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DGH Inquiry

PTR Hearing - Day 1

June 20, 2013

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1 Thursday, 20 June 2013
 2 (10.00 am)
 3 THE CHAIRMAN: Well, good morning, everyone. Can I start by
 4 saying, which I have to say, that no photographs will be
 5 allowed of these proceedings -- that includes today --
 6 and all mobile phones obviously must be switched off.
 7 On a more positive note, for the benefit of members
 8 of the press who are here, this is an entirely public
 9 Inquiry. You are free to report anything that is said
 10 here today, unless -- which is very unlikely -- I rule
 11 to the contrary. I don't expect to have to do that.
 12 So, subject only to that, please report anything you
 13 wish which occurs today. The same will apply at future
 14 hearings of the Inquiry.
 15 Well, having got that out of the way, ladies and
 16 gentlemen, I can welcome you to the first hearing of the
 17 Dr Giraldi Home Inquiry. This is only a preliminary
 18 hearing. The main hearing of the Inquiry is scheduled
 19 to take place on 30 September of this year, and we plan
 20 to hold another preliminary hearing which in effect will
 21 be a continuation of this one on 23 July: next month, in
 22 other words.
 23 In language which will be familiar to lawyers, these
 24 preliminary hearings, that's to say today and the next
 25 one on 23 July, will be concerned purely with case

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1 management issues. That's to say dealing with
 2 procedural and administrative matters and generally
 3 setting the scene for the main hearing, including
 4 finalising the list of issues to be investigated at this
 5 Inquiry at the main hearing.
 6 Today's hearing will be essentially introductory in
 7 nature, and I don't expect to have to make any final
 8 rulings today. In a moment, I will describe briefly how
 9 the Inquiry came into being and what its terms of
 10 reference are, if you have not already read them, and
 11 I will also explain in general terms what matters we
 12 will be considering at these preliminary hearings.
 13 Before doing that, can I make some introductions and
 14 can I start by introducing myself: my name is
 15 Jonathan Parker and I am the Chairman of the Inquiry.
 16 I was appointed a High Court judge in England in 1991.
 17 Prior to that, I had practised at the Chancery Bar in
 18 England since 1962, becoming a Queen's Counsel in 1979.
 19 In 2000, I became a Lord Justice of Appeal, which
 20 means, in other words, a judge of the English Court of
 21 Appeal. I retired from the English Court of Appeal in
 22 2007. Subsequently I was a member of the Tribunal which
 23 inquired into the conduct of the former Chief Justice of
 24 Gibraltar.
 25 In 2010 I became a member of the Gibraltar Court of

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1 Appeal, a post which I continue to hold.
 2 I would like to say that I have had a long personal
 3 association with Gibraltar. I first came to know it
 4 well in the 1950s, believe it or not, and I have kept in
 5 touch with developments here ever since.
 6 So when in October of last year the Government of
 7 Gibraltar asked me to chair this Inquiry, I had no
 8 hesitation in agreeing to do so.
 9 Can I introduce next Mr Dennis Figueras, who is
 10 sitting just in front of me here: he is the Secretary to
 11 the Inquiry, and he will be well known to many of you.
 12 I also have an experienced team of lawyers to assist
 13 me in conducting this Inquiry, and if I may, I will
 14 introduce now the more prominent members of that team.
 15 Leading counsel to the Inquiry is
 16 Mr Robert Englehart Queen's Counsel of Blackstone
 17 Chambers, Middle Temple in London: he is sitting to my
 18 extreme left; on the right, if you are looking from the
 19 back. Mr Englehart is a senior and respected member of
 20 the English Bar, who has for a number of years sat as
 21 a deputy High Court judge in England.
 22 Mr Englehart is assisted by Mr Keith Azopardi
 23 Queen's Counsel who is sitting next to him in the front
 24 row. He needs no introduction for he will be very well
 25 known to all of you.

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1 The solicitors to the Inquiry are TSN, that's Triay
 2 Stagnetto Neish; a number of their lawyers are engaged
 3 on this Inquiry. They include Ms Gabrielle O'Hagan,
 4 Ms Cristina Linares and Mr Nick Bottino, and they are
 5 all in court here today.

6 A number of other lawyers are present here today,
 7 appearing for various individuals or organisations who
 8 are interested in one way or another in the proceedings
 9 of the Inquiry, and in a moment I will ask them to
 10 introduce themselves and to say who they represent.

11 In addition, Mr Maurice Valarino is here in person,
 12 and I shall ask him in a moment what he would like to
 13 say today.

14 I should, however, introduce Ms Gillian Guzman
 15 Queen's Counsel who appears for The Care Agency, leading
 16 Mr Julian Santos. She is sitting on my right, on the
 17 left as you look from the back of the room.

18 The Care Agency is the agency which is currently
 19 responsible for the running of the Dr Giraldi Home in
 20 succession to the Social Services Agency, known as the
 21 SSA, and Ms Guzman will be also very well known to you.

22 Can I now ask the remaining counsel who are here to
 23 introduce themselves and to say who they represent.

24 Mr Vasquez, perhaps you would start.

25 MR VASQUEZ: Yes, I am Robert Vasquez QC and I presently

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1 represent -- I say presently because there may be issues
2 in this regard as I understand from what I have read --
3 Sharon Berini, Melissa Hales, Sean Matto and
4 Richard Muscat. I am obliged, sir.
5 THE CHAIRMAN: Who would like to go next?
6 MR NAVAS: Good morning. Kenneth Navas, I appear for
7 Mr Jonathan Teuma, Mrs Rose Robba and
8 Mrs Manolita Adamberry.
9 THE CHAIRMAN: Thank you very much. Next one?
10 MR BORASTERO PORTER: Good morning, Francis Borastero Porter
11 and I'm instructed by Nigel Bassadone and Jenny Garrett.
12 THE CHAIRMAN: Thank you very much, Mr Borastero Porter.
13 MR MILES: I appear for Gabriella Llambias and my name is
14 Chris Miles.
15 THE CHAIRMAN: Thank you, Mr Miles.
16 MR CONROY: Good morning. My name is Damian Conroy, senior
17 counsel, and I appear for Her Majesty's
18 Attorney General.
19 THE CHAIRMAN: Thank you very much.
20 MR MAHTANI: Good morning, Suresh Mahtani, I appear for
21 Yvette Borastero, Angelica Williams and
22 Michelle Garrett.
23 THE CHAIRMAN: Thank you, Mr Mahtani.
24 MS WRIGHT: Christina Wright, holding brief for Mr Nick Cruz
25 on behalf of Ms Maria Gomez.

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1 MR GOMEZ: Nicholas Gomez on behalf of Mr Charles Gomez and
2 we appear on behalf of Kirushka Compson and
3 Mr Craig Farrell.
4 THE CHAIRMAN: Thank you very much. Anyone else who needs
5 to introduce themselves?
6 MS MORAN: Kathryn Moran, I represent Gayle Everest.
7 THE CHAIRMAN: Thank you very much.
8 MR WATTS: My name is Ian Watts, holding brief for
9 Chris Finch who acts for Joanna Hernandez.
10 THE CHAIRMAN: I gather that Mr Finch is unfortunately ill.
11 MR WATTS: Yes, my Lord, unfortunately he had a matter which
12 overlapped with today's hearing, so I am standing in in
13 his place.
14 THE CHAIRMAN: Well, please pass on our good wishes to
15 Mr Finch for his speedy recovery.
16 Right. Then can I go on to say something about the
17 Inquiry itself. First of all, perhaps how it came into
18 being.
19 As many of you will already know from the press and
20 the media, in 2006 Ms Joanna Hernandez, who was a former
21 manager at the home, brought proceedings in the
22 Industrial Tribunal in Gibraltar claiming unfair
23 dismissal by her former employer, the SSA. The SSA was
24 at that stage responsible for the running of the
25 Dr Giraldi Home.

