

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 29

(MONDAY 6 SEPTEMBER 2021)

International Arbitration Centre
3rd floor Ritter House
Wickhams Cay II
Road Town, Tortola

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Mr Hussein Haeri of Withers LLP (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

Counsel to the Commission Mr Bilal Rawat also appeared.

Mr Edward Childs gave evidence.

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Those present:

Session 1

Mr Hussein Haeri, Withers LLP (attending remotely)
Ms Lauren Peaty, Withers LLP (attending remotely)
Ms Sara-Jane Knock, Withers LLP (attending remotely)

Mr Bilal Rawat

Mr Steven Chandler, Secretary to the Commission
Ms Juienna Tasaddiq, Assistant Secretary to the Commission
Mr Andrew King, Senior Solicitor to the Commission
Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police Force

Session 2

Mr Hussein Haeri, Withers LLP (attending remotely)
Ms Lauren Peaty, Withers LLP (attending remotely)

Mr Bilal Rawat

Mr Edward Childs (attending remotely)

Mr Steven Chandler, Secretary to the Commission
Mr Andrew King, Senior Solicitor to the Commission
Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician

Officer Junior Walker, Royal Virgin Islands Police
Force

P R O C E E D I N G S

Session 1

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3 COMMISSIONER HICKINBOTTOM: Mr Rawat, just before we
4 start, could I just say a couple of things.

5 First, it's the fourth anniversary of Hurricane Irma.
6 Of course, I cannot fully appreciate, I cannot fully imagine the
7 effect of that hurricane. Only those who are here who endured
8 it and its immediate aftermath could possibly do that. But we
9 have seen and heard a considerable amount of evidence about the
10 devastation it caused, not only to the physical geography of the
11 country but also to the welfare of those who live here. I'm
12 very sensitive to that and also to the reaction of those who
13 live in this islands to Irma and later to Maria and later,
14 still, to the COVID-19 pandemic. They have met these natural
15 disasters with great fortitude and great resilience. And today
16 of all days, that is very much at the forefront of my mind, and
17 I know in the minds of all my team.

18 Second, today we resume taking evidence at COI
19 hearings. I'm afraid that this morning we will have to deal
20 with some of my frustrations in making progress. The causes
21 today are very much the same as the causes in June and July,
22 when they were fully aired in the open hearings that I held.

23 I will continue to press for information, which I
24 consider relevant to my Terms of Reference. However, I should
25 make it quite clear that as I've reached this stage of this

1 Inquiry, when it is more than ever important that I press ahead,
2 complete the hearings and write and promptly deliver my Report.
3 I have no doubt--no doubt at all--that the public welfare of the
4 BVI requires that I do. I'm afraid that I and, indeed, my whole
5 team, have been frustrated but I must make very clear that
6 nothing and no one will deflect or distract us from completing
7 the task set by my Terms of Reference.

8 Thank you very much.

9 Mr Rawat.

10 MR RAWAT: Good morning, Commissioner.

11 Can I, before I make any submissions just introduce
12 the representation that we have, in line with COVID
13 restrictions, you have issued a direction that effectively
14 limits the numbers who can be in the hearing room to those that
15 need to be here. And in terms of legal representation of the
16 witnesses, the focus is on allowing or creating circumstances in
17 which a witness can safely attend in person, and that means that
18 those legal representatives who are not representing the
19 interests of that witness will attend remotely; and, in terms of
20 those who do, they will be limited to one person.

21 Today, the one witness we have is not legally
22 represented and so quite sensibly other legal representatives
23 for other participants are attending remotely. And if I could
24 just introduce the individuals that we have online, we have
25 Mr Hussein Haeri, Ms Sara-Jane Knock, and Ms Lauren Peaty, all

1 of whom are here on behalf of the Attorney General and the
2 elected Ministers.

3 COMMISSIONER HICKINBOTTOM: Yes.

4 MR RAWAT: The other participants, as you recall, are
5 remaining Members of the House of Assembly represented by Silk
6 Legal. They are not attending and have not contacted the
7 Secretary to make any arrangements to attend even remotely.

8 The first matter on the Hearing Schedule today has
9 been listed as a direction hearing. And if, perhaps, I could
10 just explain the purpose of that. It follows on through the
11 remarks that you made a few moments ago, Commissioner, and that
12 is to understand the present position in relation to a number of
13 specific issues:

14 They are, firstly, compliance with requests for
15 Affidavits in relation to Statutory Boards and the redactions
16 that may be sought in relation to material that may be used as a
17 hearing concerning Statutory Boards. That is perhaps the most
18 pressing because, as you in the public were informed in a press
19 notice, Statutory Boards refers is in fact refers to a topic
20 that we intend to canvass in these resumed hearings.

21 The second topic I would welcome assistance on is
22 clarification of the Attorney General's position in relation to
23 the redaction of the response that the elected Ministers
24 submitted to the Governor's Position Statement.

25 The third is clarification as to the position of the

1 Attorney General in relation to disclosure of documents relating
2 to Belongership.

3 The fourth is progress in general on Affidavits.

4 And the fifth is an issue that we canvassed in July
5 but you may need, in light of recent correspondence, to return
6 to, and that is the position of participants as to the meaning
7 of the paragraph 1 of the Terms of Reference.

8 COMMISSIONER HICKINBOTTOM: Yes, the scope of
9 paragraph 1.

10 MR RAWAT: The terms of that.

11 What I propose to do, Commissioner, with your leave,
12 is to take each of these topics in turn but then pause at the
13 end of each one so that you can then invite submissions, if
14 required, from others.

15 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

16 MR RAWAT: So, the first topic is Statutory Boards.

17 What I would emphasise today is that what we would
18 hope as the COI Team is that the product of this hearing is not
19 to go at length or in any granular detail about events of the
20 past, however recent, but rather to try and come to a pragmatic
21 solution as to the way forward. That is particularly important
22 in this case because, otherwise, we will not be able to do the
23 hearings that we so want to do.

24 But I do need to give this some context and some
25 history.

1 Now, on the 2nd of June, you publicly announced those
2 topics that you intended to investigate at further hearings, and
3 they included Statutory Boards; requests for Affidavits were
4 sent out on the 4th of June. And in your remarks two days
5 earlier, you indicated that the reason for asking Affidavits was
6 so that you could--they would result in more focused hearings.

7 Progress--and this has been ventilated at previous
8 hearings, has been slow, not just in relation to Affidavits
9 relating to Statutory Boards but in relation to other
10 Affidavits, and you have had to grant extensions.

11 And as we have made clear, again in previous hearings,
12 with very, very limited exceptions, you have granted those
13 extensions in the hope that it would produce useful evidence
14 that would mean more focused hearings.

15 But delays in relation to Statutory Boards and the
16 production of Affidavits was such that you could not, as you
17 intended, deal with the topic in the week commencing the 19th of
18 July. The expectation, however, was that we would receive
19 outstanding Affidavits well before the resumption of hearings
20 but, unfortunately, that has not happened.

21 And to give some immediate examples, one of whose who
22 has been asked to make an Affidavit is the current Financial
23 Secretary, Mr Jeremiah Frett. An Affidavit relating to
24 Statutory Boards was received from Mr Frett on the evening of
25 the 3rd of September, 2021, notwithstanding that it had actually

1 been sworn on the 26th of August 2021. Affidavits were received
2 from Tasha Bertie and Carolyn O'Neal-Morton, both Permanent
3 Secretaries, late last night. Those documents run to hundreds
4 of pages and both of these witnesses are due to be called this
5 week.

6 As we have said before, the concern of the COI is that
7 when there are such delays, it undermines the ability of the COI
8 Team to prepare properly, and it puts at risk the Hearing
9 timetable, and that just doesn't disrupt the COI; it disrupts
10 witnesses who will have taken time and been scheduled to attend
11 on particular days. But as you have indicated, Commissioner, we
12 have reached the point where delays of this sort cannot be
13 allowed to continue to disrupt the course of the COI.

14 As well as delay, a parallel issue has been redaction,
15 and it may assist if I just set out in summary the approach that
16 the COI has adopted when making requests for Affidavits. When
17 Letters of Requests have gone out seeking an Affidavit from the
18 Government, they have always been addressed to the Ministers.
19 The recipients of those Letters of Request, and the letters set
20 out specific questions and issues to be dealt with, and ask that
21 all relevant documents be exhibited that address those
22 questions, but in the letter recipients are asked at that point
23 to identify any redactions on any ground, so that includes, for
24 example, legal professional privilege or public interest
25 immunity, and to then provide redacted version of any documents

1 in two forms: The first is with the redactions sought blanked
2 out completely so it's not visible and the second with it shaded
3 so it remains visible.

4 Now, our Protocols allow that. The provision of the
5 redaction Protocol that is on the Inquiry's website at
6 paragraph 14 envisages that. And the same point, more
7 importantly, is made in the protocol on the provision of written
8 evidence.

9 Now, we make that request in every letter for good
10 reason, and that was because it minimises delay, and it was
11 prompted by the fact that, in early hearings, when we first
12 started our hearings, which were in private, what emerged was
13 that there was, not that disclosure in disarray, but it was
14 missing, and that, in part, prompted the requests for
15 Affidavits.

16 I say in part because it is conventional in any
17 Inquiry for first that Inquiry, first of all, to seek general
18 disclosure, and then, as it goes through that disclosure to make
19 requests, sometimes for Witness Statement, but in this
20 jurisdiction it's the Affidavits. And what those requests are
21 intended to do is to ask a witness to explain a particular
22 issue.

23 In our case, the benefit was that, where we had
24 experienced delay in getting documents, et cetera, having
25 someone explain circumstances and exhibit relevant documents was

1 intended and should have reduced delay because the consequence
2 is that, if you, as Commissioner, agree with the proposed
3 redaction, then that document can be used in redacted form. If
4 you don't agree or if there is an issue that is yet to be
5 resolved, then the shaded version can be used, and that then
6 allows all those involved or with access to documents to
7 understand that there may be some parts of the document that are
8 subject to sensitivity or maybe the subject of an application,
9 and it's a pragmatic way of allowing a hearing to proceed.

10 The important point, perhaps, to remember is that when
11 we are using documents at a hearing, we are not automatically
12 releasing those documents to the public--they are not, for
13 example, published on the website--and so it's a different
14 situation from one where an inquiry were to immediately publish
15 all its information on to its website. And in my experience,
16 that is not what Inquiries do anyway.

17 But, regrettably, across a range of requests--and I'm
18 not here speaking specifically of Statutory Boards--the position
19 of the Attorney General has been--and can properly be described
20 as a marked reluctance to comply with a direction in a Letter of
21 Request to identify those matters on which she seeks redactions.

22 You may be asked or the issue of personal data may be
23 raised in any submissions that are made to you on this point;
24 but, in my submission, that's a distraction because one can work
25 around a document that contains personal data. You don't--it

1 would be--there will be limited circumstances, in my submission,
2 where one needs to refer, for example, to a telephone number or
3 an e-mail address, and we have the protection of the fact that
4 we are not publishing on our website straight away.

5 More importantly is that, the Attorney General's
6 stance has been to say that in relation to material that she
7 provides to the Inquiry, she maintains or reserves a right to
8 make a claim for Legal-Professional Privilege or a claim for
9 Public Interest Immunity or indeed for another sort of
10 confidentiality or privilege.

11 Now, that, in my submission, is not enough, because it
12 begs the question well, what are you making the claim in
13 relation of, and it is the Attorney General that is best placed
14 to identify the basis of it. And it is important that that was
15 done early enough because if we take the example of PII, Public
16 Interest Immunity, it is not enough for a participant to say I
17 raise Public Interest Immunity in relation to all of the
18 documents I have provided to you or a set of documents that are
19 exhibited to an Affidavit. And the reason for that is because
20 just simply saying the words "Public Interest Immunity" out loud
21 does not prevent a Commissioner from using that material. There
22 is an application that has to be made. The basis of the
23 immunity claim has to be identified. It has to be developed as
24 an argument. And ultimately you have to be persuaded that the
25 balance between--for Public Interest Immunity, which means that

1 the documents or documents are not used at all, outweighs the
2 interest in having an open and transparent inquiry, which as I
3 understand it, and as the COI has always understand it, the wish
4 of all participants involved in this process.

5 So, if I return back to Statutory Boards and the
6 problem we face which is a practical one, and I hope that with
7 the assistance of participants we can come to a solution, on the
8 24th of August, the Attorney General was provided with a Hearing
9 Bundle and asked to confirm whether there were any redactions to
10 be sought on whatever basis. At that time, the COI was still,
11 in fact, awaiting Affidavits on Statutory Boards. The Attorney
12 General was also asked to confirm if she had any objection to
13 Silk Legal having a copy of that same Hearing Bundle, which was
14 unredacted.

15 We keep in mind, of course, that Silk Legal owe you
16 the same obligation of confidentiality that everyone else does.

17 The Attorney was asked to provide her response by the
18 27th of August. An extension was requested and granted to the
19 30th of August, but it was not possible for a response by that
20 date. What we did receive on Saturday the 4th of September was
21 a redacted bundle, and the following day--that is,
22 yesterday--the Attorney indicated that she was content for that
23 bundle to go to Silk Legal.

24 Now, in the context of both delay and the provision of
25 redaction, it may be said, and reference may be made, as it has

1 been made, to the fact that Public Officers are overstretched
2 and have worked extensively to provide assistance to this
3 Inquiry. That is a good point. And you, Commissioner, have on
4 more than one occasion expressed your thanks to those officers
5 in the Civil Service who have made considerable efforts to
6 provide this COI with the material.

7 It is a point that is stronger on delay, perhaps, than
8 it is on redaction because, if the Attorney wishes to make an
9 application for redaction on the basis or assert
10 Professional-Legal Privilege or make an application based on
11 Public Interest Immunity, that is a matter for her, not, for
12 example, for a Public Officer to really determine.

13 And, rightly, one can also, as was done in July,
14 point to these circumstances of the pandemic that have affected
15 the BVI. But what we must also bear in mind is that those very
16 factors were taken into account when granting extensions; that
17 the letters requesting Affidavits--and this is the state we're
18 at now--was addressed to Ministers, and it was Ministers that
19 decided to delegate the making of Affidavits to Public Officers;
20 that those officers, we assume, have the same support from the
21 IRU which is well resourced and has a significant number of
22 lawyers working for it, the same support will go to those Public
23 Officers as would go to an elected Minister making an Affidavit.
24 And that in many cases, these Affidavits were requested months
25 ago.

1 The situation we have reached is, and can properly be
2 said, to be an unhappy one. We have had, as a COI Team, to
3 prepare for Statutory Boards on the basis of our own Hearing
4 Bundle, and so we're in a situation where we now have two
5 bundles, and we need to find a pragmatic way forward.

6 The history I have set out is not intended to repeat
7 criticisms that may have been made of legal representatives and
8 participants in the past, but it is to give context to the
9 proposal that I want to make and put to you, and that is that I
10 suggest that we use the Hearing Bundle that has been prepared by
11 the COI, and I say that for the following reasons:

12 Firstly, the point that I've already made, that
13 there's a difference between referring to material at a Hearing
14 and publishing it more widely.

15 Secondly, that if there is a concern that, for
16 example, a Cabinet paper that has been provided to the
17 Commissioner and is in that Hearing Bundle, contains reference
18 to material that does not relate to Statutory Boards and,
19 therefore, should be redacted. Well, that concern doesn't
20 really arise because I cannot think or envisage the
21 circumstances which when we are dealing with the topic of
22 Statutory Boards, we will need to refer to any other part of the
23 Cabinet paper that refers to another topic other than Statutory
24 Boards. That is our focus.

25 Thirdly, if there is a concern over personal data,

1 then we will, as we have done throughout our hearings, take care
2 when referring to it. The issue in relation to personal data
3 that has arisen, is in relation to the fact that CVs or résumés
4 of persons appointed to Statutory Boards has been provided to
5 the Commission. Those CVs are in the Hearing Bundle. Whether
6 they become relevant may depend to a great extent on what
7 witnesses say.

8 Our understanding is that the Attorney General does
9 not propose or the elected Ministers do not propose to rely on
10 the CVs at present. So, she has to some extent determined on
11 their behalf, the Attorney General has reserved her position.
12 And so, there is recognition, and the recognition that was
13 further recognition that there may be personal information that
14 is relevant on the 13th of July when Mr Olimpitis was
15 representing the Attorney General.

16 I may have got the date wrong. It's the date on which
17 Order 19 was made. So that, in my submission, is something that
18 we to have deal with on a case-by-case basis as the evidence
19 emerged.

20 But the last point to make is that what we have in
21 additional protection is that is the three-minute delay. The
22 effect is that we are not broadcasting immediately live, and
23 that delay would allow a witness or a legal participant to raise
24 a concern which you would then take into a private session and
25 determine before we resumed our public hearing.

