if officers were concerned 15 about the interference with a live investigation, 16 they would not have sent any WhatsApp 17 messages about that. Do you agree? 18 A. As I've explained earlier, Mr Wagner, most 19 of our communications at the time were taking 20 place during office hours, in person. So, no, I 21 don't. 22 Q. When the RGP approached Mr McGrail 23 after the June 2024 request for further 24 disclosure, through lawyers, asking for 25 permission to inspect the image of his mobile</p> <p style="text-align: center;">Page 113</p>	<p>1 lonely, as a senior officer. In the sense that, 2 you know, the GPA had presented a position, 3 which on the face of it was supported by the 4 Governor and (clearly) Chief Minister. There 5 was no interaction with the rest of the senior 6 team around what was occurring. So, we were 7 essentially in the dark, other than what we 8 were hearing from Mr McGrail and we heard 9 from him, in terms of what he was 10 experiencing, what he was being asked to do 11 and was being told to do. So, you know, 12 following 12 May and what occurred 13 subsequently to that, and then the delivery of 14 those letters on the 22nd, I didn't know what 15 was happening, really, other than what we 16 were being told by Mr McGrail. So, it felt -- 17 we felt vulnerable, because we could not turn 18 to anybody, the natural... institutional pillars, 19 if you like, that we would have turned to: the 20 Governor, Chief Minister or -- or the GPA, 21 were all aligned, as far as I understood it, 22 requiring Mr McGrail to retire. 23 Q. Aligned with what, sorry? 24 A. With requiring Mr McGrail to retire. 25 Q. You said you felt lonely. Was that your</p> <p style="text-align: center;">Page 115</p>
<p>1 phone, which was in the custody of the RGP 2 (well, sorry, the image of the mobile phone), 3 did he give his consent? 4 A. He did. 5 Q. And was Mr McGrail cooperative with the 6 RGP request for his concern over the messages 7 that you retained? 8 A. He was. 9 Q. I want to ask you about the GPA's 10 invitation to retire, that they made on 22 May. 11 In the days that followed the GPA's invitation 12 to retire, was it your understanding that Mr 13 McGrail wanted to retire? 14 A. I don't remember it that way. From -- from 15 what I remember, though, there was a lot of... 16 discussion about, you know, what was the 17 direction of travel. Clearly, he'd been invited 18 to retire, that was quite a -- 19 THE CHAIRMAN: I did not just catch what 20 you just said. It was something about the 21 direction -- 22 A. The direction of travel, sorry. 23 THE CHAIRMAN: -- direction of travel. 24 A. What -- I mean, my recollection is that we 25 were... it -- it felt quite lonely as a sen--</p> <p style="text-align: center;">Page 114</p>	<p>1 understanding of how other senior RGP 2 officers were feeling, as well? Perhaps. I 3 mean, that is a sentiment that I've -- I can 4 relate to now. 5 Q. Did Mr McGrail show you his response, in 6 draft, to the GPA's invitation to retire, which 7 was ultimately sent by his lawyers on 28 May? 8 A. I think he did. I think -- it's the only 9 correspondence that I remember -- recall 10 reading at the time, so I didn't read the rest but 11 that, I think -- I -- I'm pretty certain that he did 12 share that correspondence with me, yes. 13 Q. Yes. And, do you remember what your 14 reaction was to it? 15 A. I mean, not particularly, other than, you 16 know, it seemed a -- obviously well-written 17 letter, that was making arguments and it was... 18 I mean, I think -- I thought that it was -- it 19 was... still a -- a means for a resolution to the 20 dilemma. That's -- that's what I interpreted. 21 Q. I am just going to turn my back for a 22 moment. Thank you, sir. 23 Questioned by MR CRUZ 24 Q. Mr Yeats, just a very few, but I think it is 25 perhaps useful -- particularly given that</p> <p style="text-align: center;">Page 116</p>

1 certainly the public will not have read your
 2 voluminous six witness statements -- if you
 3 can just summarise, as briefly as you can but
 4 in a complete way, the disclosure process.
 5 From the beginning, through to where you find
 6 yourself, let us say, the end of June 2024. Just
 7 explain the journey.
 8 **A. So, as I -- I think I tried to explain earlier,**
 9 **we approached this in two ways. One was the**
 10 **individual disclosure following the receipt of**
 11 **letters as -- as witnesses to the Inquiry, but also**
 12 **to address the volume of information that the**
 13 **RGP held, which clearly would be central to --**
 14 **to the Inquiry. And that took a -- the form of,**
 15 **in -- in October and November of 2022 -- two**
 16 **engagements with the previous STI, who**
 17 **around that time were involved in -- in the data**
 18 **breach which led to the change of --**
 19 **subsequently led to the change of STI. But we**
 20 **were essentially discussing with them the**
 21 **categorisation of documents for disclosure for**
 22 **assessments of relevance, potential public**
 23 **interest considerations. And -- and I think**
 24 **primarily, I remember primarily, one of our**
 25 **concerns was what that relevance test was,**

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1 **to you subsequently -- I think May 2023 had**
 2 **already decided that they were going to**
 3 **refocus and re-- and take over, essentially, the -**
 4 **- the disclosure process that we had been**
 5 **conducting. They gave us search terms, which**
 6 **I think we were much more comfortable with,**
 7 **to apply to all our data, and therefore just**
 8 **produce a result for them to assess relevance.**
 9 **Which I -- I think, as I just said, we all agreed**
 10 **from the RGP perspective was a better**
 11 **approach, because it removed us from that**
 12 **decision-making. That occurred during May**
 13 **and June of 2023, where we provided in -- in**
 14 **two tranches first all the digital files from the**
 15 **network shares and subsequently the email**
 16 **products in -- in early July of -- of that year.**
 17 **There was some difficulty around the -- the**
 18 **nature or the format in which those were --**
 19 **were provided. They then engaged with us to**
 20 **determine whether there were any concerns**
 21 **around the documents that they intended to**
 22 **disclose at the end of the summer of 2023.**
 23 **That engagement took place and the disclosure**
 24 **occurred, which is what is available to all -- all**
 25 **parties in this Inquiry. That essentially leads**

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1 **simply because we were not alive to the case**
 2 **theories advanced by the other parties in the --**
 3 **in the Inquiry. We became core participants**
 4 **around that time. That developed into the --**
 5 **or, around that time we appointed a -- a**
 6 **disclosure team of four officers, who were**
 7 **reviewing all the material that was provided to**
 8 **them: hard-copy material, electronic material**
 9 **in the form of the network shares for the senior**
 10 **officers that had been in-post during all of that**
 11 **period, the email shares. I think I mentioned**
 12 **earlier that in one of the preliminary -- or in**
 13 **advance of one of the preliminary hearings Mr**
 14 **Wyan asked for an update and there were -- I**
 15 **think 900,000 documents had -- had been**
 16 **examined and there were another 600 waiting**
 17 **for examination. That is not including emails.**
 18 **Almost 30,000 hard-copy documents were**
 19 **available. Then, the team conducted the**
 20 **inquiry -- sorry, disclosure, made allegations in**
 21 **the form of whistleblower statements, which I**
 22 **considered to be unfounded at the time and**
 23 **still do, and were investigated by SI McVea.**
 24 **That led to... a pause in the process,**
 25 **obviously, but by then the STI -- as they wrote**

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1 **us to June of -- of last year.**
 2 Q. Well, let me stop you there. So, when you
 3 say they took over, what did that mean in
 4 terms of physically -- what does that mean,
 5 when you say they took over?
 6 **A. So, two things happened. One is that --**
 7 **that S-- members of the STI team attended the**
 8 **Secretary's Lane offices, and they examined**
 9 **some of the -- the hard-copy documents**
 10 **themselves. But taking over, I mean, the**
 11 **providing of keywords for searching and**
 12 **assessment of relevance.**
 13 Q. Right. Can I ask you -- perhaps you could
 14 be assisted to go to E889. This is your sixth
 15 witness statement. Specifically, paragraphs 62
 16 and 63. Paragraph 63, there is a reference to a
 17 letter, could you just remind yourself of it. Is
 18 that at the same time as them taking over?
 19 **A. So, I think they'd also... They had already**
 20 **attended the Secretary's Lane offices before**
 21 **that, as I think the previous paragraph**
 22 **suggests, where they had been present with**
 23 **DC Carra (?), who was the one remaining**
 24 **officer of the team, to look at the hard copy**
 25 **disclosure before that. I think, as STI makes**

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<p>1 clear in that letter, the taking over of the</p> <p>2 disclosure exercise was not as a result of any</p> <p>3 failings of the RGP.</p> <p>4 Q. Right. So, as of July -- or as of June 2023,</p> <p>5 the STI are saying there is no RPG failing?</p> <p>6 MR SANTOS: Sorry, can I just intervene.</p> <p>7 What that letter says is, "We also wish to</p> <p>8 clarify that our decision to take over the RGP</p> <p>9 disclosure process predated the criminal</p> <p>10 investigation and is not as a result of any</p> <p>11 failings by the RGB in the disclosure process."</p> <p>12 That is not a statement by STI, as my learned</p> <p>13 friend is suggesting, that there have been no</p> <p>14 failings by the RGP.</p> <p>15 Q. Let us put it in context. There is a</p> <p>16 reference to an investigation, a criminal</p> <p>17 investigation. What is that, Mr Yeats?</p> <p>18 A. That investigation?</p> <p>19 Q. Yes.</p> <p>20 A. Into the allegations made by the</p> <p>21 whistleblowers in respect of the disclosure</p> <p>22 exercise.</p> <p>23 Q. Yes. Just to give it context, given my</p> <p>24 learned friend's intervention. What, broadly,</p> <p>25 was that investigation?</p> <p style="text-align: center;">Page 121</p>	<p>1 A. Yes.</p> <p>2 Q. And was it timely?</p> <p>3 A. We responded to every request that we had</p> <p>4 in the timescales that we were given. We may</p> <p>5 have asked for an extension on the odd</p> <p>6 occasion, but we complied with that too.</p> <p>7 Q. Okay. When were you first asked for the</p> <p>8 WhatsApp exchanges between Ian McGrail</p> <p>9 and Richard Ullger and Mark Wyan and Mr</p> <p>10 Richardson and yourself. When were you first</p> <p>11 asked for those specific WhatsApps?</p> <p>12 A. On 27 June 2024.</p> <p>13 THE CHAIRMAN: But hang on, Mr Cruz.</p> <p>14 The original letter in July '22 refers to</p> <p>15 WhatsApps.</p> <p>16 MR CRUZ: Yes. Yes, Mr Chairman, it does.</p> <p>17 It refers to disclosure that includes</p> <p>18 WhatsApps. But I am specifically asking</p> <p>19 about the WhatsApps between these</p> <p>20 individuals: when was the first time there a</p> <p>21 specific request.</p> <p>22 THE CHAIRMAN: Yes. Well, I think that</p> <p>23 question is misleading, without referring to the</p> <p>24 request in July '22.</p> <p>25 Q. Okay. In July 2022, did the general</p> <p style="text-align: center;">Page 123</p>
<p>1 A. So -- so, yeah, this was allegations that the</p> <p>2 whistleblowers -- three whistleblowers had</p> <p>3 made, who were involved in the RGP</p> <p>4 disclosure process, about concerns that they</p> <p>5 had around that discovery process and the way</p> <p>6 that Mr Wyan and I had managed it.</p> <p>7 And what was the outcome of those concerns?</p> <p>8 A. They were found to be unfounded by SIO</p> <p>9 McVea.</p> <p>10 Q. Unfounded. So, is that statement that the</p> <p>11 intervention is not down to any failings of the</p> <p>12 RGP in relation to that disclosure process --</p> <p>13 was there any other letter or communication ,</p> <p>14 to your knowledge, that suggested there were</p> <p>15 any failings as of June 2023?</p> <p>16 A. Not that I know, no.</p> <p>17 Q. Not that you know of. Thank you. Insofar</p> <p>18 as the position generally -- we will get to June</p> <p>19 2024 in a moment -- would you say that you</p> <p>20 gave you ("you" being the RGP) gave</p> <p>21 comprehensive disclosure?</p> <p>22 A. I would. I have repeatedly said so</p> <p>23 throughout the morning.</p> <p>24 Q. Did you give everything that you had,</p> <p>25 when you had it?</p> <p style="text-align: center;">Page 122</p>	<p>1 reference for disclosure include hard copy and</p> <p>2 electronic, including WhatsApps?</p> <p>3 A. It did.</p> <p>4 Q. It did. But specifically in relation to the</p> <p>5 exchanges between Mr Ullger -- the ones I</p> <p>6 have just mentioned. In other words, one with</p> <p>7 specificity focused on that.</p> <p>8 THE CHAIRMAN: Well, if that is your</p> <p>9 excuse Mr Cruz, it is not impressive.</p> <p>10 MR CRUZ: I understand, Mr Chairman; I</p> <p>11 take the point. But nevertheless, Mr</p> <p>12 Chairman, if you will allow me to ask the</p> <p>13 question?</p> <p>14 THE CHAIRMAN: You can ask the question.</p> <p>15 MR CRUZ: I understand the point.</p> <p>16 THE CHAIRMAN: Well, you are trying to</p> <p>17 persuade me, not the witness.</p> <p>18 MR CRUZ: No, I understand, Mr Chairman,</p> <p>19 but I am asking when the focus on those</p> <p>20 WhatsApps was given. I think your answer</p> <p>21 was June '22?</p> <p>22 A. '24.</p> <p>23 Q. '24, sorry. And when were they provided?</p> <p>24 A. On 2 September 2024.</p> <p>25 Q. Okay. And when will further requests</p> <p style="text-align: center;">Page 124</p>

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<p>1 sought? To extend the date range, if I may 2 (inaudible). 3 A. On 9 December. 4 Q. And when were they provided? 5 A. 20 December 2024. 6 Q. Okay. So, in those circumstances, is it 7 your position that comprehensive disclosure 8 was nevertheless timely? 9 A. It is. 10 Q. It is. Could you have given more 11 disclosure quicker, in your opinion? 12 A. I... I don't think so. 13 Q. One question: to your knowledge, have 14 you ever criticised the government party's 15 disclosure? 16 A. No. 17 Q. And finally, have you ever colluded or 18 conspired or engaged with Mr McGrail or Mr 19 Richardson in relation to disclosure, before or 20 during the Inquiry or since the last hearing? 21 A. No, of courses not. 22 MR CRUZ: Thank you. Thank you, sir. 23 THE CHAIRMAN: Can I ask something. 24 Very sensibly, you or the RGP have made 25 inquiries with other forces as to best practice</p> <p style="text-align: center;">Page 125</p>	<p>1 -- 2 THE CHAIRMAN: And probably gives rise 3 to all sorts of other data-protection issues. So, 4 I just want to know what the best practice is. 5 A. Okay -- absolutely, sir, we can provide 6 you with copies of the -- 7 THE CHAIRMAN: Yes. 8 A. -- of what is available online. 9 THE CHAIRMAN: Because presumably, now 10 that you have realised that it was an error the 11 delete all this stuff, the RGP are trying to set 12 up some local best practice? 13 A. So -- so the context of -- of what I was 14 trying to describe this morning was that -- that 15 the draft policy that's already been created. In 16 fact there are two draft policies: one is in 17 relation to the use of personal devices and 18 trying to manage that and restrict that -- 19 THE CHAIRMAN: Yes. 20 A. Also the other one is on the -- 21 THE CHAIRMAN: That is a slightly different 22 point. 23 A. Yes, of course. And the other one is the 24 corporate devices. In relation to those, the 25 direction of travel that we'd taken was to</p> <p style="text-align: center;">Page 127</p>
<p>1 of retaining and storing. There are 42, I think, 2 different forces in the UK, do they all have 3 different practices? 4 A. Variations of, yes. 5 THE CHAIRMAN: Could you just provide -- 6 these practices are in writing, presumably? 7 A. I'm sorry? 8 THE CHAIRMAN: These practices are set 9 out in writing, presumably? 10 A. So, some of them are available online, 11 others are not. 12 THE CHAIRMAN: Alright. Well, can you 13 just give me an example of best practice? I 14 mean, I do not mean now; I mean, can you go 15 back and send to the solicitors a copy of 16 somebody's best practice? 17 A. Well, I mean, obviously (?) -- 18 THE CHAIRMAN: Because I had previously 19 thought (wrongly, as it turns out) that the best 20 practice would be to save everything that was 21 on these devices. But that does not sound as if 22 that is right. 23 A. Well, I think because there are practical 24 difficulties with then re-examining that data 25 and considering for future use, and I think that</p> <p style="text-align: center;">Page 126</p>	<p>1 conduct regular backups and reg-- in fact not 2 backups, that has a different meaning in the 3 content of this, but rather full copies of the 4 phone. Which is what we have done on with 5 Mr Field, what we did with -- with Mr Romero 6 when he retired recently, and what is already 7 (inaudible) for Mr Ullger when he retires 8 shortly. But that has consequences, because of 9 how that data is copied and how it is retained, 10 for further examination in the context of a 11 data-protection (inaudible). 12 THE CHAIRMAN: Yes. 13 A. So -- so I think what I'm trying to say is 14 that I'm -- in hindsight, although I'd already 15 taken a -- a view, I -- I am not sure that is the 16 best approach, that -- it may be that it really is 17 to -- down to the professional judgement of 18 individual to consider whether a 19 communication -- 20 THE CHAIRMAN: Yes, well that is why I 21 just want a copy of best practice. 22 A. Sorry. Of course, sorry. 23 THE CHAIRMAN: Yes. 24 MR SANTOS: Sir, if you have no further 25 questions.</p> <p style="text-align: center;">Page 128</p>

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<p>1 THE CHAIRMAN: No, no, sure. No. 2 Questioned by MR SANTOS 3 Q. I have two points to follow up on. Can I 4 please ask that the original disclosure letter be 5 placed on the screen by Mr Triay, the one that 6 was sent to Mr Yeats. This is the original 7 disclosure letter that went to you, Mr Yeats, on 8 14 July 2022. If I can ask Mr Triay to just 9 scroll down slowly and continue to the next 10 page. There is some background set out, and 11 then if we can continue, at the bottom of that 12 page there is a section that is headed "Request 13 for Information and Evidence". And we say, 14 "We therefore request you to cooperate with 15 the Inquiry by preparing and producing", and 16 first of all we say, "a statement under oath 17 addressing the subject matter of the Inquiry", 18 and then we specify specific questions, 19 subparagraphs, under 1, just on the next page. 20 If we can, first of all, "appointment", "tenure 21 or Mr McGrail", there is a reference to 22 "Delhi", of course we know you were not 23 involved in Delhi. And then (d), sub 24 paragraph (d) refers to Operation Kram, the 25 incident at sea. What was your involvement,</p> <p style="text-align: center;">Page 129</p>	<p>1 A. So, I mean, I think you are going to the -- 2 my first witness statement and my second 3 witness statement on the evidence and my 4 involvement on Kram, and the WhatsApps 5 disclosed around my alerting Mr McGrail to 6 the existence of that reply. So, the reason I did 7 not I didn't -- don't consider those WhatsApps 8 relevant is that they're simply alerting Mr 9 McGrail -- 10 Q. I am not going to get into an argument 11 about relevance of that message, Mr Yeats. I 12 am talking about the process. I think 13 arguments can be made directions about that 14 message; I am not going to get into an 15 argument. My question is just: did you 16 understand that disclosures request to include, 17 if you deemed them relevant, any WhatsApps 18 related to operation Kram? 19 A. Yes, but -- 20 Q. Yes. 21 A. -- I mean, could I explain why that 22 particular message I did not, and do not, 23 consider relevant -- I -- 24 Q. I am happy to give you that opportunity, 25 but I am not going to dispute that with you.</p> <p style="text-align: center;">Page 131</p>
<p>1 and then over the page, did you attend any 2 meetings, "were you privy to any 3 correspondence with any of the persons listed 4 in paragraph 1(c)(ii) above". Can we just go 5 back to 1(c)(ii). That is a number of 6 individuals there. If we can continue now, 7 sorry, where we were, "findings of the 8 reports", "developments" and then in (e) we 9 list another few matters. And finally (f), 10 "Were you involved in any meeting or 11 briefings with McGrail in the month or so 12 leading up to his resignation", and your 13 recollection of the meeting with the command 14 team on 22 March. And then (ii) is the request 15 for documents. And we say, "any documents, 16 including but not limited to electronic 17 documents such as emails, Word documents, 18 PDFs and SMS, WhatsApp or other instant 19 messages in your possession of control 20 relevant to the subject matter of the Inquiry 21 and the matters referred to in paragraph (i) 22 above." So, did you interpret this request for 23 disclosure to include any WhatsApps relating 24 to Operation Kram as described in paragraph 25 (i) above? To the extent that they existed.</p> <p style="text-align: center;">Page 130</p>	<p>1 But I am happy to give you the opportunity. 2 A. I mean, it's simply because I am alerting 3 him to something that I'd done and I had 4 exhibited in evidence. The statement was -- 5 Q. The email? 6 A. -- was there. The email was there, sorry. 7 So, I didn't think that saying to someone in a 8 WhatsApp message, read your email, when the 9 email I have presented is relevant. 10 Q. Just to clarify, I am not going to get into an 11 argument with you over that. I am not 12 suggesting that that email is extremely 13 relevant. Or, we can have an argument on the 14 margins but it is not going to help anybody. 15 My point is just that: would you accept that 16 that disclosure request required a search of 17 your WhatsApps in case there was anything 18 relevant? 19 A. Yes. 20 Q. And did you conduct a search of your 21 WhatsApps in case there was anything 22 relevant at the time? 23 A. Yes. 24 Q. And did you discover at that moment that 25 you had no WhatsApps going back beyond a</p> <p style="text-align: center;">Page 132</p>