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1 A number of witness statements were filed on her
2 behalf in those proceedings, including one by
3 Ms Hernandez herself, in which various allegations were
4 made of mismanagement, misconduct and malpractice in the
5 Home, including abuse. Witness statements were also
6 filed on behalf of the SSA denying all those
7 allegations.
8 In the event, the proceedings in the Industrial
9 Tribunal never went to a full hearing, and in
10 consequence the allegations contained in the witness
11 statements filed on behalf of Ms Hernandez were never
12 investigated by the Industrial Tribunal.
13 Over the ensuing years, as many of you will know,
14 there were a number of calls made for a public inquiry
15 into the allegations, and in consequence there were
16 exchanges in the Gibraltar Parliament relating to that
17 matter.
18 The present Government of Gibraltar has decided to
19 hold a public inquiry into those allegations, and that
20 has led in due course to the setting up of this Inquiry
21 and to my appointment as its Chairman.
22 I can now turn, I think, very briefly to the
23 Inquiry's terms of reference. You may have already seen
24 them. They have been published, and they can be found
25 on the Inquiry's website. I won't attempt to dictate

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1 the address of the website because I shall certainly get
2 it wrong, but if you need to ask what it is, you can ask
3 one of the representatives of TSN who will show you, or
4 Google it and you will find it.
5 The first paragraph of the terms of reference
6 requires the Inquiry to inquire into two specific
7 matters. The first of those matters consists of the
8 allegations that I have just mentioned, that's to say
9 the allegations in the witness statements filed on
10 behalf of Ms Hernandez in connection with her claim of
11 unfair dismissal.
12 The second matter to be inquired into is, and
13 I quote:
14 "The conduct of the relevant authorities and
15 agencies in response to or otherwise in relation to such
16 allegations."
17 I hope that that is self-explanatory. The second
18 paragraph of the terms of reference is very important.
19 It reads as follows:
20 "To inquire into such other matters relating to the
21 Dr Giraldi Home as the Chairman of the Inquiry shall, in
22 his absolute discretion, consider appropriate."
23 The effect of that paragraph, paragraph 2 of the
24 terms of reference, is to give me, as the Chairman of
25 the Inquiry, power at my discretion to expand the

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1 Inquiry's remit to include other matters relating to the
 2 Dr Giraldi Home if I consider that it is appropriate to
 3 do so. I'll come back to that in a moment.
 4 Paragraphs 3 and 4 of the terms of reference require
 5 the Inquiry to find the relevant facts and to report
 6 them to the Government of Gibraltar.
 7 Now, the witness statements mentioned in the first
 8 paragraph of the terms of reference were made, all of
 9 them were made as long ago as 2006. So the question
 10 arises as to whether I should exercise my power under
 11 paragraph 2 of the terms of reference so as to expand
 12 those terms to include the period from 2006 to date.
 13 I have taken the provisional view -- and I emphasise
 14 provisional -- that the terms of reference should be so
 15 expanded, but that is one of the matters to be
 16 considered at these preliminary hearings. I'll return
 17 to it in due course once I have heard what counsel may
 18 wish to say about it. I certainly will not be making
 19 any final ruling on that question today.
 20 In order to set the scene for a consideration of
 21 that question, namely whether the period to be
 22 investigated should be expanded and extended from 2006
 23 to date, in March of this year the Inquiry issued
 24 a public notice inviting any individual or organisation
 25 who wished to do so to place before it matters of

1 potential relevance to its work. You may have seen the
 2 notice in the press. It explained in detail the nature
 3 and scope of the matters on which the Inquiry wished to
 4 hear from the public, including any allegations critical
 5 of the Dr Giraldi Home and of the conduct of members of
 6 staff towards each other and towards residents at the
 7 Home, and it also gave a date for the receipt of
 8 representations as a deadline.
 9 In the event, no representations whatever were
 10 received by the Inquiry in response to that public
 11 notice.
 12 A further question also arises as to how far back in
 13 time the Inquiry's investigations should go. I've taken
 14 the provisional view -- again I stress provisional --
 15 that the starting date for the Inquiry's investigations
 16 should be November 2002, when the SSA assumed overall
 17 responsibility for the running of the Dr Giraldi Home,
 18 but that too is a matter which will have to be
 19 considered in due course at these preliminary hearings.
 20 There is one qualification to that, namely that one
 21 of the witness statements filed on Ms Hernandez's behalf
 22 is a witness statement by Ms Mandy Spencer Ball, deals
 23 exclusively with the period 2000 to 2002, and it
 24 contains certain allegations.
 25 So far I understand we have been unable to contact

1 Ms Spencer Ball and I don't know whether she will be
 2 attending the Inquiry. But this may be a matter which
 3 will have to be considered as a qualification to my
 4 provisional view that the starting date for the
 5 investigation should be 2002, that's the end of the
 6 contract of Milbury Care Services Limited and the
 7 beginning of the taking over of responsibility by the
 8 SSA.
 9 Now, there are, before I turn to the detailed agenda
 10 for this hearing, two general points which I would like
 11 to make. The first point is perhaps rather an obvious
 12 one but it's also an extremely important one and must be
 13 understood by everyone. This is an Inquiry; it is
 14 not -- I repeat, not -- a criminal trial. No one will
 15 be on trial here. My task is to find the relevant facts
 16 and to report them to the Gibraltar Government. I hope
 17 that it goes without saying that I approach that task
 18 with a completely open mind. It is important that
 19 I make that point, because it has been drawn to my
 20 attention that in the last few days Ms Hernandez has
 21 been accessing Gibraltar social media sites in order to
 22 make highly critical and intemperate statements about
 23 a number of individuals in relation to matters with
 24 which this Inquiry is concerned. She's also publicly
 25 suggested that the independence and integrity of this

1 Inquiry has been compromised. I am not going to go into
 2 further detail of what she said, you may well have read
 3 what she said already. I would like to make it clear,
 4 however, that that is, in my view, a very unfortunate
 5 development, to put it no higher. It is extremely
 6 important for the work of this Inquiry that intemperate
 7 statements about matters which are within its remit
 8 should not be made on social media. It doesn't assist
 9 the Inquiry's work, and I very much hope that no further
 10 such statements will be made. I'll say no more about it
 11 today. I very much hope that I won't have cause to
 12 return to it at any time in the future.
 13 Then returning to the points that I was making, the
 14 general points that I was making, before turning to the
 15 detailed agenda: the second point I would like to make
 16 is also perhaps a rather obvious one, it relates to the
 17 procedure to be adopted at the main hearing of the
 18 Inquiry. I am of course concerned to ensure that
 19 whatever procedure is adopted, it will be fair to
 20 everyone concerned, including in particular those
 21 individuals, authorities or agencies whose conduct may
 22 be or may have been the subject of criticism.
 23 At the same time, I am sure everyone will understand
 24 that I have to ensure that this Inquiry does not turn
 25 into what might be described as a free-for-all. Were

1 that to happen, the Inquiry would be liable to become
2 unmanageable, quite apart from becoming
3 disproportionately lengthy and expensive. So the
4 procedure adopted must inevitably incorporate an element
5 of control in order to prevent that happening.

