

THE CRANSTON INQUIRY

OPENING STATEMENT OF THE MARITIME AND COASTGUARD AGENCY

Introduction

1. The thoughts of those who work and volunteer at the Maritime and Coastguard Agency (“MCA”) are, and continue to be, with the families of those who lost their lives in the tragic incident in the English Channel on 24 November 2021, and with the two survivors. The MCA is committed to assisting the Inquiry in its investigation of the incident.
2. The hearings in March 2025 will provide an opportunity for detailed questioning of key witnesses involved in events on 23/24 November 2021. It is likely that at least 12 people who were on duty on 23 or 24 November will be giving oral evidence. In the circumstances, this Opening Statement will focus primarily on overarching issues rather than attempting a comprehensive analysis of the events of 23/24 November.
3. Until November 2018, the number of asylum seekers attempting to cross the Channel in small boats (invariably poorly constructed inflatable dinghies fitted with outboard motors) was almost negligible. In December 2018, the Home Secretary declared a Major Incident after approximately 200 people attempted such crossings in November and December of that year. The numbers continued to increase rapidly after that date. The number of arrivals in 2021 represented an increase of over 200% from the number in 2020 and an increase of over 1,400% from the number in 2019.¹ By 23 November 2021, the MCA had successfully coordinated the rescue of over 35,000 people who attempted the crossing.
4. The MCA never loses sight of the fact that those who travel in migrant small boats are people.² The MCA is committed to complying with its international obligations including the obligation, enshrined in the International Convention on Maritime Search and Rescue 1979 (“the SAR Convention”), to ensure that assistance is provided to any person in distress at sea regardless of their nationality, status or the circumstances in which they are found.³ The MCA’s role is distinct from that of the Department for Transport (“DfT”), the Home Office or Border Force, and it is a Full Participant in its own right in this Inquiry.
5. The role of the MCA is to be the UK agency that provides an emergency response service within the UK’s Search and Rescue Region. By November 2021, working

¹ 1,843 in 2019; 8,466 in 2020; 28,526 in 2021

² In this statement, we use the term “migrants” to describe people making such a journey and “migrant small boats” to describe the vessels that they travel in. Similar terminology was used by the Marine Accident Investigation Branch (“MAIB”) and by the United States Coast Guard (“US Coast Guard”) in their reports {INQ010445} and {INQ004345} and the terms serve to draw a necessary distinction between the matters under investigation and mariners who navigate the Channel in recreational or commercial vessels.

³ SAR Convention Annex para 2.1.10

practices had developed whereby the MCA (i) proactively booked planes to carry out surveillance when crossings were likely⁴ and (ii) proactively tasked helicopters and surface vessels whilst individual migrant small boats were still in France's SAR region with the intention of rescuing them after they entered the UK SAR region. As explained in more detail in the Legal Framework section of this statement, there was no legal requirement to introduce these measures. They were only some of a number of measures introduced before 23 November 2021 in response to the increasing numbers of crossings.

6. On the night of 23/24 November, planes (provided under a long-term contract between the MCA and 2Excel) had been tasked to carry out aerial surveillance in support of SAR. However, for reasons entirely out of the MCA's control – namely, adverse weather conditions, airport availability and aviation safety concerns – at a late stage 2Excel communicated that it would be unable to fulfil the tasking.⁵ The MCA tasked a specialist Search and Rescue helicopter⁶ (provided under a long-term contract between the MCA and Bristow Helicopters) to provide surveillance in place of the cancelled 2Excel flights.
7. The MCA opened Incident CHARLIE upon receipt of information from Maritime Gendarmerie (“the French Coast Guard”) in respect of the migrant small boat carrying those who later died.⁷ The MCA (i) tasked HMC Valiant (a Border Force ship) to search for Charlie before Charlie was understood to have entered the UK SAR region (ii) broadcast a Mayday Relay using Charlie's estimated position⁸ and (iii) specifically tasked the SAR helicopter to search for Charlie using a datum⁹ set with reference to Charlie's estimated position.
8. In total, Valiant was at sea for over 5 ½ hours.¹⁰ The SAR helicopter searched for over 2 hours and, on completion of its search plan, returned to base.¹¹ Analyses carried out after the incident concluded that the search areas covered by both Valiant¹² and the SAR helicopter¹³ would have encompassed the likely position of Charlie. During its mission, the SAR helicopter spotted migrant small boats but did not spot Charlie. During its mission, Valiant rescued a total of 98 migrants from 3 boats and spotted a further migrant small boat that was making way under engine power.¹⁴ The fact that neither the SAR helicopter nor Valiant spotted Charlie illustrates the difficulty of spotting

⁴ This type of tasking was still expressly in support of SAR – see {INQ005198} and {INQ010049}

⁵ Norton WS {INQ010335} pages 19-27

⁶ R163

⁷ In this statement, the unnamed small boat carrying the migrants who died and the two who survived will be referred to as Charlie

⁸ We describe it as an “estimated position” because the position was derived from WhatsApp and WhatsApp positions should not be regarded as accurate – see the expert report of Iain Ivory {INQ010133} section 5.2

⁹ The datum is the position around which a search is undertaken

¹⁰ Toy WS {INQ010136} paras 65, 80 and 81

¹¹ {INQ008983}; Trubshaw WS {INQ009651_0014} para 4.3.11; Hamilton WS {INQ010336_0020} para 7.4.1

¹² US Coastguard report

¹³ MAIB report and HM Coastguard internal review

¹⁴ Toy WS {INQ010136_0026} para 72

migrant small boats in the dark even with the benefit of specialist equipment. At the time, it was believed that Valiant had found Charlie and rescued its passengers – this issue is addressed in paragraphs 75 - 81 of this statement.

9. Since the incident, the MCA has sought to learn lessons from it and further reduce the risk of migrants perishing in the UK SAR region. To this end, it (i) carried out a detailed internal review of the incident (ii) commissioned the United States Coast Guard (“US Coast Guard”) to carry out an independent SAR Case Study into the incident and (iii) fully cooperated with the investigation by the Marine Accident Investigation Branch (“MAIB”). The witness statement of Assistant Chief Coastguard Matthew Leat details the recommendations made by each of those investigations and the changes made by the MCA in response to those recommendations and more generally.¹⁵
10. This Opening Statement contains the following sections.
 - The nature and role of the MCA
 - The legal framework
 - The challenges posed by migrant small boats
 - France’s SAR region
 - The MAIB report
 - Systems for migrant small boat SAR
 - The events of 23/24 November 2021
 - Final observations