<p>1 certain date?</p> <p>2 A. Yes, that is my recollection, yes.</p> <p>3 Q. And why did you not inform the Inquiry at</p> <p>4 that stage of the fact that you did not have any</p> <p>5 WhatsApps going back beyond a certain date?</p> <p>6 A. I am not sure it ever became an issue in</p> <p>7 terms of the requirements. I mean, I think</p> <p>8 coming from my point of view, and I -- I don't</p> <p>9 mean to be disrespectful -- disrespectful to</p> <p>10 anybody, the -- the issue of the WhatsApp</p> <p>11 seems to have evolved into an issue much later</p> <p>12 into the Inquiry, although I accept that you</p> <p>13 were requesting them at the time, but the</p> <p>14 relative importance to the WhatsApps has</p> <p>15 grown exponentially, in my view, later on in</p> <p>16 the day. I mean, I can't explain it beyond that.</p> <p>17 I mean, it just wasn't in our minds to say -- I</p> <p>18 mean, in the same way that we didn't say we</p> <p>19 didn't have any other particular documents, it</p> <p>20 wouldn't have -- I mean, the same could have</p> <p>21 applied to SMSs, for example: we've not said</p> <p>22 we didn't have any SMSs, I'm not sure</p> <p>23 anybody else has. I don't mean to belittle it,</p> <p>24 but I think that's the most natural explanation</p> <p>25 that I can give to that.</p> <p style="text-align: center;">Page 133</p>	<p>1 Q. So, do you or does the RGP still have that</p> <p>2 document?</p> <p>3 A. I'm not sure it was ever in my possession.</p> <p>4 Q. Okay. Thank you, Mr Yeats, no further</p> <p>5 questions.</p> <p>6 THE CHAIRMAN: Okay, thank you very</p> <p>7 much indeed, that is fine. And so, obviously a</p> <p>8 sensible time to break, we can deal with Mr</p> <p>9 Ullger this afternoon.</p> <p>10 MR SANTOS: Thank you, sir.</p> <p>11 THE CHAIRMAN: Okay. Two o'clock.</p> <p>12 (13.01)</p> <p>13 (The luncheon adjournment)</p> <p>14 (14.01)</p> <p>15 (After the luncheon adjournment)</p> <p>16 THE CHAIRMAN: Yes, you have been sworn</p> <p>17 once so you are still under oath.</p> <p>18 MR SANTOS: Thank you, sir. For the benefit</p> <p>19 of everybody watching, our next witness is</p> <p>20 Commissioner Richard Ullger.</p> <p>21 COMMISSIONER RICHARD ULLGER</p> <p>22 Questioned by MR SANTOS</p> <p>23 MR SANTOS: Mr Ullger, Commissioner</p> <p>24 Ullger, can I please take you first of all</p> <p>25 through the statements that you have provided</p> <p style="text-align: center;">Page 135</p>
<p>1 Q. Just moving to a different topic, you say</p> <p>2 that Mr McGrail showed you his draft</p> <p>3 response to the GPA on 29 May.</p> <p>4 A. I saw the letter. When --</p> <p>5 Q. Well, sorry, the draft of the response that</p> <p>6 he would send.</p> <p>7 THE CHAIRMAN: The date he was asked --</p> <p>8 A. Correct.</p> <p>9 THE CHAIRMAN: The date he was asked</p> <p>10 was about 28 May.</p> <p>11 MR SANTOS: Yes.</p> <p>12 THE CHAIRMAN: But presumably it was a</p> <p>13 draft of the letter of 29 May.</p> <p>14 Q. It does not really matter the date on which</p> <p>15 he was shown --</p> <p>16 THE CHAIRMAN: Yes.</p> <p>17 Q. -- my question is geared towards whether</p> <p>18 that was a hard copy or whether it was in</p> <p>19 electronic form.</p> <p>20 A. I'm pretty vertain was a hard copy, but I...</p> <p>21 Q. So, was that copy handed to you or did Mr</p> <p>22 McGrail retain that copy?</p> <p>23 A. I'm not sure, why would he have handed it</p> <p>24 to me. No, I can't recall him giving me a copy</p> <p>25 of that letter, no.</p> <p style="text-align: center;">Page 134</p>	<p>1 to the Inquiry since you last gave evidence so</p> <p>2 that you can confirm the truth of their contents</p> <p>3 and that they are your statements. The first</p> <p>4 statement appearing is your fifth witness</p> <p>5 statement. I will just ask Mr Triay to take you</p> <p>6 to the final page. Is that your signature on the</p> <p>7 final page?</p> <p>8 A. Yes, it is.</p> <p>9 Q. Thank you. Then your sixth witness</p> <p>10 statement. Is that your sixth witness</p> <p>11 statement?</p> <p>12 A. It is.</p> <p>13 Q. Is that your --</p> <p>14 A. And it is signed by me, yes.</p> <p>15 Q. Thank you. There is a seventh. I believe -</p> <p>16 it is the sixth, sorry, no.</p> <p>17 A. Sixth.</p> <p>18 Q. Apologies. Can I ask you to confirm that</p> <p>19 the contents of those two statements are true to</p> <p>20 the best of your knowledge, information and</p> <p>21 belief.</p> <p>22 A. They are.</p> <p>23 Q. Thank you. Can I ask you - we have heard</p> <p>24 from Mr Yeats this morning but can I ask you</p> <p>25 what are the methods that RGP officers at the</p> <p style="text-align: center;">Page 136</p>

<p>1 senior end use to communicate with each other 2 about investigations? 3 A. So Mr Yeats alluded to the fact that senior 4 officers rarely are involved in investigations 5 but our communications between ourselves in 6 respect of other business matters is more so by 7 face to face, briefings, emails, and very rarely 8 Whatsapps. I must reiterate again what Mr 9 Yeats said earlier on that Whatsapps feature 10 very little in any of our day to day business. 11 Q. You say that senior officers do not feature 12 very often in investigations or participate in 13 investigations. 14 A. Correct. 15 Q. Operation Delhi is perhaps an exception to 16 that. 17 A. There have been a number of exceptional 18 investigations, and Delhi was one of them that 19 required a senior investigating officer and that 20 was led by Mr Richardson. 21 Q. In your experience in Delhi and in other 22 investigations, how much of the 23 communication takes place in person and how 24 much takes place via Whatsapp? 25 A. I can't honestly give you a number but</p> <p style="text-align: center;">Page 137</p>	<p>1 recordings or dissemination of personal data 2 via Whatsapp or other media platforms. This 3 is not an exhaustive list. The use of the latter 4 media platforms will be restricted to 5 administrative purposes only, such as 6 requesting officers to come into work, offering 7 overtime, informing of change of hours, etc." 8 It appears from what I have read out that the 9 primary reason for the transition to work 10 phones was data protection concerns. Is that 11 your understanding? 12 A. That is correct. We had suffered a data 13 breach and as a result of that data breach we 14 felt that it was important that we protected the 15 organisation, and we did so by implementing 16 this Force order. However, we quickly learned 17 that there would be gaps because - and again 18 Mr Yeats alluded to it in his evidence earlier 19 on - that we now find ourselves in the position 20 where we are having to create two policies, 21 one for the use of police mobile phones and 22 the use of personal mobile phones. We say 23 that simply because there have been many 24 occasions where police officers have been 25 attending critical incidents and the only way</p> <p style="text-align: center;">Page 139</p>
<p>1 suffice to say that anything done officially 2 would be done through briefings, by reports 3 and by emails where everything is recorded. 4 Q. Can I take you to E920, please. This is the 5 set of RGP Force orders that we were looking 6 at this morning dated 18 July 2019. Over the 7 page, I took Mr Yeats through a number of 8 passages in that policy. Just focusing on the 9 last two passages to remind ourselves, first of 10 all it is at the bottom of 921: 11 "Unfortunately we are once again having to 12 provide explanations to the Data Protection 13 Commission following what appears to be a 14 breach of the Data Protection Act by an officer. 15 In this case the issue lies with the use of a 16 personal device for work purposes." 17 Then over the page, the final paragraph in 18 bold, that says: 19 "As a result of a change in Force policy and in 20 order to safeguard the organisation and 21 officers alike on data protection breaches, the 22 use of mobile phones or other personal 23 electronic devices for work purposes will 24 cease forthwith. This includes using said 25 devices for taking of photographs, video</p> <p style="text-align: center;">Page 138</p>	<p>1 that they have been able to capture evidence is 2 by the use of their own mobile phone. The 3 risk of losing that evidence is too great for that 4 not to be allowed to happen. So as an 5 organisation we are continuing to review the 6 position that we are in. 7 Q. Can I just take you to two pages on, 924, 8 just to show you. You signed this as Acting 9 Commissioner of Police. Perhaps an obvious 10 question, but am I to take it from that that you 11 agreed with and endorsed this policy? 12 A. Yes. 13 Q. After that Force order did you cease using 14 your personal phone for all work based 15 communication? 16 A. No, I didn't. 17 Q. Why not? 18 A. Because we were still going through the 19 transition period. It was very difficult - so all 20 of my contacts, for example, in the different 21 business areas would have been using my 22 personal phone. I did reach out to people and 23 ask them to start using my work phone, but 24 that just didn't happen. People are creatures of 25 habits and they will stick to their old habits,</p> <p style="text-align: center;">Page 140</p>

35 (Pages 137 to 140)

<p>1 and we found it - or I certainly found it 2 difficult to be able to communicate with 3 people through a work phone and then the 4 personal phone. Then what we found as a 5 command team as well is that we were just 6 constantly having different messages coming 7 in from different people on to different 8 devices, and it just became complicated and 9 difficult to try and operate. 10 Q. Was your experience that Mr McGrail 11 generally - generally - preferred to use his 12 personal number or his work number? 13 A. I used to generally communicate with him 14 on our personal phones. 15 Q. Did you object to his use of his personal 16 phone? 17 A. I didn't object but what we tried to do is 18 we tried to come away from personal phones 19 but found it difficult to do so. 20 Q. Can I take you, please, to a letter dated 14 21 July 2022, which is the Inquiry's disclosure 22 request, original disclosure request, to you. I 23 have already conducted this exercise with Mr 24 Yeats but I think I should conduct it with you 25 in fairness as well. Just going to the second</p> <p style="text-align: center;">Page 141</p>	<p>1 your involvement in and knowledge of 2 Operation Delhi?" 3 Then jumping over to the bottom of page 4: 4 "(e) In respect of Operation Kram, the incident 5 at sea on 8 March 2020, what was your 6 involvement in and knowledge of Operation 7 Kram?" 8 Then over the page: 9 "(f) To what extent were you involved in the 10 following matters, and if you were involved 11 what were your dealings with Mr McGrail 12 and/or other individuals?" 13 One of the sub-paragraphs, the second: 14 "The findings of the 2020 report by Her 15 Majesty's Inspectorate of Constabulary and 16 Fire and Rescue Services." 17 So that is all part of the evidence that we 18 sought from you. Then number (2) at the 19 bottom of page 5 is the documents request, and 20 it reads as follows: 21 "Any documents including but not limited to 22 electronic documents such as emails, Word 23 documents, PDFs and SMS, Whatsapp or other 24 instant messages in your possession or control 25 relevant to the subject matter of the Inquiry</p> <p style="text-align: center;">Page 143</p>
<p>1 page first of all and the bottom of that second 2 page, that is a section that sets out the request 3 for information and evidence and it says: 4 "We therefore request you to cooperate with 5 the Inquiry by preparing and producing: (1) a 6 statement under oath addressing the subject 7 matter of the Inquiry, namely your knowledge 8 and any information, records or documents of 9 which you in your position as Commissioner 10 have custody or control as to the reasons and 11 circumstances leading to Mr In McGrail 12 ceasing to be Commissioner of Police in June 13 2020 by taking early retirement, including 14 addressing the following specific questions." 15 Just focusing on a few sub-paragraphs, first of 16 all: 17 "(c) During Mr McGrail's tenure as 18 Commissioner of Police were you aware or put 19 on notice of or do you possess or control any 20 information, records or documents relating to 21 any allegations or complaints made by 22 members of the Gibraltar Police Federation in 23 respect of bullying and/or intimidation by Mr 24 McGrail? 25 "(d) In respect of Operation Delhi, what was</p> <p style="text-align: center;">Page 142</p>	<p>1 and the matters referred to in paragraph (1) 2 above. All electronic documents are to be 3 provided in their native format with the 4 original metadata preserved. In addition, in 5 your capacity as Commissioner of Police, we 6 request that you produce the following 7 documentation which we believe to be in your 8 possession or control, or alternatively if any of 9 the below documentation is not in your 10 possession or control we ask that you indicate 11 to the best of your knowledge from whom we 12 may be able to obtain it." 13 One of the items in (d) is the Operation Delhi 14 case file, including unused material, the whole 15 file. Then: 16 "(e) The Operation Kram case file." 17 Then: 18 "(f) All of Mr McGrail's relevant electronic 19 and hard copy communications and data 20 during his time at the Royal Gibraltar Police, 21 including but not limited to emails in his 22 former email account, and sent to and from the 23 people listed below." 24 So my question, having taken you through 25 that, is: did you understand that letter? Did</p> <p style="text-align: center;">Page 144</p>

36 (Pages 141 to 144)

<p>1 you understand from that letter that relevant 2 Whatsapp messages needed to be disclosed? 3 A. Yes, I did. 4 Q. Did you search for Whatsapp messages 5 relating to those matters? 6 A. I did, yes. Personally for myself, yes, for 7 when I was preparing my personal statement, 8 yes. 9 Q. At that point did you discover - can I 10 actually just take you to your evidence. Can 11 we go to E872, please. Paragraph 18, this is 12 your fifth witness statement and in paragraph 13 18 you say: 14 "When I prepared my first statement to the 15 public inquiry in November 2022, part of my 16 disclosure exercise was to check my personal 17 work mobile phone for messages with key 18 officers linked to the public inquiry issues. I 19 had no Whatsapp data and therefore shared no 20 messages as part of my disclosure, nor was I 21 able to make any relevant assessments." 22 So am I correct in saying that by November 23 2022 you realised that you did not have any 24 messages on your work phone predating 25 November 2020?</p> <p style="text-align: center;">Page 145</p>	<p>1 was important for me was to ensure that the 2 Royal Gibraltar Police put resources into a 3 disclosure exercise to support the public 4 inquiry, and we made the best effort to do that 5 by redeploying four police officers into a 6 disclosure unit just for the purpose of the 7 public inquiry. So I was not only thinking 8 about my own personal data but the data that 9 we held which went into over a million 10 documents, as you are well aware. 11 Q. Can we now focus on your personal phone. 12 If we go to 302 we can see an email there 13 dated 28 June 2024 from you to Mr Cruz. You 14 say: 15 "Dear Nick, as you are aware, in anticipation 16 of STI's request for my Whatsapp 17 communications with Ian McGrail, I 18 proceeded to check my phone and found that 19 my Whatsapp messages with Mr McGrail only 20 go as far back as 3 July 2021. Furthermore, 21 this was only linked to his present telephone 22 number but there was nothing linked to his 23 previous number when he was the 24 Commissioner. Naturally I was concerned that 25 there was no continuity of messages with Mr</p> <p style="text-align: center;">Page 147</p>
<p>1 A. That is correct. 2 Q. Did you make any efforts at that stage to 3 retrieve those messages? 4 A. So I checked my mobile phone and I saw 5 that I had no Whatsapp messages, and that was 6 the conclusion of my search. 7 Q. Why did you not inform the Inquiry at that 8 stage that you did not seem to have messages 9 from the time? 10 A. It didn't occur to me. 11 Q. Am I also correct that by November 2022 12 you also realised that you did not have any 13 messages on your personal phone from the 14 relevant time? 15 A. That is correct. 16 Q. Did you make any efforts to retrieve those 17 beyond searching the phone itself? 18 A. No. 19 Q. In terms of why you did not inform the 20 Inquiry, is the answer the same? 21 A. Correct. Sorry, I think, Mr Santos, at the 22 same time as well I was cognisant of the fact 23 that the Royal Gibraltar Police was undergoing 24 a massive exercise in respect of disclosure, and 25 I know this is personal to me but equally what</p> <p style="text-align: center;">Page 146</p>	<p>1 McGrail dating back to May/June 2020 but it 2 would appear that I have also lost messages 3 with different people I communicate with quite 4 regularly, for example ..." 5 and you list a few examples, going back to 6 differing dates. 7 A. Mm-hm. 8 Q. You say: 9 "I did purchase a new phone in June 2020 and 10 it would appear that with updates I have been 11 losing messages but this is not confirmed." 12 Do you confirm that in your evidence, that you 13 did purchase a new phone in June 2020? 14 A. Yes, I did. 15 Q. Do you believe that this is the reason why 16 messages were lost? 17 A. I am no Whatsapp geek. I can only assume 18 that it was because I purchased a new phone 19 and I lost some of my data. I just have no idea 20 whatsoever. 21 Q. What about messages between June - so, 22 for example, in respect of Mr McGrail, what 23 about messages between June 2020 and July 24 2021? What do you believe has occurred 25 there?</p> <p style="text-align: center;">Page 148</p>

37 (Pages 145 to 148)

1 **A. Again, equally the same.**
 2 Q. But if you purchased a new phone in June
 3 2020, why do your messages only go back to
 4 July 2021?
 5 **A. Well, that's the same if I go back to the**
 6 **people that I've listed. I mean, there are**
 7 **variances between different people that I**
 8 **communicate with on a daily basis, so I just**
 9 **have no idea why I've lost messages with**
 10 **different people in my family, including Mr**
 11 **McGrail.**
 12 Q. But it is fair to say that messages
 13 postdating 2020 cannot be attributed to a
 14 purchase of a phone in July 2020.
 15 **A. Correct, yes.**
 16 Q. Sorry, June 2020.
 17 **A. June 2020.**
 18 Q. It is also fair to point out that in respect, for
 19 example, of your sister's messages, they do go
 20 back to 2019.
 21 **A. Correct.**
 22 Q. As you fairly point out in --
 23 **A. Correct. So it just did not make sense that**
 24 **some messages went back to 2019 but, for**
 25 **example, my son, who I communicate on a**

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1 **daily basis, there was - you know, it went back**
 2 **only to 2022. So it just didn't make sense.**
 3 Q. That email, you say that you found that
 4 your messages with McGrail only go back as
 5 far as 3 July 2021.
 6 **A. Sorry, the email?**
 7 Q. That email that we have just showed you,
 8 you say:
 9 "I proceeded to check my phone and found
 10 that my Whatsapp messages with Mr McGrail
 11 only go as far back as 3 July 2021."
 12 **A. Mm-hm.**
 13 Q. But your evidence is that in fact when you
 14 received the original request in 2022 you had
 15 already established that, is that correct?
 16 **A. Correct.**
 17 Q. Was it your idea to reach out to SIO McVea
 18 to obtain the missing messages between you
 19 and Mr McGrail?
 20 **A. Yes, it was.**
 21 Q. When did you do that?
 22 **A. I think it was like a moment where it just**
 23 **occurred to me that we had undertaken an**
 24 **investigation and that there was evidence that**
 25 **could support the request, and I reached out to**

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1 **Mr McVea to see whether that existed or not.**
 2 Q. Roughly at what time, when in relation to
 3 that email did you reach out to Mr McVea?
 4 **A. Probably on the day that I received the**
 5 **email from Mr Cruz requesting the**
 6 **information. It was very soon after.**
 7 Q. Why did you not inform the Inquiry in
 8 June or July 2024 that you had lost messages
 9 on your own phone but were pursuing this
 10 alternative line of inquiry?
 11 **A. I didn't feel the need to do so. I thought**
 12 **that I had to follow a process and through**
 13 **counsel we reached out to Mr McGrail's**
 14 **counsel to be able to go down the process of**
 15 **seeking the image of his phone. I am sure**
 16 **whether - our counsel had reached out to**
 17 **yourselves to inform you, but again it didn't**
 18 **occur to me to reach out to yourselves.**
 19 Q. I think if you go up one page, there is the
 20 message from Mr Cruz to Mr Gomez of
 21 Gomez & Co, of course Mr McGrail's lawyer,
 22 saying:
 23 "Please read the email exchanges below with
 24 STI and COP Ullger. Can you please reach
 25 out to Mr McGrail and confirm he has no issue

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1 with exchanges between him and Mr Ullger
 2 being released to STL."
 3 Is that Mr Cruz requesting disclosure from -
 4 well, requesting McGrail's --
 5 **A. Permission.**
 6 Q. ... Mr McGrail's permission, or at least
 7 lack of objection to --
 8 **A. Correct.**
 9 Q. So it is actually, as you say, it is the very
 10 same day that you point that out to Mr Cruz,
 11 that the request goes through a few hours later.
 12 **A. Mr Santos, I could have kept quiet about it**
 13 **and just kept on saying that I didn't have**
 14 **control of the messages, but what I wanted to**
 15 **do is to make sure that we provided the**
 16 **information as soon as we could, and this was**
 17 **an avenue to be able to access it and this is**
 18 **why we went down this route. It was the right**
 19 **thing to do.**
 20 Q. In your experience, we have seen that
 21 email exchange, but generally was Mr
 22 McGrail generally cooperative with the RGP
 23 when they requested his consent to access this
 24 information?
 25 **A. So I didn't have any dealings with Mr**