1 As to Silk Legal, they are not represented here today.
2 It is not entirely clear whether they intend to appear in
3 relation to the Statutory Boards' hearings. They don't
4 represent any of the witnesses who are going to be called. The
5 COI Rules do allow you to decide whether a core participant
6 should have disclosure of a particular document and, if so, in
7 what form. The pragmatic solution that I would proffer is that,
8 in the first instance, whilst within the Hearing we are using
9 the COI's Hearing Bundle, that the redacted bundle be provided
10 to Silk Legal. If there are additional--and there has been
11 additional material that the Attorney General has provided--and
12 I refer to the three Affidavits that came in late--then she can
13 propose redactions to those, and those can then be passed on to
14 Silk Legal.

15 COMMISSIONER HICKINBOTTOM: Are the pagination numbers
16 in the redacted bundle the same as in the Hearing Bundle that we
17 have prepared?

18 MR RAWAT: Yes.

19 COMMISSIONER HICKINBOTTOM: Good. So, in practice,
20 that should work?

21 MR RAWAT: Yes, it would allow Silk Legal to
22 understand the issues and to follow proceedings.

23 COMMISSIONER HICKINBOTTOM: Yes.

24 MR RAWAT: It would be a matter then if they wish to
25 make any applications in relation to the bundle they have been

1 provided. But it seems to us, as the COI Team, that the
2 approach I've outlined and the proposition I've put is a
3 sensible way of ensuring that we can progress and call witnesses
4 in relation to Statutory Boards.

5 COMMISSIONER HICKINBOTTOM: And as you say, Mr Rawat,
6 Silk Legal, who aren't here, could make an application. I'm not
7 quite sure what the basis of it would be, but they could make an
8 application to see the full bundle. They're covered by the same
9 confidentiality as anybody else, but they may not think that's
10 necessary.

11 MR RAWAT: And if they do make an application, that
12 would give the Attorney General--

13 COMMISSIONER HICKINBOTTOM: Exactly--

14 MR RAWAT: --an opportunity to explain why she objects
15 or whether she no longer maintains her objection.

16 COMMISSIONER HICKINBOTTOM: Yes.

17 MR RAWAT: I am going to pause there because it might
18 be a sensible point at which to invite a response from or
19 observations from one of the three legal representatives to the
20 Attorney General.

21 COMMISSIONER HICKINBOTTOM: Yes, I think the
22 correspondence suggests it's going to be you, Mr Haeri. Is it
23 going to be you?

24 MR HAERI: Commissioner, it is going to be me.

25 COMMISSIONER HICKINBOTTOM: Good. Without wishing to

1 stop you saying anything that you want to say, given that we are
2 starting the oral hearings on Statutory Boards today, now, I'm
3 most anxious to find, under this head that Mr Rawat has opened,
4 a pragmatic solution to the issues that he has raised. I have
5 to say, I think a pragmatic solution should be readily
6 achievable.

7 MR HAERI: Thank you, Commissioner.

8 So, I think, if I may, there were a number of
9 background points that Mr Rawat had made, and I don't propose to
10 address them all, but I think it might be helpful if I set out a
11 little bit of background and context on at least some of them.

12 I think he started by addressing the issue of the
13 Affidavits, and the question of capacity, the question of
14 difficulties in this period of COVID, the question of
15 resourcing, and I think that there are important points there,
16 which are very pertinent because since the 20th of May, we've
17 had not less than 59 Affidavit requests, which is a very
18 significant number.

19 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
20 Mr Haeri. Does that include Affidavit requests that were made
21 because I considered the Affidavits which had been provided to
22 be inadequate and, therefore, asked for further Affidavits?

23 MR HAERI: I believe that's the full number of
24 Affidavit requests which would include what you refer to.

25 COMMISSIONER HICKINBOTTOM: Yes, thank you.

1 MR HAERI: So, many persons have also received
2 multiple Affidavits requests often with the same deadline. Of
3 those 59 Affidavit requests, 42 have been submitted to the COI
4 or otherwise dealt with. This has required an enormous effort
5 on the part of the Ministers, on the part of the public
6 officials, on the part of the IRU. And the reason is because
7 each Affidavit requires extensive work, and just to give some
8 examples, the Crown Lands Affidavit is 37 pages, it has an
9 exhibit of over 1,000 pages. The Financial Secretary has had to
10 produce 5 Affidavits exhibiting a total of about 4,000 pages.
11 Not only have several Affidavits required exhibits in the
12 thousands of pages, but many more also have exhibits in the
13 hundreds of pages. So, this has been a very significant effort
14 on the part of many persons working over the last months, in
15 some cases without break and in very difficult circumstances so
16 as to assist as much as reasonably possible, and on timetabling.
17 And I think just considering the average of what has been done
18 over this period, we've had 2.7 Affidavits a week produced over
19 the last 14 weeks, so it's a very significant effort that has
20 been made to achieve this.

21 And I think the other thing is that has been done
22 alongside numerous other requests. There have been other
23 document requests, factual, legal, administrative issues on
24 which public officials, Ministers, where appropriate, and also
25 the IRU have been assisting the COI. So, there is a lot of work

1 that's been going on alongside these Affidavit requests, all in
2 the context, of course, of the COVID surge, which has resulted
3 in some cases officials are unable to work on Affidavits due for
4 periods due to bereavements, and, of course, the business of
5 running the Government and the jurisdiction in this very
6 difficult time. So, I think by way of background, this is
7 something that I should note.

8 The second issue that I would like to address is the
9 point of redactions, and I think the suggestion was made that
10 because the redactions are not a matter for the public officials
11 or the Ministers that they, therefore, ought to be more readily
12 done. I think the difficulty is that it does require
13 significant resources in order to go through many thousands of
14 pages and to apply the redactions in the way that Mr Rawat
15 indicated. It does take significant amounts of time, and so
16 we're having to balance focusing on the Affidavits, on Statutory
17 Bodies and Crown Lands, which we understood were the priority
18 and which I'm pleased to say are all now in, albeit all were not
19 able to be put in in accordance with the initial deadlines, but
20 all are now in. We are having to weigh out that as compared
21 with also spending days and days going through thousands of
22 pages for the purposes of redactions, and it simply hasn't been
23 possible to do all of that all at the same time, so resources
24 are needed to go through the redactions.

25 And, of course, the Attorney General's Chambers, the

1 IRU, have been putting resources on redactions, but it's not the
2 case that that resource doesn't have implications in terms of
3 other work that is then needed in terms of, for example, the
4 Affidavits.

5 I should also say there is a reasonable limit to what
6 the Attorney General Chambers and the IRU can do without
7 instructions or documents or information where it's needed for
8 the purposes of Affidavits. For example, with all the support
9 that has been given, if it's not possible for the public
10 officials to turn things around in the time scales that are
11 indicated because of the reality of circumstances, then
12 encourage support and as much as can be done, of course, is
13 done, but nevertheless instructions are required. And I think
14 it's really been a tremendous effort on the part of many people
15 to have gotten to the point where we are in terms of having
16 responded on the Affidavits in particular.

17 COMMISSIONER HICKINBOTTOM: In terms of redactions, we
18 have received correspondence to say that instructions are
19 awaited from Cabinet over several weeks, and now the National
20 Security Council who we are told by you have not given
21 instructions in relation to redactions. That must have slowed
22 things down.

23 MR HAERI: So, I think on the National Security
24 Council point, I believe that you should receive a letter, if
25 not today, then perhaps by tomorrow addressing that issue

1 because a waiver has been given with regards to the use of the
2 papers that I think you're referring to for the National
3 Security Council.

4 In terms of the position of Cabinet, I think it's fair
5 to say that concerns--there have been concerns about the
6 approach of publication of documents in some cases. I think an
7 example that I would give of that is the Audit Reports which
8 were published on the COI website before they were laid before
9 the House of Assembly. Be that as it may--

10 COMMISSIONER HICKINBOTTOM: Those are the reports that
11 were gone through in great detail in the oral hearings.

12 MR HAERI: Yes, they have been addressed in the Oral
13 Hearings.

14 COMMISSIONER HICKINBOTTOM: Yes.

15 MR HAERI: I think that the concern I was referring to
16 was more that they had not been laid as would be usual before
17 the House of Assembly before they were published on the COI
18 website.

19 I think the issue, though, remains is that the Cabinet
20 has a policy, Government has a policy of engaging and assisting
21 the COI. That's why we're all here. That's why we're turning
22 around all of these requests for Affidavits and documents as
23 soon as humanly can be done. And Cabinet, with regards to the
24 Hearing Bundle, has agreed to waive privilege, and so, you know,
25 we've again been working to produce a redacted bundle, and as

1 Mr Rawat indicated on Saturday, we were able to deliver the 24
2 hard copy folders that reflected that redacted information.

3 I think it's far easier when we have a specific
4 Hearing Bundle to put it before Cabinet for a decision in terms
5 of the waiving of the privilege and confidentiality, which is
6 important.

7 And I think what I just referred to shows is they
8 continue to maintain the same policy of openness towards that.
9 What becomes more difficulty is where there's a perception that
10 they are being asked to take a view on a blanket waiver, if that
11 is how it may seem, in a broader context when we're dealing with
12 thousands and thousands of pages of documentation that's being
13 submitted to the COI. This is where I think perhaps some of the
14 difficulty has lay.

15 COMMISSIONER HICKINBOTTOM: Mr Haeri, I understand
16 what you say, but in relation to the Affidavits, whereas, as you
17 say, some of the exhibits are big--hundreds or thousands of
18 pages--but I have asked for the Affidavits to address specific
19 issues, and those issues have been addressed, and the exhibits
20 are the documents that the deponent of the Affidavit considers
21 are relevant.

22 So, I think there is a really good chance, if the
23 Affidavits have been put together properly, with proper advice
24 and proper focus, that we will want to put into the Hearing
25 Bundles on any topic the Affidavits and the exhibits which you

1 say are relevant.

2 MR HAERI: Well, I think there's two points, if I may,
3 on that. The first is the simple one of resourcing, which I
4 mentioned earlier. The more time that is spent on going through
5 documents for the purposes of redaction, the less time that can
6 be spent on moving passed these 42 Affidavits that we submitted
7 towards getting through the remaining ones, and so there are
8 very real resourcing and trade-off times. And I know Mr Rawat
9 says, well, you've got a team and you're resourced, and that
10 shouldn't be any issue, but the reality is that these are the
11 constraints that we're facing. There has to be some trade-offs.

12 And it does take time, and so that's the first thing I
13 would say in response.

14 The second thing is that in some cases it's not
15 entirely clear that all documents will be referred to or would
16 be published. And I can give as an example the Belongership
17 Affidavit in which Cabinet Memoranda for Belongership
18 applications have been asked for over a 10-year period. In some
19 cases they're very broad what's asked for, all documents related
20 to certain issues, all Minutes, all correspondence and so on.
21 And in those cases, it's far more difficult to see a
22 proportionate approach where it's necessary or, shall we say, as
23 much a priority as working on the Affidavit, to spend days,
24 which have been spent on redactions, no mistake, but more
25 days--it's a question of how helpful is that as compared with

1 focusing on the Affidavit, so these are some of the very real
2 issues.

3 COMMISSIONER HICKINBOTTOM: Mr Haeri, I certainly
4 appreciate that some of these requests require a substantial
5 amount of work, particularly by the Public Officers to whom the
6 task has been delegated by the Ministers in most, I think
7 possibly all cases.

8 Looking at where we are now, because we are now in the
9 hearings. We are now considering the matters where these
10 Affidavits have just been put in, some haven't been put in yet,
11 so there is--there is, I think should be a focus on how we can
12 proceed from here particularly in relation to Statutory Boards,
13 which is starting now. Is there any difficulty that you can see
14 about the proposal to Statutory Boards that Mr Rawat's made
15 which is essentially that we, the COI Team, and you, the IRU and
16 the AG and those you represent, use the COI bundle, and a copy
17 of the redacted bundle, that will need to be updated. Because
18 Affidavits came in yesterday. Those haven't been sent in a
19 redacted form yet. That bundle is given to Silk Legal if,
20 indeed, they're going to attend any of these hearings.

21 Given that the pagination is the same, I would have
22 thought that this is a logistical problem--a logistical issue
23 which could be pretty easily resolved.

24 MR HAERI: I am, I think, in the need to take
25 instructions on the point. I understand the proposal, and there

1 are a couple of reasons why I say I think I will need
2 instructions on it.

3 One is that the redactions in the bundles that have
4 been put in exclude information from Cabinet Minutes that is not
5 relevant to the specific topics, whereas I don't believe the COI
6 Hearing makes allowance for those redactions, issues of
7 relevance, what may not be relevant, what is relevant, in the
8 Cabinet papers.

9 COMMISSIONER HICKINBOTTOM: Those parts of the Minutes
10 simply aren't going to be referred to by anybody under any
11 circumstances. Mr Rawat isn't going to suddenly in the middle
12 of Statutory Boards raise a point on a document that has nothing
13 to do with Statutory Boards from a Cabinet Minute.

14 And if he does, you can leap in and stop the Hearing.
15 You can stop the live-streaming of the Hearing. I don't
16 understand any difficulty.

17 MR HAERI: Yes, I take that point that it's unlikely
18 there'd be reference made to it, so it may be that a practical
19 view can be taken on that point.

20 The second issue is with regards to the CVs and the
21 issue of personal data which I think Mr Rawat referred to as a
22 "distraction". I think, in that case, as he would know, the IRU
23 team has spent a lot of time trying to engage with the relevant
24 individuals--we're dealing with more than 100 CVs in this
25 context--so as to seek their consent for their CVs to be

1 published. In some cases we've had responses that have--they've
2 not agreed to publication. In some cases, there have been
3 agreements to publication.

4 So, I think, again, that would be a difference in
5 terms of the issue of redactions. And we have in mind in
6 particular on this the Data Protection Act, which came into
7 force in the BVI on the 9th of July 2021, so I think that's
8 another reason why I'd need to take instructions on the proposed
9 approach and can endeavor to come back very quickly on that.

10 COMMISSIONER HICKINBOTTOM: Mr Haeri, without going
11 into the law, which we don't have to do, in relation to this
12 personal data, these personal data, the first point is that you
13 have sent these to us. You've sent these data to us. We have
14 them. We're not going to publish them without--well, I would
15 have thought we're not going to publish them in any event, but
16 we're certainly not going to publish them without clearing that
17 with you and with the owners of the data, I wouldn't have
18 thought.

19 But, secondly, you say that the Attorney does not
20 propose relying upon any of the CVs, any of the data in the CVs,
21 as Mr Rawat said, "at present". So, reliance could pop up at
22 any moment. But the letter in which you said that seemed to me
23 to be based on a false premise. You say you're not relying on
24 it because the competence of the individuals is not in question.
25 The competence of the individuals is not in question. We are

1 not here to look at the competence of individuals in that sense.

2 But I would have thought it would be possible that the
3 attorney and those she represents may want to rely upon a CVs in
4 this sense; that is, when we look at the process how Statutory
5 Board members were removed and how they were appointed, I
6 imagine that at least in some cases the CV may have been taken
7 into account; and, therefore, that's something which an
8 individual Public Officer may want to rely upon. And so, I'm
9 not sure that you're saying that the Attorney doesn't propose to
10 rely upon them, is based upon a true foundation.

11 But third, and perhaps most importantly, in any event,
12 it seems to me--Mr Rawat can obviously speak for himself--but it
13 seems to me that it's unlikely we're going to get into any
14 detail of any of the CVs because what's going to be important in
15 terms of process will be if the CV was taken into account,
16 probably more than the content of it. The content of it may
17 conceivably raise its head in some cases, but it's really going
18 to be whether the individual, who is part of the decision-making
19 process, took into account the individuals' CV.

20 So, I just don't see that there is any great practical
21 difficulty in dealing with these data.

22 MR HAERI: Let me come back to you, Commissioner, on
23 the suggestion of using the COI bundle, which is that I'm
24 instructed that we can proceed on that basis and use it. I
25 think the only point that's made is that obviously Silk Legal

1 would have access then to non-relevant material, such as in
2 Cabinet papers, but I think with that proviso, I think we can
3 agree, which hopefully is a constructive way forward on that.

4 COMMISSIONER HICKINBOTTOM: Yes, and quite quickly,
5 please, because we're starting with these witnesses who are
6 going to be using this bundle, as I understand it, tomorrow
7 morning.

8 Now Mr Haeri, is there anything else you want to say
9 on this head?

10 MR HAERI: Not on this head, sir, no.

11 COMMISSIONER HICKINBOTTOM: Mr Rawat?

12 MR RAWAT: I may have misheard the last point that
13 Mr Haeri made, that is, that the proposal is that Silk Legal
14 receive the redacted version, so they will not see irrelevant
15 material because as I understand it, the redacted bundle as
16 provided by the Attorney General has removed from Cabinet papers
17 all irrelevant material, and so that is the protection that that
18 proposal affords the Attorney, so I hope that's clear. Just to
19 return to--

20 MR HAERI: That's correct. Yes.

21 MR RAWAT: Thank you.

22 Just to return to the question of CVs. I think what I
23 can say is this: We will all take care--and we all should take
24 care, and that includes witnesses and other legal
25 representatives in how we use personal data, but we are in a

1 situation where we need to get on with the Hearing but also the
2 question of CVs--and you've drawn attention this--they may arise
3 as relevant. If they arise as relevant, then that will be
4 canvassed during the course of the hearing. And of course,
5 people will need to be proportionate about the extent to which
6 they need to refer to a particular CV, but we cannot exclude the
7 possibility that a witness, be it an elected Ministers or be it
8 a Permanent Secretary, needs and wants to refer to this
9 material. I think I'll return to the Data Protection Act under
10 another head, if I may.