The nature and role of the MCA

11. The MCA is an executive agency of DfT. It was established in 1998. His Majesty’s Coastguard (“HM Coastguard”) was founded in 1822 and forms part of the MCA.
12. In 1992, the Secretary of State for Transport laid the following determination before Parliament (“HM Coastguard Responsibility Statement”): *“HM Coastguard is responsible for the initiation and coordination of civil maritime search and rescue within the UK search and rescue region. This includes the mobilisation, organisation and tasking of adequate resources to respond to persons either in distress at sea, or to persons at risk of injury or death on the cliffs or shoreline of the UK.”*¹⁶ In the maritime context, “distress” is defined as *“a situation wherein there is reasonable certainty that a vessel or other craft, including an aircraft or a person, is threatened by grave and imminent danger and requires immediate assistance.”*¹⁷
13. The following fundamental points about HM Coastguard need to be understood. First, it is an emergency service – the UK’s only national emergency service – and, like other emergency services, it works 24 hours a day 365 days a year. Secondly, like other

¹⁵ Leat WS {INQ010098} pages 123-134

¹⁶ {INQ000101}

¹⁷ SAR Convention Annex para 1.3.13

emergency services, HM Coastguard is a responsive service. Thirdly, the emergencies to which HM Coastguard responds are emergencies within the UK's Search and Rescue Region, which covers approximately 2 million square miles.¹⁸ The SAR Coordination and Response and Maritime Assistance Service Policy states that it is the policy of the MCA that: "*HMCG provides 24 hour statutory civil maritime SAR coordination service for the coast of the United Kingdom and at sea within the UK Search and Rescue Region.*"¹⁹ Fourthly, unlike most emergency services, it is not HM Coastguard staff who attend emergencies at sea. HM Coastguard initiates and co-ordinates SAR by mobilising, organising and tasking assets operated and staffed by other organisations.²⁰

14. HM Coastguard initiates and co-ordinates SAR through a fully integrated national network comprising the Joint Rescue Coordination Centre ("JRCC") in Fareham, 9 Maritime Rescue Coordination Centres ("MRCC") spread around the UK²¹ and one Maritime Rescue Sub Centre in London ("MRSC"). This national network has the capability to allocate HM Coastguard officers to any operational zone²² where they are needed. This is known as "flexing". The flexing capability of the network means that staff based at the JRCC, MRSC or any MRCC can be tasked to assist with, or assume coordination of, an incident in any operational zone.
15. As a national emergency service, it is logical and appropriate that HM Coastguard should employ a national network. The national network provides significant advantages: because HM Coastguard cannot know in advance in which operational zone an incident may arise, flexing is more efficient than moving officers around the UK based on predictions.
16. The assets which HM Coastguard mobilises, organises and tasks are classified as either Declared Facilities or Additional Facilities.²³ These include vessels on the sea ("surface assets") and fixed wing aircraft, helicopters and drones ("aerial assets").
17. Throughout the period under investigation in this Inquiry, HM Coastguard did not own or operate any surface assets. This was partly for historic reasons, in particular the existence of the Royal National Lifeboat Institution ("RNLI")²⁴ and independent lifeboat organisations. All such lifeboats were Declared Facilities. The increasing numbers of migrant small boats placed considerable strain on the resources of the

¹⁸ {INQ000412_0005}

¹⁹ {INQ000430_0002}. In the interests of completeness, we note that it also states: "HMCG will provide, in accordance with international humanitarian principles, a SAR coordination response for any incident of which it first becomes aware, in any part of the Earth's seas and oceans. Such coordination will then be handed over, where possible, to the appropriate SAR coordination service as soon as practicable." This provision is of no relevance to the matters under investigation in this Inquiry.

²⁰ Both employees and volunteers

²¹ Dover, Falmouth, Milford Haven, Holyhead, Belfast, Stornoway, Shetland, Aberdeen and Humber

²² The UK SAR region was divided into 36 operational zones; the Dover Strait was Zone 14.

²³ Declared and Additional Resources {INQ003768}

²⁴ The RNLI is a charity founded in 1824, two years after HM Coastguard

RNLI. In December 2018, Border Force surface vessels were made available for SAR tasking as Additional Facilities.²⁵

18. Civil SAR helicopters and fixed wing aircraft under contract to the MCA were Declared Facilities.²⁶ As at 23 November 2021, the MCA had a contract with 2Excel in respect of fixed wing aircraft and a contract with Bristow Helicopters in respect of SAR helicopters. Although these assets bore the HM Coastguard livery, their crew were employees of 2Excel / Bristow Helicopters, which owned and operated them. In addition, HM Coastguard had access to information obtained by unmanned aerial vehicles (aka drones) operated by Tekever under a contract with the Home Office.²⁷
19. During the summer of 2021, the MCA was made aware of Home Office predictions that 60,000 migrants might cross the Channel in 2022,²⁸ a huge increase on 8,466 in 2020 and 6,917 in the first half of 2021.²⁹ As a result, the position as at 23 November 2021 was that the MCA had initiated plans to have increased capabilities in place from March 2022 onwards.³⁰ To this end, it had run recruitment campaigns for Dover MRCC in August and September 2021 and ran a third one in November 2021. These campaigns resulted respectively in nine, five and eight new officers being appointed.³¹ Further, in October 2021, it commenced Project Caesar³² to procure increased aerial asset capability.³³ In addition, the Home Office had begun upgrading its maritime rescue capability before 23 November 2021 by trialling a new vessel type, Crew Transfer Vessels. The first such vessel, CTV Hurricane, was deployed in July 2021 with four more being deployed in April 2022.³⁴

The legal framework

20. Whilst this is a non-statutory inquiry rather than a forum for determining legal disputes, it is important that the issues to be investigated are analysed within the applicable legal framework.
21. The global maritime SAR system is underpinned by international conventions: the United Nations Convention on the Law of the Sea 1982 (“UNCLOS”); the Convention on Safety of Life at Sea 1974 (“SOLAS”); and the SAR Convention.
22. The objectives of these international conventions include (i) ensuring that the Earth’s oceans and seas are divided into clearly defined SAR regions³⁵ and (ii) ensuring clarity

²⁵ Leat WS {INQ010098_0080} para 5.16; Whitton WS {INQ010137_0013} para 28; {INQ002510}

²⁶ {INQ003768}

²⁷ Leat WS {INQ010098_0039} para 2.47

²⁸ Leat WS {INQ010098} paras 2.20 and 5.69

²⁹ {INQ008905_0019}

³⁰ Leat WS {INQ010098_0031} para 2.22

³¹ Leat WS {INQ010098_0093} para 5.69

³² Channel Aviation Emergency Search and Rescue

³³ {INQ001178}; {INQ001360}; {INQ001180}; {INQ001182}; {INQ003743}

³⁴ Whitton WS {INQ010137_0010} para 21

³⁵ The SAR Convention Annex defines a “Search and rescue region” as “An area of defined dimensions associated with a rescue co-ordination centre within which search and rescue services are provided” (para 1.3.4)

as to which State is responsible for coordinating search and rescue in each SAR region.³⁶

