

THE CRANSTON INQUIRY

CLOSING SUBMISSIONS ON BEHALF OF THE HOME OFFICE

A. INTRODUCTION

1. As has consistently been reiterated on behalf of the Home Office, but which bears repeating, the incident which took place in the early hours of 24th November 2021 was a tragedy. All those who died or were traumatised were the victims of ruthless exploitation by criminal gangs preying on vulnerable men, women and children.
2. Again, the Home Office extends its deepest sympathies and condolences to each of those victims and their loved ones. Nothing said in this document or at any stage of this Inquiry, on behalf of the Home Office, is intended to diminish the severity of the incident or the grief, suffering and pain caused to these innocent people.
3. The purpose of these submissions is solely to seek to assist the Inquiry in the discharge of its Terms of Reference. Specifically, these submissions endeavour to identify the relevant evidence relating to the Home Office's actions to enable the Inquiry to make determinations on matters relevant to the Inquiry's List of Issues¹ and consider the need to make recommendations.
4. To those ends, these submissions are structured in accordance with the main headings in the Inquiry's List of Issues, namely:
 - I. The victims and survivors
 - II. The law of the sea and the applicable legal framework
 - III. The operational systems in place in the UK as at 23rd - 24th November 2021 to respond to small boats attempting to cross the Dover Strait
 - IV. The events of 23rd and 24th November 2021
 - V. Inspection and lesson learning prior to 24th November 2021
 - VI. Recommendations.

¹ Published in June 2024.

5. These submissions adopt the acronyms in the Inquiry's glossary. They also refer to the small boat in question as incident *Charlie* for consistency.

B. THE INQUIRY'S LIST OF ISSUES

I. THE VICTIMS AND THE SURVIVORS

6. Specific questions are raised under this heading in the List of Issues. Each of these is taken in turn below.
7. As to "*who were the victims and who were the survivors*", the evidence is not conclusive. The Inquiry has indicated that it has been able to determine "*with confidence*" the identities of 26 of those who died and is able to suggest the identity of the 27th individual whose body was recovered. It has identified four men who are believed to have been on the boat but whose bodies have not been recovered.² It is, therefore, unfortunately clear that the Inquiry cannot be certain exactly how many were on board the boat in question or their identities, despite the passage of time and the resources expended.
8. As to the question of "*how did they come to be in the small boat on 24th November 2021*", the Inquiry has received evidence from the families of some of the deceased and missing, as well as from one of the survivors, Mr Issa Mohammed Omar. The other survivor, Mohammed Shekar Ahmad, has not engaged with the Inquiry³.
9. Their stories are varied, and no attempt is made to summarise them here. However, the Home Office notes that many, if not all, make reference to the role of people smugglers and the significant sums that these criminals were paid in return for a place on the ill-fated boat⁴. Despite up to about \$100,000 collectively being paid to the smugglers in return for false promises of safe passage, the boat they provided was a criminally unsafe dinghy, with only the most rudimentary and entirely insufficient seafaring equipment provided to them. Whilst the Home Office recognises that the remit of this Inquiry is not to consider the wide-ranging and politically charged issue of small boat crossings generally, it does suggest that the Inquiry's final report

² Day 1 p91-92. Note references to transcripts from the Full Hearings are in the form 'Day X'. References to witness statements are '[Name] §paragraph'.

³ Day 1 p9-11.

⁴ It appears that the sums charged by the smugglers for a place on the boat were between \$2,200 USD and \$3,300 USD per person. Rizghar Hussein Mohammed §23 (\$2,500); Mustafa Mina Nabi §23 (\$3,300); Zana Mamand Mohammed 2 §42 (\$3,200); Saman Alipour §36 (\$2,200).

should, at least, note this unchallenged evidence and the significant role and responsibility of these organised criminal gangs in this tragic incident.

10. As to *“how and when the victims came by their deaths”*, insofar as this requires a medical cause of death to be established, the position is made difficult because the bodies of the deceased were recovered to France or not at all. The Home Office understands that, insofar as any autopsies were carried out, the Inquiry has not had access to any post-mortem reports.

II. THE LAW OF THE SEA AND THE APPLICABLE LEGAL FRAMEWORK

11. The Home Office’s submissions on this topic are limited to (a) identifying, and emphasising responsibility for search and rescue (“**SAR**”) within the United Kingdom’s (“**UK**”) SAR region (“**UK SRR**”) and the role of the Home Office in this context and (b) the role and obligations of Home Office staff at sea.

(a) Responsibility for SAR within the UK SRR

12. In summary, the Department for Transport (“**DfT**”) and the Maritime and Coastguard Agency (“**MCA**”) are responsible for the establishment, operation and maintenance of effective SAR services in the UK SRR, which includes in the Channel.
13. DfT is the lead Government department for SOLAS. It has the overall responsibility to promote the establishment, operation and maintenance of an adequate and effective SAR service regarding safety on and over the sea, pursuant to a number of international treaties and Conventions including: the Convention on the High Seas 1958; the SOLAS convention; UNCLOS; and the ECHR.
14. Under the Coastguard Act 1925, His Majesty’s Coastguard (“**HMCG**”), which forms part of the MCA, has a statutory duty to discharge the DfT’s duties in respect of SAR. It is the organisation responsible for the initiation and coordination of civil maritime SAR within the UK SRR.⁵
15. However, as the Inquiry is aware, HMCG does not have its own surface assets to deploy in response to SAR incidents. HMCG maintains a list of ‘declared’ facilities and ‘additional’ facilities that it can call upon to assist in any SAR missions. A ‘Declared SAR Facility’ is a facility which has been designated as being available for maritime SAR according to a specific standard or set criteria (e.g. the Royal National Lifeboat Institution (“**RNLI**”) and contracted air operators),

⁵ INQ007381.

whereas an ‘Additional Facility’ is one which may be available on an *ad hoc* basis but which is not of a specific standard (e.g. vessels in the vicinity of an incident).⁶

16. UK Border Force (“UKBF”) was and is responsible for securing the UK border by, amongst other things, carrying out immigration and customs controls for people and goods entering the UK. It is not a dedicated SAR provider. It is not responsible for SAR policies or provisions. DfT had not delegated its SAR responsibilities to UKBF. Under the laws of the sea, however, UKBF assets can be requested for SAR tasking, as with any other vessel, at which point they must respond, if the circumstances require and permit.
17. Accordingly, the Home Office's role in respect of SAR in November 2021 was limited to making some of its assets available to HMCG for tasking as Additional Facilities. In the context of small boats in November 2021, this was done under the auspices of Operation Deveran (“**Op Deveran**”). The Operational Plan for Op Deveran designated UKBF assets as available for HMCG SAR taskings.
18. Once an incident was identified and an asset tasked, HMCG would retain responsibility for all operational decisions in any SAR mission, including, but not limited to, the collation and processing of information about an incident, the setting of search locations and parameters and determinations as to whether the SAR mission had in fact been successful, and thus could be concluded. That point is covered in more detail in section C(III), below. However, it is of such critical importance to the understanding of UKBF's role that it requires emphasising here.

(b) Role and obligations of Home Office staff at sea

19. In this context, the Home Office makes three points.
20. First, masters of Home Office maritime vessels have obligations under maritime law in respect of vessels in distress requesting assistance – those obligations are set out in Chapter V of the SOLAS 1974 Convention. The Inquiry has received evidence from Kevin Toy, an experienced Commander, on this issue – both in the form of his witness statement and in oral evidence.⁷ Home Office employees who operate at sea are trained on these obligations and are not permitted to board a vessel if their training is not up to date.⁸

⁶ INQ001347.

⁷ Toy §38; Day 5, p5 116-22, p95 13-13, p97 14-20.

⁸ INQ002070; Whitton §27; Toy §41-42 and 60.

21. Second, it is important to remember that the concept of ‘distress’ in the context of maritime law differs to the term ‘distress’ in ordinary usage – at times it appears this led to a degree of confusion or misunderstanding during the oral hearings.⁹ As MCA has explained in its written opening statement, the 1979 SAR Convention sets out three emergency phases for a SAR incident “for operational purposes” – the uncertainty phase, the alert phase, and the distress phase.¹⁰ It sets specific objective criteria for each operational phase. As a number of witnesses repeatedly explained, whether or not those criteria were met was a matter for HMCG as the coordinator of SAR activity for the UK SRR, and not the Home Office.¹¹ The Inquiry has heard extensive evidence that HMCG determined that, because of the risk inherent in attempting to cross the Channel in a small boat, all such boats were categorised as ‘in distress’ for the purposes of SAR operations even if such a vessel was not in ‘distress’ in the colloquial sense (e. g. it was still under power, not excessively overloaded or clearly taking on water etc).¹² That decision, and the decision to downgrade such a boat from the ‘distress’ phase was one for HMCG, and HMCG alone.
22. Third, the 1979 SAR Convention recognises that assistance to persons in distress at sea is to be provided “regardless of the nationality or status of such a person or the circumstances in which that person is found.”¹³ There is no evidence to support the suggestion made in the oral closing submissions of the survivor and bereaved that there was a “two-tier system in place” in respect of the assistance provided to individuals attempting to cross the Channel in small boats.¹⁴ Conversely, there is no obligation upon the Home Office to provide assets for SAR, yet a bespoke capability was provided pursuant to Op Deveran for migrant rescue. Nor is the Home Office aware of any evidence to support the contention seemingly made by the representatives of the bereaved and the survivor, of stereotyping and discrimination impacting the SAR.¹⁵
23. The Inquiry has heard that hundreds of thousands of people in similar circumstances have been rescued by UK authorities and RNLI volunteers, as well as evidence of the primacy of SOLAS under Op Deveran. By and large the evidence that the Inquiry has heard, demonstrates that HMCG, UKBF, the RNLI and others all worked professionally and adhered to the requirements

⁹ For example, Day 8 p16 l21 onwards; Day 11 p100.

¹⁰ 1979 SAR Convention §5.2.1.

¹¹ For example, Day 8 p16 l21 onwards, p68-71; Day 6 p96; Day 10 p78 l1-3; Leat §1.27; Day 11 p100.

¹² Leat §1.25-1.27.

¹³ 1979 SAR Convention §2.1.10.

¹⁴ Day 15 p43 l25.

¹⁵ Day 15, p52 l3-7. Counsel for the families claimed, “we focus on the discriminatory stereotypes and attitudes towards migrants on small boats, which fatally affected the SAR response.”

of their roles. Any suggestion that SAR efforts were withheld on the grounds of the status or nationality of those in small boats is untenable and should categorically be rejected, not least because it is contradicted by the sheer number of individuals in near identical circumstances that were rescued, including more than 300 on 23rd-24th November 2021 alone. The Inquiry received evidence about the physical and mental challenges of this work and heard powerful evidence of the abuse that RNLI volunteers had received for going to the rescue of migrants. Mr Simon Ling's evidence explained that RNLI volunteers have been subjected to horrific abuse themselves, and Cmdr. Toy's evidence detailed the physical and mental toll that rescues made on UKBF officers, who conducted close to 90% of those rescues. It is also worth noting in this context that, as Mr O'Mahoney explained, many Border Force Maritime ("BFM") personnel also volunteer with the RNLI in their free time.¹⁶ Yet the organisations and individuals engaged in SAR efforts in respect of migrants in small boats never wavered in their attempts to rescue them, night-after-night and day-after-day, for which they should be commended.

