

Golfer's name and address, and satisfied itself as to his role in the original investigation and his rank both at that time and upon retiral from the force. The Golfer was informed of the outcome of these enquiries before the beginning of his second interview, and during the course of that interview he confirmed that he had been correctly identified. The Commission has not included details of the Golfer's identity in the statement of reasons, but will release these if requested to do so by the court.

5.29 A copy of the Golfer's second statement is in the appendix of Commission interviews. In general, he remained reluctant to divulge details of his career history, although he was prepared to confirm that he had been [REDACTED]. He said that during the police investigation he had carried out enquiries in the UK and the US as well as [REDACTED]. Part of his role in the latter, he said, involved creating a "profile" of [REDACTED]. While the Golfer regarded everything about [REDACTED] as "strange", his enquiries had produced nothing "as such" to link him to the bombing.

5.30 The Golfer said that while [REDACTED] he was instructed by [REDACTED] [REDACTED] to [REDACTED]. According to the Golfer, [REDACTED] considered that similar items might have been the source of [REDACTED] identified by the forensic scientists in the case. Later in the interview the Golfer claimed to have been told by [REDACTED] that forensic analysis [REDACTED] had proved inconclusive.

5.31 The Golfer also named [REDACTED] of his allegation that surveillance had been carried out in Malta prior to the bombing. When pressed, however, the Golfer seemed unable to point to anything to distinguish this alleged operation from the unauthorised surveillance of a Palestinian named Abu Nada which took place after the bombing and which led to the suspension of police enquiries in Malta. Nevertheless, he maintained that he would not have confused the two incidents. [REDACTED] was also allegedly the source of the allegation made by the Golfer at his interview on 20 October that certain of the Autumn Leaves suspects had been followed to Mary's House. Following further questioning, however, the Golfer

alleged that Mr Orr had told him only that the suspects had been followed to “a shop” in Malta, and had not specifically mentioned Mary’s House.

5.32 As to his allegation that Mary’s House was under surveillance prior to the arrival of Scottish officers, the Golfer claimed to have been told this by [REDACTED] [REDACTED] had informed him that surveillance on the shop had confirmed that there was no link with terrorists. According to the Golfer, there had been no “cold calling” on Mary’s House by officers following enquiries at Yorkie Clothing on 1 September 1989.

5.33 The Golfer was asked to expand on his allegation that evidence of the order number “1705”, which appears on the fragment of Yorkie trousers (PT/28), was fabricated. He alleged that he had seen the photographs of this item which were taken to Malta by DCI Bell during initial enquiries there, none of which showed the order number. He had seen the photographs before they were taken to Malta, but had not seen them subsequently. Asked the basis for his allegation that evidence of the number had been fabricated, he said that he would reveal this at the end of the interview.

5.34 The Golfer was also asked further detailed questions about his allegation that Anthony Gauci’s first police statement had been altered. He was referred to the passage in his statement of 20 October 2004 in which he claimed to have been told about the reason for the alteration by one of the officers involved in Anthony Gauci’s interview. In an abrupt change of position, the Golfer responded “Did I say that?”, before denying that he had been told any such thing by an officer involved in enquiries in Malta. Although he knew the officers who had obtained Anthony Gauci’s first statement (DCI Bell and DS Armstrong), he did not know them well and had not questioned either of them about the statement.

5.35 The Golfer went on to say that it was not he himself who had discovered the alleged discrepancy between the two versions of the statement, but rather a HOLMES operator who had thereafter brought it to his attention. On being asked the name of this officer, the Golfer again pledged to disclose this at the end of the interview.

5.36 The Golfer alleged that the only other officer likely to have seen the "original" version of the statement as it arrived on the fax machine at LICC [REDACTED] [REDACTED] who was at that time a [REDACTED]. Although the Golfer had not discussed the statement with [REDACTED] in any detail, he believed that [REDACTED] might have read parts of it himself. As to the other officers who would have been aware of the terms of the original version of the statement, the Golfer named [REDACTED] the officers involved in obtaining the statement and the officer who he intended naming at the end of the interview.

5.37 Contrary to the allegation made in the application, the Golfer claimed to know nothing about Anthony Gauci having failed to identify the applicant from photographs shown to him. Similarly, with regard to the babygro, aside from a belief that it was not found in the manner described by the police, the Golfer claimed to know nothing about the allegation attributed to him by MacKechnic and Associates to the effect that evidence relating to the item had been fabricated.

5.38 The Golfer was also questioned about the allegations which had been attributed to him concerning the umbrella, fragments of which were recovered from the crash scene and linked by forensic scientists to the primary suitcase. He alleged that [REDACTED] [REDACTED] but that this was included in the later version he had seen. He also alleged that the umbrella subsequently relied upon in evidence was not the item found at the crash scene. As to his basis for this assertion, once more the Golfer informed members of the enquiry team that he would return to the matter at the end of the interview.