23. The UK and France have achieved these objectives by agreeing a mutual regional arrangement known as the ManchePlan. The version which applied in November 2021 was agreed in 2018. It is a comprehensive bilateral agreement covering maritime SAR provision (and a range of other issues) in the English Channel.³⁷ The ManchePlan states: *“The position, either known or assumed, of a maritime event or an area of pollution in relation to the “MANCHEPLAN line of separation” shall determine which of the two States Parties should bear initial responsibility for intervention, no matter what the type of intervention may be.”*³⁸ The ManchePlan line of separation marks the division between the UK SAR region and France’s SAR region. Therefore, the ManchePlan clearly defines the boundaries of the two SAR regions and clearly defines responsibility for SAR in each of them. In the Dover Strait, the boundary between the UK SAR region and France’s SAR region is identical to the boundary between UK territorial waters and French territorial waters, save in one small area³⁹ which is of no relevance to the events of 23/24 November 2021. In this statement, we refer to SAR regions rather than territorial waters but, for the avoidance of doubt, all relevant events that took place in France’s SAR region also took place in French territorial waters.⁴⁰
24. A further objective of the international conventions is ensuring that necessary arrangements are in place for the coordination of search and rescue in each SAR region.⁴¹ The UK and France achieve this by both having SAR services that work 24 hours a day, 365 days a year and are capable of coordinating SAR operations within their respective SAR regions at all times.
25. The duty to rescue persons in distress is one of the most ancient and fundamental principles of the law of the sea. The SAR Convention divides a SAR incident into several phases. The most serious is the Distress phase, defined as: *“a situation wherein there is reasonable certainty that a vessel or other craft, including an aircraft or a person, is threatened by grave and imminent danger and requires immediate assistance.”*⁴² This is an objective test. Given the objective nature of the test, the MCA’s position is (and was in November 2021) that all migrant small boats crossing the Dover Strait are in Distress and should be classified as such by the State in whose

³⁶ UNCLOS Article 98(2); SOLAS Chapter V Regulation 7(1); SAR Convention Annex paras 2.1.3, 2.1.4, 2.1.6, 2.1.9, 2.3.1, and 2.3.2

³⁷ {INQ000095}. Article 31.1 of the ManchePlan states: “The principles governing coordination between France and the United Kingdom defined in Articles 17 to 23 shall apply in their entirety to the management of ECNs in the SAR context” {INQ000095_0045}. Article 2.1 defines an ECN as “an event at sea for which Coordination is Necessary” {INQ000095_0017}.

³⁸ Article 19.1 ManchePlan {INQ000095_0035}

³⁹ An area where the UK SAR region extends into French territorial waters in order to assist the smooth operation of the Traffic Separation System which operates in the Channel.

⁴⁰ Territorial waters extend 12 nautical miles from the coast – see Articles 3 and 5 UNCLOS

⁴¹ UNCLOS Article 98(2); SOLAS Chapter V Regulation 7(1); SAR Convention Annex paras 1.3.3, 2.1.2, 2.3 and 4.2.1

⁴² SAR Convention Annex para 1.3.13

SAR region they are at the time, unless and until there is compelling evidence to indicate that their status can be downgraded.

26. This position is supported by the judgment of Lady Chief Justice Carr in *R v Ibrahima Bah*.⁴³ This criminal case arose out of an incident in December 2022 in which at least 4 passengers in a migrant small boat died. Bah was convicted of 4 counts of gross negligence manslaughter⁴⁴ and his conviction was upheld by the Court of Appeal. Bah had been given free passage by people traffickers in return for steering the boat. During the voyage, water started to enter the boat and, as a consequence of passengers standing up, the floor of the boat broke, and the boat collapsed in on itself. Lady Carr stated, in a description which would equally apply to all or virtually all migrant small boats: *“The boat was not of a satisfactory construction, and craft of this kind are not intended to be used in open seas across large distances. The boat was not provided with the necessary safety and navigation equipment. In short, the boat was not safe at all, let alone for the purpose of carrying around 45 people on the open sea ... the boat was wholly unsuitable and unequipped for the crossing of the Channel which was attempted.”*⁴⁵
27. The implication of the decision in *Bah* is that the lack of care involved in supplying and skipping a migrant small boat is truly exceptionally bad, with such a crossing involving a serious and obvious risk of death.⁴⁶ Both conclusions are intrinsically linked to the poor condition of the small boats and the inherent risks involved in travelling in one across the Channel without adequate equipment or experience.
28. It follows that all migrant small boats should be classified as in Distress by the French Coast Guard as soon as they become aware of them. Thereafter, the French Coast Guard is responsible for coordinating their search and rescue as they pass through France’s SAR region. Accordingly, the DfT / MCA Briefing Note dated 13 May 2020 was correct to state that: *“HMCG does not have primacy for SAR or the tasking of assets for any incident within the French Territorial Sea or French SAR Region unless assistance is specifically requested by French authorities”*.⁴⁷
29. If the French Coast Guard inform HM Coastguard about a migrant small boat incident while it is still in France’s SAR region, HM Coastguard monitors it. In circumstances where it is not known whether or not a migrant small boat has reached the UK SAR region, the French Coast Guard remain responsible for its search and rescue. It is only when a transfer of responsibility for an incident has been expressly accepted by HM Coastguard, or when HM Coastguard becomes aware that a migrant small boat has entered the UK SAR region, that responsibility for its search and rescue passes from

⁴³ [2024] EWCA Crim 1499

⁴⁴ The jury confirmed this – see para 12 of the CA judgment

⁴⁵ Bah paras 9 and 36

⁴⁶ The legal test for gross negligence manslaughter is clear, well understood and summarised in Bah para 29. It requires a serious and obvious risk of death that is reasonably foreseeable at the time of the breach of duty and circumstances of breach that are truly exceptionally bad and so reprehensible as to amount to gross negligence.

⁴⁷ {INQ002510_0001}

France to the UK.⁴⁸ It is only at this point that the UK's SAR service (i.e. HM Coastguard) is required to coordinate a SAR operation.⁴⁹

30. Although the MCA had in place arrangements for fixed wing aircraft to carry out proactive surveillance flights, strictly speaking there was no requirement for it to do so. The SAR Convention does not require a State to patrol its SAR region. By this we mean that there is no requirement on a State to task assets to carry out patrols or surveillance in the absence of information that there are persons in distress in its SAR region.⁵⁰
31. Neither the European Convention on Human Rights nor domestic law provisions⁵¹ require the UK to commence a SAR operation in respect of a migrant small boat while it is in France's SAR region. Guidance issued by the Cabinet Office on the Civil Contingencies Act states: "*The primary responsibility of HM Coastguard is to initiate and co-ordinate civil maritime search and rescue within the UK Search and Rescue Region. This includes mobilising, organising and dispatching resources to assist people in distress at sea, or in danger on the cliffs or shoreline, or in certain inland areas.*"⁵² As stated in HM Coastguard's SAR Coordination and Response and Maritime Assistance Service Policy: "*HMCG, as a Category One Responder of the UK SAR organisation, shall provide a component of the UK emergency response arrangements in accordance with the Civil Contingencies Act 2004 but only so far as the maritime responsibilities of the Secretary of State for the Department for Transport extend.*"⁵³