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<p>1 McGrail myself, it was dealt with between 2 counsel -- 3 Q. Between lawyers, yes. 4 A. Yes, but I understand that there was full 5 cooperation, yes. 6 Q. Now, if we can go to E155, please. These 7 are the messages that the RGP disclosed to the 8 Inquiry in September 2024, and that prompted 9 a further request from the Inquiry to the RGP, 10 and it was in response to that further request 11 that the RGP confirmed that the messages had 12 been obtained from the image of Mr McGrail's 13 phone and not your phone. 14 A. Correct. 15 Q. That confirmation arrived in December 16 2024. Why did you not inform the Inquiry in 17 September 2024 when you disclosed these 18 messages that you had lost access to the 19 messages on your personal phone? 20 A. Again, it didn't occur to me. I am unsure 21 whether our counsel Mr Cruz had reached out 22 to yourselves to tell you that this exercise was 23 happening -- 24 Q. Well ... I will not go into -- 25 A. Into ...</p> <p style="text-align: center;">Page 153</p>	<p>1 as I am aware, the first that the Inquiry learned 2 of this. Paragraph 5 of his fifth witness 3 statement, which is on page E276, and it is the 4 third line on paragraph 5: 5 "For reasons that he does not understand but 6 suspects is as a result of him purchasing a new 7 phone in June 2020, Commissioner Ullger has 8 not been able to retrieve messages from the 9 relevant period from his personal phone." 10 I do not need to read out the rest of it ... 11 A. No, okay. 12 Q. ... but this statement is dated 20 December 13 2024. 14 A. Okay. I took it for granted there may have 15 been communications between yourself and 16 Mr Cruz in respect of: "This is what we are 17 trying to achieve," and I thought that you 18 probably knew about it before. Sorry, can I 19 just go back to as well, in respect of your 20 earlier question about having my phone 21 forensically examined, I think it's important to 22 note here that our digital forensic unit doesn't 23 go into phones to extract information like we 24 expect them to do for this public inquiry, and 25 the digital forensic unit has an insurmountable</p> <p style="text-align: center;">Page 155</p>
<p>1 Q. ... a back and forth. 2 A. Okay. 3 Q. But the Inquiry's position is that the first 4 that it learned of this was in your evidence in 5 December 2024. 6 A. Okay, I thought it had been earlier. 7 Q. I will be corrected -- 8 A. Sorry, I might be wrong. 9 Q. (Pause) We will get to the bottom of that 10 and I will come back to you on that, thank you. 11 A. Sure. 12 Q. Did you consider submitting your personal 13 phone for forensic examination, as 14 Superintendent Wyan has done? 15 A. So no, I didn't, because to do so would 16 mean time, it would mean resourcing and the 17 mere fact that we had an image already would 18 have provided me the details to be able to 19 submit the messages between me and Mr 20 McGrail to yourselves at a far quicker - with a 21 far quicker approach than having to go through 22 the whole process again. 23 Q. Just to come back on that point that we 24 were discussing, the matter is dealt with in Mr 25 Yeats' fifth witness statement. That was, as far</p> <p style="text-align: center;">Page 154</p>	<p>1 amount of work at the moment in respect of 2 other live criminal cases. We have got 3 criminal cases with people on very lengthy 4 police bail simply because we just don't have 5 the capacity or the capability to be able to 6 interrogate computers and phones and all the 7 technical gear that comes with modern 8 criminality. So again, that would have been 9 one of the reasons why I didn't want to go 10 down the forensic route, to put more pressure 11 on our forensic unit to be able to forensically 12 examine my phone when I knew it already 13 existed by work undertaken by SIO McVea. 14 Q. Can I ask you: how many people work 15 within the RGP's IT department? 16 A. So it's not an RGP IT department, the 17 information technology department is run, as 18 we've heard already, by government ITLD and 19 there are two IT officers that work for the RGP 20 but are employed by the ITLD. But if you are 21 talking about the digital forensics unit? 22 Q. We might as well establish that as well: 23 how many are within the digital forensic unit? 24 A. So again this was all about capacity 25 building, and we had an aspiration over a</p> <p style="text-align: center;">Page 156</p>

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<p>1 period of three years to try and rebuild this 2 very specific unit. It means a lot of training, it 3 means a lot of investment in financing and we 4 were going through a journey but we hadn't 5 been very successful in that regard and we 6 only have currently two police officers. When 7 we risk assessed it, we certainly need four to 8 five police officers in that department to be 9 able to do the work that is expected of them. 10 So it's very well under-resourced. 11 Q. My next question to you - I think you have 12 already answered - is do you consider that to 13 be adequate complement? 14 A. It is very difficult to be able to explain to 15 victims of crimes that an offence has been 16 committed, that they are the victim of crime 17 but yet there are delays in getting evidence 18 simply because we don't have the capacity or 19 the capability to investigate the crime, and it 20 goes through a risk process. 21 Q. What happens when one or two of those 22 two individuals is off ill or off duty or on 23 leave? 24 A. You just have the one. 25 Q. If they are both on leave, things just grind</p> <p style="text-align: center;">Page 157</p>	<p>1 since June 2024? 2 A. It does, and it's simply because the Royal 3 Gibraltar Police has produced and provided 4 this inquiry with a huge amount of disclosure 5 material, and I felt that these messages would 6 only maybe support what we know already. 7 Q. What about your discussions with Mr 8 McGrail about the HMIC report? Is your 9 position that those only support what we 10 already have? 11 A. I believe so. Um, I think we ... evidence 12 was given in the previous Public Inquiry of the 13 fact that not enough had happened for the 14 HMIC inspection and that it was a poor 15 inspection, um, so ... and we acknowledged 16 that. And that is reflected in the messages. 17 Q. And does the same apply to your -- 18 THE CHAIRMAN: When you say it was a 19 poor inspection, do you mean it reflected 20 poorly on the force or it was badly 21 constructed? 22 A. Yes, it reflected poorly on the force. 23 THE CHAIRMAN: Yes. 24 A. Yes. 25 MR SANTOS: And in --</p> <p style="text-align: center;">Page 159</p>
<p>1 to a halt. 2 A. So both wouldn't be on leave because we 3 wouldn't allow it, but you may have one on 4 leave and one going off sick. So these are 5 huge concerns and feature very highly in the 6 RGP Force risk register in respect of the risks 7 that we carry. 8 Q. Can we now turn to 873, please, E873, at 9 the very bottom of that page, paragraph 23. 10 You say: 11 "Finally, although I have only seen this 12 disclosure recently, I would add that I do not 13 think the disclosure requested and provided 14 since June 2024 would be of any significant 15 relevance to the PLOI albeit clearly connected 16 to it, save perhaps messages exchanged 17 between me and the then Minister for Justice, 18 the Honourable Miss Samantha Sacramento 19 who had ministerial responsibility for the RGP, 20 who at that material time expressed no 21 discontent over Mr McGrail's performance 22 and indeed expressed surprise how matters 23 developed." 24 Does that remain your view regarding the 25 relevance of disclosure that we have received</p> <p style="text-align: center;">Page 158</p>	<p>1 A. Sorry -- 2 (14.30) 3 Q. Go on, of course. 4 A. Sorry, if I can as well. I think I would like 5 to add as well that I said in my previous 6 evidence that Mr McGrail's approach at the 7 time was to fight crime and he did so robustly. 8 That doesn't mean that the RGP was not 9 performing in other very key areas and 10 strategic business areas. So, um, I think it's 11 important to ... the HMIC was an important, 12 um, that strategic direction for the organisation 13 and maybe we should have done more, but that 14 doesn't mean that the RGP wasn't doing 15 enough already in other areas of business. 16 Q. And just focusing on the relevance point, 17 what we have already discussed, does your 18 position apply equally to your discussions with 19 Mr McGrail about the incident at sea? Your 20 position on relevance of those messages. 21 A. Yes, yes. 22 Q. Now, can we go to E629, please. This is 23 an exchange between you and Mr McGrail 24 where I think it is important to establish that, 25 although there is a reference to a sudden death,</p> <p style="text-align: center;">Page 160</p>

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<p>1 there is no actual sudden death. It is 2 a hypothetical sudden death that had come up 3 in conversation. And Mr McGrail in the 4 second message from the top says to you: 5 "(Spanish text read). Paul Richardson should 6 not investigate the sudden death because he 7 says it is involuntary manslaughter on my 8 part." 9 And you reply: "(Spanish text read). I know, 10 my god, and how the guy, we are in a mess." 11 Or words more or less to that effect. I mean, 12 you can correct my translation of Spanish. 13 Mr McGrail replies: "(Spanish text read). The 14 problem is that he is buddy buddy with the 15 Stipe." And then you reply: "Indeed, too close 16 to him." What did you mean by your 17 messages in this exchange? 18 A. So, I think I have got a context to this 19 because this has nothing to do with this Public 20 Inquiry. It has nothing to do with ... and I 21 smile because it was banter. It was banter in 22 respect of something that had happened to 23 Mr McGrail where an individual was 24 constantly complaining to him and, um, 25 through messaging or calling him or stopping</p> <p style="text-align: center;">Page 161</p>	<p>1 who says to you: "(Spanish text read). He is 2 buddy buddy with the Stipe." And your 3 response is: "Indeed, too close to him." 4 A. Correct, that is right. I think that's what 5 you said earlier. 6 Q. Sorry, I thought I had got it the wrong way 7 round. 8 A. No. 9 Q. So is your evidence that you do not believe 10 that he was too close to the Stipe. Presumably 11 that means the Stipendiary Magistrate. 12 A. Correct. He was, I think they were good 13 friends, but when we talk about professional 14 lines, um, the command team had very strict 15 professional lines at all times and I know 16 Mr Richardson as an individual would never 17 cross those lines. 18 Q. When he -- 19 A. And again I must stress that this was 20 literally banter about the individual that was 21 harassing Mr McGrail at the time. And we 22 were just creating this hypothetical scenario 23 that could happen, um, and just making a joke 24 out of it. 25 Q. Then after that, I only focus on these</p> <p style="text-align: center;">Page 163</p>
<p>1 him. And basically he told this individual, and 2 again this is banter, told this individual to get 3 a life and, um, in conversations I think we had 4 in the corridor or in his office, I can't 5 remember the detail, but basically he said to 6 me that it was going to be my problem now, 7 um, and the banter was about the person taking 8 his life because he told him, "Get a life." And 9 there's nothing sinister about it whatsoever. 10 Q. No, I understand that and I am not 11 suggesting that there is anything sinister in 12 relation to (inaudible), let me that I can that 13 absolutely clear. My question is more about 14 your reaction to that suggestion and your 15 suggestion subsequently: "(Spanish text read). 16 He is buddy buddy with the Stipe." Why did 17 you say that about Mr Richardson? 18 A. So, that's all banter between me and 19 Mr McGrail. I have the utmost respect for 20 Mr Richardson as an individual and as 21 a professional. And that conversation is no 22 reflection of what I think of Mr Richardson at 23 all. 24 Q. Then further down the page, sorry, let me 25 just clarify that. Actually it is Mr McGrail</p> <p style="text-align: center;">Page 162</p>	<p>1 because they are dated 22 April 2020. There 2 are four messages. The next four messages 3 between you are deleted. I believe they are all 4 deleted by you. But just before I ask you the 5 question, I want to point out, in all fairness to 6 you, that they are at 1 pm the next day. Was 7 that a continuation on the same topic or was it 8 an unrelated matter or do you not remember? 9 A. In all honesty, I don't remember. 10 Q. So, do you have any idea why those 11 messages were deleted? 12 A. No, Mr Santos, at all. 13 Q. Now, can we turn to some questions about 14 your work ... sorry. 15 A. Sorry, sir. It would be wrong of me to turn 16 round and say to you that, no, that is about 17 something else. I just don't know. But yes, 18 it's true, it happened the next day. 19 Q. Can we turn now to some questions about 20 your work phone. If we can go to E1069. 21 This is a statement submitted by DC Garcia 22 and we have already gone to this paragraph but 23 I just want to focus on subparagraphs (a) and 24 (b), where he says that he has found 2,733 25 messages. In the image taken from</p> <p style="text-align: center;">Page 164</p>

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<p>1 Mr McGrail's phone, he has found 2,733 2 messages between your personal devices. Is 3 that correct? 4 A. That's correct. 5 Q. And then no messages between 6 Mr McGrail's personal device and your work 7 device. Is that correct? 8 A. That's correct. 9 Q. Did you ever, as far as you recall, 10 exchange messages between your work phone 11 and Mr McGrail's personal phone? 12 A. I can't honestly remember, but if it would 13 have happened, there would have been very, 14 very few. 15 Q. Did you ever exchange messages between 16 your work phone and Mr McGrail's work 17 phone? 18 A. Again, similarly, I can't remember. 19 Q. But -- 20 A. And if there would have been, there would 21 have been very few, if there would have been 22 any. 23 Q. So your evidence is that your predominant 24 means of communication was personal to 25 personal.</p> <p style="text-align: center;">Page 165</p>	<p>1 were lost in that process? 2 A. Not at all. 3 Q. Before you made that transition, or at the 4 time of the transition, did you realise that this 5 would result in your previous messages being 6 lost? 7 A. Not at all, no. 8 Q. After the transition, did you realise that 9 your previous messages had been lost? 10 A. No. 11 Q. Not even when opening the device, there 12 were no WhatsApp messages there, did you 13 not realise that? 14 A. No. 15 Q. Did you make any inquiries around the 16 time of the transition, whether before or after, 17 about how to back up or transfer the messages 18 that were on your Samsung device? 19 A. No, I didn't, no. 20 Q. Why not? 21 A. Quite clearly, Mr Santos, we were dealing 22 with, um, a number of different critical matters 23 around the RGP, not least the resilience issues 24 and, um, developing the RGP in a number of 25 business areas, that I just didn't ... I mean, I</p> <p style="text-align: center;">Page 167</p>
<p>1 A. That's correct, sir. 2 Q. And as far as messages on your work to 3 work phones are concerned, the Inquiry's 4 understanding is that if any did exist, those are 5 no longer available due to the transition from 6 Samsung to iPhone. 7 A. That's correct. 8 Q. Can we now go to E877, please. This is 9 where Mr Yeats deals with the Samsung issue. 10 It is paragraph 12 and then paragraph 26. We 11 went through them this morning, but I am 12 happy for you to read them again if you wish 13 to remind yourself of them. (Pause). 14 A. I am happy to proceed. 15 Q. I am just going to ask you some general 16 questions about it. It is not about the detail. 17 Why did the RGP make the transition from 18 Samsung to iPhone? 19 A. I think Mr Yeats already alluded to it. It 20 was a preference, you know, it was a choice. 21 We preferred the iPhones. I think we all 22 operated on iPhones personally, um, and we 23 just couldn't get used to the Samsungs. 24 Q. Do you have anything to add to Mr Yeats's 25 technical evidence about why the messages</p> <p style="text-align: center;">Page 166</p>	<p>1 wouldn't think about it, it wouldn't occur to 2 me. And I would have hoped that people from 3 ITLD would have been the people appropriate 4 to be doing this for us. But unfortunately, as 5 Mr Yeats explained earlier on this morning, 6 they were not happy to support us in this 7 journey. 8 Q. Given that by that stage the Inquiry had 9 been announced by the Chief Minister in 10 Parliament, why did you not seek to at least 11 preserve your messages with Mr McGrail? 12 A. I didn't even think of it. 13 Q. Now, E319, please. 14 A. I think it's important again that I reiterate 15 to you, Mr Santos, that for me the WhatsApp 16 messages were probably the most irrelevant 17 data that the RGP held, considering everything 18 that we have produced for this Public Inquiry. 19 For me it was more important to produce 20 daybooks which recorded decision making 21 processes, our emails. Those for me were 22 probably the most important, um, pieces of 23 data that we could protect. 24 Q. If we can go to 319, there is the mobile 25 device policy that ... endorsed by Mr McGrail.</p> <p style="text-align: center;">Page 168</p>

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<p>1 We went through it this morning. 2 A. Yes. 3 Q. I am not going to take you through it again, 4 but were you aware of the policy when it was 5 introduced? 6 A. Yes, I was. 7 Q. And when you became Commissioner of 8 the RGP, did you give any consideration to 9 whether this policy needed to be improved or 10 updated? 11 A. Um, so, our policies are reviewed by our 12 corporate services department. So I won't 13 know at what stage whether they may have 14 reviewed it. If you go a bit further down it 15 might tell you. No, okay. So it wouldn't have 16 been reviewed by our corporate services. But 17 we, the Royal Gibraltar Police, had become 18 a learning organisation and we adopted, um, 19 some learning as a result of the Public Inquiry 20 in June of last year. And we have already 21 started to take measures, as you will have 22 heard from Mr Yeats this morning, of creating 23 a better policy that addresses some of the 24 issues, but there is no definitive answer to a lot 25 of the gaps that currently exist and that will</p> <p style="text-align: center;">Page 169</p>	<p>1 the instruction, but it just would have been 2 provided to the department and the process 3 would have been followed. 4 THE CHAIRMAN: Sorry, just let me come 5 back to a question you asked a few moments 6 ago. Do you think that your policy was in fact 7 just lifted from the College of Policing from 8 a pro forma document? 9 A. So, um, one of the recommendations by 10 HIMC was to ensure that any work that we do 11 in respect of best practice in the United 12 Kingdom, we must make sure that as well it is 13 applicable to the Royal Gibraltar Police in the 14 police environment that we work here in 15 Gibraltar. 16 THE CHAIRMAN: Yes. 17 A. So, what they have said to us is never to 18 adopt something which has been adopted for 19 UK policing in its entirety. But I would say, 20 sir, that probably 95 per cent of this policy 21 reflected what is best practice in the UK, yes. 22 THE CHAIRMAN: Is that in fact what 23 happened, do you think? 24 A. Yes. 25 THE CHAIRMAN: Do you think it was just</p> <p style="text-align: center;">Page 171</p>
<p>1 probably continue to exist. 2 Q. And do you have anything to add to what 3 Mr Yeats said about the reasoning for the 4 policy and his findings or the RGP's findings 5 as to the best practice adopted by forces in the 6 UK? 7 A. Correct, um, I think, so Mr Yeats has 8 agreed to share with yourselves some of the 9 policies that currently exist in the United 10 Kingdom. I think what is important here that 11 we also acknowledge is that the Royal 12 Gibraltar Police is a very small force and we 13 depend on the College of Policing in the UK 14 who have researchers and who do a lot of 15 work in the background to support British 16 policing. A lot of policies that UK police 17 forces have come from again research that the 18 College of Policing has undertaken. So this 19 policy would have mirrored in many ways UK 20 police force's best practice and probably 21 recommendations by the College of Policing. 22 Q. When an officer retired under that policy, 23 who was it who gave the instruction for their 24 phone to be wiped? 25 A. Sir, I'm not too sure who would have given</p> <p style="text-align: center;">Page 170</p>	<p>1 lifted, is that right? 2 A. Well, so this happened in 201, sir. So what 3 I suspect happened is that the officer that was 4 tasked to create the policy researched it and 5 produced a policy for us reflecting what is best 6 practice in the UK. I mean, he may have 7 changed here and there and few minor details, 8 but it would have been probably, um, best 9 practice in the UK. 10 THE CHAIRMAN: Yes, okay. 11 MR SANTOS: As far as Mr McGrail's phone 12 is concerned, do you know when 13 Mr McGrail's phone was wiped? 14 A. No, sir. I had no control of that. 15 Q. Would there be any record of Mr McGrail's 16 phone being wiped? 17 A. I'm sure there would be, yes. 18 Q. Is it possible to obtain that record? 19 A. If it exists, yes. 20 THE CHAIRMAN: I think you might be 21 assuming something that is wrong because I 22 rather got the impression from Mr Yeats he 23 was saying that it was the general policy that it 24 was done but there was not any record of any 25 individual phone being wiped.</p> <p style="text-align: center;">Page 172</p>

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<p>1 A. So, I am assuming, if -- 2 THE CHAIRMAN: No, I would not do that. 3 A. Okay. I am assuming, sir, again, the 4 Commissioner of Police does not deal with 5 these minor matters -- 6 THE CHAIRMAN: No, no. 7 A. -- and I wouldn't have any idea whatsoever 8 whether anyone has got any record of it or not. 9 THE CHAIRMAN: I think if you do not have 10 any idea whatsoever, it is better to say so. 11 A. Okay. 12 MR SANTOS: Could I ask then, after today 13 the RGP go and check whether there is any 14 record of it and when it took place? 15 A. So now, if we look on the now, for 16 example, I today have handed in my mobile 17 phone to our digital forensics unit so that they 18 can create an image of it and now that will be 19 handed in to the IT officers who will then 20 undertake the wipe of it so it can be 21 repurposed. That is now. 22 Q. No, I just mean in relation to Mr McGrail's 23 phone, could there be a check at least to see 24 whether there is any record of that and could 25 we be let know one way or another?</p> <p style="text-align: center;">Page 173</p>	<p>1 A. I'm sorry, I just don't understand the 2 question. 3 Q. I am sorry, I could have made it clearer. 4 A. Sorry. 5 Q. You recognise that the RGP has a duty of 6 disclosure in relation to relevant documents. 7 A. Yes, absolutely. 8 Q. But we have also seen that there are mobile 9 device policies and force orders that require 10 the wiping of phones. Focusing on the policy, 11 would you say that the duty of disclosure is 12 subject to the mobile device policy or would 13 you say that the duty of disclosure exists and 14 cannot be trumped by the policy? 15 A. The duty of disclosure exists and certainly 16 is very important for us. I think what is very, 17 very important that we also say, that I reiterate 18 what Mr Yeats gave in his evidence today, that 19 matters around WhatsApps are very 20 insignificant in policing, very insignificant, 21 because all of our data is mainly collected 22 around emails, meetings where records are 23 made in our daybooks and then our platform, 24 our Cyclops platform, which captures all the 25 evidence in that regard, so.</p> <p style="text-align: center;">Page 175</p>
<p>1 A. We can check, yes. 2 Q. Thank you. 3 THE CHAIRMAN: I thought Mr Yeats said 4 this morning. 5 MR SANTOS: I thought that he did as well 6 perhaps. But we will check. 7 THE CHAIRMAN: Yes. 8 MR SANTOS: Maybe we will review the 9 evidence at the end and if necessary we will 10 take the matter up with you, Mr Ullger. 11 A. Okay. 12 Q. You do recognise obviously that the RGP is 13 under a duty of disclosure in relation to 14 prosecutions. 15 A. Yes. 16 Q. And would you accept that in theory that 17 could extend to WhatsApps exchanged 18 between police officers? 19 A. Yes. 20 Q. So when we have policy documents, 21 a force order that requires the wiping of 22 records, would you say that that is subject to 23 the duty of disclosure, or would you say that 24 those trump the duty of disclosure of RGP 25 officers?</p> <p style="text-align: center;">Page 174</p>	<p>1 Q. Did the RGP take any steps to preserve the 2 materials on Mr McGrail's phone, given the 3 controversial circumstances of his departure 4 and his involvement in Operation Delhi? 5 A. Not that I know of, no. 6 Q. And when Mr Richardson retired, did the 7 RGP take steps to preserve materials on his 8 phone that related to Operation Delhi? 9 A. Not that I know of, no. 10 Q. Now, do you maintain the position in your 11 witness statement that the RGP has given 12 comprehensive disclosure at all times? 13 A. I do, yes. 14 Q. Can I now turn to the contents of some of 15 the messages in the new disclosure because I 16 have some questions which may shed light on 17 the issues that we considered already in the 18 main inquiry hearing. First of all, I want to 19 focus on the incident at sea. It appears from 20 the messages exchanged between you and 21 Mr McGrail that you were not in Gibraltar at 22 the time of the incident. 23 A. That is correct. 24 Q. Is that correct? And you were not on duty, 25 obviously.</p> <p style="text-align: center;">Page 176</p>