5.39 The Golfer repeated his allegations in respect of the Toshiba instruction manual (PK/689), another item recovered from the crash scene and linked forensically to the primary suitcase. According to the Golfer, while in the Dexstar store on one occasion he had come across the manual which, although dirty, was intact. Some time later, during a discussion with [REDACTED] regarding the apparent reluctance by the German police ("BKA") to accept the existence of a link between the Autumn Leaves suspects and PA103, the Golfer told both officers about his find. On being shown at interview a photograph of PK/689 taken from the RARDE report,

the Golfer alleged that this was not the same item as he had come across. According to him, if PK/689 had come from the item he had seen, there must have been some "jiggery pokery". The manual he had seen was of a different size and shape to the one shown to him at interview and was almost complete.

5.40 The Golfer confirmed the allegation attributed to him by MacKechnie and Associates regarding [REDACTED], and the police label attached to PI/995. In particular, the Golfer claimed that [REDACTED] for the Crown, [REDACTED] had told him that he was concerned about an alteration that had been made to a police label [REDACTED]. The Golfer confirmed that this conversation took place [REDACTED].

5.41 The Golfer was asked how he had first come to the attention of MacKechnie and Associates. According to him, Mr MacKechnie's colleague, Mr Thomson, had previously worked for a firm of solicitors in Paisley. Mr Thomson's replacement at that firm was aware that the Golfer had worked on the original police investigation and suggested to Mr Thomson that he might wish to speak to the Golfer about the case. According to the Golfer, it transpired that MacKechnie and Associates, seemingly by coincidence, were already in the process of tracing him. According to him, this was because [REDACTED].

5.42 The Golfer was asked if he had ever been employed by MacKechnie and Associates in any capacity. This followed comments by Mr MacKechnie that the Golfer was carrying out work for his firm. According to the Golfer, while MacKechnie and Associates had met his hotel and travel expenses, he had never been paid for his work, nor had he wanted such payment. Although he had never been employed as an investigator with MacKechnie and Associates, he had worked at their offices, sometimes for a week at a time, and had also carried out an enquiry on their behalf. This consisted of an approach to [REDACTED] to ascertain whether he would be prepared to speak to MacKechnie and Associates about the change made to the

label attached to PI/995. According to the Golfer, after taking advice [REDACTED] declined to do so. The Golfer added that [REDACTED] was unable to recall their alleged conversation [REDACTED].

**5.43** As to why he had decided to come forward at this stage, the Golfer stated that he believed the applicant to be innocent. It was suggested to him that if he felt this way he could have spoken up before the applicant's conviction, rather than after. The Golfer claimed that he had tried to raise his suspicions at Crown precognition but that "they" would not listen to him. He claimed to have told the Crown that he was "unhappy" about the case, but was informed that it was none of his business and that he was only there to speak to the recovery of an item of debris.

**5.44** Despite his concerns about the case, and the alleged dismissal of these by the Crown, the Golfer frankly admitted that when precognosed by the defence he had told them nothing. This, he sought to explain, was because it was only when speaking to MacKechnie and Associates after the trial that the significance of what he knew became apparent. In particular, it was only when he saw copies of Anthony Gauci's statements that he noticed that the version of the first statement he had seen was not there. Prior to that, he did not think the "dropping" of Paul Gauci from the statement was significant. The Golfer was pressed as to why he had not informed the defence of his concerns, but had no answer to this. He denied that he was simply making up stories or had an ulterior motive for now coming forward.

**5.45** The Golfer was asked about the matters to which he said he would return at the end of the interview. His initial response to this was, "What matters are they?" However, after being reminded of what he had said about the order number on the fragment of Yorkie trousers, he informed the members of the enquiry team that he did not wish to say anything about this. On being asked to explain himself, he claimed to have received advice not to answer such questions on the grounds that he might incriminate himself. He said that although he had planned to come back to this issue, he had changed his mind.

**5.46** The Golfer was asked with whom he had discussed the alleged change to Anthony Gauci's first statement, and replied that he had done so with DS Sandy Gay,

who at that time was a statement reader in the HOLMES room. According to the Golfer, it was Mr Gay who had drawn his attention to the differences between the two versions of the statement. He said they had discussed the matter together within a day or two of receipt of the first statement.

**5.47** With regard to the umbrella, the Golfer repeated that he did not believe this to have been a “legitimate and proper evidential find”. However, when asked the basis for his suspicions, he replied that he did not wish to “go down that line” on the basis that he might incriminate himself. In particular, he was concerned that by not coming forward with this information at an earlier stage he might somehow be guilty of attempting to pervert the course of justice.

**5.48** Following the meeting, the Golfer was urged to seek legal advice before attending any further interview.

*The third interview: 21 January 2005*

**5.49** A copy of the Golfer’s third statement is contained in the appendix of Commission interviews.

**5.50** Despite agreeing to seek legal advice prior to attending interview, the Golfer indicated that he wished to proceed without it, although he reiterated that he had no intention of disclosing the sources of his information.