24. It is correct that the coordination of SAR missions for small boats presented unique and extraordinary challenges when compared to conventional SAR taskings. That these challenges necessitated a different approach to the coordination of the rescue of, say, a fishing vessel with experienced mariners and suitable communication and location technology, is not, however, indicative of discrimination.

III. OPERATIONAL SYSTEMS IN PLACE IN THE UK ON THE NIGHT IN QUESTION

(a) Relevant organisations and Relationships

Responsibility for SOLAS in the UK SRR

25. As already explained, the DfT is the lead Government department for SOLAS. It has the overall responsibility for the establishment, operation and maintenance of an adequate and effective civil SAR service regarding safety on and over the sea. HMCG, under the auspices of the MCA, has a statutory duty to discharge those obligations. It is the organisation responsible for the initiation and coordination of civil maritime SAR within the UK SRR.
26. On the other hand, UKBF was and remains responsible for securing the UK border, including by carrying out immigration and customs controls for people and goods entering the UK.¹⁷ It was

¹⁶ O'Mahoney §87.

¹⁷ INQ010137.

not a dedicated SAR provider and DfT and the MCA had not delegated their SAR responsibilities to UKBF.

27. None of that will be news to the Inquiry. However, the implications should not be overlooked, as they form the bedrock of the UK's SAR approach on the night in question. It is, therefore, worth re-emphasising that UKBF was not responsible for coordinating SAR missions. It would not decide which assets to task, coordinate them once deployed nor determine whether a SAR mission had succeeded, and thus could be concluded. UKBF did not have that responsibility. Further, it did not have any obligation to procure additional assets for that purpose. UKBF's remit in respect of SAR was limited to that which it was legally obliged to perform under the law of the sea and the applicable legal framework, being to deploy its available assets for SAR purposes, if requested to do so by HMCG.

Op Deveran

28. The number of attempted Channel crossings using small boats increased significantly in late 2018. As the Inquiry is aware, that increase led the then Home Secretary to declare a Critical Incident in December 2018.¹⁸ In order to assist with the increasing demand for SAR resources presented by small boat crossings, the Home Office made assets available for tasking by HMCG.
29. Mr Whitton OBE explained how in May 2019 Op Deveran was introduced to formalise the provision of UKBF vessels as additional facilities for small boat SAR operations in the Channel. Op Deveran was established as the UKBF maritime response at sea to the threat of facilitated illegal migration using small boats. The operational order for Op Deveran was subject to regular reviews and updates in response to the evolving situation.¹⁹ The JMSC was also created in 2019 to bring together various stakeholders, including the MCA, and provide them with a common operating picture in the UK maritime area.²⁰ The first and most important objective was SOLAS. In that regard, it also bears repeating that UKBF assets were not 'declared' SAR facilities but nevertheless found themselves being tasked to provide SAR assistance on such a regular basis that in 2021 close to 90% of all small boat rescues were conducted by UKBF. However, responsibility for SAR remained with HMCG at all times.

¹⁸ O'Mahoney §56; Note this is different to a Major Incident referred to by some HMCG witnesses, which relates to the interoperability of emergency responders (such as police forces, fire services) pursuant to JESIP (Joint Emergency Services Interoperability Principles).

¹⁹ Whitton, §29, §49-50.

²⁰ O'Mahoney, §19.

CCTC

30. In addition to Op Deveran, Mr O'Mahoney explained that Operation Altair ("**Op Altair**") was launched in December 2020 as a cross-Government, multi-agency response to the crisis posed by increasing numbers of small boats attempting to make the unsafe journey across the Channel. The CCTC was established within the Home Office in August 2020 and its work was guided by the Op Altair Operational Campaign Plan.²¹ The first strategic aim of Op Altair was to save lives, and it recognised that the MCA, through HMCG, had primacy in respect of SOLAS.²² CCTC was asked to make small boat crossings unviable.

SAR missions

31. The relationship with HMCG evolved as the challenges and tactics of small boat smugglers developed. The Inquiry has heard evidence from multiple witnesses that 2021 was a challenging period, with a rapid and substantial increase in the number of small boats requiring a SAR response. It has heard how the challenges presented by the rescue of persons on small boats continued to evolve, but also that the collective response evolved to address those challenges, in terms of not only the dedicated maritime and aerial assets available, but also the practices employed by those directly involved in rescues, as a result of shared learnings regarding best practice. Those observations are reflected in the content of the Op Deveran Operational Order in place in November 2021, which also reflected the strategic aim of Op Altair to save lives and that *"the overarching priority will always be public safety and SOLAS"* (original **emphasis**).²³
32. By November 2021, UKBF had developed a close working relationship with HMCG in respect of Op Deveran. The Op Deveran Operational Order set out UKBF's processes, including weather assessment-based plan, asset availability and tasking.²⁴ Weekly multi-agency Small Boats Response Planning meetings were held, which Mr Whitton OBE usually attended on behalf of BFM.²⁵ The Joint Control Room ("**JCR**") at the Dover MRCC was established in Autumn 2020, with Liaison Officers ("**LO**") posted to improve information sharing and communication with HMCG. In November 2021, LOs were normally on shift from 05:00 (small boats typically arrived in UK waters subsequent to that time).²⁶

²¹ O'Mahoney, §25.

²² INQ008370 (Op Altair Gold Commander Strategy), p3-4.

²³ O'Mahoney §62; Op Deveran Operational Order INQ000619.

²⁴ INQ000619.

²⁵ Whitton §109; O'Mahoney §48.

²⁶ O'Mahoney §38; Whitton §41.

33. Debriefs were held following deployments and Mr Whitton OBE ensured that operating procedures were regularly reviewed. Planning calls ('Red Day planning calls') were also held in advance of 'red days' (when crossings were highly likely), with HMCG leading on a tactical level.²⁷ Situational Reports ('SitReps') were distributed within the CTCC with information about weather, asset availability and numbers of incidents in French and UK waters. Daily operational and situational awareness briefs that collated information from various sources, including CCTC, were also circulated – these set out the weather forecast for the coming days, maritime intelligence, aerial coverage and an asset update.²⁸
34. When SAR missions commenced, there was a clear chain of command that was straightforward and readily understood by all relevant parties. The process is set out in the Op Deveran Operational Order, which explains in bold that in relation to SAR, "*HMCG will take primacy in the coordination of any SOLAS incident and execute C² [command & control] from their Maritime Operations Centre at Fareham.*" As understood by all parties, HMCG would manage information regarding small boats for SAR purposes, whether calls from the small boats themselves, information from France or wider reconnaissance matters. It designated all small boats as being in the operational 'distress' phase upon entry to the UK SRR. If required, it would ask UKBF to task one of the dedicated Op Deveran assets to assist.
35. Once tasked, HMCG was responsible for providing instructions to that UKBF asset in respect of the SAR mission. HMCG could communicate with UKBF Maritime Command Centre ("**MCC**") and vessels effectively and rapidly via a number of alternative communications channels (phone, VHF radio or Airwave radio). That permitted the rapid issuance of instructions for SAR missions, therefore supporting the fact that there was an efficient means of communication.²⁹ Under repeated questioning from the Inquiry witnesses from the Home Office were clear in their oral evidence on this issue.³⁰ Witnesses from HMCG corroborated this position.³¹ UKBF officers were able to communicate directly with their colleagues in HMCG (or via the LOs based in the JCR, when available). BFMCC officers could communicate with UKBF vessels by phone or other means, albeit they did not have access to VHF radio.

Memoranda of Understanding

²⁷ O'Mahoney §48.

²⁸ O'Mahoney §50.

²⁹ INQ000619 p8.

³⁰ See, for instance, Transcript, Day 12, Stephen Whitton.

³¹ See, for instance, Transcript, Day 9 (George Papadopoulos) and Day 3 (Neil Gibson).

36. The Inquiry has asked whether the relationship between UKBF and HMCG required a formal memorandum of understanding (“MoU”) or other legal documentation. Those departments had MoU with regards to matters such as information sharing.³² The evidence that the Inquiry has heard shows that an equivalent document with regards to SAR missions would have been unnecessary. The central underlying principles and components of Op Deveran were clearly set out in the Operational Order which was subject to regular review – SOLAS was the primary strategic aim. HMCG’s role in respect of SAR is already clearly established in statute and the obligations of individual BFM vessels in respect of SAR and SOLAS (whether on Op Deveran or otherwise) are already clearly set out in maritime law. UKBF’s role under Op Deveran was limited to making assets available for deployment on SAR taskings and deploying them when requested to do so by HMCG. Once tasked, those assets received instructions in respect of SAR directly from HMCG, who retained responsibility for the coordination of SAR missions. There was no evidence of confusion.³³ A cross-department MoU would, therefore, have been unnecessary.

(b) Relationship with French Counterparts

37. Cooperation with French SAR authorities on an operational level was a matter for HMCG. In its Written Opening Statement the MCA explained that this consisted of the *ManchePlan*, meetings between the Accident Technical Group and regular meetings and contact between HMCG officers and their counterparts in MRCC Gris-Nez.³⁴
38. The law enforcement relationship between the Home Office and French authorities in respect of small boat crossings is addressed in the evidence of Mr O’Mahoney. The Home Office’s relationship with France was focused on a national level with the Ministry of the Interior and, at a regional level, with the *Prefet Delegee pour la Defense et la Securite at the Prefecture de la Region Hauts-de-France et du Nord*.³⁵ In 2018, the UK and France signed the Sandhurst Treaty concerning the reinforcement of cooperation for the coordinated management of the shared border. The UK committed £45m to the Treaty which also agreed the creation of the *Centre Conjoint d’Information et Coordination* (“CCIC”), a coordination centre at Coquelles, which is staffed by UKBF and the French Police. In 2019, the UK and France signed a further declaration relating to the CCIC and

³² INQ000100.

³³ Save, perhaps, with regards to questioning – for instance, Mr Whitton was asked, “in November 2021, you weren’t able to provide an effective and enduring maritime search and rescue response?” and (correctly) responded “That wasn’t our responsibility, sir, to provide an effective search and rescue response.”

³⁴ MCA Opening §47.

³⁵ INQ010134, §28.

a joint action plan on illegal migration across the Channel in small boats, which included an additional £3.2m contribution from the UK for new security equipment. Later the same year, the UK paid an additional £2.25m towards the deployment of Gendarme Reservists. On 28 November 2020, the UK and France signed a joint statement on the next phase of collaboration on tackling illegal migration with the UK investing £28.1m to support France's efforts against small boats in Boulogne and Dunkirk. On 20 July 2021, the UK and France signed another joint statement on the next phase of tackling illegal migration with the UK committing to invest £54m to help France expand its enforcement and technological capabilities.