6 The procedure to be followed at the main hearing is
7 another of the matters which will be considered at these
8 preliminary hearings, and in due course I will hear what
9 counsel and Mr Valarino, if he wishes to say anything
10 about it, would like to say. But again I do not intend
11 to make any ruling on procedure at this stage. The
12 position is that witness statements are to be provided
13 by, I think the deadline is 1 July, and it would be
14 premature to make any decision or ruling about procedure
15 until we have seen the witness statements which are due
16 to be provided by that date. So in other words, that's
17 a matter which will have to be dealt with on 23 July, if
18 submissions are going to be made about it.

19 In a moment I'll invite Mr Englehart to introduce
20 this topic, which is, I think, item 2 on the agenda, and
21 to indicate the general nature of the procedure which
22 I currently -- and I stress provisionally -- have in
23 mind, subject to hearing what counsel may wish to say
24 about it, and subject to seeing the further witness
25 statements which I have just referred to.

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1 I do, however, stress once again, and it cannot be
2 more importantly stressed, that this Inquiry is not
3 a criminal trial, and that obvious fact will inevitably
4 be reflected in whatever procedure is eventually adopted
5 by the Inquiry.

6 So, Mr Englehart, with that introduction, could
7 I ask you to say something about what is currently and
8 provisionally intended?

9 MR ENGLEHART: I am much obliged. Sir, I thought it might
10 be useful for those affected by this Inquiry and their
11 legal representatives to know how inquiries of this sort
12 have been conducted in the United Kingdom recently, for
13 it will be my submission on how this Inquiry should
14 proceed that it should be firmly based on what has
15 generally been done in the United Kingdom in inquiries
16 of the present sort.

17 As the Chairman has said, whatever I may say is of
18 course subject to any submissions that counsel may make
19 today, and it is very much how we see the position
20 at present. I shall in due course be inviting
21 the Chairman to follow the sort of procedure that I have
22 in mind.

23 As the Chairman has stressed, the important point to
24 bear in mind at all stages of an Inquiry such as this is
25 that it is not a criminal or indeed a civil trial, and

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1 procedure which might be appropriate in the case of
2 a trial is not appropriate, or not necessarily
3 appropriate for an Inquiry.

4 It is certainly in the public interest that this
5 Inquiry should follow an efficient and expeditious
6 course, but again as the Chairman has stressed, it is
7 not the function of this Inquiry to punish or to
8 compensate individuals or organisations. As you, sir,
9 have pointed out, your terms of reference require you to
10 inquire into and to report. The overriding principle to
11 bear in mind is that, with an Inquiry such as this, it
12 is not intended to be an adversarial process.

13 Well, as has been publicised, this Inquiry has
14 established its own website, and onto this website will
15 be uploaded not only a considerable amount of underlying
16 documentation but also, in due course, witness
17 statements from witnesses whose evidence is to be taken
18 into account. All this information will be readily
19 accessible and open to all, and the materials on the
20 basis of which you, sir, will ultimately be writing your
21 report is intended to be and will be wholly transparent
22 and available for public examination on the website.

23 Now, even at this early stage, we can see that there
24 are a considerable number of potential witnesses.
25 However, it is not intended that everyone who provides

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1 a witness statement should inevitably be required to
2 attend in order to give oral evidence. It will not be
3 necessary for a witness to have given oral evidence for
4 a witness's evidence to be taken into account. Indeed,
5 it is anticipated that there will be quite a number of
6 witnesses from whom it will not be necessary to hear
7 oral evidence. The intention would be only to call as
8 witnesses those where some elaboration beyond what
9 appears in a witness statement might be thought to be
10 helpful.

11 Now, obviously those who are invited to give oral
12 evidence will be notified of that in advance, and
13 an intended timetable for the calling of witnesses will
14 be prepared, and we will have some clearer indication
15 about that, as the Chairman has mentioned, after July 1
16 has passed.

17 Now, against that background, turning to the
18 substantive hearing itself, I would propose to make
19 a short introductory opening. The purpose of this
20 opening would be merely to describe, in the most general
21 terms, the subject matter of the Inquiry and the nature
22 of the evidence which will be given. Again, I emphasise
23 that it is not necessary or appropriate to have a full
24 opening of the kind which might be suitable at a trial.
25 Then after the opening, those witnesses who are to give

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1 oral evidence should be called.
 2 In the first instance, questioning of a witness is
 3 conducted solely by counsel to the Inquiry. If there
 4 are some particular questions which a representative of
 5 some other person or organisation would like to have put
 6 to a witness, those questions should be put forward in
 7 writing to the solicitors to the Inquiry before the
 8 witness gives evidence, and counsel for the Inquiry will
 9 put any such questions, subject to counsel considering
 10 that such questions are appropriate.

11 The purpose of the examination of witnesses at
 12 an Inquiry such as we have here is solely to elicit
 13 information, and I should stress there is no question of
 14 any case having to be put to a witness such as would be
 15 expected in a court. In keeping with the principle that
 16 this is not an adversarial process, there is not
 17 cross-examination by other parties.

18 At the conclusion of questioning by counsel to the
 19 Inquiry, the representative of the witness, if the
 20 witness is represented, may be asked if he or she would
 21 like to ask any questions by way of brief
 22 re-examination. In general, however, there is no
 23 cross-examination such as one is familiar with in
 24 a court by any other legal representative.
 25 Nevertheless, if there is some particular question which

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1 it is thought essential to ask a witness, permission to
 2 ask a question or series of questions may be sought from
 3 the Chairman, and a request for permission should be
 4 accompanied by an explanation of why it is sought to ask
 5 the question or questions, and any such additional
 6 questioning is likely to be subject to strict time
 7 limits. So much for the calling of oral evidence.

8 After the evidence from the witnesses who have given
 9 evidence orally has been concluded, it is suggested
 10 there should be time for the preparation of written
 11 submissions. When those have been filed, there should
 12 be a concluding day when counsel to the Inquiry may
 13 summarise the issues on which, sir, you are to report.

14 There will also be an opportunity for any concluding
 15 oral observations which an advocate may wish to make.
 16 But, again, I anticipate that there is likely to be
 17 a fairly strict timetable for the making of oral
 18 submissions over and above what will already have been
 19 put in writing.

20 Now, finally, I should make mention of one matter
 21 which is generally felt to be important in order to
 22 preserve fairness to those likely to be affected by
 23 an Inquiry such as this. These are what is known
 24 colloquially as Salmon Letters. They are so called
 25 because of a recommendation made as long ago as 1966 on

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1 a Royal Commission on Tribunals of Inquiry chaired by
 2 the then Lord Salmon.
 3 Salmon Letters are commonly sent to any person about
 4 whom the chairman of an Inquiry is minded to make
 5 a significant criticism. The letter will summarise the
 6 potential criticism and give the recipient
 7 an opportunity of answering it before the report is
 8 finalised. So that is an added safeguard in the
 9 interests of fairness to anyone who may be adversely
 10 affected by a report.