**5.51** The Golfer was first asked about those issues which he had refused to address at his previous interview. With regard to the order number on the fragment of Yorkie trousers, the Golfer claimed to know from a “source” that “the thing as presented in court may not be as it originally was”. However, he claimed not to have “much specific information” about this and did not know the detail of “what was done and who did it”. At first, the Golfer denied that his source had given him any specific information, but he then went on to say that he had taken from what he had been told that the order number did not originally feature on the fragment and had been “added” later. He had been shown the relevant productions by MacKechnie and Associates and had noticed that one of the photographs of the fragment did not show the order

number. As to what the source had said to make him think that the order number had been added to the item, the Golfer again refused to “go down that line”, saying only that the number had been suggested to him as an “addition”. The source had not told him it was an addition “as such”, only that there was something “not right about it”. He was asked why he considered the evidence to have been fabricated, to which he responded that he did not think that “as such”, and that there might be a reason as to why certain of the photographs do not show the order number. Initially, the Golfer declined to name his “source”, but after further questioning he said that the information “came out” when Mr Gay “was telling ██████████ about it”. Specifically, Mr Gay appeared to have had some suspicion that the order number might not have been on the fragment when it was found and had appeared only after the police visits to Malta. The Golfer accepted that what he had allegedly heard might simply have been “gossip or conspiracy theories that sometimes arise in investigations”. He claimed not to have discussed the matter with anyone else, and to know nothing more about it.

5.52 With regard to the umbrella, the Golfer’s only information was to the effect that more than one such item had been recovered from the crash scene.

5.53 According to the Golfer, Mr Gay was also the source of his allegation that evidence regarding the babygro had been fabricated. Mr Gay, he said, had found it strange that the original police enquiries in Malta in connection with this item had “come back negative”, when there was subsequently such an issue made of it on the basis that it had been purchased from Mary’s House. In a subsequent conversation, Mr Gay allegedly repeated his suspicions to the Golfer, and suggested that evidence of the babygro had been “planted”. The Golfer was not aware of the basis for Mr Gay’s allegation, other than that it was something he (Mr Gay) had read.

5.54 The Golfer was asked about the extent of his involvement in MacKechnic and Associates’ enquiries into the babygro. He said that although he had seen photographs and scientists’ reports, he did not consider himself to have “really” been involved in their investigation. He had asked them whether they had looked at these items and was told that they had not. Some time later, they had asked him to “come

down", which he had done. He had directed MacKechnie and Associates to look into the babygro issue purely because of Mr Gay's alleged suspicions on the matter.

5.55 The Golfer denied having told MacKechnie and Associates at any stage that a babygro had been subjected to explosions in the US and the fragments presented as evidence in the case. He regarded such an allegation as "ridiculous". He claimed never to have seen the submissions to the Commission in which this allegation was made.

5.56 The Golfer also described as "rubbish" a further allegation attributed to him, namely that Anthony Gauci had been shown photographs of both accused but had failed to identify them. He also denied telling MacKechnie and Associates that persons associated with a Palestinian terrorist cell had been followed to Anthony Gauci's shop where they had been observed purchasing items of clothing. Although he maintained that he was told by [REDACTED] that a Palestinian had been followed to a shop in Malta, and that thereafter he had assumed that this was Mary's House, he claimed never to have told MacKechnie and Associates that the shop in question was Mary's House or that the suspects had been observed making purchases.

5.57 It was explained to the Golfer that, in light of his allegations, the Commission might wish to speak to Mr Gay. He replied that this was "certainly what I would do". According to the Golfer, he and Mr Gay "went back years".

### **Subsequent events**

5.58 Following the third interview, MacKechnie and Associates advised the Commission that the Golfer had been in touch with them complaining that their submissions to the Commission did not accurately represent his position. Despite this, MacKechnie and Associates stood by the allegations they had attributed to him. In a letter dated 2 February 2005, Mr MacKechnie stated that the Golfer had in fact admitted to him that he had made the allegations, but claimed to have been unable to confirm these to the Commission for fear of exposure.

**5.59** On 1 March 2005 the Golfer attended the Commission's offices again in order to confirm the contents of the three statements he had given. After viewing the statements, he confirmed that he was satisfied with them, subject to certain proposed amendments and deletions. The Golfer was advised that these would be considered, and a further arrangement was made to meet.

**5.60** The Golfer's final visit to the Commission's offices took place on 10 March 2005. Each of his proposed amendments was discussed with him and explanations given as to the Commission's decisions to accept or reject them. Generally, amendments were permitted where their purpose was to clarify something recorded in the statement, but were rejected where they consisted of deletions of particular comments which the Golfer did not dispute making. In the event, the Golfer refused to sign the statements and informed members of the enquiry team that he did not wish to have copies of them.

**5.61** Some time after the Golfer's final interview the Commission was contacted by a journalist named Ian Ferguson who made reference to specific details of one of the Golfer's interviews. Mr Ferguson also referred to the Commission's general reluctance to accept information in confidence from witnesses. The Commission declined to discuss the matter with Mr Ferguson.

