

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

POSITION STATEMENT – GOVERNANCE

Introduction

1. The Government took office on February 25, 2019, committed to change and renewal including of governance in the Virgin Islands. It won an overwhelming mandate for that change, gaining the support of 46.6% of the voting electorate compared to the 28.2% of its nearest rival, the outgoing NDP government.
2. This Position Statement, which is submitted by the seven Cabinet and junior ministers (the elected Government), is intended to indicate, at a general level, some of the structural difficulties and weaknesses the elected Government has faced in the Territory's governance since it came to office and to answer the questions posed by the Commission; it is not intended to be their full statement on these and the other matters under inquiry. While we have not set out our answers in the "examination question" form they have been asked, it is hoped those answers will become apparent from what follows.
3. Further, the identification of problems is not intended to imply that there are not considerable strengths within the system of government in the Virgin Islands when it is working well. Virgin Islanders are rightly proud of their history, their vigorous democracy and strong political tradition and identity, which have no doubt developed because of resilience born of geographical remoteness and of their own spirited activism.
4. Democratic elections are firmly rooted and there is a vigorous and proud political tradition of representative government, which is especially cherished because within

living memory it has had to be fought for. Civil society, much of it perhaps based on widespread participation in the Methodist Church, and its representative forms of governance, was active in this cause. For example, the Civic League was founded in 1938 to campaign for the restoration of the legislature, and the later campaign in 1949 by Theodolph Faulkner, a fisherman from Anegada, for the restoration of representative government to the Islands because he had been unable to find medical treatment for his pregnant wife on Anegada and had no representative with whom to raise his concerns, is widely remembered and celebrated. His actions, which gained strong support, and were accompanied by protests, led to the return of the legislative council in July 1950.

5. Similarly, the Positive Action Movement of the late 1960s, in which Mrs Patsy Lake was prominent, is remembered for its fight to reverse the UK Colonial Administrator's decision to sell a long lease to a British developer of Wickham's Cay and most of Anegada just before ministerial government was restored in 1967, causing the UK Government to buy back the lease from the developer.
6. The continuity of tradition runs all the way back to the time of slavery, in 1776, when the Quaker, Samuel Nottingham freed his slaves and gave them his estates in Tortola. The freed slaves then followed a practice of buying their fellow slaves' freedom from neighbouring plantations. The names many families now bear are the names of the former owners of the plantations where their ancestors had been enslaved. However, uniquely in the West Indies, in 1808, when the slave trade was abolished, most of the planters returned to Britain, abandoning their estates, and the slaves began to purchase the land from them, which became the pattern throughout the rest of the nineteenth century. The land these former slaves now owned and cultivated was the outward symbol of freedom, independence, and dignity. This tradition is important to understanding the proud sense of self-reliance, identity and belonging of the people of the Virgin Islands.
7. Furthermore, the Government, led by the Ministry of Health, with a clear statutory basis for its authority to assume this role, has dealt firmly and effectively with the Covid-19 crisis, and has ensured that the disease has been controlled while keeping people fed and free from destitution. During that time, democratic government has continued, the economy has been kept on a steady course, law and order has been maintained, and the

independent judiciary has continued to discharge its functions. The Virgin Islands' small society has proven resilient in the face of the devastation caused by Hurricanes Irma and Maria and by the pandemic, which have all occurred in the space of just three years.

8. We believe good governance to consist in capable, efficient, transparent, and democratically accountable institutions of government, able to plan effectively and formulate and successfully implement sound policies that are underpinned by the rule of law and the principles of good administration, such as fairness and proportionality. Ministers plainly have an important role to play in that endeavour as do *all* the constituent elements of government.
9. However, in the Virgin Islands, ministers are faced with significant structural difficulties that do not exist in the UK in that they are not fully responsible for “their own house” and all the matters on which the success of their government depends. Virgin Islanders are in a transitional stage of development towards a yet-to-be-chosen form of self-determination. Their democratic participation in their own government is limited. The Virgin Islands do not have a unified executive under a single authority accountable to their democratic assembly. Large areas of executive government are not under the control of ministers, and thus are neither transparent nor democratically accountable to those who are governed, and those areas that *are* devolved to the democratically elected local government are subject to control by the UK, as the administering state, both by constitutional and extra-constitutional means.
10. The nature of government is that it is not always possible, in delivering good governance and sound policy, easily to separate one area of government from another because they tend to overlap. It is also not difficult if so inclined, for one of the two authorities, advertently or otherwise, to impede or frustrate the initiatives of the other. The political implications for the elected Government mean that the only way that a government divided in this way can function effectively is if there is a genuine relationship of trust and a *sharing* of responsibility in which the locally elected institutions can have confidence their role is respected, even where there are disagreements, and that, in accordance with international law, there is a sincere commitment to *build up their capacities* for self-government where weaknesses exist.

A breakdown in trust at the heart of government

Political disagreements - the relationship with the UK Government

11. When it came to office, the new Government was committed to asserting and achieving greater autonomy and self-government for the Virgin Islands. It argued that the United Kingdom had “strayed” from the concept of a modern partnership set out in the 1999 and 2012 White Papers, “*Partnership for Progress and Prosperity*” and “*Security, Success and Sustainability*”, which committed the UK to building the capacity of the Virgin Islands to govern themselves and making sure the constitutional arrangements worked effectively. It asserted the UK had repeatedly failed to respect the Constitutional settlement of 2007, which devolved responsibility for the management of economic and financial affairs to the elected BVI Government, *inter alia* by obliging it to sign the highly restrictive fiscal rules contained in the Protocols on Effective Financial Management in 2012 and by legislating to impose a public register of beneficial ownership in the Sanctions and Anti-Money Laundering Act 2018.

12. On 2 May 2019, the Premier was the first BVI Head of Government to address the Caribbean Regional Seminar on the Eradication of Colonialism [Annex 1]. Citing the preamble to the Virgin Islands Constitution Order Constitution 2007, which declared,

“Affirming that the people of the Virgin Islands have generally expressed their desire to become a self-governing people and to exercise the highest degree of control over the affairs of their country at this stage of its development; and Noting that the United Kingdom, the administering power for the time being, has articulated a desire to enter into a modern partnership with the Virgin Islands based on the principles of mutual respect and self-determination....”

and the UK’s duty in international law to complete decolonisation and facilitate the right to self-determination by “the progressive development” of BVI institutions [Article 73 UN Charter; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ GL No 169, 25 February 2019 at paras 146-7], he called for greater constitutional protections for self-government and invited the scrutiny of the United Nations Special Committee on Decolonisation in that process.

13. On 12 November 2020, in the Budget Speech, the Premier articulated the aspiration of the elected Government on behalf of the people of the Virgin Islands, drawing an analogy with developing nations,

In its April 2020 report, the Commission on State Fragility, Growth and Development, chaired by former British Prime Minister, David Cameron, emphasises that the solution for states moving from a condition of weakness and fragility to one of being strong, are largely domestic and home-grown.

International players and donors as well as domestic actors need to change the way development is approached, since international perspectives are often disconnected from what obtains and what is needed on the ground.

There must be an emphasis on greater national respect and responsibility, but this will only work, according to the Cameron Committee, if citizens in developing countries are allowed to set out their national priorities – about where they are going as a country and who they want to be.