11 Sir, that's a brief run through the proposed
 12 procedure. Of course I emphasise that it is subject to
 13 any submissions that you may hear today, sir, but I hope
 14 that it is of some use by way of an introduction in any
 15 event.

16 THE CHAIRMAN: Thank you very much, Mr Englehart. Now,
 17 I know that a number of counsel have raised questions of
 18 procedure, including you, Mr Vasquez, and I'll certainly
 19 hear anything that any counsel wants to say about that
 20 today. I stress today, because, as I have indicated, it
 21 won't be possible finally to determine matters of
 22 procedure until the next hearing, by which time we
 23 should have the witness statements. So I am not
 24 encouraging lengthy submissions on this point today,
 25 because there will be a full opportunity for that on

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1 23 July. But if anyone would like to say something
 2 briefly about it, of course I will hear it.

3 Mr Vasquez, do you want to say anything about it
 4 today?

5 MR VASQUEZ: Very, very briefly, sir.

6 THE CHAIRMAN: Yes.

7 MR VASQUEZ: My main concern at the moment is actually the
 8 timetabling, not so much because of counsel but because
 9 it has been expressed to me by the persons who
 10 I represent, some of them to prepare a statement by
 11 1 July may be a little bit --

12 THE CHAIRMAN: A little bit tight.

13 MR VASQUEZ: -- tight. I have one who has already done it,
 14 so it very much depends on the situation. I would hope
 15 that should that become an issue later on, and we are
 16 going to try and meet the deadline, that I will write to
 17 the solicitors and see if we can get a little more time,
 18 but we are conscious that time is important for
 19 the Tribunal.

20 In an application for funding, I have raised certain
 21 issues which are in writing. I don't think that there
 22 is any point in my --

23 THE CHAIRMAN: No, I have read that, and I have seen it,
 24 Mr Vasquez.

25 MR VASQUEZ: I think they are more apprehensions rather than

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1 applications at this stage, but it was initial thoughts
 2 that I had, and I don't want to prolong matters today by
 3 going through them, and I think, and have heard
 4 yourself, sir, and counsel, and I am aware that you are
 5 all very conscious of the issues of fairness, and that
 6 is one of the main concerns that I have.
 7 So I do not think I want to prolong matters beyond
 8 what I have already said today, and I think we will just
 9 see how it goes along.
 10 THE CHAIRMAN: See how it goes.
 11 MR VASQUEZ: There is only one issue that I think you are
 12 coming to, which is on the issue of representation, we
 13 will perhaps get some direction as to what might happen
 14 in relation to people who have similar situations.
 15 I don't know how my Lord --
 16 THE CHAIRMAN: We will have to see how far we can deal with
 17 that.
 18 MR VASQUEZ: I am obliged, sir.
 19 THE CHAIRMAN: Thank you very much, Mr Vasquez. Anybody
 20 else like to say anything else about procedure?
 21 MR MILES: Mr Chairman, of course this is the first Inquiry
 22 I have been involved in, and I would thank Mr Englehart
 23 for outlining the procedure.
 24 The difficulty that I have, and I represent
 25 Mrs Gabriella Llambias, I don't appear to have received

1 any substantial allegations against her, that is
 2 a witness statement of any nature against her, and of
 3 course the next step is preparing our witness statement,
 4 the difficulty I face is I don't see --
 5 THE CHAIRMAN: You are not quite sure what you are
 6 answering.
 7 MR MILES: Yes.
 8 THE CHAIRMAN: Mr Miles, I think that's a very fair point
 9 you make, and you have already made it in writing, and
 10 I have seen your letter to that effect, and of course
 11 I will take that into account. I think we will wait
 12 until the witness statements are in, and if there is no
 13 further involvement of your client and no further
 14 allegations are made in relation to her, it may be that
 15 we will decide there is no need for her to be party to
 16 the Inquiry any more. I can't rule on that today,
 17 though, I will need to see what the witness statements
 18 say. But obviously it's a matter which will be on the
 19 agenda on 23 July, and it may well be, or we may be able
 20 to deal with it prior to that date once we have seen
 21 what the content of the witness statements is.
 22 MR MILES: I am grateful.
 23 THE CHAIRMAN: Anyone else like to say anything about
 24 procedure? Right. Thank you very much for that. Let's
 25 move on with the agenda. The agenda, by the way, if you

1 don't have copies of it, there are copies available in
 2 court if anybody needs one.
 3 The third item on the agenda, which is where we have
 4 now got to, relates to issues relating to representation
 5 and funding. I am going to ask Mr Azopardi if he would
 6 be good enough to introduce this item.
 7 Yes, Mr Azopardi.
 8 MR AZOPARDI: Sir, many thanks for that. I intend to make
 9 just some very preliminary remarks on representation and
 10 funding. Section 11 of the Commissions of Inquiry Act,
 11 and I paraphrase, indicates that any person whose
 12 conduct is subject to inquiry or who is in any way
 13 implicated or concerned in the matter under inquiry is
 14 entitled to be represented by counsel at the Inquiry.
 15 Of course, the distinction that we would make is that,
 16 while there might be a right to representation, it does
 17 not necessarily mean that there is a right to funding
 18 throughout the terms of the Inquiry.
 19 But in any event, the Inquiry is conscious, and
 20 the Chairman has made those remarks, of the need to
 21 balance the public interest and the interests of
 22 fairness to all the persons concerned or implicated in
 23 any way, and having regard to that, thought has been
 24 given to ensuring that there is an adequate framework so
 25 that there is funding for representation for persons who

1 might be eligible.
 2 There is a protocol that has been published and it's
 3 on the Inquiry website, it has been given to a number of
 4 people who have been written to. The protocol is
 5 intended to set out a criteria for eligibility, the
 6 principles on which the Inquiry will grant and consider
 7 funding awards, the mechanics for applications, and the
 8 process for payment. We have endeavoured to ensure that
 9 that process should be transparent and fair.
 10 The protocol, and now I'm just going to make some
 11 remarks on the protocol itself, even though it's
 12 publicly available, but for the purposes of providing
 13 information today. The protocol, as I say, is available
 14 on the website. It has been modelled on the protocol on
 15 funding used in the Leveson Inquiry. The protocol sets
 16 out, as I say, general framework that provides
 17 principles, mechanics and process. So it sets out that
 18 a person attending the Inquiry may be eligible if they
 19 are going to give evidence or produce documents, and if
 20 in the opinion of the Chairman there is a particular
 21 interest of that person in the proceedings or outcome of
 22 the Inquiry. We have regard in the protocol to issues
 23 of conduct or possible criticism or possible prejudice,
 24 and also, in the context of assessing a funding award,
 25 whether it is fair, necessary, reasonable or

1 proportionate.
 2 Also important, and it has been mentioned in certain
 3 letters, to have regard to the issue of cost. The
 4 Inquiry has power under the protocol -- and maybe not
 5 for today, but for comment at the subsequent preliminary
 6 hearing -- to consider whether there should be common
 7 legal representation of certain parties. That is in the
 8 public interest, in the context of saving cost, but
 9 always ensuring fairness of representation.