39. Mr O'Mahoney confirmed that in 2020 and 2021 the relationship with France at a national level was strained as a result of the UK's exit from the EU, the AUKUS submarine deal, the decision by France to withdraw support for the Cherbourg Agreement and Operation Sommen ("**Op Sommen**").³⁶ However, on an operational level, French and UK authorities continued to exchange intelligence and operational planning products in this period.³⁷
40. At sea, Cmdr. Toy explained that his experience of working with French vessels on SAR operations was generally very good and a "*professional working relationship*".³⁸ While deployed he would communicate with French vessels via VHF radio as necessary.³⁹

(c) Assets and Resources

41. At the outset, it is repeated that UKBF was not responsible for ensuring that sufficient assets were available to enable HMCG to fulfil its SAR obligations. UKBF is primarily a law enforcement agency. Whilst its assets, once tasked, will always give primacy to SOLAS, it does not follow that it was the agency or department responsible for ensuring that there were sufficient assets available at any given time.

Surface Asset availability and adequacy

42. As set out in the Op Deveran Operational Order, UKBF had made available for Op Deveran five cutters, six CPVs, and a CTV (*Hurricane*), which was introduced under trial conditions in July 2021 in response to increasing numbers of small boat crossings.⁴⁰ A second UKBF Cutter could

³⁶ Transcript Day 1, p219 l10 onwards.

³⁷ O'Mahoney §34.

³⁸ INQ010136, para. 56.

³⁹ Toy §56.

⁴⁰ INQ000619; Whitton, §30.

be deployed to Op Deveran with 12 hours' notice.⁴¹ UKBF had other surface assets which were suitable for coastal SAR operations as necessary. Those assets were available for HMCG's SAR missions but, as with all other UKBF assets, were not 'declared' SAR facilities. Cutter crews were assigned to Op Deveran for three months at a time, after which they would rotate to other assignments. While assigned to Op Deveran they would be placed on 15-day 'shifts' where they lived and slept on the cutter and were available to deploy at 30 minutes' notice.⁴² CPV crews were placed on Op Deveran for periods of between 4 to 6 months and, as the crews were not able to live on board, were available to be deployed on 60 minutes' notice.⁴³ HMCG retained oversight of the surface assets, including RNLI assets, which were available for SAR operations.⁴⁴ While proactive patrols had historically been carried out by UKBF vessels, as the number of crossings increased these were reduced to conserve resources and ensure that vessels were appropriately located to respond to SAR taskings from HMCG.⁴⁵

43. In terms of the suitability of UKBF assets, it is well-documented that UKBF cutters and CPVs were not designed for SAR. The Inquiry must, it is submitted, be careful to understand what UKBF mean when describing suitability. Both Mr Whitton OBE and Mr O'Mahoney describe suitability in terms of embarking migrants, not in terms of speed, capacity or general ability to perform SAR patterns.⁴⁶ Further, the assets performed well until the unprecedented crossing attempts from 2021 meant that their design and capacity was outstripped by demand. At that stage, additional resources were requested, trialled and ultimately made available (the CTVs). The CTVs were described as better assets, primarily due to increased deck space (not because they were quicker or that it was easier to spot small boats from their decks). Cmdr. Toy explained to MAIB that certain modifications had been made to the cutters to make them more suitable for SAR. The cutters carried SAR equipment such as lifejackets, fresh water, and blankets for the people that were rescued.⁴⁷ He further explained in his evidence how the rescues using a cutter worked in practice. Having travelled to the location using coordinates provided by HMCG, small boats would be sighted using the equipment on the cutter (such as night vision and spotlights), with crews both keeping a lookout and receiving updated coordinates from HMCG personnel in the MRCC. Once a small boat was spotted this would be reported to HMCG. The RHIB carried

⁴¹ Whitton §91-92; INQ000619 p15.

⁴² INQ000619 p16-17.

⁴³ INQ000619 p16-17.

⁴⁴ Whitton §91.

⁴⁵ Whitton §19. The Inquiry has also heard evidence that the most effective way of spotting small boats was through the use of aerial assets.

⁴⁶ Day 12.

⁴⁷ Whitton, §25, §72.

by the cutter would then be launched with a small number of crew, engage with the migrant boat and disembark migrants up to the RHIB's capacity, at which point it would return to the cutter. The RHIB would repeat the operation, if necessary, until disembarkation was complete. Cmdr. Toy explained that this often presented challenges, particularly where individuals rescued had restricted mobility, but it became *"quite a slick operation because we did it many times."*⁴⁸ His evidence described incidents where they had successfully rescued people from the water.⁴⁹ Whilst the disembarkation of migrants from manifestly unsafe small boats involved clear dangers, it was always safely carried out, such that no migrant fatalities are known to have occurred during that process. As Mr Whitton OBE explained in his statement, UKBF vessels have (on occasions with the assistance of specialist RNLI vessels) rescued every person on small boats that they have encountered while deployed on Operation Deveran.⁵⁰ Despite that record of successful rescues, it was recognised that more specialist equipment was needed and efforts to procure such equipment were underway in November 2021.⁵¹

Aerial assets and surveillance

44. In terms of aerial asset availability, the Inquiry has heard that the MCA had fixed-wing capabilities via 2Excel Limited, which provided aerial surveillance (described as a 'game changer' for SAR, as aerial assets were more effective than surface assets when it came to detecting small boats). The MCA had contracts with the Bristow Group Inc for specialist SAR helicopters, described by Mr Golden as HMCG's *"crown jewel"*.⁵²
45. Tekever Limited UAVs or drones were available to the Home Office primarily for law enforcement and flew close to UK shores. Tekever provided a live video downlink to the JCR as well as post-operation written reports. A Tekever liaison operator was based in the JCR in the Dover MRCC. The Tekever drones were available for five days in every seven, which reflected the patterns of weather (and therefore activity levels) in the Channel.⁵³ The standard aerial deployment under Op Altair involved two fixed wing aircraft, which operated at a higher altitude than UAVs, deployed early at night, with the Tekever UAVs deployed in the early

⁴⁸ Transcript p32 113-14; see also Toy Statement; Whitton §73.

⁴⁹ Toy, §35.

⁵⁰ Whitton, §17. Contrary to the line of questioning that concluded Mr Whitton's evidence, that paragraph refers to instances where UKBF are directly involved, i.e. alongside (and was not intended to insinuate that there had been no fatalities in the Channel).

⁵¹ Whitton §73; O'Mahoney §66.

⁵² Golden, Day 6 p125 123-24.

⁵³ O'Mahoney §70-71.

morning when most small boats typically entered UK waters.⁵⁴ However, as the Inquiry has heard there are practical limitations on the use of these aircraft, both environmental and operational (e.g. distance or flying time).

46. The MCA also had a contract with RVL Aviation Ltd (“**RVL**”) to provide fixed wing airplanes as ‘spotters’. As Dr Honeyman explains, the Home Office had entered into arrangements with the MCA to enable it to use RVL’s assets to test experimental surveillance capabilities. On 23rd November 2021, the CTCC team sent a request via HMCG to task the RVL asset from 22:00 until 05:00 the next day, but not for SAR purposes.⁵⁵
47. The Inquiry has asked whether there was a ‘Plan B’ if conditions prohibited 2Excel from flying. Whilst that is a matter for HMCG to address, it is notable that the Tekever drones could, in some circumstances, act as a Plan B (although the flying arrangements were different, and the drones could also not be used in certain weather conditions).⁵⁶

UKBF staff training

48. UKBF’s SOPs and Operational Orders set out training and other requirements for Op Deveran. As described by Mr Whitton OBE, “SOPs form the basis of BFMC training which complements the MCA training our crew have.” The primary UKBF SOPs were *MCC Operation Deveran Standard Operation Procedures*,⁵⁷ the *Cutter Migrant Rescue Operating Procedures*⁵⁸ and the *Op Deveran Operational Order*.⁵⁹ Supplementary online courses were available, if required. Mr Whitton OBE explained that, while there was no dedicated training course for small boat SAR, many UKBF mariners (including Cmdr. Toy⁶⁰) had gained considerable experience from working in the Mediterranean.⁶¹ That experience was used to help develop the Op Deveran SOPs, which as mentioned, formed the basis for training.⁶² As further detailed below, UKBF Commanders are also experienced mariners, and complete relevant training as part of their general certifications. As numerous witnesses explained, SAR operations in respect of small boats were and continue to be a constantly evolving situation. Cmdr. Toy’s view was that on the job training was

⁵⁴ O’Mahoney §73.

⁵⁵ Honeyman §17. INQ003876.

⁵⁶ Honeyman, §9.

⁵⁷ INQ010666.

⁵⁸ INQ003920.

⁵⁹ INQ000619.

⁶⁰ Day 5, p2-4.

⁶¹ Day 11, p17 ll3-10.

⁶² Whitton §70; Day 11 pp113-115.

important because it was very dynamic and Mr Ling repeatedly explained that the RNLI was having to adapt and evolve its own response to small boat rescue: “[i]t is by no means normal and it demanded constant understanding, constant adapting, constant evolving.”⁶³ Indeed, the Inquiry heard from Mr Ling that in September 2021 not even the RNLI with its specific SAR role and expertise had developed dedicated training for SAR of small boats.⁶⁴

49. All UKBF personnel had received appropriate training, as to which:

- a. In terms of ‘at sea’ operations, Cmdr. Toy confirmed that his team were all trained mariners and would not have been permitted on board if their training was not up to date. Op Deveran crews were in full compliance with applicable SOPs and their associated training requirements. Cmdr. Toy explained that all UKBF officers hold MCA certification, and all commanders complete an MCA business and law course, which includes SAR obligations under maritime law. All mariners need to comply with the IMO International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, which includes relevant skills such as medical knowledge, given that crews at sea are required to deal with medical incidents when far from appropriate facilities, as well as personal survival techniques, fire prevention and firefighting.⁶⁵ UKBF completed further training exercises such as TTXs and drills matrices on board (e.g. man overboard processes) two or three times a year. Ad hoc and informal training occurred around search patterns and other relevant topics.⁶⁶ Safety teams would also spend a few days with crews to review and provide feedback on scenarios under controlled circumstances. Cmdr. Toy’s evidence was also that the most effective learning was on the job.
- b. In terms of landside staff training, BFMCC was staffed by two suitably qualified members of staff on the night in question (Karen Whitehouse and Tom Willows). BFMCC staff are not deployed to sea and are therefore not trained in the same way as BFM crews, albeit Mr Willows was in fact an experienced mariner.⁶⁷ Insofar as it relevant to this Inquiry, their remit for SAR purposes was limited to the initial tasking of BFM assets when requested to do so by HMCG, which does not require SOLAS or SAR specific training. BFMCC staff nevertheless participated in ongoing training exercises, such as a TTX organised by the

⁶³ E.G. Day 10 p38 ll2-4.

⁶⁴ Day 10 (Ling), p64 l8-10.

⁶⁵ INQ010136, para 41.

⁶⁶ Whitton, §71; INQ010137.

⁶⁷ Willows, §1.

JMSC on 4th November 2021.⁶⁸ There has been no suggestion that their training was inadequate for the role BFMCC staff performed.

Staffing Levels

50. In terms of staffing levels, and all matters regarding the allocation of scarce resources, it is submitted that the Inquiry must exercise caution. An offer of additional resource could always assist and would rarely be spurned by an organisation. But the allocation of additional resource would necessarily mean moving resources from other departments or priorities. The question that the Inquiry is encouraged to consider is whether a lack of staffing materially impacted the SAR mission on the night in question. In that regard, *Valiant* was fully and appropriately staffed. There has been no suggestion that additional personnel on the cutter would have helped the SAR mission (to the contrary, it may have reduced available deck space). Additional UKBF and RNLI assets were available to assist with the search if asked to do so by HMCG. In terms of BFMCC staffing levels, both Karen Whitehouse and Tom Willows were present on the night in question. With regards to SAR, their function was to task *Valiant* (or any other asset) when requested to do so by HMCG (which they did, within five minutes of the request). Whilst additional resourcing would almost invariably have been welcomed, BFMCC's actions did not impact on the SAR mission and therefore staffing levels cannot have materially impacted the outcome.
51. In terms of hours that could be worked by the crews at sea the Home Office was subject to general obligations on all employers in respect of working hours and safety as an employer, but there are additional regulations in place that specify rest periods for mariners.⁶⁹ These are in place for the safety of the crew. Cmdr. Toy explained that restrictions in place for the Covid-19 pandemic presented further challenges - crews were kept in 'bubbles' which restricted reassignment between Border Force crews. The Inquiry had evidence from Cmdr. Toy about the physical and mental toll that the work on Op Deveran had on him and his crews. Cmdr. Toy explained that it was stressful work and that he and his crew did what they could to the best of their ability.⁷⁰ They took pride in the work that they did, saving lives.⁷¹ The Home Office had and has in place mental and occupational health supports for its employees.⁷²

Increasing Capacity

⁶⁸ INQ009672.

⁶⁹ The Merchant Shipping (Hours of Work) Regulations 2002 specifies rest periods within certain windows (e.g. reg. 5(1)(a) requires 10 hours rest in a 24-hour period). A breach of these regulations carries a criminal sanction (regs. 4 and 20).

⁷⁰ Toy, §83.

⁷¹ Toy, §88.

⁷² Whitton, §80.

52. By November 2021, it was recognised that further assets were required to tackle the increasing number of small boat crossings. Efforts were underway to assist. However, increasing resources is always an involved, considered process (procurement processes are required, design decisions need to be taken, and recruits need to be trained). Further, the authorities had no concrete way of anticipating future demand trends. Mr O'Mahoney explained that forecasts in 2021 had been relatively accurate until November 2021 which he explained was and remains an anomaly – in November 2020 761 people crossed the Channel in small boats, in October 2021 2,701 made the journey, while in November 2021 6,971 were recorded as crossing.⁷³ Those figures eclipsed the previous record by more than 2,000 (4,602 in September 2021) and have only been surpassed twice since (in August and September 2022) and never in a winter month.⁷⁴ It is recognised by all stakeholders that in November 2021 assets were stretched to an unprecedented level.⁷⁵ It is important to note that although assets were stretched in 2021, UKBF was coping with increasing demands. Mr O'Mahoney explained that asset planning was framed around the periods of time that small boats were likely to be in the UK SRR – this enabled proper management of resources given the time limits for maritime and aerial crew deployments.⁷⁶ As already noted, a second BF Cutter could also be stood up for Op Deveran within 12 hours.
53. By November 2021, the following changes were already underway:
- a. The successful trial and implementation of the CTV Hurricane, which was on the Operation Deveran rota on 24th November 2021. Work was already underway to procure additional CTVs, which were eventually added to the fleet of surface assets available during Operation Isotrope.⁷⁷
 - b. The Inquiry is also aware that work was underway to develop and trial new and improved surveillance and reconnaissance resources, including aerial assets.⁷⁸

⁷³ Mr O'Mahoney explained that the likely reason that the numbers in November 2021 exceeded predictions was likely a new batch of boats and engines in the supply chain of the OCGs (§78).

⁷⁴ O'Mahoney statement §79. Based on figures to 26 September 2024.

⁷⁵ Whitton Day 11 p80 l21-25.

⁷⁶ O'Mahoney Day 11 pp183-185.

⁷⁷ Whitton §73.

⁷⁸ See Honeyman statement.

- c. Efforts were also underway to improve the reception facilities at Tug Haven to reduce the congestion that arose when disembarking large groups of migrants from surface assets.⁷⁹

Op Sommen

54. UKBF was and is primarily a law enforcement agency. Contrary to the suggestion that the focus was on law enforcement to the detriment of SAR, the evidence was that the focus on SAR was to the detriment of law enforcement - Mr O'Mahoney described in a submission in late 2021 that Op Deveran arrangements led to a 50% reduction in BFM's capability to conduct its law enforcement work.⁸⁰ As already noted the primary aim of Ops Altair and Deveran was to save lives. For the avoidance of doubt, it would be unlikely to have assisted the overall objective of SOLAS for the Home Office to abandon its law enforcement responsibilities in respect of small boats. As Mr Whitton OBE explained, Op Sommen was not implemented on the night.⁸¹

Deployment decisions

55. Under Op Deveran, the Met Office was tasked to produce a daily weather assessment to identify whether or not the conditions were favourable for small boat crossings such that they were highly likely (red) or likely (amber).⁸² As the Inquiry is aware, the forecast for 23rd-24th November 2021 was for an 'amber' night leading into a 'red' day.⁸³ As mentioned above, prior to one or more red day periods, planning calls were held with HMCG leading on tactics. Both HMCG and the Home Office were aware that, because favourable conditions for crossing were rarer in the winter months, 'red days' would normally be busy with a 'surge' of crossings.⁸⁴ The plan designated primary responders (in this instance, UKBF's cutter *Valiant*).
56. At the commencement of any SAR mission, HMCG would decide which assets to deploy (in light of the primary responder already designated). UKBF's commitment to assist HMCG with SAR missions is contingent on availability. Whilst UKBF could, in theory, have declined a tasking, there is no evidence that UKBF ever did that. Once tasked, the asset would be under HMCG's instructions (HMCG would specify a destination location etc).

(d) Volunteers

⁷⁹ [INQ000619] p14: "As of April 2021, plans are underway to relocate the migrant reception areas and berthing away from the Tug Haven and located them at the Dover Jet Foil Berth." . O'Mahoney §36.

⁸⁰ O'Mahoney §§16, 83-87; see also Whitton §21.

⁸¹ Whitton, from §56.

⁸² INQ000619 (p7); O'Mahoney §45.

⁸³ O'Mahoney §47.

⁸⁴ O'Mahoney §64.

57. UKBF staff were employees. This issue is best considered by the HMCG.

(e) Plans for responding to small boat crossings

58. As explained, UKBF's plan was set out in the Op Deveran Operational Plan and associated SOPs. With regards to the sub-issues under this heading, the inter-department roles and responsibility have been set out, above. To reiterate, it was not the Home Office's responsibility to manage SAR missions. It was therefore not responsible for the detection of SAR events, the tracking of small boats for SAR purposes, the coordinating of SAR missions, assessment of the extent to which vessels were in trouble, deciding which assets should be tasked, determining urgency, specifying search starting locations or parameters, determining prioritisation between incidents, concluding or calling off SAR missions or linking recovered vessels to HMCG's incident log.
59. Given the nature of some of the questions posed to Home Office witnesses (see further from paragraph 91, below), it is important to address any suggestion that Border Force officers should have had greater involvement in making decisions in respect of SAR missions.⁸⁵ It would have been wrong for Home Office employees to cross into HMCG's domain and seek to influence decision making. Such a course of action would risk confusion. Moreover, UKBF officers did not have the information or training to enable them to make those decisions.⁸⁶ They did not receive calls from small boats of information from the French authorities. They did not have the ability to task other assets, such as the RNLI or passing vessels, if required. They could not issue Mayday Relays. Even if UKBF officers did possess those abilities, for both HMCG and UKBF officers to have made decisions in respect of SAR missions would have undermined the chain of command, and created a serious and obvious risk of confusion.⁸⁷ For that reason, it was vital that decisions in respect of SAR missions remained the exclusive responsibility of HMCG. The Inquiry has heard from Matthew Leat how SAR is an area that entails specialist knowledge and expertise.⁸⁸ Accordingly, it was simply not for UKBF to intervene in these matters. With those points in mind, the Home Office does not consider that it needs to respond to sub-issues beyond the following:

(i) High Activity

⁸⁵ Day 6 (Whitehouse), who is asked, "Did it ever occur to you during the shift — again, as far as you can recall — that there was any doubt that the Valiant had found Incident Charlie?"

⁸⁶ In Cmdr. Toy's words, he did not have the "overall picture".

⁸⁷ Day 11 (Whitton), p109 ll7-24.

⁸⁸ Day 15 (Leat).

60. As above, the Met Office daily weather assessments and associated measures was the mechanism for responding to periods of suspected high activity.

(v) Recording of incidents

61. As an operational matter, this issue is best answered by HMCG. However, by way of clarification, the Inquiry explored the use of trackers used by different organisations to manage and process information regarding small boats with UKBF witnesses. UKBF used its own log primarily to assist landside operations in pursuance of its law enforcement role. Its tracker estimated numbers on board and initial location, with a further column available for a 'Brief Description' of the incident. Its purpose was to keep landside colleagues in the Home Office, who had the responsibility for receiving and processing the rescued migrants once they were landed, properly informed and to prepare and distribute 'live updates' to various staff and stakeholders.⁸⁹ The information requirements for those purposes were, understandably, different to those for SAR operations and the UKBF Tracker did not form part of SAR operations.⁹⁰ Accordingly, it did not contain all of the information that one might expect HMCG to record on their ViSION system, and it would have been unnecessary and inappropriate to have included that information. By extension, it was not, therefore, for BFMCC officers to record details about, for example, the specific reported condition of a particular vessel in the 'Brief Description' column. The content on the UKBF tracker was informed by calls with BF assets, HMCG and the HMCG tracker.⁹¹ Crucially, however, it was never intended as, and not used as, a tool to assist SAR.
62. Responsibility for the management of SAR trackers rested with HMCG, via the HMCG (later, shared) tracker and the ViSION log. Prior to November 2021, it had been agreed that it would be helpful for BFMCC to have 'live' access to HMCG's tracker, meaning that HMCG would not have to email snapshots from their tracker to BFMCC and BFMCC would not have to request updated copies throughout busy nights. It is accepted that BFMCC had access to the tracker on the night, but the exact nature of that access is questioned (as set out below). However, the type of access is immaterial to events since it is agreed by all parties that responsibility for the decisions concerning and arising from the tracker remained with HMCG at all times. George Papadopoulos confirmed to the Inquiry that HMCG would retain responsibility for linking and closing incidents in the tracker.⁹² At a meeting on 26th November 2021 the LO sought clarification

⁸⁹ Whitton §115.

⁹⁰ Whitehouse, §68.

⁹¹ Whitehouse, §16.

⁹² Day 9, page 65.

from Mr Papadopoulos on who was to populate which sections,⁹³ who subsequently circulated guidance on 28th November 2021.⁹⁴

63. To the extent necessary, the Inquiry has seen documents that suggest that on 20th November 2021 the BFMCC did not have full access (there were discussions around sharing the tracker on a “*trial basis*”) to the HMCG tracker.⁹⁵ On 22nd November 2021, an email suggests that at least read-only access was available, although discussions on how to use the HMCG tracker were ongoing,⁹⁶ and on 23rd November 2021 an email suggests that there were continued difficulties in sharing the link.⁹⁷ The Home Office’s understanding is that by 23rd November 2021 only the LO in the JCR had ‘write’ access to the Tracker, with officers in the MCC having ‘read only’ access.⁹⁸ It is clear that the document produced by MCA, which was said by the Inquiry to show when changes were made to the HMCG tracker from 00:00 on 24th November 2021 and put to Ms Whitehouse and Mr Willows on this basis,⁹⁹ is not conclusive on this issue - for instance, HMCG’s George Papadopoulos explained he could not have made changes to the tracker at 01:00 on 24th November 2021 whilst off-duty and – presumably – resting.¹⁰⁰ Furthermore, HMCG’s Mike Bill did not have an independent recollection of updating the HMCG tracker on 24th November 2021, though it was noted that he made a change to the tracker at 08:35.¹⁰¹ The entry for incident Lima was noted as “M958”. The entry on the tracker was confirmed to be an error.¹⁰²
64. BFM officers were provided with daybooks – Mr Whitton OBE explained that as a law enforcement command he would expect accurate record keeping around “*evidential issues*” and that in terms of the decision making in respect of Op Deveran, to record any decisions made and the rationale for that. He explained that this may only extend to, for example, the fact that a vessel had been made available in support of a request from HMCG.¹⁰³ Commanders of BFM vessels also had daybooks, and Cmdr. Toy explained he would record the salient information in his

⁹³ INQ010642.

⁹⁴ INQ010649. Notably this chain shows the LO making further suggestions as to the use of the HMCG tracker.

⁹⁵ INQ010631; INQ010632; INQ010640.

⁹⁶ INQ010634; INQ010648; INQ010656.

⁹⁷ INQ010645.

⁹⁸ Day 8 (Willows).

⁹⁹ Day 8 (Willows), p37-38; Day 6 (Whitehouse), p37, Ms Whitehouse was shown Document INQ007058 and told, “*this is a record which the Inquiry has obtained showing changes which were made to the coastguard tracker on the night in question...It suggests, doesn’t it, that Border Force personnel, including the two of you, were indeed, able to change the coastguard tracker that night?*”.

¹⁰⁰ Day 9 (Papadopoulos), p65-70.

¹⁰¹ Bill, §10.

¹⁰² Day 7 (Bill) p42 – 43.

¹⁰³ Day 11 (Whitton), pp120-121.

daybook.¹⁰⁴ The only decision that Ms Whitehouse was responsible for was deploying the *Valiant* and this decision was recorded in her daybook.¹⁰⁵ In this context it is worth reiterating that BF Officers were conducting a different role to those in HMCG – the salient information for their role was different. Accordingly, the fact that information was salient for HMCG officers does not necessarily mean it was salient or important for BFM officers to record.

IV. EVENTS ON THE NIGHT IN QUESTION

The Victims and Survivors:

65. The Inquiry has asked about communications made by and to the victims or survivors in relation to the incident. The UK and French Coastguards retained responsibility for communicating with all small boats (including the vessel known as incident *Charlie*). UKBF did not have any direct communications with *Charlie*.
66. In terms of UKBF's at sea communications with small boats, the Inquiry has heard that small boats were not usually equipped with standard maritime communications equipment (such as VHF). When engaging any small boats, *Valiant* (or any other responder) would communicate primarily via signed instructions (the Inquiry has heard that the engine noise and possible language barriers meant hand signals were the most appropriate way forward).
67. In terms of the events on the night in question, the Home Office hope the following to be a largely uncontroversial summary of events. It is not a detailed chronology; it is a summary with particular focus on matters concerning UKBF.
 - a. In terms of planning, the Op Deveran reports issued on both 22nd and 23rd November forecasted "*Amber*" conditions for the night of 23rd-24th November, meaning that crossings were likely, moving to "*Red*" the following day, 24th-25th November, meaning that crossings were highly likely.¹⁰⁶ *Valiant* had been designated by BFMCC as the primary responder for the night and was moored at Dover.¹⁰⁷ *Hunter* was on standby with *Hurricane* to deploy at 6:00 on 24th November 2021. HMCG was aware of all of that and knew it would have to manage available resources carefully across the busy period.
 - b. At about 21:00 on 23rd November 2021, incident *Charlie* left France for the UK.

¹⁰⁴ Day 5 (Toy), p33.

¹⁰⁵ INQ000565.

¹⁰⁶ INQ000150.

¹⁰⁷ INQ000566.

- c. At about 22:00, a French Coastguard vessel trailed the vessel for between 1 and 1.5 hours.¹⁰⁸
- d. Due to poor weather conditions, 2Excel postponed its scheduled surveillance flights, ultimately cancelling them at 02:04.
- e. At 00:56, the French Coastguard confirmed to HMCG that a number of small boats were in transit.¹⁰⁹ The vessel that became incident *Charlie* was approaching the median line.
- f. At 01:24, HMCG telephoned Border Force to ask that *Valiant* be tasked. That tasking was in response to the knowledge that small boats would soon pass into the UK SRR (not because of information to suggest that any one was in imminent peril).
- g. At 01:30, *Valiant* was tasked. At 01:38, BFMCC called MRCC Dover to request a course for *Valiant* to take to incident *Charlie*.¹¹⁰ HMCG tasked *Valiant* to incident *Charlie's* last known WhatsApp location.
- h. *Valiant* departed by 02:00, within its 30-minute readiness window and cleared Dover about 22 minutes later and made best safe speed to the location as requested by HMCG.¹¹¹
- i. At 02:26, HMCG broadcast a Mayday Relay stating that a small boat was "*taking water and requiring immediate assistance*". At the time of that broadcast, the nearest vessel was the French Coastguard vessel *Flamant*. The Mayday Relay was repeated and its contents reiterated directly to the French Coastguard during a call at 02:42.¹¹² During that call, HMCG (repeatedly) tried to persuade the French Coastguard to deploy *Flamant* but was told that *Flamant* was attending to another incident.
- j. *Valiant* responded to the Mayday Relay at 02:31¹¹³ and at 02:32 Stuart Downs (HMCG) confirmed to *Valiant* that it was understood that they were heading to the Mayday Relay.¹¹⁴
- k. The evidence shows that no calls were received by HMCG from incident *Charlie* after 03:12.

¹⁰⁸ Day 2 (Omar), from p29 .

¹⁰⁹ INQ001201.

¹¹⁰ INQ007652.

¹¹¹ Toy §62 (onwards) and INQ002051 (daybook).

¹¹² INQ007656.

¹¹³ INQ007611; INQ007612.

¹¹⁴ INQ007814. See also INQ007814.

- l. At 03:20, HMCG advised *Valiant* that R163 would be on task at 03:30, that there were other migrant vessels in the area of the Sandettie Light Vessel and that *Valiant* should continue to the coordinates already provided with regards to incident *Charlie*.
- m. At 03:24, *Valiant* arrived at the position specified by HMCG. No small boats were located. *Valiant* indicated to HMCG that it would search towards the Sandettie Light Vessel, since, in Cmdr. Toy's experience, "*migrant vessels may travel towards navigational lights, having little nautical expertise or understanding of tides.*" HMCG did not provide alternative instructions and noted the same.
- n. At 03:35, *Valiant* spotted two small boats using night vision equipment. One of those boats was making way, but the other appeared to have stopped. HMCG was notified. *Valiant* approached the small boat that appeared to not be making way. As explained by Cmdr. Toy, "*my rationale for providing assistance to the vessel that was not making way was that it was likely to be in greater danger than the vessel that was able to make way, such that it was less able to navigate out of the way of commercial vessels transiting the Dover Straits.*"
- o. At 03:48, *Valiant's* RHIB engaged with the small boat. The vessel that was making way continued to do so and *Valiant* lost sight. During a call with *Valiant*, HMCG stated: "*Believe this could be incident Charlie which you've been assigned to.*"¹¹⁵
- p. At 03:55, UKBF allocated an M number to the incident. At 04:07 migrants from this vessel started to be embarked onto *Valiant*.
- q. At 04:16, in response to a request, UKBF told HMCG that the migrants embarked had not claimed to have called UK authorities.
- r. At 04:39, *Valiant* had embarked 35 persons, comprising 20 males, 13 minors and 2 females from a small boat.
- s. At 04:43, *Valiant* confirmed to HMCG that it had embarked 35 persons (and the numbers of men, women and minors) from the first small boat and confirmed it was available to take a further tasking from HMCG. It then received a tasking from HMCG to go to a boat spotted by R163. At 04:48, R163 provided *Valiant* with a description of the new vessel. Various updated positions were communicated to *Valiant* by HMCG.

- t. At 05:04, BFMCC asked how many migrants *Valiant* had embarked “for Charlie”. As above, whilst reference is made to “Charlie” given that is the HMCG incident *Valiant* was tasked to, that does not mean that UKBF officers were seeking to link events from a SAR perspective (responsibility for which rested with HMCG).
- u. At 05:19, *Valiant* engaged another small boat and launched its RHIB. At 05:57, *Valiant* advised HMCG that all of the occupants had been embarked.
- v. At 06:10, HMCG tasked *Valiant* to another incident, this time near the SW Goodwin Buoy. At 06:30, *Valiant* made contact with a small boat.
- w. At 07:20, *Valiant* notified HMCG that it had completed the embarkation of the migrants from that vessel. By this time, both CPV *Hunter* and CTV *Hurricane* had been tasked by HMCG. As *Valiant* was at full capacity, HMCG was informed that it would head for Dover, entering the Port at 07:57.
- x. At 08:16, *Valiant* berthed in Dover and began disembarking migrants using its RHIB. At 10:30, following a 10-hour shift, *Valiant* was stood down and instructed to proceed to Ramsgate.

The Victims and Survivors: Was the loss of life avoidable?

Primary Cause

- 68. The Inquiry has asked to what extent the loss of life was avoidable.
- 69. The starting point is that the evidence unanimously confirms that the loss of life was directly caused by the failure of the vessel provided by the people smugglers. Neither the Inquiry nor MAIB (nor any other UK investigative authority) has been afforded an opportunity to inspect the vessel post-incident. However, the available evidence led MAIB to state: “After about 4 hours the rigid floor of the boat damaged the flexible material of the boat’s floor and sides and water began to enter the bottom of the boat. The occupants initially managed to control the flooding by bailing out the water until, shortly after 0100, the water ingress became uncontrollable. At the same time, the boat’s inflated collar began to lose pressure. Some of the occupants attempted to reinflate it using the hand-operated air pumps provided, but they were unsuccessful.”

70. MAIB's analysis as to the boat is supported by two factors. Firstly, MAIB's conclusions are corroborated by Issa Omar's account, which confirmed that the vessel started taking on water and capsized about 40 minutes to one hour later.¹¹⁶ His oral evidence was that water began entering the vessel in the back or middle first slowly but later very quickly.¹¹⁷ Secondly, prior experience from HMCG and other authorities has led them to conclude that the boats typically used in such a scenario are fundamentally unsuitable and therefore all are classified as in distress as soon as they cross into the UK SRR. Vessels commonly used for similar crossing were routinely found to be defective and unseaworthy. The Inquiry itself described incident *Charlie* as "*unseaworthy and overcrowded*" in its opening.¹¹⁸
71. Second only to providing a defective vessel, the next most significant factor relevant to the Inquiry's assessment into whether the loss of life was avoidable must be the lack of onboard safety measures. The smugglers had failed to furnish the vessel with any basic safety or communications equipment. There was no radio. There are mixed reports as to the availability of lifejackets and, insofar that certain of the migrants did have lifejackets, the suitability of those lifejackets for conditions in the Channel. The occupants did not have access to other maritime communications equipment. They were reliant on mobile phones to try and call for aid and provide location information, which has been described by Ian Ivory as not reliable in Channel.¹¹⁹ There was no way for the vessel to initiate or assist the SAR mission, for instance, by accurately notifying HMCG of the vessel's location or by identifying itself with distress flares. The lack of equipment hindered the response.
72. The foregoing highlights a point that has been made clear via the evidence heard during the Inquiry - the use of small boats in attempts to cross the Channel is fundamentally and inescapably dangerous.¹²⁰ Whilst the Inquiry has (understandably) not dedicated a significant portion of its time considering the failure of the vessel and focussed its attention on why the UK SAR mission was not successful, the Inquiry is encouraged to determine that the root cause of the incident was the smugglers' decision to encourage migrants to attempt a Channel crossing in an unseaworthy

¹¹⁶ Omar statement, §85.

¹¹⁷ The Cranston Inquiry, Day 2 Transcript (March 4, 2025), from p34.

¹¹⁸ Day 1 (Inquiry Opening), p4.

¹¹⁹ Ivory Report §4.4, §5.2.3 & §5.2.4. In particular, when discussing the geolocation data provided from mobiles, Mr Ivory states "[i]t is not possible to state any specific figures [...] due to the high number of contributory factors and variability of data."

¹²⁰ As noted by HMCG in their written Opening Submissions at §27, this is the necessary implication of the decision of the Court of Appeal in *R v Bah* ([2024] EWCA Crim 1499) in upholding the conviction of a person who had skippered a small boat that sank for gross negligence manslaughter. Such a conviction requires there to be a serious and obvious (present, clear and unambiguous) risk of death.

vessel without appropriate safety equipment. To return to the question posed by the Inquiry in its List of Issues, the only certain way to avoid the loss of life would have been for the defective vessel not to have been launched in the first place.

The Search and Rescue Operation (SAR)

73. Through its List of Issues, the Inquiry has sought to consider whether certain possible factors impacted on the SAR mission. Each will be considered in turn.

Staff Training

74. There has been no suggestion, from the evidence or otherwise, that Home Office staff lacked training (still less, that any lack of training was material to the SAR mission). UKBF's training requirements are set out above.

Staffing Levels

75. As noted at paragraph 50 (above), *Valiant* was fully and appropriately staffed on the night.

Adequacy, availability and tasking of assets, including for surveillance

76. The availability and suitability of surface assets, aerial assets and surveillance in general has been considered, above.
77. In terms of the night in question, as Mr Whitton OBE explained in his statement, *Valiant* was the primary responder, with the CPV *Hunter* on standby and CTV *Hurricane* available from 06:00 on 24th November 2021. The RNLI, a 'declared' SAR facility, had assets that were available to be tasked. HMCG asked for an asset to be tasked and were told that *Valiant* was the primary responder.¹²¹ UKBF ensured that *Valiant* was tasked immediately and there is no suggestion that, had it located incident *Charlie*, that it would not have been capable of effecting a rescue. Accordingly, there can be no basis for saying that a lack of surface assets contributed to the loss of life on the night in question.

Implications of Asset Availability

78. Additional assets were available but not used in the SAR mission for incident *Charlie*. Accordingly, asset availability cannot have had a direct impact. Whether it had an indirect impact is harder to determine. The Inquiry has heard that HMCG's decision not to request additional

¹²¹ INQ007648.

resources on the night in question *may* have been impacted by considerations for the then-unknown but correctly anticipated high pressures of the following red day, where crossings were expected to be ‘highly likely’.¹²² Given the CPV *Hunter* was deployed for SAR at around 06:40¹²³ and CTV *Hurricane* at around 07:20 that consideration appears to have been well-founded.¹²⁴ However, that cannot have been the only consideration. It would have taken time for any asset tasked later in the morning to travel from its berth. More importantly, the Inquiry has heard that small boats were extremely challenging to locate and that aerial, not surface assets, were more effective at undertaking this difficult task.¹²⁵ Accordingly, it cannot be said with any confidence that surface asset availability would likely have changed the outcome of the SAR mission.

Tasking

79. In terms of *Valiant*'s actions on the night, *Valiant* was tasked immediately upon receipt of a request from HMCG and departed within its 30-minute allotted window. It took just over 20 minutes to exit Dover Port, one of the busiest in the world, which, as Cmdr. Toy explained, was standard.¹²⁶ It made best speed to the location provided by HMCG (the Inquiry will recall that it was required to deviate from a straight course to its tasking to avoid tankers and other vessels as it crossed one of the busiest shipping lanes in the world). There is no evidence to suggest that Cmdr. Toy wasted any time. In opening, the Inquiry asked whether the launch of the *Valiant* was delayed due to waited for a Criminal and Financial Investigation officer. The clear evidence of Cmdr. Toy was that there was no delay.¹²⁷ *Valiant* acted appropriately and as expected, making best safe speed to the location provided by HMCG.
80. In terms of its actions once tasked, it is crucial to remember (again) that *Valiant* was under the direction of HMCG. It proceeded to the coordinates given. At around 03:18 *Valiant* confirmed to HMCG that it was in the vicinity and at 03:24 it indicated to HMCG that it would continue a search in the direction that a small boat would drift, were it not making way, and HMCG gave no instructions to the contrary. Less than 10 minutes later, it hailed HMCG and confirmed that it had located two small boats, one under power, and the other having stopped.¹²⁸ At 03:48 *Valiant* confirmed to HMCG that it was attending to the stopped vessel; ¹²⁹ it had embarked all 35

¹²² Gibson, §134 .

¹²³ Cockerill, §48(a).

¹²⁴ Whitton, §128.

¹²⁵ Day 5 (Toy), p47-48, 118-19; Toy §19.

¹²⁶ Toy §26, 65; Day 10 (Ling), p88.

¹²⁷ Day 5 (Toy).

¹²⁸ INQ007604; INQ007562; INQ007563; INQ007065; INQ007606; INQ007607; INQ007608.

¹²⁹ INQ007390.

passengers by around 04:36. Over the next three hours, *Valiant* was tasked by HMCG to two further boats identified by R163 and embarked the passengers from those boats, reaching capacity at around 07:20 before returning to Dover. In terms of the search patterns, *Valiant* followed recognised and approved patterns using on-board equipment to search and detect boats. The methods identified other, similar vessels. In witness questioning, the Inquiry has explored whether patterns for individuals in the water as opposed to boats should have been adopted, but the evidence suggests that the vessel remained intact (albeit, capsized) and that the occupants predominantly sought to hold onto the vessel for as long as possible, meaning that patterns for a small boat search would have been appropriate. Moreover, the Inquiry heard that search patterns for an individual in the water would not necessarily be appropriate where a group of people are in the water. The area searched by *Valiant* has been considered and agreed by the US Coastguard in its report, which stated: *"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."*¹³⁰

81. The Inquiry has asked whether UKBF should have suggested or tasked additional assets given *Valiant's* capacity of one hundred passengers (plus crew) given the estimated number of small boats and passengers. It was not for UKBF to make any such decisions. However, UKBF would note that the Inquiry has consistently heard that reported passenger numbers were generally unreliable (the Op Deveran SOP notes that, *"First information about passenger numbers can often be misleading..."*).¹³¹ Further, given the other factors, including the belief regarding the time taken to travel to the incident and the mistaken belief that the SAR mission for incident *Charlie* had been successful, it is unlikely that addressing any perceived capacity concerns would have changed the outcome and prevented the tragedy from occurring.
82. Overall, *Valiant* was tasked as soon as required, was ready to depart as soon as practicable and, under the expert direction of Cmdr. Toy, proceeded as instructed. Once on scene, as indicated in the MAIB Report, *Valiant* travelled from incident *Charlie's* last given WhatsApp coordinates (provided by HMCG), proceeded with the direction of presumed travel to the Sandettie Light Vessel and beyond, before returning to the south-east of the Sandettie. R163 had covered the

¹³⁰ INQ004345.

¹³¹ INQ003920.

same area earlier during roughly the same period. It remains unclear why the vessel was not located, although it is clear that UKBF and other tasked assets performed their function properly and professionally. There are any number of possible explanations, although one matter that has not been considered in detail is the possibility that the WhatsApp positions provided were not accurate (see, for instance, Iain Ivory's report¹³², which suggests that WhatsApp locations in rough seas in the Channel may lack accuracy).

Adequacy of interdepartmental co-ordination

83. The evidence shows that HMCG could directly communicate with UKBF, both with those in the MCC and on BFM vessels, to permit the rapid issuance of instructions for SAR missions. The processes and policies were set out in the Op Deveran Operational Order. The interdepartmental roles were clear and understood. There was no interdepartmental confusion as to responsibilities. The Inquiry is referred to the Home Office's comments under section III (Responsibilities) above.

Adequacy of the systems and equipment used to communicate with the occupants of small boats

84. Save for when migrants were being rescued or embarked on the vessels, UKBF did not have any direct communications with the occupants of small boats during SAR operations. The small boats did not have any standard maritime communication systems to facilitate direct communication with UKBF vessels. When engaging directly with small boats during a rescue, UKBF officers found hand gestures the most effective method of communication in light of the background noise and (possible) language barriers. In terms of the adequacy of the systems and equipment used by small boat occupants to communicate with rescuers or other vessels, the Inquiry has heard that the small boats generally lacked even basic communications systems, which negatively impacted their chances of being rescued.