11 COMMISSIONER HICKINBOTTOM: That can be dealt with,
12 can't it, W Mr Rawat, by a combination of things: Firstly, the
13 fact that either you or those representing the individual or
14 those representing the AG, which may possibly be different, will
15 take great care not to divulge any personal data, at least
16 without given me notice that that's about they're about to do,
17 and we can tell witnesses that that's an important constraint on
18 them. Over and above that, we have the three-minute delay. And
19 if necessary, we can go into private, non-live-streamed session
20 to deal with any issues that might arise because you're right,
21 issues might arise, not many, I think, but it's certainly
22 possible that they might arise. But those seem to me to be
23 adequate safeguards against the inappropriate disclosure of
24 personal data.

25 MR RAWAT: And I mean, the reason I return to the

1 issue is I don't want anyone to be under the illusion that if
2 something is referred to at a hearing it cannot then be referred
3 to in your Report. Depending on what the witnesses say, you may
4 need to refer to material that is in an Affidavit.

5 COMMISSIONER HICKINBOTTOM: Yes.

6 MR RAWAT: And that's important for us to keep in
7 mind.

8 COMMISSIONER HICKINBOTTOM: Yes.

9 MR RAWAT: And there are circumstances in which
10 Inquiries do need to refer to personal data, I mean the names of
11 people who may have died in an accident is personal data: Their
12 ages are personal data, the names of their relatives or whether
13 they had children of a certain age is personal data. And such
14 material is referred to.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 MR RAWAT: And so, one has to put it in that context.
17 But I think we've reached a point, at least on that issue, where
18 subject to Mr Haeri confirming his instructions, we may have a
19 way forward that allows us to proceed with tomorrow's hearing.

20 COMMISSIONER HICKINBOTTOM: Yes, thank you.

21 MR RAWAT: Can I turn to the second topic, and that is
22 the question of the position in relation to the elected
23 Ministers' response to a Position Statement produced by the
24 Governor. You have already alluded to this with the reference
25 to the National Security Council, but again, to give it some

1 background and context, you asked a number of participants--all
2 the participants but also a number of those who with an interest
3 in Government, institutions and individuals--to submit Position
4 Statements on issues of governance and law enforcement and
5 justice. Those Position Statements have been published on the
6 website. You made an Order, and it's Order No. 15 on the 30th
7 of June, Commissioner, which allowed participants to respond to
8 criticisms made of them by others in their Position Statements,
9 and those responses had to be in by the 12th of July.

10 The Order referred to the need for the response to be
11 in the same format as you had previously directed for Position
12 Statement, and that meant that what was expected was that at
13 that point, somebody putting in a response would also identify
14 any redactions they sought, and would, as we've said,
15 produce--effectively you produce documents in three forms:
16 Unredacted, shaded and blanked out. And that has been the
17 approach we have been adopting since late May to try and keep
18 the show on the road, so to speak.

19 And that is important because I noted a moment ago
20 that Mr Haeri pointed to resources limiting the work that could
21 be done identifying redactions when the focus was made on
22 producing the Affidavit. What I must point out is that the
23 Letters of Requests for Affidavit asked for redactions at the
24 same times the Affidavit was being produced.

25 And that the position, which is the position of

1 concern, that the Attorney has adopted is that she doesn't in
2 relation to matters like LPP or public interest immediately
3 identify what redactions she seeks, which are matters of legal
4 argument, ultimately potentially, but simply says "I reserve the
5 right to do so". and that is not helpful.

6 But if I go back to the position of the response, in
7 relation to that, the Ministers--elected Ministers for their
8 response sought and were granted extensions. They provided the
9 response on the 16th of August, no redactions were sought, and
10 they were, therefore, given by you until the 25th of August to
11 indicate the position. There was a response on that day, but
12 without any real specific detail, but what was said--and it's a
13 point that you've alluded to--and that was that documents had
14 been provided as part of that response which required the
15 consent of the National Security Council and the Joint Task
16 Force in terms of whether--it wasn't entirely clear--but whether
17 there would be a waiver over redaction or a waiver of a
18 publication or a waiver over use.

19 What wasn't explained, bafflingly, was how the elected
20 Ministers were able to actually hand over those documents in the
21 first place without having received the consent of either the
22 National Security Council or the Joint Task Force. What you
23 directed, therefore, on the 26th of August was that the position
24 of the National Security Council in relation to publication of
25 the response on the website of the COI be clarified, and that

1 two copies be provided of any document for which redaction was
2 to be sought. And the deadline for that was the 31st of August.

3 On that day, the responses received were that the
4 Attorney General needed more time, and the response from the COI
5 was to ask when a substantive response will be forthcoming, and
6 whether other redactions were being sought. The position was
7 that the only answer was that the Attorney General had yet to
8 receive clarification of the National Security Council's
9 position but no response was also given as to whether she would
10 be seeking any other sort of redactions.

11 So, and I appreciate that Mr Haeri may have alluded to
12 this, if I heard him correctly, but what we need to know now
13 because it does impact on the hearings, we will want to have a
14 hearing on governance at some point:

15 Firstly, if there is a substantive response, what is
16 the substantive response?

17 Secondly, and how is it that the Ministers could
18 disclose National Security Council and Joint Task Force
19 documents when consent had not been obtained?

20 And, thirdly, if there is any reliance on Public
21 Interest Immunity, what is meant by that.

22 And, finally, if there is going to be in relation to
23 the response in the documents exhibited to it redactions sought
24 on any other basis, and if so, what those bases are.

25 Back to the point that you made earlier, that the

1 documents here are not documents--those are documents that the
2 elected Ministers say it is important for you to see in order to
3 understand their response to criticisms made of them, and so
4 they have assessed those documents as relevant. And it isn't
5 enough for them to say, "Well, it's for the Commissioner to see
6 and the Commissioner to see alone". because if they want you to
7 understand their position, they also need to understand that you
8 will need to refer to it possibly at a hearing and possibly in
9 your Report.

10 So, I pause there again and would just invite Mr Haeri
11 just to clarify the position.

12 COMMISSIONER HICKINBOTTOM: Yes, Mr Haeri.

13 MR HAERI: Thank you.

14 So, I think the position is hopefully relatively
15 straightforward in terms of moving forward. The LLC has
16 approved waiver of Public Interest Immunity confidentiality with
17 respect to some pertinent points in their papers, and I believe
18 that those are going to be uploaded to Relativity in redacted
19 form today. There is no other confidentiality or immunity that
20 is claimed with regards to the other papers that were appended
21 with the Minister's response, and so you will be in a position
22 as of today to publish the Minister's response to the Governor's
23 statements along with all of the appendices.

24 MR RAWAT: Can I just check, one thing I may have
25 misheard Mr Haeri, but he said something is going to be

1 uploaded, that the document will be uploaded in redacted form.
2 That's one of the questions we raised and have been raising,
3 what is the basis for the redaction? And when is the
4 application for redaction going to be made?

5 COMMISSIONER HICKINBOTTOM: What are the redactions?
6 We don't know what the redactions are.

7 MR RAWAT: Until we see them.

8 MR HAERI: The redactions are certainly for relevance.
9 The NSC papers are, of course, confidential. There is a high
10 level of confidentiality around them more generally. They were
11 given to the COI in confidence, of course, in terms of the
12 two-stage process. Of course, we rely on assurances given in
13 that respect.

14 So, I think that's hopefully, you know, clear, that
15 it's not intended to have general publication of National
16 Security Council meetings other than what's particularly
17 pertinent to what is said.

18 COMMISSIONER HICKINBOTTOM: Does that mean that in
19 respect of the redacted version which you're sending us
20 hopefully today, you'll identify, obviously, everything that you
21 wish to have redacted and also the reasons for those proposed
22 redactions?

23 MR HAERI: That's correct. The redactions will be
24 given in what is uploaded. I hope, from what I've just said as
25 well as the fact that you also have the unredacted version given

1 on the confidential basis, it should be reasonably clear as to
2 the reason why for relevance, for example, there have been those
3 redactions made.

4 COMMISSIONER HICKINBOTTOM: Mr Haeri, it will be, with
5 respect, reasonably clear because in your covering letter you're
6 going to say what the basis of the redactions are. If it is
7 that you don't consider relevant parts, say, of the NSC
8 meetings, which I quite understand, I quite understand both the
9 importance of that and also its force, then just say that. That
10 will make things a lot easier.

11 MR HAERI: Understood. We can do that in the cover
12 letter.

13 COMMISSIONER HICKINBOTTOM: And then hopefully my task
14 in agreeing the redactions will be really straightforward.

15 MR HAERI: Yes.

16 COMMISSIONER HICKINBOTTOM: Good.

17 MR RAWAT: Could I, just before we move on to the next
18 topic, just check one thing. What there is is obviously a
19 response from the elected Ministers, together with annexes which
20 are documents. Could Mr Haeri just confirm that there are no
21 redactions being sought in relation to the response, I take it,
22 are there redactions being sought just in relation to the
23 annexed documents?

24 MR HAERI: Your question was are the redactions so
25 just in relation to the annexed documents or--sorry if I didn't

1 quite follow.

2 MR RAWAT: As I understand it, there is a written
3 response which sets out the position of--

4 MR HAERI: The answer to your question is yes. The
5 redactions are only with reference to the appended documents
6 because once it's in the response, obviously, it's relevant.

7 MR RAWAT: So, what will come in your covering letter
8 will say these are the redactions sought and they are sought on
9 this basis?

10 MR HAERI: Yes, they will.

11 MR RAWAT: Thank you very much.

12 COMMISSIONER HICKINBOTTOM: Thank you very much,
13 Mr Haeri.

14 MR RAWAT: Can I just move on, then, Commissioner,
15 just to a topic that Mr Haeri has referred to, and that is the
16 question of Belongership.

17 On the 29th of July, the COI sought an Affidavit on
18 this matter from the Minister from Natural Resources and
19 Immigration. On the 24th of August, the IRU confirmed that it
20 had made disclosure and that it would be providing a short
21 Affidavit relatively shortly. The point was made in that letter
22 that in terms of the disclosure, appendices were not included,
23 and then what then followed was that, on the 26th of August, the
24 COI wrote to the IRU expressing concern over the way in which
25 disclosure had been provided; and in particular, that it had

1 been provided in redacted form.

2 And the position as set out in a letter sent to us on
3 the 1st of September--and I hope I'll try and summarise it
4 shortly but fairly--was that documents have been removed because
5 they contain sensitive personal information, and that was in
6 line with data obligations, and that's Mr Haeri's point about
7 the Data Protection Act.

8 Now, what the letter says is that, firstly, to use the
9 material, we would need the consent of the individual concerned
10 and also we would need to give the IRU good reason, and so this
11 seems to be a shift in terms of disclosure to the Commission
12 because your Protocols that you have issued make clear that you
13 expect to see material in unredacted form. It makes clear that
14 you will ultimately be the arbiter of relevance.

15 And it adds an additional caveat because, not only
16 must you seek consent as Commissioner, but you must also give
17 the IRU and I assume that's the Attorney General a reason for
18 why you should have the material, and she will then be the Judge
19 of relevance rather than an independent Commission of Inquiry.
20 What would, in my submission, assist you today is some
21 explanation of the legal basis for the stance that is now being
22 taken in relation to this Affidavit, particularly because it
23 hasn't been taken in relation to previous Affidavits.

24 Now, I know that Mr Haeri in earlier submissions, and
25 he used the example of Belongership as an example, but he

1 pointed to the fact that there, there had been requests for
2 documents spanning a number of years. What I would point out is
3 two points:

4 Firstly, the Terms of Reference of this Commission are
5 wide, and as I've said, you determine relevance.

6 But, secondly, the approach that needs to be taken in
7 response to Requests for Affidavits is that they can be easily
8 distinguished from requests for disclosure. All the Affidavits
9 have been put, requests are set out questions and request
10 information that you have said is already relevant to the work
11 of the Commission. And so, what the recipient of the Affidavit
12 is being asked to do is direct their mind to those questions and
13 direct their mind in such a way that what they are told is this
14 is material that can be used in the hearing, which is why we
15 always ask about redaction.

16 And so, I was struggling to understand the basis on
17 which data protection means that in some instances the Attorney
18 General, through the IRU, can disclose material, which has
19 sensitive personal information such as the CV, but in others
20 it's not required to.

21 So, I will pause there and perhaps if Mr Haeri could
22 clarify his position in relation to the Belongership Affidavit.

23 COMMISSIONER HICKINBOTTOM: Yes, thank you.

24 Mr Haeri?

25 MR HAERI: Yes, thank you.

1 I think it was said that there had been a change of
2 approach and no precedent for this issue with regards to
3 extremely sensitive personal data. Of course, the Belongership
4 Applications involve extremely sensitive personal data of a
5 particularly sensitive nature, including to do with the state of
6 children, marital relation, including to do with financial
7 information, disability sometimes, so they are extremely
8 sensitive.

9 And in the context of the hardship applications, the
10 same approach as was taken as is being taken here, which is that
11 if it's necessary and proportionate and the Commissioner wishes
12 to see the information then, that would be given, but this
13 information is not all being given in a blanket way without that
14 initial screening threshold.

15 And so, we have said that in circumstances where more
16 information is intended to be sought about a particular
17 person--the names have all been given, as there were with the
18 hardship applications--then that's something which can be done.
19 And the reason is that even before the BVI Data Protection Act
20 of 2021 came into force, and it's on the 9th of July of this
21 year, so after the protocols but relevant to this specific
22 issue, there's the U.K. GDPR which similarly has particular
23 provision with regards to sensitive personal data, so that is
24 the reason and what it proposed as hopefully one that--an
25 approach that, you know, allows for what's necessary and

1 proportionate but doesn't just simply hand over 10 years' worth
2 of Belongership applications without very sensitive personal
3 data, without it being necessary and proportionate.

4 I think the only other thing I would say because
5 Mr Rawat comes back to the issue of when Affidavit requests are
6 made, the issue of relevance is stated at that stage. I think
7 what we have and what's provided in the rules is a two-stage
8 process, and in that two-stage process, we had understood, would
9 involve a secondary stage when particular relevance for
10 publication was sought.

11 Now, by asking for redactions to take place, across
12 the board in all documentation that is included in a response,
13 essentially what you have is a kind of conflated process, and it
14 does come down to resourcing again, because while a lot of time
15 is spent on redacting thousands of pages that are appended to
16 Affidavits which may not necessarily need to be published or may
17 not want to be published, that's time that's not being spent on
18 working on the Affidavits themselves, so there is some, in a
19 sense, challenge here in covering all bases, and it is very time
20 consuming to do that.

21 So, it's a question of priorities and the reason we
22 focused on the Affidavits and particularly the ones identified
23 is because we've understood that to be the particular priority.
24 So, I hope that will help explain that issue because simply by
25 saying in the request this is broadly relevant, it still doesn't

1 help to address the resourcing problem.

2 And relevance, also, may be a matter of degree
3 because, I'll give an example, the Crown Lands Affidavit had 22
4 questions. One of the questions had 13 subquestions. So, it
5 may be of interest in that sense of relevance, and of course
6 relevance is for the Commissioner, but I don't think that it's
7 necessarily the case that everything that comes back in all of
8 those responses is necessarily going to be published. It would
9 seem to us to be a different question.

10 MR RAWAT: Can I respond?

11 COMMISSIONER HICKINBOTTOM: Yes.

12 MR RAWAT: I think it's important to clarify what is
13 meant by being "published".

14 As I've said, we are not or we have got limited amount
15 of material onto the website, and that has been done for
16 specific purposes. So, to take example of the Auditor General's
17 Report or the Internal Auditor's Report, the Reports were
18 published--were done after there had been significant--in
19 relation to the Auditor General's two days' worth of evidence,
20 going through the Reports in detail.

21 So, we need to make a distinction between the
22 publishing to the world at-large and publishing for the purpose
23 of a Hearing because that's the stage at which we're at. And
24 when we publish, as we have done, by giving a Hearing Bundle to
25 a witness and to participants and the Attorney General has

1 received hearings bundles that relate to witnesses that she does
2 not represent. We are not publishing to the world. And so,
3 that's an important decision, but Mr Haeri relates--refers to
4 the two-stage process.

5 With respect, it has not been conflated. The first
6 stage--and the first stage is particularly important to the
7 question that we are now discussing--is that material is
8 disclosed in unredacted form to the Commissioner, and the
9 Commissioner asked for that material that he considers relevant
10 to his work. That's the first stage.

11 The second stage relates to the possible use of that,
12 either in a hearing or in a Report or if it needs to be
13 published more widely, for example, in the Inquiry's website.
14 What has changed only is that we have sought, for reasons I've
15 explained, participants to give their--to set out what they want
16 redacted at an early stage; and if one--I'm sorry we're going
17 round and round slightly, but Mr Haeri has made the point more
18 than once to resources, but the point that the Attorney General
19 has made--and this was made by Ms Knock in submissions on the
20 8th of July--the point that was made loud and clear is "I'm not
21 doing this. I'm not complying with this Protocol. What I'm
22 going to do is just reserve my right to do so".