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<p>1 A. That's correct, I was away from Gibraltar. 2 Q. Can we now look at E502, please. Row 3 1031, halfway down the page, has a message 4 from you at 09.49. Now, I should point out 5 that that is UTC or GMT, so our calculation is 6 that that message would actually be at 10.49 7 Gibraltar time. And there is a message from 8 Mr McGrail -- 9 THE CHAIRMAN: Do you not mean 9.49 10 Gibraltar time? 11 MR SANTOS: Sorry, 10.49 Gibraltar time. 12 My calculation is because that time is in GMT. 13 THE CHAIRMAN: Okay. 14 A. I would have been four hours ahead where 15 I was. 16 MR SANTOS: I see. The message comes 17 from Mr McGrail to you and he says: 18 "Here with AG in my office. Collision 19 happened 6 NM east of the airport/La Linea 20 beach." 21 And your response is: 22 "6 NM is past the 3 NM instructions, but the 23 airport/La Linea median line I can live with. If 24 the chase is long and intense, coxswains would 25 not be looking at radar for co-ordinates, they</p> <p style="text-align: center;">Page 177</p>	<p>1 A. Correct. 2 Q. Now, what did you mean when you said: 3 "The airport/La Linea median line I can live 4 with"? 5 A. So, if you take the airport, the beach by the 6 airport, and the La Linea beach, where the 7 border fence is, what I meant is that if the 8 officers had gone just slightly into Spanish 9 waters, and we are talking about 10, 15, 20 10 metres, because of the chase, I could live with. 11 That's what I meant. 12 Q. Why could you live with that? 13 A. Because it is part and parcel of a high 14 speed chase and, um, the officers are 15 concentrating on the dynamics, the risks, and, 16 you know, you've got to bear in mind that the 17 risks that they take are quite high. So, you 18 know, if they were chasing a vessel which was 19 literally on the borderline, I could live with 20 a couple of metres in and out of ... into 21 Spanish waters, yes. That's what I meant. 22 Q. Can I just take you up to 1028, please. 23 This is a message from Mr McGrail to Ullger 24 a little bit earlier that morning, at 8.05. And 25 we think that that is 9.05 Gibraltar time. He</p> <p style="text-align: center;">Page 179</p>
<p>1 would be concerned with the chase and vessel 2 in front." 3 Was your understanding from Mr McGrail's 4 message that the collision had happened 5 outside of BGTW? 6 A. So, my understanding was that it happened 7 outside British Gibraltar Territory Waters, but 8 if you look at the message where it says 9 airport/La Linea, and I talk about the median 10 line, what I thought at the time was that it was 11 literally six miles east off Gibraltar. And there 12 would have been very minor distance either 13 between La Linea beach and the airport. So I 14 took it that it was literally on the line, um, on 15 the borderline, if that makes it easier for you. 16 The frontier borderline all the way out to 6 17 nautical miles out at sea. Which we now know 18 is not the case because it happened further into 19 Spanish waters. 20 Q. And it is fair to say as well that the 21 borderline does not go in a straight horizontal 22 line. 23 A. It doesn't. It doesn't. 24 Q. It sort of goes down towards Gibraltar 25 waters.</p> <p style="text-align: center;">Page 178</p>	<p>1 says to you: "(Spanish text read). I swear I am 2 going it hit somebody. (Spanish text read). 3 Do not see Paul R or you do not want to know 4 Paul R. Already talking of potential corporate 5 manslaughter, etc. I have really had to assert 6 myself here." 7 And your response a minute later: "FFS, does 8 he know how fucking difficult it is to operate 9 out there?" 10 What were you referring to there? 11 A. So, obviously Mr McGrail was ... so, it is 12 apparent that Mr Richardson was informing on 13 Mr McGrail of issues around corporate 14 manslaughter. Um, and what I was referring to 15 was that the, um, area of this, the policing at 16 sea is a very difficult environment to operate 17 in and this carries a number of risks and it is 18 very difficult. It is not easy to operate in. So 19 my view was that we should not be 20 considering straight away corporate 21 manslaughter without having the full facts. 22 Q. Now, can I take you to E511, please. This 23 is a message from Mr McGrail to you on 15 24 March, about a week later, where he says: 25 "I am so (Spanish text read) SOP of the marine</p> <p style="text-align: center;">Page 180</p>

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<p>1 section. I am so angry with the SOP of the 2 marine section done by Brian F and Nolan 3 apparently. So, so shabby in presentation. In 4 blank paper, no letterhead, no author, no date, 5 shambolic. Such basic things that even 6 a probationer would not miss. (Spanish text 7 read). In the end HMIC is right on the 8 negative comments vis leadership. We can 9 fucking produce a proper set of instructions." 10 And you respond: "Indeed that was so [I think 11 you mean] poor." 12 A. Correct. 13 Q. "(Spanish text read). But Wayne has 14 responsibilities here too and should have had 15 a better grip. I have said it before, not 16 impressed with Nolan either." 17 Were you disappointed with the marine section 18 standard operating procedures and leadership? 19 A. At the time, um, there were a set of 20 instructions that were not up to standard, 21 certainly not up to RGP standard, yes. 22 Q. There are some exchanges which refer to 23 the HMIC report. E495, we have just seen one 24 reference to it, but E495 is another, 5 March. 25 So this is going back in time a little bit, just</p> <p style="text-align: center;">Page 181</p>	<p>1 And I think our 2022 inspection showed that in 2 order to adopt the strategic risk management 3 of HMIC recommendations required a lot of 4 work and it required a lot of implementing. 5 And it wasn't just a tick box exercise. So, um, 6 again in hindsight, both Mr Yeats and 7 Mr Richardson were correct in their views, 8 um, of not being able to do the work like 9 Mr McGrail and even I wanted to happen at 10 the time. 11 Q. Can I go to E1102 now, please. This is 12 a voice note transcript from a voice note that 13 was sent by Mr McGrail to you on 28 14 April 2020. And he says: "(Spanish text read). 15 Listen, Rich, we are going to have to explain 16 why we never worked on the other 17 recommendations. (Spanish text read). We 18 are going to explain, for example, lack of 19 resourcing, challenges gone in with the IT 20 system and a couple of others that obviously 21 focus on the money val. Big, big operations 22 that we have to dedicate a lot, a lot of time and 23 energy. So there is loads of reasons why we 24 can say that we could not allocate that much 25 time to it and then I will remind them that the</p> <p style="text-align: center;">Page 183</p>
<p>1 before the incident at sea. And it is 986, the 2 second from the top: 3 "HMIC (Spanish text read). HMIC is taking 4 me through the streets of sorrow, battling 5 against Cathal and Paul. It is an uphill 6 struggle for me. Get your arse back." 7 You reply: "Yes, I told you that they were 8 (Spanish text read) pathetic [is our translation 9 of that] about it, not putting the importance to 10 it and saying we were overreacting. They do 11 not see the damage it can do." 12 Presumably this was a reference to the HMIC 13 report. 14 A. That is correct, yes. 15 Q. Why did you think it could do damage? 16 A. I think it has been palpable already. It's 17 demonstrated itself. Um, so what happened 18 here was that Mr McGrail wanted to start 19 adopting procedures and processes to start 20 implementing work towards achieving the 21 recommendations by HMIC. And, um, I think 22 in hindsight now, and in fairness to both 23 Mr Yeats and Mr Richardson, they were right 24 in respect of that we couldn't do what we were 25 being asked of in a couple of weeks or months.</p> <p style="text-align: center;">Page 182</p>	<p>1 inspection was not meant to have been 2 commissioned so soon, but it was mainly 3 arising from the staff survey that we wanted to 4 them to come in. (Spanish text read). Words 5 so I do not have any problem explaining." 6 Did you agree with these explanations offered 7 by Mr McGrail? 8 A. So, if we go to my original evidence in the 9 Public Inquiry last year, you may remember 10 that we told Mr McGrail to ask HMIC to do 11 an inspection of us was not the right thing to 12 do. Um, and he disagreed and we went ahead 13 with it. These are quite, um, these are reasons 14 that he is giving to explain why we haven't 15 achieved, um, the HMIC recommendations 16 and there is nothing sinister about it at all. It is 17 true to say that we were suffering in respect of 18 resources. We had a really poor IT system and 19 that is reflected in our annual surveys. We 20 were doing a lot of work in respect of money 21 val. And we were also fighting crime. We 22 were doing a lot of cross-border fighting 23 (16.00) 24 crime, which was very important to us. So 25 what he was just doing is just going over some</p> <p style="text-align: center;">Page 184</p>

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1 **of the details in the event that we needed to**
 2 **explain what had happened.**
 3 Q. What is your reaction to the government
 4 parties suggestion that Mr McGrail was
 5 seeking to come up with explanations after the
 6 event for failing to meet HMIC requirements.
 7 **A. Not at all. I think Mr McGrail fully**
 8 **accepted that we hadn't, you know, we hadn't**
 9 **achieved - I mean, again, we have got to go**
 10 **back to the original public inquiry where I**
 11 **explained that Mr McGrail had a debrief from**
 12 **HMIC and HMIC said that they were happy**
 13 **with some of the prose but they would make**
 14 **further recommendations, and on that day**
 15 **when they left his office, I shook his hand and**
 16 **I said: well done, we've cracked it. And then**
 17 **we got the report and the report was not the**
 18 **best of reports and I think Mr McGrail was**
 19 **very alive to it. You know, he is a very mature**
 20 **individual and he accepted it but obviously**
 21 **there were reasons behind why we didn't do**
 22 **some of the recommendations.**
 23 Q. Can I go to, now, E767, which is the
 24 bottom of the page? Sorry, at the bottom of the
 25 page it is a message on 1 June 2020. So,

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1 coming towards the end of Mr McGrail's time
 2 at the RGP. 1 June he says, "I would ask a big
 3 favour and I know you are already working at
 4 it but the more that is done on the HMIC
 5 recommendations within the next couple of
 6 weeks, the better." Over the page, you reply --
 7 we have got to skip -- because Mr McGrail
 8 sends another message talking about the MET
 9 report but then in the next message you say
 10 "...(Spanish text read), I can't believe it. The
 11 quicker they speak to CM the better.
 12 Absolutely mate. I told you today I'm doing
 13 absolutely everything I can do to push things
 14 to show that we are dealing with them
 15 proactively." What steps had you taken to try
 16 to push things?
 17 **A. (After a pause) So, this is linked to**
 18 **obviously the HMIC inspection and what we**
 19 **had started to do is we created a road map to**
 20 **start addressing the gaps, and minor - quick**
 21 **fixes are things that Mr McGrail wanted us to**
 22 **try and achieve.**
 23 Q. Can I just interrupt you because I think in
 24 fairness to you, actually I should put the
 25 message before - I should read that message as

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1 well because on reflection I want you to
 2 consider which of these two messages you are
 3 responding to in your message. The message
 4 preceding that says, "John F [presumably
 5 Field] spoke to me a while ago. The marine
 6 expert has agreed with most of the
 7 observations we made of the draft. So has the
 8 MET team. So, the final report won't be as
 9 harsh." You say --
 10 **A. So, that has got to do with the**
 11 **...(Inaudible)**
 12 Q. Exactly so --
 13 **A. Right.**
 14 Q. It is not clear to me which of those
 15 messages you are responding to when you say,
 16 "The quicker they speak to the CM the better
 17 ... I told you and --
 18 **A. Sorry, Mr Santos, can we just go back up**
 19 **to 2521 again so I can --**
 20 Q. Yes.
 21 **A. - give it a quick...**
 22 Q. That is clearly referring to HMIC.
 23 **A. (After a pause) Both messages that Mr -**
 24 **obviously have nothing to do, one with the**
 25 **other.**

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1 Q. No.
 2 **A. They are completely different. Certainly**
 3 **what my message was - sir, can I just go back**
 4 **down to my message? So, that has got to do -**
 5 **yes, that's got to do with the HMIC that we are**
 6 **trying to do absolutely everything to adopt**
 7 **some of the recommendations, but again, like I**
 8 **have said in my evidence, that as we began to**
 9 **get to grips with the work that we were**
 10 **required to do, we started realising that the ask**
 11 **of Mr McGrail was too big because a lot more**
 12 **had to be done and it was going to take us far**
 13 **more time than to do the quick fixes.**
 14 Q. Do these messages show that you and Mr
 15 McGrail were concerned by the criticism
 16 leveled at the RGP in the HMIC report.
 17 **A. I wouldn't say that we were concerned. I**
 18 **think we were disappointed and I think it was**
 19 **embarrassing as well at the same time because**
 20 **no one likes to be told that you have failed in**
 21 **certain areas. So, what we did as the mature**
 22 **organisation I think that we are, is we started**
 23 **to try and address them.**
 24 Q. Now, can I move to E742, please, and it is
 25 the bottom of the page. There is a message

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<p>1 there from you to Mr McGrail on 15 May at 2 4:45 where you say "Que me te? How did it 3 go?" and his response, "All good-ish. Too 4 much to explain by text. Chill out, will chat 5 on Monday." If things had gone badly at the 6 meeting, would you have expected Mr 7 McGrail to have told you that in the message? 8 A. Probably, yes or he would have called me. 9 Q. Did you speak about the matter on 10 Monday? 11 A. I can't honestly remember if we did. We 12 probably did but I can't remember what we 13 discussed, and equally, I can't remember 14 whether we maybe had a telephone 15 conversation on the Saturday or the Sunday. 16 Q. Do you recall what Mr McGrail told you 17 about that meeting? 18 A. I can recall bits of it. I think this is 19 something that Mr Yeats and I have discussed 20 over the past few months, over the years, is 21 that we have read so much over the past few 22 months that at times we find that we might be 23 conflating what happened on a certain date, 24 but certainly I can remember that he had gone 25 to a meeting and they had had their</p> <p style="text-align: center;">Page 189</p>	<p>1 because I can't remember exactly whether it 2 was an email that he had received, a 3 conversation that he had had, or an instruction 4 he had received. I have no idea. I can't 5 remember. 6 Q. Do you have any recollection of Mr 7 McGrail telling you by that point that he was 8 considering retiring? 9 A. I think Mr McGrail was very worried of 10 the position that he found himself in. As soon 11 as he had had the conversation with the Chief 12 Minister on 12 May. There was an element of 13 nervousness around him, and worry. 14 Q. You say that he had "our" full support. 15 Who were you referring to by saying "our" full 16 support? 17 A. The command. 18 Q. Was that full support in terms of him 19 staying in his post? 20 A. Yes. You have got to remember that, again, 21 we only know of what he had been telling us, 22 and he had our full support, yes. 23 Q. At various points over the next few days, 24 Mr McGrail sent you messages about how he 25 was feeling. So, on 751 you ask him, towards</p> <p style="text-align: center;">Page 191</p>
<p>1 discussions. The exact detail, I can't 2 remember. 3 Q. Can we now go to 747, please? 4 A. This is 20 May 2020, and you message Mr 5 McGrail, the third message from the top. 6 "Mate, hate seeing you like this, let's not talk 7 about you leaving but just the things that we 8 can start to turn things round for us. You have 9 our full support and wouldn't want it any other 10 way. You have been inspirational these past 11 few months and that says a lot for you as an 12 individual. Be strong mate, big hugs." Mr 13 McGrail, replies, "Rich, thanks mate. It means 14 a lot. I'm, just being realistic of what is likely 15 to happen. It's a ruthless world that these 16 people live in. Certainly not ours. My 17 conscience is very peaceful. I mean that." 18 Why did you say: "Let's not talk about you 19 leaving"? 20 A. So, I can't - I can't remember what 21 happened before for that message to happen, 22 but certainly the build up towards Mr 23 McGrail's eventual departure, it was like a 24 build up to something big happening and 25 again, I can't say what made me say that</p> <p style="text-align: center;">Page 190</p>	<p>1 the bottom, "Morning mate, hope you're 2 okay." He says, "Coping mate, thanks. 3 Longing for this nightmare to end." That is on 4 24 May. Then 756, he says at the top of the 5 page, "On edge, wanting this over. Let's see 6 what reaction I get from GPA to the lawyers 7 letter." - 28 May. What was your 8 understanding of these messages from Mr 9 McGrail in terms of his wishes? 10 A. Well, I think we have got to remember that 11 - I forget the date, where he was issued the 12 section 15 letter by the Chief Minister. I think 13 it was the 19th, was it? It was the Thursday? 14 Q. The -- 15 A. The section 15 letter. 16 Q. For Kram? 17 A. For Operation - for Kram, HMIC. 18 Q. Yes. 19 A. Then he -- 20 Q. It is 21 May. 21 A. 21 May. Then he received the letter from 22 the GPA asking him to retire. I think you have 23 got to - if you look at both at the same time 24 and subsequently, I think Mr McGrail found 25 that he no longer had the confidence of the</p> <p style="text-align: center;">Page 192</p>

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<p>1 Chief Minister, of the Governor at the time, the 2 Attorney General, and the police authority, so I 3 think Mr Yeats alluded to it earlier as well. 4 You know, he had lost the four pillars that we 5 would go to for support. He didn't have none 6 of that, and the most obvious and probably the 7 easiest way would be for him to leave the 8 RGP. But most important to Mr McGrail was 9 obviously that he would leave with his head 10 high and that he wouldn't lose any of his 11 pension benefits. 12 Q. Did he say anything to you, at that point, 13 about how he thought the nightmare could 14 end? 15 A. At that stage it was a discussion between 16 his counsel, the acting Governor, the Chief 17 Minister and the Gibraltar Police Authority, so 18 -- 19 Q. Well, can I put it in a different way? Was 20 your understanding that at that stage he wanted 21 to remain in his post or that he wanted to get 22 out on good terms? 23 A. I honestly thought that he wanted to stay in 24 his post, yes. But at the same time, we have to 25 understand that he was already facing a very</p> <p style="text-align: center;">Page 193</p>	<p>1 wider government position, seeing that we did 2 a lot of business with the Ministry of Justice at 3 the time. 4 Q. So, are you saying that it was your 5 suggestion? 6 A. Correct. Yes. 7 Q. In what capacity did you approach Ms 8 Sacramento? As Mr McGrail's friend, or 9 officially with your RGP hat on? 10 A. This was a conversation that was had 11 before the Covid pandemic SEG meeting. It 12 was had in the kitchen where she closed the 13 kitchen door and we had a conversation about 14 Ian's position - sorry, Mr McGrail's position, 15 and I wanted to try and get the take to see what 16 she understood of what was happening and she 17 said that there had been a discussion in cabinet 18 and that she had full confidence and that she 19 had no issue with Ian - sorry, Mr McGrail. 20 And that she worked very well with him -- 21 Q. I am sorry to interrupt you because I will 22 take you to the voice note that you played. 23 A. Okay. 24 Q. I am just asking, first of all, before the 25 conversation took place, as you approached,</p> <p style="text-align: center;">Page 195</p>
<p>1 difficult situation where he had the Chief 2 Minister, the interim Governor, the GPA and 3 the Attorney General against him and he found 4 himself in a position that was untenable. No 5 one would want to finish their career like Mr 6 McGrail did. 7 Q. Can I then, on the same page at 756, the 8 penultimate message. You say, "... (Spanish 9 text read)..." Meaning, I will speak to you in 10 due course. Was this a reference to Samantha 11 Sacramento? 12 A. That's correct. Yes. 13 Q. Had you agreed with Mr McGrail that you 14 would try to talk to her? 15 A. So, Mr McGrail used to attend the morning 16 briefs - so at the time Royal Gibraltar Police - 17 Gibraltar was going through the Covid 18 pandemic and Ms Sacramento would be 19 chairing the SEG and Mr McGrail would 20 attend those meetings, but obviously Mr 21 McGrail was now going through this process 22 and I started attending those meetings for him. 23 I had informed him that I would speak to 24 Samantha Sacramento to see if she had a take 25 on what was happening to understand the</p> <p style="text-align: center;">Page 194</p>	<p>1 what hat did you consider yourself to be 2 wearing? 3 A. I think you wear both hats, Mr Santos. 4 Yes. 5 Q. Can we look at E1106, which is a voice 6 note that you sent on the same - on the 29th. 7 This is a voice note, so you say, "So 8 essentially, I followed into the kitchen and we 9 had a conversation on our own, a good 10 conversation for about 10, 15 minutes. She 11 claimed not to know absolutely nothing about 12 it. She was really shocked. She knew there 13 was something going on with regards to the 14 incident at sea but not with regards to HMS at 15 all. Erm, completely shocked with regards to 16 the asking to resign and that the GCG to retire 17 and the GPA were involved. Erm, she 18 obviously didn't want to talk too much and she 19 said Richard ... (reads Spanish text)... this is 20 between Samantha and Richard, nothing else 21 at this conversation ... (reads Spanish text)... 22 but she confirmed what she told you with 23 regards to deli and that mmm, she sympathised 24 with you in that regard because she thought 25 you were an honest person with a lot of</p> <p style="text-align: center;">Page 196</p>

