



Our ref: AGC G 12/2/2

30 September 2021

The Rt Hon Sir Gary Hickinbottom  
Commissioner  
BVI Commission of Inquiry  
Room RB 1.11  
22 Whitehall, London  
SW1A 2 EG

Dear Commissioner,

I write to express my disquiet about the COI Team's conduct of the Honourable Minister Vincent Wheatley's oral examination on 28 September 2021, which has, wholly avoidably, created a misleading impression of the true situation relating to certain discussions of the Cabinet about a sensitive Belonger Status application, and which I consider to be damaging to the public interest. I say, "avoidable" because, the matter appears to have been raised in a manner that not only violated your own protocols and the essential assurances on which confidential government documents are disclosed to you but also prevented the Minister from being able to present the facts on a matter that was bound to be of acute public concern.

At the end of the hearing, the Honourable Wheatley was directed to the minute (the "**Minute**") of Cabinet's Meeting on 22 November 2019, in which a Belonger Status Application was discussed.

### **Breach of Confidentiality and COI Protocols**

The COI Team disclosed the contents of the Minute to the public without first obtaining Cabinet Consent, and in a deviation from the COI's Protocols.

The Minute is a Cabinet document, which attracts Cabinet Confidentiality under the vital public interest and constitutional principle of Collective Ministerial Responsibility. Those I represent disclosed the Minute voluntarily to the COI Team alone on an expressly confidential basis, and in the reliance of the assurances in given in the COI Protocols of the "safeguard" provided by the two-stage disclosure process.

At various times during the Inquiry, the Cabinet has provided consent for otherwise confidential documents to be used at public hearings. However, at no stage between its disclosure on 16 March 2021 and the hearing on 28 September 2021 did the Cabinet give such consent in relation to the Minute.

At the hearing, Counsel to the Commission did not draw the Commissioner's attention to the fact that the Cabinet had not waived confidentiality in the document. Nor was the Solicitor General's attention drawn to the fact that Cabinet consent to making the document public had not been obtained. She was not afforded the opportunity to make submissions on whether on balance the public interest in public disclosure outweighed Cabinet Confidentiality, or even provided with a copy of the Minute.

I would be most grateful if you would confirm whether a decision was made to use the confidential Minute at a public hearing without first discussing it with the IRU, or whether the unauthorised use was accidental. I would also be grateful for your assurance that the COI Team will not use Cabinet Papers at public hearings or otherwise make them public without prior notice to me.

### **No notice of criticism**

The Minister had no advance warning that he would be questioned in relation to the Minute: the Minute was not included in the advance bundle, and he was not handed a copy of it prior to the hearing.

Criticisms were put to the Minister in relation to the Minute without having been included in his Warning Letter. No explanation has been given for why he was not so warned. On 17 September 2021, the COI Team requested a full copy of the Minute (as the previously disclosed versions had some text cut off). No indication was then given that the Minute was to be used at a public hearing. There is nothing to suggest that it would have been impracticable to provide the Minister with a copy of the Minute before the hearing along with an indication that he would be asked questions about it. The Minister's hearing began late and at a very minimum he could have been provided with the Minute in the hour or so before he gave evidence. Alternatively, and given the seriousness of the criticisms, the Minister could have been recalled on another day, as have other witnesses in this Inquiry.

But the Minister was questioned at length and in detail about the Application. We will write separately in relation to the criticisms made. Those lines of questioning deployed were not appropriate. For example, the Minister was asked: "*how is it that you cannot remember if you granted a rapist Belonger status or not*". Even allowing for a degree of forensic enthusiasm, this was unfair in the circumstances since the Minister had not been given the opportunity to remind himself of the facts and would obviously not want to provide evidence to the Inquiry that he had not verified, particularly on such a sensitive matter. Furthermore, the tone and manner of the questioning was prosecutorial and accusatory.

### **Harm to the Public Interest**

We accept that in general it is in the public interest for the proceedings of the COI to take place in public. And it is inevitable that in any such public proceeding, some misconceptions may arise among members of the public as to the matters under discussion. But the lack of notice to me and to the Minister as to the use of this confidential Cabinet minute, and of the criticisms made in respect of these matters, denied him the opportunity to check the facts and remind himself that

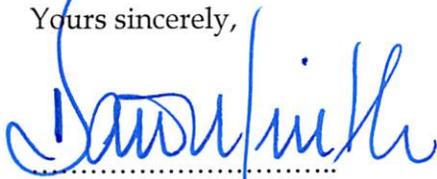
the individuals had either not been granted Belonger Status or were not under consideration for Belonger Status at the time. This means that a false impression has been created (as can be seen in social media posts on this subject) that these persons have indeed been granted Belonger Status by the current Government.

The misleading impression caused by this approach is damaging to the public interest. The effect has been needlessly to undermine public confidence in the willingness of the Government and the administration to protect their security. It could hardly have done more damage to public perception of Government as a whole if it had been calculated to do so.

Furthermore, these revelations have prejudiced the rights to privacy and administrative fairness of the individuals and victims concerned, which should have been the predictable conclusion of any responsible reflection on this matter. This is a small community in which personal references are easily identified, and the resulting furore will have caused unnecessary, acute and deep distress to the families of the persons concerned.

I very much regret having to write to you in this vein. However, the importance of the subject compels me to do so. Finally, in the exceptional circumstances of this matter, and to clarify the misleading impressions to which these events have given rise, I have decided that this letter should be made public.

Yours sincerely,



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Dawn J. Smith  
Attorney General