

## **BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

### **PRESS NOTICE**

#### **COMMISSIONER'S OPENING STATEMENT AT FIRST PUBLIC LIVE STREAMED HEARING, 2 JUNE 2021**

The Commission of Inquiry ("the COI") was issued on 19 January 2021 to look into whether corruption, abuse of office or other serious dishonesty may have taken place amongst public, elected and statutory officials in recent years; and to make appropriate recommendations as to governance and the operation of the law enforcement and justice systems in the BVI. The Rt Hon Sir Gary Hickinbottom is the sole Commissioner.

The COI held its first public hearing today, streamed live on the COI's dedicated YouTube Channel. At the start of the hearing, the Commissioner made an opening statement. A copy of that statement is attached to this Notice. In his Statement the Commissioner confirmed his wish that all future hearings should be held in public and streamed live so that the BVI public can better follow the work of the COI.

He has repeatedly expressed his readiness to use the wide powers he has to direct the COI's procedures to ensure the COI is able to work as flexibly and efficiently as possible. That is particularly important given the pandemic. At the hearing, the Commissioner expressed his hope that all those involved in the COI will work to ensure that it proceeds in an organised and efficient manner. To minimise the risk of disruption to the COI's work, the Commissioner yesterday published a revision to the COI Rules and its protocol on the redaction of documents. The Commissioner also published two new protocols: one concerning the conduct of the hearings; the second the provision of written witness evidence to the COI. These can all be found on COI's website at [www.bvi.public-inquiry.uk](http://www.bvi.public-inquiry.uk).

In his Statement, the Commissioner also set out the timetable and intended topics for future substantive hearings to resume on 14 June. He noted that, given the deficient state of the documents produced and the sheer weight of issues which have been brought to the attention of the COI for investigation, it is clear that he will not be able to deliver his report by July. He has therefore sought an extension from His Excellency the Governor who has been kind enough to indicate that he is in principle willing to grant such an extension, but who has asked the Commissioner to report on progress of the COI by mid-July before he appoints a date by which he will require the Commissioner to report. The Commissioner remains committed to completing his investigation into the subject matter under inquiry and delivering his report with all due speed.

Steven Chandler  
Secretary to the Commission

2 June 2021

## **BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

### **The Commissioner's Opening Statement for COI Hearing** **Wednesday 2 June 2021**

I am delighted that this hearing is being live-streamed. The hearings to date, which have focused on production of information and documents, could not be public because, through the Attorney General, the BVI Government Ministers and Ministries she represents reserved their rights and privileges in respect of the information and documents being discussed. I stress that those Ministers and Ministries were entitled to rely upon such rights and privileges that they have to keep documents and information from the public; but it regrettably meant that the hearings could not be public. As I will explain, we are now beyond that stage; and, absent exceptional circumstances, all future hearings of the COI will be live-streamed.

As you are all aware, in January, I was appointed by the then Governor to conduct a Commission of Inquiry ("COI") to establish whether there is information that corruption, abuse of office or other serious dishonesty in relation to public officials may have taken place in recent years; and, if appropriate, to make independent recommendations with a view to improving the standards of governance and the operation of the agencies of law enforcement and justice in the British Virgin Islands.

In the first stage of the Inquiry, in addition to considering information which was helpfully submitted by members of the public, the COI made requests for voluntary production of information, mainly from Ministers and other public officials. Many documents were provided, and I am deeply grateful to the public officials who, on top of their regular duties, have been involved in a considerable amount of work to respond to the requests. I sincerely thank them for their efforts.

However, the initial COI hearings held in May, to which I have already referred, confirmed that the documents produced were significantly incomplete and in generally very poor order. Often, it was impossible to ascertain the story that they told. For example, I heard evidence from witnesses over several days on the BVI Government contracts in respect of radar barges simply to try and understand how those contracts might have come into being. Even now, the COI does not have a full set of the relevant documents. At the hearing on 20 May 2021, Sir Geoffrey Cox QC on behalf of the Attorney General frankly and properly conceded that the BVI Government's files are in "severe disarray", and that (he said) largely explained why the documents produced to the COI had been in such very poor order.