The challenges posed by migrant small boats

32. Migrant small boats posed and continue to pose particular challenges for SAR.
33. First, persons may end up in the water at any stage during the Channel crossing as a result of either the failure of the structural integrity of the boat or other factors. Whilst the sea has always posed a threat to humankind, most modern vessels have an array of features and equipment designed to mitigate that elemental threat.⁵⁴ Migrant small boats do not. As recognised in *Bah*, sending migrants across the Channel in a small boat exposes them to a serious and obvious risk of death with no guarantee that they will be successfully rescued. In *Safi v Greece*, the European Court of Human Rights stated: "*The Court emphasises that, admittedly, State agents – coastguards in the present case*

⁴⁸ SAR Convention Annex para 4.5.4; Article 20.1 ManchePlan {INQ000095_0035}

⁴⁹ The SAR Convention Annex defines "Rescue" as "an operation to retrieve persons in distress, provide for their initial medical or other needs, and deliver them to a place of safety" (para 1.3.2) and "Search" as "an operation, normally coordinated by a rescue co-ordination centre or rescue sub-centre, using available personnel and facilities to locate persons in distress" (para 1.3.1)

⁵⁰ The experience of Stephen Whitton (Head of Border Force Maritime Command) and Kevin Toy (Commander of HMC Valiant) was that, in practice, patrolling with surface vessels had little impact and was not the best use of resources – Whitton WS {INQ010137} para 19; Toy WS {INQ010136} para 48

⁵¹ The Civil Contingencies Act 2004

⁵² Emergency Response and Recovery: Non statutory guidance accompanying the Civil Contingencies Act 2004, October 2013 (para 3.2.29). This is consistent with the HM Coastguard Responsibility Statement {INQ000101}

⁵³ {INQ000430_0004}

⁵⁴ Leat WS {INQ010098} paras 1.15, 1.25 and 1.26

– *cannot be expected to effect the successful rescue of everyone imperilled at sea... ”.*⁵⁵
Dr Jacob Berksen of Alarm Phone states: *“It is because of these inherent dangers involved in dinghy crossings that SAR operations, even when conducted properly, cannot guarantee that lives will not be lost.”*⁵⁶

34. Secondly, migrant small boats are difficult to locate in an area the size of the Dover Strait and are more difficult to spot in the dark.⁵⁷ The modus operandi of the Organised Criminal Gangs (“OCGs”) who control the cross-Channel route is to launch boats under cover of darkness in a clandestine manner thereby rendering the boats and their passengers deliberately difficult to spot.⁵⁸ The OCGs also invariably fail to provide their passengers with any of the wide range of safety equipment commonly used by mariners (e.g. Automatic Identification System (“AIS”), VHF marine radio, Digital Selective Calling communications systems, GPS devices or chart plotters, Personal Locator Beacons, Emergency Position-Indicating Radio Beacons, or even simply distress flares) to enable them (i) to work out their position (ii) to communicate their position and (iii) to draw attention to themselves on the water.⁵⁹ Invariably, migrants are reliant on mobile phones, which are not a recognised form of maritime communication.
35. The challenges identified in the two points above will, for the following reasons, generally be greater in late Autumn and Winter. Colder air and sea temperatures increase the risks to migrants and may also make their heat signature more difficult to detect if they enter the water. The sea state is more likely to endanger small boats as well as making them more difficult to spot from aerial assets and surface vessels. Reduced hours of daylight and the increased likelihood of foggy or misty conditions also reduce the likelihood of small boats being spotted.
36. Thirdly, migrant small boat incidents are difficult to reconcile. Unlike other vessels, migrant small boats do not have names. They also have few distinguishing features and no passenger manifest. Those on board are unlikely to know all of their fellow passengers personally and it is unlikely that they would, if asked how many passengers were on board, all give the same answer.
37. The evidence in relation to Charlie illustrates this point. The French tracker emailed at 0148 noted that Migrant 1, Migrant 7 and Migrant 9 might be the same boat whilst at the same time recording that Migrant 1 had 40 passengers, Migrant 7 had 33 passengers (including 13 women and 8 children) and Migrant 9 had 33 passengers (including 3 women and 6 children).⁶⁰ As to the evidence of those on the boat, on the night HM

⁵⁵ Safi v Greece (Application 5418/15, 7 July 2022) para 157

⁵⁶ Berksen WS {INQ010093_0019} para 58. Alarm Phone’s “Information for travellers” candidly states “Crossing to the UK is very dangerous” {INQ008768}

⁵⁷ Trubshaw WS {INQ009651_0004} paras 3.3.5 and 3.3.6; Toy WS {INQ010136} para 40

⁵⁸ Everyone on the boat was wearing dark clothing – Omar WS {INQ010388_0012} para 64

⁵⁹ Leat WS {INQ010098} paras 1.15, 1.25, 1.26 and 3.29 – 3.31

⁶⁰ {INQ007692} – this remained the case on the French tracker emailed at 0544 {INQ007696}

Coastguard was told in two separate calls that there were 40 people on board.⁶¹ Zana Mohammed refers to 33 people.⁶² Kani Mohammed refers to 34 people.⁶³ The survivor, Mr Omar, states that he did not know any of the other people on the boat before the day of departure and did not interact directly with everyone on the boat that night. He recalls that “*once the main group had got on the boat, the smugglers brought another two or three people on*” and that “*whilst I am certain that the smugglers told us that there were 33 of us, I do not believe that is the true number of people on board the boat that night.*”⁶⁴ When HM Coastguard asked about the colour of Charlie, the answer was “*No understand*”.⁶⁵ The evidence in relation to lifejackets is similarly mixed. The French Coast Guard told HM Coastguard that 14 people on Migrant 7 had lifejackets⁶⁶ whereas Mr Omar states that all passengers wore lifejackets.⁶⁷ HMC Valiant rescued 35, 31 and 32 migrants respectively from 3 boats on the morning of 24 November. Its Commander was not able to establish anything specific from speaking to those rescued.⁶⁸

38. HMCG’s experience is that, rather than assigning one person on board to be the single point of contact with the emergency services, multiple passengers make multiple calls.⁶⁹ Further, the information provided in those calls is often not reliable. This may be because those on board cannot accurately state the number of persons on board and/or it may be because they have been instructed by OCGs to make certain statements about their predicament in the hope of speeding up their rescue.⁷⁰ Other factors which add to the difficulty of obtaining useful, accurate information include: calls disconnecting as mobile phone signal is lost; poor signal strength and sound quality; background noise from other persons on board, the weather or the engine; and language barriers.
39. By the time of rescue in the UK SAR region, migrants are likely to have been at sea for many hours and to be cold, tired and hungry. They may well not be in the right frame of mind to provide their rescuers with a detailed de-brief. If multiple calls were made from the boat by multiple persons, it may in any event not be possible for those questioned on rescue to provide an accurate account of the names of those who made calls or whom they called. Further, migrants have no incentive to assist the authorities after they have been safely rescued. Rather, there are a number of important disincentives. In considering this point, the criminal character of the enterprise needs to be borne in mind. The OCGs are willing to risk the lives of their passengers and very substantial terms of imprisonment for themselves⁷¹ in return for financial gain. Mr