23 Well, if one works it through, even if the Attorney
24 does do that, then at some point she's going to have to go, or
25 her lawyers working for her, would have to go through the

1 documents to identify where they wish to raise LPP and where
2 they wish to raise PII. So, that exercise will have to be done.
3 All we're asking is to do it earlier rather than later because
4 if you're producing an Affidavit it's likely to make its way
5 into the Hearing Bundle. That's the point. And so, the
6 exercise has to be undertaken.

7 And the position that we're in is that if that
8 exercise is going to be undertaken at the very last minute, then
9 that causes significant disruption to the timetable.

10 But to return to why Mr Haeri--the reasons Mr Haeri
11 has given for why a difference of approach has been taken to
12 Belongership, that, with respect, doesn't answer the question,
13 and it doesn't answer the basis on which it was set out in the
14 letter. The letter said that what the reason was because of the
15 need to comply with data protection obligations, and so, you
16 know, what the question then becomes is firstly, well, what are
17 those data protection obligations? Why have you now sought to
18 rely on them when previously you haven't? And then in
19 circumstances where you are told and you know that the material
20 (a) is sought by the Commissioner and (b) is being given on a
21 confidential basis, what is the justification for ignoring it?
22 Because if there is justification, then it means that if the
23 Commissioner issues a summons tomorrow for that material, the
24 Attorney General will not comply with that summons.

25 MR HAERI: Well, I think, in response, Mr Rawat, I'm

1 not sure if you heard the part where I said that it's not a
2 change of approach. Because with regard to the hardship
3 applications, again that was the issue of extremely sensitive
4 personal data. And, in that case, what was said is, if it's
5 necessary and proportionate, it will be handed over. That was
6 the position that was accepted by the COI at the time. So, it
7 seems that if anything, there is a change in position from the
8 COI not from the Attorney General on this.

9 I think the other thing, as I mentioned that's very
10 relevant is the timing of the Data Protection Act. In that
11 context, the GDP R was relevant to the point, and indeed still
12 would be, but the BVI Data Protection Act of 2021 came into
13 force on the 9th of July 2021, so that is a relevant
14 consideration.

15 And again, the Attorney General is not saying the
16 information will not be given. All the names have been given.
17 What is said is, where it's necessary and proportionate, then
18 all the extremely sensitive personal details will be given, but
19 not where it's not necessary and proportionate.

20 COMMISSIONER HICKINBOTTOM: Yes, I mean given that the
21 Attorney's position hasn't changed and, therefore, there is no
22 bar on the data being handed over to the COI, I'm struggling to
23 see what the legal basis of the objection to giving the COI this
24 information is.

25 But how can we progress this, Mr Rawat? At the

1 moment, from what Mr Rawat says, there is no legal basis for the
2 objection because he says that if we ask for the information and
3 set out that we do want to see it, it will be disclosed?

4 MR RAWAT: It has been done. The Letter of Requests
5 set out what information was sought. The Protocols made clear
6 that material is handed to the Commissioner on a confidential
7 basis. What the Attorney wishes to do up to insert herself in
8 the process by being the person who determines whether it's
9 necessary and proportionate to make disclosure.

10 She is now the arbiter of relevance. She's now--and
11 she now wishes to control how it operates.

12 But there is no point in my going back over the point.
13 What I had hoped is that Mr Haeri could point to a provision in
14 the Data Protection Act that allows a participant in a
15 Commission of Inquiry to withhold information on this basis. I
16 can't add any more than we have made the request and we've set
17 it out and that is a request.

18 MR HAERI: Okay, I understand. Maybe a constructive
19 way forward, Mr Rawat, if perhaps you might explain to us and
20 perhaps we can take this off-line but how the BVI Data
21 Protection Act, how its provisions allow as a matter of BVI law,
22 the provision of this information in this context, then maybe we
23 can find a way to go forward in that respect.

24 MR RAWAT: I'm quite happy to do that, although I'm
25 somewhat surprised. I'm happy to talk to Mr Haeri off-line, but

1 I'm somewhat surprised that given the letter from Withers
2 specifically refers to data protection and obligations they had
3 not considered that question themselves before writing that
4 letter.

5 But the point--it's just--the concern I would have is
6 that if one follows the logic of the submission through and the
7 point made in the letter, then if the current state of the law
8 prevents this disclosure being made, then in circumstances where
9 there has been previous disclosure of sensitive information, the
10 logic is that the elected Ministers, by giving that information,
11 were in breach of their own data protection obligations and
12 would now be under a duty to go and contact all of those people
13 whose data they provided to the Commission and explain that they
14 had breached those people's data protection rights.

15 MR HAERI: I'm sorry, but I said it's extremely
16 sensitive personal data, it's of a different nature, and under
17 data protection legislation, it has a different quality to other
18 information which is not extremely sensitive. And as I
19 mentioned, I believe a couple of times, the BVI Data Protection
20 Act came into force on the 9th of July 2021, so that is an
21 important new element in timing terms on this issue.

22 COMMISSIONER HICKINBOTTOM: Well, I think the first
23 step, Mr Haeri, because I certainly don't understand this, but
24 I'm sure you will illumine us, is that you write to the
25 Commission setting out the basis upon which this disclosure has

1 been withheld, referring, I assume, to the 2021 Act, and then we
2 can consider that basis because at the moment I don't understand
3 what the basis is.

4 MR HAERI: Yes. We will put that into a letter.

5 As just to precis it, it's sensitive personal data,
6 and it's Section 7(1) of the Act which says that a Data
7 Controller shall not process personal data about a person
8 without that person's express consent, but we will put it into a
9 letter in more detail.

10 COMMISSIONER HICKINBOTTOM: That would be helpful, and
11 then we can take it from there, Mr Haeri.

12 MR HAERI: Thanks.

13 COMMISSIONER HICKINBOTTOM: Good. Thank you very
14 much.

15 MR RAWAT: The next topic, and I hope we can take this
16 shortly because Mr Haeri has given some indication already of
17 the state of play. He's referred to 59 Affidavits being sought
18 and being provided, and as you--as he confirmed to you,
19 Commissioner, some of those had to be provided because the
20 original Affidavit didn't really fully comply with the requests
21 that had been made. So far we have 42 that have been submitted,
22 on Mr Haeri's maths. He has--

23 MR HAERI: Two are withdrawn as having not been
24 relevant, so I think I said 42 submitted or otherwise dealt
25 with. I think it's 40 submitted.

1 MR RAWAT: I'm not going to argue over that number.
2 I'm quite happy to accept either 42 or 40. But the point is
3 that there are a number outstanding, and what would, I think,
4 assist you, and again, it assists us in terms of planning
5 because helpfully the IRU produced a table at your request,
6 Commissioner, setting out the state of play, and that table
7 usefully identifies who was delegated to make the Affidavit,
8 when it was originally sought for, how many extensions were
9 requested, and then the date provided. But in relation to some
10 of the Affidavits, they are marked in terms of data to be
11 provided as to be confirmed.

12 And it's just really perhaps if Mr Haeri could give
13 you some comfort in terms of when Affidavits can be expected.

14 COMMISSIONER HICKINBOTTOM: And this is important,
15 Mr Haeri, because we are planning the hearings, and you're
16 saying to us we want to know what the timetable is. We want to
17 fix the timetable. We can't fix the timetable without the basic
18 information, some of which was requested several months ago, but
19 certainly several weeks ago. We simply cannot organise the
20 timetable in a sensible and efficient way.

21 MR HAERI: And I think if, you know, we're able to get
22 some input as you had helpfully done previously with regards to
23 the focus on statutory bodies and Crown Lands Affidavit, that
24 will help us because, as I've said, there are a lot of things
25 going on in terms of Affidavits, in terms of redactions,

1 responses to other requests for legal input, in terms of
2 administration of bundling and so on. So, I think that will
3 help us to expedite and focus on those things that are most
4 proximate in terms of chronology as well. I think we have some
5 sense of that, but anything that you can indicate on that will
6 help us.

7 I can't give exact dates for specific Affidavits, as
8 would be understood because we are necessarily reliant on public
9 officials and Ministers who are working very hard to assist, but
10 there are obviously instructions that need to be obtained,
11 documents collated and so on. And as we know, the state of
12 record-keeping in the Virgin Islands is not in a good place. It
13 actually comes back to the point you started with, in part at
14 least, which is this being the anniversary of Hurricane Irma
15 four years ago, and record-keeping has been significantly
16 affected by that, but there, I think, are other long-standing
17 issues to deal with record-keeping, certainly not ones that the
18 Ministers who came into office in February--sorry 2019 are
19 personally responsible for, but, you know, doing all that they
20 can to support and assist on that process nonetheless as well.

21 COMMISSIONER HICKINBOTTOM: But how can we timetable
22 topics such as particular contracts, Crown Leases, et cetera,
23 without having any idea of when, if at all, we're going to get
24 the basic information that we've requested? How can that be
25 done?

1 MR HAERI: It partly comes down to the prioritization,
2 I think as I mentioned, the Financial Secretary has put in five
3 Affidavits dealing with more than 4,000 pages, so I think if
4 recipients can know the order in which they should be
5 prioritising working on their respective Affidavits, that would
6 certainly be of assistance.

7 COMMISSIONER HICKINBOTTOM: Well, it's certainly
8 extremely disappointing that some of these Affidavits which have
9 been outstanding for some time, we have absolutely no idea when
10 they might be ready, nor, even more worryingly, do you.

11 But as I say, we will simply have to do what we can.
12 If there is any further focus that we can give you, we will, but
13 we've identified--I've identified--those matters which are of
14 interest to me. That was done weeks ago, and it is very
15 frustrating that we cannot timetable these topics in a sensible
16 and efficient way because we simply do not know when, if at all,
17 we're going to get basic information from the Government.

18 Mr Rawat.

19 MR RAWAT: What assistance we can give is--and this
20 was why we asked for Statutory Boards and Crown Lands to be
21 prioritised in July because they were the next topics in line,
22 what we tried to do is to go through the topics in the order
23 that you set them out in June.

24 COMMISSIONER HICKINBOTTOM: Yes, of course.

25 MR RAWAT: We have had to put governance off because

1 there was still responses being received and I've set out the
2 sort of chronology of the time it has taken the elected
3 Ministers to come up with a response. We cannot do governance
4 until we have got that resolved, and so that is--that's one
5 issue. I mean, governance will now have to come after Statutory
6 Boards and after Crown Lands. I think the--once we've done
7 Statutory Boards, in an ideal world, we would like to do Crown
8 Land.

9 But, I mean, I think we're in--we've ended up in a
10 circular position because Mr Haeri says, well, if you tell us
11 the order that you want to do things we have done, then we will
12 try and follow that order. But the problem is that we cannot
13 keep to that order if we don't get the material. And if, for
14 example, there is delay in providing an affidavit or an issue
15 arises over its redaction which we start losing hearing time,
16 what we would want to do in that event is to bring another issue
17 forward or bring another witness forward. In an ideal world, we
18 would have of course want to follow the order because it is
19 important the public understand how we are working, but we do
20 have to be flexible, and that does mean maybe calling witnesses
21 out of turn or a different time, even if they go to another
22 topic.

23 COMMISSIONER HICKINBOTTOM: I think Mr Rawat makes a
24 very good point. I've said from the outset that I've proposed
25 to deal with matters flexibly, but given the current state of

1 play, there will inevitably be a need for greater flexibility
2 because we have to get through this work, and in circumstances
3 in which we simply don't know when we're going to get basic
4 information from the Government, that will mean that we have to
5 be increasingly flexible.

6 But Statutory Boards, for example, which were due to
7 start on the 19th of July, we're starting them today, and two of
8 the Affidavits arrived quite late last night, so it puts the
9 Commission in an extremely difficult position. As I said at the
10 outset, whatever difficulties we face, I intend to press on as
11 best I can. And if that puts--well, I intend to press on as
12 best and as quickly and as efficiently as I can, and I expect
13 the BVI Government to be supportive in that object.

14 (Overlapping speakers.)

15 COMMISSIONER HICKINBOTTOM: As I understand it,
16 Mr Haeri, you can't give any further information on these
17 outstanding Affidavits.

18 MR HAERI: I think--I think there was a very detailed
19 document which Mr Rawat referred to that set out the state of
20 play with the respective Affidavits.

21 And then I can come back with indications of when we
22 think we may be able to submit respective Affidavits. I mean,
23 as I said, these 42 Affidavits have required an enormous
24 effort--late nights, weekends, Minister, public officials, and
25 including, as you say, yesterday when there was a power outage,

1 public officials still working on that on their Affidavits. So,
2 I think a huge effort, sincere effort, a good-faith effort has
3 been made. We put in all of the Affidavits on statutory bodies.
4 You've indicated Crown Lands was next. That's also been
5 submitted. We're working very hard, and the Government, you
6 know, maintains its approach of working, you know,
7 constructively to try and assist.

8 So, I can come back with our best indications on
9 timing, if that's helpful, and if we're able to get any further
10 guidance, because there are a very large number of issues that
11 are still being considered for focus, that would certainly be of
12 assistance to help us to help you as it were.

13 COMMISSIONER HICKINBOTTOM: Yes. Certainly if by,
14 say, the end of tomorrow you could come back with best
15 indications of the Affidavits on your table that are
16 outstanding, where you simply put in "to be confirmed", if you
17 can give us dates, then we can work up a timetable for the next
18 few weeks.

19 Yes, thank you very much, Mr Haeri.

20 MR RAWAT: Commissioner, I think the last topic we
21 need to return to, and that is just to return to a matter that
22 you canvassed with the participants on the 13th of July, which
23 was followed on from having sought written submissions from both
24 Silk Legal and the Attorney General, and you sought those
25 submissions internally as to the definition of the words

1 "corruption, abuse of office, and other serious dishonesty" that
2 appear in paragraph 1 of your Terms of Reference.

3 At the Hearing in July, you heard submissions from
4 Mr Olympitis on behalf of the Attorney General who seemed to
5 agree with a proposition that you put to him.

6 I think that what I would do is just invite you just
7 to seek some clarification from Mr Haeri as to whether the
8 Attorney General agrees with the position adopted by
9 Mr Olympitis at that Hearing, which appears to be from the
10 Transcript that he, without caveat, agreed with the proposition
11 that had been put to him.

12 COMMISSIONER HICKINBOTTOM: Yes, thank you, Mr Rawat.

13 Can I just put it a slightly different way, Mr Haeri,
14 because obviously we--I've seen your letter of the--yesterday on
15 this, on the 5th of September on this. And the reason the
16 Hearing with Mr Olympitis in July on the scope of paragraph 1
17 was so short is because I firmly thought that this was common
18 ground as between the AG, Silk Legal, and me; and if it's not,
19 then I will need to make a ruling on it. But I think it
20 probably is. I just want to make sure that there is no
21 misunderstanding.

22 The propositions I put to Mr Olympitis, or at least
23 let me put these propositions to you, and then we can work out
24 if there is any difference between what you've said in recent
25 correspondence and my understanding of what Mr Olympitis was

1 agreeing to, we can at least identify that.

2 The premise is that--and this was set out in our
3 letter, which I think you agreed with as a proposition, that a
4 Public Officer exercising his or her public functions must act
5 in the public interest and only in the public interest.

6 Pausing there, is that a proposition with which you
7 agree?

8 (Overlapping speakers.)

9 MR HAERI: Commissioner, it's not a--no, not without
10 caveat, and Mr Rawat said that Mr Olympitis said so without
11 caveat; but, with respect, we don't agree, in the Transcript--

12 (Overlapping speakers.)

13 MR HAERI: --caveat--

14 COMMISSIONER HICKINBOTTOM: I do want to be clear on
15 this, but can I just make this absolutely clear because this is
16 really worrying to me, not in terms of--I'm terribly sorry,
17 everything is frozen on my screen, but I think that may be due
18 to me.

19 Can you still hear me, Mr Haeri?

20 MR HAERI: I can hear you, yes.

21 COMMISSIONER HICKINBOTTOM: You froze on the screen,
22 which doesn't matter very much because I can see you on the big
23 screen. I think I've probably kicked the lead-out, which is my
24 fault.

25 So, you say that a Public Officer exercising his or

1 her public functions need not act in the public interest and
2 only in the public interest but can act--because the opposite of
3 public interest is private interest--can act in private
4 interest, in whole or in part.

5 MR HAERI: No, sir, that's not what we say and it
6 doesn't follow from what I said either. What I was saying is
7 that there was an important caveat to what Mr Olympitis had
8 said. He made an important qualification. And I think to avoid
9 any, perhaps, misunderstanding, the position as set out in the
10 letter of the 5th of September is the best position in writing.
11 It's very clear. We can avoid any misunderstanding. But what
12 is said in that letter with reference to Mr Olympitis' important
13 qualification is that any knowing departure from the public
14 interest must be a serious one. A knowing departure must be a
15 serious one.

