

**Chapter 3: The Commission of Inquiry Methodology and Process**

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# MEMORANDUM

**FROM:** Attorney General

**Our Ref.:** AGC G 12/2/2

**TO:** Ministers  
Deputy Governor  
Financial Secretary  
Cabinet Secretary  
Permanent Secretaries  
Heads of Departments  
All Public Officers

**DATE:** 5 February 2021

**Re: Inquiry Response Unit**

As you know, on 19 January 2021, the former Governor Augustus Jaspert appointed Sir Gary Hickinbottom (the "**Commissioner**") to hold an inquiry (the "**Inquiry**") to inquire into whether corruption, abuse of office or other serious dishonesty in relation to officials – elected, statutory or public – "*...may have taken place in recent years*". As part of the Inquiry, the Commissioner will wish to make requests of Government departments, Ministers, Junior Ministers, public officers and statutory bodies for interviews, information, documents and/or to give written or oral evidence.

The Commissions of Inquiry Act, 1880 (Cap. 237) grants the Commissioner the power to summon witnesses and call for documents. It is Government policy, and Cabinet wishes to ensure, that all ministries, departments, statutory bodies and Government-owned entities provide appropriate and timely cooperation with the Inquiry. Likewise, it is appropriate that individual public officers should render assistance.

It is important that assistance is given to the Inquiry without compromising the duties and responsibilities of Ministers, public officers or other functionaries who report directly or indirectly to Ministers or Cabinet. There will be circumstances in which material should not be disclosed without proper safeguards or at all. Such material could include, but is not limited to,

- a) personal/private data of members of the public,
- b) information that attracts public interest immunity,
- c) information that is commercially confidential,

d) legally privileged information.

Ministers, public officers and other functionaries who report to Ministers or Cabinet therefore, need to ensure, while providing the fullest possible assistance to the Inquiry, that these legitimate interests and obligations are properly considered. That will require putting in place clear policies and procedures and resources for Ministers, Permanent Secretaries ("PS"), and all public officers and functionaries generally to understand their duties in connection with the Commission of Inquiry and specifically to enable them to seek prompt advice and assistance in responding to them.

Under our Constitution, Ministers have responsibility for the administration of their departments, over which they have direction and control (see s.56(5)). Those who direct the departments and individual public officers and functionaries should not be placed in the position of having to navigate these issues without legal advice and support. Ministers, PSs and the management of all statutory bodies and Government-owned entities therefore need to put in place an effective plan for managing the assistance to be given the Commission - whether by employees of statutory bodies, public officers, officials, or the Ministers themselves.

To assist Ministers, public officers and other public functionaries, Cabinet has decided to establish an **Inquiry Response Unit ("IRU")**, administered by Withers BVI and led by Rt Hon. Sir Geoffrey Cox QC, to support the Attorney General's Chambers in ensuring that information is provided in a systematic, efficient, and well-organised way without breaching any relevant legal obligations. The IRU will report to and work closely with the Attorney General to ensure that the Government participates efficiently, appropriately and expeditiously in, and facilitates the task of, the Inquiry, establishing an effective and cooperative dialogue with the Inquiry's Secretary and Counsel to the Inquiry ("**Inquiry Team**").

The legislation under which the Inquiry has been established is the Commissions of Inquiry Act (the "**Act**"). The Act provides at section 12, *inter alia*, that any person *in any way concerned* in the matter under inquiry shall be entitled to be represented by counsel at the *whole of the inquiry*. The IRU led by Sir Geoffrey Cox QC will perform this role on behalf of the Government to facilitate the task of the Commission. The IRU will also assist with legal queries and support for public officers in the context of the Inquiry.

Accordingly,

1. **The Commission will be invited to address requests to Departments, public officers or other public functionaries as appropriate for information, evidence or interviews to the**

IRU, which will promptly review the request and liaise with the relevant Minister or Department.

2. The IRU will raise any points of ambiguity and necessary clarification with the Commissioner and, where necessary, seek to establish, in dialogue with the Inquiry Team, the precise scope of the request.
3. In conjunction with the PS and public officers in the Departments and other public functionaries as appropriate, the IRU will then a) identify relevant material for disclosure, b) review the material for any of the issues of law mentioned above, c) advise the Minister and the PS accordingly, as well as other public functionaries as appropriate, and d) where necessary engage with the Commissioner and the Inquiry Team about suitable means of making disclosure while protecting the Government's legal obligations.
4. The default approach of the IRU will be to advise in favour of disclosure unless any valid legal obligation of the Government prevents it, and even then, to seek ways in discussion with the Inquiry Team of affording disclosure while giving due weight to that obligation. For example, the Government may consider, in appropriate cases and subject to safeguards, waiving legal professional privilege for the purposes of the Inquiry only.

Any direct approach to a public officer or official in their *official* capacity with a request for information, documentation or evidence, should be referred to the IRU.

Please, therefore, ensure that all public officers or other employees operating in the Departments or public functionaries as appropriate are aware that they should refer any requests from the Commission / Inquiry Team to the IRU at [REDACTED] or [REDACTED]  
[REDACTED]

Understandably, it may not be immediately clear whether a particular statutory body or Government-owned entity should work through the IRU. An employee or officer of a statutory body or agency who receives a request from the Commission should discuss with the IRU whether it would be appropriate for the IRU to assist them in dealing with the request. The Attorney General, assisted by the IRU, will advise on whether it would be appropriate for a non-departmental agency or a statutory body to work with the IRU, or whether any of them should use a separate protocol, having regard to their particular status.

The IRU is an independent unit set up to assist the Government to coordinate its response and collectively afford the maximum possible cooperation to the Inquiry. The role of the IRU is not to withhold or delay but to facilitate the provision of information to the Inquiry. Part of the work of


the IRU will be to ensure that documentation is handled efficiently and in accordance with legal requirements. That means, wherever possible, avoiding unnecessary duplication or providing large quantities of irrelevant material. It will also mean providing the information in an appropriate form.

Each Minister should issue a standing instruction to all within his Ministry and departments to allow the IRU access to documentation and information required to carry out its functions. IRU personnel will have given suitable undertakings to ensure the confidentiality of Government documents is observed, as advised by the Attorney General.

Finally, some individuals within the public sector may have matters or concerns that they wish to raise with the Commission without consulting the IRU. Every public officer is entitled and at liberty to approach the Commission in his or her *personal* capacity with information or concerns.

That said, it will be self-evident that public officers must not copy or remove Government property from Government premises (including documents) for purposes of the Inquiry without referring the issue to the IRU. If an individual is in any doubt about whether information they wish to disclose to the Commission is confidential, they should seek their own independent advice before doing so, not least to protect their own position.

I look forward to your assistance and cooperation over the next several months.



Dawn J. Smith  
Attorney General





## Inquiry Response Unit ('IRU')

### Guidance Note No. 1

18<sup>th</sup> February, 2021

This Guidance Note is intended to assist you and your staff and provide practical advice on what to do when you receive a request for official information/documents ('**Request**') from the Commission of Inquiry (the '**Inquiry**'). This supplements the Memorandum entitled 'Re: Inquiry Response Unit' sent to you on 5 February 2021.

#### **What is the IRU?**

The Inquiry Response Unit ('**IRU**') is an independent body led by Sir Geoffrey Cox QC, reporting to the Attorney General. The IRU is jointly administered by staff from Withers BVI and the Attorney General's Chambers to assist and advise the Government with the provision of official information and documents to the Inquiry.

Broadly speaking, "Official Information" is information in any form which has been created, compiled or is held in the course of carrying out the functions and duties of your ministry or department. The IRU will assist the Attorney General by providing manpower, technical and legal assistance where required.

All members of the IRU have taken an Oath of Confidentiality. This means that all official information and documents they receive will be maintained in the utmost confidence and will not be shared with anyone other than the Inquiry and under the Attorney General's authorisation.

The Attorney General remains the ultimate decision maker in respect of the IRU.

#### **What is the function of the IRU?**

The IRU is here to assist you with any Requests directed at you / your department and the gathering of information and documents necessary to answer such Requests.

The IRU has developed a protocol to ensure that all Requests are carefully reviewed in order to ensure that responsive information and documents can be collated and that any information and documents received are processed in a secure, respectful, organized and efficient manner. Where documents are provided in hard copy, we will log receipt of those documents, track their progress and return them to you as provided.

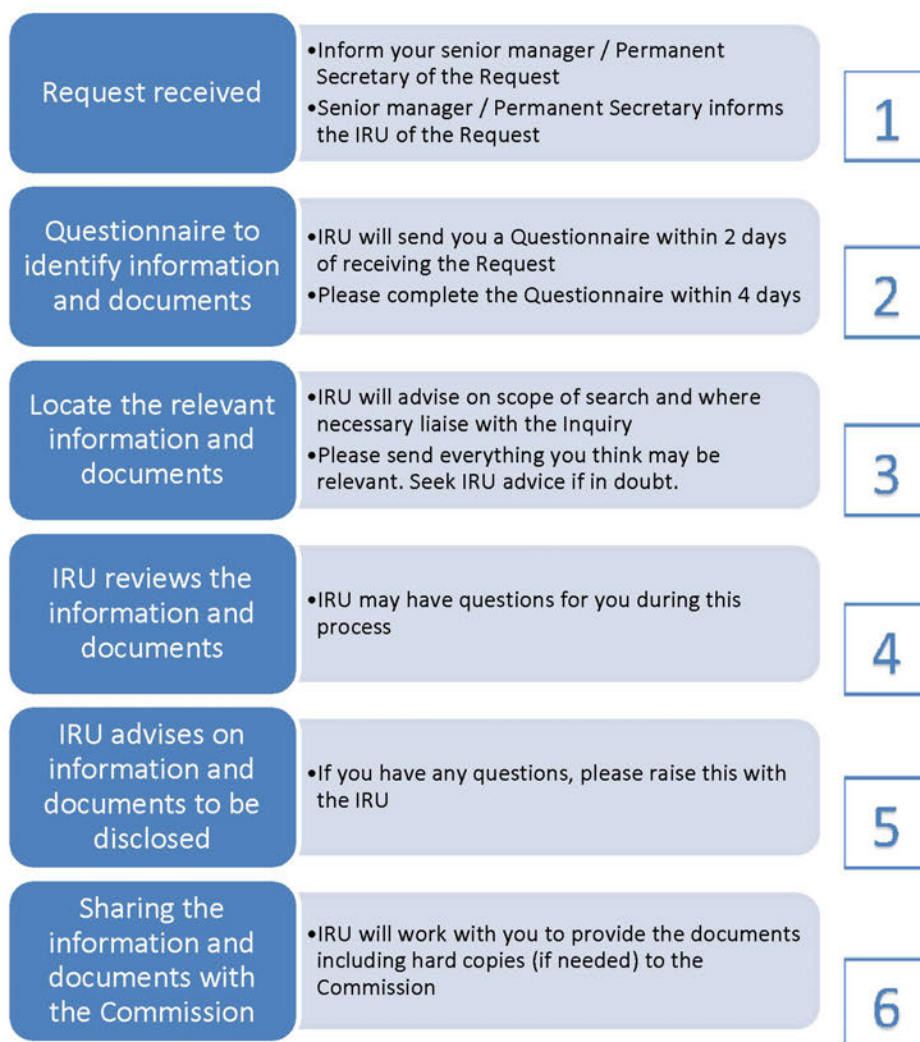
Unless there is a specific need to do so, we will endeavour to process all documents where they are located, or if that is not practical for any reason (such as space, copying / scanning facilities etc), we will arrange to transport them to a secure location in a Government building designated for this purpose for processing prior to being returned to you.

### What do you need to do when you receive a Request?

Please remember that the IRU is here to help you with everything you need to deal with Requests.

The IRU has prepared the following step-by-step guidance to assist in the collection and review of such material. It is important that the timelines provided in this Guidance Note are followed as closely as possible to ensure that all relevant information and documents can be shared with the Inquiry in a timely manner.

#### Step-by-step flowchart



### Further elaboration of the steps

#### 1. Tell your senior manager / the Permanent Secretary

It is essential that the Government implements an auditable and accountable process for the handling and disclosure of official information so that it can demonstrate that Requests from the Inquiry have been fully and properly fulfilled in each case. The IRU exists to ensure such a process, that Requests are dealt with in an efficient and coordinated way and that all public servants obtain the help they need to deal with them promptly.

Therefore, when you receive a Request, please inform your senior manager or Permanent Secretary immediately. Senior managers and Permanent Secretaries should then inform the IRU as soon as possible by emailing: [REDACTED] or [REDACTED]. Alternatively, where you think it may save time, it is open to you to refer the Request to the IRU directly.

If you have any questions or would like to speak to someone about the Request, please contact the IRU on its dedicated telephone line which is [REDACTED].

It is very important that from now you do not remove or destroy any documents. More information on this is set out in the attached Document Preservation Notice.

#### 2. Fill out the Questionnaire

Once the IRU has been notified of the Request, the IRU will send you a questionnaire to complete within 2 days.

This questionnaire will help the IRU understand what assistance you need to answer the Request, as it will enable the IRU to: (1) assess how the Request can best be answered and (2) ascertain the format and location of any Documents you may have that are responsive to the Request. A copy of the Questionnaire is attached.

If you consider that there may be documents relevant to the Request that are confidential, please let us know when completing the Questionnaire. Please do contact the IRU if you have any difficulty filling out the questionnaire. The IRU has tight timetables for responding to Requests from the Inquiry, so please try to complete the questionnaire as soon as possible and within 4 days at the latest. If it has not received the complete questionnaire, the IRU will follow it up with you once that time has elapsed.

#### 3. Locate the relevant information and documents

Once you have completed the Questionnaire and sent it to the IRU, the IRU will contact you within 2 days after receiving the Questionnaire to discuss the best way for you to provide the relevant information/documents for review by the IRU.



In considering the scope of the search you should carry out for documents to answer the Request, you should consider all formats of documents and how they are held, including but not limited to: emails, hard copy documents, hand written notes, WhatsApp messages and documents held on USB drives.

It is always much better to provide the IRU with everything you think may be relevant, rather than holding anything back. The IRU is trained to review documents to ascertain what may be relevant and required to be provided to the Inquiry.

Where necessary, IRU team members can attend at the location of the documents to help your team to locate the documents.

The IRU team will work with the Department of Information Technology (DOIT) to assist with the uploading of the documents to a special electronic database that is being commissioned by the Government for this purpose.

Rest assured that the IRU will take the utmost care with all documents provided to them, ensuring that they are properly logged and if in hard copy, securely stored and handled. All hard copy documents will be returned to their original location.

#### 4. Processing the information and documents

The IRU will review the relevant information and documents (either in electronic / hard copy format) to ensure that the Inquiry receives all relevant material and that any legal obligations of the Government are properly considered.

In reviewing the documents, the IRU will carefully consider whether any issues arise in relation to disclosure, for example:

- Issues relating to confidentiality;
- Legal professional privilege;
- Public interest immunity; and
- Personal / private data of members of the public.

#### 5. Advising you

The IRU will then advise you as to which information and documents (if any) should be provided to the Inquiry.

The IRU and the AG will be available to discuss this advice, prior to any information and documents being provided to the Inquiry. The IRU is there to answer any questions you may have.

#### 6. Sharing the information and documents with the Inquiry

Once the AG has authorised the release of any information and documents to the Inquiry, the IRU will facilitate the provision to the Inquiry of those information and documents.

Whilst it is hoped that most documents will be shared electronically with the Inquiry, the IRU recognises that in some circumstances that may not be possible. If sharing hard copy documents is required, the IRU will work with you to provide copies of the same to the Inquiry.

#### **When is it appropriate for you to seek personal legal representation?**

The IRU is here to help you carry out your professional role and responsibilities in respect of official information and can advise you fully in that respect. If you receive a Request that relates to actions carried out by you or any member of your department by virtue of your/their employment, the IRU will be able to advise and assist.

If you receive a Request which is directed at your personal actions, rather than your actions in the normal exercise of your employment, then you may wish to seek personal legal representation. Put simply, if actions of yours that could be said to be not in the proper exercise of your duties are the subject of the Inquiry, then you should seek personal legal representation.

In either case, if you are unsure about whether you should be seeking personal representation, please do contact the IRU.

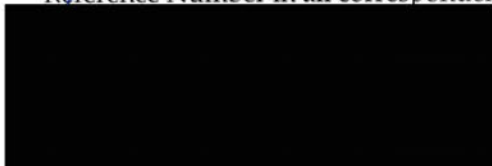
**Please remember that the IRU is here to help you.**

**Please contact us with any questions you may have.**

#### **Contacting us**

Should you have any questions about the above or about the IRU in general, please contact us via email at [REDACTED] or [REDACTED] or on the IRU's dedicated telephone line which is [REDACTED]. We will respond to your query as soon as we can.

If you are contacting us in relation to a specific request, please ensure that you quote the Request Reference Number in all correspondence.



Dawn J. Smith  
Attorney General

## INQUIRY RESPONSE UNIT ('IRU')

### Questionnaire

**For the identification of documents in response to Request from the Commission of Inquiry (a 'Request')**

To:	
Date:	
Date Request received by IRU:	
IRU Identification number of Request: (the 'IRU No'):	
Nature of the Request (the 'Request'):	

*Please return this form to [REDACTED] or [REDACTED] no later than 4 business days after receiving it from the IRU.*

**Please do not send any documents in response to the Request until notified by the IRU.**

1. Do you consider that there are documents which might be relevant regarding the Request?

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2. If yes, please provide the information required to answer the Request

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3. Does the Department / Ministry / Minister presently hold any documents that are relevant to the Request?

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- 3.1 If yes, please indicate how many documents relevant to the Request you presently hold. If the exact number of documents is not known, please provide an estimation.

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- 3.2 Are these documents in electronic or hard copy or both?

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**4. If there are documents in hard copy:**

4.1 Where are those documents located?

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4.2 Do you have the necessary facilities to scan them and upload them on to a computer?

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4.3 Do you anticipate requiring assistance to scan those documents, and if so how much?

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4.4 Do you have the facilities to upload scans of the documents to an external data sharing platform?

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**5. If there are documents in an electronic format:**

5.1 Do you have the facilities to upload them to an external data sharing platform?

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5.2 Will you require any IT training / assistance to deal with the electronic documents?

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**6. How long do you estimate it will take to deal with the relevant documents?**

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**7. Please confirm that you have read the attached Document Preservation Notice**

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Please consider the Request and the attached documents very carefully. Should you have any questions about the above or the attached, please contact [REDACTED] or [REDACTED]

**Confirmation**

I [insert name, position] confirm that I am authorised by [insert name, position] to provide the above information in relation to Request [insert Request No.]

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[name, position]

[date]

*Attachments:*

- *Document Preservation Notice*



# MEMORANDUM

**FROM:** Attorney General

**Our Ref.:** AGC G 12/2/2

**TO:** Ministers  
Deputy Governor  
Financial Secretary  
Cabinet Secretary  
Permanent Secretaries  
Heads of Departments  
All Public Officers

**DATE:** 9 February 2021

**Re: Commission of Inquiry - Document Preservation**

As noted in the memorandum dated 5 February 2021, following the establishment of a Commission of Inquiry (the "**Inquiry**") to inquire into whether corruption, abuse of office or other serious dishonesty in relation to officials – elected, statutory or public – "*...may have taken place in recent years*", an Inquiry Response Unit ("**IRU**") has been established. As part of the Inquiry, the Commissioner will wish to make requests of Government Departments, Ministers, junior Ministers, public officers and statutory bodies for interviews, information, documents and/or to give written or oral evidence.

The Commissions of Inquiry Act, 1880 (Cap. 237) (the "**Act**") grants the Commissioner the power to, among other things, call for the production of documents. It is Government policy, and Cabinet wishes to ensure, that all Ministries, Government Departments, statutory bodies and Government-owned entities, as applicable, provide appropriate and timely cooperation with the Inquiry. Likewise, it is appropriate that individual public officers should render assistance.

In line with this, and as the Inquiry is already underway, it is crucial that Ministers, Permanent Secretaries ("**PS**"), and all public officers and functionaries take steps to ensure that all Government documents are preserved and are not modified in any way, deleted or destroyed, at least for the duration of the Inquiry proceedings.

Accordingly, all Ministers, PS and all public officers and functionaries are advised, at least for the duration of the Inquiry proceedings, to:

1. suspend any processes in place for the routine or periodic destruction or clearance of documents and/or information;
2. take all necessary steps to preserve and safeguard, and not to alter, delete, destroy, or discard, any items, paper or electronic documents and data in the possession or under the control of the relevant Ministry, Government Department, statutory body or Government-owned entity, as applicable;
3. retain all devices containing such information or documents; and
4. not copy or remove government property from Government premises (including devices, documents and/or information, unless in the ordinary course of work and in any event without prejudice to it being made available as required by the Inquiry).

It should be noted that 'Document' includes:

- paper and electronic documents;
- documents held on computers;
- documents held on portable devices such as memory sticks or mobile phones, or within databases;
- emails or other electronic communications such as text messages, webmail or social media;
- voicemail, audio or visual recordings;
- information stored on servers and back-up systems, and electronic information that has been "deleted";
- metadata (typically embedded information about the document that is not readily accessible from an electronic image or paper document, such as the date and time of creation of a work processing file) and other embedded data; and
- documents that might otherwise have been deleted or destroyed in accordance with a document retention policy, or in the ordinary course of business.

Where there is any doubt or uncertainty as to whether a document or piece of information should be preserved, such query should be referred to the Inquiry Response Unit ("IRU") at [REDACTED] or [REDACTED]. Pending a response from the IRU, said document or piece of information should not in any way be altered, deleted or destroyed.

[REDACTED]

Dawn J. Smith  
Attorney General





## ***THE HOUSE OF ASSEMBLY OF THE VIRGIN ISLANDS***

***Honourable Alvera Maduro-Caines***  
*Member for the Sixth District*

*Richard C. Stout Building  
P.O. Box 2390  
Road Town, Tortola  
British Virgin Islands VG1110  
Tel: (284) 468-6900  
(284) 494-3701 Ext. 6900/6980  
Fax: (284) 468-6993 (Main Office)  
Fax: (284) 468 -6995 (Clerk's Office)*

1<sup>st</sup> June, 2021

The Rt. Hon. Sir Gary Hickinbottom  
Commissioner  
British Virgin Islands International Arbitration Centre  
3<sup>rd</sup> Floor, Ritter House  
Wickhams Cay II  
Road Town, Tortola

Dear Commissioner,

I have read the Position Statement by Ministers and I confirm that it meets with my agreement and has my wholehearted support.

Yours sincerely,

Hon. Alvera Maduro-Caines, MHA  
Member for the Sixth District

cc. Steven Chandler, Secretary



## ***THE HOUSE OF ASSEMBLY OF THE VIRGIN ISLANDS***

***Honourable Neville A. Smith***  
*Deputy Speaker and  
Territorial Member*

*Richard C. Stout Building  
P.O. Box 2390  
Road Town, Tortola VG 1110  
British Virgin Islands  
Tel: (284) 468-6900  
(284) 494-3701 Ext. 6980/6961*

1<sup>st</sup> June, 2021

The Rt. Hon. Sir Gary Hickinbottom  
Commissioner  
British Virgin Islands International Arbitration Centre  
3<sup>rd</sup> Floor, Ritter House  
Wickhams Cay II  
Road Town, Tortola

Dear Commissioner,

I have read the Position Statement by Ministers and I confirm that it meets with my agreement and has my wholehearted support.

Yours sincerely,

.....  
Hon. Neville A. Smith, MHA  
Territorial Member

cc. Steven Chandler, Secretary

**IN THE MATTER OF THE TERRITORY OF THE VIRGIN ISLANDS COMMISSION OF INQUIRY 2021  
AND THE COMMISSION OF INQUIRY ACT (CAP 237) ("the Act")**

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**SUPPLEMENTARY NOTE ON THE POSITION STATEMENT ON GOVERNANCE OF THE ELECTED  
GOVERNMENT OF THE VIRGIN ISLANDS**

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**This document should be read with the Position Statement submitted to the Commission of  
Inquiry on behalf of the Ministers**

1. The Position Statement does not assert that, as a matter of law, the Constitution of the Virgin Islands has been breached by the PEFM, although, as is well known, the constitutionality of SAMLA 2018 is the subject of current proceedings in the High Court of the Virgin Islands between two private citizens and the FCDO, to which the Attorney General is a party.
2. In paragraph 11, the elected Government contends that there has been a failure on the part of the UKG and the former Governor to *respect* the constitutional *settlement* of 2007. As the Attorney General said in her letter Secretary of the Commission dated 14 June, 2022, that was not intended to be a submission of law but as indicated by the heading to the relevant section, which is entitled, “The relationship with the UK Government – political disagreements”, a *political* statement. Indeed, the elected government has been making the same statement to the previous Governor and the FCDO for some years.
3. In the elected Government’s view, to make good that assertion, it is unnecessary for it to show specific instances of illegality since the lack of respect it alleges may be manifested as much by constitutionally *lawful* as by unlawful means.
4. The constitutional settlement of 2007 devolves exclusive power over all matters, including economic and financial policy to the ministers save for the special responsibilities reserved to the Governor by section 60 of the Constitutional Order 2007. These special responsibilities are external affairs, defence, internal security, the terms and conditions of service of public officers and the administration of the courts. By section 57, he is obliged on matters of internal security to follow the advice of the National Security Council unless

he considers doing so would adversely affect Her Majesty's interest. By section 38 of the Constitution, the function of the Deputy Governor is, inter alia, to assist the Governor in the discharge of those responsibilities, and he remains subject to the Governor's direction.

5. The 2007 Order was accompanied by declarations that acknowledged the "*distinct cultural identity*" and "*the free and independent spirit*" of the people of the Virgin Islands, that they "*have expressed a desire for their Constitution to reflect who they are as a people and a country and their quest for social justice, economic empowerment and political advancement*", and

Affirming that the people of the Virgin Islands have generally expressed their desire to become a self-governing people and to exercise the highest degree of control over the affairs of their country at this stage of its development; and

Noting that the United Kingdom, the administering power for the time being, has articulated a desire to enter into a modern partnership with the Virgin Islands based on the principles of mutual respect and self-determination;

Now, therefore, the following provisions have effect as the Constitution of the Virgin Islands.

6. While the elected Government fully accepts that these solemn preambular declarations did not give rise in themselves to legal obligations, it believes that the promises of those political statements and the political commitments made in the White Papers [1999 White Paper "*Partnership for Progress and Prosperity*"; 2012 White Paper "*Security, Success and Sustainability*"] to a "modern partnership" based on mutual respect and the principle of self-determination are not currently being fulfilled.
7. The matters to which it refers in its Position Statement demonstrate, in its view, that the UKG has not acted in full respect for those principles, which should involve affording the people of the Virgin Islands "*the highest degree of control over the affairs of their country at this stage of their development*" [BVI Constitution, preamble; and see the 1999 White Paper at ¶ 1.19].



8. Instead, the elected Government believes, as it has set out in its Position Statement (at ¶ 130), the UKG has sought to place extra-constitutional constraints on the autonomous control by the elected Virgin Islands Government of its own vital economic and financial policies and to dictate policy choices that are for the Virgin Islands Government to decide if the constitutional settlement, and the right to the highest degree of self-government it is said to embody, is to be fully respected. The UKG also declines to allow the elected Government to assume responsibility for important spheres of governmental activity even where those matters are not constitutionally reserved to the Governor and where they would more logically lie with the elected Government, such as disaster management.
9. Further, the cooperation necessary between the respective elements of the Government depends on consultation and mutual understanding even where the issue is not one on which the Constitution compels it. In the recent experience of the elected Government, decisions have been taken acutely affecting the interests of the Territory and those matters for which the elected Government is responsible, without consultation or even effective notice. One such example is the instigation of the Commission of Inquiry.
10. They observe that if the elected Government is not enabled to develop the self-reliant and independent capacities to undertake these responsibilities, it is difficult to see how they will achieve the self-determination to which they have a right (as to which see paragraphs 13 et seq. below).
11. The 1999 White Paper asseverated that the modern partnership would be ‘based on consultation and mutual understanding’ [*ibid.* ¶ 2.4] but when these concerns are raised, they are not entertained in a way that gives the elected Government the confidence they have been heard and fairly considered.
12. That is not an untypical experience in the Overseas Territories. Then, there is no one to appeal to. As the House of Commons Select Committee on Foreign Affairs has found there is a lack of democratic scrutiny of the administration of the Virgin Islands by the Overseas Territories Directorate (OTD) to which the Governor reports in the exercise of his functions. [Global Britain and the British Overseas Territories: Resetting the relationship; Fifteenth Report of Session 2017–19 at ¶12, 13, 34-38]. Good governance and accountability should surely cut both ways. If public trust in the locally elected institutions

would be increased by greater transparency and accountability, it follows that trust would also be enhanced by greater transparency and accountability of the exercise of the Governor's responsibilities and of the OTD.

13. The elected Government believes that the principle of self-determination in international law is also relevant. The duty of the UKG is to *develop the self-government* of the Virgin Islands people, taking due account of their political aspirations and to assist them in the progressive development of their free political institutions according to their particular circumstances and stage of advancement. [Article 73 of the Charter of the United Nations].

14. The UK Government has stated that its guiding principles for its relationship with the overseas territories are to be found in Article 73 of the UN Charter. [1999 White Paper, ¶ 2.2]

15. The International Court of Justice has observed of Article 73,

147. In the Court's view, it follows that the legal régime of non-self-governing territories, as set out in Chapter XI of the Charter, was based on the progressive development of their institutions so as to lead the populations concerned to exercise their right to self-determination. [2019 ICJ Advisory Opinion on Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 ¶ 147]

16. The General Assembly has stated that

Chapter XI of the Charter embodies the concept of Non-Self-Governing Territories in a *dynamic state of evolution and progress* towards a 'full measure of self- government'. As soon as the territory and its peoples attain a full measure of self-government, the obligation ceases. Until this comes about, the obligation to transmit information under Article 73e continues. [GA res 1541 (XV), Annex, Principle II. *italics supplied*]

17. A Non-Self-Governing Territory can be said to have reached a full measure of self-government by its emergence as a sovereign independent State, free association with an independent State or integration with an independent State. [GA res 1541 (XV), Annex,

Principle VI; cited in the Western Sahara Case, ICJ Rep 1975 p 12, 32.]. In 1970, in the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations (the Friendly Relations Declaration), the General Assembly recognised a new category, “the emergence into any other political status freely determined by a people.” A right to self-determination is recognised in the International Covenant on Civil and Political Rights [ICCPR, Art 1(3)], which extends to the British Virgin Islands.

18. The elected Government observes that these principles of international law import a general obligation to maintain a *continuous process* of development of self-government so as to place the people of the Virgin Islands in a position ultimately to choose a new political status.
19. The UK Government has stated to the United Nations Secretariat of the Special Committee on Decolonization that the OTs *were* now internally self-governing, *subject only to the UK retaining powers to enable it to carry out its obligations under international law*. [Working paper prepared by the Secretariat on the BVI, 9 February 2011, UN Doc No. A/AC.109/2011/6, ¶ 56.]
20. However, the elected Government does not accept that the controls effected by the PEFM, the pressure to adopt the RDA, and the unilateral action of the UK Government to impose a public register of beneficial ownership following SAMLA 2018 before it becomes a global standard, are necessary to fulfil the UK’s obligations under international law. It contends these measures are predominantly insisted upon to satisfy the interests of the UK.
21. Again, for the purposes of the Inquiry, the elected Government does not believe it is necessary either to allege or establish a *breach* of international law amounting to an internationally wrongful act for which the UK is responsible. It accepts that Article 73 expresses general principles and undertakings, and the content of the positive obligation to facilitate and maintain progress towards a full measure of self-government, particularly of its timeframe, is imprecise.

22. However, it believes, as asserted at paragraph 25 of the Position Statement, that these guiding principles of international law inform and are an important part of the background to the elected Government's central contention that the concept and promise of a "*modern partnership*" based on "mutual respect" is not being fulfilled [FCO's 1999 policy paper, p. 11].
23. In summary, the elected Government believes the UKG appears to attach higher priority to managing its contingent liabilities than to institutional capacity-building and the progressive development of self-government in the Virgin Islands in accordance with Article 73. It is not necessary to argue that matters have reached the stage at which UK is in *breach* of its international legal obligations to make this point.
24. For the avoidance of doubt, the elected Government believes that there *have* been instances when lack of respect for the partnership embodied in the constitutional settlement has been evinced by the former Governor in clear breaches of the Constitution or a disregard for the laws of the Virgin Islands. See the express allegation at paragraphs 30-31 of the Position Statement.
25. Other examples include the former Governor's successful request to the Registrar of Interests in November 2020 for disclosure of information concerning the register of interests, (and now made available to the Inquiry) which it is submitted he ought to have known could at the very least arguably be considered as a breach of her Oath of Office and of section 13(1) of the Register of Interests Act. These instances risk conveying the impression that the laws of the Virgin Islands do not apply in full to the office of Governor.
26. The Position Statement outlines and seeks to explain, therefore, from the point of view of the elected Government, the causes of a recent breakdown of trust within the Government of the Virgin Islands, and its corrosive effects on effective and good government in such a system. It also seeks to explain a central problem with good governance in the Virgin Islands, which is the condition and chronic neglect of the

public service and of its critical policy development functions. For that neglect, successive Governors, and the UK Government, which promised support for the public service it does not appear to have delivered, cannot be exempt from criticism.

Attorney General