⁶¹ {INQ008929_0006} call at 0148; {INQ007655_0003} call at 0231

⁶² Zana Mohammed WS {INQ010210} para 49

⁶³ Kani Mohammed WS {INQ010465} para 7

⁶⁴ Omar WS {INQ010388} paras 41, 43, 47 and 73

⁶⁵ {INQ007655_0004}

⁶⁶ {INQ007647} telephone call at 0107

⁶⁷ Omar WS {INQ01038} para 71

⁶⁸ Toy MAIB transcript {INQ008330_0006}

⁶⁹ Leat WS {INQ010098_0011} para 1.29. The evidence of Kani Mohammed is that people on Charlie were “continuously calling the UK and French police” (Kani Mohammed WS {INQ010465} paras 12-15)

⁷⁰ Leat WS {INQ010098_0064} paras 3.81 and 3.82; Whitton WS {INQ010137_0032} paras 83 and 84

⁷¹ Bah’s sentence of 9 years 6 months was upheld by the Court of Appeal and he did not have an organisational role in the OCG

Omar states: *“The second time the police found us on the beach near Dunkirk and they sent us back. The smugglers were on the beach with us that night. Their faces were covered and they had guns. They did not threaten us but they were taking pictures of us and taking details so they could track us down to make sure we paid them when we arrived.”*⁷² In Bah, *“the traffickers were armed and were threatening the migrants and assaulting them”*.⁷³

40. There is evidence that OCGs instruct migrants to throw their mobile phones in the sea before they are rescued.⁷⁴ And there is evidence that two of the deceased were planning to do so.⁷⁵ Migrants will often be fearful of the OCGs⁷⁶ who may know not only their identities but also the identities and addresses of family members in their home countries.
41. In the circumstances, one should not be surprised at migrants complying with an instruction to discard their mobile phone, declining to reveal their names and denying having called the emergency services.⁷⁷ Nor should one blame them for doing so. But one should recognise that such behaviour adds to the complexity and difficulty of HM Coastguard’s work.
42. Fourthly, in the absence of up-to-date information from an independent person, there is no reliable means of determining which migrant small boats are in greatest need of rescue. This is a logical consequence of some of the points previously made above. All migrant small boats should be, and are, categorised as in “Distress” at the moment that they are known to have entered the UK SAR region. They should not be downgraded to “Alert” unless and until there is compelling evidence to indicate that they are not in Distress. Such evidence would need to be based on an up-to-date visual assessment by an independent person. Further, because Distress is the highest emergency classification recognised by the SAR Convention, there is no recognised classification into which a subset of migrant small boats in Distress could be upgraded. Therefore, in the absence of up-to-date information from an independent source such as a SAR facility or a passing vessel, there is no reliable means of determining whether one migrant small boat should be prioritised for SAR ahead of another migrant small boat.
43. Fifthly, HM Coastguard cannot know (i) how many migrant small boats have been launched on any given night (ii) the condition of those boats and/or their passengers and (iii) how many boats will be launched in the following 24 hours. Given that SAR assets are finite, it would in principle be irresponsible to mobilise all assets at the same time because the effect would be to reduce the assets available later, when the need for

⁷² Omar WS {INQ010388_0008} para 39

⁷³ Bah judgment para 4

⁷⁴ {INQ004438}; {INQ008284}

⁷⁵ Shakar Alipour, who sent a voicenote {INQ009020_0010} “If you have not heard from us, it is because I will throw away my mobile and it means it is UK”, and Twana Mohammed (see Zana Mohammed WS {INQ010210_0013} para 62)

⁷⁶ Some passengers are likely to be victims of modern slavery – see {INQ002983}

⁷⁷ Leat WS {INQ010098} paras 1.29, 1.30 and 3.48

them might be equal or greater. This is well illustrated by what happened on the nights of 9/10 and 10/11 November 2021. Operation Deveran forecast crossings as “Likely” on the night of 9/10 November and 22 migrant small boats made the crossing.⁷⁸ On the following night, crossings were predicted as “Highly Likely” and a record 36 boats made the crossing.⁷⁹

44. The cumulative effect of these challenges is increased by the number of migrant small boats attempting the Channel crossing on any given night. The number in 2021 represented an increase of over 60% from the number in 2020 and an increase of over 500% from the number in 2019.⁸⁰ Further, there was no precedent nor prediction for the number that attempted the crossing in November 2021 - more migrant small boats made the crossing that month than in any previous month in any year.⁸¹

France’s SAR region

45. A migrant small boat launched from the French coast will have to travel a minimum⁸² of 9 nautical miles (“nm”) in France’s SAR region before it reaches the UK SAR region. From Dunkirk the journey to the UK SAR region is over 15nm.
46. Migrant small boats travelling through France’s SAR region are the responsibility of the French Coast Guard. The evidence of the Inquiry’s expert in Communications Technology (Iain Ivory) suggests that emergency calls that they make from mobile phones may continue to connect them to the French authorities even if (i) their intention is to call the UK authorities and (ii) they have entered the UK SAR region. In his report, he considers the scenario where a mobile which starts a journey on the French mainland with a SIM registered to a French mobile network then travels across the Dover Strait. Mr Ivory explains that, as the mobile moves away from the French coast, the signal quality will weaken but the mobile will still “prefer” to stay connected to the French network. Only when the signal passes close to or below a quality threshold will the phone look for an alternate network, at which point it is likely to attempt connection to a UK mobile network as a roaming device.⁸³ He concludes: *“In this scenario it is quite likely that mobile phone would be well into UK territorial waters before it switched to a UK mobile network.”*⁸⁴
47. This factor, together with the international conventions and the fact that the UK and French SAR regions adjoin in the Channel, mean that cooperation between the UK and French authorities is essential. Prior to 23 November 2021, this cooperation took a

⁷⁸ {INQ007305}

⁷⁹ {INQ007306} – this prediction had been made with “moderate confidence” on the morning of 9 November and was confirmed on the morning of 10 November.

⁸⁰ 164 in 2019; 641 in 2020; 1,034 in 2021

⁸¹ {INQ008905_0018}

⁸² It is a minimum of 9nm because (1) this is the distance at the narrowest part of the Dover Strait, and (2) it does not take account of tide, leeway due to wind or swell, or lack of nautical experience.

⁸³ Ivory expert report {INQ010133} para 5.2.6.2 (see also para 4.4.7)

⁸⁴ Ivory expert report {INQ010133} para 5.2.6.3

number of forms. First, the ManchePlan mentioned above. Secondly, meetings of the Anglo-French Accident Technical Group. Thirdly, meetings between HM Coastguard officers and their counterparts based at MRCC Gris-Nez. Fourthly, regular telephone and email contact between on duty operational staff.