16 And so, it's difficult to see how that can be the case
17 unless in almost all cases there would be an improper motive.
18 And these are qualifications which are important and are set out
19 in the letter, reflect the position of the Attorney General on
20 the subject.

21 COMMISSIONER HICKINBOTTOM: And my problem, Mr Haeri,
22 is I simply don't understand your letter, but I'm sure that it
23 will become clear.

24 But the first proposition--the first proposition--is
25 that a Public Officer exercising public functions must act in

1 the public interest and only in the public interest. That, I
2 would have thought, as a public lawyer, is a pretty trite
3 proposition.

4 But do you say on this proposition--we'll go on from
5 what flows from it, but do you agree that proposition, or can a
6 Public Officer exercising public functions act, in part, in his
7 own private interest?

8 MR HAERI: There must be a knowing breach of the duty
9 to act in the public interest, which is part of what is said in
10 the letter, so that's the issue which is not touched on in your
11 formulation. It's the knowing breach. It's the knowledge of
12 the breach of the duty to act in the public interest, not in the
13 public interest as anyone or someone may construe it, but they
14 must know that they are acting other than in the public
15 interest. That's the important element.

16 COMMISSIONER HICKINBOTTOM: But we have to take this
17 in stages, Mr Haeri. I fully accept because it's the case that
18 the public interest has many strands; so, when somebody takes a
19 decision in the public interest, there are many strands of the
20 public interest to take into account; and, generally speaking,
21 the weight to be given to those strands will be a matter for the
22 public decision-maker--I understand all of that--and we'll come
23 on to knowing, which is extremely important; we'll come on to
24 that.

25 But are you suggesting that a Public Officer can act

1 in his private interest in any circumstances? Because if you
2 say that, there is a big gulf between me and the Attorney
3 General.

4 MR HAERI: I'm not suggesting that a Public Officer
5 can act in a private interest. What I'm--in the context of
6 their official capacity. What I'm suggesting is that the
7 formulation in paragraph 1 requires a knowing departure from the
8 duty to act in the public interest. That's the qualification
9 that is given. And it's very difficult to see how that could be
10 the case, unless there was an improper motive.

11 COMMISSIONER HICKINBOTTOM: Well, but you say
12 "improper motive", but--and I know that some of the old cases
13 use the word "motive"; I don't think it's a particularly
14 apposite word here, but we can use it for now. But the
15 important thing is that a Public Officer, when he's conducting
16 his public functions, does not act in anything other than the
17 public interest. He cannot knowingly, as you say, he cannot
18 knowingly introduce a private interest into that decision-making
19 process. Or do you say that he can?

20 It's quite alarming if you're saying that if a Public
21 Officer is determining, let's say, a Statutory Board Member,
22 that he can positively take into account the fact that somebody
23 has given him a bribe or a particular candidacy's brother or
24 something like that.

25 MR HAERI: That's absolutely not the position that is

1 being taken.

2 I think, with response to Mr Rawat's, you know,
3 narrowing in on Mr Olympitis's comment, saying it was given
4 without caveat, the point that's made in response is that it was
5 not made without caveat. It was referred to as needing to be
6 serious, important. And the knowing element is a key aspect in
7 terms of the knowing breach of a duty to act in the public
8 interest, and in almost all cases, we consider that would
9 require an improper motive as well.

10 So, it's not the position that, you know, a Minister
11 can act in a personal interest, but the important qualification
12 to what was said by Mr Olympitis is, nevertheless, we think,
13 important.

14 COMMISSIONER HICKINBOTTOM: Three things--three
15 different things you said there, Mr Haeri. Let's just take them
16 in turn.

17 In terms of "serious", and, you know, you refer to the
18 reasonably well-known case of Chapman, of course, Chapman says
19 what it says in terms--in respect to corruption. But what
20 Chapman was saying is that if a Public Officer is acting during
21 his public functions, then, absent dishonesty--or a number of
22 other things, but dishonesty will do for now--absent dishonesty
23 is not going to be guilty of corruption because corruption
24 requires some seriousness. I accept that.

25 But do you suggest that if a Public Officer

1 takes--deliberately, intentionally, knowingly takes into account
2 something which falls outside the scope of public interest, that
3 is not, so far as he is concerned, serious dishonesty in public
4 office?

5 MR HAERI: The individual knowingly departed from
6 their conception of the public interest in a way that was
7 serious and in most cases would have an improper motive element
8 to it, then I think we're not disagreeing on that specific
9 point.

10 COMMISSIONER HICKINBOTTOM: That's what I put to
11 Mr Olympitis, that if somebody acts other than only in the
12 public interest, he brings private interests into the--into his
13 actions, then that is serious enough to fall within the phrase
14 within paragraph 1.

15 MR HAERI: I think the word "knowingly" is--the word
16 "knowingly" is an important part of this, I believe.

17 COMMISSIONER HICKINBOTTOM: Mr Haeri, I accept that.
18 But we're taking the three strands of your submissions in turn.
19 The first one was "serious". All I'm saying is that, if the
20 Public Officer takes into account private interests in his
21 public functions, that is serious enough, full stop.

22 So, for example, a bribe. It doesn't matter whether
23 the bribe is \$10,000 or a million dollars. If he takes that
24 into account in making a decision, that is dishonest and falling
25 within the scope of paragraph 1.

1 MR HAERI: No, and, sir, no one is disagreeing with
2 respect to that example.

3 COMMISSIONER HICKINBOTTOM: Knowing, I accept that.
4 That was in the formulation of the proposition, and that's
5 again, as you indicate, Chapman comes in here a bit. But he
6 doest--he must know that he's taking into account--in the
7 illustration that I've made, that he's taking into account
8 something in the private interest rather than the public
9 interest.

10 MR HAERI: In the example you give, yes.

11 COMMISSIONER HICKINBOTTOM: Yes. But generally
12 speaking, too, he must know; it must be knowing.

13 MR HAERI: Knowing is an important qualification, yes.

14 COMMISSIONER HICKINBOTTOM: I agree with that, and
15 that was in the formulation of the proposition that I put to
16 Mr Olympitis.

17 And then you say "improper motive". As I say, I'm not
18 sure that "motive" is the right concept here, but it will do as
19 a word for now. But the improper motive is that he's
20 taking--deliberately, knowingly taking into account a private
21 interest. That is the improper motive.

22 MR HAERI: When you say "taking into account", do you
23 mean acting on a private interest? What do you mean exactly by
24 "taking into account"?

25 COMMISSIONER HICKINBOTTOM: Yes, acting on a private

1 interest.

2 MR HAERI: Acting on a private interest rather than
3 their conception of what is the public interest, yeah.

4 COMMISSIONER HICKINBOTTOM: Yes, yes, yes, more or
5 less. I mean, you say the "perception", but nobody could
6 perceive that the pri--that the public interest included private
7 interests.

8 MR HAERI: I think with regards to your example of a
9 bribe, I can see what you're saying, which it that it couldn't
10 possibly be in someone's perception of the public interest where
11 they were taking a bribe. I don't think there'd be any
12 disagreement on that.

13 COMMISSIONER HICKINBOTTOM: Or the appointment of a
14 brother. If a public official appointed his brother to a post,
15 ignoring all other criteria, are you saying that that's anything
16 other than falling firmly within paragraph 1?

17 MR HAERI: Well, I think it would depend also on
18 whether they thought that that was in the public interest. They
19 have to knowingly do something that was not in the public
20 interest. And if the brother had credentials that met the
21 qualifications, then they wouldn't knowingly be departing from
22 the public investment. The fact that they--it was their brother
23 wouldn't automatically make it in the private interest or put
24 you within paragraph 1. So I certainly wouldn't agree with
25 that.

1 COMMISSIONER HICKINBOTTOM: Because in those
2 circumstances, it wouldn't be the fact that he's the brother
3 that would drive the decision. It would be the fact that he
4 was, if this were the case, the best man or at least an
5 appropriate man for the post--

6 (Overlapping speakers.)

7 MR HAERI: --may have experience, credentials, yeah.

8 COMMISSIONER HICKINBOTTOM: Absolutely.

9 But in those circumstances, it wouldn't be the
10 relationship which had been taken into account. The
11 decision-maker would--

12 (Overlapping speakers.)

13 COMMISSIONER HICKINBOTTOM: --would discount the
14 relationship?

15 MR HAERI: No. If the individual knew, if they knew
16 that the brother was wholly inappropriate for the role and knew
17 that they didn't have any credentials or qualifications and they
18 were solely motivated that it was the brother, other than that
19 aspect of the public interest, which is having a suitable
20 person, then that's again why the relevant provision is
21 knowingly.

22 COMMISSIONER HICKINBOTTOM: I don't quite agree with
23 that because the fact that he is the brother might be simply one
24 factor that he's taken into account when making the decision, so
25 I can't agree with you that being the brother is the--can be the

1 only factor, but if it's a factor in the decision-making
2 process, that's certainly wrong and dishonest, and it seems to
3 me it's sufficiently dishonest. It's serious dishonesty that
4 falls within (1).

5 But what we need to know is--and that was the
6 proposition I put to Mr Olympitis, and he agreed without caveat,
7 he said--I put the proposition, and he said "yes".

8 MR HAERI: Yeah, I think if you look in the Transcript
9 then a few pages on, there are qualifications that are given
10 with regards to the importance of the issue as well as
11 dishonesty, which doesn't always necessarily need to be a
12 requirement.

13 But I think there were caveats that were given, and
14 the purpose of the letter was to address and set that out as
15 fully and as clearly as possible, and that's the position that
16 we rely on.

17 COMMISSIONER HICKINBOTTOM: But the letter which I'm
18 not quite sure entirely mirrors what--your submissions today,
19 but what I need to know is is there any disagreement between you
20 and the proposition I put to Mr Olympitis, and the propositions
21 that I've put to you today? If there is, I will make a ruling.

22 I mean, it seems to me that I--now I may have to make
23 a legal ruling because everything seemed absolutely clear-cut
24 and dried, and since your letter, it's not. I'm afraid I don't
25 find your letter clear.

1 MR HAERI: Well, I think it's as clear a reflection of
2 the position as is taken, and--

3 SIR GEOFFREY: I understand that.

4 (Overlapping speakers.)

5 MR HAERI: --if you feel the need to make a ruling, of
6 course, that's a matter for you. But the position on behalf of
7 the Attorney General is that set out in the letter.

8 COMMISSIONER HICKINBOTTOM: Well, I mean, that is
9 helpful.

10 And so, I can take it that, effectively, I don't need
11 to ask for any further submissions. I can simply rely upon the
12 submissions that were put in in July and this letter.

13 MR HAERI: Well, I think if you are going to make a
14 ruling on the matter, as you've just raised, then it may be
15 appropriate to have an opportunity for submissions on it.

16 COMMISSIONER HICKINBOTTOM: We are moving towards
17 hearings that deal with this--which deal with Warning Letters
18 that have been drafted on the basis of the--what I thought was
19 the agreement in July, and now at least it's unclear to me
20 whether you agree. I don't find your--the letter of the 5th of
21 September clear. I don't see--I don't find clear the
22 differences you draw between the proposition I put to
23 Mr Olympitis and the position now apparently taken by the
24 Attorney General.

25 But, as I say, if the Attorney General says that a

1 public servant in making a public decision in the public
2 interest can take into account private interests in any shape or
3 form, then that is something which she should make absolutely
4 clear, and I will make an absolutely clear ruling on it.

5 MR HAERI: Sir, was that que--sorry, sir. Was
6 there--I didn't--is that a question to me about whether that's
7 the position of the Attorney General? No, okay.

8 COMMISSIONER HICKINBOTTOM: Well, that's the position
9 that you seem to have adopted in your letter.

10 MR HAERI: I don't believe that's the way that the
11 letter puts it.

12 COMMISSIONER HICKINBOTTOM: Okay. Do you want another
13 opportunity to make any further submissions on this?

14 MR HAERI: Well, sir, I would say no, except that you
15 say you don't find the letter helpful, which makes me wonder if
16 some further submissions may be of utility to you. The position
17 is reflected in the letter, but it's for the reason that, you
18 know, in response to that, that I'm wondering if you would find
19 it helpful.

20 COMMISSIONER HICKINBOTTOM: I've got the Attorney's
21 original submissions. I've got--we've obviously got the
22 Transcript of the hearing in July. We've got this letter. If
23 you wish to make any further submissions, I'll give you that
24 opportunity, but this cannot--this cannot--be left in the air,
25 if the Attorney is taking the view that you appear to suggest

1 she's taking, which is a curious one. But I just want to make
2 absolutely clear that I've understood her submissions.

3 Do I take that nod of the head that you would like
4 some time to make some further submissions?

5 MR HAERI: I'll take instructions, and will come back
6 to you on that.

7 COMMISSIONER HICKINBOTTOM: If you could do so by the
8 end of today because we'll have to have the submissions in very
9 quickly because we are moving on to this very point.

10 But I think you understand the point now. I take the
11 view that a public official act, including taking a decision,
12 was exercising his or her public functions, that must be in the
13 public interest and only in the public interest, and if he
14 takes--he or she takes into account that anything outside the
15 proper scope of public interest--i.e., private interest--that
16 falls within the scope of paragraph 1. If the Attorney
17 disagrees with that as a proposition, I would like to know as
18 soon as possible.

19 MR HAERI: I'll take instructions and come back today
20 on that.

21 COMMISSIONER HICKINBOTTOM: Thank you very much. If
22 you could come back later today, Mr Haeri, that's much
23 appreciated.

24 Mr Rawat, anything else on that?

25 MR RAWAT: I don't think I can assist with any

1 submissions at this stage. Perhaps what, given the indication
2 that you've given to Mr Haeri, that he can put in further
3 submissions. What I would suggest is that we write to Silk
4 Legal drawing their attention to the Transcript of today's
5 proceedings and invite the--

6 (Overlapping speakers.)

7 COMMISSIONER HICKINBOTTOM: We're going to wait for
8 Mr Haeri to come back to us. If he says that it's all fine and
9 he doesn't want to put in any submissions, it's all fine and
10 there will be no further submissions. If he wants to put in
11 further submissions, we will then notify Silk Legal, and they
12 will have a similar opportunity; if Silk Legal, of course,
13 agreed with that, the proposition, too.

14 MR RAWAT: Yes.

15 COMMISSIONER HICKINBOTTOM: Anything else?

16 MR RAWAT: No, I don't think I've got any further
17 matters to raise.

18 COMMISSIONER HICKINBOTTOM: Good. Anything else?

19 MR RAWAT: No. I don't think I've got any further
20 matters to raise.

21 COMMISSION SECRETARY: Anything else, Mr Haeri?

22 MR HAERI: No, Commissioner. Thank you.

23 COMMISSIONER HICKINBOTTOM: And thank you for all your
24 help this morning, Mr Haeri. Thank you very much.

25 MR RAWAT: Thank you. Commissioner, I think our

1 witness is due at 2:00, and so if I could ask you to rise--

2 (Overlapping speakers.)

3 COMMISSIONER HICKINBOTTOM: Yes. We'll break now
4 until 2:00.

5 Mr Haeri, are you returning at 2:00 remotely?

6 MR HAERI: I am, yes.

7 COMMISSIONER HICKINBOTTOM: Good. Well, we'll see you
8 and anybody else who links in then. Thank you all very much.

9 MR HAERI: Thank you.

10 (End at 11:56 a.m.)

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Session 2

MR RAWAT: You will appreciate, our first witness of our hearing is Mr Edward Childs, who is appearing remotely.

If I could, before turning to Mr Childs, just introduce the representation that we have this afternoon. On behalf of the Attorney General and the elected Ministers we have Mr Hussein Haeri and Ms Lauren Peaty who are both also appearing remotely. Silk Legal are not represented or are not appearing this afternoon.

BY MR RAWAT:

Q. Mr Childs, I hope you can hear me. Can I start off, first of all, by thanking you for coming to give evidence. I understand that you would like to give your evidence on oath; is that right?

A. That's correct, yes.

Q. And do you have a copy of the Holy Book with you and the words of the oath?

A. With regard to--just hang on.

I do have those.

Q. You have that with you, yes?

A. I do, yes.

Q. Could you take the Holy Book in your hand, please, and read out the words of the oath.

A. Yes. I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but

1 the truth.

2 COMMISSIONER HICKINBOTTOM: Thank you, Mr Childs.

3 MR RAWAT: Could I also confirm that you received a
4 bundle from the Commission, the Hearing Bundle, which has some
5 33 pages to it?

6 THE WITNESS: I do.

7 BY MR RAWAT:

8 Q. And we need to do this just for the purposes of the
9 Transcript, but can you confirm that you are alone?

10 A. I am alone.

11 Q. And there are no recording devices operating where you
12 are?

13 A. There are no recording devices, no.

14 Q. We can hear you very clearly, but I know it will help
15 the Stenographer if both you and I try and keep our voices up,
16 so I'd encourage you to be louder than quieter if you can.

17 A. Sure, no problem.

18 Q. All right. Mr Childs, can we just begin, and this is
19 a question I've asked of all the Witnesses that have appeared
20 before the Commissioner--just by asking you to give an outline
21 of your background and work history, please.