That has inevitably had a serious adverse impact on the progress of the COI. In particular, it is inevitable that the analysis of the documents, and the COI hearings, will be significantly more difficult and take substantially longer.

I promptly took a number of steps to mitigate the problems that have resulted.

First, on 20 May 2021, I directed that, by 31 May, each Minister and other public official who had responded to a letter of request for documents, having made any further checks necessary, should swear an affidavit setting out the steps they had taken to identify documents covered by each request and to confirm that they considered they had taken all reasonable steps to ensure that disclosure is complete. I directed that those assurances be supported by an affidavit by the Attorney General (or a senior member of her team) confirming that, in her view, reasonable

steps have been taken to ensure the documents produced are complete. The Attorney General has asked for an extension to lodge those affidavits to 7 June, which I have granted.

Second, I have commissioned a specialist IT system called Relativity to manage the documents that we have. This system is widely used in public inquiries and major judge-led inquests in England and Wales including some which receive material of a highly personal nature (such as the Inquiry into the Grenfell Tower Fire and the Infected Blood Inquiry) or which engage national security (such as the Undercover Policing Inquiry and the Jermaine Baker Inquiry). The system provides me with the necessary confidence that documents provided to the COI will continue to be held in a secure way; but it also has powerful search and analysis functionality which, with the affidavits to which I have referred, will reduce the risk that poor or incomplete documents will disrupt future hearings.

Third, I had already invited those who have participant status, such as the Attorney General and elected Ministers and Members of the House of Assembly, and others with an interest in these matters to provide me with position statements setting out their response to specific questions regarding governance and the operation of the law enforcement and justice systems. This gives an early opportunity for those with a constitutional interest in these matters to inform the work of the COI. These position statements are still being received but, subject to any compelling objection, I propose publishing them on the COI's website so that the public can better follow our work.

The next step, which will begin shortly, is for the COI to issue letters requesting corporate statements from the relevant Ministries which, in respect of particular topics of interest, set out the relevant facts as they see them and explain the available documents. These, I hope and expect, will again ameliorate deficiencies in the documents and will enable more focused hearings going forward.

With those measures in place, we can resume substantive hearings, which I propose to do on Monday 14 June. As I have said, unless I exceptionally grant an application that a hearing be heard in private, all hearings will be live-streamed, and a link to that recording will be available on the COI website. If, during the course of a hearing, Counsel to the Commission or a participant or a witness considers that the evidence being given is privileged or confidential or otherwise cannot properly be given in public, then that person will make that clear to me and the live-stream will be temporarily suspended whilst that point is aired and determined. The live stream will be resumed as soon as it can be. In addition to a live-stream recording, once available, transcripts of hearings will continue to be published on the website.

I propose holding hearings from 14 June on the basis of a four day week, Monday to Thursday, which will give Fridays and weekends as preparation time. Hearings will generally commence at 10am and be concluded by 4.30pm; but I will remain flexible, and the COI is fully prepared to sit outside those times and days to ensure that our work proceeds efficiently and effectively. Key information concerning the conduct of hearings has been set out in a protocol published yesterday. Those who have attended the private hearings will already be aware of some of this information. Publishing it ahead of the public hearings has the important benefit of assisting the BVI public better to follow the public hearings.

I would like now to give some more detail about the forthcoming hearings.

I propose dealing with the subject matter under inquiry by topic. Although this may mean that some witnesses will be called more than once, again this will ensure that the work of the COI proceeds in an organised and efficient manner, and will give the participants a full opportunity to engage with the process. Whilst I repeat I propose to be flexible and other issues may arise during the course of the hearings, the proposed order in which I intend to take topics is as follows:

- (1) The interests held and declared by Members of the House of Assembly and elected Ministers.
- (2) Questions arising from the position statements submitted by participants and others on governance and law enforcement and justice.
- (3) The work of the Auditor General, the Internal Auditor and the Complaints Commissioner.
- (4) The composition and function of statutory boards.
- (5) The purchase and leasing of Crown Land.
- (6) The system under which BVI Government enters into contracts both in general and in relation to specific contracts.

That is an ambitious programme; but one which is, in my view, necessary under my terms of reference. I intend to allocate a specific number of days to each topic.

I expect those who have the privilege of participant status and their legal representatives to make every effort to assist me and my team in maintaining the progress of the COI. One way in which that can be done is if participants now make submissions on the topics I have set out, identifying any issues within those topics they consider I should investigate and witnesses whom I should call. To have these points raised shortly before hearings relating to a topic are about to commence would be disruptive to the hearing schedule. Participants should therefore send any submissions they wish to make on those matters, in writing to the COI, by 9 June 2021. I do not expect any difficulty with participants complying with that direction given that they have provided much of the documentation received by the COI on these topics; and, at least in the case of those who have instructed the Attorney General, work has been progressing for some months. As and when the COI can give more information on each topic, for example as to which witnesses will be called, then it will do so. I expect the first information to be sent out to participants today or tomorrow. A rolling timetable will be available to the public on the COI website.

I want to say something about redaction, because this is something else which has the potential for interfering with our timetable. It is something with which the lawyers in this room will be familiar. For the benefit of the public, redaction is a process by which certain information which cannot be made public is blanked out. There may be good reasons why a document needs to be redacted: for example, it may contain personal data or information otherwise confidential or privileged. What is redacted is ultimately a decision for me as Commissioner, taking into account both the relevant law and all the circumstances including the views expressed by both participants and others that this inquiry should be as transparent as possible.

On 5 March 2021, the COI published a redaction protocol. It is detailed but, put simply, it allows those who provide documents to the COI to make representations as to why information should be redacted from the documents which they have provided. However, I am concerned that the problems surrounding the disclosure received from government bodies will undermine the effectiveness of that protocol. Whilst respecting rights of privacy and confidentiality, it is

important to maintain and safeguard the hearing programme. I have therefore published an updated redaction protocol, which allows the COI to invite those providing documents to identify any information they want redacted, and the reasons for that request, but without rendering it necessary to rule on every redaction issue before a hearing. Such issues will only be determined as and when necessary, in the light of how hearings in fact proceed. There is a balance to be struck between ensuring that sensitive information which for legitimate reasons needs to be redacted is not put into the public domain, and the COI being as transparent as possible, a balance which I consider the new protocol provides. I expect the legal representatives of participants to work with the COI Team in a proactive way to find a pragmatic solution to any issues that arise.

I stress that none of this exercise will compromise in any way the COI's undertaking to members of the public who have made information available on a confidential basis that that material will remain confidential and the source of it will remain anonymous.

I intend to press forward with the public hearings as quickly as is consistent with my terms of reference, which require the inquiry to be not only faithful and impartial, but full.

However, irrespective of those efforts, it will be clear to all that it is not now possible for me to deliver my report by 19 July 2021, the initial date for its delivery in my Instrument of Appointment. Indeed, it is inconceivable that the hearings will be over by that date. I have therefore written to His Excellency the Governor seeking an extension of that time. The Governor has been kind enough to indicate that, given the matters to which I have alluded and the sheer weight of issues which have been brought to the attention of the COI for investigation, he is in principle willing to grant such an extension; but he has asked me to report on progress of the COI by mid-July, before he appoints a date by which he will require me to report. I am grateful to His Excellency. He, and all those who live in the BVI, may rest assured that I will press forward with the inquiry, and deliver my report, with all due speed.

**The Rt Hon Sir Gary Hickinbottom**  
**2 June 2021**