10 The protocol provides rates for payment of counsel
 11 and solicitors. It also provides for caps on funding
 12 awards up to a certain level for the provision of
 13 witness statements, and also provides for hourly caps
 14 per week in paragraph 15. Even though it does that, the
 15 Inquiry has designed it with a view to ensure that there
 16 is sufficient flexibility for the Chairman to deliver
 17 fairness and adequate representation. The rates are not
 18 too dissimilar to rates that would be granted on legal
 19 assistance, although I accept that they are lower in
 20 some cases. The framework certainly provides for much
 21 higher funding awards than would be available on legal
 22 aid in this jurisdiction.

23 I end my preliminary remarks on funding just by way
 24 of information to say that we have already, the Inquiry
 25 has already processed a number of applications and has

1 made 19 funding awards, limited up to 5 July, and that
 2 date has been chosen because we think that by then we
 3 should have witness statements of a number of
 4 individuals, and that will then allow us, on receipt of
 5 a second funding application, to assess and ascertain
 6 the future involvement and the need for legal
 7 representation of parties subsequent to 5 July.

8 Thank you.
 9 THE CHAIRMAN: Thank you very much, Mr Azopardi.
 10 So far as representation is concerned, Mr Vasquez,
 11 and perhaps a number of you, would like guidance today.
 12 It's going to be very difficult, in fact I think
 13 impossible, to give any useful guidance today until all
 14 or at least most of the witness statements have been
 15 provided and we can see what they contain. That's to
 16 say some time after 1 July, which is the deadline for
 17 providing witness statements, although it's not
 18 an absolute deadline, I would like to make clear to
 19 Mr Vasquez.

20 So this is certainly an item, an important item
 21 which will have to be considered carefully on 23 July,
 22 and I will propose to do that. But if anyone wants to
 23 say anything about representation today, I will of
 24 course hear them.

25 As to funding, and obviously representation and

1 funding are fairly intimately connected, as Mr Azopardi
 2 has made clear, they are separate considerations but
 3 they overlap in relation to funding. As Mr Azopardi has
 4 explained, limited funding at public expense may be
 5 available under the terms of the protocol, which is to
 6 be found on the Inquiry's website. I would, however,
 7 sound a note of caution, if I may, about the funding of
 8 lawyers' fees at public expense. In deciding whether to
 9 make a funding award under the terms of the protocol,
 10 and in relation to the amount of any funding, I have to
 11 have regard -- I have to have regard -- among other
 12 things, to, and I quote from paragraph 1(a) of the
 13 protocol:

14 "The need to avoid any unnecessary costs to public
 15 funds."

16 In other words, unnecessary cost to the Gibraltar
 17 taxpayer. That is an important provision of this
 18 protocol, because without some such provision as that,
 19 it's only too easy for an Inquiry of this kind to become
 20 disproportionately lengthy and expensive. In other
 21 words, if I may be excused for using the expression,
 22 a lawyer's beanfeast. Of course I am not suggesting for
 23 a moment that any lawyer present today regards this
 24 Inquiry in that light. The only point I would like to
 25 make is that funding at public expense is limited, and

1 will not extend to costs which are unnecessarily
 2 incurred. That, no doubt, is why, among other things,
 3 I have power under paragraph 9 of the protocol to direct
 4 that one or more parties to the Inquiry should be
 5 represented by the same counsel where that does not
 6 create a conflict of interest. One of the matters which
 7 I shall have to consider on 23 July is whether, and if
 8 so in what circumstances, that power could be
 9 appropriately exercised in relation to this Inquiry.

10 Another point I would make about the protocol is
 11 that, although it gives me -- it is flexible, as
 12 Mr Azopardi has rightly said, and it gives me discretion
 13 in a number of respects in deciding whether or not to
 14 make an award under it and as to the terms of any award
 15 which I decide to make, I have no power to change the
 16 terms of the protocol itself. Any change in its terms
 17 would require the approval of the Gibraltar Government
 18 pursuant to section 13 of The Commissions of Inquiry
 19 Act. So there is no question of my being able to alter
 20 the terms of the protocol itself, and that's something
 21 which needs to be borne in mind by everybody applying
 22 for funding under it.

23 The only other point I would make about the funding
 24 protocol is that, while the Inquiry is still in the
 25 process of taking shape, that's to say as it is at the

1 moment, I have decided to adopt a stage by stage
2 approach to funding applications, hence the existing
3 applications are all limited to the period up to 5 July.
4 That is because I have to be careful not to saddle the
5 Gibraltar Government and hence the Gibraltar taxpayer
6 with future obligations in relation to funding which
7 subsequently turn out to have been inappropriate or
8 unjustified. So at the moment we are adopting a stage
9 by stage process until it becomes clear exactly how the
10 main hearing will proceed, and who will be involved in
11 it, and how they will be represented.

12 Now, if anybody would like to say anything about
13 representation/funding, of course I will hear you today.
14 I hope it will be brief, because, as I hope I have
15 explained, this is not really a matter that we can deal
16 with in any detail today, pending receipt of the witness
17 statements. But if anybody would like to say anything,
18 I will certainly hear them. Mr Vasquez, do you want to
19 say anything about that?

20 MR VASQUEZ: I don't think so at this stage, sir, thank you.

21 THE CHAIRMAN: Anybody else like to say anything about
22 representation or funding? Right, thank you very much
23 for that. Then I think we can proceed speedily --
24 perhaps I should at this stage make it clear for the
25 benefit of the transcribers that I am not planning on

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1 having a break, because I hope it won't be necessary,
2 and as we are proceeding quite expeditiously at the
3 moment, I think it won't be necessary but if you would
4 like a break you only have to say and of course you can
5 have one.

6 Right, well, item 4 is submissions, representations
7 on the provisional list of issues and finalisation of
8 a list of issues.

9 I referred to this earlier, and there is available
10 in court, if you haven't already seen it, a provisional
11 list of issues, which I think is already on the website.
12 There is a qualification to it, which I mentioned
13 earlier, that the witness statement of Ms Spencer Ball
14 relates to allegations or makes allegations relating to
15 the period 2000 to 2002, so it will fall for
16 consideration, once we have seen what all the witness
17 statements say, whether or not the period should be
18 extended further back. I rather hope we don't need to
19 do that, because it's getting really a long time ago,
20 but my terms of reference require me to investigate the
21 allegations contained in the witness statements, and
22 Ms Spencer Ball's witness statement does contain some
23 such allegations. But subject to that, the provisional
24 list of issues sets out those issues which, at the
25 moment provisionally again, we think are appropriate to

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1 be investigated at the hearing.

2 Now, Mr Valarino, would you like to say anything
3 about these issues? I think you have a point on one of
4 them.

5 MR VALARINO: Yes, I would.

6 THE CHAIRMAN: Would you like to come more up to the front
7 so I can hear?

8 Mr Valarino, you can either say what you would like
9 to say today, or we can deal with the whole matter on
10 23 July, if you can be here then, but I am in your hands
11 and we will do what you will find more convenient.

12 MR VALARINO: If the chair agrees, I will go today.

13 There is four things I want to address you on, sir,
14 one is on the terms of reference of the Inquiry. I note
15 that on item 3 of the terms of reference you say that
16 you have to report the facts to the Government.

17 THE CHAIRMAN: Find the relevant facts and report them, yes.

18 MR VALARINO: My concern is, sir, that there seems to be no
19 requirement of the Inquiry to make recommendations on
20 these findings to the Government and my representation
21 at least to you, sir, using your powers under the
22 Commissions Act to actually include recommendations in
23 your report.