22 A. Sure.

23 My name is Edward Childs. I've resided in the British
24 Virgin Islands since 1990. I work at "Smithskol" (phonetic), a
25 real estate company, who I joined in 1990. I'm a Director of

1 the company. And my roll there is commercial property.

2 Q. Has your work history, if you like, been essentially
3 commercial-based?

4 A. Yes, it has, yes. I deal with anything from offices,
5 abandoned property, marinas, hotels. We work both in the BVI
6 and also throughout the Caribbean.

7 Q. Now, it's right, isn't it, that for a time at least
8 you were a Member of the Climate Change Trust Board; is that
9 right?

10 A. That is correct.

11 Q. If you have the bundle with you, and you go to page 5?

12 A. Yes.

13 Q. I'm taking you to Sections 4 and 5 of the Virgin
14 Islands Climate Change Trust Fund Act of 2015.

15 A. Yes.

16 Q. We established the Virgin Islands Climate Change Trust
17 Fund, that's at Section 4.

18 A. Um-hmm.

19 Q. It says: "The Trust...[as] a body corporate...capable
20 of entering into contracts, acquiring, holding, and disposing of
21 real and personal property, of suing and being sued and of doing
22 and performing such acts as a Body corporate may legally
23 perform."

24 And then if we go to Section 5, which has the margin
25 entry. "Objectives of the Trust," amongst those objectives was

1 that "the Trust shall seek to facilitate a link between domestic
2 and international climate change finance sources...; (b), serve
3 as a catalyst to attract investments to implement a range of
4 priority climate change adaptation and mitigation projects and
5 programmes in the Virgin Islands; and (c) serve as a National
6 Implementing Entity...for the Virgin Islands."

7 Now, that's language that probably delights lawyers,
8 but from your perspective, what was the purpose of the Climate
9 Change Trust and of the Board?

10 A. Well, the Trust itself was obviously established by
11 this Act. As a fund, it was there to support initiatives within
12 the BVI that were engaging in climate change projects, it could
13 be anything from education within the school environment to
14 somebody wanting to do some kind of green energy, maybe solar
15 panel investment, something like that. So the Trust Fund is
16 very much supporting those initiatives from the private sector.
17 People can apply to the Fund for money, and the Fund would then
18 consider the application and make a decision as to whether or
19 not to support it.

20 There would also be ongoing checks to make sure that
21 the people who've given money, made a grant, would be performing
22 correctly from the point of view of what they were giving money
23 for, and the project was implemented, according to certain
24 criteria.

25 The Board itself was like any Statutory Board, is

1 there more as an oversight position, and underneath the Board
2 would be a secretariat, which would actually do the day-to-day
3 operation of the Fund.

4 MR HAERI: Mr Rawat, before you ask your next
5 question, if you don't mind, apologies, but I don't believe that
6 I or any of those instructed by the Attorney General, received
7 the 33-page bundle you referred to. I'm sorry, if we missed it,
8 but may I just ask on that, please, it would be very helpful to
9 have a copy.

10 MR RAWAT: If you don't mind, Commissioner, if I can
11 just check with the people behind me.

12 COMMISSIONER HICKINBOTTOM: Of course, yes.

13 (Pause.)

14 MR RAWAT: Rather than spend time checking whether it
15 was sent and when it was sent, I think that the swiftest way of
16 dealing with it is just for it to be sent to Mr Haeri and
17 Ms Peaty, so that they can access the document as we're going
18 through.

19 COMMISSIONER HICKINBOTTOM: I'm sure that's right. I
20 think it's been sent somewhere, Mr Haeri, but we will simply
21 e-mail it. It's a short bundle.

22 MR HAERI: Grateful to receive it. Thank you.

23 MR RAWAT: Thank you.

24 Unless Mr Haeri has any objection, I will propose that
25 while that's being done, I will just continue with my questions.

1 BY MR RAWAT:

2 Q. Mr Childs, again trying to sort of summarise it--and
3 please correct me if I get this wrong, but the Board, then, was
4 the oversight body for a trust which was intended to take steps
5 such as raising finance for climate change projects,
6 facilitating private-public partnerships, and generally driving
7 forward a range of climate change initiatives. Would that be a
8 fair summary?

9 A. That would be a fair summary indeed, yes.

10 Q. Now--and that's reflected, isn't it, if we look at
11 page 6, and Section 6 of the statute, there are there a range of
12 functions allocated to the Trust which includes financial
13 support, supporting actions to build ecosystem resilience, for
14 example.

15 A. That is correct, yes.

16 Q. Now, could you just tell the Commissioner, when were
17 you first appointed to the Climate Change Trust Board?

18 A. I was first appointed in 2017. I believe it was in
19 July 2017.

20 Q. We have amongst the documentation that we received a
21 date of 15th of June 2017. Does that sort of match your
22 recollection?

23 A. I--well, I think my appointment letter didn't come
24 until--I've got a notice 7th of July, so that's when I received
25 an appointment letter.

1 Q. I see.

2 A. It may well have been that there was some approval
3 within Government in June, and then I received a letter on the
4 7th of July.

5 Q. And that letter would be the document that would
6 formally appoint you to the Board?

7 A. No. That was a letter informing me that I had been
8 appointed to the Board, and then we had an instrument of
9 appointment.

10 Q. Thank you.

11 And prior to that appointment on the Board, had you
12 served on any statutory body before?

13 A. Not a statutory body, no.

14 Q. Any other kind of public body?

15 A. Yes. I have been on other committees within the BVI.
16 There is the Economic Advisory Council. The Government did
17 something called a McKinsey Report, and they had various bodies,
18 various committees, and I served on some of those committees as
19 well.

20 Q. So, as well as bringing your commercial expertise to
21 this Board, you would have had some experience of serving on
22 committees and bodies charged with various functions?

23 A. Correct, yes.

24 Q. If you turn, please, to page 12--sorry, page 11, first
25 of all.

1 A. Okay.

2 Q. You see there, and it's Section 12(1)--

3 A. Um-hmm.

4 Q. --that sets out the makeup of the Board, and so at
5 that time the Board came under the Ministry of Natural Resources
6 and Labour, so there were ex officio Members which were the
7 Permanent Secretary, the Financial Secretary, and the Chief
8 Executive of the Trust, but also there were to be six other
9 Members appointed with the approval of Cabinet by the Minister,
10 and at that time, obviously, it would have been the Minister of
11 Natural Resources and Labour. And these were a private sector
12 representative of the tourism industry, private sector
13 representative of the financial services sector, private sector
14 representative of any sector responsible for making
15 contributions to the Fund, not already represented on the Board,
16 a representative from an academic or research organisation
17 ordinarily resident in the Territory, a representative from a
18 non-governmental organisation or community-based organisation
19 ordinarily resident in the Territory, and an individual
20 ordinarily resident in the Territory. So, the makeup of the
21 Board would have been dominated by six non-governmental
22 individuals; is that right?

23 A. That's correct, yes.

24 Q. And that's the (drop in audio) that you came under?

25 REALTIME STENOGRAPHER: I'm sorry, could you start

1 your question again? The audio blipped out.

2 MR RAWAT: I'm sorry. I'll say that again.

3 BY MR RAWAT

4 Q. Just can you confirm again, please, Mr Childs,
5 Section 12 provides for six non-governmental appointees; that's
6 right, isn't it?

7 A. That is correct, yes.

8 Q. Those appointees make up the majority of the Board?

9 A. They do.

10 Q. And that's the cohort of appointees that you came--you
11 fell within?

12 A. That is correct, yes.

13 Q. If we look now to paragraph--bottom of that page, it
14 sets out there that, in appointing those non-governmental
15 appointees, the Minister has to be satisfied that such persons
16 have the necessary expertise and involvement in the sector for
17 which they seek appointment, no conflict of interest, including
18 related to political affiliation; and the capacity to do one or
19 more of the following: Attract financial support for the Trust;
20 ensure effective financial management of the Trust; provide
21 sound and effective decision-making leading to the attainment of
22 identified functions of the trust; and provide effective
23 leadership and direction to the Board.

24 Now, against that background, could you just outline
25 for the Commissioner your experience of how you--of the

1 appointment process for you?

2 A. Sure.

3 Well, first of all, I saw the Climate Change Trust
4 Fund, there was information in the press probably about 2015
5 that the Climate Change Act had been passed. And then shortly
6 after that, there were adverts inviting people to apply for
7 position on the Board, and it was of interest, so I followed up.
8 I believe I probably contacted the Ministry or anyway, to get a
9 hold of an application form.

10 We had to fill in an application form. Once
11 that--which included references and had to put down why you
12 thought you were qualified.

13 Shortly after that, the Ministry, they organised some
14 evenings or some sessions for the public who had applied, and
15 you could come to, probably I think there was three or four
16 different evenings you could go to, where they would give you a
17 little bit more information about what the Trust Fund is and
18 what the Board would be doing, general information.

19 And then it was--then we just have to wait, and we
20 were--we had follow-up information probably towards the end of
21 2016 and the start of 2017 through e-mails, and just telling us
22 where they got to in the process, and how they were selecting
23 people. That was one of the e-mails that was sent out.

24 Q. And so, and you can see if you look at your bundle at
25 page 12, Section 13 provides that one of the ways--the Minister

1 in appointing persons to the Board--and these are the
2 non-governmental appointees--

3 A. Um-hmm.

4 Q. --there has to be public advertisement of their
5 qualifications and other criteria required for eligibility.

6 A. That's correct, yes.

7 Q. That's what happened, there was an advertisement for
8 the post. Is that right?

9 A. Yes. So, there was an--the advert which I saw and
10 which I responded to, so anybody who had applied, first of all,
11 went to that public meeting, and then was obviously submitted,
12 and then at some stage there was an advert that said that these
13 were the following people who applied, this is the section that
14 they'd applied for, could be Financial Services, tourism,
15 whichever section. And then a little bit about their
16 background, I believe. I can't totally recall exactly what was
17 published.

18 Q. I think you if turn to page 13, we see why that was
19 done reflected in the Act because, if you can see the number (4)
20 in brackets there, "after the close of the application process,
21 the Minister shall disclose to the public the names of all
22 applicants and the sectors that they wish to represent on the
23 Ministry's website." And so the public were informed about what
24 role the appointees were going to play; is that right?

25 A. That's correct, yes, um-hmm.

1 Q. So, to summarise, just make sure we've got it--(drop
2 in audio) that the possibility of applying was advertised?

3 A. Yes.

4 Q. You applied using a form in references?

5 A. Yes.

6 Q. You were invited to an open session where the role was
7 explained to you?

8 A. Correct.

9 Q. There were follow-up e-mails to tell you what progress
10 was being made in terms of the appointment process?

11 A. Yes.

12 Q. And then, as we've just seen, there was a public
13 announcement of the appointees and what role--what part of, if
14 you like, civil society they represented and what role they
15 would play on the Board?

16 A. Yes, that's--that's all correct.

17 Q. And in terms of the requirement for six Members or six
18 non-governmental appointees as I put it, were all those
19 positions filled?

20 A. They were, yes.

21 Q. Now--

22 A. Sorry, I should probably point out, in the list of
23 people on the Board, that includes the Chief Executive Officer,
24 that position wasn't filled because that position would have
25 come later on. That would be the Chief Executive Officer of the

1 Secretariat, so that position wasn't actually ever in place.

2 Q. Because, once the Board was in place, part of your
3 function was to establish your funds and set up your
4 Secretariat; is that right?

5 A. Correct, yes.

6 Q. You would have then had to seek out and appoint a
7 Chief Executive?

8 A. Correct, yes.

9 Q. Now, if you turn to page 14 in the bundle, we see at
10 Section 15 that your period--your term of office was for a
11 period or stipulated to be a period not exceeding three years,
12 but you would be then eligible for reappointment. So, for you,
13 your term would have expired in 2020; is that right?

14 A. Correct, yes.

15 Q. What we see also at 15(2) is that the appointment of
16 non-Government Members was intended to be staggered to ensure
17 that no more than two non-Government representatives are
18 re-appointed in any calendar year.

19 So, did you understand that to mean that you would not
20 have a situation where all six non-Government Members would
21 leave at the same time but rather that they would be a change on
22 a rolling basis?

23 A. That's correct, yes.

24 Q. And did that happen in your case, in the case of your
25 Board, that there were people appointed at a later date than

1 you?

2 A. Not at--there was one person appointed at a later
3 date, yes. There was one of the Board Members was actually
4 posted back to the UK, but their tenure was one year anyway, so
5 that--so, rather than renewing it, that was allowed to lapse,
6 and then there was a new person that came on the Board going
7 through the same process, and they were then duly appointed.

8 Q. Now, under the Act--and I won't take you to the
9 section unless you need to see it, but for the Transcript it's
10 Section 12(5), the Board has a Chair and a Deputy Chair. And
11 were those appointments made?

12 A. They were, yes.

13 Q. And what role did you take on, if any?

14 A. I was Chairman.

15 Q. And was that from the inception of the Board, from the
16 time that you came to be part of it?

17 A. It was, yes.

18 Q. If we do, however, look at Section 10 at page 10, this
19 is a section of the Act which is--has the marginal status of the
20 Trust, and 10(1) says: "The Trust is not a Government fund of
21 the Territory, and the capital and revenue of the Trust is not
22 public money of the Virgin Islands and as such not subject to
23 control and accounting except as provided by this Act."

24 And if we look at 3(b), it also says that "the Trust
25 cannot render the Government of the Virgin Islands liable for

1 any debts, liabilities or obligations of the Trust."

2 Keeping those in mind, what did you as Chair of the
3 Board understand to be the relationship between the Trust or
4 between the Board and Government?

5 A. Maybe I can answer that by saying at the very start of
6 Board's tenure, the very first job we had to do was to approve
7 the Operations Manual. The Operations Manual was put together,
8 was drafted by an expert in climate change and legislation, and
9 it was made very clear to us that, from an Operations Manual
10 point of view and also from the Act's point of view, if the
11 Trust wanted to apply to International Organisations to raise
12 finance, the most important thing was the impartiality of the
13 Board and the Trust and the independence of the same. When it
14 came around to what the Trust is and what the Board is and then
15 leave, you know, Government to one side. So, it was very
16 clearly spelled out to us through that whole process that we
17 were a Statutory Board and running independent of the
18 Government, if you like, although we had obviously government
19 people on the Board.

20 Q. You mentioned funding, and let's look at page 8 of the
21 bundle, please.

22 Can you see the number 4 there in brackets, in
23 particular 4(a)?

24 A. Yeah, um-hmm.

25 Q. The Trust's duties was to raise funds from domestic

1 and international sources; and under 7, we can see then that the
2 trust had power to invest in various Trust Funds.

3 And if you go to Section 8 on the next page, at the
4 very bottom there, 8.(1) says that the Trust could "accept
5 donations from lawful sources subject to such conditions as may
6 be imposed by the donor if doing so would not cause the Trust to
7 violate any provision of this Act." So, given that you could
8 raise funds, invest, and also receive donations, it does follow,
9 doesn't, that the intent at least was that the Trust should not
10 be entirely funded by Government?

11 A. Oh, absolutely. There was obviously going to be some
12 seed money which came through a particular tax, but that would
13 only be seed money and supporting some of the basics for running
14 the Trust. But yes, it was very clear that if you wanted
15 to--for the trust to be successful, we would be applying to
16 international bodies. There is one in particular we were told
17 about, the Green Climate Fund. And if you wanted to apply to
18 that, then you had to--the Operations Manual and the Act had to
19 be drafted in a certain way to make you even eligible to apply.

20 Q. You mentioned seed money. Can you just explain a
21 little bit more about how that seed money was generated?

22 A. Yes.

23 The Government had separately instigated an
24 environmental levy, which is charged to visitors on arrival, and
25 it's \$10 per head, and that was collected--I can't remember

1 which year it started. It was around about the same time as we
2 were appointed, so maybe 2016, and those funds were collected
3 and put into an account. They were being collected by the
4 Customs Officers when people arrived into the BVI.

5 The intention was that the Climate Change Trust Fund
6 would receive 40 percent of those funds in order to give it
7 annually a degree of seed money in order to run the Secretariat
8 and really to, you know, to underpin the whole operation.

9 During the time--from the time that we were appointed
10 until December 2018, the--I think the issue was that the Act
11 that created the environmental levy and the climate change--the
12 Act that created the Climate Change Trust Fund, they didn't talk
13 to each other. So, although there was mention within each about
14 the levy and where it would go, it didn't actually direct that
15 that's what would happen.

16 So, for all the time that we were a functioning Board,
17 we were--a lot of our discussion was about how was that process
18 going to happen and when was it going to happen. It was
19 eventually decided by Cabinet--December 2018, again, I think was
20 the date, they eventually decided where those funds would go,
21 but I believe it then had to go to the House to be passed, and
22 we never got to that point.

23 So, we never actually benefited from those funds.

24 Q. And those funds were intended, as you say, to help you
25 begin to establish your Secretariat.

1 A. Correct.

2 Q. And establish essentially a foundation for the next
3 stage, which would be going out to seek further investment and
4 contributions in order to do the work of the Trust?

5 A. That's correct.

6 We--it was fairly evident that, in order to go out and
7 raise or try and source funds, then you needed to engage with
8 people that had access, and that would come at a cost.