48. By 23 November 2021, there was a well-established working practice whereby the French Coast Guard would email HM Coastguard a tracker document (“the French tracker”) listing SAR incidents it had opened in relation to migrant small boats in France’s SAR region. The French tracker provided valuable early notice of crossings and has assisted the rescue of thousands of people. The French tracker would be updated and sent to HM Coastguard a number of times during a shift in which there was migrant small boat activity.
49. Events in relation to Charlie are summarised later in this statement. However, the following matters are particularly relevant to the role of the French authorities. For the avoidance of doubt, the MCA wishes to make it clear that it had a good working relationship with the French Coast Guard at the time and continues to do so.
50. The evidence suggests that, on the night of 23/24 November, Charlie set off from the Dunkirk area at around 2100 and travelled within France’s SAR region for over 4 hours.⁸⁵ The first French tracker that night was not emailed to HM Coastguard until 0056, although the French Coast Guard had been aware of migrant small boat activity since 2102.⁸⁶
51. The updated French tracker received at 0148⁸⁷ indicated that Migrant 7 (which had been linked to Charlie and was thought to have 33 occupants) was a possible repeat of Migrant 1 (thought to have 40 occupants) and Migrant 9.
52. At 0242, the French Coast Guard contacted HM Coastguard stating that it was receiving calls from migrant 7. By this time, Charlie was probably in the UK SAR region and HM Coastguard was coordinating its search and rescue. The fact that such calls were still being received by the French Coast Guard is probably a result of the “preference” of the mobiles of those on board to stay connected to the French network.
53. During the 0242 call the French Coast Guard was informed that the French warship, Flamant, which had not responded to the Mayday Relay broadcast at 0227, was the closest asset to Charlie and approximately 9 minutes away from its estimated position.
54. It should be apparent from the above that (1) events in France’s SAR region (2) the knowledge and actions of the French Coast Guard and (3) the knowledge and actions of the Flamant are all highly relevant to the events of 23/24 November. Such matters

⁸⁵ All times in this statement are UTC (also known as GMT)

⁸⁶ {INQ001435}

⁸⁷ {INQ007692}

fall squarely within the List of Issues and should therefore be investigated by the Inquiry to the fullest extent possible.

55. We recognise that the Inquiry is unlikely to be able to investigate such matters to anything like the extent to which it would wish. Our understanding is that the French authorities have declined to cooperate with the Inquiry. They also declined to cooperate with the MAIB investigation⁸⁸ and with HM Coastguard's internal review.⁸⁹ As a result, the internal review states that it should be considered incomplete and its status remains "draft".⁹⁰ The limited evidence available to the Inquiry about these matters reinforces the view that they are highly relevant and should be investigated to the fullest extent possible.

- (1) The survivor, Mr Omar, states: *"After we had travelled for about an hour we were spotted by the French coastguard. They came up to us to see what we were doing and shone a light on us ... After about an hour they left us. They did not give us any instructions, they just left us and turned their boat around."*⁹¹ If this is correct, it suggests that the French Coast Guard was aware of Migrant 7 / Charlie from as early as 2200. The evidence certainly indicates that Flamant was with Migrant 1 for a time.⁹²
- (2) It is reported that numerous telephone conversations took place between those on board Migrant 7 / Charlie and the French Coast Guard in the period between 0035 and 0333, when a final 17 minute long call ended.⁹³
- (3) It is reported that the tanker, Concerto, called the French Coast Guard to report a vessel in difficulty: *"He asks the French authorities what action should be taken. The operator indicates that he can continue his route, as the Flamant is on its way. The police have established that the Flamant was not sent to help this vessel."*⁹⁴
- (4) The crew of the Flamant who were questioned *"all declare that they did not receive the Mayday Relay"*.⁹⁵ However, an investigation in France is reported to have *"revealed that Le Flamant's crew had received three alerts from the British rescue services. Despite the absence of a distress frequency watch, these alerts reached them by VHF radio, with the signal taking the form of a loud sound that stopped only after the radio was tampered with."*⁹⁶ It has similarly been reported that the

⁸⁸ The section on evidence from France states: "no information has been forthcoming about the actions taken by the French Search and Rescue Centre at Gris-Nez or by the French government vessels in the area at the time." {INQ010445} para 1.2.2

⁸⁹ Examples of HM Coastguard's attempts to obtain information from the French authorities and their response can be found at {INQ007703}, {INQ007704} and {INQ007706}

⁹⁰ {INQ008905_0007} para 1.5.3

⁹¹ Omar WS {INQ010388} paras 79 and 82

⁹² See the second French tracker {INQ007692} as well as {INQ007647}

⁹³ {INQ000018} Le Monde 15.11.23

⁹⁴ {INQ004714} Le Monde 22.11.22

⁹⁵ {INQ007704}

⁹⁶ {INQ004426} Le Monde 15.3.24

French investigation found the Flamant's decision not to respond to the Mayday "difficult to understand" as it was not "busy with a vital mission."⁹⁷

56. Even on the basis of this limited evidence it is clear that, had the French authorities acted differently, events would have unfolded in a different way. Had HM Coastguard received information from the French Coast Guard when the French Coast Guard received it,⁹⁸ or had Flamant responded to the Mayday Relay and joined the search for Charlie, the outcome could have been very different.

The MAIB report

57. The Terms of Reference state that the Chair will consider the investigation already carried out by the MAIB. When doing so, we invite him to bear in mind the following two limitations of the MAIB investigation. First, as explained above, the MAIB did not investigate the following highly relevant matters: (1) events in France's SAR region (2) the knowledge and actions of the French Coast Guard and (3) the knowledge and actions of the Flamant.
58. Secondly, an analysis of the transcripts of MAIB interviews which have been disclosed to Full Participants suggests that the MAIB's methodology was to ask interviewees for their recollection of events without taking them to any contemporaneous documents.⁹⁹

Systems for migrant small boat SAR

59. Maritime Operations Officer ("MOO") is HM Coastguard's entry level position. The MOO training programme comprises 10 weeks of formal training, with the remainder of the programme being consolidation time at the employee's home station.¹⁰⁰ Before they complete this training programme, employees are known as Trainee MOOs.
60. The MOO training programme covers HM Coastguard's Standard Operating Procedures ("SOPs") and a wide range of topics including: search planning; mission coordination; nautical knowledge; communications; and use of HM Coastguard's technical systems. Much of the training and many of the SOPs directly relate to SAR operations.
61. The role of Search Mission Coordinator ("SMC") is an internationally recognised role with responsibilities set out in the IAMSAR Manual as well as in HM Coastguard documents.¹⁰¹ In HM Coastguard the role is undertaken by more senior grades than MOOs. Achieving the SMC qualification involves attendance on a three week training course and the successful completion of a number of written and practical

⁹⁷ {INQ004421} Le Monde 3.1.23

⁹⁸ Article 21.1 of the ManchePlan {INQ000095_0035} provides that: "The State Party initially informed of the occurrence of a maritime event meeting the criteria of an [event at sea for which Coordination is Necessary], or liable to do so in the future, shall seek to provide initial information to the other State Party without delay."