The adequacy of the issuance of and response to the Mayday Relay

85. A Mayday Relay was broadcasted from 02:27 (and subsequently repeated). The decision to issue – and the actual issuance of the Mayday Relay – were taken by HMCG. In terms of the response, *Valiant* was provided with the relevant coordinates but was already making way, meaning there was little operational impact for UKBF. At 02:34, Cmdr. Toy's daybook stated that *Valiant* was "proceeding to mayday" (although he cannot actually recall receiving the Mayday).¹³³

¹³² INQ010133.

¹³³ INQ002051.

86. However, critically, HMCG states that part of the rationale for broadcasting the Mayday Relay was to gain the attention of a French navy patrol vessel called *Flamant*. According to the MAIB Report, *Flamant* was about 3.27nm from the Mayday Relay position whereas the nearest UK government vessel, the *Valiant*, was about 10nm away. *Flamant* did not respond, despite the situation being mentioned in a further call between the UK and French coastguards.¹³⁴ The reasons for the non-response are not known and are outside of the scope of this Inquiry's investigations. However, Counsel to the Inquiry noted in opening that: "*On the face of it, it appears that by failing to respond, the Flamant would have breached its obligation to render assistance to persons in distress at sea under the International Convention for the Safety of Life at Sea.*" That point is also made by a number of witnesses, including Cmdr. Toy, who states, "*If a mayday is received, then all vessels in the vicinity must respond, in keeping with basic obligations under maritime law.*"¹³⁵ *Flamant's* actions remain a major matter of concern for all involved.

The adequacy of information sharing and co-operation between the UK and French coastguards

87. HMCG was responsible for communicating and sharing information with the French Coastguard. BFMCC did not communicate directly with the French Coastguard on operational planning matters.¹³⁶ Cmdr. Toy has explained that he could communicate with French vessels via VHF, but he did not in fact speak to any such vessels while deployed on the morning of 24th November 2021.¹³⁷
88. The wider evidence suggests that the French Coastguard was aware of incident *Charlie's* location and course for several hours before sharing that information with the HMCG. *Valiant* was tasked in light of that information and (notably) before HMCG became aware that incident *Charlie* was in imminent danger (i.e. before that information was passed via the French Coastguard or communicated by the occupants of incident *Charlie*). It is unclear why it took so long for information regarding incident *Charlie* to be relayed by the French Coastguard to the UK authorities, and it is unknown what impact, if any, earlier commencement of the UK SAR mission may have had.

The adequacy of the system for reconciling and closing and suspending any SAR mission

¹³⁴ Gibson, §116.

¹³⁵ Toy, §67.

¹³⁶ Whitton, §43. However, BFMCC staff were normally sent the French 'tracker' directly by email, alongside HMCG.

¹³⁷ Day 5 (Toy), p107.

89. As explained above, the responsibility for reconciling small boats embarkation with HMCG's incident names rested with HMCG at all times. UKBF did not have the expertise or information to make any such judgements. HMCG will no doubt explain its systems. However, to the extent it needs to be repeated, having heard the evidence, it is now very clear that distinguishing between small boats is extremely difficult. Small boats do not have identification numbers or names. Their features are often similar if not almost identical (size, colouring, design etc.). They do not have location or communications equipment. They are often overcrowded (which makes head-counting challenging) and sit low in the water. The Inquiry has heard that aerial assets are better suited to locating small boats at sea. Further, as the Inquiry has heard, information relayed to HMCG is not "a fact" but intelligence that required verification. The difficulties are increased by known instances of occupants providing inaccurate information regarding their vessels, whether unknowingly because they are unfamiliar with sea crossings or simply in a confused and overawed state given the difficult circumstances they face in the Channel, or deliberately to prompt early rescue. The Inquiry has heard and seen evidence that the numbers of persons reported on small boats were often inaccurate.¹³⁸ Bearing all of that in mind, the risks of confusion are high. In this case, *Valiant* found at least two vessels within the vicinity of incident *Charlie's* last presumed location, one of which was in a serious state of peril (it had lost power in one of the world's busiest shipping lanes). Whilst it was not *Valiant's* or UKBF's responsibility to seek to determine whether or not one of those vessels was incident *Charlie*, UKBF officers can see why misidentification and confusion is an inevitable risk of small boat crossings.

Conclusion: Was the loss of life avoidable?

90. In conclusion, in response to the Inquiry's question as to whether the loss of life was avoidable, the evidence shows that the primary reason for the loss of life was the failure of the vessel used for the crossing, coupled with a lack of safety equipment. The only certain way that the loss of life could have been avoided was if the crossing had not been attempted in the manner it was. In terms of the assessment as to why the SAR mission did not succeed, it is clear that there were multiple factors ranging from bad weather grounding aircraft to delayed communication from France and HMCG's understandable - but ultimately mistaken - belief that incident *Charlie* had been rescued. If any of those and other factors had not happened, the prospects of success of the SAR mission *may* have been improved. But none could have guaranteed success. The Home Office does not seek to theorise as to what factors may or may not have altered that outcome (the reality is that no one can say for sure whether any one factor would have made a difference).

¹³⁸ Day 5 (Toy), p62; Toy §39.

However, to make the Home Office's position clear, the Home Office is entirely confident that none of its actions were responsible for or could fairly be said to have contributed to the SAR mission not succeeding.

Observations on questioning of BFMCC witnesses

91. Whilst not directly related to topic IV on the List of Issues (*'The events of 23rd and 24th November 2021*), the Home Office sets out here its observations on the questioning of two of its employees.
92. At the outset of this sub-section, the Home Office wishes to reiterate its gratitude to the Inquiry for carrying out its important work. The Home Office respectfully suggests that the Inquiry was conducted efficiently, effectively and collated a proportionate amount of evidence to enable its Terms of Reference to be discharged.
93. The Home Office also recognises that the Inquiry must carry out a full and fearless, independent investigation into matters within its scope. That requirement on the Inquiry will necessarily warrant putting matters to witnesses which could identify failings or mistakes on the part of those persons or the organisations that employed them.
94. However, and whilst recognising the above, the Home Office does, however, draw attention to the manner in which two of its witnesses, in particular, were questioned.
95. At all stages, the Home Office has endeavoured to assist the Inquiry's preparation and the progress of the final hearings. This has led to the production of hundreds of documents, collated from searches of many thousands more. It has also included providing witness statements and live evidence from Kevin Toy (Commander of *Valiant* on 24th November 2021), Karen Whitehouse and Thomas Willows (Officers in the BFMCC, who liaised with HMCG on the night in question and tasked *Valiant* when requested by HMCG) and from two corporate witnesses, Steven Whitton OBE and Dan O'Mahoney, who addressed UKBF's wider processes with regards to Op Deveran, as well as describing the measures adopted to deter crossings generally. The Inquiry also has a witness statement from Dr Neil Honeyman, who addresses the capabilities of an aerial asset operated by RVL on the night in question.
96. These witnesses, and no doubt others who gave live evidence, attended the hearings being aware that the Chair had emphasised that the Inquiry's process was to be inquisitorial, not adversarial: *"Nobody has a case, a claim, or a defence to advance."* They would also have been aware that in his opening Leading Counsel to the Inquiry indicated that witnesses would be questioned, not cross-

examined. Notwithstanding those assurances, the Home Office considers that the questioning of two of its employees, Ms Whitehouse and Mr Willows, was on occasion akin to adversarial cross-examination, not designed to elicit open responses, but rather, to put criticisms which were not properly levelled against those witnesses or to suggest that the witness had been economical with the truth or to 'catch out' witnesses on immaterial matters. By way of examples taken from Karen Whitehouse's evidence:

- a. Criticisms not properly directed at BFMCC: Ms Whitehouse was asked about BFMCC's processes to manage operational decisions, despite the Inquiry already appreciating that operational SAR decisions were made by HMCG. For instance, she was asked, "*When you were dealing with these incidents, did you have a categorisation system denoting the level of urgency needed for a response?*", to which she correctly explained that was a matter for HMCG.¹³⁹ Again, she was asked, "*If you had been told that information, that the boat was taking on water, or it was sinking, or that there were people in the water, would that not have changed your approach to your work that night and made you take some proactive step?*", despite that being a matter for HMCG to communicate to the vessel it had tasked to respond to the SAR event (as confirmed by Ms Whitehouse in response).¹⁴⁰ She was asked whether, given that UKBF had other assets available, she "*wished*" she had sent another vessel to aid with the SAR mission (p84), to which she (correctly) responded – in keeping with the earlier point that tasking would be in response to HMCG requests - "*if asked, I would have done*".
- b. Questions put on a false premise: Ms Whitehouse was asked a number of questions based on factually incorrect implied premises. For instance, she was asked, "*Didn't you have to have a grasp on what was going on with the various small boats in order to decide whether further Border Force assets needed to be deployed?*", despite the Inquiry having already been told that UKBF would deploy assets in response to requests from HMCG.¹⁴¹ Later, she was asked, "*You are saying that you would make a note of all of this information in order to determine, for example, the appropriate asset?*", despite having already confirmed that decisions about the appropriateness of assets for SAR missions were made by HMCG. She was then accused of being "*very very sloppy*" for not recording information, despite having explained that the

¹³⁹ Day 6 (Whitehouse), p21, l24.

¹⁴⁰ Day 6 (Whitehouse), p75.

¹⁴¹ Day 6 (Whitehouse), p21, l1 and p8, 10.

information was not material to her role – which was the tasking of *Valiant*, if requested to do so by HMCG.¹⁴²

- c. Adversarial questioning: Ms Whitehouse was questioned on what access BFMCC had to HMCG's tracker on the night in question. She was asked about her statements, and it was put to her: *"sitting where you are now, that is your evidence; that you only had read-only access to the coastguard tracker? A. Yes. Q. Right. Well, let's have a look at some contemporaneous material on this. Can we look, please, at {INQ007058/1}, the second page, please {INQ007058/2}. Now, this is a record which the Inquiry has obtained showing changes which were made to the coastguard tracker on the night in question. You see the date, "Change Date"? A. Yes. Q. And you will see entries 3 and 4 have your email address? A. Yes. Q. And entry 17 has Thomas Willow's email address? A. Yes. Q. It suggests, doesn't it, that Border Force personnel, including the two of you, were indeed, able to change the coastguard tracker that night? A. That document would suggest that."* (p37). Aside from being unnecessarily adversarial, the line of questioning was also based on a false premise as Mr Papadopoulos and Mr Bill later confirmed that the document did not accurately record information about edits to the tracker and immaterial (Mr Papadopoulos also confirmed it retained responsibility for linking recovered vessels with its incidents, and the inputting of M numbers by UKBF could only be done after the HMCG had linked the vessel to an incident).¹⁴³ On her recollections, it was put to her that her "position" had *"very radically changed"* and, later, asked *"what's your position today"*. These questions proceeded on the basis that Ms Whitehouse's first statement was untrue. This was unnecessarily pejorative. It was clear that her first statement contained a mistaken account, but there was no basis for suggesting that she was not intending to tell the truth (in the sense that she was lying) and, indeed, Ms Whitehouse had actively sought to correct that account with the production of a second statement.

97. By way of examples taken from Tom Willow's evidence:

¹⁴² Day 6 (Whitehouse), p66.

¹⁴³ Day 7, (Papadopoulos), p70, where Mr Papadopoulos stated, *"I can't imagine why I will have been awake going through the tracker 1 o'clock, so I am unable to recall really me going on the tracker at that time. In hindsight, it wouldn't have made sense for me to be awake at this time of the night."* And p65, *"Q. So whilst Border Force was meant to be adding/inputting the information manually, would it be fair to say that they would need to liaise with coastguard in order to understand which row they were adding it to, which incident it was allocated to? A. They would have to be aware of which incident we were requesting specific Border Force assets to be tasked to. Q. And not only that, because, as you can appreciate, if a Border Force asset is tasked to a specific incident, it may in fact locate another incident. A. Correct. Q. And then you can imagine how there would be scope for errors if Border Force were not in contact with coastguard, who would be ultimately the entity who would be deciding which incident this boat related to. A. Correct."*

- a. Criticisms not properly directed at BFMCC: Mr Willows was repeatedly questioned as if BFMCC had responsibility for making operational decisions regarding prioritisation of SAR events, asset deployment, capacity, SAR taskings etc., despite the Inquiry appreciating that all of those matters remained within HMCG's remit at all times. The line of questioning was accusatory, as if seeking to imply that BFMCC had somehow failed in its role by not taking those decisions for HMCG. For example, Mr Willows was asked, *"If you had heard that Mayday, if you had known that Charlie required immediate assistance at 2.27, do you think you might have reassessed whether your asset provision, the decisions you had made about the assets to send, were sufficient?"* Mr Willows responded by explaining (correctly) that, *"ultimately, that is a coastguard decision to make"*, and providing additional context.¹⁴⁴ Nevertheless, the questioning went on to ask (again), *"if you had known [about the Mayday], would you have reassessed the situation and the need to provide further assets? I am asking about you and what you would have done"*, and later, *"When you found out that Charlie was full of water, did that change your assessment of the urgency of the situation, of this incident?"*.¹⁴⁵ Mr Willows (again) correctly started to explain that questions around urgency were for HMCG, but the question was asked again. Mr Willows was also asked about his views on distress (*"My question is about your assessment of the situation"*), capacity (p76, 123), the linking of small boats recovered with HMCG's incident tracker and (*"Why was Valiant allowed to return to port with only three of those four intercepted?"*) (p85, 111). Another extract (from pp86, 111) was in a similar vein: *"Q...Why was Valiant allowed to return to port with only three of those four intercepted? A. Well, again, that's a coastguard decision. Once they've — yes, when they can return to port, that's not an MCC decision. That's a combination of if they have reached their — their limit for number of migrants on board or the assessment that there's no outstanding vessels. But that's not an MCC decision. Q. So you have been told there are four out there and you know at that point that Valiant has found three. Are you saying it's not your role or responsibility to say, "Hang on, I think we might have missed a boat here"? A. Well, I don't know if it was — maybe the coastguard thought there was another duplicate. They had already identified duplicates from earlier in the evening, so..."*
- b. Questions put of a false premise: It was put to Mr Willows that, *"you have told us they [small boats] often weren't genuinely in distress"*, despite that claim not being made – expressly or implicitly – in Mr Willows' written or oral evidence. Mr Willows was then asked, *"Does*

¹⁴⁴ Day 8, (Willows), p62 116.

¹⁴⁵ Day 8, (Willows), p64 11, p68 123 and (p69, 19).

*that mean even where they were classified formally as being in distress you weren't always treating them as though they were in a state of distress or emergency?"*¹⁴⁶ That question is predicated on the assumption that BFMCC was responsible for assessing and categorising small boats' distress levels and/or that BFMCC would treat small boats differently if they had determined that the distress level was not problematic. It was not for BFMCC to designate a small boat as being in distress. BFMCC did not make decisions regarding SAR missions, so could not treat small boats differently.

98. It is regrettable that Home Office staff were questioned in this manner. The Home Office sought to assist the Inquiry in achieving the purpose envisaged by the Chair at the opening hearing. The individuals who attended the Inquiry to give evidence on behalf of the Home Office did so voluntarily to attempt to help the Inquiry to discharge its Terms of Reference. They produced witness statements on events that took place several years ago in line with the deadlines set by the Inquiry, and prior to full disclosure, including of transcripts of calls held by the MCA involving those individuals. To the extent there was confusion, it was because the events occurred a long time ago on a night that was not, at the time, known to be any different to the high number of other pressurised nights being experienced. It is therefore a source of regret for the Home Office that these witnesses were questioned on occasions as if they were not being truthful when, in fact they, like other witnesses (who were not so questioned), struggled to recollect events or put in clarificatory statements to address late disclosure from the Inquiry.

V. INSPECTION AND LESSON LEARNING PRIOR TO 24TH NOVEMBER 2021

99. UKBF's experience from working with Frontex to assist with the small boat crisis in the Mediterranean informed the development of SOPs and procedures for dealing with small boats in the Channel. The operational deployments and plans for Op Altair and Deveran were subject to regular review.¹⁴⁷ The Inquiry is also aware of the *Small Boats Response: Lessons Learned Review* which was published in June 2019 – as Mr Whitton OBE explained this was effectively a stocktake conducted in response to the increasing numbers of small boats attempting to cross the Channel and to attempt to identify how the response would evolve moving forward.¹⁴⁸ He explained that the review likely led to the creation of the CTCC and the internal structure within the Home Office to respond to the challenges posed by small boats, both in respect of SAR and the law enforcement requirements (insofar that the incredibly dangerous crossings were underpinned

¹⁴⁶ Day 8, p18 l5.

¹⁴⁷ Day 11, pp224 l20-24, p225-226 l25-2 and p32 l16-21.

¹⁴⁸ Day 11 p19 l13 onwards.

and driven by criminal activity). However, as always, the focus for BFM officers at sea (and all those involved in Ops Altair and Deveran) remained SOLAS.¹⁴⁹

VI. RECOMMENDATIONS

100. Having considered the question in detail and in light of the evidence heard, the Home Office's view is that no further Home Office-specific recommendations are necessary. The events in question have already been subject to external review by MAIB with appropriate recommendations having been implemented. The Inquiry will appreciate that the situation has significantly evolved since 2021 and continues to do so. The smugglers' small boat tactics have evolved to respond to law enforcement interventions and there has been a substantial increase in the number of migrant journeys more generally. In response to those changes, and as a result of ongoing learnings in relation to small boats, the Home Office's practices have also evolved. Op Deveran was superseded in March 2022 by Op Isotrope, with primacy being passed back to the Home Office on 31st January 2023.
101. The MAIB report recommended that UKBF develop procedures for achieving, as far as is practicable, an overview picture of small boat activity during periods when aerial surveillance is limited to rotary wing aircraft or is unavailable. The recommendation has been met. The intelligence, surveillance and reconnaissance capabilities, which as Dr Honeyman's evidence shows, were under development prior to the events in question. They have evolved significantly since November 2021 such that, as the Inquiry has heard, by Spring 2022 "*almost all*" small boats entering the UK SRR had been detected.¹⁵⁰ In the event that aerial assets are unable to provide full coverage, due to inclement weather or other reasons, the deployment of vessels on the median line serves as an effective temporary contingency to reduce the surveillance gap, insofar as is practicable. In practice, inclement weather will typically signify a 'green day', which itself will limit the number of migrant crossings made during that period.
102. To set out some of the further measures that have been implemented since November 2021:
- a. The Home Office has established Small Boats Operational Command ("SBOC").¹⁵¹ SBOC protocols and procedures have been codified in an Operational Manual which provides a

¹⁴⁹ Indeed, Mr Whitton explained that SOLAS would be the priority even if a BFM crew were deployed on a drug trafficking operation. Day 11 p23 3-9.

¹⁵⁰ O'Mahoney, §92.

¹⁵¹ O'Mahoney, §55 onwards.

clear, detailed explanation of the role and responsibilities of Higher Officers embedded within the JCR or the Operations Room at the Dover MRCC.

- b. In terms of cooperation amongst stakeholders, the co-location of relevant SAR entities via UKBF's Liaison Officers has been advanced further such that the UKBF now has a 24/7 presence in the JCR in HMCG's MRCC. Daily, multi-agency planning meetings take place in the JCR to facilitate asset planning and forecasting.
- c. Landside facilities for the reception of migrants rescued from small boats have also been improved. In early 2021, it was recognised that Tug Haven was not suitable and a permanent, purpose-built facility has since been constructed at the Western Jet Foil. This facility includes a dedicated berth for use by CTVs and other UKBF vessels. This has reduced disembarkation times improving operational efficiencies.
- d. By the time of the incident, the Home Office was already aware of the limitations of its existing surface assets for small boat SAR. Procurement and use of CTVs was already in progress with a CTV in use by November 2021. The Home Office has now procured five CTVs and three RHIBs for use in migrant SAR operations. As already noted, it has also greatly improved its ISR capabilities and procured additional ISR assets.
- e. Intelligence sharing between SBOC and French counterparts takes place on a more structured basis, which includes reconciliation processes at the end of each shift to ensure all identified events have been interdicted.

103. As the Inquiry is aware, those measures were not taken in direct response to the events of the 23rd-24th November 2021. Efforts were underway to respond to the evolving challenges posed by the sizeable and rapid increase in numbers of small boats being sent into the Channel. Steps were being taken as quickly as reasonably possible to respond to those challenges. While safety at sea can never be guaranteed and attempting to cross the Channel on a small boat continues to be an inherently dangerous and, indeed, life-threatening endeavour, the Home Office is confident that the chances of a similar incident reoccurring are as low as they could reasonably be.

C. CONCLUSION

104. It is right that the Inquiry has put the survivors and the families of the victims at the heart of its investigation. This was an undeniable human tragedy.

105. However, the circumstances of the UK SAR response need to be properly and fairly considered in the context of the reality of the challenge that HMCG, RNLI and Home Office employees faced in trying to locate and rescue those in small boats in the Channel.
106. Further, the Inquiry's findings will no doubt be grounded in verifiable fact or, if those facts are not or cannot be known, whether because of the limitations created by the French criminal investigation or otherwise, be suitably caveated.
107. Any recommendations must recognise practical limitations and the objective reality that, in the words of Simon Ling of the RNLI, small boat rescue is and was *"by no means normal and it demanded constant understanding, constant adapting, constant evolving."*¹⁵²
108. The Home Office once again extends its gratitude to the Chair and the Inquiry team for taking on the task of investigating the matters set out in its Terms of Reference. If in the course of the drafting of its Report the Inquiry finds it requires further information, the Home Office stands ready to assist as necessary.

PRASHANT POPAT KC

GEORGE MALLET

FREYA FOSTER

Henderson Chambers

17 April 2025

¹⁵² Day 10 (Ling), p38 ll2-4.