9 We were also--once we realised we were fairly close to
10 receiving the funds, we also started the process of looking for
11 somebody who could be qualified as a CEO, and also we were
12 looking for a secretary to support them, so those are the areas
13 that we were looking at towards the end of 2018.

14 Q. And in terms of the reality of the Trust Board and how
15 it operated--

16 A. Um-hmm.

17 Q. --how often were you meeting as a board?

18 A. We were appointed just before Hurricane Irma. We did
19 meet shortly after Hurricane Irma passed. We carried on
20 meeting. We had, I believe from memory, a total of 15 Board
21 Meetings between July 2017 and April 2019, so we were very much
22 a functioning Board.

23 We were tasked initially, obviously, with the
24 Operations Manual. That was a substantial document, and we had
25 to be very familiar with it. The person that drafted it had a

1 lot of knowledge, but very much wanted it to be our document.
2 So, we would sit as a Board--we actually outside of those Board
3 Meetings, we then had training sessions over weekends and things
4 like that, so that we were very familiar with the whole
5 Operations Manual, and the drafting of it. As I said, a very
6 substantial document, and that person that drafted it wanted it
7 to be our document, not his document.

8 Q. Was that person a Consultant brought from outside the
9 Virgin Islands or someone within Virgin Islands?

10 A. No, no, he was brought in from outside, from Europe.

11 Q. So, he came in to help you essentially write your own
12 Operations Manual?

13 A. Yes. He wasn't appointed by the Board. He was
14 already brought in by the Government. So, by the time we were
15 appointed, the Operations Manual had been probably substantially
16 drafted, and then it was our role, then, as I say, to go through
17 each section, and make it into our document, how would it work
18 for the BVI.

19 Q. Again, please tell me if I've got this wrong, but as
20 I've understood your evidence so far, the Operations Manual was
21 key to the next stage of the Board's work, which would have been
22 going out into the world market to secure funds for green
23 initiatives within the Virgin Islands; is that right?

24 A. That is correct.

25 It was made very clear to us that we had various

1 options in the way we could draft it.

2 With the great Green Climate Fund, for example,
3 because the BVI is a dependent Territory, overseas Territory, it
4 wouldn't in itself be eligible to apply directly to that fund to
5 raise money. However, at some stage, we may be eligible to do
6 that, in which case we had the choice to write the Operations
7 Manual in this way, in which case we wouldn't be eligible ever,
8 or to we write it in this way and make sure that at some stage
9 we would be eligible, and we chose the latter.

10 Again, we just didn't want to tie the Board or the
11 Trust to an Operations Manual--you could always change it, but
12 we didn't want to tie the Operations Manual to a format that
13 couldn't stand up to scrutiny from an international
14 organisation.

15 Q. Now, we've seen from looking at the Act a little
16 earlier, that as well as the non-Government Members, there were
17 Public Officers who were part of the Board, and you've explained
18 why the Chief Executive Officer of the Trust was not actually a
19 member of the Board because he or she had not been appointed.
20 But you had the Permanent Secretary and the Financial Secretary.
21 Were those Public Officers attending your Board Meetings?

22 A. They were. They attended, if not all of them,
23 virtually all of them.

24 Q. And what role--what was their role on the Board?

25 A. The Permanent Secretary really was as much as all of

1 us, to say the focus was very much in the Operations Manual, but
2 the Permanent Secretary and the Financial Secretary were taking
3 the same role as we were in giving input to that whole process.
4 We did a logo, we did a website, so they had the same input on
5 that.

6 Where it properly differed was when it came to any
7 discussion on the environmental levy because as the private
8 sector members of the Board, we didn't have that connection with
9 what was happening within Government, so we then had to rely on
10 their input much more as to that whole process of the
11 environmental levy, at what stage it was within the process of
12 being, you know, the two acts being connected; and then finally
13 the funds being allocated correctly to the Trust Fund.

14 So, they would take any information, any questions
15 that we may have back to government and then at the next Board
16 meeting would report back on where things had got to.

17 Q. You stated 15 Board meetings starting from July 2017.
18 You were Chair of the Board. Did you consider that there was a
19 good-working relationship amongst the various members of the
20 Board?

21 A. Very good.

22 Q. Non-Government?

23 A. Yeah, very good. There was absolutely no--no--how do
24 I say?--there was nothing that made the people from Government
25 any different from the people from the private sector.

1 Everybody's working together, and it worked extremely well as a
2 board.

3 Q. And your last answer probably half deals with this
4 question, but just so that we're clear, you were the Chair. At
5 any time, did those Government Officers raise with you any
6 concerns over the way that the Board was operating?

7 A. No.

8 Q. Did they raise any concerns about individual
9 non-Government members of the Board?

10 A. No.

11 Q. Can I ask you just to turn now to page 32 in the
12 bundle. You have that page, Mr Childs?

13 A. I have to--I'm scrolling down, yeah.

14 Q. Thank you.

15 Now--

16 A. Okay.

17 Q. At some point, and following the most recent election,
18 the Climate Change Trust and the Climate Change Board moved from
19 sitting under the Ministry of Labour and Natural Resources to
20 the Premier's Office; is that right?

21 A. It did, yes.

22 Q. I just want--before I ask you some questions--just to
23 read out a letter that was sent to you from the Office of the
24 Premier. The letter is addressed to you as Chairman of the
25 Climate Change Trust Fund Board, and it's dated April 5th, 2019.

1 It begins: "Dear Mr Childs:" As regards "Climate Change Trust
2 Fund Board," "I write with regard to the above-captioned
3 subject.

4 "As you are aware, this administration has just taken
5 office a little over five weeks ago. Since taking office, I
6 have been assessing the functions and composition of the
7 Statutory Boards across Government and more so those Boards that
8 fall under the portfolio of the Premier's Office.

9 "Further, you may be aware that a number of portfolios
10 had been shifted around. Therefore, and in this regard, the
11 climate change portfolio has been moved to the Premier's Office.
12 Thus, in keeping with our mandate, it is this Government's
13 intention to restructure the composition of membership on each
14 Board inclusive of youth involvement on each Board. A new
15 policy attaching term limits on board membership to coincide
16 with the term of the sitting Government is now being
17 implemented.

18 "Hence, in view of the foregone, we are seeking your
19 cooperation in voluntarily tendering your resignation from the
20 Climate Change Trust Fund Board by Thursday April 11, 2019.

21 "The Government thanks you for your service rendered
22 and wishes you success in your future endeavor."

23 And it ends, sincerely, and it's signed by Andrew
24 Fahie, Premier of the Territory of the Virgin Islands.

25 Now, was that the first communication that you had

1 received from the Premier's Office following that election,
2 which Mr Fahie became the Premier of the Virgin Islands?

3 A. Yes, it was.

4 Q. Prior to that letter, had you had contact from any
5 other Minister in Government?

6 A. No.

7 Q. Had you had contact in relation to your position as
8 Chair and a Member of the Climate Change Trust Fund Board from
9 any public official?

10 A. No.

11 Q. You'll see that there's reference in the letter to it
12 being the Government's intention to restructure the composition
13 of membership on each Board, inclusive of youth involvement on
14 each Board.

15 What did you understand by the reference to the
16 "Government's intention"?

17 A. I suppose when I read the letter it was Government's
18 policy to change Boards, and I believe that at the time,
19 probably being information in the press indicating that the
20 Government were going to be--was going to look at Statutory
21 Boards. As I say, I've got a memory of that, but I couldn't say
22 where I--it would just be in the general press, I think.

23 Q. Can you help the Commissioner with this, was a letter
24 in similar terms sent to all the non-Government Members of the
25 Climate Change Trust Fund Board?

1 A. It was.

2 Q. So, everyone was asked to voluntarily resign?

3 A. They were, yes.

4 Q. Now, we'll come on to your response to this letter in
5 a moment, but other than what I've read out to you, were you
6 given any other explanation as to why you were being encouraged
7 to voluntarily resign?

8 A. No, not at all.

9 Q. I'm sorry to make you jump around in the bundle, but
10 could you turn up page 14, please. Do you see there, we're
11 going back to the Act, but do you see there Section 16.

12 A. Yes, I do, yes, um-hmm.

13 Q. Section 16(1) that I want to draw your attention to,
14 because that says that: "A Member of the Board can resign at
15 any time by notice in writing addressed to the Minister, and
16 such resignation becomes effective upon receipt by the Minister,
17 unless specified to take effect at a specified date." Now,
18 we've seen the letter that was sent to you. Did any board
19 Member resign?

20 A. No.

21 Q. Go now back to the last page in the bundle, and that's
22 page 33.

23 Now, this is a letter, and I'm going to read it out
24 again so it's on the record; but before I do, between your
25 receiving the letter which invited you to resign within a week

1 from the Premier, and sending the response that we're going to
2 look at in more detail, back to him, were there any discussions
3 amongst the six Board Members to what steps you could take?

4 A. There were, yes. We spoke on the phone, and we--I
5 believe we met. I'm pretty certain we met. At that stage, we
6 decided it would be inappropriate to include the two Government
7 representatives. I think they would be conflicted, so it was
8 just the private-sector Members that discussed this.

9 And we talked about the letters that we
10 received--first of all, when I received my letter, I assumed it
11 was just me that had it, so I did reach out to other Board
12 Members, and that's when I realised everybody received the same
13 letter.

14 So, our discussion was very much along the lines of
15 what should we do, and I don't know if you want to read out the
16 letter or I can explain what our decision was, but we decided at
17 the time we were concerned that a lot of effort had gone into
18 getting the Trust Fund to where it was at that point. In
19 particular, we were concerned that the Operating Manual,
20 Operations Manual, that had been agreed and approved was really
21 the knowledge of all the people on the Board.

22 So, individually, while if any of us had to come off
23 the Board, it wouldn't really matter, but for all of us to come
24 off the Board at one stage, you're effectively starting again
25 with the Trust Fund, and we felt that that would be an issue.

1 We were also concerned that, again, this comes back to
2 the ability of the Trust Fund to raise financing
3 internationally. And what we were being asked to do
4 was--obviously, we realised and we were familiar with the
5 Act--one of the members of the Board was actually a lawyer as
6 well, so we had their opinion if you like, and it was very clear
7 that what we were being asked to do was not in agreement with
8 the wording within the act. So, we decided to reach back to the
9 Premier and request a meeting where we could explain what we've
10 been up to, where we were going, and--you know, just give him
11 more information, and hope that we would have an audience
12 where--anyway, if at the end of the day the Premier wanted to
13 change certain people on the Board, the Climate Change Trust
14 Fund is bigger than any individuals, but--so, if I had been
15 asked to step down, I would have no issue with that at all, but
16 I think we just felt that it was wrong for everybody to step
17 down at the same time, and so we drafted this letter back
18 requesting a meeting.

19 Q. I will read the letter in just a moment.

20 Was the primary concern of the six non-Government
21 Members asking everybody to resign, meant that collective
22 expertise was going to be lost in one fell swoop?

23 A. Yes.

24 I would say it was twofold. It was primarily that,
25 but also setting a precedent that the whole point of the Climate

1 Change Trust Fund and the Act, if you're going to be applying to
2 these international bodies, is that there is a degree of
3 independence, and this seemed to be crossing that line. So,
4 those were the two primary concerns.

5 Q. Let me read the letter. It's a letter that you wrote
6 and signed. It's dated the 17 of April 2019 and it reads as
7 follows: "Dear Honourable Fahie, Virgin Islands Climate Change
8 Trust Fund Board. I refer to your letter dated 5th April 2019,
9 received by e-mail on 9 April 2019, and I am responding to you
10 as Chairman of the Board, Virgin Islands Climate Change Trust
11 Fund, and on behalf of the members of the Board representing the
12 non-Government interests.

13 "We are delighted that you, as Premier of the Virgin
14 Islands, have taken an active interest in the issues of climate
15 change impacting the Territory. We particularly noted your
16 statement in March announcing that a statutory body would be
17 established to develop plans, programmes and strategies for
18 climate adaptation. The members of the Board are a committed
19 group and likewise passionate about climate change and
20 addressing how to make the Territory more resilient to
21 anticipated climatic changes by introducing adaptation and
22 mitigation measures to tackle the inevitable changes we will see
23 in the years ahead. We are equally interested in ensuring the
24 Territory plays its part in reducing global carbon emissions
25 while creating opportunities locally for businesses to invest in

1 a renewable-energy sector which would be supported through
2 training and job creation.

3 "We have received your respective letters, and would
4 like to have the opportunity to meet with you to apprise you of
5 the achievements of the Board to date, which includes conveying
6 the knowledge, training and continuity that has been established
7 by the Board since July 2017. We would like to see that our
8 work will not be lost and further, the ability for the Territory
9 to tackle climate change be delayed just at a time when progress
10 is about to be made."

11 And the letter, as we see, is copied to the following:
12 John Klein, who is the Deputy Chair and the representative of
13 the tourist sector; Ronnie Lettsome, who is representative of an
14 individual of ordinarily resident in the BVI; Dr Shannon Gore,
15 is the representative of a NGO or community-based organisation;
16 Dr Katherine Smith, as a representative of the academic or
17 research organisation; and Shelly Bend, as a representative of
18 the financial services sector. So, just so we're clear again,
19 this letter was not sent on your own behalf alone, was it,
20 Mr Childs? You were sending it on behalf of all six Members who
21 had been asked to resign; is that right?

22 A. That is correct, yes.

23 Q. And it's marked at the top "BY HAND."

24 Does that mean that it was physically delivered by
25 hand to the Premier's Office?

1 A. Yes. I delivered it myself.

2 Q. Now, again, you've said that the Board had been
3 working since July 2017. Before receiving your letter inviting
4 you to resign, you had not had any communication from the
5 Premier's Office, and I take it from the Premier, but before
6 Andrew Fahie became the Premier, had he at any time from
7 July 2017 approached the Board to discuss its work?

8 A. Not to me, and I don't believe he approached anybody
9 else, but I couldn't testify to that.

10 Q. So, 17th of April 2019, you wrote to the Premier.
11 Did you receive a response to that letter?

12 A. No.

13 Q. In any form, any form of communication at all from
14 anyone in Government?

15 A. No, no communication at all.

16 Q. What happened then? Did you resign?

17 A. No. The next thing we heard was, I believe it was
18 Minutes of a Cabinet meeting that were made public, just
19 advising that the Climate Change Trust Fund Members had been
20 taken off the Board. I can't remember the exact wording, but
21 that was the effect.

22 Q. And that was all of you?

23 A. Correct, yes.

24 Q. So, other than that communication, a public
25 communication, of a decision of Cabinet, was the decision to

1 revoke your membership of the Board otherwise communicated to
2 you?

3 A. No.

4 Q. Could you go, please, back to page 14 in your bundle,
5 and if you look at section 16(2), please, Mr Childs.

6 A. Um-hmm.

7 Q. We've looked at the resignation element of this
8 provision, which was 16(1). 16(2) deals with the removal of
9 Members of the Board, and it says as follows. This is 16(2):
10 "The Minister may, with the approval of Cabinet, revoke the
11 appointment of a member of the Board, other than a government
12 member, if the Minister is satisfied that the member (a) is
13 guilty of misconduct; (b) failed to attend four consecutive
14 meetings of the Board of which the member had notice except
15 where leave was granted by the Board or where the member is
16 excused by the Board for having been absent from those meetings;
17 or (c) knowingly failed to notify the Board of a conflict of
18 interest; (d) no longer fulfills the conditions of appointment
19 as set forth in Section 12; or (e) acts in a way that is
20 detrimental to the Trust."

21 Now, you're speaking of yourself as an individual
22 Member, were you informed of the reasons for the decision to
23 revoke your membership of the Climate Change Trust Fund Board?

24 A. No.

25 Q. Did your actions in any way come within any of the

1 five reasons that are set out in the Act--

2 A. No.

3 Q. --to allow a Minister to remove a Member of the Board?

4 A. No.

5 Q. As far as you're aware, did any of those reasons apply
6 to any other Members of the Board?

7 A. Not as far as I'm aware, no.

8 Q. And so, does it come to this, Mr Childs, that you were
9 never told the reason why your membership of the Board had been
10 revoked?

11 A. Correct, except for what was set out in the letter
12 that was sent to me from the Premier's Office.

13 Q. And that was the letter inviting you to resign?

14 A. Yes, um-hmm.

15 Q. Now, once all six Members were revoked, that meant
16 that the Climate Change Trust Fund Board just had two Members on
17 it, the two public officers, do you know what has happened to
18 the Board since then?

19 A. No. I don't know what's happened to the Board. I
20 mean, there is an active current account with some funds in it.
21 There is a stamp for the Board, so yeah, but I have no knowledge
22 of what's happened to the Board itself.

23 Q. Do you know whether there have been further
24 appointments to the Board as yet?

25 A. I don't.

1 Q. The possibility, therefore, is that the Board is
2 inactive?

3 A. Yes.

4 Q. Hadn't had new appointments?

5 A. Yes. I think I would have heard if there had been any
6 new appointments.

7 Q. Now, you spoke earlier of the concern not held not
8 just by you but by your Fellow Members of losing collective
9 expertise. You started working in July 2017 as a board. You no
10 longer worked as from April 2019.