### **Consideration**

**5.62** In terms of a draft protocol between the Commission and Crown Office, where the Commission becomes aware of evidence which suggests that a criminal offence has been committed it may, if it considers it appropriate, refer the matter to Crown Office for investigation. In practice, the Commission's approach to this provision has been to refer such allegations only where their source is considered credible and reliable. To do otherwise would risk inundating Crown Office with the numerous unsubstantiated allegations to which the Commission is exposed. In the present case it was decided that unless or until the Commission was persuaded of the Golfer's credibility and/or found support for his allegations in other evidence, it was not necessary to refer the matter to Crown Office. For the reasons given below the Commission did not consider it appropriate to do so.

**5.63** The Commission is satisfied that the Golfer was an officer in the original police investigation and, as such, was potentially party to information regarding the various enquiries undertaken. Throughout his interviews he displayed an awareness of the evidence and aspects of the enquiry which, in the Commission's view, could only have been gathered through first hand involvement. Any possible doubt as to the Golfer's background and credentials was removed by the results of the Commission's enquiries directed to establishing his identity.

**5.64** Despite this, the Commission has serious misgivings as to the Golfer's credibility and reliability as a witness. In determining this issue, the Commission is aware that such matters are, in the final result, for the High Court to determine. Accordingly, in assessing credibility and reliability the Commission generally applies a low standard and may hold that a witness is credible merely where it considers the witness capable of being believed by a reasonable jury. In the Golfer's case, however, the Commission is not persuaded that his accounts satisfy even this standard.

**5.65** Part of the basis for the Commission's rejection of the Golfer's allegations is the vast array of inconsistencies between, and sometimes within, his various accounts. As well as this, the Commission considers some of his allegations to be implausible when considered alongside other elements in the case, and unsupported or refuted when viewed in the context of some of the Commission's other findings.

**5.66** As indicated, in both the original submission to the Commission and those made subsequently, it was alleged that the Golfer had read a version of Anthony Gauci's first police statement which he later found was different in certain respects from the version eventually lodged as a production at trial. The first recorded reference to this allegation appears in the second defence memorandum, as described above. In that account, and in those given to the Commission, the Golfer alleges that in the "original" version of the statement, Anthony Gauci claimed that his brother Paul was present in the shop when the purchase of the clothing took place; but that this detail had been removed from the "official" version, in which Anthony Gauci is said to have been alone in the shop at the time of the purchase.

**5.67** An examination of the Golfer's accounts of this allegation reveals a wealth of often irreconcilable inconsistencies.

**5.68** In the second defence memorandum, the Golfer is said to recall only "vaguely" that the original version of the statement contained details of Paul Gauci's presence at the time of the purchase, and that he "cannot now remember certainly what was in the statement". At his first interview with the Commission, however, the Golfer was much more firm in his recollection. In particular, he stated that he was as certain as he could be about the reference to Paul Gauci in the original version of the statement, and that he did not doubt his memory in this respect. In the Commission's view, one would not normally expect a reliable witness to recall an event only vaguely in one account, and to then display a clearer recollection of the same event in an account given later.

**5.69** The Golfer went on to say at his first interview that, after noticing the discrepancy between the two versions of the statement, he had questioned one of the officers responsible for interviewing Anthony Gauci about this. According to the Golfer, the officer concerned told him that the statement had been altered in order to extract Paul Gauci from involvement in the case. The Golfer also suggested that he had first seen the official version of Anthony Gauci's statement (and therefore the discrepancies between the two versions) "not soon after" he retrieved the statement from the fax machine, though "perhaps less than a year after".

**5.70** At his second interview, however, the Golfer strenuously denied having discussed the alleged alteration to the statement with one of the officers involved in Anthony Gauci's interview. Instead, he claimed that the alteration had first been brought to his attention by a HOLMES operator, who was not involved in the enquiries in Malta. Asked later if he had any explanation as to why he had given an entirely different account at his first interview, the Golfer could only state that he did not recall having done so.

**5.71** Later in his second interview, the Golfer identified the HOLMES operator as DS Alexander Gay (on whom, more below) but he then contradicted himself again by saying that he was already aware of the alleged alteration to the statement by the time

Mr Gay raised this with him. In addition, contrary to the position adopted at his first interview (that he had learned of the alleged alteration “perhaps less than a year” after he retrieved the item from the fax machine) the Golfer stated that his discussion with DS Gay took place within days of him having read the first statement. When this discrepancy was put to him, he claimed not to know “where this year thing comes from”, and said that although it may have been more than a couple of days after the fax came in, it was not of the order of nearly a year.

**5.72** Further contradictions in the Golfer’s account of this incident emerged at his third interview. There, he could not recall having discussed the alleged alteration to the statement with anyone at all, including Mr Gay.

**5.73** The Golfer’s position as to the differences between the two versions of the statement he allegedly saw was also prone to variation. For example, at his first interview he claimed that the original version of the statement contained reference to the sale of a babygro, whereas in his second and third statements he maintained that there was no reference to such an item. Similarly, at his first and third interviews he claimed that there was some reference in the original statement to the sale of an umbrella, while in his second statement he claimed that there was not. While one can appreciate an honest witness simply forgetting such details over time, the apparent certainty with which the Golfer often expressed his differing recollections hardly served to vouch his reliability or credibility.