24 THE CHAIRMAN: Right. I can answer that very quickly,
25 actually. You are right, the terms of reference do not

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1 include making of recommendations, and that is not
2 a thing which I have been asked to do. It's not
3 a matter that I have been asked to approach. I am bound
4 by the terms of reference as they stand. I am not in
5 a position to make recommendation if I have not been
6 invited, as Chairman of this Inquiry, to do so. So
7 recommendations are out. All that I have been charged
8 with is finding facts and reporting them. It will then
9 be a matter for the Gibraltar Government what, if any,
10 recommendations they may wish to make or what changes
11 they may wish to make.

12 MR VALARINO: Sir, do you not have powers under the Act to
13 actually make any recommendation you think you ought to
14 make?

15 THE CHAIRMAN: I am not aware of any power which would
16 enable me to extend the terms of reference beyond what
17 the Government has told me.

18 MR VALARINO: Sir, the other matters I wish to address you
19 upon is on the matter of the issues.

20 THE CHAIRMAN: I think it's issue 15, was it?

21 MR VALARINO: I have looked through that, sir, and there are
22 other issue I would raise, if I may. There are three
23 matters, your Lordship.

24 THE CHAIRMAN: Right.

25 MR VALARINO: One would be on issue number 4. It says:

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1 "Whether the staff at the Home were sufficiently
 2 trained, organised and supervised and appraised".
 3 I think that should be amended to include:
 4 "Were they actually security vetted? Were
 5 background checks carried out?"
 6 THE CHAIRMAN: Were reference checks carried out?
 7 MR VALARINO: Yes, and whether they were vetted for
 8 criminality before appointment.
 9 THE CHAIRMAN: So if we did that, we would go:
 10 "and (e), were reference checks carried out?"
 11 MR VALARINO: Yes, "and, if so, to what extent and to what
 12 depth?"
 13 THE CHAIRMAN: "And, if so, to what extent?"
 14 MR VALARINO: And what depth, sir.
 15 THE CHAIRMAN: I am not altering this, I am simply making
 16 a note at the moment of what you are suggesting. Right.
 17 MR VALARINO: In respect of issue 15, I have some difficulty
 18 with the word "inappropriate punishment".
 19 THE CHAIRMAN: Right.
 20 MR VALARINO: The residents of the Home are indeed adult and
 21 I think it is inappropriate to punish adults in any care
 22 placement. I think that by having the word
 23 "inappropriate" before the word "punishment" would imply
 24 that punishment is acceptable in a care placement, and
 25 I am of the view, sir, that it could well mislead the

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1 Inquiry into finding that there was punishment, and it
 2 was justifiable or inappropriate, of adults. I think
 3 that is ...
 4 THE CHAIRMAN: At the moment, as it stands, I would have to
 5 consider whether any punishment is or is not
 6 inappropriate, so that I would be limiting my findings
 7 to: was there encouragement of inappropriate behaviour
 8 and punishment?
 9 MR VALARINO: Sir, I will submit that any punishment of
 10 an adult is itself wrong.
 11 THE CHAIRMAN: Right. If that is the case, and if I made
 12 a finding to that effect, then it would be
 13 inappropriate, so it would still fall within the terms
 14 of the issue as drafted.
 15 MR VALARINO: The last point, my Lord, is 21, which reads:
 16 "Did the SSA promulgate a code of conduct for
 17 members of staff at the home and if so, were copies
 18 readily available to staff?"
 19 I think the issue should be extended to find out
 20 whether the code of conduct actually formed part of the
 21 employees' induction to the job. The code of conduct,
 22 was that included in the initial training of staff?
 23 THE CHAIRMAN: How would you like the issue to read, then?
 24 MR VALARINO: Well, did the SSA promulgate a conduct of
 25 members of staff at the Home? Were copies readily

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1 available to the staff? Was the content of the code of
 2 conduct included in the initial training of staff? And
 3 indeed was it included in the ongoing training of staff?
 4 THE CHAIRMAN: "If so, were copies readily available to
 5 staff and did any such" -- sorry, I am just trying to
 6 draft -- "code form part of the training of staff",
 7 something like that?
 8 MR VALARINO: Yes.
 9 THE CHAIRMAN: Yes, thank you very much, Mr Valarino.
 10 Well, if I could just ask counsel: I'm not presently
 11 minded to alter the terms of issue 15, which I think is
 12 fair enough as it stands. Mr Englehart, do you want to
 13 say anything about that?
 14 MR ENGLEHART: Sir, I would respectfully agree.
 15 A submission can in due course be made that any
 16 punishment would be inappropriate of any sort, and that
 17 would come within that issue as drafted.
 18 Sir, on --
 19 THE CHAIRMAN: What about 4 and 21?
 20 MR ENGLEHART: Dealing with 21 while it's fresh in my mind,
 21 the last one, there would appear, although I appreciate
 22 that drafting on one's feet is never a very satisfactory
 23 process for anyone, but there would appear from the way
 24 it was being dictated, to be a serious overlap with
 25 issue 4.

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1 THE CHAIRMAN: Exactly, which already includes training.
 2 Yes, I agree with that.
 3 MR ENGLEHART: So I would respectfully suggest that the
 4 concerns needn't come within a revision of the issues.
 5 THE CHAIRMAN: Right. What about adding a (e) in 4, were
 6 reference checks carried out, and if so, to what extent,
 7 or do you think that's included --
 8 MR ENGLEHART: The problem with that, sir, as I see it, is
 9 this: it is fair to say that these issues have been
 10 drafted in fairly wide terms, that's because, as will be
 11 known to no doubt many in this room, that the witness
 12 statements are phrased in fairly wide terms, as they
 13 were drafted for the Industrial Tribunal.
 14 Now, the supposed addition is honing down into
 15 a point of detail which may be of some relevance but at
 16 the end of the day, isn't as such made in the witness
 17 statements. You of course have power, sir, under
 18 paragraph 2 to extend your Inquiry, but I would
 19 respectfully submit that some caution should prevail
 20 before one narrows down these admittedly fairly widely
 21 drafted terms of the issues into a point of detail such
 22 as this.
 23 THE CHAIRMAN: I mean, I suppose in practical terms if that
 24 were added as an extension of issue 4, the Inquiry would
 25 have to look at the basis on which every single member

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1 of staff was employed over the entire period.
 2 MR ENGLEHART: That was a concern, because the extent to
 3 which you, sir, would want to get involved with the
 4 precise detail of each employee's induction is possibly
 5 debatable. But, sir, I would respectfully suggest that
 6 it's better left in admittedly fairly broad terms as it
 7 stands at the moment.
 8 THE CHAIRMAN: Thank you. Would anyone else like to say
 9 anything about the list of issues? Well, Mr Valarino,
 10 thank you very much for what you have said. I fully
 11 understand the points you have made, but I am not
 12 persuaded that it would be useful to extend the terms of
 13 reference as you have suggested, as Mr Englehart has
 14 pointed out, the proposed addition to issue 21 is
 15 already covered by issue 4, and in relation to issue 4
 16 itself, in my judgment it would not be appropriate in
 17 practical terms to extend it so that I would have to
 18 investigate every single incident of employment all the
 19 way through the period of investigation.
 20 So for those reasons, while thanking you for what
 21 you have said, Mr Valarino, I am going to leave the list
 22 of issues as it is. It being the fact that nobody has
 23 made any further submissions, I will take it, unless
 24 anybody wants to say something at the last moment --
 25 Ms Guzman, do you want to say something?

1 MS GUZMAN: Sir, the only thing we would say at this stage
 2 is that we have no concerns with the list of issues as
 3 drafted at present on the basis of the very widely
 4 drafted. The only reservation that I would express is
 5 that at the next preliminary hearing there may well be
 6 submissions to be made in relation to that, once we
 7 actually have receipt of further material.
 8 THE CHAIRMAN: Right.
 9 MS GUZMAN: At the moment it's purely based on the
 10 information we have, which is limited in itself.
 11 THE CHAIRMAN: So you say it would be premature formally to
 12 adopt this as a finalised list until we have seen the
 13 witness statements?
 14 MS GUZMAN: Yes, sir, that's certainly our position. But in
 15 general terms as it stands now, we have no objections or
 16 concerns with the list, subject to that reservation, and
 17 it may well be that there is nothing further to add at
 18 the next hearing, but until such time as we have the
 19 material, we cannot say.
 20 THE CHAIRMAN: I fully accept what you say, Ms Guzman, and
 21 so for that reason I will not formally finalise this
 22 list today, but I may perhaps express the hope that at
 23 the next hearing we can do that without too much further
 24 submission. Thank you very much.
 25 Right, that deals with item 4 on the agenda.

1 Item 5, proposed timetable, overview by counsel to the
 2 Inquiry. Mr Azopardi, would you be good enough to
 3 introduce that?
 4 MR AZOPARDI: Thank you, sir. Item 5 on the agenda is
 5 intended to provide public information as to the
 6 progress of the work of the Inquiry so far. The Inquiry
 7 is conscious that it was established towards the end of
 8 last year, it has sought to maintain as much public
 9 information as possible, but a lot of the preliminary
 10 work of course has happened behind the scenes. So the
 11 purpose of item 5 is to a large extent provide some
 12 information on the backdrop over the last few months and
 13 also as to how we see the work of the Inquiry going
 14 forward.
 15 We are grateful for the co-operation provided so far
 16 by public authorities, who have thrown open their files
 17 on our request, and indeed it has been an important part
 18 of our preliminary work to review documents held by The
 19 Care Agency for relevance. Indeed, that process and
 20 exercise has taken up a lot of the Inquiry team's first
 21 few months.
 22 To give you an idea, there has been a sift for
 23 relevant documents of over 80 boxes of material. There
 24 is a sift of what we call hard documents but also
 25 electronic disclosure requests have been sent to the

1 various relevant entities. We have been in discussions
 2 with the public authorities concerned on documentation.
 3 The purpose of that is not only to ascertain relevance,
 4 but also to enable then the compilation of an Inquiry
 5 bundle so that we can use it at the main hearing, and
 6 also -- within the umbrella -- under the umbrella of the
 7 Inquiry bundle, a core documents bundle which would be
 8 of use at the Inquiry.
 9 The volume of papers that have ascertained as
 10 broadly relevant to the issues that are set out in the
 11 witness statements are of such magnitude that the
 12 decision has been taken in principle that it would be of
 13 greater assistance for the Inquiry bundle to be held on
 14 an electronic platform. For that reason, while there
 15 might be a hard copy Inquiry bundle for use of
 16 witnesses, it is not intended for there to be too many
 17 copies of the Inquiry bundle compiled for costs reasons.
 18 It is indeed cheaper and, in the long run, will reduce
 19 costs for relevant documents to be uploaded onto
 20 an electronic platform so that the Inquiry can then
 21 quickly search in seconds rather than days for relevant
 22 material.
 23 Again to give people an idea of the volume of
 24 papers, around 35,000 pages have been scanned, which are
 25 being uploaded onto an electronic platform, special

1 contractors have been brought in to construct the
 2 electronic platform, which will be ready -- certainly we
 3 are on target that it will be ready, it is being
 4 constructed in London, but it will be ready by the
 5 beginning of July. It is our hope that that should be
 6 so, and it will certainly facilitate the work of the
 7 Inquiry.

8 The intention behind the electronic platform, once
 9 it is constructed, is that it will also facilitate
 10 access by other counsel of documents. We are in
 11 principle not intending to give access to the whole
 12 Inquiry bundle to all counsel, but rather to ringfence
 13 relevant parts of the Inquiry bundle to individual
 14 counsel, in the interests of confidentiality. It is
 15 certainly the in principle intention of the Inquiry, we
 16 will give access to the core documentation of the
 17 Inquiry to all counsel.

18 That is what I wanted to say in relation to the
 19 electronic platform itself. As has been stated, there
 20 has been a request made that witness statements be
 21 served by various people by 1 July. It is important to
 22 the work of the Inquiry, subject to extensions being
 23 granted, as reasonably requested, that those deadlines
 24 be met, because it will certainly facilitate the next
 25 few months' work and allow the progress of the Inquiry

1 on the targeted dates.

2 Apart from the requests for witness statements,
 3 there is the possibility that additional witness
 4 statements will be requested from other parties and
 5 individuals not written to yet. That will depend on
 6 some of the witness statements being filed and other
 7 documentation that we are expecting. Because I do make
 8 the point also that, while the documents work has to
 9 a very large extent finished in the sense that we have
 10 sifted many, many documents, for relevance, it has not
 11 concluded. It has not concluded because there still
 12 remain outstanding requests for disclosure from certain
 13 public authorities and we are expecting to receive
 14 further documents in the next few weeks. We are hopeful
 15 that that will happen, and that will again -- is
 16 important for us to keep to the desired timetable.

17 As the Chairman has already indicated, it is
 18 intended that there should be a second preliminary
 19 hearing on 23 July where procedural rulings and other
 20 case management directions will be given. Today's
 21 preliminary hearing was very largely a case management,
 22 an initial case management hearing. The second one will
 23 hopefully deliver finality on the list of issues and on
 24 other procedural matters which will then enable the main
 25 hearing to happen on the targeted date. As the Chairman

1 has indicated, it is the Inquiry's hope that the -- and
 2 certainly the settled view at this stage -- main hearing
 3 will commence on 30 September of this year.

4 Mr Chairman, I think I have said all I had to say on
 5 that.

6 THE CHAIRMAN: Thank you very much, Mr Azopardi. I would
 7 like to repeat, really, what Mr Azopardi said in
 8 relation to the target date. Monday 30 September for
 9 the commencement of the main hearing. That is a target
 10 which we intend to hit, if at all possible, and I very
 11 much hope that these outstanding matters to which
 12 Mr Azopardi has referred will be resolved as soon as
 13 possible and that outstanding requests for disclosure
 14 will be met, again as soon as possible, so that we can
 15 stick to the proposed timetable, because it is
 16 important, in everyone's interests, now that this
 17 Inquiry is, as it were, up and running, that the main
 18 hearing should take place as soon as it is practically
 19 possible to hear it.

20 So that is what we are planning, and I very much
 21 hope that all those who have been asked to assist in any
 22 way in the work of the Inquiry will bear that in mind,
 23 and that outstanding requests for disclosure and other
 24 such matters will be dealt with as quickly as it is
 25 possible to deal with them.