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<p>1 integrity. I told her about the fact that the best 2 - the best scenario here was what you were 3 looking - was you wanted to retire now 4 because your position was untenable with all 5 individuals for that matter and that you wanted 6 to leave the organisation but maintain your pay 7 and to have your retirement package in two 8 years' time. And I asked, I said, look, this 9 conversation you need to be having it with 10 Charlie Mike(?) and she said that she would 11 but she said that she hadn't seen him for a 12 while and that there had been very little 13 conversation and she said that she was 14 completely blinded with regards to what's 15 happened and the letters." Is that an accurate - 16 it is your voice note but I do want to ask you to 17 confirm in evidence that that is an accurate 18 account of the conversation. 19 A. It is. Yes. 20 Q. Had Mr McGrail previously communicated 21 to you that he thought his position was 22 untenable? 23 A. We had spoken about it, yes. 24 Q. Who was the individual "all individuals" 25 that you were referring to?</p> <p style="text-align: center;">Page 197</p>	<p>1 report was not the best report but that it was 2 something that we could work at together. 3 Q. During this conversation, did she express 4 to you that she had lost confidence in Mr 5 McGrail? 6 A. No, she didn't at all. 7 Q. Did she suggest that anybody else in 8 Cabinet, apart from the Chief Minister, of 9 course, her lost confidence, to you - had lost 10 confidence in Mr McGrail? 11 A. Sorry? 12 Q. Sorry, let me say that again. Did she 13 suggest that anybody else in Cabinet had lost 14 confidence in Mr McGrail? 15 A. No, she did not. No. 16 Q. Now, can we go to 1081, please? This is 17 the statement provided by Ms Sacramento, the 18 former Minister for Justice, to the Inquiry. At 19 64 to 66. I am not going to read them all out, 20 but she suggests that you were -- 66, three 21 lines from the top, she says, "I think that their 22 hope was that tempers had settled and I could 23 somehow intervene." Did you suggest, or was 24 your intention that Ms Sacramento should 25 somehow intervene?</p> <p style="text-align: center;">Page 199</p>
<p>1 A. Where to, sorry? 2 Q. Sorry, let me just take you to the 3 specific.... It is where you say about just over 4 halfway down, I think Mr Triay is pointing it 5 out now. 6 A. Yes. The individual would have been the 7 Chief Minister. 8 Q. With "all individuals" for that matter -- 9 A. Correct. 10 Q. -- is a reference to whom? 11 A. It would have been the interim Governor, 12 the Attorney General and the Gibraltar Police 13 Authority. 14 Q. You say that Ms Sacramento had alluded to 15 the incidents at sea being an issue in Cabinet. 16 A. Correct. 17 Q. How did she allude to that being an issue 18 in Cabinet? 19 A. Again, she didn't disclose much but she 20 said that there had been a conversation in 21 Cabinet and that they had talked about the 22 incident at sea but she didn't go into any depth 23 whatsoever. 24 Q. What did she say about the HMIC report? 25 A. Again, that the, you know, the HMIC</p> <p style="text-align: center;">Page 198</p>	<p>1 A. She was the Minister for Justice and she 2 was the Minister that we undertook a lot of 3 policing business with, and I thought she was 4 an important figure in government, to be able 5 to support us and to understand what was 6 happening better. So, I thought she was more 7 of an ally to support us in trying to assist Mr 8 McGrail or trying to get us back to a table 9 where we could communicate and discuss 10 where we went wrong and move on from 11 there. That was my hope. 12 Q. Have you had the chance to consider Ms 13 Sacramento's evidence? 14 A. I have. Yes. 15 Q. Do you agree with her recollection of your 16 conversation? 17 A. Yes, I would say that she did say that she 18 would try and help, but as far as where that 19 help would take us, it was very much in the air. 20 Q. Now, can we just go on to E761 now, 21 please? The penultimate message on that page 22 is one on 29 May at 7 pm; the day that the 23 letter goes from Mr McGrail's lawyers to the 24 GPA. You say to Mr McGrail, "Mate, had a 25 text from Minister. She's trying to make</p> <p style="text-align: center;">Page 200</p>

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<p>1 contact with him but hasn't been able to see 2 him face to face." That text that you received 3 from the Minister, would that have been on 4 your personal or on your work phone? 5 A. On my personal phone. 6 Q. Have you been able to obtain that 7 message? 8 A. No. No, I haven't. 9 Q. 765. The penultimate message, again. 31 10 May 2020. Mr McGrail, to you, "Rich, don't 11 pursue the matter with S again, at least not for 12 now. Will explain more tomorrow. Cheers 13 mate. If you have been in touch with ...(reads 14 Spanish text)... [don't worry, no worry] but 15 don't insist on it." Do you know why Mr 16 McGrail asked you to stop pursuing the 17 matter? 18 A. If I remember correctly, I think it was 19 advice that he had received from his counsel. 20 Q. Did you stop pursuing the matter? 21 A. Yes. 22 Q. Then 786. This is 6 June 2020. Mr 23 McGrail messages you at 11:13. The very first 24 message. "I can't see them forcing a section 25 13. Do you?" And there is a couple of</p> <p style="text-align: center;">Page 201</p>	<p>1 Q. Can we just go to E168, please? I am 2 taking this a bit out of the sequence because I 3 have not -- I jumped over it before and I have 4 just got enough time to deal with. On 26 May 5 2020, you said Mr McGrail a phone number 6 for Matt Parr. I believe he was the HMIC 7 inspector. Is that correct? 8 A. That's correct. Yes. 9 Q. You say, "Richard, Matt Parr is happy to 10 support Ian - sorry. 11 A. That's a -- it's a message from HMIC to 12 me. 13 Q. Correct. Sorry. 14 A. So, it would have been a message by Paul 15 Holewell. You will see the PH at the top. So, 16 Paul Holewell was the inspector that came to 17 Gibraltar to carry out the inspection. 18 Q. He says, "Richard, Matt Parr is happy to 19 support Ian and would welcome a call from 20 him at his convenience regarding recent 21 developments concerning his position. Paul." 22 And you reply, "Hi, Paul, thanks ever so much. 23 I shall pass this on to Ian. Not the best of days 24 these past few." Paul: "Do you have Matt's 25 mobile number? We don't seem to have it."</p> <p style="text-align: center;">Page 203</p>
<p>1 messages that are not - we are not concerned 2 with because I think they are referring to 3 previous messages. Then, penultimate 4 message you say "At all, mate. It would be a 5 travesty if they did and really make them look 6 bad in light of the previous attempt. I'm sure 7 that your message to DG and the response to 8 the GPA by your lawyers will give them a 9 solution. I feel so bad for you mate. It's been 10 one of the worst months of my life and for you 11 ...(reads Spanish text)..." You say -- I just 12 wanted to ask you about where you say, "It 13 would be a travesty if they did and really make 14 them look bad in light of the previous 15 attempt." What did you mean by the previous 16 attempt? 17 A. The first letter issued by the GPA. 18 Q. The government parties submit that you 19 provided unconditional support for Mr 20 McGrail during this period. Do you agree 21 with that suggestion? 22 A. At the time I had no other information at 23 all, as well, from anyone else, and I did 24 provide him our unconditional support. Yes, 25 we did. And I did.</p> <p style="text-align: center;">Page 202</p>	<p>1 We then see [him] passing that number on to 2 Mr McGrail. Had you spoken to Mr Parr or 3 anyone else at the HMIC? 4 A. So, I didn't speak to Mr Parr but I spoke to 5 Mr Holewell and it was a conversation about 6 the fact that Ian -- sorry, Mr McGrail was 7 going to -- was going to leave the RGP or had 8 left. When was this message sent? Sorry. 9 Q. I think this is the 26 May 2020 but I will 10 just get that double checked. 11 A. And essentially because one of the reasons 12 why we had the section 15 and Mr McGrail's 13 position was becoming untenable, what our 14 discussion was about was whether a report of 15 this -- the HMIC report findings on the Royal 16 Gibraltar Police by the HMIC, if this would 17 have happened to a Chief Constable in the 18 United Kingdom, would it have cost him his 19 job. And Paul Holewell said no, it wouldn't 20 have. And on that basis we thought it was 21 important that Mr McGrail would speak to 22 Matt Parr. 23 Q. I am just trying to find, for completeness, 24 the message where you pass that on to Mr 25 McGrail. E169. Thank you to Ms Williams</p> <p style="text-align: center;">Page 204</p>

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<p>1 for pointing that out. That is your message 2 with Matt Parr. 3 A. Yes. Mmh. 4 Q. Then, finally, I just want to go to E1114, 5 please. This is the Concerns WhatsApp group 6 which you have disclosed messages from, and 7 which was set up by the Chief Minister. That 8 group contained the Chief Minister, the 9 Governor, not Mr Pyle, but his -- 10 A. Sir David Steel. 11 Q. Sir David Steel. 12 A. Correct, and myself. 13 Q. And yourself, yes. Now, I just wanted to 14 ask you this: are the messages at E1114 and 15 E1115 the full extent of the messages on the 16 Concerns WhatsApp group? Or are there 17 others in that group? 18 A. There are others. 19 Q. Is there a reason why you have disclosed 20 these and not others? 21 A. Can I just -- can we go down so I can just 22 read them again and refresh my memory on 23 that. 24 Q. Yes. 25 A. So, these were disclosed because of the</p> <p style="text-align: center;">Page 205</p>	<p>1 Q. At E1108, paragraph 6, you state that: the 2 WhatsApp group created by the Chief 3 Minister, which included His Excellency the 4 Governor, Sir David Steele and I had made 5 concerns with the RGP crest with exchanges 6 with the Chief Minister dated 19 January 2023, 7 and I, where Mr Picardo raised numerous 8 allegations of criminality against Mr McGrail 9 made by alleged whistleblowers. Do you 10 mean by this that Mr Picardo used this 11 WhatsApp group to raise the allegations of 12 criminality against Mr McGrail? 13 A. Yes, he did. 14 Q. Those allegations that you are referring to, 15 are those contained in the messages that you 16 have disclosed? 17 A. Yes. 18 Q. Are they contained in any other messages 19 from them? 20 A. No. 21 Q. Okay. Thank you. I have no further 22 questions. I do wonder though whether that is 23 an opportune moment? 24 THE CHAIRMAN: Yes. Plainly. We will 25 have a short, short break.</p> <p style="text-align: center;">Page 207</p>
<p>1 Government's assertions that -- 2 Q. Apologies, sorry. Let us just get the right 3 document up. It is E1116. Not E1114. Yes. 4 There, sorry. They commence on 17 January, 5 which is when the group is created. 17 6 January 2023, and the final message that we 7 had is 19 January 2023. Sorry if I interrupted 8 your -- my question was whether that was the 9 full extent of them; you said it was not, and I 10 asked why would some have been disclosed 11 and some not. Thank you. (After a pause) 12 So, are you able to assist with why these -- I 13 think your evidence is that these are not the 14 entirety of the messages from that group. 15 A. That's correct. 16 Q. Is there a reason why you have disclosed 17 some of the messages and not others? 18 A. So, these are messages in respect of the 19 government's claims that I was too close to Mr 20 McGrail and this was my opportunity to 21 explain a number of factors which were -- 22 which was totally wrong on their assertion. 23 Q. So, your position is that other messages in 24 this group are not relevant to this inquiry. 25 A. Not to this inquiry, no.</p> <p style="text-align: center;">Page 206</p>	<p>1 (Adjourned for a short time) 2 (15.31) 3 (Short break) 4 (15.43) 5 THE CHAIRMAN: I am not going to time 6 you to the minute, Sir Peter, but I have been 7 asked to point out that in general terms we 8 have allowed an hour for these questions and I 9 am not going to hold anyone to the last minute. 10 It is now 15.40, we will go on until 16.40 or 11 thereabouts if necessary. 12 SIR PETER CARUANA: Sir, are you 13 suggesting that I only have half an hour? 14 THE CHAIRMAN: No, I am not suggesting 15 anything except -- 16 SIR PETER CARUANA: Alright, thank you, 17 sir. 18 THE CHAIRMAN: -- between you, you have 19 got an hour. 20 SIR PETER CARUANA: Yes, oh alright, I 21 see. That is what I thought. 22 THE CHAIRMAN: Starting now. 23 SIR PETER CARUANA: Okay, sir. 24 Questioned by SIR PETER CARUANA 25 Q. Good afternoon, Mr Ullger.</p> <p style="text-align: center;">Page 208</p>

<p>1 A. Good afternoon, Sir Peter.</p> <p>2 Q. Just to start with some of the loose points</p> <p>3 that have arisen from the answers that you</p> <p>4 gave to my learned friend Mr Santos. When</p> <p>5 he read to you the transcript of the voice clip</p> <p>6 of Mr Ullger [sic] rattling off the reasons that</p> <p>7 you could give for not having implemented the</p> <p>8 2016 report, do you remember that?</p> <p>9 A. Mr McGrail, you mean?</p> <p>10 Q. Yes.</p> <p>11 A. Yes.</p> <p>12 Q. Well, it was you -- yes, Mr McGrail --</p> <p>13 A. To me, yes.</p> <p>14 Q. -- reading out -- to you, exactly.</p> <p>15 A. Yes, yes, yes.</p> <p>16 Q. Do you recall -- and I think you have said</p> <p>17 that the reasons were valid, in your opinion?</p> <p>18 A. Yes.</p> <p>19 Q. That is what you have said today. Do you</p> <p>20 recall, in your evidence at the oral hearings</p> <p>21 you agreed with me that you had been able to</p> <p>22 implement them, nevertheless, without</p> <p>23 additional resources?</p> <p>24 A. That's correct, sir.</p> <p>25 Q. So, if you were able to implement them in</p> <p style="text-align: center;">Page 209</p>	<p>1 recommendation, sir.</p> <p>2 Q. Yes, but that is not the point. The point is</p> <p>3 that he could have done whatever low-hanging</p> <p>4 fruit there was in respect of the arrears of</p> <p>5 recommendations, he could have done equally</p> <p>6 quickly.</p> <p>7 A. He could have, yes.</p> <p>8 Q. Exactly. Now, you say that you were</p> <p>9 disappointed but not concerned by the HMIC</p> <p>10 report. Can I just ask you to put up on the</p> <p>11 screen please, Mr Triay, E497, row 998. I</p> <p>12 cannot see it myself, but I am sure it is there</p> <p>13 somewhere. Yes, thank you. This is a</p> <p>14 message from Mr McGrail, do you see it, just</p> <p>15 at the top of the page? "I hope so", (Spanish</p> <p>16 text read), this is: depressed about all of this.</p> <p>17 "At least Joey", presumably Mr Britto, the</p> <p>18 chairman of the GPA, "agrees with us, but I</p> <p>19 don't think I can count with his support if the</p> <p>20 wheels comes completely off." Do you think</p> <p>21 that that is a statement of disappointment or of</p> <p>22 concern?</p> <p>23 A. It really depends how you contextualise it</p> <p>24 all, Sir Peter. I mean...</p> <p>25 Q. Well, the wheels only come off as a result</p> <p style="text-align: center;">Page 211</p>
<p>1 18 months without additional resources, why</p> <p>2 would lack of resources be a valid reason for</p> <p>3 Mr McGrail to suggest for not having done</p> <p>4 them in more or less the same period?</p> <p>5 A. I think I explained to you on that occasion,</p> <p>6 sir, that it... only because I had implanted</p> <p>7 HMIC recommendations in 2022 and Mr</p> <p>8 McGrail hadn't in 2019 --</p> <p>9 Q. Okay.</p> <p>10 A. -- it doesn't mean that he hadn't done other</p> <p>11 core business areas. And what -- what my</p> <p>12 argument was is that there was -- there was no</p> <p>13 right answer who had done what.</p> <p>14 Q. And he also asked you for quick fixes?</p> <p>15 A. That's correct, sir.</p> <p>16 Q. He also said: to help me with this, can you</p> <p>17 get on with implementing as many of them as</p> <p>18 possible.</p> <p>19 A. That's correct, sir.</p> <p>20 Q. So, if he thought that there was low-</p> <p>21 hanging fruit that you could do quickly --</p> <p>22 A. Mm-hmm.</p> <p>23 Q. -- why could he not have implemented that</p> <p>24 low-hanging fruit equally quickly?</p> <p>25 A. But this was post the HMIC</p> <p style="text-align: center;">Page 210</p>	<p>1 of things to be concerned about, is that not</p> <p>2 right?</p> <p>3 A. I think it's -- what's wrong is, we're</p> <p>4 forensically going into, word-by-word, in</p> <p>5 messages that are -- are done at the...</p> <p>6 Q. Yes, alright.</p> <p>7 A. So, again, I'm not too sure in what context</p> <p>8 that mess-- how that con-- that message came</p> <p>9 across or when. I mean, obviously we know it</p> <p>10 happened on 6 March but --</p> <p>11 Q. Okay.</p> <p>12 A. -- but certainly, you know, yes, we, you</p> <p>13 know -- the --</p> <p>14 Q. Well, I am just putting it to you for your --</p> <p>15 you have given an answer, I am suggesting to</p> <p>16 you that that shows concern not</p> <p>17 disappointment. And can we look at E729,</p> <p>18 line 2205. So, on sight of the report some</p> <p>19 local worthies, previous Governors and things,</p> <p>20 wrote in with messages of support, do you</p> <p>21 recall that?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And do you see there where you say to Mr</p> <p>24 McGrail, "I think it's important to print those</p> <p>25 off and leave them in the safe, you never</p> <p style="text-align: center;">Page 212</p>

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<p>1 know. Good to always have ex Gov and MoJ 2 showing you support and trust." Why did you 3 feel that it was good to have these things in the 4 safe, if you were only disappointed and not 5 concerned? 6 A. Well, it just shows you that the -- the 7 support that the previous Governor, Sir Ed 8 Davis -- 9 Q. Yes. 10 A. -- and the previous Minister of Justice, Mr 11 Neil Costa, was giving to -- was giving Mr 12 McGrail about the HMIC report. And if I 13 remember correctly it was on the lines of that, 14 you know, it's very difficult to -- to please -- 15 Q. Yes. 16 A. -- everyone in a very difficult working 17 environment, on those lines, so. 18 Q. So, again you think that shows 19 disappointment and not concern? Just, yes, 20 that's your answer? Yes. 21 A. Playing -- you're playing with words, Sir 22 Peter, honestly. 23 Q. I am not playing with words, Mr McGrail 24 [sic], I do not think I am, Mr Ullger. Sorry 25 (inaudible).</p> <p style="text-align: center;">Page 213</p>	<p>1 Q. Okay. When you spoke about the 2 Samantha Sacramento conversation, you were 3 asked by my learned friend whether she had 4 told you if anybody else in the cabinet had 5 expressed concern, had lost confidence, and 6 you said: no. But -- 7 A. Correct. Correct, that was in our -- 8 Q. Sorry? 9 A. That wasn't in our conversation with 10 Samantha Sacramento. 11 Q. No, it was not in the conversation but she 12 told you that she had not lost confidence in Mr 13 McGrail, correct? 14 A. Correct. 15 Q. And my learned friend asked you whether 16 she had said whether anybody else in the 17 cabinet had lost confidence, and you said: no. 18 A. I -- it probably would have been: I don't 19 know. Would probably have been the best 20 answer. 21 Q. Because, is it correct to say that she did not 22 tell you that no one else had lost confidence, 23 she simply told you that she had not. 24 A. Correct. 25 Q. Is that correct?</p> <p style="text-align: center;">Page 215</p>
<p>1 THE CHAIRMAN: Sorry, I did not catch the 2 answer. It is easier -- 3 SIR PETER CARUANA: I think he is 4 confirming that he says this is disappointment, 5 also. 6 A. Well, Sir Peter, we were disappointed, of 7 course we were very disappointed with the 8 report because at the end of the day it's -- 9 Q. No, I am suggesting to you that you were 10 concerned, not disappointed. 11 A. No, I -- 12 Q. You've said you were disappointed. 13 A. And I'm saying -- 14 THE CHAIRMAN: You have got to let him 15 answer the question. 16 SIR PETER CARUANA: Yes. 17 A. So -- so, when you say about being 18 concerned, the concern is if it's not -- you 19 know, it's not fixable and there -- and there's 20 crisis. But, you know, what we -- what we -- 21 Q. Okay. 22 A. -- what we decided to do: start fixing the 23 problem. So, disappointed what had happened 24 but there was a roadmap in place to be able to 25 start addressing the HMIC recommendations.</p> <p style="text-align: center;">Page 214</p>	<p>1 A. Correct. 2 Q. Right, thank you. It is just the way my 3 learned friend asked the question -- 4 A. Okay, sir. 5 Q. -- I just wanted to give you the opportunity 6 -- 7 A. Mm-hmm. 8 Q. -- to clarify the answer. In terms of what 9 you have said just now in relation to E1116, 10 the concern group, about the Chief Minister 11 making allegations of criminality against Mr 12 McGrail. First of all, do you agree that this is 13 a group by the Chief Minister (it says so in the 14 first email) between the Governor, yourself as 15 Commissioner of Police and him as Chief 16 Minister, to bring to your attentions concerns 17 that are put to him? 18 A. Correct. 19 Q. Correct. And it was not the Chief Minister, 20 do you agree, that made allegations? What he 21 actually said was that these were allegations 22 that had been raised with him by others? 23 A. Correct. 24 Q. So, he was not making allegations of 25 criminality?</p> <p style="text-align: center;">Page 216</p>