⁹⁹ Issa Mohammed Omar {INQ010120} and {INQ010121}; Trubshaw {INQ006321}; an employee of Bristow Helicopters {INQ006322}; Toy {INQ008330}; Driver {INQ006072}

¹⁰⁰ Leat WS {INQ010098} pages 18-22; {INQ006713}

¹⁰¹ {INQ000401}

assessments.¹⁰² The training course includes simulated exercises in which the SMC coordinates the SAR response. It generally takes approximately 3 years for MOOs who wish to qualify as SMCs to do so.

62. Whilst, as explained above, migrant small boats pose particular challenges, searching for and rescuing migrant small boats remains very much a SAR operation, with standard SAR principles still highly relevant. Knowledge, skills and experience gained in the search and rescue of more conventional vessels are all relevant to migrant small boat SAR. Similarly, much of the material covered in the MOO training programme and the SMC training programme is directly applicable to migrant small boat SAR.
63. Further, many of HM Coastguard's generic SOPs were applicable to migrant small boat SAR. Examples of generic SOPs applicable to migrant small boat SAR include (but are not limited to): Emergency Telephone Call Handling and SMS Text Messages; Declared and Additional Resources; Vessel Unsure of Position; Vessel Reported in Difficulties; ViSION Multiple Call Scenario and Incident Functions; Incident Coordination; Distress Phase checklist; C-Scope Simulated Tracks; SAC Search Patterns; SAC Instructions to SRUs; SAD Mobile Communications Devices; Search Suspension and Termination.
64. By 23 November 2021, a number of SOPs specific to migrant small boat SAR had been introduced. These included: Incidents Involving Migrants; SAR Incidents Involving Migrants; Aircraft Tasking Policy for Migrant Surveillance Patrols; ARCC Small Boat Response; Protocol for HMCG Termination of SAR.¹⁰³
65. In August 2021, HM Coastguard delivered training to officers entitled "Migrant Incidents Phases of Response".¹⁰⁴ In September and October 2021, HM Coastguard delivered training to officers entitled "Migrant Incidents SOP and Termination of SAR Protocol".¹⁰⁵ On 4 November 2021, HM Coastguard took part in a multi-agency simulation training exercise which focused on how agencies would respond to a mass casualty incident involving multiple capsized migrant small boats.¹⁰⁶ On 11 November 2021, HM Coastguard took part in a multi-agency exercise based on a migrant small boat scenario.¹⁰⁷

The events of 23/24 November 2021

66. The purpose of this section is to provide a concise outline of events on 23/24 November relevant to Charlie. It is not intended to be a comprehensive analysis of all events. It is important to bear in mind that focusing specifically on Charlie in this way is artificial and does not reflect how HM Coastguard's officers would have experienced events at

¹⁰² Leat WS {INQ010098} pages 22-24; {INQ000359}

¹⁰³ {INQ000428}, {INQ000449}, {INQ000461}, {INQ001456}, {INQ007381}

¹⁰⁴ {INQ008914}

¹⁰⁵ {INQ003396}, {INQ004550}, {INQ004549}, {INQ010043}, {INQ010044}

¹⁰⁶ {INQ009672}

¹⁰⁷ {INQ008908}

the time. We now know that 18 migrant small boats including Charlie set off from the French coast that night. This highly valuable information was not known, and could not have been known, by anyone within HM Coastguard at the time. Due to the number of calls received, as well as other information, HMCG opened 91 separate alphanumeric incidents on its migrant small boat tracker.¹⁰⁸ The challenges associated with working out which of those incidents were duplicates should not be underestimated.

67. The Operation Deveran assessments issued on both 22 and 23 November¹⁰⁹ forecasted “Amber” conditions for the night of 23/24 November¹¹⁰ (i.e. crossing attempts likely), and “Red” conditions for the night of 24/25 November¹¹¹ (i.e. crossing attempts highly likely). On this basis, the outlook was for some crossings to occur from the evening of 23 November onwards, building to a peak of activity on the morning of 25 November.
68. In light of the “Amber” day assessment, and in accordance with Operation Eos procedures, HM Coastguard submitted taskings for 2Excel planes to undertake surveillance flights in support of SAR in the Dover Strait between 0300 and 0800, and then 0830 to 1600 on 24 November.¹¹² In addition, 2Excel planes were booked to be available between midnight and 0500 in support of the Home Office’s Operation Altair.¹¹³ Valiant had been designated by Border Force Maritime Command as its primary responder for the night and was moored at Dover.¹¹⁴
69. As of the 2100 Network Conference Call, HM Coastguard’s Aeronautical Rescue Coordination Centre (“ARCC”) had been informed by 2Excel that two aircraft were available and would be used to cover the surveillance taskings requested.¹¹⁵ At 2353, 2Excel postponed the Op Eos flight.¹¹⁶ Later, at 0204, it confirmed that no flights could be undertaken that night due to adverse weather conditions, airport availability and aviation safety concerns – matters outside of HM Coastguard’s control.¹¹⁷
70. MRCC Dover received the first French tracker by email at 0056 on 24 November.¹¹⁸ The tracker listed 6 migrant small boat incidents, but did not include Migrant 7. It was not until a call at 0106, made by MRCC Dover to the French Coast Guard to query the suspected position of Migrant 1, that HM Coastguard were informed of Migrant 7. Coordinates of 51° 06.51N 001° 46.21E were provided, which would place the migrant small boat in France’s SAR region, 0.6nm from the UK SAR region. A log for incident Charlie was opened at 0119.¹¹⁹

¹⁰⁸ ALPHA was opened at 0026 and NOVEMBER 3 at 1508. GOLF was not used in the first set.

¹⁰⁹ {INQ006332} and {INQ000150}

¹¹⁰ 2200 UTC 23 November to 0600 UTC 24 November

¹¹¹ 2200 UTC 24 November to 0600 UTC 25 November

¹¹² See {INQ006336} and {INQ006335}

¹¹³ {INQ006337}

¹¹⁴ {INQ000566}; Toy WS {INQ010136} paras 50 and 57

¹¹⁵ See in particular the call between Jacob Lugg of 2Excel and the ARCC at 2001 {INQ008827}

¹¹⁶ See the ARCC Log {INQ000224} and the call between the ARCC and 2Excel {INQ010447}

