

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

RULING No 4

1. On 3 May 2021, as sole Commissioner of this Commission of Inquiry (“COI”), I issued a summons to Mr Bevis Sylvester to appear before me today, 13 May 2021, for the purpose of being examined under oath or affirmation. Mr Sylvester is the Chairman of the BVI Airports Authority, and Regional General Manager of Delta Petroleum (Caribbean) Limited, a wholesale and retail distributor of fuel in the BVI and the Caribbean. The summons followed Letters of Request which the COI had sent to Mr Sylvester on 6 and 7 April 2021 seeking documents and information from him in his capacity as Chairman of BVIAA and in his personal capacity respectively. In neither case had Mr Sylvester made any response to those requests prior to the service of the summons upon him.
2. On 11 May 2021, Ms Nelcia St Jean of McW Todman & Co on behalf of Mr Sylvester made an application under section 12 of the Commissions of Inquiry Act 1880 (“the COI Act”) to represent him at the hearing. At the hearing, I refused that application, and now provide reasons for that refusal.
3. Section 12 provides:

“Any person whose conduct is the subject of inquiry under this Act, or who is in any way implicated, or concerned in the matter under inquiry, shall be entitled to be represented by counsel at the whole of the inquiry, and any other person who may consider it desirable that he should be so represented may, by leave of the commission, be represented in the manner aforesaid.”

References to “section 12” in this ruling are to that section. Paragraph 3 of the COI Protocol for Representation under Section 12 requires an application to be made in writing for a direction by the Commissioner confirming representation as a participant under section 12; and provides that, in the absence of such a direction, representation for a participant will not be allowed. However, by paragraph 26 of the COI Rules, the Commissioner may permit a witness to have Counsel present when giving evidence to the COI.

4. Ms St Jean said that her submissions on the section 12 application exactly mirrored those made on 6 May 2021 by Terrance Neale of her firm on behalf of Ms Patsy Lake – the Deputy Chairman of the BVIAA and a business woman – when she had been summoned that day.
5. The applications being materially the same, I can deal with this application very shortly: I refused Mr Sylvester’s application for the same reasons upon which I refused the application made on behalf of Ms Lake as set out in my Ruling No 2 dated 10 May 2021.
6. However, for the purposes of today’s hearing, I made an order under paragraph 26 of the COI Rules that Ms St Jean be present during Mr Sylvester giving evidence. That enabled her to give him any advice he required on any particular question or document and thus Mr Sylvester was not at all adversely affected by my result of the section 12 application.



The Rt Hon Sir Gary Hickinbottom

Commissioner

13 May 2021