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<p>1 A. No.</p> <p>2 Q. Okay.</p> <p>3 A. And he was --</p> <p>4 Q. Thank you for clarifying that.</p> <p>5 A. But he was the messenger on WhatsApp.</p> <p>6 Q. Yes. Would it be fair to say that both you</p> <p>7 and Mr Yeats today have tried to generally</p> <p>8 minimise the potential importance of</p> <p>9 WhatsApps generally, as a source of evidential</p> <p>10 relevance to this Inquiry?</p> <p>11 A. It's the truth, Sir Peter.</p> <p>12 Q. No, no, I am not -- I am just asking you</p> <p>13 whether you have tried to minimise it, I am not</p> <p>14 probing the underling correctness of the</p> <p>15 statement.</p> <p>16 A. No, I think the -- Assistant Commissioner</p> <p>17 Yeats alluded to in his evidence that I think</p> <p>18 this Inquiry has taken WhatsApps to another</p> <p>19 level, as it WhatsApps are the bes-all and</p> <p>20 ends-all in policing.</p> <p>21 Q. Just --</p> <p>22 A. When it's not the case.</p> <p>23 Q. No. Look, I am not particularly a</p> <p>24 specialist criminal practitioner but is that not</p> <p>25 what the RGP does when there is a suspect?</p> <p style="text-align: center;">Page 217</p>	<p>1 ultimately responsible for the protection of</p> <p>2 police material, police information, police</p> <p>3 compliance with data protection?</p> <p>4 A. I am, sir.</p> <p>5 Q. And we have heard how Commissioner</p> <p>6 McGrail retires from the force from one day, I</p> <p>7 do not remember what day of the week it was,</p> <p>8 and he leaves his desktop on the desk, and no</p> <p>9 one can explain where it is now. Would that</p> <p>10 desktop not have had confidential police</p> <p>11 information, worthy of being protected both</p> <p>12 for confidentiality and data protection, in it?</p> <p>13 A. It would have been on the server, Sir -- Sir</p> <p>14 Peter.</p> <p>15 Q. No, it could also -- no, no, that is about</p> <p>16 retention, that is about not losing the</p> <p>17 information. But the machine itself could have</p> <p>18 had confidential information in it worthy of</p> <p>19 being protected. Have you not been concerned</p> <p>20 to find it, to make sure that (to quote Mr Yeats)</p> <p>21 it did not fall into the hands of those who</p> <p>22 should not have it?</p> <p>23 A. I didn't search for it, no.</p> <p>24 Q. No. Did you... Okay. I know you have</p> <p>25 heard the evidence this morning, so I am not</p> <p style="text-align: center;">Page 219</p>
<p>1 The first thing you do is grab their mobile</p> <p>2 phone and inspect their WhatsApps, why do</p> <p>3 you do that?</p> <p>4 A. No, not -- that's not the case, Sir Peter.</p> <p>5 THE CHAIRMAN: But that is in the</p> <p>6 investigation of drug dealers.</p> <p>7 SIR PETER CARUANA: Only drug dealers?</p> <p>8 Alright...</p> <p>9 THE CHAIRMAN: Well, not only drug</p> <p>10 dealers, but that is a different kind of game.</p> <p>11 Q. Okay. I am just pointing out to you that</p> <p>12 this is something that is generally regarded as</p> <p>13 a source of useful information about what</p> <p>14 people have done or not done --</p> <p>15 A. Informa--</p> <p>16 Q. -- WhatsApps.</p> <p>17 A. Information technology is --</p> <p>18 Q. Yes.</p> <p>19 A. -- feeding in to criminality at a -- at a speed</p> <p>20 that no one can control.</p> <p>21 Q. Okay.</p> <p>22 A. And it can be on WhatsApp, Signal, Viber,</p> <p>23 SMS, in different forms, not only in</p> <p>24 WhatsApp.</p> <p>25 Q. So, as Commissioner of Police are you</p> <p style="text-align: center;">Page 218</p>	<p>1 going to bore you or the Inquiry, or waste my</p> <p>2 time, repeating stuff. But by way of summary</p> <p>3 only -- yes or no, if you do not agree or do.</p> <p>4 So, the RGP has wiped all relevant RGP work</p> <p>5 phones of their WhatsApps, yes?</p> <p>6 A. It was in our policy.</p> <p>7 Q. Yes. Well, the policy does not require it.</p> <p>8 And/or, has lost access to WhatsApps from</p> <p>9 changes to new phones. Yes?</p> <p>10 A. Yes.</p> <p>11 Q. Wiped off all data from Mr McGrail's</p> <p>12 laptop, yes?</p> <p>13 A. I'm not too sure whether we wiped off data</p> <p>14 from Mr -- I wouldn't know (?) personally, no.</p> <p>15 Q. Oh, okay. Lost the desktop computer, or at</p> <p>16 least not found it. Yes?</p> <p>17 A. I wouldn't be able to answer that, because I</p> <p>18 personally don't know.</p> <p>19 Q. Caused WhatsApps on Mr McGrail's</p> <p>20 personal phone to be lost -- to him, anyway;</p> <p>21 not to Mr McVea, fortunately. And, lost his</p> <p>22 daybooks. Yes? In consequence of which --</p> <p>23 which is why I feel entitled to raise this with</p> <p>24 you -- the Inquiry has none of the material that</p> <p>25 would have been on it. Now, the question is:</p> <p style="text-align: center;">Page 220</p>

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<p>1 do you think that the RGP have in this instance 2 -- I do not make a wider point -- in this 3 instance, do you think that the RGP has lived 4 up to the standards to be expected of it in the 5 careful preservation of potentially important 6 information? 7 A. I still think we have. Yes, Sir Peter. 8 Q. Despite the litany that I have just read to 9 you? 10 A. Yes. 11 Q. Okay. Now, you all changed your -- well, I 12 say "you all" -- you, Mr Richardson and Mr 13 Yeats changed your Samsung work phones, 15 14 months after you had been issued with them, 15 because you were after the better user 16 interface, whatever that is, on the iPhones. 17 Correct? 18 A. That's correct, yes. 19 Q. What about the other 48 police officers that 20 had been issued Samsungs? Was nobody 21 concerned about their user-interface 22 preferences? 23 A. I'm unsure whether our IT people asked 24 them about it or not, I have no idea. 25 Q. No, no, this is not asking. You told your IT</p> <p style="text-align: center;">Page 221</p>	<p>1 new WhatsApps 2 Q. But you would have seen that this one, new 3 one, had none on it, or did you not notice that? 4 A. I -- I honestly can't remember, Sir Peter, I - 5 - when I picked up the phone -- 6 Q. But none of you noticed it. You did not 7 notice it, Mr Yeats did not notice it and Mr 8 Richardson did not notice it. 9 A. It wasn't relevant -- 10 Q. Well, I have not asked Mr Richardson, in 11 fairness, but he had not said so. (?) 12 A. But -- but it wasn't relevant to me at the 13 time. I just -- I'm not a -- a person that lives 14 for my phone and, you know, I'm -- 15 Q. You were unconcerned about the complete 16 loss of all your previous WhatsApps in relation 17 to your official business? 18 A. I've said -- I've said it already once, and 19 I've -- or I've said it a few times, Sir Peter: I 20 would be more concerned about emails. 21 Q. Yes. 22 A. Reports, which sit on our server. Those 23 would have been more concerning to me than - 24 - 25 Q. Alright.</p> <p style="text-align: center;">Page 223</p>
<p>1 people that you wanted a new one for this 2 reason. And why did the reasons that applied 3 to you three not apply to all other 48 -- 51 4 (inaudible), that is why I say 48. 5 THE CHAIRMAN: Do we know they did 6 not? 7 SIR PETER CARUANA: I think we do, from 8 Mr Yeats' evidence: these four were changed. 9 A. I couldn't answer, Sir Peter, I don't know. 10 Q. Well, if you do not know, you do not know, 11 Mr Ullger, that is fine. So, you heard the 12 questions I put to Mr Yeats this morning, I am 13 not going to repeat them all to you again, 14 about the fact that on the day you were handed 15 your new phone you must have seen that there 16 were no WhatsApps on it? 17 A. No, because I wouldn't have realised, I 18 wouldn't have -- it just didn't cross my mind, 19 Sir Peter, it's just -- 20 Q. No, I am not talking about particular 21 WhatsApps -- 22 A. Yeah. 23 Q. -- it had no WhatsApps on any of your 24 personal chat groups. Personal, work... 25 A. It -- it would have been a new phone with</p> <p style="text-align: center;">Page 222</p>	<p>1 A. -- mere WhatsApps between us, which are 2 conversations which happened mostly out of 3 work. 4 Q. Alright. So you have agreed, I think, that 5 the RGP deleted WhatsApps from Mr 6 Richardson's work phone when he retired from 7 the force, which is in June 2021, even though 8 the Inquiry had already been announced and in 9 the run-up to disclosure in the Operation Delhi 10 investigation of which he had been the senior 11 investigating officer, do you agree? 12 A. Yes. 13 Q. If the RGP had done that, wiped a key 14 person's phone WhatsApps despite the Inquiry 15 having already been called etc, why did you 16 instruct your counsel to attack, for example, 17 Mr Baglietto, senior lawyer and QC, for 18 supposedly doing the same thing as the RGP 19 itself had done? 20 A. I'm unsure he did attack him. 21 Q. Well he -- with respect -- you know, and I 22 do not want to remind anybody about what Mr 23 Cruz said about ventriloquists and dummies 24 and every question being cleared with the 25 RGP, but he put it to Mr Baglietto whether he</p> <p style="text-align: center;">Page 224</p>

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<p>1 wanted to reconsider his evidence that he had 2 not intentionally deleted, given that the Inquiry 3 had already been convened or announced. 4 What is the difference between what you did 5 and what Mr Baglietto has done? 6 MR CRUZ: Sir, Mr Chairman, to rise, only 7 because my learned friend is putting forward a 8 proposition that is not exactly what happened. 9 Maybe it is a matter for submissions, but 10 certainly that is not what I did, not what I said, 11 and not in that context. So, I cannot sit here 12 while he puts something that is not correct. If 13 he wants to adduce it to submissions we will it 14 address it as well, but that is not the position. 15 Q. So your evidence, then, is that the RGP is 16 not critical of what Mr Baglietto did? 17 A. It is a matter for the chairman, not for the 18 RGP -- 19 Q. No, I am asking you what the RGP's 20 position is. 21 A. It's a matter for the Chairman, Sir Peter. 22 Q. Well of course, everything is the matter for 23 the Chairman. Your evidence, I am asking you 24 is, do you think that Mr Baglietto, does the 25 RGP think that Mr Baglietto deleted</p> <p style="text-align: center;">Page 225</p>	<p>1 A. Correct. 2 Q. So, can I -- I am sure my learned friend Mr 3 Gibbs will forgive me for plagiarising two of 4 his questions to Mr Levy in this respect. The 5 first one is: what appears to be the criterion by 6 which the telephone has preserved some 7 messages but not preserved others? 8 A. I have no idea whatsoever. 9 Q. No. That is the answer Mr Levy Gave. Of 10 the messages that have been preserved, does 11 that include any of the messages to and from 12 you and any of the people whom the Inquiry 13 has been interested in? 14 A. Sorry, I haven't understood the question. 15 Q. This is a question that Mr Gibbs put. Of 16 the messages that have been preserved, does 17 that include any of the messages to and from 18 you and any of the people whom the Inquiry 19 has been interested in? Well, we know it did 20 not include Mr McGrail -- 21 A. McGrail. 22 Q. -- because it was amongst (inaudible). So, 23 do you agree that you, Mr Richardson, Mr 24 Yeats and Mr James Levy KC have all 25 managed to lose WhatsApps on transfer to new</p> <p style="text-align: center;">Page 227</p>
<p>1 WhatsApp messages, given that the Inquiry 2 was already announced and therefore to 3 prevent it from reaching the Inquiry? 4 A. That's a matter for the Chairman, Sir Peter. 5 Q. But you are making no such allegation? 6 A. No. 7 Q. No. Or the RGP? 8 A. No, we are not. 9 Q. As Mr Cruz says, the rest of it we can 10 explore in closing. So, you lost WhatsApps on 11 your phones twice, actually: once on your 12 work phone and again on your personal phone. 13 Do you agree? 14 A. I -- 15 Q. On transfer -- 16 A. I -- 17 Q. -- when you were changing phones from 18 one phone to the other. 19 A. I -- yes. 20 Q. So, like Mr James Levy, you appear to 21 have only lost certain chats. I think you said 22 you lost Mr McGrail's, and I do not know who 23 else, and one of your children perhaps, but not 24 everybody's. Your sister, sorry, but not 25 everybody.</p> <p style="text-align: center;">Page 226</p>	<p>1 mobile phones, is that correct? 2 A. Yes. 3 Q. So, it seems pretty normal for senior and 4 honest people to lose. 5 THE CHAIRMAN: No, that is not a very 6 well-drafted question. Well, it is not a properly 7 drafted question, I should say. 8 Q. You think it is leading? Fine, well we are 9 in a civil trial rather than a criminal one. 10 Alright, fine. So, do you agree then, or do you 11 think that it is justified therefore, to conclude 12 that this means that you all did so to conceal 13 that evidence from the Inquiry? 14 A. No, that's not the case at all. 15 Q. It is not the case at all. You make no such 16 allegation against Mr Levy, then? 17 A. No, we haven't. 18 Q. So, did you feel some sympathy for Mr 19 Levy when he was being cross-examined by 20 Mr Gibbs to that effect? The RGP having 21 done the same with Mr Richardson's phone -- 22 with all your work phones, for that matter? 23 A. This is a public inquiry seeking the truth, 24 and... 25 Q. And given that it has been submitted to this</p> <p style="text-align: center;">Page 228</p>

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<p>1 Inquiry -- though not by the RGP, I have to 2 say, not by the RGP -- that the failure by Mr 3 Levy to carefully retain and store relevant 4 messages with Mr Picardo lent support 5 backwards to the RGP's view that he may have 6 been tempted to suppress information that 7 could embarrass him? I mean, given the 8 RGP's own failure to carefully retain and store 9 important material, do you agree with that 10 submission? 11 THE CHAIRMAN: Well, I am sorry, I have 12 lost the thread of the question. You just have 13 to go a bit more slowly. 14 Q. Given that the RGP itself has failed to 15 retain information carefully, do you agree with 16 the submission made by others at this Inquiry 17 that it might be possible to read into that a 18 temptation to have suppressed information? 19 No, you do not understand it? (inaudible) You 20 do not understand the question. 21 A. (inaudible) to go -- 22 Q. Alright. Now, if I could just ask you some 23 questions about the circumstances in which 24 you do not disclose your WhatsApps with Mr 25 McGrail. So in summary, because we have all</p> <p style="text-align: center;">Page 229</p>	<p>1 20 May and 5 June in relation to the 2 circumstances leading to his retirement? You 3 have answered all my learned friends' 4 questions on that. 5 A. Sir Peter, Mr McGrail and I were in 6 constant communication with one another and 7 I think our -- the image provided by Mr 8 McVea in his investigation -- 9 Q. Yes, you -- 10 A. -- which was authorised by Mr McGrail -- 11 Q. Speaks for itself. 12 A. -- shows the amount of messages. 13 Q. Correct. 14 A. But I would not remember for the -- for the 15 life of me, what messages we would have 16 shared, at all, because of the amount of 17 messages that there was. 18 Q. Do you agree that the WhatsApps between 19 you and Mr McGrail show that you were 20 aware at least by 29 May that Mr McGrail had 21 already decided who was going to retire 22 because his position had become untenable? 23 Indeed, you have been very candid today, you 24 have said -- actually you used the words "loss 25 of confidence", rather than "untenable", which</p> <p style="text-align: center;">Page 231</p>
<p>1 heard it already this morning and before, 2 basically it is because you had lost -- as we 3 have just discussed -- because you had lost it 4 from your personal phone on transfer to the 5 new phone? 6 A. That's correct, sir. 7 Q. Okay. So, that answer applies only to the 8 WhatsApps themselves, correct? 9 A. Correct, sir. 10 Q. But do you agree that in the letter of 14 11 July 2022 the Inquiry had asked you not just 12 for documents and WhatsApps, it had also 13 asked you to disclose your knowledge and any 14 information as to the reasons and 15 circumstances leading to Mr McGrail ceasing 16 to be Commissioner of Police? 17 A. Correct. 18 Q. Are you aware of that? 19 A. Yes. 20 Q. Not just documents and WhatsApps -- 21 A. Mm-hmm. 22 Q. Knowledge and information. Do you 23 accept that the WhatsApps between you and 24 Mr McGrail show that you were heavily 25 engaged with him and on his behalf between</p> <p style="text-align: center;">Page 230</p>	<p>1 is what you say in the clip. 2 A. Mm-hmm. 3 Q. But this morning you said because he had 4 lost the confidence of everybody: the Chief 5 Minister, the interim Governor -- 6 THE CHAIRMAN: Can you just identify the 7 precise question? 8 Q. Well, yes. I am laying the foundation for 9 the question, so -- 10 THE CHAIRMAN: Yes. 11 Q. -- there is a question, okay? So, do you 12 agree that you knew by 29 May that that was 13 the reason why he had determined by at least 14 then that he was going to retire, that he wanted 15 to retire? Do you agree that the WhatsApps 16 show that? 17 A. Yes -- 18 Q. You don't think so? 19 A. Yes -- 20 Q. Yes. 21 A. -- I would say that the WhatsApps show 22 that there is a journey that -- 23 Q. No, no, that is not what I am -- 24 THE CHAIRMAN: No, hang on, you have 25 got to let him answer the question.</p> <p style="text-align: center;">Page 232</p>

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<p>1 Q. But I have not asked about journey, I have 2 asked about whether it shows that by that date 3 he had decided -- 4 A. But you can't -- 5 Q. -- that he wanted to retire. 6 A. No, but you can't expect me to answer 7 what you want me to answer, I've got to 8 answer what I have to answer. 9 Q. Alright. 10 A. And what I am saying is that there was a 11 journey taking us towards what was eventually 12 the inevitable, and that was his retirement. 13 That was -- 14 Q. A journey? 15 A. -- there was always hope, and that hope 16 existed in one of the conversations that I had, 17 and as I've explained, with Samantha 18 Sacramento. 19 Q. I see. Well, can we put E1106 on the 20 screen again, then. 1106. Can we just read 21 more slowly the second half of that quotation, 22 from about ten lines down. "I", that is you, 23 "told her about the fact that the best, the best 24 scenario here was that you were looking at 25 what you wanted", that is, what Ian McGrail</p> <p style="text-align: center;">Page 233</p>	<p>1 THE CHAIRMAN: You may only have a 2 short time to ask the question but he has got to 3 have the time to -- 4 SIR PETER CARUANA: But his answer is 5 the journey, sir. He has given it. 6 THE CHAIRMAN: He said he was looking at 7 the potential, I think he said. 8 A. That's correct, sir. 9 THE CHAIRMAN: Okay. 10 SIR PETER CARUANA: So, the potential. 11 UNKNOWN SPEAKER: Hope. 12 THE CHAIRMAN: Potential and hope, yes. 13 SIR PETER CARUANA: Yes, exactly. 14 THE CHAIRMAN: Potential and hope there 15 will be a resolution, or something like that. 16 SIR PETER CARUANA: Yes. Can you look 17 at E764, line 2497. Yes, at the top of the page, 18 thank you, Mr Triay. This is Mr McGrail to 19 you on 30th, that is the day after your 20 conversation with the Minister: 21 "All I want," 22 that is all Mr McGrail wants, 23 "is a dignified exit and not a forced one." 24 Is there any ambiguity around that comment, 25 do you think?</p> <p style="text-align: center;">Page 235</p>
<p>1 wanted, you told the minister, "is to retire now 2 because your position was untenable with the 3 individual, er, all the individuals, for that 4 matter, and you wanted to leave the 5 organisation but maintaining your pay and, er, 6 to retire to have your retirement package in 7 two years' time." Is there any scope there for 8 ambiguity about journeys and incidents and 9 distinctions between collisions and chases? 10 There is not, is there? You reported back to 11 Mr McGrail that you had told the minister that 12 that is what he had decided already to do. 13 Correct? 14 A. The -- Sir Peter, you've got to -- you've 15 got to remember that these are -- these are 16 messages, these are voice messages, and there 17 are a lot of things happening in the periphery. 18 Now, there had been discussions with Mr 19 McGrail that, you know, he was looking at the 20 potential of early retirement. But in the midst 21 of everything there is hope to try and stay on, 22 and -- 23 Q. Well, hope springs eternal, I suppose, yes. 24 Can we look at E764. I only have half an 25 hour. Can we look at E764?</p> <p style="text-align: center;">Page 234</p>	<p>1 A. No, not at all. 2 Q. No. Can we look at the very next line, 3 where you answer: 4 "Yes, I know, mate, fully conscious of it." 5 What were you fully conscious of? That what 6 you wanted was a dignified exit and not a 7 forced one, but an exit. 8 A. But, Sir Peter, again I go back to what I 9 said earlier: these are just mere messages 10 which are captured but there could have been 11 conversations and no doubt there were 12 conversations in the morning, in the evening, 13 in the afternoon, by telephone, in his office, 14 my office, in the corridor, like we said, many, 15 many times. We are being very forensic over 16 just .. 17 Q. I am sorry ... 18 A. ... a text message. 19 Q. But you have said today that you think that 20 the Whatsapps are unimportant because, to 21 quote you, "they show nothing new". Do you 22 think that this is the case that emerged at the 23 oral hearings? 24 A. Sir Peter, I stress again: Whatsapps play 25 very little role in policing and these are just</p> <p style="text-align: center;">Page 236</p>