**5.74** As well as these inconsistencies (which are not exhaustive), the Commission has serious doubts as to the substance of the Golfer’s allegation regarding Anthony Gauci’s first police statement. First of all, as a police conspiracy to play down Paul Gauci’s role in the case it was plainly unsuccessful, given that he was eventually cited by the Crown to give evidence and was, until a late stage of the proceedings, likely to be called. Moreover, if the allegation were true, it would follow that various police officers have connived with Anthony and Paul Gauci in order to obscure the latter’s presence in the shop at the time of the purchase. If that is the case, it is clear that those concerned have gone to extraordinary lengths to cover their tracks. Not only must the terms of Anthony Gauci’s statement of 1 September 1989 have been altered to reflect the fact that he was alone when the purchase took place, the passage in

which he claims that Paul Gauci was watching football on television at the time must also have been fabricated. The various statements attributed to Paul Gauci in which the police attempt to identify precisely which matches he might have watched that day must also be an invention, together with the enquiries carried out to establish the times at which particular matches were broadcast on television in Malta. In the Commission's view, such a scenario beggars belief.

**5.75** The Commission has established that a number of Anthony Gauci's statements were indeed faxed to LICC, but there is no support for the suggestion that his first statement was transmitted by this means. The Commission obtained all faxed versions of Mr Gauci's statements in D&G's possession, and his statement of 1 September 1989 was not among them. By letter dated 28 April 2005, D&G informed the Commission that statements would be faxed only where the officers involved in enquiries were likely to be delayed in their return to the UK. In terms of DCI Bell's HOLMES statement (S2632X, see appendix), which describes his initial enquiries in Malta, it appears that the visit during which Anthony Gauci was first seen was relatively short, lasting from 30 August to 5 September 1989.

**5.76** At interview with members of the enquiry team (see appendix of Commission interviews), Mr Bell explained that there was no hard and fast rule governing whether witness statements were faxed to the incident room. In circumstances where officers were in Malta for three weeks Mr Gauci's statements would probably have been faxed to LICC if they were obtained at the beginning of the visit. However, if the officers were into the last week of the visit when they obtained the statements they might simply have been delivered by the officers concerned to LICC. Mr Bell recalled that statements would normally be faxed from the British High Commission. However, according to him, after the first meeting with Mr Gauci officers encountered problems getting in to the High Commission due to it having been a half day. He could not recall faxing Mr Gauci's first statement but did not rule this out as a possibility. Mr Bell thought that he had just telephoned to report what had happened.

**5.77** As to the alleged surveillance of Mary's House to ensure that it was not a terrorist "hotbed", Mr Bell confirmed at interview that his first visit to Mary's House

took place on 1 September 1989, the same day as he first visited Yorkie Clothing. He recalled that en route to Mary's House he asked the Maltese police officer, Inspector Godfrey Scicluna, who accompanied him on these enquiries, whether he knew of Mary's House and whether it posed a risk. According to Mr Bell, Mr Scicluna appeared to be aware of the Gauci family and assured him before they attended the shop that there was no risk. Mr Bell's recollections were supported by Mr Scicluna himself, as well as by his then superior, former Commissioner of the Maltese police, George Grech, both of whom were also interviewed by the enquiry team.

**5.78** Further doubts as to the Golfer's credibility arise from his failure to bring his allegations to light at an earlier stage. Although he claims to have tried to do so at Crown precognition, he was unable to explain why he made no similar attempt when seen by the defence. While he sought to suggest in his third statement that at the time he was precognosed by the defence he had "no idea what the evidence was", this begs the question as to why he allegedly tried to communicate his concerns to the Crown. Given the nature of his current allegations, it is difficult to see how his ability to reveal them depended upon some wider knowledge of the evidence in the case. As to his motives for coming forward, the explanation given by him in his second statement to the effect that he believed the applicant to be innocent does not sit well with the contents of the first defence memorandum, in which he is recorded as saying that the applicant may well have had some involvement in the bombing.

**5.79** The results of a number of the Commission's enquiries also significantly undermine the allegations attributed to the Golfer. As indicated in chapters 7, 9, 10 and 11, the Commission has investigated the evidence surrounding the fragments of the grey Slalom shirt, the Toshiba manual, the brown tartan Yorkie trousers and the babygro, and in all cases is satisfied as to its validity and legitimacy.

**5.80** A further, potentially disturbing, feature of the Golfer's accounts concerns his comments regarding a former colleague, DS Alexander Gay. The Golfer first referred to Mr Gay at his second interview when he claimed to have discussed with him the alleged alterations to Anthony Gauci's statement. In his third statement, the Golfer went on to name Mr Gay as the officer who had expressed doubts as to the provenance of the evidence concerning the babygro, and the order number which

appears on the fragment of Yorkie trousers. He indicated that Mr Gay might still be a serving officer in Strathclyde Police.