¹¹⁷ {INQ007824}

¹¹⁸ {INQ001201}

¹¹⁹ {INQ000237}

71. Provided that the position was accurate, it was anticipated that Migrant 7 would shortly enter the UK SAR region. As a result, at 0124, MRCC Dover relayed this position to Border Force Maritime Command in order to arrange the mobilisation of a ship.¹²⁰ HMC Valiant was tasked at 0125 to the coordinates linked to Charlie.¹²¹ At this stage HM Coastguard had not received information to suggest that Charlie was in any specific difficulty beyond the inherent risks associated with any migrant small boat crossing.
72. At 0148 the SMC at MRCC Dover received a phone call (transferred from the French Coast Guard) from a person now known to have been on Charlie.¹²² This call, which lasted 21 minutes, changed MRCC Dover's impression of the situation. The caller stated that there were 40 people on board, and despite communication difficulties, was able to follow instructions to provide WhatsApp positions at around 0201 and 0214.¹²³ These suggested that Charlie was in position 51° 08.5N 001° 44.5E. The HM Coastguard log notes that this was 1.8nm from the Sandettie Light Vessel on a bearing of 244 degrees (approximately west-south-west).¹²⁴
73. As a result of the phone call, a decision was made to broadcast a Mayday Relay to all ships on VHF channel 16 at 0227. The wording of the Mayday was: "*Small Craft with 40 persons on board in position 51° 08.5N 001° 44.5E this bears 244° 1.8nm from Sandettie Light Vessel, taking water and requiring immediate assistance any vessel that can assist to contact Dover Coastguard*". The position obtained through WhatsApp was used. By 0232 Valiant had confirmed that it was responding.
74. As noted above, at the time of the Mayday Relay the Flamant was the closest SAR asset to Charlie's suspected position. MRCC Dover emphasised this fact on a call with the French Coast Guard at 0242.¹²⁵
75. The evidence indicates that no calls were received by HM Coastguard from anyone onboard Charlie after 0312. Whether or not the calls received by HM Coastguard at 0306 and 0312 were from persons onboard Charlie is currently unclear.
76. At 0327 Valiant arrived at the Mayday Relay position and found no migrant small boats in the area. It therefore turned broadly north-east and searched towards Sandettie Light Vessel, the anticipated direction of drift for any small boat that had previously been in the vicinity of the Mayday position. Eight minutes later, in position 51° 09.6N 001° 47.7E, Valiant sighted two migrant small boats, one making way under engine, the other not. It rescued 35 migrants from the latter in position 51° 10.4N 001° 47.8E.
77. The US Coast Guard's analysis of Valiant's actions is worth noting:

¹²⁰ {INQ007648}

¹²¹ Whitehouse WS {INQ010135} para 53

¹²² {INQ00763}

¹²³ Gibson WS {INQ010392} paras 93-94; and Charlie ViSION log {INQ000237}

¹²⁴ {INQ000237} at 0224 UTC

¹²⁵ {INQ007656}

“The location of the small boat that was located by the HMC VALIANT was directly in-line with surface current vectors and within the higher probability area of the simulated drift. Based on the drift evaluation it is reasonable to conclude that the small boat located by HMC VALIANT did correspond with estimated drift location of the distressed vessel. There was a high probability that a disabled vessel that began drifting from the time and location of the last WhatsApp location would end up in the location where the HMC VALIANT effected the rescue.”¹²⁶

78. By this time an HM Coastguard SAR helicopter (R163) was airborne in the vicinity. Initially tasked by the ARCC to provide surveillance in place of the cancelled 2Excel flights¹²⁷, it was given initial search instructions by MRCC Dover at 0250¹²⁸ and was airborne by 0350.¹²⁹ MRCC Dover then provided amended search instructions at 0352, taking account of WhatsApp positions received at around 0220 and using Sandettie Light Vessel as the datum. R163 proceeded to undertake an expanding square search.¹³⁰ As a result, R163 was able to direct Valiant to 2 more migrant small boats. Valiant rescued 31 migrants from position 51° 07.96N 001° 41.25E at 0519 and 32 migrants from position 51° 08.8N 001° 31.5E at 0630.¹³¹
79. R163 was on scene until 0603.¹³² Valiant commenced passage back to Dover at 0720. Drift analyses carried out after the incident by the MAIB and HM Coastguard conclude that the search area covered by R163 would have encompassed the likely position of Charlie. Both R163 and Valiant were equipped with specialist technology that stood some of the best chances of spotting a migrant small boat or persons in the water. The fact that neither of them spotted Charlie or its passengers illustrates the unavoidable difficulty of spotting migrant small boats and/or persons in the water at night.
80. By the time that R163 and Valiant had both completed their missions, they had between them searched for Charlie for some 2 ½ hours. Whilst the Incident CHARLIE log remained open pending formal closure, a conclusion had been reached for a number of reasons that in all likelihood one of the small boats rescued by Valiant had been Charlie. These reasons included the absence of any further calls to HM Coastguard linked to Charlie for several hours and the absence of any relevant sightings by R163 or Valiant after 0630.¹³³

¹²⁶ {INQ004345_0015}

¹²⁷ {INQ001907}

¹²⁸ {INQ001884}. The instructions were for a search area from the MPC Buoy up towards the Sandettie Light Vessel and back towards the edge of the SW lane of the TSS.

¹²⁹ Golden WS {INQ009628} para 88; Gibson WS {INQ010392} para 152

¹³⁰ {INQ0006308}. For a pictographic representation of R163's search over time, see {INQ006370}.

¹³¹ Toy WS {INQ010136} paras 77 and 79

¹³² {INQ008983}

¹³³ Toy WS {INQ010136} para 79

81. The US Coast Guard have analysed this decision as follows:

“The small boat was in the area in which distressed boat was expected to be and had a similar number of persons on board. The rationale for the correlation was reasonable, however, the decision was not reviewed, discussed, or documented in real-time. Since the original reporting source could not be identified among the rescued individuals, there remained a possibility that the rescued small boat was not small boat CHARLIE ... Without positive identification, however, the SMC could not be certain of the subject's status. When the requisite information needed confirm [sic.] that a craft or persons are no longer in distress is not available, categorizing the case as “active search suspension” in accordance with the IAMSAR Manual is more appropriate. In practice, suspending the search and closing the case would likely result in the same outcome. In both scenarios search efforts would cease. The suspension, however, would create an opportunity to review the facts and rationale for making a probable correlation, acknowledge the possibility of that the distress situation still exists, and communicate that responders should be vigilant for any new information that could re-activate the case.”¹³⁴

Final observations

82. At the time of writing, the MCA has successfully coordinated the rescue of over 150,000 migrants.
83. Whilst there have been no migrant deaths in the UK SAR region since December 2022, conditions in the Channel continue to present a serious risk to the lives of all who attempt to cross it in migrant small boats. Tragically, at least 78 migrants lost their lives in France’s SAR region in 2024 alone.
84. The MCA and its employees have already provided the Inquiry with detailed witness statements and disclosed thousands of documents. It is committed to assisting the Inquiry and hopes that the Inquiry’s investigation, hearings and final report will answer questions that the families and survivors have.
85. The MCA will welcome and carefully consider any recommendations that the Inquiry may have to reduce the risk of another tragedy occurring.

JAMES MAXWELL-SCOTT KC
JACK MURPHY
Crown Office Chambers
24 February 2025

¹³⁴ {INQ004345} pages 17 and 18