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<p>1 messages in the mix of conversations that we 2 would have had in an office, hour after hour, in 3 corridors, so - and we're just picking at what 4 we have in front of us. 5 Q. But it is not, Mr McGrail, is it - I beg your 6 pardon, Mr ... I do beg your pardon - Mr 7 Ullger. It is not just banterous messages, it is 8 what you told the Minister for Justice when 9 you were seeking her assistance to secure the 10 best possible pension terms for him, is it not? 11 A. It is one of the best - it is one of the 12 possible outcomes. 13 Q. I see. 14 A. I am not denying the fact that Mr McGrail 15 didn't already know where this was going to 16 end up, but like I said, there was always hope 17 at the end of the day where we would be able 18 to sit round a table and discuss things, like 19 things had happened many, many times before 20 in the past. 21 Q. The issue here is not what the outcome 22 could have been, whether he was going to be 23 allowed to retire or be sacked. Of course that 24 outcome was not in his hands. The issue here 25 is what these messages show about Mr</p> <p style="text-align: center;">Page 237</p>	<p>1 That is the issue that I am talking about here, 2 nothing about section 15 reports. 3 A. There was a cause that made the Chief 4 Minister, the Acting Governor and the 5 Attorney General to lose confidence in Mr 6 McGrail. 7 Q. So notwithstanding your failure to make 8 any allusion to any of this material, to any of 9 the information that you -- 10 A. I disagree. 11 Q. ... you must have known -- 12 A. I disagree with you, Sir Peter -- 13 Q. I have not asked you a question yet. 14 A. You are saying that I failed and I have not 15 failed because I gave it in my evidence in the 16 first inquiry. 17 Q. Are you saying now that you think that the 18 evidence that you gave in the first hearings last 19 year disclosed all your knowledge about this 20 kind of interaction here that we are talking 21 about? 22 A. We said we had meetings, we had 23 discussed that in the first inquiry, where Mr 24 McGrail was briefing us. All of that has come 25 out.</p> <p style="text-align: center;">Page 239</p>
<p>1 McGrail's state of mind and your knowledge 2 of it. So in any event, why did you not 3 mention any of this, any of these issues - 4 because it is not for me or for you to decide 5 the relevance, it is for the Chairman - why did 6 you not mention any of these issues, even if 7 you did not have the messages themselves, in 8 any of your witness statements to the Inquiry? 9 Why did you let the Inquiry end its hearings 10 without giving them, as they had asked you 11 for, your knowledge and information disclosed 12 in these Whatsapps? 13 A. I think I did, Sir Peter, in my evidence in 14 the first inquiry. I gave evidence on the fact 15 that Mr McGrail had received a section 15 16 letter, he had received a letter from the GPA 17 asking him to resign. I spoke about his mental 18 state, how he was a fraction of the figure what 19 he was before. 20 Q. I am talking about the narrative about the 21 clarity with which what was at stake by 29th 22 was not his desire to retire because he knew he 23 had lost the confidence, which has been the 24 government's case throughout, and not any 25 unlawful interference, which was his case.</p> <p style="text-align: center;">Page 238</p>	<p>1 Q. But did it come out that you had gone to 2 the Minister to tell her that Mr McGrail had 3 already decided he wanted to retire because he 4 had lost the confidence of all four relevant 5 parties? You never said that. That is the key 6 point I am talking to you about, Mr Ullger. 7 And that you were fully conscious that that is 8 what he wanted to do. You sat there, whilst 9 you fielded a different case, and never cleared 10 it up for the inquiry. That is the point I am 11 trying to put to you. 12 THE CHAIRMAN: Was that a question? 13 SIR PETER CARUANA: I can very easily 14 convert it into one. Do you agree that that is 15 what happened? 16 A. I disagree with you entirely, Sir Peter. 17 Q. You disagree with me entirely ... 18 A. Yes. 19 Q. ... about everything that I have just said. 20 A. Yes. 21 Q. Okay. All right. Okay, I finish. So can I 22 just ask you this about: eventually, you said to 23 my learned friend this morning, that it 24 suddenly occurred to you that Mr McVea had 25 the image and, having not disclosed any of</p> <p style="text-align: center;">Page 240</p>

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<p>1 these chats in time before the inquiry hearings 2 ended, after the inquiries had ended and 3 prompted by the June email from the Inquiry, 4 you suddenly said: "Ah, Mr McVea has an 5 image, I will get it from him." 6 A. No. 7 Q. Is that how it happened? 8 A. No, that's not the case. 9 Q. You said you had suddenly had a thought. 10 A. So we were asked, again I checked my 11 phone, and then I asked Mr McVea whether he 12 had an image. I didn't know what Mr McVea 13 had at the time. I asked him if he did have an 14 image and whether I would be able to use that 15 image. 16 Q. Why did you not do that before the inquiry 17 hearings? 18 A. Sir Peter, the Royal Gibraltar Police was 19 going through a crisis. We were dealing with 20 so many things that unfortunately when you're 21 dealing with crisis, particularly resilience, 22 where you lose 24 police officers almost in 23 one go, where you have very little front line 24 policing, where you are failing victims of 25 crimes, you are dealing with other matters</p> <p style="text-align: center;">Page 241</p>	<p>1 comes under the Commissioner of Police but it 2 is very wide context to provide. 3 Q. When you provided the Inquiry with the 4 information in relation to Operation Kram, you 5 provided it with a whole stack of Whatsapps 6 and emails provided from Mr Levy, from Mr 7 Perez, from all the Delhi defendants to each 8 other, to Mr Sanchez, etc, etc. Did you have 9 any reluctance to do that without seeking their 10 consent first? What was the need to seek Mr 11 McGrail's consent in his case but not in their 12 case? 13 A. Because Mr McGrail's image was taken as 14 a result of an investigation where it was sought 15 of by a search warrant. 16 Q. Their investigation was also a criminal 17 investigation, the police. The information was 18 seized, it was in the possession of the RGP in 19 the context of a criminal investigation, and you 20 did not hesitate in disclosing it to the Inquiry - 21 rightly so, I should say. It is up to the Inquiry 22 what degree of confidentiality and privilege it 23 wants to accord it in the circumstances in 24 which it was obtained. Is that right? 25 A. Correct.</p> <p style="text-align: center;">Page 243</p>
<p>1 which are very important or equally as 2 important as the public inquiry. It was a 3 lightbulb moment that I had at the time and I 4 contacted Mr McVea and I asked him whether 5 he had an image of Mr McGrail's phone -- 6 Q. But you agree with me -- 7 A. ... that's what actually happened. 8 Q. ... that you could have done it before. 9 A. I could have done it, do so much more, of 10 course we could. 11 Q. Because Mr McVea was conducting the 12 investigation as an RGP officer sworn by you 13 into your Force, correct? 14 A. Reporting to myself and, for transparency, 15 to His Excellency the Governor. 16 Q. So when you say that you had not 17 disclosed it before because it was never in 18 your possession and control, that is not strictly 19 true, is it, because if it is in the possession and 20 control of the RGP, it is in your possession and 21 control. 22 A. No, that's not the case. This is personal. 23 Q. I see. It is personal. 24 A. Of course it is, Sir Peter, it's personal to 25 me. Of course everything that the RGP holds</p> <p style="text-align: center;">Page 242</p>	<p>1 Q. But you made that judgment for the 2 Inquiry by not even disclosing that it existed 3 before the Inquiry hearing. Is that correct? 4 A. Correct. 5 Q. I only have one minute left, sir, and I am 6 grateful for your indulgence. Now, Mr 7 McGrail (sic), I do not want to make a huge 8 fuss about this - I do beg your pardon, Mr 9 Ullger, it is absolutely an error, I hope you 10 accept that that is all it is. In any case there is 11 no shame in calling you Mr McGrail. This 12 business of your very close friendship with Mr 13 McGrail, which neither I nor the government 14 parties criticise at all, but you did say this 15 afternoon that "the government parties are 16 wrong in asserting that I was too close to Mr 17 McGrail," and that is what these emails that 18 my learned friend Mr Santos put to you - 19 Whatsapps, sorry - showed, that you had all 20 these, not supported by Mr McGrail, things 21 that you had done in relation to social events 22 and things of that sort. But you are not 23 denying that you are - that you were, sorry, I 24 am very sorry to hear it may no longer be the 25 case, genuinely so, but do you still think the</p> <p style="text-align: center;">Page 244</p>

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<p>1 government parties were wrong to suggest that 2 you were close, very close to Mr McGrail? 3 A. Wrong to suggest when? 4 Q. Then. Not now. Then. At this time, at the 5 time - at the critical period, May/June. 6 A. Very close -- 7 Q. Very close. 8 A. ... very close friends. 9 Q. So when you said that the parties were 10 wrong in the assumption of making that 11 allegation, why did you say that? 12 A. It was post. I think it's quite clear. 13 Q. But we have only ever been concerned 14 with facts that happened at the time that you 15 were close. 16 A. That's not the case, Sir Peter. I think we all 17 know that there has been allusions that Mr 18 McGrail has been very close to me whilst 19 matters have been investigated by the RGP, 20 and ... 21 Q. So you have very candidly admitted this 22 afternoon that you do not know whether Mr 23 McGrail lied to the Chief Minister in the 24 meeting of 12 May. All you know is what he 25 was telling you.</p> <p style="text-align: center;">Page 245</p>	<p>1 Q. You gave him unconditional support. 2 A. Oh, yes. 3 Q. So what is wrong with Mr Picardo having 4 done the same for Mr Levy, his close personal 5 friend -- 6 THE CHAIRMAN: (Inaudible). 7 A. Very, very different circumstances. 8 THE CHAIRMAN: Do not answer that 9 question. 10 SIR PETER CARUANA: Is it so different? 11 Why is it so different? 12 A. I think the Chairman -- 13 SIR PETER CARUANA: You do not want to 14 answer, okay. 15 A. ... has told me not to answer. 16 SIR PETER CARUANA: Either the giving of 17 unconditional support to a friend without 18 evidence, for which your counsel Mr Levy - 19 Mr Picardo - I beg your pardon, for which Mr 20 Picardo was criticised is right or it is wrong. 21 But you have done the same, have you not? 22 A. I will only say, Sir Peter -- 23 Q. All right. I withdraw the question. 24 A. ... very different circumstances. 25 Q. All right. Do you agree - and this is my</p> <p style="text-align: center;">Page 247</p>
<p>1 A. Correct. 2 Q. So you do not know whether he lied or did 3 not lie. 4 A. I met the Chief Minister two weeks after 5 Mr McGrail left the RGP and he never told me 6 that Mr McGrail had lied. 7 Q. Well, why should he? 8 A. No, why should he, of course it's not -- 9 Q. But Mr McGrail -- 10 A. It's not that important, is it? 11 Q. But you did not know whether he had or - 12 because you were not at the meeting. 13 A. No, I wasn't. 14 Q. Therefore notwithstanding that you had no 15 evidential base - I am just thinking of 16 something that Mr Cruz put to another witness 17 - you nevertheless deployed in favour of your 18 friend, as I would expect, as I might do myself, 19 unconditional support, despite lack of any 20 evidence as to whether or not he had lied to the 21 Chief Minister. Is that correct? 22 A. That's a matter for the Chairman to ... 23 Q. All right. You had no evidence that he had 24 lied or not lied. 25 A. None whatsoever.</p> <p style="text-align: center;">Page 246</p>	<p>1 absolutely final question, sir, topic, two short 2 questions. Do you agree that the Whatsapp 3 chats between you and Mr McGrail that we 4 have now seen after the hearing has ended, 5 show that you and Mr McGrail - that there was 6 a sense of intense hostility and combat 7 between Mr McGrail and you on the one hand 8 and the GFP leadership on the other? 9 A. I think everyone knew that, Sir Peter, even 10 the Chief Minister. 11 Q. So it was mutual. The language that you 12 used to speak about them. 13 A. Even the Chief Minister used it once. So 14 seeing that you have brought it up, I need to 15 bring it up because - yes, Sir Peter, because in 16 a meeting once with the Chief Minister the 17 Chief Minister alluded to the fact that Mr 18 Morello was un payaso, a clown. 19 Q. Yes. 20 A. And - can I finish? And a very difficult 21 person to get on with because he used to be in 22 school with him. And the Chief Minister 23 alluded the fact that you had to know how to 24 control Mr Morello. 25 Q. So the Chief Minister did not think very</p> <p style="text-align: center;">Page 248</p>

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<p>1 highly of Mr Morello. That is not my - I am 2 not interested -- 3 A. No, no, that's not the case. 4 Q. What I am interested in, my question was - 5 - 6 A. They got on very well. 7 Q. What I am asking you - give whatever 8 answer you want, I am just asking a question - 9 what I am asking you is: do you think that 10 these Whatsapps show that the opinions 11 between you and Mr McGrail on the one hand 12 and the GFP leadership on the other were 13 pretty mutual? 14 A. In what respect, pretty mutual? 15 Q. That you thought as little of each other as 16 the other. 17 A. No, that's not correct. We always - and we 18 said this, and I said this in my evidence - we 19 always tried to work with the Police 20 Federation. We wanted to try and improve the 21 Royal Gibraltar Police. What's wrong is we 22 found it very difficult to do so, with a person 23 who told Mr McGrail on his very first few 24 days that he would make life impossible for 25 him.</p> <p style="text-align: center;">Page 249</p>	<p>1 relationship shows, is it surprising therefore 2 that Mr Pyle was hearing that there was a 3 fractured relationship between the GFP and 4 that he was constantly getting stories about it, 5 which is what he said in evidence? 6 A. So what is the question, sorry? 7 Q. Is it surprising to you, given what we have 8 just been talking about -- 9 A. Sir Peter, it was -- 10 Q. ... that Mr Pyle should have been hearing 11 those stories? 12 A. It was a known fact, and if you would have 13 read my messages you would have seen the 14 messages between Mr McGrail and I trying to 15 address the relationship with the Chief 16 Minister. 17 Q. Fine. It was fractured. 18 A. But we were trying to address it ... 19 Q. Fine. 20 A. ... and we were trying to improve it -- 21 Q. That may be so. 22 A. Yes. 23 Q. But is it or is it not surprising -- 24 A. It is my view -- 25 Q. ... that Mr Pyle was hearing, and that he</p> <p style="text-align: center;">Page 251</p>
<p>1 Q. The language that you used in a private 2 chat with Mr McGrail and the terms in which 3 you were repeatedly referring to them suggests 4 that you felt bad blood towards them: bastards, 5 fools, and worse. Repeatedly, I stopped 6 counting. It is not a big deal, I just ... Is your 7 answer yes or no? Was there reciprocity of 8 mutual hostility, yes or no? 9 A. It was a very fractured relationship, yes, it 10 was -- 11 Q. Exactly. 12 A. It wasn't easy. 13 Q. All right. 14 A. But -- 15 Q. That is all I want to hear from you. 16 A. No, but it was a relationship that we tried 17 to work on to try and better the RGP. 18 Q. Okay. 19 A. But we found it extremely difficult. 20 Q. Okay. All I am trying to get at is this, and 21 this is absolutely my last question. 22 THE CHAIRMAN: It is about the fourth last 23 question. 24 SIR PETER CARUANA: Thank you, sir. In 25 the light of what these mutuality of fractured</p> <p style="text-align: center;">Page 250</p>	<p>1 should be concerned about that state of affairs? 2 A. Why is the relationship between me today 3 and the current Chairman and Secretary not a 4 fractured one? It is one because we can 5 negotiate, we can agree to disagree. On this 6 occasion we were dealing with a very difficult 7 person. 8 Q. Is it not really the case that these Whatsapp 9 messages show that your relationship - your 10 relationship with the GFP was already 11 fractured before you became Commissioner? 12 A. No, not at all. 13 Q. All right. 14 A. We tried -- 15 Q. (Inaudible). 16 A. We tried fixing - I tried fixing that 17 relationship. It worked in my command for 18 about a year and a half, and after two and a 19 half years it fell apart as well. 20 SIR PETER CARUANA: Thank you, Mr 21 Ullger. 22 A. Thank you, Sir Peter. 23 Questioned by MR WAGNER 24 MR WAGNER: Apologies that it is already 25 half four, but I --</p> <p style="text-align: center;">Page 252</p>

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<p>1 THE CHAIRMAN: It is not your fault. 2 MR WAGNER: I will be as quick as I can. 3 THE CHAIRMAN: Yes, I am sure you will. 4 MR WAGNER: Good afternoon, 5 Commissioner Ullger. The government parties 6 in their written submissions say that, and I am 7 paraphrasing paragraph 9, that the fact that 8 there were no messages between you and 9 Mr McGrail, notwithstanding that you were 10 Assistant Commissioner and Mr Grail's very 11 close friend, about interference with Op Delhi, 12 they say that that means it is completely 13 implausible that there were any concerns 14 between the senior officers about that. As in, 15 if there had been concerns, it would have been 16 in the WhatsApp messages. 17 A. Correct. 18 Q. And do you agree that, first of all, do you 19 agree that the fact that it was not mentioned, 20 you know, there is interference with Op Delhi 21 in the WhatsApp messages, means that there 22 was not any concern? 23 A. No, not at all. There were meetings that 24 we had in his ... in the Commissioner's office 25 where we were discussing a number of our</p> <p style="text-align: center;">Page 253</p>	<p>1 Q. Why? 2 A. Because Mr McGrail felt that, first and 3 foremost he came back to his office, he called 4 us in, and again I can't remember exact details, 5 but certainly he alluded to the fact that he had 6 had a confrontation, for a better word, between 7 himself and the Chief Minister about the fact 8 that we were attempting to execute a search 9 warrant on James levy. 10 Q. Do you recall whether it was soon after 12 11 May that Mr McGrail started talking about the 12 possibility that he may have to leave? 13 A. I can't remember exact dates, no. But I 14 think a turning point was certainly when he 15 received the section 15 letter from the Chief 16 Minister and the letter from the Police 17 Authority. 18 Q. So that was 21 and 22 May. 19 A. Correct. 20 Q. E871, please. At paragraph 9 of your 21 witness statement, I think this is your third or 22 fourth, one of the newer ones, you say: 23 "Of course there were many emotive 24 exchanges between us in the period between 25 12 May and 9 June as I saw what I and the rest</p> <p style="text-align: center;">Page 255</p>
<p>1 concerns around it. 2 THE CHAIRMAN: When were those 3 meetings? 4 A. Regular meetings at different times, sir. 5 THE CHAIRMAN: No, dates. 6 A. I can't remember, sir. 7 THE CHAIRMAN: Where are the minutes of 8 those meetings? 9 A. Um, Mr Richardson would have had 10 minutes of those meetings. 11 MR WAGNER: Mr McGrail says that ... 12 sorry. 13 THE CHAIRMAN: Is there any record of 14 such a meeting of which you were aware? 15 A. I am unsure, sir. 16 MR WAGNER: Mr McGrail recalls calling in 17 the senior command on 12 May after his 18 meeting with the Attorney General and the 19 Chief Minister. 20 A. That's correct. 21 Q. Do you recall that meeting? 22 A. Yes. 23 Q. Do you recall that being a concerning 24 meeting? 25 A. It was, yes.</p> <p style="text-align: center;">Page 254</p>	<p>1 of the RGP senior team considered an entirely 2 unfair process in the treatment of former 3 Commissioner Mr McGrail." 4 Can you expand on why you thought it was 5 an entirely unfair process? 6 A. Sorry, I am trying to find where it is. 7 Q. It is at the top of the page, paragraph 9. 8 A. Sorry, yes. 9 Q. I was reading just from there. If you want 10 to look at it quickly. (Pause). 11 A. Yes, we felt that, I mean, what we felt was 12 that the reason behind Mr McGrail being 13 asked to leave was the mere fact that the RGP 14 had attempted to execute a warrant on 12 May 15 and Mr McGrail was starting to feel the 16 pressure from the Chief Minister, Interim 17 Governor and the GPA. 18 Q. E171, please. You texted Mr McGrail on 19 28 May. You can see it a little bit further 20 down, the first white box. It says there: 21 "We were thinking about you both all the time. 22 All we do is talk about you. It is so painful to 23 see you so sad. Be strong, mate, you have the 24 admiration of all, everyone in the command 25 team is proud of you."</p> <p style="text-align: center;">Page 256</p>