The Committee says: —Owning those priorities, learning from mistakes, combatting corruption, and demonstrating accountability are all crucial.

This is why your Government has been so passionate about the development of our people and ensuring that once they meet the required qualifications for jobs – especially those that are at the leadership level in our institutions, where they can influence how the culture of the Virgin Islands becomes preserved and not watered down – Virgin Islanders must be enabled and encouraged to develop and manage their country.

Whether we move to independence or some different relationship with the United Kingdom in the future, that journey and the work to get to that point must be continuous.

14. On 8 March 2019, given its analysis of the damage to the economic interests of the Virgin Islands, the elected Government brought judicial review proceedings against the Foreign, Commonwealth and Development Office (FCDO) in respect of the decision to direct the BVI Government to adopt a public register of corporate beneficial ownership.
15. In addition, with the support of the elected Government, a claim for constitutional relief, to vindicate their fundamental rights to privacy under Chapter 2 of the Virgin Islands Constitution, was commenced by two Virgin Islanders with business interests in the BVI, against the FCDO in respect of the decision. That litigation is presently before the BVI High Court. The BVI Government remains the only government of a British Overseas Territory that will not implement the FCDO's direction, while such registers are not the global standard, although the BVI Government has stated that it would adopt the measures if and when they do become the global industry standard.

16. Before the new Government took office, the outgoing government had introduced the Recovery and Development Agency Act (RDAA) into the House of Assembly, which received Royal Assent on 12 April 2018. The Agency (RDA) was set up to execute the Recovery and Development Plan (RDP) devised to promote the recovery and development of the Virgin Islands after the destruction caused by Hurricanes Irma and Maria in September 2017, in which 60%-80% of the building stock was damaged or destroyed. The enactment of the RDAA and the creation of the RDA was a *condition* of a £300,000,000 loan guarantee offered by the United Kingdom to support borrowing for development projects to be identified and carried through to completion under RDA management.
17. However, the RDAA granted wide-ranging and exclusive powers to the RDA to receive *all* Government appropriations and borrowing earmarked for the RDP (s.15 (c) RDAA) and to conduct the development of major capital projects according to the RDP. This would have meant that the BVI Government would have been unable to borrow or to finance and initiate development projects, including in the health and social services, tourism, environmental and energy sectors, whether it used the loan guarantee or not, unless those projects were carried out by the RDA. The UK Government emphasised it would tolerate no dilution of these conditions [Annex 2 at p 4].
18. The RDA was to be an independent statutory agency, with its own board and governance, the membership and voting arrangements of which were to be subject to the agreement of the UK Government. The RDA was not to be directly accountable to the elected Government and thus to the House of Assembly. The extent and lack of direct political accountability of its powers attracted strong public, cross-party criticism and the FCDO's broad interpretation of the RDA's remit was resisted by the outgoing government, which by the time of the election had not signed the loan guarantee agreement.
19. A "High-Level Framework" was drafted by the UK Government setting out the terms of the "partnership" it proposed [Letter enclosing High Level Framework, 24 November 2017, Annex 3]. It required the Government, among other things, to divest itself of public assets, presumably (since it has no others) those such as the Territory's utilities

and its National Health Insurance scheme. In September 2019, the Premier travelled with a delegation to the United Kingdom to discuss these terms with a view to securing the loan guarantee, and met in London with Lord Ahmad and other officials of the FCO [Annex 3.1]. However, notwithstanding these meetings, the Premier was subsequently told that the conditions were “non-negotiable” [Annex 4].

20. Furthermore, the BVI Government would be in breach of the PEFM if it borrowed under the loan guarantee. The effect of such a breach is, among others, to require the BVI Government to submit its annual budgets and any proposed government borrowing for the consent and approval of the UK Government. The FCDO also intimated that “discussions would need to take place” and “conditions would be required” were the elected Government to decline the loan guarantee, and attempt to borrow without it, breaching the borrowing ratios. Again, these terms were not negotiable [*ibid*, Annex 4].
21. While it understands that these measures of control may have been seen by the UK Government as necessary to protect the UK taxpayer against contingent liability, the new Government saw them as cumulatively incompatible with its declared policy objective of developing greater autonomy and democratic self-government and with its views of the proper scope of its rights and powers under the constitutional settlement of 2007. It vigorously opposed the use of the RDA structure to interfere in its conduct of central matters of economic policy [Annex 5].
22. Furthermore, given its objectives and the well-publicised failures of the past, the newly elected Government was anxious to build up the capacity of the ministries and of public officers to manage and monitor significant projects in the future. In a report entitled “*Advancing the Recovery: Recommendations for a Timely, Efficient and Effective BVI-led Recovery*”, dated 01 May 2019, [Annex 6 at p.17], the Disaster Recovery Coordinating Committee situated in the Premier’s Office, set up in 2017, strongly recommended that the Government and the RDA should *share* direct responsibility for executing the RDP and that the Government should develop clear and measurable criteria for deciding which projects should be allocated to the RDA. It said,

To do otherwise will invariably result in fatal loss of opportunity for the BVI Government to engage and utilise its competent resources, as well as to build capacity,

and moreover to be excluded from development projects and initiatives that fall squarely within the Government's constitutionally devolved ministerial portfolios.

23. It recommended amendments to the RDAA to clarify the responsibilities for recovery and development and that the Government should take the opportunity of making important organisational and institutional changes to allow it to undertake those tasks.
24. From the very first day of its mandate, the newly elected Government came under heavy pressure from former Governor Jaspert to agree and sign up to the terms of the loan guarantee agreement, while it resisted doing so on the grounds that it was unwilling to put itself in the position of sacrificing political and democratic control of so central a priority of its economic policy. An extraordinary briefing war broke out between the elected Government and the Governor and the FCDO, in which the latter sought to refute the Government's suggestions that the loan guarantee and the RDA would have such an effect.
25. From the outset, therefore, the relationship between the newly elected Government and the FCDO suffered from an atmosphere of mutual misunderstanding and distrust. The elected Government strongly believes that the UK Government has not fully respected and honoured the promises made in the White Papers, in the preamble to the Constitution, in the Constitution itself and in international law and has sought in breach of those promises and obligations to exert undue pressure and control over the democratically elected institutions of the Virgin Islands.

The relationship with the former Governor

26. It is critical to the success of the form of government adopted by the 2007 Constitutional Order and to good governance in the Virgin Islands that the relationships among those who hold, pursuant to Chapter 4 of the Constitution, the *shared* responsibility of government should function with at least a basic level of trust and respect. Recently, that has not always appeared to be the case in the Virgin Islands.
27. The role of the Governor in the overseas territories has been described as requiring him to achieve what is no doubt a difficult balance,

“It is often said that Governors “wear two hats”, because they head the governments of the territories but are appointed on the advice of, and report to, the Secretary of State. Governors are charged by Ministers in London with endeavouring to ensure good government in their territories, as well as representing to local politicians the policies of the United Kingdom Government. But a Governor must at the same time represent and explain the views of the territory governments to London. [*British Overseas Territories Law*, Ian Hendry and Susan Dickinson, Hart, 2011 p. 37].