1 Mr Vasquez, do you want to say something about the
 2 timetable?

3 MR VASQUEZ: Just a slight clarification, sir. Sir, you
 4 were at pains at the beginning of the Inquiry to say
 5 that everything was public unless you said otherwise.
 6 I have just heard Mr Azopardi say that the electronic
 7 platform will be ringfenced in relation to counsel
 8 because there might be issues of confidentiality.
 9 Unless I am failing to understand something I think
 10 there seems a bit of incompatibility with the
 11 statements.

12 THE CHAIRMAN: It's one thing to say what happens here in
 13 terms of what is said in this place, and as I have said,
 14 today's hearing is entirely public; it's quite another
 15 matter whether all the documentary evidence should be
 16 disclosed to everybody involved in the Inquiry, because
 17 one of the dangers of that would be that the Inquiry
 18 would be likely to become unmanageable. But that's
 19 something we will have to consider when the time comes.
 20 It may be, if you want to make submissions about that,
 21 Mr Vasquez, I think that's a matter which we will have
 22 to consider seriously at the next hearing. Is that all
 23 right?

24 MR VASQUEZ: Thank you.

25 THE CHAIRMAN: What I was going to say about the next

1 hearing, if that's a good moment to do it, is that we
 2 have identified a number of matters which are going to
 3 have to be resolved at the next hearing, and that may be
 4 one of them. What I would ask people to do is, if you
 5 wish -- if you, that's to say counsel or Mr Valarino in
 6 person, wish to make submissions at the next hearing,
 7 could you please provide the Inquiry with a written
 8 skeleton argument -- it needn't be too extensive -- by
 9 I would suggest close of business by Friday 12 July.
 10 Then counsel to the Inquiry will have another seven days
 11 in which to produce a skeleton in response, if that is
 12 thought to be appropriate. So that would be close of
 13 business on Friday, 19 July. Then the hearing will take
 14 place on the Tuesday. Is that all right with everyone?
 15 I do appreciate these time limits are fairly tight, but
 16 as Mr Vasquez himself appreciates, we have to get on
 17 with this as quickly as we reasonably can.

18 I hope that is a fair direction, and it will
 19 certainly assist me to have arguments in writing prior
 20 to the hearing itself, because it will make it much
 21 easier for me to produce a ruling sooner than I might
 22 otherwise have been able to do.

23 Thank you very much for that.

24 Item 6, settlement of list of persons within
 25 section 11 of the Act. Well, Mr Azopardi I think

1 referred earlier to section 11. I am not going to take
 2 time by reading it out. It involves anybody who is in
 3 effect implicated in the Inquiry or against whom
 4 allegations were made. We have a list of such persons.
 5 A number of them we have so far unfortunately been
 6 unable to contact. But we are still trying to do so.
 7 I am not going to name those persons because that would
 8 not be fair. We are making an attempt to contact
 9 everyone who might fall, on any possibility, within
 10 section 11 of the Act. I think that's all that need be
 11 said about that unless there is anything else,
 12 Mr Azopardi or Mr Englehart? No.

13 Right. So that's really for information. So is
 14 item 7. I consider that it would be helpful for me to
 15 visit the Dr Giraldi Home, simply to see the layout so
 16 that I can understand in my mind when a reference is
 17 made to a particular flat in the building, I have seen
 18 it and I know what its layout is. I am not proposing to
 19 take any sort of evidence on that visit, it's simply for
 20 my own information. What I propose to do, Ms Guzman, is
 21 to arrange with your clients a convenient date and time
 22 for me to make that visit. I would propose, unless you
 23 think otherwise, that counsel should be notified of the
 24 date and time and obviously, if they wish to attend, may
 25 do so and so may any person within section 11 who may

1 not be represented: if they want to come along as well,
 2 then of course they may do so. But I do stress that
 3 this is not an evidence-taking exercise at all, it's
 4 simply to enable me to visualise what the building looks
 5 like, how it's laid out, so that when references are
 6 made in the evidence, it's much easier for me to
 7 understand what the witness is talking about.

8 So that, I think, is all I need to say about the
 9 proposed visit.

10 We are now right down to the end of the agenda with
 11 the familiar item, any other business. No one has
 12 notified any other business. I have actually one
 13 further point which I would like to raise now, because
 14 it is quite an important point affecting the main
 15 hearing and my duty to, as the terms of reference put
 16 it, find the relevant facts.

17 There has been much discussion by lawyers in recent
 18 years as to the way in which an Inquiry like this should
 19 approach that task. Provisionally, and I've said that
 20 several times this morning, so here is another
 21 provisionally, and subject to any contrary submissions
 22 by anyone, counsel or in person, I am minded to adopt
 23 the approach taken by Mr Robert Francis QC in his recent
 24 report into the Mid Staffs NHS Trust, and that is to
 25 say, and I will quote here -- it's not actually a direct

1 quotation but it is what appears in his report, and I am
 2 going to read it through and then I will repeat it for
 3 anyone who may want to make a further note of it and the
 4 approach which I am proposing to adopt provisionally is
 5 as follows:

6 "To express my findings as I see fit without being
 7 required to adhere to some particular standard of proof,
 8 provided of course that the findings are logically
 9 founded on the evidence before the Inquiry and provided
 10 that anyone adversely affected by a finding has had
 11 a full opportunity to deal with it."

12 I will just read that again, because if anybody is
 13 worried about it, we will have to consider it at the
 14 next hearing:

15 ""To express my findings as I see fit without being
 16 required to adhere to some particular standard of proof,
 17 provided of course that the findings are logically
 18 founded on the evidence before the Inquiry and provided
 19 that anyone adversely affected by a finding has had
 20 a full opportunity to deal with it."

21 I would just add that the last bit obviously refers,
 22 among other things, to the Salmon approach which
 23 Mr Englehart has already described.

24 So that's how I propose at the moment to approach
 25 the task of finding the relevant facts. I am not going

1 to bounce this on anyone today, but if anybody has
2 concerns about that, and wishes to make submissions that
3 some contrary approach would be appropriate, then of
4 course I will hear that on 23 July, but I hope that that
5 is a fair approach and it's certainly one which
6 Mr Francis adopted, and on the basis of the authorities
7 which I have seen, I regard that as, at the moment
8 anyway, subject to any contrary submission, the correct
9 approach for me to take.

10 So that's any other business. I think that really
11 completes everything we can do today. We have flagged
12 a number of matters. Mr Englehart, do you want to add
13 anything?

14 MR ENGLEHART: No, sir, I respectfully agree.

15 THE CHAIRMAN: Right. If anybody else wants to say
16 anything. Mr Valarino, if you want to say anything
17 more, please do. Otherwise I will close this hearing,
18 thank everybody for their attendance, I hope it has been
19 useful in explaining what the Inquiry is about, where it
20 has got to, and where it hopes to be going, and I can
21 assure everyone that we will get on with our work as
22 speedily as it is possible to do, and, as I say, I very
23 much hope that we shall meet again on 23 July and the
24 final main hearing will begin on 30 September.

25 So, unless anyone wants to say anything else, thank

49

1 you all very much and I will see you again perhaps on
2 23 July.

3 (11.20 am)

4 (The hearing adjourned until Tuesday, 23 July 2013)

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