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<p>1 Why was the command team proud of him on 2 28 May? 3 A. Um, Mr McGrail became a shadow of the 4 person he was. Um ... 5 THE CHAIRMAN: At that time? 6 A. Correct, sir. Um, he was, I mean, he had 7 been mentally affected by the attack that he 8 was receiving and, um, obviously you have got 9 to understand that he was seeing his career 10 ending prematurely and for reasons that we 11 didn't understand at the time ourselves. So, 12 we were offering him our full, unconditional 13 support. 14 MR WAGNER: But why were you proud of 15 him? 16 A. Because he was a good leader. 17 Q. E170, please. You say: "Just spoken to 18 dad." This is at the top of the page. This is 19 your dad, who is also a former Commissioner 20 of Police. Is that correct? 21 A. Correct, sir. 22 Q. Yes. 23 "He is really upset for you and said that 24 whatever you need to call him. He can't 25 believe this has happened to you but not</p> <p style="text-align: center;">Page 257</p>	<p>1 the concerns WhatsApp group included, was 2 a place where the Chief Minister made or 3 passed on allegations of criminality against 4 Mr McGrail. Is that right? 5 A. Not only against Mr McGrail, but other 6 concerns that he was coming across, but it 7 wasn't only specific to Mr McGrail. 8 Q. Sure. Because in the part of the group that 9 we have, that you have disclosed or that your 10 lawyers have disclosed to the Inquiry, the 11 Chief Minister does not actually pass on any 12 allegations against Mr McGrail of criminal 13 conduct. 14 A. No, not there, no. 15 Q. He just refers to the fact that he thinks the 16 allegations will be investigated and he could 17 end up being prosecuted. 18 A. That's correct. 19 Q. But did he in that group also pass on 20 allegations of, in messages we have not seen, 21 allegations of criminality against Mr McGrail? 22 A. No, he didn't. No. 23 Q. He did not. 24 A. No. 25 Q. So where you said in your witness</p> <p style="text-align: center;">Page 259</p>
<p>1 surprised at all." 2 This is on 27 May. Do you recall why your 3 father was not surprised at all? 4 A. Well, by that time, sir, the rumour mill 5 around Gibraltar was quite ... was spreading 6 and people knew what was happening behind 7 the scenes. Um, and he felt for Mr McGrail 8 because they were close friends themselves. 9 Q. But why was he not surprised? What did 10 not cause him surprise about the reasons 11 behind what was going on? 12 A. The rumour mill behind everything, which 13 was the fact that, um, the RGP had attempted 14 to execute a search warrant at Mr Levy's 15 office. 16 Q. And you felt and he felt that that had led to 17 what had happened. 18 A. Correct. 19 Q. Samantha Sacramento, was one purpose of 20 your interaction with Samantha Sacramento to 21 ask her to help to defuse the dispute between 22 Mr McGrail and Mr Picardo? 23 A. Correct. 24 Q. The concerns WhatsApp group, you said, I 25 think your evidence before, earlier, was that</p> <p style="text-align: center;">Page 258</p>	<p>1 statement at paragraph 6, I am sorry, I have not 2 noted the reference, but I am just going to read 3 it for you for time -- 4 MR SANTOS: It is E1108. 5 MR WAGNER: Thank you very much. 6 THE CHAIRMAN: Sorry, could you just give 7 the reference again? 8 MR SANTOS: E1108. 9 MR WAGNER: 1108, at paragraph 6, just find 10 it. This is the statement by which you disclose 11 those messages. You say, in the third line 12 down: 13 "Where Mr Picardo raised numerous 14 allegations of criminality against Mr McGrail 15 made by the alleged whistle-blowers." 16 Is that actually incorrect, that he did not use 17 this group to make the allegations? Or did he? 18 A. He alluded to them. So, he alluded to the 19 fact about whistle-blowers. 20 Q. But he did not raise the allegations 21 themselves in this WhatsApp group. 22 A. No. 23 Q. Now, you maintained a very careful 24 separation between yourself and Mr McGrail 25 with reference to the Inquiry and in fact all</p> <p style="text-align: center;">Page 260</p>

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<p>1 other matters after he left, did you not? 2 A. I did, sir. 3 Q. On reflection and looking back at this 4 WhatsApp group with the Chief Minister, I 5 appreciate the Chief Minister set it up, should 6 you have maintained more of a separation 7 between you and the Chief Minister in relation 8 to matters relating to the Inquiry? 9 A. In what respect, sorry? 10 Q. Would it have been better if the Chief 11 Minister wanted to raise issues about 12 Mr McGrail, interactions with the RGP with 13 reference to the Inquiry, that should probably 14 have all been done through the lawyers rather 15 than directly with you. Is that fair? 16 A. It is reasonable, yes. 17 Q. Yes. E1115, please. (Pause). Sorry, if you 18 just go back, please, to the page before. And 19 go down, sorry, it is in the concerns WhatsApp 20 group. I think it is 1115, yes. So there, yes, it 21 is at the very bottom, the names have now 22 been redacted, I am not going to mention the 23 name. This is the Chief Minister: 24 "I am being told that Mr McGrail has been 25 granted access by Special Branch to the files</p> <p style="text-align: center;">Page 261</p>	<p>1 person a couple of months ago vis-à-vis the 2 Inquiry, or was it just independently? 3 A. Independently. 4 Q. Yes. Do you think it was appropriate for 5 him to be raising that with you, asking you 6 about extant criminal investigations against 7 someone that he had a link to? 8 A. He just raised it and I answered it and I 9 gave him little detail. 10 Q. But as far as you are concerned, 11 Mr McGrail did not try to access any 12 information -- 13 A. No, not at all. 14 Q. -- about that individual. 15 A. Not at all. 16 Q. Did Mr Picardo ask you again about that 17 individual after this text? 18 A. No, he didn't, no. 19 Q. Just finally in relation to ... sorry, just two 20 points. In relation to Mr Baglietto, just to 21 clarify something that was put to you before. 22 Now, my understanding of Mr Baglietto's 23 evidence was that he gave evidence that after 24 the Inquiry was announced he deleted 25 a number of his WhatsApp messages but the</p> <p style="text-align: center;">Page 263</p>
<p>1 relating to the [something] matter." 2 And that was a name, was it not, of 3 an individual? 4 A. Correct. 5 Q. That has been redacted. "For the purpose 6 of use in the Inquiry." And just further down: 7 "Is this something which you are aware of or 8 which the RGP or any member is assisting or 9 facilitating information to Mr McGrail without 10 an order from the Inquiry Chairman to provide 11 such information?" 12 And as we go down, your response, you say 13 that he has raised various allegations. But in 14 relation to point 2, and this is the second 15 paragraph down: 16 "Special Branch has housed at New Mole 17 House Police Station and Ian McGrail. As I 18 reassured you in my text on Tuesday, he has 19 not visited New Mole House. In actual fact, as 20 I told you a couple of months ago, we are also 21 running no investigation against [somebody]." 22 Was that somebody, somebody who you knew 23 the Chief Minister to have a link to? 24 A. Yes. 25 Q. And had the Chief Minister raised that</p> <p style="text-align: center;">Page 262</p>	<p>1 two events were not related in his mind. He 2 did not do one because of the other, but he 3 deleted a number of WhatsApp messages. 4 That was his evidence. Am I right, is it 5 correct, that your evidence is not that you 6 deleted messages, it is that you lost access to 7 messages? 8 A. That is correct, yes. 9 MR WAGNER: Yes. (Pause). I am just going 10 to turn my back. Those are my questions, 11 thank you. 12 THE CHAIRMAN: Thank you. Yes. 13 MR GIBBS: Sir, might I just? There was one 14 topic which I know that my learned friend 15 Mr Santos intended to absorb from me but 16 which perhaps late in the day he decided not 17 to. And it has been raised by some of the 18 propositions -- 19 THE CHAIRMAN: Carry on. 20 MR GIBBS: -- put on behalf of Hassans by 21 Sir Peter Caruana and I wondered whether -- 22 THE CHAIRMAN: You could pursue the 23 matter shortly. 24 MR GIBBS: Yes, thank you very much. The 25 topic is conflict of interest. In 2023</p> <p style="text-align: center;">Page 264</p>

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<p>1 Mr McGrail was arrested on an allegation of 2 sexual impropriety. Did you know that? 3 A. Yes, sir. 4 Q. And he was also arrested on an allegation 5 of data breach. 6 A. Which I think happened before the sexual 7 offence, yes. 8 Q. Thank you. And in relation to the sexual 9 allegation he was acquitted and in relation to 10 the other he was released without charge. 11 A. That's correct, sir. 12 Q. When he was under suspicion on either of 13 those two occasions, apart from -- 14 THE CHAIRMAN: Just hang on. The matter 15 in which he was released without charge may 16 still be under investigation, may it not? 17 MR GIBBS: Possibly. The point is as to this 18 officer's behaviour during that period. 19 THE CHAIRMAN: Okay, but I just think that 20 the premise might be slightly incorrect. 21 MR GIBBS: Right, thank you. Thank you. 22 THE CHAIRMAN: I may be wrong, but I am 23 not completely confident. 24 MR SANTOS: I think that is consistent with 25 what we have heard today.</p> <p style="text-align: center;">Page 265</p>	<p>1 confidential information that had come to you 2 in the course of your job about either of those 3 cases? 4 A. It would be totally unethical for me to do 5 so, sir. 6 Q. Totally unethical, yes. Did you suggest to 7 him or to his lawyers challenges that might be 8 made to the police action? 9 A. Not at all, sir. 10 Q. Did you suggest to him or to his lawyers 11 lines of defence that he as the suspect might 12 run? 13 A. No, sir, not at all. 14 Q. Do you try to influence the decision 15 whether Mr McGrail should be interviewed? 16 A. Not at all. 17 Q. Did you try to dissuade the Director of 18 Public Prosecutions or the Attorney General 19 from proceeding against him? 20 A. No, sir. 21 Q. Did you try to influence the decision 22 whether his mobile telephone should be 23 examined? 24 A. Not at all, sir. 25 Q. And why did you not do any of those</p> <p style="text-align: center;">Page 267</p>
<p>1 THE CHAIRMAN: Yes. 2 MR SANTOS: Did the question relate to the 3 data breach or the hard drive? Data breach, 4 then my understanding is as far as the data 5 breach is concerned, he has been released 6 without charge and we were told this afternoon 7 that in relation to the hard drive, that remains 8 ongoing. 9 THE CHAIRMAN: That is another data 10 breach. 11 MR SANTOS: Well, I think there is 12 an allegation, yes. 13 MR GIBBS: I am sorry to have complicated 14 what I thought was a very straightforward 15 proposition. In relation to the release without 16 charge, when he was under suspicion in 17 relation to either of those things, apart from 18 expressing sympathy, did you speak to him 19 privately about those cases? 20 A. Not at all. 21 Q. Or to his lawyers privately -- 22 A. Not at all. 23 Q. -- about either case? 24 A. Not at all. 25 Q. Or pass on to him or to his lawyers</p> <p style="text-align: center;">Page 266</p>	<p>1 things? 2 A. Because, um, it was important that I 3 protected the Royal Gibraltar Police, it was 4 important that I protected the integrity of the 5 investigation and obviously protected 6 Mr McGrail at the same time. But all the 7 questions that you have asked me, sir, it would 8 have been unethical of me to do any of those. 9 Q. And arising from Mr Peter Caruana's 10 questions, you and he had been great friends. 11 A. The best of friends. 12 Q. You had worked for the same organisation 13 for years and years. 14 A. Yes, we did, sir. 15 Q. He was your senior colleague in the same 16 organisation. 17 A. He was, sir. 18 Q. Obviously not a solicitor's firm but 19 a police force. And did you need to have the 20 obvious conflict of interest pointed out to you? 21 A. No, sir, not at all. I knew my position. 22 Q. The question of the seizure of mobile 23 telephones, which I think it has been suggested 24 will be the first thing you would look at if you 25 were, what, investigating crime, Mr Peter</p> <p style="text-align: center;">Page 268</p>

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<p>1 Openshaw says, for instance, for a drug dealer, 2 would you look very quickly to seize the 3 person's telephone? 4 A. Yes, sir. 5 Q. But the same would apply in a conspiracy 6 it defraud -- 7 A. Absolutely, sir. 8 Q. -- or in a case of corruption? 9 A. Yes, sir. 10 Q. And why is that? 11 A. Because it's where there would be 12 evidence. 13 Q. And of course it might be evidence that 14 would prove guilt. 15 A. Correct, sir. 16 Q. In which case it would be vital for the 17 police. 18 A. Absolutely, sir. 19 Q. Or it might be evidence which would prove 20 innocence. 21 A. Yes, as well. 22 Q. In which case it would be vital for the 23 defence. 24 A. Absolutely. 25 Q. In either of which circumstances it would</p> <p style="text-align: center;">Page 269</p>	<p>1 those, which was the most significant source? 2 Was it the meetings, the minutes, the emails, 3 the attachments to the emails, the case files ... 4 A. All of those, sir. 5 Q. Where in that spectrum of significance did 6 theWhatsapps on the investigating officers' 7 mobile telephones lie? 8 A. Very little significance, sir. 9 Q. At the bottom? 10 A. Very. 11 Questioned by MR COOPER 12 MR COOPER: There is one point arising 13 which I would like to clarify, if I may. It 14 relates to what we have just learned, which is 15 that, as I understand, the data breach matter 16 has been resolved but that the data breach in 17 relation to the hard drive is ongoing. I would 18 just like to establish, if I may, what is the 19 current status of the criminal investigation? 20 THE CHAIRMAN: I do not -- 21 A. I won't discuss that. 22 THE CHAIRMAN: I do not think that is a 23 proper question. 24 MR COOPER: But we were told today that 25 certain questions cannot be answered because</p> <p style="text-align: center;">Page 271</p>
<p>1 obviously be vital to preserve the contents of 2 the device. 3 A. Indeed, sir. 4 Q. To back it up and to save the backup. 5 A. Yes, sir. 6 Q. And to make sure that it was not thrown 7 away -- 8 A. Yes, sir. 9 Q. -- or corrupted or that it did not in some 10 way disappear. 11 A. Yes, sir. 12 Q. But, by contrast, 13 (16.50) 14 the investigating officers, would they also use 15 mobile telephones in all likelihood? 16 A. Yes, sir. 17 Q. To try to catch criminals. 18 A. Yes, sir. 19 Q. And to speak to each other, to make 20 arrangements in the investigation. 21 A. Yes, they would. 22 Q. When it came to disclosure of material to 23 the Inquiry and the hundreds of thousands of 24 documents which you and your organisation 25 were able to make available to the Inquiry, of</p> <p style="text-align: center;">Page 270</p>	<p>1 of the fact of an ongoing live criminal 2 investigation. 3 THE CHAIRMAN: Yes. 4 MR COOPER: So may I ask then who is 5 responsible for that investigation? 6 (?): (Inaudible due to microphone not 7 switched on) 8 THE CHAIRMAN: No, this is not a proper 9 topic to be investigated in an open hearing. 10 MR SANTOS: I think if there is a live 11 investigation I think we should not ask 12 questions about it at this stage. 13 MR COOPER: But it does appear to be 14 somewhat open ended, the investigation, and 15 without -- 16 THE CHAIRMAN: It is not open ended, it is 17 ongoing. 18 MR COOPER: Yes. 19 THE CHAIRMAN: As I understand it, but I 20 have only received this information today, it is 21 tenth hand, it is not a good way to proceed at 22 all. 23 MR SANTOS: No, and I do not think it falls 24 very comfortably within our terms of reference 25 either.</p> <p style="text-align: center;">Page 272</p>

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<p>1 THE CHAIRMAN: No. I just think this is off 2 limits until I have sorted the position out. 3 MR COOPER: The real question I want to 4 understand is whether it is being independently 5 investigated. That is relevant to the matters in 6 issue. 7 THE CHAIRMAN: You mean independent of 8 the RGP? 9 MR COOPER: Indeed, yes. 10 THE CHAIRMAN: No, it is a criminal 11 investigation in Gibraltar. 12 MR SANTOS: I think we should establish the 13 position ... 14 THE CHAIRMAN: Yes. 15 MR SANTOS: ... and then to the extent that it 16 is relevant, we will pass that information on. 17 But I do not want to start trampling -- 18 THE CHAIRMAN: I do not either. It is 19 blundering into a minefield. 20 MR SANTOS: Yes. 21 THE CHAIRMAN: Where none of us know 22 where the mines are. It is off limits for the 23 time being. I will make enquiries. If there is 24 anything you should know I will ensure that 25 you are told.</p> <p style="text-align: center;">Page 273</p>	<p>1 to a search warrant, which somebody said 2 today, that is probably right, is it not? 3 MR CRUZ: In the context of - of course. 4 THE CHAIRMAN: You could have asked the 5 Inquiry to authorise it. 6 MR CRUZ: Indeed he could have gone for a 7 completely different route had he applied his 8 mind, Mr Chairman, but I think there was a 9 suggestion, unless I have misunderstood my 10 learned friend Sir Peter, that having obtained it 11 in the context of one criminal investigation he 12 could have a sort of free flowing access to the 13 document, to the phone, and that is why I 14 asked Mr Ullger why did he ask for consent? 15 Because if he obviously had that right he 16 would not have asked for consent. 17 THE CHAIRMAN: Yes, because the warrant 18 would only authorise its seizure and retention 19 in relation to the terms of the warrant. 20 MR CRUZ: Yes, indeed. 21 THE CHAIRMAN: Correct. 22 MR CRUZ: You have taken the point, Mr 23 Chairman. 24 THE CHAIRMAN: Do not sound so 25 surprised. (Laughter)</p> <p style="text-align: center;">Page 275</p>
<p>1 MR COOPER: We are most grateful for that. 2 THE CHAIRMAN: Okay. 3 MR COOPER: Thank you. 4 THE CHAIRMAN: You may know more than 5 we do, but let us just leave that alone and we 6 will sort it out in the background. 7 MR CRUZ: Yes. 8 Questioned by MR CRUZ 9 MR CRUZ: Just a couple of questions, Mr 10 Ullger. I am going to risk leading a little here 11 just to get to the point. You did not have 12 access to your Whatsapps until you got Mr 13 McGrail's mirror phone. I think we can all ... 14 A. That's correct, sir. 15 Q. That is correct, yes. So did you ask for 16 permission to view - to get access to that 17 phone? 18 A. I did, sir. 19 Q. Why? 20 A. Because it had been obtained in a criminal 21 investigation. 22 Q. So you had no right to it. 23 A. No, sir. 24 Q. I see. 25 THE CHAIRMAN: If it was seized pursuant</p> <p style="text-align: center;">Page 274</p>	<p>1 MR CRUZ: I apologise for that, it is just the 2 fact that others appear to follow such an 3 interesting train of thought. In the case of all 4 the Whatsapps contained in all the charging 5 documents and all the other documents in 6 Operation Delhi, is that the same situation? 7 A. (Inaudible), sir. 8 Q. Sorry? 9 A. Sorry, sir? 10 Q. In the context of all the Whatsapps 11 contained in the charging reports and the 12 bundle, the search warrant application, is that 13 the same situation as the one we have just 14 described? 15 A. Completely different. 16 Q. Completely different. Couple of last 17 questions. Is your position that the RGP has 18 given comprehensive disclosure as and when it 19 has had information in its control? 20 A. We have, sir. 21 MR CRUZ: Thank you. 22 Questioned by MR SANTOS 23 MR SANTOS: One question following on 24 from that, and then a separate one. Why do 25 you say the position is different with Operation</p> <p style="text-align: center;">Page 276</p>

<p>1 Delhi material?</p> <p>2 A. Because it had already been asked for by</p> <p>3 the Inquiry.</p> <p>4 Q. I see. Then one question: you said during</p> <p>5 my own questioning, and it is a matter that has</p> <p>6 been raised with me, that the best evidence is</p> <p>7 likely to be from emails, day books and</p> <p>8 Cyclops, you said. Can you just explain what</p> <p>9 Cyclops is?</p> <p>10 A. So Cyclops is a platform that the Royal</p> <p>11 Gibraltar Police uses to record and investigate</p> <p>12 crime, and it's where all the decisions are</p> <p>13 made by investigators, so it is our platform for</p> <p>14 not only investigations but for other business</p> <p>15 areas.</p> <p>16 Q. Has the RGP provided relevant disclosure</p> <p>17 of documents to the Inquiry from Cyclops?</p> <p>18 A. Yes, we have, sir.</p> <p>19 THE CHAIRMAN: Cyclops is probably an</p> <p>20 acronym of something, is it?</p> <p>21 A. No idea, sir. But it's a platform, it's an IT</p> <p>22 platform.</p> <p>23 THE CHAIRMAN: It is used in the UK as</p> <p>24 well, probably.</p> <p>25 A. Yes, sir, it is.</p> <p style="text-align: center;">Page 277</p>	<p style="text-align: center;">1</p> <p style="text-align: center;">2</p> <p style="text-align: center;">3</p> <p style="text-align: center;">Page 279</p>
<p>1 THE CHAIRMAN: Yes.</p> <p>2 A. Yes.</p> <p>3 MR SANTOS: Would any relevant Whatsapps</p> <p>4 be uploaded to --</p> <p>5 A. No, not at all.</p> <p>6 Q. Nowadays would any relevant Whatsapps -</p> <p>7 -</p> <p>8 A. No.</p> <p>9 MR SANTOS: I do not have any further</p> <p>10 questions.</p> <p>11 THE CHAIRMAN: No, okay. Thank you</p> <p>12 very much indeed for coming back.</p> <p>13 THE WITNESS: Thank you, sir.</p> <p>14 THE CHAIRMAN: I am very grateful to you.</p> <p>15 THE WITNESS: Thank you very much.</p> <p>16 THE CHAIRMAN: Ten o'clock tomorrow.</p> <p>17 MR SANTOS: Tomorrow, yes.</p> <p>18 THE CHAIRMAN: Okay. Thank you very</p> <p>19 much.</p> <p>20 (The Inquiry adjourned at 16.57 hours until</p> <p>21 10.00 hours on Thursday 10 April 2025)</p> <p>22</p> <p>23</p> <p>24</p> <p>25 1</p> <p style="text-align: center;">Page 278</p>	

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