5.81 Subsequent enquiry with Strathclyde Police established that Mr Gay in fact [REDACTED] on 16 February 1992, a time when the Golfer was a serving officer with that force. According to [REDACTED] now a [REDACTED] with [REDACTED], who was interviewed in connection with the Golfer's accounts (see appendix of Commission interviews), Mr Gay's death was, as one might expect, well known among his fellow officers. Although [REDACTED] did not know Mr Gay well on a personal level, he had attended his funeral. Mr Gay [REDACTED] [REDACTED] explained, had [REDACTED] which were in no way related to the Lockerbie case.

5.82 Given the Golfer's comment in his third statement that he and Mr Gay "went back years", it is difficult to avoid the conclusion that he was fully aware of Mr Gay's death at the time of his interviews, and deliberately misled the Commission by proffering him in support of his allegations. When the information about Mr Gay's death was put to him at his final meeting with members of the enquiry team on 10 March 2005, the Golfer denied any prior knowledge of it.

5.83 [REDACTED] was named by the Golfer in two contexts. First, he said on more than one occasion that [REDACTED] might have been present when he allegedly retrieved Anthony Gauci's first police statement from the fax machine at LICC, and may have read parts of the statement. Secondly, the Golfer alleged that Mr Gay had, in the Golfer's presence, expressed concerns to [REDACTED] about the order number on the fragment of Yorkie trousers. Accordingly, while the Golfer suggested that [REDACTED] was present on particular occasions, he stopped well short of levelling any allegations against him.

5.84 In order to respect the undertaking given to the Golfer that his anonymity would be preserved as far as possible during the Commission's investigations, [REDACTED] was not informed about the precise reasons for the interview. Despite this, he appeared to answer fully and frankly all questions put to him. He had no specific recollection of seeing Anthony Gauci's first police statement and explained

that, if he had not been [REDACTED] in the HOLMES room at the time, he would have had no reason to see it. He was unable to recall whether he had [REDACTED] [REDACTED] from the fax machine, but emphasised that this was not to say that it did not happen. All statements received at LICC, he explained, should have been processed through HOLMES first, and he had no knowledge of statements being taken to the senior investigating officer without this having been done. He recalled a briefing on the terms of Anthony Gauci's first statement, but could not remember physically seeing the statement itself. He could not recall anything specific in the statement but was generally aware that it contained a detailed list of clothing. When asked if he could recall any reference to Paul Gauci in the statement, he replied that Paul had not been in the shop at the time the purchase had taken place. Asked whether he had gleaned this information from the statement itself, he replied that it would be in the statement as it was very important.

5.85 As regards the Yorkie trousers, [REDACTED] stated that he only had a very vague recollection about the number on the trousers. When shown a photograph of the order number 1705, he stated that he knew nothing about it. Asked if anyone had ever expressed any doubts to him about the fragment, he responded that no-one that he knew of had done so. He would have remembered if anyone, including Mr Gay, had done so.

5.86 In the Commission's view, [REDACTED] was an entirely credible witness whose account offers no support for the Golfer's allegations.

5.87 One other matter raised with [REDACTED] is worthy of note. At his first interview, the Golfer was shown handwriting samples of four police officers (DCI Bell, DS Armstrong, DC Crawford and DC Byrne) who at various stages noted statements given by Anthony Gauci. In the event, the Golfer identified each of them correctly. Given that [REDACTED] was employed as a [REDACTED] [REDACTED], and therefore might be expected to recognise the handwriting of officers involved in the enquiry, the same samples were shown to him at interview. Unlike the Golfer, however, he was unable to identify any of them. As the Golfer was not employed in the HOLMES room during the enquiry, it occurs to the Commission that his abilities in this area may stem more from his recent exposure

to Anthony Gauci's statements at the offices of MacKechnie and Associates than from his time as an officer in the investigation. Support for such a conclusion can be found in the second defence memorandum in which the Golfer is recorded as saying that at the time he allegedly retrieved Anthony Gauci's first statement from the fax machine he was unable to identify [REDACTED]

**5.88** The precise extent to which the Golfer assisted MacKechnie and Associates in their work is not known, but if one accepts what he said at interview on the subject it seems that his involvement went beyond that normally expected of a witness. While the Golfer does not appear to have been formally employed by the firm, by his own word (and indeed that of Mr MacKechnie) he "worked" at their offices and was even shown parts of the initial application lodged with the Commission. Indeed, his involvement appears to have extended to the further submissions lodged by MacKechnie and Associates. In an appendix to the Slalom shirt submissions (see chapter 7) there is an internal memorandum produced by MacKechnie and Associates in which a ground of review relating to the timer fragment (see chapter 8) is outlined. The memorandum bears to have been copied to the Golfer, despite the fact that he has never claimed any knowledge of the matters raised. A copy of the memorandum is included in the appendix.

**5.89** Although even in the absence of his connection with MacKechnie and Associates, the Commission would still have had no hesitation in rejecting the Golfer's allegations, it seems clear that some of what he had to say has been influenced by his exposure to materials by that firm. One example of this concerns the Golfer's allegations regarding the order number which appears on the fragment of Yorkie trousers (PT/28). As indicated, in his second statement the Golfer claimed that part of the basis for this allegation was that the number did not feature in any of the photographs of the item he had seen. While he claimed in that statement that he had seen these photographs on only one occasion (prior to their being taken to Malta by the officers involved in the enquiries there) in his third statement (and in his first), he suggested that these were in fact shown to him by MacKechnie and Associates and that he had never seen them prior to them being taken to Malta by police officers.

**5.90** It is, of course, possible that the Golfer may deliberately have sought to provide inconsistent accounts in order to diminish his significance to the Commission's investigation, and thus extract himself from further scrutiny by the authorities. According to MacKechnie and Associates this was precisely the explanation given by him as to why he had failed to speak to certain of the allegations attributed to him. It would also be consistent with the Golfer's position at his meeting with members of the enquiry team on 1 March 2005, when he agreed much of the contents of the Commission's three statements, without querying or even mentioning the obvious inconsistencies between them.

**5.91** However, even if the Golfer has deliberately misled the Commission in this way, it does not follow that his allegations are more likely to be true. Indeed, such behaviour may be equally consistent with someone who has levelled false allegations, but who never envisaged matters developing as far as they did. In any event, as indicated, the Commission's reasons for rejecting the Golfer's accounts are based not simply upon the wealth of inconsistencies between them, but also upon the inherent implausibility of what he had to say, and the fact that many of his allegations simply do not stand up to scrutiny when viewed in the context of other aspects of the case.

## **Conclusion**

**5.92** In terms of the decision in *Al Megrahi v HMA* 2002 SCCR 509, in considering evidence not heard at trial, the court must be persuaded that it is capable of being regarded as credible and reliable by a reasonable jury (or fact finder); and likely to have had a material bearing on, or a material part to play in, the determination of a critical issue at the trial.

**5.93** For the reasons given, and applying the low standard of assessment described above, the Commission does not consider that the Golfer's accounts meet the first branch of this test. As such, the Commission does not believe that the absence of the Golfer's evidence at the applicant's trial suggests that a miscarriage of justice may have occurred in his case.

## CHAPTER 6

### INTRODUCTORY MATTERS RELATING TO CHAPTERS 7 TO 11

**6.1** In the submissions concerning the Slalom shirt, the timer fragment, the Yorkie trousers, the Toshiba manual and the babygro, allegations are made as to the provenance of certain items purportedly recovered from the crash site. Before dealing with these submissions the Commission sets out its findings on some of the procedures employed by the police and forensic scientists in connection with the recovery and examination of debris.

#### **Difficulties with early record keeping**

**6.2** It became apparent to the Commission during its review of the police statements and other records that uncertainties existed in the evidential chains of many of the items recovered from the scene of the crash. Following receipt of the full copy of the Crown's precognition volume dealing with the recovery of debris (chapter 5 of the case), which included the Crown's own "summary and analysis" document, it was clear that such difficulties had also been identified by the Crown during its preparations for trial.

**6.3** Because of the passage of time, many witnesses involved in the recovery of debris could not remember specific items they were said to have been involved in finding or handling. The sheer volume of debris recovered and the conditions in which the searches took place made record keeping difficult. Notebooks were not generally used, and witnesses often did not provide statements recording what they had found. Although the HOLMES system contains statements which purportedly record the finding or handling of various items of debris, these were often produced by officers of the police enquiry team on the basis of documentary records, rather than by the witnesses themselves on the basis of their actual recollections. This practice was not confined to the finding and handling of debris: as former DC Callum Entwistle confirmed at interview with the Commission (see appendix of Commission interviews), the collation of the police report involved an element of rewriting and rewording of statements. Thus, a statement referred to in the police report might not

have been written by the police officer to whom it was ascribed. Instead, it might have been written by a member of the “collation of reports team” (such as Mr Entwistle), and based either on a previous statement given by the witness or purely on the available records. It was therefore apparent to the Commission that the HOLMES statements, although often helpful and informative, could not always be relied upon in and of themselves in establishing the provenance of particular items.

**6.4** In response to such difficulties, the Crown’s approach to the recovery of debris, both at precognition and in evidence, was to present witnesses with original production logs along with the items themselves (including the police labels attached to the items). This allowed witnesses to reach a conclusion about their involvement with particular items, even if they had no specific recollection of the matter. This reliance on the production logs involved precognosing the officers responsible for completing the logs, as well as the officers recorded as being responsible for finding individual items. It also depended on police labels attached to items having been completed at the time of discovery. As stated below, signatures on such labels were, in fact, often obtained from witnesses long after the event. Moreover, sometimes the original labels were replaced after the items were handed into the Dexstar store, and often in such circumstances the original label was either lost or destroyed.

**6.5** Accordingly, it cannot be said with regard to every piece of debris recovered that a full and reliable evidential chain exists. For the purposes of dealing with the submissions on this issue, it is important to address in more detail four specific issues. The first is the procedures adopted at Hexham, which was the initial property centre for many items found in Northumbria. The reason for focusing on Hexham is that it provides a good illustration of the difficulties that arose in accurately recording items; and also because the submissions raise a number of points regarding items that were processed there. The second issue of importance is the exercise which was conducted to obtain signatures on labels retrospectively. The third concerns the decision by the defence teams at trial to agree, in joint minute number 1, the provenance of many items of debris. The fourth concerns the photographs taken of the debris at the Royal Armaments Research and Development Establishment (“RARDE”) and the accuracy and reliability of the notes made by the expert witness Dr Hayes, particularly in

relation to the dates on which the photographs were taken and when the notes themselves were written.