28. In a constitutional order in which the Governor maintains special responsibility for a range of matters (ss. 47, 60, 92 of the Virgin Islands Constitution Order 2007) that often closely overlap with the interests of the elected government, including the management and effectiveness of the Public Service, and a power to override the Public Service Commission in respect of appointments within the Public Service (such as permanent secretaries in each ministry) it is essential that the elected Government should feel that the Governor is willing to understand its point of view, however dissonant from that of the FCDO, and to discharge his vital counterbalancing function.
29. It is also essential to good governance that respect for the 2007 Constitutional order and a scrupulous adherence to the respective roles and responsibilities assigned by it to each of its component institutions are observed from the top down.
30. Yet, the elected Government believes there to have been many instances of a failure by the previous Governor to respect the standing and scope of authority of the elected institutions conferred by the Constitution, even to the extent of openly undermining them, and these have been a further source of controversy and distrust.
31. For example, the Constitution provides,

Proceedings in the Cabinet

49.—(1) The Governor shall, so far as practicable, attend and preside at meetings of the Cabinet.

(2) In the absence of the Governor there shall preside at any meeting of the Cabinet the Premier, or in his or her absence, the Deputy Premier.

However, since the election of the Government on 25 February 2019, on each occasion on which the former Governor was absent, and despite that clear and unqualified constitutional intention, he refused to allow the Premier to preside over a Cabinet

meeting and purported to delegate that responsibility to the Deputy Governor instead, pursuant (it is said) to his general power to delegate his functions by instrument under seal conferred by s. 39 of the Constitution. The elected Government believes there to be no respectable argument for that position as a matter of law.

32. The continuing refusal to recognise the express and specific rule set out in the Constitution has been a source of concern to the elected Government, not least because it appears at odds with the UK Government's professed policy of fostering local democratic institutions and promoting self-government and must have been expected to inflame relations with an elected Government committed to that goal.
33. On 30 September 2020, the Premier wrote to the Parliamentary Under Secretary of State, Baroness Sugg, requesting her intervention to resolve the dispute, without success [Annex 7]. If the UK Government, and the former Governor whom it has appointed, are unwilling, when it concerns the Overseas Territories, to adhere to the rule of law, it is reasonable to ask, what example does that set?
34. Other contentious issues arose after 25 February 2019, which can be characterised as a turf war between the Governor and the elected Government over who had the right to initiate and lead on policy in specific areas. The elected Government wished to assume greater autonomous responsibility for the affairs of the Virgin Islands where the Constitution permitted it, even if that meant a change in the status quo. The Governor invariably resisted.
35. For example, the elected Government took the view that Disaster Management should properly be a matter that lay predominantly within the area of responsibility of the democratically elected institutions since the development and organisation of the response to a disaster would require a cross-government approach, with each ministry and department involved in planning and preparation. It sought appropriate legal advice from which it concluded there was no constitutional objection to a change. It wished to introduce legislation to amend the Disaster Management Act 2003 to situate the overall responsibility for disaster management with a Minister. The former Governor disagreed, arguing that although ministers must be and were involved, the Governor should remain

in overall charge. He invoked section 60 of the Constitution, arguing that the legislation affected internal security and threatened to withhold assent.

36. Sometimes, regrettably, the disputes became heated. On 8 January 2020, at a Cabinet meeting, the former Governor made remarks that to those present appeared to make imputations about the integrity of the elected Government. The Premier wrote to the former Governor to protest. He said [Annex 8],

Your statements during that historical Cabinet Meeting on Jost Van Dyke are consistent with a pattern of behaviour that I have observed from you towards my Government since the initial weeks of my Government's tenure when I requested time to analyse and consider the conditions proposed by the UK Government with respect to its offer of Loan Guarantees for Hurricane Recovery, more so since my Government proposed a smaller revised Recovery and Development Plan based on practical considerations.

37. He continued,

If you have evidence of corruption in Government, especially post-25 February, 2019, then I invite you to bring it forward so that it can be investigated and firmly prosecuted by the appropriate authorities - the Director of Public Prosecutions (DPP) and the Commissioner of Police...

Prior to 25 February, 2019, there were allegations of misconduct in Government affairs with respect to the activities of the previous administration. These included the \$7.2 million BVI/BV Airways deal; the \$1.6 million Elmore Stoutt High School perimeter wall project, which saw individuals inflating their costs by an average of 65 percent, as much as more than 150 percent of the true value of the work done; and the more than \$50 million in cost overruns at the Tortola Pier Park project.

These were drawn to your attention and to the attention of your predecessors. There was no action by your office to meaningfully deal with these matters.

38. Where such a division exists, it also creates an inevitable and undesirable uncertainty in the minds of public officers about to whom they are accountable and whom they serve, which leads to understandable reluctance to take the risk of being seen to give advice that might conflict with the perceived interest of one or other "side".
39. On 6 May 2020, the Premier wrote to the Parliamentary Under Secretary of State for the Overseas Territories, Baroness Sugg, on behalf of the elected Government, that

There is a continual concern of overreach into the Public Service of the Virgin Islands by the FCO through the Governor, and the Governor through his office, even though Ministers have been legally assigned the responsibility for administration of their ministries and departments, as in keeping with the Constitution. I am quite mindful that since 1967, a ministerial system of government was instituted in the Territory of the Virgin Islands.

In fact, Public Officers have also privately expressed concerns, in confidence, that the Governor and the Governor's Office are making direct contact into ministries and departments and have requested that a proper protocol be established so that there is a clear understanding of how the Governor and his Office should be interacting with ministries and departments.

For those Public Officers who have been in the Public Service for a significant period of time and have institutional knowledge and understand how the mutual relationship across ministries and departments worked in the past, they have expressed a high level of discomfort to me privately, I have asked them to express the same with the Deputy Governor about the Governor and his Office's actions, while some may have been hesitant because the Deputy Governor report [sic] to the Governor, I am sure that some may have mustered the courage to express their concerns without fear [Annex 9].

A Public Service suffering from chronic neglect

40. Critical to the success of any government is an efficient, modern, and well-functioning public service. Although ministers were aware, not least from public servants themselves, that the management of the Public Service and the machinery of government in the Virgin Islands required wholesale modernisation and reform, it was not immediately clear to the new Government, most of whom were new to elected office, how serious the problem had become. The chronic neglect of the public service became apparent, notwithstanding the significant efforts and hard work of public servants.

41. On 6 June 2019, the Premier made a Statement on the First 100 Days in Office [Annex 10]. He said,

“But the lessons of the First 100 days have told us about the crucial needs of improving the efficiency of the public services: setting up a broad policy unit and making our processes more accountable.

We will continue to build on that foundation being set, going forward.

Our First 100 days have confirmed to us what we knew coming in: that there is a challenge in governance that **MUST** be fixed to be able to deliver for our **PEOPLE**.

The problems are both structural and historic; understanding that our system that was set up a long time ago and is now not compliant with modern challenges and realities.”

42. A report dated June 2019, by Public Administration International (PAI) described how the performance of the ministries and departments was beset by an absence of planning and policy development, a lack of central policy formulation, coordination, monitoring and evaluation, and a chronic lack of institutional capacity to implement the new Government’s objectives. The report described the effect of these shortcomings on the ability of the Government to achieve its legislative programme [Annex 11],

However, it is clear from the challenges set out above that many of the issues being experienced because of the lack of policy coordination and development mechanism(s) are significant and will impede the Government in progressing its manifesto commitments, in an environment where the electorate voted overwhelmingly for a change.

The weakness in policy capability also impacts the Government’s ability to successfully progress legislation to Royal Assent. Having reviewed a number of ‘instructions to counsel for the drafting of Bills there was a clear pattern. The senior policy advisors tend to review relevant precedents from across the Caribbean, Commonwealth and other Overseas Territories and then compile a comparison chart and then a draft Bill. This work then goes to the Attorney General’s Chambers (A.G.’s Chambers) to ‘finalise the bill’ and then it is presented to Cabinet who may seek amendments or additions. The process is wholly unsatisfactory with ministries getting frustrated at what they perceive are unnecessary delays by the A.G.’s Chambers and so conclude the Chambers does not have the relevant ‘expertise’ to support their drafting needs. Conversely, the A.G.’s Chambers is likewise frustrated because they are resource-constrained and this is made all the more challenging when they receive poor drafting instructions that do not give any policy intent and they are expected to ‘work it out’ when this is not the role of Legal Drafters/Parliamentary Counsel. The end result is that there is much delay, a lack of clarity as to the purpose and intent of Bills. This impacts the success of passage through the House and it is not uncommon for Bills to be rejected despite a significant amount of time and energy being spent on them.

43. Another example of this lack of planning and policy capacity is that responses to predictable problems were being left by ministries, departments, and the Deputy Governor’s Office, to the point at which those problems had become immediate and pressing priorities, leading to a common practice throughout the Government of requesting *ad hoc* Cabinet waivers of procurement processes pursuant to s. 170(2) of the Public Finance Management Regulations 2005 (as amended).

44. This is a long-standing and widespread problem, albeit it may have increased since the Hurricanes. The previous government approved at least 44 waivers between August 2015 and February 2019. Between 2019 and 2021, out of 10 contract awards made by the Governor's Group, 6 were by waiver of tender.
45. Between 2011 and 2018, no financial audits of the Government's finances had been carried out. The Territory had been without an Auditor General between 2015 and January 2018. As of January 2020, 4 senior auditor posts remained vacant in the Auditor General's Office. In addition, the Government's Financial Statements, a vital tool of financial management, had remained uncompleted by the acting Accountant General since 2016.
46. The Government inherited a Public Service Transformation Programme (PSTP) and a Public Service Management Bill (PSMB) that were still in design although a review of the Public Service had been commenced on the enactment of the Virgin Islands Constitution Order 2007 (See [Annex 12] at para 1.2.1).
47. The Cabinet believes this to show that, at the time of the 2007 Constitution Order and for many years afterwards, no serious work had been done to equip the Virgin Islands with a modern public service capable of effectively supporting the expanded democratic architecture and self-government for which the Constitution made provision. Indeed, much of the necessary apparatus of support in a modern democratic government for a minister, let alone a premier, in formulating and implementing policy is lacking.
48. Under the 1976 Constitution, the responsibility for policy formulation lay formally with the Governor subject to consultation with the Executive Council, the advice of which he was indeed obliged to follow unless he thought it affected a matter reserved to him. Under the 2007 Order, the responsibility for policy formulation, in all but reserved matters, was conferred on the newly created Cabinet. Yet, as the PAI Report shows, no corresponding human resource, systems and infrastructure were put in place to make that task an effective reality despite the growing complexity and volume of the Government's responsibilities.

49. The consequence is a void in policy development, planning and coordination, which there is no doubt a strong temptation on the part of the Governor's Office and the FCDO to fill by means that can appear to be coercive. That, in turn, leads to further tension and distrust and the debilitating effects on the public service of which mention has been made.
50. The Director of Human Resources identifies the need for a complete reform of the terms and conditions of service of public officers and points out that many of the most important rules and procedures in the still current 1982 General Orders are outdated, fail to focus effectively on "employment equity" and emphasise process at the expense of achieving outcomes. [*ibid* para 1.2.2.]. There is a need to
- establish appropriate mechanisms and structures to create broad policies on the employment, deployment and development of human resources, and the development of a management system, in which the responsibility and capacity to make decisions are placed with the most appropriate functionary and levels of management. It also addresses a systematic approach to accountability in which indicators are developed for measuring, monitoring and evaluating the quality of performance of ministries/departments, public officers and employees.
51. The absence of such modern management systems and structures in 2021 is remarkable, leaving inevitable room for uncertainty and misunderstanding as to the reasons for deployment and for promotion decisions taken within the service.
52. The PSMB would establish in law the concept of *ministries*, which are not mentioned by the Constitution, and define the roles, duties, and accountability of Public Officers in relation to them and to Ministers. It would also set out the powers, duties, and functions of the Minister within the ministry and recognise the need for Ministers to be able to appoint "ministerial staff" (special advisers), who are an essential component of a modern ministerial government, and who need to be accommodated within the system by special rules. Their presence will also afford greater protection for public servants in preserving political impartiality.
53. The PSTP (Option 2) proposes a Strategic Policy and Planning Unit (SPPU) situated within the Premier's Office and a Monitoring and Evaluation Unit (MEU) within the Cabinet Office. The elected Government strongly agrees that these reforms are essential

and long overdue and has supported the PSTP. It is committed to the enactment of the PSMB.

54. However, as we have observed, there is a continuing tension between the dual accountability of public servants to ministers and to the Deputy Governor and the Governor. Therefore, the elected Government believes that the PMSB should expressly set out the nature of the matters on which instructions may be given to public servants other than by ministers.
55. In addition, in parallel with the Integrity in Public Life Commission that is now being considered by the House of Assembly, we propose that the Cabinet Office should contain a Propriety and Ethics Unit that would guide incoming Cabinet ministers on the declaration of their interests and advise them on actions they should take to avoid conflicts of interest and on best practice. Each minister should be required by the Ministerial Code to disclose his interests to the Unit, which should be updated regularly. The Cabinet Secretary should consult the record of the minister's interests prior to each Cabinet meeting with a view to raising possible conflicts for the minister's consideration. This function should not overlap with that of the proposed Commission, which would be unsuitable to advise ministers on such matters. The Unit would also be able, from time to time, to propose other codes of conduct for ministerial use, such as for making public appointments.

The progress of the Government's "good governance" legislation

56. When the elected Government took office, it seems that no preparatory work had been done within the Public Service to analyse its manifesto commitments and to develop policy options for their execution. The Premier was sworn in on 26 February 2019 and the Cabinet on 1 March 2019. A Cabinet orientation and briefing day was held on 20 March 2019.
57. The 2019 annual Budget was due by 2 April. Although the new Government had been in office only 5 weeks, it was obliged to present a transitional budget to the House of Assembly, which was approved on 26 April 2019. The Premier and Minister of Finance

announced he would hold consultations and bring forward the 2020 Budget by December 2019.

58. Nevertheless, between February and November 2019, considerable work was undertaken by officials to draft and hold consultations on the Public Procurement Bill and the Public Service Management Bill.
59. On 2 May 2019 the Cabinet was informed that the new Government through the Premier's Office would be "*leading the charge*" in the implementation of an Integrity Commission. The Premier requested that all input from the Deputy Governor's Office be submitted to the Premier's Office as a matter of urgency so that the Commission could make it a reality "*forthwith*" [Annex 13].
60. On 7 November 2019, the Cabinet approved a proposal from the Premier for an "Integrity in Public Life Policy" [Annex 14] presented to it in "*partnership*" with the Deputy Governor's Office. That partnership properly reflected the cross-cutting nature of the proposals, which affected the constitutional responsibilities of the Cabinet, the Legislature and the Governor. A decision was then taken to ask the Deputy Governor's office to be responsible for instructing the Attorney General's Chambers to draft a new Integrity in Public Life Bill.
61. On 14 November 2019, in the speech from the Throne, the elected Government set out its legislative programme for the ensuing year. It included the introduction of an Integrity in Public Life Bill, a Public Service Management Bill to replace the General Orders 1982 and Whistleblower legislation [Annex 15].
62. On 19 November 2019, the Premier presented the Budget for 2020 [Annex 17].
63. On 28 November 2019, in accordance with the Cabinet's decision of 7 November 2019, the Deputy Governor's Office instructed the Attorney General's Chambers to draft the Integrity in Public Life legislation to implement the Cabinet's policy [Annex 18].
64. In December 2019, the Cabinet decided that amendments were needed to the Public Procurement Bill (see Chronology prepared by Ministry of Finance [Annex 16]. The

Attorney General's Chambers were also in the process of developing a draft Whistleblower Bill.

65. On 12 February 2020, the Cabinet discussed and noted that, among others, the Integrity in Public Life Bill, the Ministerial Code (referred to as the Code of Ethics), the Whistleblower Bill, the Contractor General Bill, the Procurement Bill, and the Public Service Management Bill were expected to come to it for decision in 2020 [Annex 19]. On 25 February 2020, the Premier made a statement to the House of Assembly in which he said,

“The Speech from the Throne that was read in the House of Assembly on 14 November, 2019, includes the policies, legislation and the agenda of your Government. Therefore, the commitment in the Speech from the Throne that legislation such as the Public Service Management Bill, Integrity in Public Life legislation and Whistleblower legislation are on the 2020 Legislative Agenda, is the commitment and initiative of your Government.

The commitment publicly expressed in the 2020 Budget Address, which I delivered in the House of Assembly on 19 November 2020 (sic), that public procurement will be strengthened by the introduction of the Contractor General legislation, is the initiative of your Government. These were policies that your present Government campaigned on in the run-up to the 2019 General Elections. They featured prominently in our campaign advertisements. They are therefore embedded in our social contract with the BVI population.” [Annex 20].

66. In March 2020 on the invitation of the Ministry of Finance, the Caribbean Development Bank engaged the Charles Kendall Group to review the draft Public Procurement Bill and make recommendations for its finalisation [Annex 16].
67. On 16 March 2020, a paper was prepared for the Cabinet which proposed a review of the draft Ministerial Code by a working group who would make recommendations to the Cabinet about its provisions [Annex 21]. The working group was to have 3 months to report.
68. On 22 March 2020, the Virgin Islands Government closed the Territory's borders having been alerted to the implications of the Coronavirus pandemic [Annex 22]. On 25 March 2020, the first cases of coronavirus were reported. On 27 March 2020, a full lockdown and curfew was imposed throughout the Virgin Islands. On 1 April 2020, the Government announced that,

If left unchecked, it was estimated that in 12 to 15 days, 10.5 percent to 12 percent of the population would be affected with COVID-19. This equates to 3,750 persons. If left unchecked, calculations showed that in 90 days, 89.8 percent of the population would be infected [Annex 23].

69. Therefore, the lockdown and curfew were extended until 27 April 2020.
70. Thereafter, the Government's central and absorbing focus was on its action plan for combating the pandemic and for urgently increasing the capacity of the Territory's health service to trace, test and treat the virus. In order to consider and execute this plan, during 2020 the Cabinet met on 94 occasions, 51 meetings being special meetings convened to deal with the COVID-19 pandemic [Annex 24, page 2].
71. Notwithstanding those pressures, on 9 April 2020, the Cabinet approved the names of those on the working group to consider the Ministerial Code [Annex 25]. On 16 April 2020, the Premier made a statement to the House of Assembly explaining the need for Public Service reform and announcing the Cabinet's decision to review the Ministerial Code [Annex 25.1].
72. Work also continued on other elements of the legislative programme. On 8 April 2020, the Attorney General's Chambers provided feedback on the draft Proceeds of Criminal Conduct (Amendment) Bill drafted by the Financial Services Commission [Annex 26]. On 15 April 2020 a draft of the Public Procurement Bill was sent from the Attorney General's Chambers to the Ministry of Finance [Annex 27].
73. In April 2020 the Charles Kendall Group completed a further draft of the Public Procurement Bill [Annex 16]. On 12 May 2020, Parliamentary Counsel considered the draft Bill [Annex 28].
74. On 12 June 2020 the Premier's Office asked the Attorney General's Chambers to complete the draft Contractor General Bill for submission to Cabinet [Annex 29].

75. On 15 June 2020, the Attorney General’s Chambers sent the draft Integrity in Public Life Bill to the Deputy Governor’s Office [Annex 30]. The Attorney General advised that it was not possible, having regard to section 112 of the Constitution, for the proposed Integrity Commission to be responsible for the Register of Interests, without Constitutional reform.
76. On 7 July 2020, the Premier’s Office sent the draft Contractor General Bill to the Attorney General’s Chambers and, by a Memorandum of the same date, the Premier asked that the review and amendments on the Virgin Islands Contractor General Act 2020 be completed for submission to Cabinet by the following Wednesday 15 July “*to allow for timely and urgent transmission to the House of Assembly for passage before or by the end of July*”[Annex 31].
77. On 8 July 2020, Parliamentary Counsel forwarded a copy of the draft Proceeds of Criminal Conduct (Amendment) Bill to the former Governor (HE Augustus Jaspert) [Annex 32].
78. On 13 July 2020 a copy of the draft Whistleblower Bill was sent from the Attorney General’s Chambers to the former Governor [Annex 33].
79. On 11 August 2020, Parliamentary Counsel wrote to the Permanent Secretary at the Premier’s Office forwarding copies of the draft Contractor General Act 2020 and a Memorandum in which she observed that the Attorney General’s Chambers had “*not received the requisite drafting or government policy instructions which would allow for a comprehensive review and drafting of the Bill*”. Parliamentary Counsel continued:
- “as previously indicated with recent Bills that when a Bill is forwarded to Chambers for review, that the draft Bill be accompanied with....1. A comprehensive policy informing the Act or a concept paper that outlines the objective of the Ministry/Department; 2. The Ministry’s comments on substantive provisions of the legislation that could be identified on the face of the draft as being relevant/irrelevant to the Virgin Islands” [Annex 34].
80. In September 2020, the Charles Kendall Group completed a draft of the Public Procurement Regulations [Annex 35].

81. On 2 September 2020, the Premier wrote to the Attorney General asking him to move forward efforts to produce a Whistleblower Bill for the Virgin Islands [Annex 38].
82. On 18 September 2020, after discussions between officials from the Attorney General's Chambers and the Deputy Governor's Office, a decision was taken that the Register of Interests Act should be amended and strengthened in respect of "*enforcement and accountability sanctions*" and extended in reach to other officers in the public service [Annex 39]. The draft Integrity in Public Life Bill was to be amended to incorporate a monitoring component through the establishment of the Integrity Commission. These discussions were recorded in a memorandum which was sent to the Attorney General's Chambers.
83. On 22 September 2020, the working group requested an extension of time until 30 November 2020 to further consider the Ministerial Code [Annex 40]. On 27 September 2020, the Cabinet's approval was sought for the 3 month extension of the time which the working group had requested [Annex 41]. The extension was granted.
84. During October 2020, Parliamentary Counsel and the Attorney General's Chambers continued to work on the draft Contractor General Bill [Annex 36].
85. On 16 October 2020, the Premier wrote to the former Governor stating the Government's continued "*commitment to the transformation of the Public Service into a modern efficient, effective and accountable organisation*" [Annex 37].
86. On 4 November 2020, Parliamentary Counsel sent a memorandum to the acting Permanent Secretary to the Deputy Governor's Office, referring to her memorandum of 18 September about the Integrity in Public Life Bill and the Register of Interests Act amendment, asking what "*enforcement and accountability sanctions*" were proposed in respect of the Register of Interests Act [Annex 42]. The Attorney General's Chambers provided drafting on both Bills.
87. On 5 November 2020, the Speech from the Throne reiterated that "*strengthening Governance remains important for having a stable economy*", that the Integrity in Public Life Bill remained a priority on the legislative agenda and that this legislation

would promote and enhance standards of conduct by consolidating laws relating to the prevention of corruption and the award, monitoring, and investigating of government contracts and prescribed licences [Annex 43].

88. On 6 November 2020, the draft Integrity in Public Life Bill and proposed amendments to the Register of Interests Act 2006 in a draft Register of Interests (Amendment) Bill were circulated for comments [Annex 18, page 10].
89. Between 6 November and 3 December 2020, there were a series of discussions between the Attorney General's Chambers, the DPP, the Registrar of Interests and other officials to finalise the Integrity in Public Life and Register of Interests (Amendment) Bills [Annex 44]. On 3 December 2020 instructions were received by the Attorney General's Chambers to prepare drafting for the repeal and replacement of the Register of Interests Act 2006, as opposed to amending it [Annex 44.]. Work thereafter proceeded on a draft Register of Interests Bill, which became known as the Register of Interests Bill 2021.
90. On 2 December 2020, at the working group's request, the Cabinet again extended the time to complete their review of the draft Ministerial Code, to 5 January 2021 [Annex 45].
91. On 3 December 2020, the former Governor briefed the press that, "*The Deputy Governor and I will shortly be bringing forward the Integrity in Public Life Act which will bolster the ability of our institutions to ensure accountability.*"[Annex 46]
92. Despite the important place that the elected Government had expressly assigned to the Integrity in Public Life legislation in its programme and the Cabinet decision, on 7 November 2019, to approve an Integrity in Public Life Policy and to press ahead with the Integrity in Public Life Bill [Annex 14], the Governor's statement taken in context, which made no reference to those facts and of which he had not informed the Cabinet, appeared to the elected Government to imply that it was neither interested in nor concerned with the introduction of the Bill and that he and the Deputy Governor were, in effect, imposing it because of his concerns about good governance in the Virgin Islands.

93. On 16 December 2020, the Premier presented a new draft of the Integrity in Public Life Bill to Cabinet [Annex 47]. The Cabinet decided to rescind its decision of 7 November 2019, which conferred on the Deputy Governor the responsibility for developing the Integrity in Public Life Bill and resolved that the Premier's Office should henceforth take charge of the Bill, in collaboration with the Deputy Governor. Cabinet resolved that the draft should be sent to the Attorney General's Chambers for consideration and finalisation [Annex 48].
94. On 18 December 2020, the former Governor wrote to the Attorney General and the Deputy Governor asserting that the draft presented by the Premier and, by implication, the Cabinet's decision was unconstitutional, and demanding that they should continue to work exclusively on the original draft Integrity in Public Life Bill [Annex 49].
95. On 22 December 2020, the Premier published a statement in which he reiterated the elected Government's long-standing election commitment to Integrity in Public Life legislation and emphasised that it was at the elected Government's initiative that a Bill would be brought forward [Annex 50].
96. By a paper dated 25 January 2021, Cabinet was invited to review the Whistleblower Bill [Annex 51].
97. On 3 February 2021 Cabinet reviewed and noted the Whistleblower Bill and the Proceeds of Criminal Conduct (Amendment) Bill deciding that the latter should be introduced for its First Reading in the House of Assembly at the next convenient Sitting [Annex 52].
98. On 3 February 2021, Cabinet decided that the Premier's Office should instruct the Attorney General's Chambers to review and finalise the Whistleblower Bill [Annex 53]).
99. During February 2021, Cabinet also reviewed the draft Contractor General Bill and further exchanges took place between the Attorney General's Chambers drafting team and the Premier's Office about the draft [Annex 54].

100. On 1 March 2021 Cabinet considered the Commission of Inquiry's requests for disclosure in respect of interests covered by the provisions of the Register of Interests Act 2006. The Attorney General proposed that the Act be immediately amended to enable necessary disclosure to be made and that a Register of Interests (Amendment) Act 2021 should be introduced at the next convenient Sitting of the House of Assembly [Annex 55]. In accordance with that advice, on 3 March 2021 Cabinet considered a Register of Interests (Amendment) Bill and decided that it should be introduced for its first reading at the next convenient sitting of the House of Assembly [Annex 56]. Work on replacement of the Register of Interests Legislation continued, with the draft Register of Interests Bill 2021 [Annex 57].
101. Also on 3 March 2021, Cabinet considered the draft Contractor General Bill and decided that it should be introduced for its First Reading in the House of Assembly at the next convenient Sitting [Annex 58]. In addition, following comments received from the Deputy Governor and the Governor's Group, the Whistleblower Bill returned to the Cabinet for review; it was decided that it should be submitted to the House of Assembly for approval at the next convenient Sitting [Annex 64].
102. On 4 March 2021 the Whistleblower Bill received its First Reading in the House of Assembly, as did the Contractor General Bill and the Proceeds of Criminal Conduct (Amendment) Bill [Annex 59]. On the same day the Register of Interests (Amendment) Act 2021 was passed by the House of Assembly [Annex 61]
103. On 8 March 2021 the Attorney General referred Parliamentary Counsel to the existence of two drafts of the Integrity in Public Life Bill [Annex 60]. She asked her to proceed considering the drafts prepared by both the Premier and the Deputy Governor's Office.
104. On 15 March 2021 the Attorney General's Chambers received a copy of the draft Public Service Management Code from the Department of Human Resources [Annex 62]
105. On 16 March 2021, after a period of correspondence and consultation with statutory agencies, the draft Integrity in Public Life Bill came once again before the Cabinet [Annex 63]. The Deputy Governor pointed out improvements that should be made to the new draft Bill and the principles to be considered in doing so.

106. On 25 March 2021, the Governor (HE John Rankin), provided his comments on the draft Integrity in Public Life Bill to the Attorney General expressing “*full support*” for the Integrity in Public Life legislation and suggested amendments to the draft most recently presented by the Premier [Annex 65]. Cabinet was also asked to approve the recommendations of the working group on the Ministerial Code [Annex 66]
107. Between 13 and 28 April 2021 the Attorney General’s Chambers were engaged with the process of finalising the drafting of the Public Service Management Bill and Code [Annex 67].
108. On 14 April 2021, the Cabinet approved the draft Integrity in Public Life Bill, which had now been amended to the satisfaction of the Deputy Governor and the Premier’s Office and decided that it should be introduced in the House of Assembly at its next Convenient Sitting [Annex 68].
109. On 15 April 2021, having now been approved by Cabinet ,the Draft Ministerial Code was laid before the House of Assembly [Annex 69].
110. On 22 April 2021 the Integrity in Public Life Bill received its First Reading in the House of Assembly.
111. On 27 April 2021 the Attorney General felt obliged to write to the Permanent Secretary at the Premier’s Office [Annex 70] on the subject of drafting instructions received by the Attorney General’s Chambers on 12 June 2020 in respect of the Contractor General Bill, pointing out that recently received instructions did not include :
- “i.The Policy which informed the draft legislation
 - ii. any reports on the consultation process;
 - iii. drafter’s credentials to include:
 - i.resume
 - ii. a list of legislation drafted in the last 5 years including title, jurisdiction and a short description of the legislation (noteworthy legislation outside of this period may also be included);
 - iii. notarised copy of the data page of the drafter’s passport; and;
 - iv.2 professional references
 - v. any other information that you think would be useful in helping us to understand the Ministry’s objectives.”

A letter in similar terms was also sent in respect of instructions received on the Whistleblower Bill [Annex 71].

112. On 3 May 2021, the Attorney General's Chambers produced a final draft of the Whistleblower Bill [Annex 72].
113. On 11 May 2021 the Proceeds of Crime (Amendment) Act 2021 was passed.
114. Between 19 and 26 May 2021 the Integrity in Public Life Act 2021 went out for public consultation [Annex 73].
115. Also, in May 2021 the Ministry of Finance, Caribbean Development Bank and the Charles Kendall Group reviewed the Public Procurement Bill and Public Procurement Regulations and a final draft was produced [Annex 16]. It is expected to go before the House of Assembly this year.
116. On 10 June 2021 the Whistleblower Act 2021 is expected to receive its Second and Third Readings before the House of Assembly and to be passed, as is the Contractor General Bill.
117. Therefore, despite the need for inexperienced Ministers to familiarise themselves with their ministerial responsibilities, to develop and present two budgets in 8 months, and the intense preoccupation of the Government with combating the pandemic and its social and economic effects, the Cabinet has moved forward, as diligently as possible, with the implementation of its commitments to legislate for new standards of governance in the Territory.
118. Much of the time taken in doing so has been caused by a chronic lack of capacity and resource within the Government. For example, instructions to draft the Integrity in Public Life Bill were sent to the Attorney General's Chambers on 28 November 2019. The first draft of the Bill was sent to the Deputy Governor on 15 June 2020. Thereafter, the Bill was the subject of discussions to resolve necessary policy questions between officials for the rest of that year. That is precisely the problem that PAI noted in its report of June 2019 and of which the Attorney General's Chambers complained on 11 August 2020 and again on 27 April 2021.

119. However, it is important not to confuse the enactment of this or any “good governance legislation” with the fundamental change of approach that is needed to the enablement of democratic self-government in the Virgin Islands. As the PAI report says, a Legislative programme is not a substitute for the development of detailed and thoughtful policy and the institutional capacity to produce and implement it successfully [Annex 11, page 7]. Indeed, the enactment of legislation without that essential preliminary work will only result in a “box-ticking exercise” that produces hasty and superficial legislation not tailored to the needs of the Virgin Islands. That is why we believe that the recent FCDO insistence on legislation will not alone solve any lack of effectiveness, transparency, and accountability in our institutions.

Good Governance in the Virgin Islands

120. The capacity of a government to plan effectively and formulate and implement sound policies is at the heart of good governance. The PAI report [at p.2, Annex 11] explains how the public service is vital in translating the commitments in a party manifesto into a policy programme and that

.....policy and planning are critical for the Executive to govern well and achieve what they promised the electorate. Moreover, it is a central pillar in establishing and maintaining Good Governance because without a Government setting clear policy objectives linked to a National Plan there is no transparency and citizens cannot hold Government accountable. Good Governance also requires collective action, i.e. by all stakeholders, not just the state, and without a clear policy agenda, supported by a robust policy development process, stakeholders cannot participate in tackling the social and economic issues that they face.

121. Furthermore, in a ministerial system of government, it is essential that ministers should be able to function within well-defined and understood policy frameworks, which guide and frame their policy options and the decisions they must make, underpinned by the rule of law and the principles of good administrative practice.

122. Ministers in the Virgin Islands Government do not operate in such an environment. As the Director of Human Resources has observed, public servants have predominantly been focussed on processes not on the development of policy. Therefore, while the Permanent Secretaries can and do offer apolitical advice, it is infrequently

backed up by established and detailed policies, previously approved by the Minister or by the Cabinet, which provide a basis for the advice he is given and the decisions he must take. Such policies protect both the public servant and the minister.

123. For example, there is no cross-government policy or procedure for the appointment of members of statutory boards, such as the UK Cabinet Office's "*Governance Code on Public Appointments*", which could guide ministers either in identifying the required qualities of suitable persons and in an appropriate means of selection. Ministers are often left to do their best by seeking out suitable persons who comply with the statutory criteria, which often only refer to "fit and proper" persons.
124. The elected Government believes there to be a need for a significant strengthening of the Premier's Office, the Cabinet Office, as has been suggested above, and of the resources of the Attorney General's Chambers with consideration given to the attachment of some of its members to be based in each ministry to work closely with the permanent secretaries and other officials in ensuring that the policy issues necessary for legislative drafting are resolved in advance of the request to draft the Bill.
125. But we also believe that if there is a deficiency in transparency and accountability in the governance of the Virgin Islands, the issue cannot be confined to the elected Government alone. A culture of greater accountability, public participation, and transparency must be encouraged in all parts of the Government. A large part of the governance of the Virgin Islands operates with no democratic accountability or transparency at all. For example, apart from the National Security Council, which necessarily operates in secret, there is no democratic or public participation in setting the strategic goals and priorities of the Royal Virgin Islands Police. Yet, there is real public concern about the operation and management of the police, particularly given the history of arrests of police officers for serious crime.
126. We believe that a police authority, consisting of some elected and some appointed persons from civic society, with the power to hold formal public sessions in which the Commissioner would make a regular presentation of the performance and objectives of the RVIP and answer questions from the authority would provide a measure of transparency and accountability. The authority would also make recommendations and

contribute to a policing plan, which the Commissioner would have the duty to prepare. No such plan currently exists but would be a tool for accountability. Public engagement in institutions of this kind would help to deepen a sense of civic participation and develop a mature relationship between the public and the police.

127. Similarly, we think it would be desirable for the Deputy Governor and even the Governor to make themselves available once or twice a year before a special committee of the House of Assembly to answer questions in public about the work of their offices and the conduct of their roles and responsibilities. This would help better inform the public about how their government works, set an example of transparency and respect among the institutions, and help to establish a better dialogue between them.
128. Good governance in the Virgin Islands must also be considered in the light of the history and the aspirations of their people. The people of the Virgin Islands aspire to, and have the right to, self-determination. The international law duty of the UK, as the administering state, is to promote and support their institutions in developing towards that goal so that they may build independent capacities to perform the essential functions of self-government and may express a free choice as to their eventual destiny. But the governance of the Virgin Islands by the UK has not reflected that important principle.
129. No doubt driven by the desire to reduce the risk of contingent liability to the Treasury, the means employed by the UK Government to guarantee fiscal discipline, an area of devolved responsibility, go far beyond what is necessary to achieve that purpose.
130. Despite the devolution of responsibility for every aspect of government save reserved matters, the UK has subsequently dictated what are perceived to be extra-constitutional instruments of control, portraying them as “obvious goods”, which the elected Governments have felt under pressure to agree, and which have sought to confine and restrict the constitutional scope of action of the local government and its sphere of democratic discretion. For example, it is a matter of legitimate political choice whether, in a devolved context, certain assets, such as the provision of water and electricity, are publicly owned. In a letter to the Governor, dated 29 November 2020, the Premier wrote [Annex 77],

The smooth operation of the Constitution, with each Constitutional actor operating within their respective parameters, is the core of the partnership based on mutual respect between the UK and the BVI. Prime Minister Boris Johnson, in his address at last week's JMC, underscored his Government's commitment to furthering this partnership, even in areas of Border Security. But, as we seek to intensify partnership, it must be on BVI's terms and the BVI must not be bullied to accept offers from the UK, especially where these conflict with the broader objective of advancing the Territory towards self-determination.

131. Similarly, capable, efficient, transparent, and accountable governance can only be achieved if the public service is equipped and supported to grow the mature capacities necessary to achieve it. In the 2012 White Paper [Annex 78], the then Secretary of State declared under the heading, "Making Government Work Better" (at p. 9), that,

The UK is committed to working closely with the Territories on these issues. To this end the UK is launching a long-term programme of support for the public services in the Territories.

The White Paper acknowledged the particular importance of policy making (at p.57),

Public services have a vital role in providing objective and impartial policy advice to Ministers and managing the policy making process including organising public consultation and assessing the potential impact of particular policy options. The UK Government is supporting the development of policy making capacity in some Territories.

132. However, in the Virgin Islands the programme to design and introduce a modern framework for the public service only commenced in October 2017, when in the immediate aftermath of the Hurricanes, the Cabinet was asked to approve the launch of the PSTP proposed by the Deputy Governor and the Director of Human Resources and the FCDO gave financial support for the recruitment of an external consultant to help with its design. It appears that the Deputy Governor has received little additional FCDO assistance in the implementation of reform. Yet, these are matters (the effectiveness, capacity and management of the public service) for which the constitutional responsibility and right of initiative lie exclusively with the Governor, and ultimately with the UK Government.
133. While the constitutional responsibility for reform of the public service and its terms and conditions is the Governor's, acting through the Deputy Governor, given the dual nature

of the executive in the Virgin Islands and their impact on organisation within the ministries, it is important that the elected Government should be encouraged and enlisted to share “ownership” of the reforms and to play a prominent and motivating role in them. But that has not been the case. On the contrary, as the former Governor’s statement on 18 December 2020 (para. above) shows, the elected institutions were not seen by him as a partner in the reforms. That statement was not untypical. On 16 October 2020, the Premier wrote to the former Governor, to emphasise the elected Government’s support for the PSTP but he observed [Annex 79],

While the human resource functions of the Governor's Group do form part of the Public Service transformation agenda, the vast majority of this exercise pertains to the reform of the practices, processes and procedures for enhancing the administrative functions within the various Ministries to improve the effectiveness of the delivery of services by the Ministries to their clients - the public - in accordance with the national vision. Ministers report to the Premier. The national vision is the remit of the elected Government, which is determined and executed by the Premier and his Ministers. This structure emanates from the Virgin Islands Constitution Order 2007 and hence, any programme for the execution of the Government's agenda and the related administration thereof lies clearly with the Premier as the Head of the elected Government.

134. When there is a unified line of authority and a clear and unambiguous statutory basis, the Government can act decisively and effectively. This was the case with its disease control measures. The Public Health Ordinance (Cap 194) and Quarantine Act 2014 provided specific measures and clearly defined roles in the event of a global pandemic [Annex 80]. The Cabinet decided to establish a unified command structure and an expanded Health Emergency Operations Centre ("HEOC") to help to guide decision-making and implementation across all sectors. The HEOC became the primary advisory body in the Territory’s defence against Covid-19. The elected Government was glad to receive the acknowledgement of the UK Secretary of State for this achievement, who wrote that it was a "testament" to the BVI's health professionals and *"the protocols that your Government have put in place, that the BVI has had so few cases"* [Annex 81].
135. Therefore, the elected Government believes that what is urgently needed to improve good governance in the Virgin Islands is the true partnership of which the 2012 White Paper appeared to speak. We are not alone in believing in the need for a change of approach. The evidence submitted to the House of Commons Foreign Affairs Committee for its Report, *Global Britain and the British Overseas Territories: Resetting*

the Relationship, [Annex 82 at page 8] , showed that there was a feeling in other Territories with self-governing institutions that,

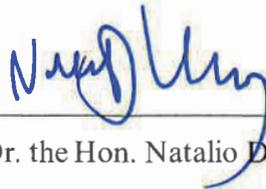
“We are often left with the impression there is a view the British Overseas Territories are to be administered, rather than treated with respect as self-governing representative democracies in their own right”.

136. In that partnership, the UK Government would genuinely promote and facilitate the modernisation and equipping of our institutions for democratic self-government and would not make the “longstanding assumption”, as the Select Committee put it, “*that the UK can take a hands-off approach and bear little cost or liability*”, save when there is catastrophe or crisis.

1 June 2021



Hon. Andrew A Fahie
Premier and Minister of Finance



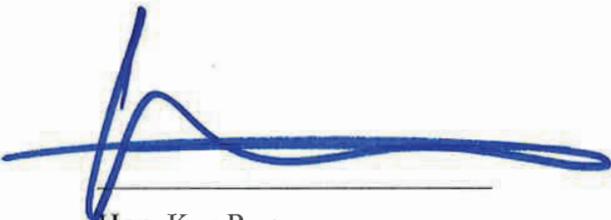
Dr. the Hon. Natalio D. Wheatley
Deputy Premier and Minister for Education,
Agriculture, Fisheries, Youth Affairs and
Sports



Hon. Carvin Malone
Minister for Health and Social
Development



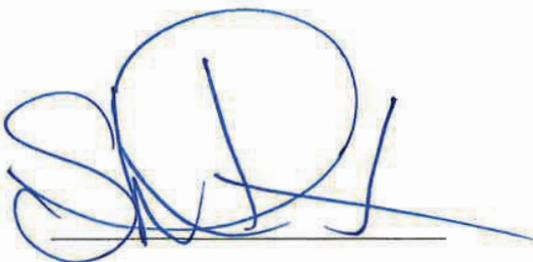
Hon. Vincent O. Wheatley
Minister for Natural Resources, Labour &
Immigration



Hon. Kye Rymer
Minister for Transportation, Works &
Utilities



Hon Shane B. deCastro
Junior Minister for Tourism



Hon. Shereen Flax-Charles
Junior Minister for Trade