11 In terms of where the British Virgin Islands were
12 compared to other Caribbean islands, were you at that time
13 leading the field, so to speak, in terms of getting climate
14 change financing and building a trust that would be effective
15 for the Virgin Islands?

16 A. Yeah, and in the process of particularly when we were
17 meeting with various experts in the field, the gentleman that
18 put together the Operations Manual and so on, we were--they were
19 able to tell us quite a bit about the background of the Act,
20 where it fitted in. And I understand from them that this was
21 the very first act of this nature within the Caribbean that had
22 been passed, and we would be the first Board obviously to be
23 working in this particular field where we could be raising money
24 and investing it.

25 There are other islands, Antigua, for example, was

1 able, while we were still aboard, to raise a fairly substantial
2 amount of money in the millions, and they were well established,
3 and then since then I have heard of other islands following suit
4 and passing their relevant legislation. I don't know whether
5 it's exactly the same as our Board, but it was certainly in the
6 climate change category.

7 Q. Assuming that the Board is still inactive because it
8 hasn't had new appointments, something we can ask other
9 witnesses to confirm, if that is the case, does that mean that
10 in this area, the Virgin Islands may have lost ground compared
11 to other jurisdictions?

12 A. Yes. I--yes, there are certainly other islands that
13 have advanced their climate change policy, and I have not
14 seen--I saw something about a green paper to do with climate
15 change management policy. You know, I haven't seen anything
16 further on that.

17 So, in the years that have passed since we--since the
18 Board kind of stopped, I've not really seen anything within the
19 BVI advancing that.

20 Q. Now, you mentioned that there is still an active
21 current account.

22 A. Um-hmm.

23 Q. As far as you're aware, is the environmental levy
24 still in place?

25 A. Yes, yes.

1 Q. So, is the Trust, the Climate Change Trust, still
2 entitled to 40 percent of that environmental levy?

3 A. I couldn't answer that question because I believe it
4 was a Cabinet Decision in December 2018 that approved the funds
5 going from the environmental levy to the Trust Fund, but I'm not
6 sure--I think there was another step it had to go through and I
7 don't know--I couldn't say if that happened or not.

8 So, by the end of 2018, we had the approval, but I
9 don't think that we were quite there to receive.

10 Q. But there are still--there is still an account with
11 monies in it, just sitting--

12 (Overlapping speakers.)

13 A. I couldn't--I don't know.

14 Q. I asked that because you mentioned an active current
15 account.

16 A. Ah, no. That was we established our own current
17 account, so the environmental levy money that's collected by
18 Government goes into a government account, nothing to do with
19 us. We would then have received the funds, the 40 percent of
20 the funds from that account.

21 The account that we've got, the active current account
22 that we have, is our own current account that we set up in order
23 to start funding some of the things like the website and the
24 logo and other things that we had to do.

25 We also received some small donations, so those are

1 still sitting in that account.

2 Q. So, just to be clear, you said it's an account "we set
3 up." So, were the Members of the Board contributing their own
4 funds to try and get things going?

5 A. Yes.

6 MR RAWAT: Thank you.

7 Commission, if I could just have a moment.

8 COMMISSIONER HICKINBOTTOM: Yes.

9 (Pause.)

10 MR RAWAT: Commissioner, those are all my questions.
11 Can I conclude, first of all, by thanking Mr Childs for making
12 himself available to give evidence to the Commission today, but
13 also thanking him for the assistance that he's given and the way
14 he's given his evidence. Thank you.

15 COMMISSIONER HICKINBOTTOM: Yes, can I echo that,
16 Mr Childs. Thank you very much for giving your time and giving
17 the assistance that you have. It's very much appreciated.
18 Thank you.

19 THE WITNESS: Thank you very much, Commissioner.

20 MR HAERI: Commissioner, may I ask the Commission to
21 ask Mr Childs some questions coming out of what he has said?

22 COMMISSIONER HICKINBOTTOM: Well, under our rules, no,
23 but you can ask Mr Rawat. What I suggest is that that's done
24 separately.

25 MR RAWAT: Yes, perhaps--sorry, if we will keep

1 Mr Childs a little bit longer, if we rise perhaps for five
2 minutes and I can just try and have a conversation with Mr Haeri
3 by different means, we could see how we can do it.

4 COMMISSIONER HICKINBOTTOM: That's the way to do it,
5 Mr Haeri.

6 Mr Childs, could you just hold on to this line for
7 now. I will rise for a few minutes. Mr Haeri will speak to
8 Mr Rawat, if there are any more question, then we can put them
9 to you before you go. Thank you very much.

10 THE WITNESS: Thank you.

11 MR RAWAT: Thank you.

12 (Recess.)

13 COMMISSIONER HICKINBOTTOM: Thank you very much.

14 Yes, Mr Childs, you're still there. You can still see
15 and hear us?

16 THE WITNESS: I can, indeed. Yes, thank you.

17 COMMISSIONER HICKINBOTTOM: Mr Rawat.

18 MR RAWAT: Commissioner, I'm grateful. Mr Haeri we
19 found out through means of communication that his e-mail those
20 questions, and I had an opportunity to look at them. There are
21 just two questions. I'm happy to put them to Mr Childs in the
22 form that they have been drafted.

23 BY MR RAWAT:

24 Q. Mr Childs, there are two more questions for you. The
25 first is this:

1 Did the Board raise any material funds from its
2 establishment in July 2017 to February 2019?

3 COMMISSIONER HICKINBOTTOM: Just one moment, Mr Rawat.
4 Just--what I recollect of the evidence that you have
5 given is that you've said that until I think it was
6 December 2018, when I think a Cabinet Decision was taken, there
7 was a sort of hiatus in your obtaining the money from the levy
8 because, I think, as you put it, these two organisations didn't
9 sort of communicate very well, and you needed the levy money,
10 which I think you referred to as "seed money," to be able to go
11 on and do other things like sets up a secretariat and going at
12 other money. That may not entirely answer the question, but it
13 may go some way to answering the question, but you have the
14 question, Mr Childs?

15 THE WITNESS: Sure.

16 So, the question is did the Trust Fund Board raise any
17 substantial monies? The answer is no. What we did, we went to
18 talk to some people who are active in climate change and are the
19 people that would go out in lieu of our behalf and raise the
20 money. But, in order to engage with them, there would be a
21 substantial fee in order to build up--you have to build up a
22 Business Plan and everything else, and you're talking probably
23 several tens of thousands, if not hundreds of thousands, of
24 dollars to engage with those kinds of people. So, it wasn't
25 something that we were in a position to be able to do at any

1 stage.

2 BY MR RAWAT:

3 Q. And can I just follow up on that, Mr Childs, but--and
4 it's just to clarify what was put to you by the Commissioner.

5 A. Um-hmm.

6 Q. What you needed was access to the environmental levy
7 funds in order to take the Trust on to the next stage; is that
8 right?

9 A. That is correct, so that's really the way everything
10 was set up, that the Trust Fund would receive the 40 percent of
11 the funds raised by the levy in order to sort of establishing
12 the Secretariat, bring on the CEO, whose job would then be--that
13 person would then be the person to go out and raise the funds
14 and get everything going under the Trust Fund Act.

15 COMMISSIONER HICKINBOTTOM: You mentioned in your
16 evidence the Operating Manual, which is obviously an important
17 tool.

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: And what would the
20 Operating Manual go to? What was its scope? What did it--

21 (Overlapping speakers.)

22 THE WITNESS: Yeah, so the Operations Manual would
23 literally be the way the entire fund would operate, the way the
24 Board would operate, where the Secretariat would operate. So,
25 going--and, you know, lots of different sections. Gosh.

1 And because it was going out to the international
2 communities, so one of the choices I think I mentioned we could
3 either go this route or this route, and the route we chose to go
4 was the international route within the Operations Manual so it
5 would cover all--lots of things like fair business practices, no
6 discrimination, so you would have lots of different sections
7 dealing with those types of issues, which wasn't necessary to do
8 with the running of the Board or the Secretariat. It was just
9 good business practices. We chose to incorporate those.

10 So, the Operations Manual really covered everything.
11 It was--yeah.

12 COMMISSIONER HICKINBOTTOM: It covered, as it were,
13 the process of going out and getting international money?

14 THE WITNESS: Very much so.

15 The process--going out to get the money. Once you've
16 got it, how do you then deal with the money. How could you
17 spend it, how could you invest it, what organisations could you
18 invest in, and there were restrictions, obviously, on some of
19 that.

20 And then the practical side of it was how everything
21 or how the Secretariat would then go out to the public to invite
22 the public to apply for funds. A member of the public would
23 say, "Hey, I want to set up a solar panel business" and come to
24 us, or the Trust Fund could say--or the Board could make a
25 decision for the following year on what it was going to

1 concentrate on, "maybe this year we would concentrate on
2 building resilience in buildings" or something like that, and so
3 you would have a programme that you'd establish, and then people
4 apply to specific programmes.

5 So, it's really--it was just setting out the roadmap
6 for everything from all areas of the operation. It was a very
7 extensive manual.

8 COMMISSIONER HICKINBOTTOM: It included getting the
9 money in and how the money went--

10 THE WITNESS: Exactly, yes.

11 COMMISSIONER HICKINBOTTOM: That detail is very
12 helpful. Thank you.

13 BY MR RAWAT:

14 Q. Before I ask Mr Haeri's second question, could I just
15 ask a question about the Operations Manual. You said that you
16 had the assistance of an external consultant.

17 A. Um-hmm.

18 Q. Who how long was that individual working with you as a
19 Board for?

20 A. For how long?

21 Q. How long did that person work for the--

22 A. Yeah, so he was already appointed by the Government's
23 climate change body, so that was a Body within the government
24 organization, so he was already engaged by the Government. And
25 then--so, I think he was--I can't remember the exact where the

1 funds came from, but I think it might have been through the
2 Caribbean Fund or something like that. I can't remember the
3 detail. So, he was paid for, so he was on board before we were
4 appointed and established as a Board.

5 So, by the time it came on board, the Operations
6 Manual was substantively complete. And as I said in my
7 evidence, it was up to us to then agree what elements were going
8 to be relevant to us as a board, as the BVI Climate Change Trust
9 Fund.

10 And--so, he was working with us from the moment we
11 were appointed. We had some sessions with him. We were working
12 remotely, so he would introduce us initially to what the scope
13 of the Operations Manual was intended to do, so we had those
14 sessions, and then we went through individual sessions on the
15 different elements of the manual as we went along.

16 How long did that take? It was quite a long time. I
17 think we were probably working that for the better part of a
18 year, I would say, I should think by the summer of 2018. We
19 were substantially through it, and that completed the Operations
20 Manual.

21 Q. The second question that I'm asked to put to you is
22 this: Aside from the manual, what did the Board achieve over
23 its 15 meetings?

24 A. Right. So, we were establishing how--once the funds
25 was ready and we were able to go, we wanted to be ready to go

1 and not then starting to think about what we were going to be
2 doing, so we were preparing the Business Plan, so under the
3 Operations Manual we would have a short-term plan and a
4 five-year plan, so what are we going to do with the next year.
5 We were doing the RFPs for the CEO and the Secretary because
6 that's what we felt we would need to start off with. We were at
7 a basic website, and we had a logo design.

8 We approached different bodies who could represent the
9 Climate Change Trust Fund in approaching international monetary
10 organisations, so I was on calls with sort of three or four
11 different organisations to really get that ball rolling, and
12 that would be inviting them to give us proposals.

13 Yeah, so--yes, I mean, it was a lot of different
14 things. I would say--I mean, towards the end of that period, we
15 were getting--starting to get a bit frustrated that the
16 momentum, you know, to get the environmental levy funds over to
17 the Climate Change Trust Fund, it was just taking a long time.
18 I think we were expecting that to be in place by probably the
19 summer of 2018, so we were aiming to be--you know, we had in
20 place press launches and so on, and then it was fairly evident
21 that that wasn't going to happen for various internal Government
22 reasons. And then, as I say, we didn't actually get to that
23 point until the end of 2018.

24 So there was--you know, we had to keep rolling the
25 ball down line waiting for that.

1 You know, from my point of view as Chairman, my
2 position was I didn't want to be going out to actually launching
3 RFPs for CEO or whatever until we knew that we could pay them.
4 There was no point in jumping the gun. Going through that
5 process, interviewing, asking people to interview, possibly even
6 to come to the BVI for interview, and then turning around and
7 say, "Actually, I'm sorry, we're not ready to go." There would
8 be no point in going down that route at all.

9 Q. Could you just clarify, what does "RFPs" stand for?

10 A. Sorry, Requests for Proposal.

11 So, we had RFPs going out to--we would have been going
12 out to different people as well as job descriptions and
13 advertisings for the CEO position, Secretariat--the Secretary
14 position. RFPs, you know, to people who could be advising the
15 fund.

16 So, we had the initial discussions, but we never
17 actually went and said, "Okay, go ahead and do it."

18 MR RAWAT: Thank you very much, Mr Childs. I think
19 those are all the questions we do have for you.

20 COMMISSIONER HICKINBOTTOM: Yes, thank you, Mr Childs.
21 Thank you for your assistance this afternoon. Thank you very
22 much.

23 THE WITNESS: Okay. Thank you very much. Bye.

24 (Witness steps down.)

25 MR RAWAT: Commissioner, we could let Mr Childs go

1 now. There is one matter that I wanted to bring to your
2 attention on which we may be assisted by Mr Haeri.

3 That is that you may remember, Commissioner--and you
4 will remember--on the 30th of August of this year, we wrote to
5 the Attorney Generals raising a number of requests which relate
6 around criticisms that may be made of others, and those are to
7 be communicated to the COI by today, 4:00 p.m., but they
8 included mention that was made by Sir Geoffrey Cox QC at a
9 hearing on the 13th of May, that the Attorney considered that,
10 in looking at matters under inquiry in the COI, she was going to
11 seek out wrongdoing and bring it to the Commissioner's
12 attention, and Sir Geoffrey explained that those were his clear
13 instructions.

14 The letter asked that the Attorney or the IRU team set
15 out what they have found as a part of that process, and where
16 there was or may have been evidence of wrongdoing. I just want
17 to draw it to your attention. You may want to ask Mr Haeri what
18 the stage of the progress in relation to those points.

19 COMMISSIONER HICKINBOTTOM: Good point, Mr Rawat.

20 Mr Haeri, you will recall the letter. The letter
21 makes one request simply for a schedule of criticisms which
22 those the Attorney General represents wished to make, but
23 including the wrongdoing that the Attorney was seeking out,
24 according to Sir Geoffrey, and also the evidence given by the
25 Premier when he gave evidence, that the previous administration

1 was corrupt. Now, that, I think, is due at 4:00 today that's
2 due. We have had no suggestion that you needed an extension of
3 time, so are we right to presume that that is going to come in
4 the next half hour?

5 MR HAERI: Yes, you're right to presume that a letter
6 would come, and we will try and have it in the next half an
7 hour, and requesting an extension of time not very long.

8 With respect to the criticisms they are set out in the
9 Ministers' statement, and also the Ministers' responsive
10 statement, both of which, of course, the COI Team has. The
11 extension of time is to provide for some scheduling in the way
12 that COI has asked us to do, so that will be with you very
13 shortly, sir.

14 COMMISSIONER HICKINBOTTOM: Is that coming in today,
15 Mr Haeri? Just forget about 4:00 at the moment, but--

16 MR HAERI: Yes, the letter requesting the short
17 extension will be coming in today.

18 COMMISSIONER HICKINBOTTOM: The letter requesting the
19 extension will come in today?

20 MR HAERI: Yes. The letter requesting the short
21 extension so as to set out the various issues in tabular form
22 that the COI has requested will come later this week, subject to
23 your approving the extension.

24 COMMISSIONER HICKINBOTTOM: Yes, but because we are
25 now entering this phase of the hearings, it's obviously very

1 important--very important--that we have any criticisms that the
2 elected Ministers are going to make.

3 MR HAERI: So, what I can assure you is that there
4 aren't any criticisms that are not already in the Ministers'
5 submission or in the Ministers' response to the Government
6 statement, so those two documents the COI has had and had for
7 some time. It shouldn't be new, and I don't think it's in that
8 sense difficult for the COI to work with them, but if it's
9 required in the format that is sought, we will provide it in the
10 format. It will just take us a little longer.

11 COMMISSIONER HICKINBOTTOM: Hopefully insofar as it
12 goes. And presumably the letter that you are going to send us
13 covers the two matters that we raises, that I raised in the
14 letter?

15 MR HAERI: It will.

16 COMMISSIONER HICKINBOTTOM: Excellent.

17 MR RAWAT: Thank you very much.

18 Thank you, Mr Haeri.

19 COMMISSIONER HICKINBOTTOM: Thank you, Mr Haeri.

20 MR RAWAT: That concludes our business for today. We
21 are due with our first witness tomorrow at 10:00.

22 COMMISSIONER HICKINBOTTOM: Yes. Thank you all.
23 10:00 tomorrow. Thank you.

24 MR HAERI: Thank you.

25 (End at 3:25 p.m.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN