

Tuesday, 23 July 2013

(10.00 am)

THE CHAIRMAN: Good morning, everyone, and welcome back to those of you who were present on the first preliminary hearing of the Dr Giraldi Home Inquiry, and welcome to those of you who were not present last time.

There is one additional party represented here today, namely the Gibraltar Disability Society, the GDS, represented by Ms Anne Balestrino, who is sitting at the back there.

The GDS is here to help to ensure that the interests of residents at the Dr Giraldi Home, and by "residents" I mean not only permanent residents, but temporary residents and also those who are attending the Home by way of respite care, to ensure that their interests can properly be respected and protected. So I am very pleased to see her present here today, and I am sure that her presence throughout the Inquiry will be of great assistance to me. Thank you, Ms Balestrino, I will call upon you later obviously.

Introduction by the Chairman

THE CHAIRMAN: As you know, this is the second preliminary hearing of the Inquiry, in the lead-up to the main hearing, which is scheduled to start on Monday, 30 September here in the Coroner's Court. Since the

1 last preliminary hearing, a great deal of hard work has
2 been done, and I am not just referring to the hard work
3 done by the Inquiry team, although they have been
4 working extremely hard and continue to do so, but many
5 of the lawyers present here today have also had to work
6 extremely hard in the meantime, helping their clients to
7 prepare witness statements and, in some cases, in
8 providing written submissions for oral submissions this
9 morning, which we will be considering later in this
10 hearing. I am particularly grateful for all the hard
11 work which they have done, the more so because the
12 timetable imposed on them was a fairly strict one, so
13 I am extremely grateful to all involved in that.

14 You should have copies of the agenda for this
15 hearing. If you don't have a copy, copies are available
16 in court. The first item on the agenda is introduction
17 by the Chairman, which I am in the process of making.

18 Once I have concluded my introductory remarks, the
19 next item on the agenda will be counsels' submissions.
20 In the event, as will I think become apparent as we go
21 on, many of the points perfectly properly raised by
22 counsel are not in fact contentious, so that there may
23 be less scope than there might have been for further
24 oral submissions, but again we will see how we go.

25 Once I have heard all the submissions which counsel

1 wish to make, and I'll ask Mr Englehart if he has
2 anything he wishes to say in response in his capacity as
3 counsel to the Inquiry, then I will respond to those
4 submissions.

5 After that, we get to item 4 on the agenda, which is
6 the finalisation of the list of issues. That was
7 something which was raised at the previous hearing, and
8 again I don't think it is going to take very long, but
9 there is a small point on it which I will deal with in
10 due course.

11 After that, I shall make some general comments on
12 various aspects of the Inquiry, with a view to assisting
13 all those involved in it in understanding how the main
14 hearing will proceed, and I will also offer some
15 guidelines on the next round of public funding which
16 I hope will be helpful to those who are proposing to
17 apply for further funding or indeed who already have
18 applied.

19 Some of what I say at that point may involve
20 a repetition of what I have said in my response to
21 counsels' submissions, so I must ask you to forgive
22 that, but it is important, I think, that I cover all the
23 points which need to be covered and that I do so in
24 order to make the position as clear as I can.

25 Next is number 6 on the agenda, I am going to ask

1 Mr Azopardi to give a brief update as to the current
2 state of play in relation to the preparations for the
3 main hearing, and in particular I think in relation to
4 what's been described as the electronic platform. He
5 will have more to say about that, which I hope again
6 will be helpful to everyone involved.

7 Finally, the agenda inevitably includes an item "any
8 other business". So far we haven't been notified of
9 any, but let's see how things go this morning. Again,
10 I am not going to, as last time, have a break, because
11 I hope that we won't need one and that we can go
12 straight through the hearing and complete it before
13 lunch.

14 Before I call on counsel, there is one matter which
15 I would like to dispose of straightaway, which I think
16 may be helpful to everyone. You may recollect that at
17 the last preliminary hearing I raised the possibility of
18 achieving a greater degree of joint representation for
19 the purposes of public funding, and Mr Mahtani has in
20 fact referred to that in his submissions. However,
21 since the first hearing, I have given further thought to
22 that possibility, and I've come to the conclusion, in
23 all the circumstances, that there is, after all, no
24 scope for changing the representation of those
25 individuals who are already represented before the

1 Inquiry. So joint representation in the context of
2 public funding is no longer an issue. Mr Vasquez in
3 particular made some submissions about that, and so
4 I can reassure him on that aspect straightaway. I will
5 have a little bit more to say about joint representation
6 later on.

7 With that, I can turn to the next item on the
8 agenda, number 2, which is counsels' submissions. You
9 will recall that, at the last hearing, I identified
10 a number of matters which would need to be discussed and
11 resolved at this hearing in advance of the main hearing
12 of the Inquiry, and I directed that any counsel who
13 wished to make submissions on any of those matters
14 should provide a written summary of those submissions in
15 advance of today's hearing. I also gave counsel to the
16 Inquiry an opportunity to respond in writing if they saw
17 fit to do so.

18 In the event, counsel have provided written
19 submissions. Mr Robert Vasquez, Queen's Counsel,
20 provided written submission, so did Mr Kenneth Navas,
21 Mr Nicholas Cruz, and Mr Suresh Mahtani. Today I have
22 seen written submissions from Ms Balestrino and
23 Ms Guzman. Never mind that the timetable was exceeded
24 because we need to deal with all these matters, so
25 I have no problem about hearing all those counsel in

1 relation to their submissions.

2 Counsel to the Inquiry have provided a written
3 response to the four earlier submissions which were
4 received, and I will of course refer to that in due
5 course as well, and I will give Mr Englehart
6 an opportunity, if he wishes, to deal with those
7 submissions which have recently been received.

8 In a moment, then, I am going to invite each of the
9 counsel who have put in written submissions in turn to
10 make any oral submissions they wish to make in
11 amplification of those written submissions, but before
12 I do that, could I just make a couple of general points?

13 In the first place, the written submissions have
14 been very clearly expressed, if I may say so, with
15 respect, and I am extremely grateful to all counsel
16 involved for that, and I have, as you would expect, read
17 them all very carefully. So it may be that there is not
18 much scope for oral submissions to amplify what has been
19 said in writing, the more so because, as I explained
20 earlier, large chunks of it are now non-contentious.

21 That is the second point I was going to make, that
22 a lot of these points are now not contentious, so there
23 is no longer any need to make oral submissions about
24 them.

25 So now I am going to call on counsel, namely in this

1 order, I think, if that is acceptable: Mr Vasquez, then
2 Mr Navas, then Mr Cruz, Mr Mahtani, Mr Borastero-Porter,
3 Ms Balestrino and Ms Guzman, to make oral submissions if
4 they wish to do so in amplification of what they have
5 said in writing. When I have heard all those
6 submissions and anything that Mr Englehart wishes to say
7 in response, then I will make my own response to them.

8 So, Mr Vasquez, is there anything that you would
9 like to say in amplification of your very helpful
10 written submissions?

11 Counsels' submissions

12 Submissions by MR VASQUEZ

13 MR VASQUEZ: Yes, sir. Very briefly, I did prepare some
14 speaking notes last night in order to try and shorten my
15 submissions this morning.

16 THE CHAIRMAN: Fine.

17 MR VASQUEZ: I am grateful for the indication that I don't
18 need to go through all the arguments that I have already
19 provided in writing.

20 THE CHAIRMAN: You don't.

21 MR VASQUEZ: So I will limit myself to the very matters that
22 I have set out. Really they are sort of in reaction to
23 what my learned friends Mr Englehart and Mr Azopardi
24 have said in their own replies.

25 THE CHAIRMAN: Right.

1 MR VASQUEZ: I am grateful to my learned friend Mr Englehart
2 for pointing out that section 11 of The Commissions of
3 Inquiry Act provide the entitlement to legal
4 representation. I am aware of that. I was more engaged
5 by section 13 which gives you, sir, the discretion to
6 grant it. I was also very careful in my original
7 submissions to anticipate that what really we were
8 seeking was clarifications rather than --

9 THE CHAIRMAN: Yes, indeed.

10 MR VASQUEZ: -- anything contentious. That's where we are.
11 That raised the issue that there are some hypotheses in
12 seeking those clarifications, because we are dealing
13 with what might happen in the future, and the issue of
14 fairness.

15 THE CHAIRMAN: Sure.

16 MR VASQUEZ: As I understand it from the latest certificates
17 that have been issued in relation to funding, the issues
18 raised by me in paragraphs 2.1.1 and 2.1.2 of my
19 submissions have really been catered to, although in
20 relation to paragraph 2.1.2 of my skeleton, these are
21 still subject to future rulings that you, sir, as
22 Chairman, might make. The reasons for that, I think,
23 are clear and obvious.

24 THE CHAIRMAN: Right.

25 MR VASQUEZ: There were other matters that I raised that are

1 not so clear at this stage, and I would just like to
2 clear up my understanding of what my learned friends
3 Mr Englehart and Mr Azopardi's outline submissions are
4 in relation to these matters.

5 As I understand it, there was no formal ruling on
6 the other matters I raised in relation to funding, at
7 this stage. He argues in his reply that I would need to
8 make specific applications to cater for those matters,
9 should they arise. That, I understand where he is
10 coming from, and I don't want to make it a contentious
11 issue, but that begs the question: how do we as counsel
12 representing individuals get to know whether those
13 circumstances arise? I realise that everything that is
14 going to happen here is public in the sense that it will
15 be published on the website of the Inquiry, but that
16 also imposes an obligation on counsel in a way to keep
17 up to date reading all that, which takes time, and then
18 trying to react. So I was just trying to find a way
19 forward that was fair to the clients that we represent
20 and at the same time did not impose a very onerous
21 financial burden on the Government. I was wondering
22 whether, sir, yourself or counsel for the Commission
23 would be making us aware, those of us who represent any
24 clients, whether any issues had arisen during the course
25 of the proceedings that would impact on our clients so

1 that we could come back and make formal submissions and
2 we could come back and reply to anything new that we had
3 not been made aware of. It's simply the rule that we
4 should know what -- I know that this is not a criminal
5 case, I know it's not a civil case --

6 THE CHAIRMAN: No, no.

7 MR VASQUEZ: -- but we are doing an Inquiry and I think we
8 should be made aware of what might be that we need to
9 answer.

10 THE CHAIRMAN: It's really a practical point that you are
11 raising.

12 MR VASQUEZ: Absolutely yes, sir.

13 THE CHAIRMAN: I have power under the protocol to sanction
14 in advance any work which is done.

15 MR VASQUEZ: Yes.

16 THE CHAIRMAN: And I think you can take it that, if
17 allegations crop up in the course of the Inquiry which
18 haven't surfaced at any earlier stage, then work done in
19 deciding how to deal with that allegation, indeed
20 finding out that it's been made, is work which will be
21 covered by any funding award, notwithstanding that you
22 might need, depending on the terms of the award which
23 you have, to apply specifically for some extension of
24 it.

25 MR VASQUEZ: I understand, sir, and I am grateful for that

1 indication, but should something happen here that we ...
2 will we be made aware of it in relation to any of our
3 particular clients?

4 THE CHAIRMAN: So far as that is concerned, you ask in your
5 submissions, I think, that the Inquiry be under
6 an obligation to inform counsel. I am afraid that's
7 going a step too far. I cannot place the Inquiry under
8 that obligation. What I can certainly do is reassure
9 you that the Inquiry will do all it can to make sure
10 that anyone against whom a new allegation is made has
11 a proper opportunity to respond to it, and that
12 obviously would include, where we are able to do it, to
13 notify counsel of the allegation and counsel can then
14 make the necessary preparations consequent upon that.

15 MR VASQUEZ: Yes, and I understand the consult(?) of the
16 Salmon Letters as well, so at the end there will be,
17 I imagine, that final safeguard. That deals with the
18 final issues, it doesn't deal with the process, and I am
19 keen that during the process we should have as much
20 ability to react as possible, and that is my primary
21 concern.

22 THE CHAIRMAN: As I say, we will do our very best --

23 MR VASQUEZ: I am obliged, sir.

24 THE CHAIRMAN: -- and funding awards are dealt with
25 extremely quickly by email, and if not instantaneously,

1 it can be dealt with usually in the course of the day.

2 Anything else on that, Mr Vasquez?

3 MR VASQUEZ: No, I think we are all aware of where we are,
4 and I am grateful for that, sir.

5 THE CHAIRMAN: Thank you very much for that.

6 MR VASQUEZ: Very quickly, there was one specific issue
7 relating to one of my clients in relation to the
8 psychological reports.

9 THE CHAIRMAN: Right.

10 MR VASQUEZ: Mr Englehart suggests that I was trying to
11 impugn in some way Ms Carreras. I wasn't. All I was
12 saying is that is something which is very expert
13 evidence, it's something that I have no real knowledge
14 of in terms of psychological reports, and I was seeking
15 to get some funding to really have that reviewed by
16 psychologists very quickly, and having some background
17 expert views so that I could understand what weight and
18 what issues and how those particular situations have
19 been determined.

20 I do not withdraw my application, I make it, but by
21 way of explanation it's not an issue of impugning
22 anybody, it's an issue of my gaining understanding of
23 what it is.

24 I don't know if I have this wrong, but the
25 indications I got from my learned friend Mr Englehart's

1 submissions is because perhaps that matter was already
2 dealt with by the police, that they are not going to
3 impact too greatly on your mind, as the Inquiry, but
4 that may be taking it one step too far.

5 As I read and re-read the reports this morning, they
6 are there to try and give some increased weight and
7 credibility to the evidence given by the persons who
8 were residents at the Home, and in that sense they could
9 have some import and some importance to my client and
10 I would be grateful, sir, if you would consider to that,
11 and if thought fit, then if I could have at least a very
12 small amount of money to seek the views of
13 a psychologist as to how these things are dealt with so
14 I can understand them better. That is surely the extent
15 of that particular submission.

16 THE CHAIRMAN: Right. I will hear Mr Englehart on that.

17 MR VASQUEZ: I think that deals with the issues that arose
18 from those replies. I am obliged, sir.

19 THE CHAIRMAN: Thank you very much, Mr Vasquez.

20 Mr Navas?

21 MR NAVAS: Good morning, sir.

22 THE CHAIRMAN: I read your written submissions, Mr Navas,
23 you appear for three clients. Do you wish to amplify
24 them to any extent?

25 Submissions by MR NAVAS

1 MR NAVAS: Briefly, if I may, sir.

2 THE CHAIRMAN: Of course.

3 MR NAVAS: My submissions are in relation to the
4 representations made on behalf of Ms Manuela Adamberry
5 and Ms Rose Robba.

6 THE CHAIRMAN: This is the point that you submit that, at
7 the relevant time, and in performing their duties, they
8 were acting not as employees of the Home but in
9 pursuance of the Families' Care Service. Is that right?

10 MR NAVAS: That's correct, yes.

11 THE CHAIRMAN: You say, do you, that that would rule them
12 out of assisting the Inquiry?

13 MR NAVAS: That's my clients' position, sir, particularly in
14 the case of Mrs Robba, who has never been in the
15 employment of the or working at the Giraldi Home. In
16 the case of Ms Adamberry, it's slightly different
17 because she had worked there for several years, quite
18 a few years, actually, and particularly with the service
19 user concerned. But at the deposition, and particularly
20 in the case of Mrs Robba, they are adamant that --

21 THE CHAIRMAN: Just to be clear, Mr Navas, are you saying
22 that there is some legal justification for excluding
23 them, in other words that the Inquiry cannot have regard
24 to their evidence even though it might be of assistance,
25 albeit in a minor respect?

1 MR NAVAS: Their position is --

2 THE CHAIRMAN: It's quite an extreme submission, really.

3 MR NAVAS: -- fairly basic in the sense that it's the

4 Dr Giraldi Home Inquiry, and at the relevant time they

5 were not working for the Dr Giraldi Home. They don't

6 take it any further than that. They do appreciate that

7 their evidence may be of assistance, but they find the

8 experience very difficult, and they are certainly not

9 looking forward to any further involvement.

10 THE CHAIRMAN: Well, I hear what you say about that.

11 MR NAVAS: I put it as far as that.

12 THE CHAIRMAN: Right.

13 MR NAVAS: One more point I wish to make is that in the

14 representations we have mentioned that the allegations

15 were never put to them, and in the response by the

16 solicitors to the Inquiry, I think that may have been

17 misinterpreted, the nature of our representation may

18 have been slightly misinterpreted, and I explain why:

19 when we have said that the allegations were never put to

20 them, it's that they have never been put to them, not

21 even in the context of the police inquiry at the time of

22 the alleged incident.

23 Given that the documents provided to them by the

24 Inquiry are unspecific as to what occurred, what

25 allegedly occurred, we thought that perhaps with the

1 benefit of, sort of in retrospect, the interviews, with
2 the benefit of the inquiries made at the time, the
3 nature of those allegations could be clarified at this
4 stage, but they are certainly aware of the fact that
5 this is not a criminal process in which charges are put
6 and then defended.

7 THE CHAIRMAN: Right.

8 MR NAVAS: We wanted to clarify that point. Those are the
9 points that I wanted to make.

10 THE CHAIRMAN: Right. Thank you very much.

11 MR NAVAS: Disclosure having been dealt with already.

12 THE CHAIRMAN: Thank you very much, Mr Navas, that's very
13 helpful.

14 Mr Cruz?

15 Submissions by MR CRUZ

16 MR CRUZ: I wonder from a logistics perspective --

17 THE CHAIRMAN: Sorry, I couldn't see where you were.

18 Lurking in the shadows over there.

19 MR CRUZ: Lurking in the background, yes.

20 I wasn't here, unfortunately, someone was holding
21 brief for me last time, and I am just wondering if we
22 are going to be in the Coroner's Court for the hearing
23 and I am not sure that in practical terms --

24 THE CHAIRMAN: So far as you are concerned it doesn't look
25 very comfortable, if I may say so.

1 MR CRUZ: It doesn't. It is air conditioned.

2 THE CHAIRMAN: We will do the best we can, but this is the
3 accommodation which we will be using, and obviously we
4 will try and use it to the best advantage of everyone
5 involved.

6 MR CRUZ: Understood.

7 As you know, Mr Chairman, I act for Marie Gomez, one
8 of the witnesses, and the submissions that I made have
9 to some extent been dealt with by my learned friends
10 Mr Englehart and Mr Azopardi, although the nature of the
11 response, with all due respect, is somewhat a little, to
12 put it politely, evasive: it doesn't really seem to
13 answer the questions that you are asking.

14 The first question was on funding, and the point
15 that we made here was that I think it's established, and
16 I referred to the Three Rivers case, that reputation,
17 integrity, is important as people's rights. It is of
18 concern not so much that there are limits, we understand
19 that perfectly, but there was a question we put: are the
20 Inquiry's solicitors subject to the same limits? The
21 response we got was in essence: it has nothing to do
22 with you, but fundamentally it was along the lines of:
23 it's entirely irrelevant.

24 Now, I think it is relevant, I think it is something
25 that the public should know, we should know, and I think

1 that I would just repeat that, and no doubt I will be
2 able to get that clarification.

3 What I am also concerned about is if one is trying
4 to limit the cost, the certificate in terms of funding
5 that I received yesterday afternoon identified myself
6 from my firm. Now, it seems just by way of suggestion
7 logical that insofar as some aspects of the work where
8 a law firm acts for a witness can be done by someone
9 a little more junior and therefore at a less cost to the
10 public purse. That limitation, that isn't allowed for,
11 despite the application being made in those terms,
12 because it's very specific to me, it says
13 Nicholas Cruz --

14 THE CHAIRMAN: Did you put in your application the
15 possibility --

16 MR CRUZ: Yes, I identified two people, myself and
17 Christina Wright who was here for the last occasion --

18 THE CHAIRMAN: Yes, I remember.

19 MR CRUZ: -- because there may be occasions where it really
20 is not necessary for the public purse to be paying for
21 a lawyer of more experience when really a lawyer of
22 less. I just raise that because it seems logical and we
23 all might benefit from that, I think it's worth pointing
24 out.

25 I think insofar as costs are concerned, we repeat,

1 echo our submissions, you have had them, that we feel
2 that I know it's not an adversarial process, but
3 equality is important, particularly when witnesses's
4 reputations are at stake, and therefore we should,
5 I suggest, consider that matter further.

6 I am also conscious of the fact that section 13,
7 there is certain limitations on this Inquiry, but of
8 course this Inquiry can go back to Government and ask
9 questions and extend its remit insofar as that is
10 concerned, so if there are current constraints insofar
11 as funding is concerned which don't deliver what we
12 would say is quite the just result we all want, then
13 there is power within the Act for you to revert to the
14 Government and seek further funding if required.

15 THE CHAIRMAN: Right.

16 MR CRUZ: I think on costs that's all I would say.

17 The next point I raised, Mr Chairman, was the
18 question of locating witnesses. Now, there is,
19 I understand, a senior individual, Ms Tosso, who has
20 not, so far as I am aware, been brought or asked to come
21 to this Inquiry to give evidence, I am not sure what the
22 position is on that, whether that's in fact correct.

23 THE CHAIRMAN: I can say that it is correct that at the
24 moment it has not proved possible to make contact with
25 Ms Tosso, still less to ensure that she attends the

1 Inquiry, but we are continuing our efforts in that
2 respect.

3 MR CRUZ: That's of comfort, because I think my position on
4 that was that if the Inquiry is to be completed insofar
5 as getting a complete picture, she is an important
6 person. Ultimately if people can't be found they can't
7 be found, but in this day of Google and internet and so
8 on, it's normally not that difficult to identify where
9 a person is and to ensure that they assist. So I would
10 just repeat that submission, and that is that we would
11 like her present, because we think it's very important
12 to complete the picture and make this Inquiry's work
13 easier.

14 THE CHAIRMAN: Right.

15 MR CRUZ: The last point is really to do with the issue of
16 the standard of proof that is being adopted. Very
17 helpfully, Mr Chairman, I understand from reading the
18 transcript and from the report given to me from
19 Ms Wright, that you are going to be guided by
20 Mr Robert Francis' Inquiry in the Mid-Staffordshire
21 case. The only issue we raise in our skeleton is that
22 we understand, looking at the case, that was going to be
23 findings with an explanation of the basis of those
24 findings, and we noted that that was omitted perhaps
25 simply by omission and no --

1 THE CHAIRMAN: You are surely not expecting me to make
2 a finding without explaining why I am making it, do you?

3 MR CRUZ: I would hope not, Mr Chairman.

4 THE CHAIRMAN: I think I can reassure you on that point.

5 MR CRUZ: Right, it's just that it was not identified in the
6 transcript, and when one looks at the specific points
7 that were raised in that particular Inquiry, there was
8 a clear statement that the basis of the findings would
9 be identified, and I am very happy to hear that that of
10 course will be done.

11 THE CHAIRMAN: Well, it's not rocket science, but I have
12 been doing this job for quite a long time.

13 MR CRUZ: And very well indeed, Mr Chairman.

14 I think those points really are the only points that
15 I have identified.

16 THE CHAIRMAN: Thank you very much, Mr Cruz.

17 Mr Mahtani?

18 Submissions by MR MAHTANI

19 MR MAHTANI: Good morning, Mr Chairman.

20 THE CHAIRMAN: Good morning.

21 MR MAHTANI: First and foremost, my apologies for framing my
22 submissions in a rather terse and short email. In the
23 shortness of time, I had no other choice.

24 THE CHAIRMAN: Brevity is a virtue, so don't worry.

25 MR MAHTANI: It is indeed. Nothing further to add except to

1 say that on the issue of disclosure of documents,
2 I wasn't entirely pleased with counsel to the Inquiry's
3 response, in that certain documents have gone missing,
4 those documents are key to refuting the allegations, and
5 whilst we are aware that this is not a criminal trial,
6 not even a civil trial, there is still the need to
7 address allegations that are rather damaging to my
8 clients, specifically my clients' reputation, and we
9 would ask that a concerted effort be undertaken to
10 recover documents that will refute those allegations,
11 and there are several documents which ought to be in the
12 possession of the Inquiry, simple documents such as
13 shift rotas, we would dispel a large volume of those
14 allegations, and I would ask again that the Inquiry
15 makes a concerted effort in that regard.

16 THE CHAIRMAN: Thank you very much, Mr Mahtani.

17 Mr Borastero-Porter, I think you are next.

18 Submissions by MR BORASTERO-PORTER

19 MR BORASTERO-PORTER: Good morning, Mr Chairman. Everything
20 has been answered which I was asking in my submissions,
21 mainly that the disclosure of documents has already been
22 addressed.

23 THE CHAIRMAN: Good. Thank you very much indeed.

24 Ms Balestrino.

25 Submissions by MS BALESTRINO

1 MS BALESTRINO: Good morning, Mr Chairman.

2 THE CHAIRMAN: Good morning.

3 MS BALESTRINO: As you have seen this morning, I did hand in
4 my arguments, I do apologise for the lateness, I was
5 only just recently appointed in this matter.

6 Just very briefly on the two points, the first two
7 points. The first one I would also urge the court to
8 try and minimise the names of the service users being
9 made public.

10 THE CHAIRMAN: Well, I think everybody involved in the
11 Inquiry team and certainly myself, we are very
12 sympathetic with that submission, and the answer which
13 I will give shortly is that we will do our very best.

14 MS BALESTRINO: I am grateful. The second point, I know
15 that it was addressed at the last hearing, I just wanted
16 to add my arguments in the skeleton arguments regarding
17 that point in the list of issues, I know that it's
18 further down in the agenda, but I did want to raise my
19 point of view regarding the --

20 THE CHAIRMAN: Well, perhaps I can deal with that
21 straightaway. This is the word "inappropriate" in issue
22 15?

23 MS BALESTRINO: That's right.

24 THE CHAIRMAN: You were not present on the last occasion,
25 but Mr Valarino in person raised that very point, and

1 you are raising it again today.

2 MS BALESTRINO: Yes.

3 THE CHAIRMAN: I said in response to him that I was not
4 persuaded that we need to make any amendment. I have
5 given some further thought to that, and I do see the
6 force of the point, so that I am perfectly happy to
7 delete from issue 15 the word "inappropriate". So there
8 is no issue on that.

9 MS BALESTRINO: I am very grateful. Thank you.

10 THE CHAIRMAN: Thank you very much.

11 MS BALESTRINO: Unless I can assist any further with my
12 other submissions?

13 THE CHAIRMAN: No, that's fine. Thank you very much.

14 Ms Guzman, do you want to say anything?

15 Submissions by MS GUZMAN

16 MS GUZMAN: No, sir, in fact, I have not made any
17 submissions or representations regarding the hearing
18 today, all I have had is -- I am somewhat confused,
19 because I have had an exchange of correspondence with
20 Mr Azopardi on various issues, but all those issues have
21 been addressed so they are matters that I tend to
22 address.

23 THE CHAIRMAN: Do you want to raise anything more today?

24 MS GUZMAN: Not at this particular point, no.

25 THE CHAIRMAN: Thank you very much, Ms Guzman.

1 Mr Englehart, do you want to respond to any of that?

2 Submissions by MR ENGLEHART

3 MR ENGLEHART: I am not sure anything very novel has arisen
4 this morning, but I should briefly address the points
5 which have been made seriatim.

6 Mr Vasquez says: well, how is he going to know about
7 new allegations? Well, he will be told, and the fact of
8 the matter is the witness statements will all be on the
9 electronic platform, he can speedily be referred to
10 anything novel that arises, and I would imagine, sir,
11 that you would yourself be interested to hear any answer
12 to a new allegation in any event. So it's not only in
13 Mr Vasquez's clients' interests that they hear all the
14 sides of the story.

15 THE CHAIRMAN: That's absolutely correct.

16 MR ENGLEHART: Now, as far as Ms Carreras is concerned, she,
17 as you know, was working at --

18 THE CHAIRMAN: This is the psychologist?

19 MR ENGLEHART: Yes. Now, the position at the moment is that
20 she has not even filed a witness statement, although we
21 have invited her to, and we would respectfully invite
22 you, sir, not to get involved in some kind of inquiry
23 into her proficiency, skill or expertise as
24 a psychologist.

25 THE CHAIRMAN: Right.

1 MR ENGLEHART: It may well be, sir, although she formed
2 certain views at the time about the abilities of
3 a service user, as they are rather unattractively
4 called, to give a credible account of events, it may be,
5 sir, that at the end of the day, you, sir, won't be
6 interested in making factual findings as to whether or
7 not she was right. So I would respectfully submit that
8 really to throw onto the Gibraltar taxpayer the expense
9 of instructing an expert witness to deal with a witness
10 or potential witness who hasn't been given a witness
11 statement, and whose findings, if that's the way to call
12 it, are not central to the Inquiry in any event, is
13 a limitation that should not be accepted.

14 THE CHAIRMAN: Okay.

15 MR ENGLEHART: Now, Mr Navas, he wants his clients to be
16 released because they were not employed at the
17 Dr Giraldi Home. Well, I have said it several times and
18 I repeat it again: this is not a trial, and it can't be
19 right that the Inquiry should be prevented from even
20 hearing what they have to say by virtue of the fact they
21 were employed not directly by the Dr Giraldi Home, and
22 there shouldn't be, in my submission, a complete gap in
23 what they have to say about the matter.

24 Mr Cruz is anxious for you to require my learned
25 friend Mr Azopardi to reveal the full details of the

1 retainer, the remuneration, payable for conducting the
2 Inquiry, and it's an invitation I would invite you to
3 reject. In my submission, there is simply no proper
4 analogy between a consensual retainer and public funding
5 for a person who is, to some extent, implicated or
6 potentially implicated, and of course it's obvious
7 public funding has to be limited and I invite you to
8 reject this fishing expedition; no doubt Mr Cruz hopes
9 that he will land a salmon, but I invite you to give him
10 a tiddler.

11 Ms Tosso: of course he is entirely correct, it would
12 be ideal if we could have Ms Tosso, and we are trying
13 our best to get Ms Tosso along. She no longer lives in
14 Gibraltar, that we do know, and we have been trying hard
15 to trace her, and we will keep on trying. But at the
16 end of the day if she is not here, she is not here,
17 there is not much we can do about that, but I can assure
18 Mr Cruz that we are looking hard and will continue to
19 look hard.

20 There is no point now over the approach to joint
21 funding, so I have nothing to say there.

22 On the complaints of Mr Mahtani about documents,
23 well, we will do what we can.

24 THE CHAIRMAN: Yes. This is a general point, isn't it,
25 which arises?

1 MR ENGLEHART: It's not particularly surprising that after
2 some ten years some documents have gone astray, and of
3 course these are documents, the solicitors to the
4 Inquiry have not, over the last ten years, been
5 accumulating a bank of every possible document. We will
6 do what we can to get them, and I hope that can be dealt
7 with, with a measure of sense and co-operation, and at
8 the moment I don't think any particularly great issue
9 has arisen on any particular documents as to whether it
10 is "disclosable".

11 Mr Borastero-Porter, nothing to add. I think those
12 points are covered.

13 Ms Balestrino, you have already indicated, sir, and
14 I would respectfully suggest appropriately so, we will
15 do what we can to preserve anonymity. Having said that,
16 in the course of my questioning, I cannot give
17 a copper-bottomed guarantee that it might not slip out
18 at some stage because that's the way of the world, but
19 we will respectfully do what we can to use initials, if
20 that's possible.

21 As far as the variation of the list of issues is
22 concerned, one could I suppose have a philosophical
23 debate as to whether anything might conceivably rank as
24 punishment is necessarily appropriate, but having said
25 that, we would respectfully agree that it would be

1 appropriate to take that word out.

2 THE CHAIRMAN: Right.

3 MR ENGLEHART: Sir, I think that's all I would --

4 THE CHAIRMAN: Just one point, Mr Englehart: Mr Navas was
5 asking for the nature of the allegations to be
6 clarified. I am not quite sure exactly what sort of
7 form that clarification might take. It's sort of
8 a comparison, I suppose, with an indictment in
9 a criminal trial.

10 MR ENGLEHART: That's the problem here. As I understand
11 this, he wants to treat this as being some kind of
12 attack on his clients, and he says: well, it hasn't been
13 really clarified enough so my clients shouldn't even
14 give evidence. Well, what we have at the moment is,
15 going back to the terms of reference, inquire into the
16 allegations that appear in the Industrial Tribunal
17 witness statements. Now, they may have been very vague
18 in their nature, I can see the force of that point, but
19 those are the allegations, and they are what, sir, you
20 have to inquire into. So I would respectfully suggest
21 that it can't be right to compel the solicitors to the
22 Inquiry to in some way hone down and produce further and
23 better particulars.

24 THE CHAIRMAN: Right.

25 MR ENGLEHART: What is said about his clients, he's been

1 told about, and no doubt will -- once his clients have
2 indeed provided witness statements, so that's the best
3 that can be done so far.

4 THE CHAIRMAN: Right. Thank you very much, Mr Englehart.

5 Response by the Chairman

6 THE CHAIRMAN: Right, now I am going to respond to the
7 submissions made by each counsel. Obviously in the
8 course of the oral submissions I have made various
9 observations and comments, so if this is a little
10 repetitive please forgive me, but I want to make sure
11 I cover every point.

12 So far as Mr Vasquez's submissions are concerned, he
13 is of course well aware of the terms of section 11 of
14 The Commissions of Inquiry Act, which give a statutory
15 right to anyone who is implicated or concerned in the
16 matters under inquiry to be represented at the whole of
17 the Inquiry. There can be no argument about that.
18 I can do nothing about that, even if I wished to do so,
19 which I don't. So that right is inalienable and
20 perfectly clear.

21 What we are talking about really, therefore, as
22 Mr Vasquez quite properly accepted, is public funding
23 and, as I indicated in the course of his submissions,
24 there is very little, if anything, that is contentious
25 in what he has said in the course of his submissions and

1 in particular in paragraph 2 of his written submissions.

2 I have a point on paragraph 2.13 of his written
3 submissions which reads like this: he is:

4 "... seeking funding in the event that any witness
5 gives oral evidence about any of them [that's a person
6 who is his client] that:

7 "(a) the individual named be advised through his/her
8 legal representative of the fact and of the nature and
9 content of the evidence given; and

10 "(b) the legal representation of the individual
11 named will be funded to reply to such assertion, and for
12 the representation during any hearing of evidence given
13 orally by any such witness."

14 I think that is what he wishes to say there. I am
15 not going to make any formal ruling about that, but as
16 I indicated earlier, I can say that if in the course of
17 oral evidence an allegation is made against a particular
18 individual which has not previously been made, at least
19 to the knowledge of the Inquiry, the individual in
20 question must be offered an opportunity to respond to
21 that allegation, and that will be taken into account in
22 the setting of the terms of any funding award.

23 An account will also be taken in that context of the
24 availability of the Salmon procedure which is
25 specifically designed to cover that kind of case.

1 As to Mr Vasquez's submission that the Inquiry
2 should be under an obligation to inform the
3 representative of the individual concerned of the new
4 allegation, again as I indicated earlier I can't place
5 the Inquiry under such an obligation, but I can give
6 an assurance that the Inquiry will do all it can to
7 ensure that the individual concerned suffers no
8 procedural unfairness by reason of any such new
9 allegation, and in any event daily transcripts of the
10 oral evidence will be available to all counsel.

11 Paragraph 2.2 of Mr Vasquez's written submissions
12 reads as follows:

13 "Clarification that witnesses will be called if
14 application be made by any of [and then he names his
15 clients] that such witness should give oral evidence and
16 that funding of legal representation be available for
17 that purpose."

18 Well, I can't accept that paragraph in the terms in
19 which it's drafted, in particular the words "will be
20 called". The position is that if counsel for
21 an individual who falls within section 11 wishes
22 an additional witness to be called to give oral evidence
23 before the Inquiry, he or she must make an application
24 to that effect, and if I consider that it is appropriate
25 that in all the circumstances that witness be called,

1 then I will grant the application.

2 In that event, you may take it that at least as
3 a general rule public funding will be available in
4 respect of the evidence of that witness. I really can't
5 be more specific than that, given that, as I am sure
6 counsel will appreciate, public funding has to be dealt
7 with under the terms of the protocol on a case by case
8 basis, and on the basis of applications made in
9 accordance with the procedure under it.

10 Paragraph 2.4 of Mr Vasquez's submissions reads as
11 follows:

12 "On behalf of Richard Muscat, [that's one of his
13 clients [for the funding of a psychologist to provide
14 advice in relation to the evidence of Giselle Carreras."

15 As things stand at the moment, and I emphasise that,
16 I can see no justification for awarding public funding
17 in respect of the expert advice of a psychologist in
18 relation to the evidence of another psychologist,
19 Ms Carreras, who expressed her expert opinion on the
20 capacity of two residents at the Home facing
21 a prospective criminal trial which actually never took
22 place, but I will keep the door open on that. I accept
23 what counsel to the Inquiry say in their written
24 response, but I am prepared to keep the position open in
25 that respect and under review as the Inquiry progresses.

1 So, Mr Vasquez, you can have liberty to renew that
2 if you feel that there is a stronger case than exists
3 today for that to happen.

4 MR VASQUEZ: I am obliged.

5 THE CHAIRMAN: Paragraph 2.5 of Mr Vasquez's written
6 submissions relates to Ms Melissa Hales, one of his
7 clients. I can say that having considered the position
8 in relation to her with the Inquiry team, I can confirm
9 that in the light of her recent witness statement she is
10 excused from any further participation in the Inquiry.
11 That doesn't mean to say her evidence will be
12 disregarded, but we won't be seeking her assistance any
13 further and we are grateful for the assistance that she
14 has already given.

15 Paragraph 3 of Mr Vasquez's written submissions
16 contains a number of arguments very clearly expressed in
17 relation to public funding, but given that there is
18 nothing really contentious about this subject, I don't
19 think I need address those arguments this morning.

20 Paragraph 4 of his submissions deals with the
21 calling of witnesses, and really I've nothing to add to
22 what counsel for the Inquiry say about that in response.

23 They say:

24 "It is proposed to draw up a timetable for the
25 calling of witnesses after it is known who will be

1 giving oral evidence and in good time before the
2 commencement of the oral hearing. An indication may,
3 however, already be given [in other words given today]
4 that Mr Vasquez's clients are unlikely to be required to
5 give evidence at the beginning of the oral hearing."

6 This is really a general point to all those who are
7 concerned as to if and when they may be required or
8 invited to give evidence before the Inquiry. The
9 Inquiry team will, again, do its best to give proper
10 notice in advance so as to minimise the inevitable
11 inconvenience which witnesses will, I am afraid, have to
12 suffer if they are asked for their assistance in giving
13 oral evidence.

14 That, I think, is all that I need say in response to
15 Mr Vasquez's submissions, both in writing and orally,
16 save to thank him for expressing them so clearly.

17 Mr Navas submits in relation to two of his three
18 clients, namely Ms Rose Robba and Ms Manuela Adamberry,
19 that they fall "outside the scope of this Inquiry", to
20 use his words, on the basis that in caring for
21 a particular resident or residents of the home they were
22 doing so as part of their duties in the context of the
23 Child/Families' Care Service and that they were not, at
24 the relevant time, employees of the Dr Giraldi Home.
25 Accordingly, Mr Navas submits that they "should not be

1 required to participate any further in this Inquiry".

2 However, as counsel for the Inquiry have pointed out
3 in their written response, and as I have said many
4 times, this is an inquiry, not a criminal trial. The
5 Inquiry is likely to be assisted in its investigations
6 by the evidence which they have given, and each of them
7 has helpfully provided a witness statement. In the
8 event, it's unlikely that their evidence will take up
9 much time at the hearing, but despite that, there is, as
10 I see it, no basis for not seeking and taking advantage
11 of such assistance as they may be able to give the
12 Inquiry in pursuing its investigations.

13 So I am, notwithstanding Mr Navas' submission, not
14 in a position to excuse either of them from further
15 participation in the proceedings of the Inquiry, even
16 though the part which they will play in those
17 proceedings is likely to be a relatively minor one.

18 In relation to each of his three clients, that's to
19 say including Mr Jonathan Teuma, as well as
20 Ms Rose Robba and Ms Manuela Adamberry, Mr Navas raises
21 a number of points about disclosure of documents,
22 a point which is also raised by Mr Mahtani in his
23 written submissions. All I can say about those aspects
24 is that there appears to be nothing at all contentious
25 in the nature of the disclosure which is being sought,

1 and the Inquiry will do all it reasonably can to meet
2 those requests. In some cases, however, the Inquiry
3 simply does not have the document in question. Where
4 that is the case, the Inquiry team will so inform
5 counsel, and counsel will have to take such other steps
6 as may be advised in an attempt to obtain disclosure
7 from third parties.

8 It is somewhat galling, if I may say so, to hear
9 that there are missing documents, because the Inquiry
10 team has spent many weeks working extremely hard in
11 sifting through a huge quantity of documentary material
12 in order to arrive at a database which is relevant to
13 the proceedings of the Inquiry. But it may be that
14 there are documents still which it does not have, and it
15 will do its best to obtain them if it can. That is the
16 most that I think I can say in relation to points about
17 disclosure.

18 Mr Navas also submits that the nature of the
19 allegations against his clients should be clarified.
20 I am not entirely sure what form that clarification
21 would take, but in any event, in my judgment, further
22 steps in that direction by the Inquiry team are not
23 justified. In the context of this Inquiry, something
24 resembling an indictment or a statement of claim is
25 simply not appropriate. The Inquiry is concerned to

1 investigate particular matters and to take advantage of
2 such assistance as is provided by those who are able to
3 give such assistance, and in my judgment there is no
4 call for the Inquiry to give, as it were, further and
5 better particulars of allegations made in the Industrial
6 Tribunal or, indeed, in any other witness statement
7 before the Inquiry. So I reject that submission.

8 Mr Cruz, turning to his submissions, submits that it
9 is unfair, to use his word, that his client,
10 Ms Marie Gomez, should only be entitled at my discretion
11 to a public funding award, which is, and I quote from
12 paragraph 6 of his written submissions "capped to no
13 more than 40 hours of work per week at hourly rates set
14 by the Inquiry", and I emphasise those words which he
15 uses "which are not commercial". The true position, as
16 I am sure he appreciates, is that the maximum hourly
17 rates which are set out in the funding protocol and the
18 number of hours in any one week which can be publicly
19 funded are not in any sense set by the Inquiry save only
20 to the extent that I do have a discretion in exceptional
21 circumstances to increase "40 hours per week" to "44".

22 But the limits are set by the Government of
23 Gibraltar. The protocol represents what the Government
24 of Gibraltar has provided in terms of public funding of
25 representation at this Inquiry. I have no power to

1 exceed these limits. That is a matter for the
2 Government of Gibraltar.

3 In any event, I would comment that some might regard
4 the limits which have been set in the protocol as
5 erring, if anything, on the generous side compared, for
6 example, to the limits to the funding of representation
7 in criminal cases in Gibraltar and not subject to the
8 income threshold applicable to civil assistance in
9 Gibraltar. But whether that comment be justified or
10 not, the limits set by the protocol are binding on me
11 and I cannot exceed them.

12 Mr Cruz also seeks confirmation that public funding
13 will be available in relation to the evidence of
14 a witness who makes an allegation against his client
15 which he has not made before. As I have already said in
16 response to Mr Vasquez, I can see nothing contentious in
17 that, although for reasons which I have already given
18 I don't think it would be appropriate for me to make
19 a formal ruling on that today.

20 In paragraph 10 of his written submission, and he
21 repeated it orally this morning, Mr Cruz submits that
22 the main hearing of the Inquiry should not take place
23 until all efforts by the Inquiry team to locate all
24 those who may fall within section 7 of The Commissions
25 of Inquiry Act have been, and I use his word, exhausted.

1 If that submission were accepted, it would place the
2 Inquiry in a totally impossible position. The Inquiry
3 team will continue to do its best to trace and locate
4 all those who may be able to assist it in one way or
5 another, but there can be no question of the main
6 hearing being postponed indefinitely while that process
7 continues.

8 In any event, as counsel for the Inquiry point out
9 in their written response, paragraph 5, if the maker of
10 an earlier allegation cannot be traced with the
11 consequence that there is no evidence before the Inquiry
12 to support a particular allegation, then that in due
13 course will be reflected in my report.

14 Mr Cruz also made submissions about my approach to
15 finding the relevant facts. They are set out in
16 paragraphs 11 to 17 of his written submissions, and he
17 briefly referred to them this morning. Having
18 considered all that he said, both in writing and orally,
19 I see no reason to alter the approach which I described
20 at the last hearing. There is no need for me to repeat
21 it. It's set out on page 48 of the transcript of the
22 last hearing.

23 As for giving an explanation of any finding of fact,
24 I think you may rest assured that I am in no way going
25 to overlook that very obvious requirement.

1 Mr Mahtani, turning to him, raises the question of
2 joint representation in his written submissions. That,
3 as I have explained earlier, is no longer a live issue.

4 He also raises matters of disclosure, and again
5 I have given a general response to that.

6 Mr Borastero-Porter raises various points in his
7 written submissions recently received. He makes
8 a number of points on disclosure, to which I have
9 already given my response. He asks for disclosure of
10 witness statements, and of course that will be done.

11 He refers at a number of points in his written
12 submissions to "leave to cross-examine a witness". The
13 expression "cross-examine" is not one which sits happily
14 in the context of an Inquiry of this kind. But, as
15 I propose to make clear in my general comments later
16 this morning, I may, at my discretion, afford
17 an opportunity to counsel to ask questions of
18 a particular witness, and it may well be that if a new
19 allegation has surfaced in the evidence of that witness,
20 then an application to that effect will be granted.
21 I can't say more than that at the moment. Leave to
22 cross-examine is not something which I could possibly
23 grant in the context of this Inquiry.

24 Mr Borastero-Porter also makes points about
25 disclosure which I think are covered really by what

1 I have already said about that.

2 Ms Balestrino has also made submissions in writing.
3 She refers to the question of anonymity of service
4 users. I wonder if we could use the expression
5 "residents" rather than "service users", because it is
6 really a rather ugly expression, and I feel that
7 "residents" is more suitable in all the circumstances,
8 "residents" to include temporary residents, respite care
9 attendees, et cetera.

10 Anonymity is certainly a factor which must be
11 achieved, so far as it's possible to do so in relation
12 to matters where anonymity is obviously appropriate, so
13 I am entirely in sympathy with Ms Balestrino's
14 submission on that. As Mr Englehart rightly said, we
15 cannot guarantee anonymity because names slip out and
16 documents may be disclosed in which names appear, but
17 what I have in mind to do is to ask the press at the
18 start of the main hearing if they would be good enough
19 not to publish the names of residents, because that
20 would really be an unfortunate occurrence if it
21 happened, and I think we can also achieve further
22 protection if I invite the transcribers to amend the
23 daily transcript so that if the name of a resident is
24 expressed in public, when it comes to the transcript,
25 letters or numbers can be used as a form of

1 identification without actually stating the name of the
2 resident concerned.

3 Ms Balestrino, if you think at any point there is
4 anything else we can do, I am sure you will get in touch
5 and we will certainly make every effort we can to
6 achieve anonymity.

7 You also raise a question of considering the witness
8 statements and exhibits of other witnesses. There is no
9 objection to that at all, subject to one possible
10 qualification, which is that the very helpful affidavit
11 of Albert Bruzon on behalf of The Care Agency contains
12 a large number of exhibits, some of which includes
13 material that could be regarded as confidential to
14 particular residents.

15 It may be therefore, and I am not going to say any
16 more than that, that it would not be appropriate for
17 that to be generally circulated, but that is something
18 which you are very welcome to discuss with the Inquiry
19 team to see if we can produce a fair result which would
20 protect the interests of any resident concerned.

21 So I think that, Ms Balestrino, deals with the
22 submissions which you have made. That, I think,
23 completes my response to the submissions which I have
24 heard and which I have read.

25 So I think we can move on now to --

1 MR CRUZ: Mr Chairman.

2 THE CHAIRMAN: Yes, Mr Cruz.

3 MR CRUZ: Just by clarification before we move on. There
4 were a couple of points I raised which haven't been
5 responded to and it may be there is a good reason for
6 it, but one of the issues I raised was whether or not we
7 could use a junior associate.

8 THE CHAIRMAN: Oh, yes.

9 MR CRUZ: I just think it's useful to get a clarification.

10 If we can't, we can't, at least it is useful to know.

11 THE CHAIRMAN: Have a word with Ms O'Hagan about that
12 because I deal with the funding applications through
13 her, and if you do it through that route, then we can
14 resolve that, I am sure, without any difficulty.

15 MR CRUZ: I am much obliged.

16 Finalisation of list of issues

17 THE CHAIRMAN: Thank you very much.

18 Can I move on then to item 4 on the agenda, which is
19 finalisation of the list of issues. At the last
20 preliminary hearing I circulated a provisional list of
21 issues to be finalised at this hearing, and Mr Valarino,
22 as I mentioned earlier, made a point which I did not at
23 that stage accept in relation to the use of the word
24 "inappropriate" before the word "punishment" in issue
25 15. At that stage, I wasn't persuaded to make that

1 alteration, but I have given further thought to it, as
2 I've said, and I can see no reason why that point should
3 not be accepted, and indeed it's been repeated by
4 Ms Guzman this morning. So I am perfectly happy to omit
5 the word "inappropriate" before the word "punishment" in
6 issue 15.

7 One other matter arises, a more significant one,
8 I think, in relation to the provisional list of issues,
9 it's also a matter to which I referred last time, namely
10 that Ms Mandy Spencer made a witness statement which was
11 in the Industrial Tribunal proceedings in which
12 allegations were made in relation to an earlier period
13 than November 2002, which was my projected starting date
14 for the Inquiry's investigations.

15 Given that the terms of reference, paragraph 1(a),
16 require the Inquiry to inquire into all the allegations
17 made in witness statements in the Industrial Tribunal,
18 I am therefore obliged to consider and inquire into
19 allegations relating to a period prior to November 2002
20 made by Ms Mandy Spencer. She has recently put in
21 a further witness statement in which those allegations
22 are referred to. I think that's correct. If you have
23 not seen it, Mr Vasquez, you certainly will shortly.

24 So there is a further extension to be made to the
25 provisional issues, to the list of issues, in that I am

1 required to inquire into those pre November 2002
2 allegations. That means that the generalised list of
3 issues in paragraph 4 will apply in relation to the
4 period from November 2002 to date, but we need to add to
5 it the specific allegations -- and I emphasise the word
6 "specific" -- made by Ms Mandy Spencer in relation to
7 a period prior to that date. How far that will affect
8 the length of the Inquiry or the evidence which is given
9 is very difficult to say, but I have to comply with
10 paragraph 1(a) of my terms of reference. So that what
11 is proposed is a list of issues which will read as
12 follows in relation to the introduction to it:

13 "1. The Inquiry will investigate the issues listed
14 in paragraph 4 below (being issues which derive from
15 allegations contained in the witness statements referred
16 to in paragraph 1(a) of the Inquiry's terms of reference
17 and/or from documentary material which the Inquiry has
18 examined) and the terms of reference are accordingly
19 widened pursuant to paragraph 2 thereof to the extent
20 necessary to include such issues."

21 And then 2, and this is the one dealing with
22 Ms Mandy Spencer's evidence:

23 "The Inquiry will limit its investigations to the
24 period since November 2002, which was the date at which
25 the Social Services Agency assumed operational

1 management of the Dr Giraldi Home, save that the Inquiry
2 will also investigate the specific allegations made in
3 witness statements by Ms Mandy Spencer which relate to
4 an earlier period."

5 Then the issues will be set out as before in
6 paragraph 4, but with the deletion of the word
7 "inappropriate" in issue 15.

8 So unless anybody has any more to say about that,
9 I think we can finalise that today, and that will, as it
10 were, set the scene for the main Inquiry. If anybody
11 has any submissions they want to make, please say.

12 Right, I will take that as tacit acceptance of the
13 list of issues.

14 Chairman's comments and guidelines

15 THE CHAIRMAN: Next, item 5, and you will be glad to hear
16 that this is really the last one which involves me,
17 because you must be tired of listening to my voice.
18 I will give what I hope are some helpful comments on
19 various issues and aspects of the Inquiry, some of which
20 are probably already covered, but, as I said earlier,
21 forgive that. In the interests of clarity I need to go
22 through this.

23 Joint representation and public funding is the first
24 one. Since the last preliminary hearing I have been
25 giving further consideration to the question whether,

1 for the purposes of public funding, it might be
2 appropriate to seek to achieve a greater degree of joint
3 representation of those who are currently represented
4 before the Inquiry. However, I have concluded that in
5 all the circumstances that would not, after all, be
6 appropriate. Accordingly, for the purposes of public
7 funding, the current situation as regards representation
8 may continue unchanged.

9 Also I have recently indicated to a group of those
10 persons who made witness statements in the Industrial
11 Tribunal that they may wish to retain legal
12 representation at the Inquiry, and that public funding
13 for that may be available in relation to such parts of
14 the Inquiry as relate directly to their witness
15 statements and to their oral evidence.

16 I further indicated to them that such public funding
17 may only be available for joint representation, and
18 I have encouraged them to discuss this amongst
19 themselves with a view to their reaching an agreement on
20 that. I don't think we have heard back from them at the
21 moment, but that is, as it were, in train.

22 Then those people who we tried to make contact with
23 but have so far been unable to do so: despite the best
24 efforts of the Inquiry team, we have so far been unable
25 to trace a number of persons who we consider might be in

1 a position to assist the Inquiry in its investigations.
2 We will continue to try to make contact with them, and
3 at the commencement of the main hearing I will report on
4 the state of play in that respect. I won't name the
5 persons concerned, but a list of their names will be
6 circulated to counsel, and the Inquiry will be grateful
7 if any assistance can be given in locating them. I have
8 already rejected Mr Cruz's submission that the main
9 hearing should, as it were, be adjourned indefinitely
10 while we carry on our attempts.

11 Next is access to what is called the electronic
12 platform, and I think Mr Azopardi is going to say
13 a little more about that later. As you may know, as you
14 will know I think, as part of its investigations, the
15 Inquiry team has reviewed many thousands of documents
16 and there are more still to come. A large proportion of
17 the documentary material is currently being uploaded
18 into what's been described as an electronic platform,
19 and that process is continuing. For obvious reasons, it
20 is not envisaged that the public will have access to the
21 electronic platform once it is complete. In other
22 words, it's not envisaged that it will be uploaded onto
23 the Inquiry's website. On the other hand, it is
24 envisaged that access to the electronic platform will be
25 available to counsel, albeit on a restricted basis,

1 given the private and/or confidential nature of much of
2 that documentation, for example, information concerning
3 residents at the Home.

4 Essentially, what is envisaged at the moment is that
5 each counsel should have access only to documents on the
6 electronic platform which are relevant to allegations
7 made against his or her client, subject always to the
8 proviso that if the client feels that he or she is being
9 prejudiced in not being allowed access to a particular
10 document or category of documents, then I will have the
11 power to permit such access if application for it is
12 made accompanied by an explanation as to the nature of
13 the prejudice which is alleged.

14 I understand that TSN have already provided those
15 persons against whom relevant allegations have been made
16 with documents which are relevant to those allegations.
17 Some requests for further specific documentation have
18 already been received and the solicitors are in the
19 process of considering these applications.

20 I will report on this once the electronic platform
21 is complete. If any issues arise on this, I will deal
22 with them at that stage, probably on the basis of
23 written submissions, in order to try and avoid the need
24 for yet another preliminary hearing.

25 Next, procedure. I am talking about procedure at

1 the main hearing. At the last hearing Mr Englehart
2 described the procedure which he submitted would be
3 appropriate for the main hearing of the Inquiry, and
4 I accept his submissions, and I can now therefore
5 indicate what the procedure will be at the main hearing,
6 save to the extent that fairness may in some particular
7 circumstances require that the procedure be amended in
8 some way. So the essential characteristic of the
9 procedure is flexibility. But what I may describe as
10 the default procedure will be as follows: first of all,
11 there will be a short opening by counsel to the Inquiry,
12 as Mr Englehart indicated. Next, oral evidence will be
13 called. The witness will be questioned by counsel to
14 the Inquiry. Those wishing particular questions to be
15 put to a witness should notify counsel to the Inquiry of
16 such questions in advance of the witness being called,
17 and counsel to the Inquiry will put those questions to
18 the witness if and so the extent that it is considered
19 appropriate to do so.

20 At the conclusion of the questioning of counsel to
21 the Inquiry, I may at my discretion allow a limited
22 opportunity for further questioning of the witness by
23 the legal representatives of the witness, if the witness
24 is represented, or by any one or more of the other legal
25 representatives before the Inquiry. As I think I made

1 clear when dealing with a submission about leave to
2 cross-examine, this is not cross-examination, this is
3 an opportunity to ask questions, and it's at my
4 discretion as to whether that's allowed and, if so, for
5 how long.

6 Then after the conclusion of the oral evidence,
7 there will, I envisage, be an adjournment of perhaps two
8 to three weeks, we can discuss that at the time, before
9 the hearing is resumed for the purposes of oral closing
10 submissions, those to be based on written skeleton
11 arguments in the usual way, to be provided in advance of
12 that resumed hearing. Again, the details we can discuss
13 once we get there.

14 Stage four will be the Salmon Letters, if and
15 insofar as they are appropriate, and any further hearing
16 or consideration of responses to the Salmon Letters,
17 again it's impossible to lay down a defined procedure.

18 Then the last and final stage of course will be the
19 publication of the report.

20 So that is how matters stand at the moment, but
21 I emphasise that flexibility is the name of the game in
22 an Inquiry of this kind.

23 Next and briefly, guidelines on public funding.
24 This is to the extent that I haven't already made it
25 clear. I have a number of bullet points on this for the

1 assistance of those who are concerned with making
2 applications under the protocol. The first bullet point
3 is this: I cannot alter the terms of the protocol. It
4 sets out what the Government of Gibraltar is providing
5 in terms of public funding of representation.

6 In certain respects the protocol itself gives me
7 a discretion -- in other words, the Government has given
8 me a discretion -- in others it does not, and I have
9 highlighted two particular respects in which there is no
10 discretion this morning.

11 The second bullet point: the operation of the
12 protocol is not to be confused with legal entitlement to
13 representation, which is a statutory right under
14 section 11 of The Commissions of Inquiry Act.

15 Turning to the operation of the protocol, I can
16 offer the following guidelines: first of all, those
17 whose original funding awards expired on 5 July, which
18 was the first round of public funding, will have to
19 apply for a further award if they have not already done
20 so. As a general rule, those further awards, I will
21 call them "round two awards", will cover the period from
22 the date of the application until the conclusion of the
23 evidence, that's to say in effect the end of the main
24 hearing.

25 Thirdly, in respect of the main hearing, round two

1 awards will not specify a set number of hours to be
2 funded, that would be impossible, it would require
3 a huge amount of guesswork and would inevitably be
4 inaccurate. Rather, they will describe those activities
5 of the legal representative which will be funded,
6 subject always to the stipulated maximum hourly rates
7 and number of hours to be funded in any one week.

8 As I have said a number of times, the procedure
9 under the protocol is for applications to be made, and
10 if people have concerns about it, the best forum for
11 dealing with that is simply to make your representations
12 to the solicitors, which I will then see, and I can deal
13 with them on a case by case basis.

14 Next, release from further participation in the
15 Inquiry. This applies to a number of people, some of
16 whom have already been excused further participation and
17 a number of applications have been made for further
18 releases to be made. It is of course open to the
19 Inquiry to decide at any stage in the proceedings not to
20 pursue its investigations into a particular allegation
21 any further. Those concerned will of course be notified
22 of that, as and when such a decision is made. Where
23 such a decision results in an individual no longer
24 facing any allegation as to his or her conduct, that
25 individual will in the normal course be excused from

1 further participation in the Inquiry.

2 I can say today that Mr Christopher Miles' client,
3 Ms Gabrielle Llambias, has been excused from further
4 participation in the Inquiry's proceedings.

5 Then briefly a few matters. Disclosure of
6 documents, I think I have already indicated the Inquiry
7 will simply do its best, but it cannot guarantee that it
8 can provide every document which is sought.

9 Some housekeeping matters: hours of sitting during
10 the main hearing, they will be flexible, but the default
11 setting, if I can so describe it, will be 10 am to 1 pm
12 with a break of a quarter of an hour or so in the middle
13 of the morning for the benefit of the transcribers, and
14 2.15 to 4.30 or as soon as convenient thereafter, with
15 another break in the middle of the afternoon.

16 As to sitting on Fridays, we will have to see how
17 that goes. The first Friday is I think going to be the
18 opening of the legal year, so if that's the case we
19 certainly won't be sitting that day. There is
20 a possibility that it may be appropriate not to sit on
21 Fridays, but we will see how we go. We will try and sit
22 a full week if that's feasible, but we will keep that
23 under review.

24 Order of witnesses: well, as I said earlier, this
25 will be notified in advance so far as possible.

1 Approach to fact finding, I have already dealt with
2 in my response to Mr Cruz's submissions, and find that
3 on page 48 of the transcript of the previous hearing.

4 One small point: I have a discretion under the Act
5 as to whether oral evidence be given on oath or not. My
6 preference is that it should not be given on oath, but
7 I think it's prudent that I reserve the right to require
8 it to be given on oath if I feel that that would be
9 appropriate. I doubt very much whether that will
10 happen.

11 Lastly, just to tell you that I visited the Home
12 yesterday morning, and was shown round by
13 Mr Carlos Banderas. That was an extremely helpful visit
14 from my point of view, because now I am familiar with
15 the layout of the Home. In fact, no other counsel
16 attended, although they were given the opportunity to do
17 so. In the course of my tour of the Home, I met
18 a number of the residents, but, as I have said, my
19 purpose in visiting the Home was simply to see what it
20 looks like, what the accommodation comprises now, and
21 simply for my own information.

22 So I think that concludes the comments which I wish
23 to make, and I am sorry if they have taken rather a long
24 time to make, but I hope everything is clear. If it
25 isn't, please let me know and I will try and provide

1 further clarification.

2 Subject to that, can we now go to item 6 on the
3 agenda, which is an update by counsel to the Inquiry,
4 and I think really, Mr Azopardi, you are probably in the
5 best position to give a brief update on the present
6 state of play.

7 Update by Counsel to the Inquiry

8 MR AZOPARDI: Thank you, sir, I will be glad to do so.

9 What I intended to do was to provide an overview of
10 the work done during the course of July, since the first
11 preliminary hearing, and the work that needs to be done
12 from now until the end of August to ensure that the
13 preparations for the hearing are completed.

14 In broad terms, there are, we think, five important
15 areas. There are numerous fronts on which we are
16 working, but I suppose I would highlight five important
17 areas on which work needs to be completed by the end of
18 August to allow the hearing to proceed smoothly.

19 First of all, we need to complete the upload of
20 material onto the electronic platform and give access to
21 different counsel to the electronic platform.

22 Secondly, we need to conclude the process of receipt
23 of witness statements. That has advanced significantly,
24 but it needs to be completed.

25 Thirdly, there needs to be an end to the disclosure

1 exercise that we have been undertaking. That is still
2 ongoing, and at the end of the disclosure exercise
3 relevant documents need to be uploaded.

4 Fourthly, we will need to prepare what we call the
5 hard Inquiry bundle for the use of witnesses and here in
6 the Coroner's Court as in the Inquiry.

7 Fifthly, an important task that you, sir, have
8 already identified is that we need to settle the order
9 and list of witnesses that will give live evidence and
10 produce the timetable.

11 In respect of those, I wanted to make a few more
12 detailed observations so people know where we are on
13 different issues and on the work that has been done, as
14 I say, since the first preliminary hearing.

15 There has been quite a lot of discussion already
16 about the funding protocol, and I will only say this,
17 I would only add that in terms of numbers of funding
18 applications, I gave an indication at the last
19 preliminary hearing, we have now received 13 separate
20 funding applications in respect of 22 individuals, and
21 one association and one public body. All of those have
22 been approved. There have been a number of funding
23 applications, second round funding applications, as you,
24 sir, have described them, post 5 July. Others are
25 awaited, and we don't believe we are in receipt of all

1 the second round funding application, and certainly
2 would encourage counsel to submit those funding
3 applications so that they can all be dealt with up to
4 the hearing itself.

5 We are grateful for the work that has been done by
6 all the other lawyers, counsel representing different
7 individuals that are represented today for the work that
8 has been done since the first preliminary hearing,
9 because we -- I did indicate at the first preliminary
10 hearing that we were waiting and had set a deadline of
11 5 July to receive witness statements. We did in fact
12 receive the vast majority of those statements. Where it
13 has been necessary to grant extensions, short
14 extensions, we have done so, and we are also grateful
15 that the nature of extensions sought has been short, and
16 that other representatives have used their best
17 endeavours to complete the work. That of course has
18 meant that we have spent quite a lot of time reviewing
19 those witness statements, and indeed there is an element
20 of consequential work that has been necessary following
21 the receipt of those witness statements.

22 We have also requested a number of other witness
23 statements, and we expect and would hope to receive
24 those by the end of July, and have set deadlines that go
25 into August in respect of a number of people, because of

1 their particular circumstances. I won't say more than
2 that about that issue, but we are expecting, as I say,
3 witness statements right into August, which will of
4 course mean that the uploading process will continue,
5 even though people will have been given access to the
6 electronic platform.

7 It's important that I turn to the electronic
8 platform at this stage just to give an overview, because
9 I think that once we give access to the electronic
10 platform, it certainly will allow people to have
11 a greater awareness of the different points that are
12 being made in witness statements, and it will certainly
13 give them access to other material that they don't have
14 today.

15 The process of giving access to the electronic
16 platform requires first, of course, the uploading of
17 a vast amount of documentation, and I gave an indication
18 on the last preliminary hearing that we were talking
19 about the nature of around 35,000 pages of documents,
20 and that has been the product of several months of work,
21 of disclosure, where we have sifted and downsized the
22 amount of reference material that is being uploaded onto
23 the electronic platform.

24 At the moment, the electronic platform contains
25 reference material, witness statements that were filed

1 in the Industrial Tribunal action, relevant source
2 documents, other witness statements that have been
3 received from other parties, and a number of core
4 documents.

5 Our assessment is that what is currently uploaded
6 represents around 60 per cent of the documents that will
7 finally find their way onto the electronic platform. We
8 are endeavouring to use all efforts to ensure that the
9 documents are uploaded at the earliest point possible.
10 In terms of access itself, we are hopeful that the
11 access to other lawyers and other counsel representing
12 individuals and bodies will be delivered by early to
13 mid-August, if we can provide access earlier then we
14 shall do so, but it requires not only the uploading of
15 material but it does require the ringfencing of certain
16 parts of the electronic platform in the manner that you,
17 sir, have already indicated.

18 The electronic platform structure contains bundles
19 from A to O that contain a vast amount of material, not
20 just reference material but witness statements, it will
21 contain raw documents, and other material. Some of
22 those will be provided, access will be provided to some
23 of those bundles to all counsel. As you, sir, have
24 indicated, access will be restricted to certain parts of
25 the electronic platform in the context of the reasons

1 that you have explained, and indeed to cater for
2 confidentiality, privacy of residents and so on. That
3 task, therefore, requires quite a lot of work, not just
4 uploading work but indeed work to ensure that the
5 ringfencing is done properly, that requires technical
6 assistance from the managers of the electronic platform
7 in London.

8 As I say, in any event, it is our ambition to ensure
9 that the uploading work is completed as soon as
10 possible, and that access is provided. It may be that
11 access is provided before 100 per cent of the documents
12 are uploaded, because uploading will continue once
13 access is -- once people enjoy access.

14 Access will be provided by individual passwords that
15 people will be provided. That access is to a mirror
16 platform that is tailor-made for that particular
17 counsel, so that they have freedom of access within that
18 platform, and they can then produce their own internal
19 documentation for use and assistance of their own
20 submissions, which will not be seen by other people on
21 the electronic platform. So all that will be explained,
22 it's rather technical, and certainly we intend at the
23 same time of providing access passwords to ensure that
24 there are online training sessions available to counsel,
25 to ensure that everyone understands the scope of the

1 electronic platform, and what they can do with it. This
2 is not just a platform on which they can access
3 documents, it is a fairly interactive platform on which
4 they can produce their own annotations, which will not
5 be seen by anybody else, and that I think is important
6 for people to appreciate, so that they understand that
7 this is a rather dynamic beast that could help them in
8 the work that they need to do towards the hearing.

9 Of course, if there is any issue on any of that, the
10 Inquiry team is happy to assist to the degree that we
11 can, we will involve the more technical people of course
12 because we don't speak the technical language that they
13 do.

14 The process of disclosure, if I can move on to that,
15 is still ongoing, and we would like to record our
16 acknowledgement and thanks to the Government and The
17 Care Agency for ensuring that there is maximum
18 co-operation with that process.

19 We are engaged on the electronic disclosure exercise
20 at The Care Agency. That electronic disclosure exercise
21 is quite significant in that we are running a keywords
22 and custodian checklist through the servers and
23 electronic data held by The Care Agency. At the moment,
24 in the initial exercise, keywords threw up
25 a tremendously vast number of emails and documents

1 around a sum of 160,000. We have downsized that to
2 around 60,000, and we are hoping to downsize it rather
3 still, so that we have a much more manageable set of
4 electronic documents that we can then sift for relevance
5 and then upload whatever is relevant. We would hope to
6 conclude that exercise also in parallel within the next
7 three weeks or so, hopefully earlier.

8 We received, since the first preliminary hearing,
9 the ministerial documents that had been requested from
10 the Government, a batch of those, and we are going
11 through those for relevance, and those again will be
12 uploaded onto the electronic platform. And a number of
13 additional documents have also been disclosed, hard copy
14 documents which we are also reviewing.

15 It is, as has been indicated this morning, a very
16 important exercise to prepare a timetable and
17 an identified list of witnesses that will give live
18 evidence at the hearing, and an order of those. Now
19 that most of the witness statements are in and that we
20 have a real feel of the allegations that were made, the
21 rebuttal of those, the people who have been contacted
22 and are available, and the reaction of other parties
23 that have been contacted. We will move on to that
24 important exercise, we appreciate it is indeed
25 an essential task, and we would hope in the next couple

1 of weeks to be able to settle a list, an initial list,
2 and then move on rather quickly to share that as soon as
3 is practicable with all other counsel so that they are
4 aware, in timetabling terms, what they can expect.

5 Without advancing anything out of the ordinary, it
6 will be likely, if I put it no higher than that, that
7 those parties and individuals that are represented here
8 today will give evidence once other parties who
9 contributed statements to the Joanna Hernandez
10 Industrial Tribunal case have done so, it makes logical
11 sense for that to happen.

12 But other counsel will have a much better idea of
13 the sequence and the timetabling issues once we have
14 produced that list. It is difficult to say how long the
15 hearing will last, but we will have a fair idea of the
16 number of witnesses once we settle the list, and how
17 long each will take, and hopefully that will allow us
18 to, with co-operation from other parties and other
19 counsel, manage the list in the best way possible to
20 ensure that the best housekeeping situation is arrived
21 at.

22 Sir, I think that concludes my overview of the work
23 that needs to be done.

24 Any other business

25 THE CHAIRMAN: Thank you very much, Mr Azopardi.

1 Now, would anybody like to say anything about what
2 Mr Azopardi has said, or indeed anything that I said
3 earlier? If you do, then please make your submission
4 now. Right, well, thank you very much. While
5 Mr Azopardi was speaking, I realised that there was one
6 matter which I didn't deal with.

7 Mr Cruz, it was actually one of your submissions
8 which I need to address directly. You referred to the
9 terms on which TSN had been retained, and you were
10 seeking to set that up as a comparator in relation to
11 the time limits and so forth, and hourly rates in the
12 protocol.

13 MR CRUZ: The Salmon, Mr Chairman.

14 THE CHAIRMAN: Yes. I have no hesitation in rejecting that
15 submission. There is no comparison, for the reason that
16 Mr Englehart gave in his written response, which is that
17 the solicitors to the Inquiry are concerned, as he put
18 it, under a contractual retainer to assemble and present
19 the entire evidence for the Inquiry. It's quite
20 a different role from those of counsel, and indeed we
21 are not concerned with public funding so far as TSN is
22 concerned. The protocol relates to those who are
23 implicated or concerned in the Inquiry, and those are
24 the rates which the protocol sets which, for reasons
25 I gave earlier, I cannot change. So I do not accept

1 that submission.

2 Well, that was a bit of "any other business" that
3 I managed to find. If anybody else has any, this is
4 an opportunity to raise it. If you haven't, and I don't
5 think you have, then thank you all very much for
6 attending this morning. I expect and hope to see you
7 all on 30 September, when we hope to begin the main
8 hearing.

9 Thank you all very much for your attendance today,
10 that concludes this hearing. Thank you.

11 (11.42 am)

12 (The hearing adjourned until Monday, 30 September 2013)

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15

16

17

18

19

20

21

22

23

24

25

INDEX

PAGE

1

2

3 Introduction by the Chairman1

4 Counsels' submissions7

5 Submissions by MR VASQUEZ7

6 Submissions by MR NAVAS13

7 Submissions by MR CRUZ16

8 Submissions by MR MAHTANI21

9 Submissions by MR BORASTERO-PORTER22

10 Submissions by MS BALESTRINO22

11 Submissions by MS GUZMAN24

12 Submissions by MR ENGLEHART25

13 Response by the Chairman30

14 Finalisation of list of issues44

15 Chairman's comments and guidelines47

16 Update by Counsel to the Inquiry57

17 Any other business65

18

19

20

21

22

23

24

25