### *Hexham*

**6.6** Debris recovered in most search sectors was collected and logged in the Dexstar warehouse at Lockerbie (“Dexstar”). However, debris found in the Kielder Forest area of sector K was collected at Hexham police station where it was processed by a team of officers from Strathclyde Police. DI Alexander Brown spoke in evidence to the procedures employed at Hexham (4/600). The system there mirrored that employed at Dexstar, in that property sheets identical to those used at Dexstar were completed for items. However, a different numbering system was used for items at Hexham which involved ascribing a “PKF” prefix and a consecutive number, rather than a “PK” number. The items themselves and the original Hexham log sheets were then transported to Dexstar, where the sheets were amended and each PKF prefix changed to a PK prefix. Copies were taken of the Hexham log sheets before they were sent to Dexstar. These were retained by D&G, who provided the Commission with copies of the entries relevant to various items.

**6.7** According to the evidence of DI Brown and also of DS Gordon Wotherspoon (14/2145), items handed in at Hexham generally comprised bags full of debris, where only the bag itself had been labelled. Much of the searching of the Kielder Forest area was carried out by groups such as Mountain Rescue teams. Generally, the leader of the team took responsibility for all the finds made by his team, and it was his details that were inserted on the label or pro forma sheet attached to each bag of debris. Police officers at Hexham processed the individual items within the bags by attaching a Scottish police label to each of them (although it is clear that on occasions bags of debris, rather than their individual contents, were processed as one item). The details inserted in each Scottish label would be taken from the label or sheet which was attached to the bag from which the item came. Thus the leader of a team of searchers would be recorded in the log as the finder of all the items in the bag, even though it was often another team member who had found them. The true finder was therefore not known.

**6.8** The original police labels or pro formas attached to the bags of debris were not normally retained, and the earliest available record of the finding of most items is the entry in the Hexham log. As the Hexham witnesses confirmed in Crown precognitions and in evidence at trial (e.g. DS Wotherspoon 14/2148) that the entries in the logs came from the original labels or statements, in the absence of persuasive evidence that the logs are invalid the Commission is satisfied that there is a sufficient evidential connection between these records and the original finds.

*Late signing of labels*

**6.9** It is suggested in a number of the submissions that labels for important items of debris were signed retrospectively, often in circumstances where the person signing could not remember finding or being involved in the handling of the item in question. This allegation is, in many cases, well founded. In their respective HOLMES statements, DC Brian McManus (S3070DH) and DC Rolf Buwert (S4649O, P, U and AF) make reference to an exercise conducted to secure the signatures of witnesses on labels they should have signed previously. It appears from DC McManus' statement that this began on Monday 10 September 1990, and that a number of signatures were obtained between then and 19 September 1990 when preparations for the fatal accident inquiry were finalised. DC McManus' statement does not contain details of which labels were signed during this exercise, or of who was asked to sign them. It records, however, that there remained a large number of witnesses who had not signed labels, and that whenever such a situation was identified a "message" was placed on the HOLMES system to record the fact.

**6.10** In his statement S4649U DC Buwert narrates that from 28 October 1990 one of his tasks was to ensure that production labels were signed by the witnesses who had identified the relevant productions. Details of those labels that required to be signed, and by which witnesses, were furnished to him by DC McManus. DC Buwert's statement contains a list of the labels signed in his presence, which included details of the police production numbers, the names of the witness and the date and place of signing.

**6.11** D&G also provided the Commission with copies of a large number of the messages from the HOLMES system which, it was explained, listed most, if not all, of the labels that were to be signed in this manner. It is apparent, however, that neither these, nor DC Buwert's statements, contain a comprehensive list of all the labels which were signed retrospectively. For example, there is no record of Brian Walton, the police officer who took receipt of PK/689, the main fragment of the Toshiba manual (see chapter 9 below), signing the label for that item, yet it is clear that this was done retrospectively.

**6.12** In his Crown precognition DC Buwert explained that signatures were sought only where the item in question originated from a bag of debris. In such situations, the individual items within the bag would not be labelled until the bag was processed at the productions store, in which case the labels would not include the finder's signature. However, it is clear that in fact the exercise DC Buwert conducted in getting labels signed was wider than this. For example, the label attached to PI/995 (see chapter 7) was signed retrospectively by DC Stuart Robertson despite the fact that PI/995 was not originally found in a bag of debris; and DC Robertson appears to have been involved only in conveying the item to RARDE, not in its discovery. DC Buwert's Crown precognition also indicates that witnesses would be asked to sign labels only if they could remember finding the item in question, but again it is clear from the Crown precognitions of other witnesses involved in the debris recovery process that it was not only those who specifically recognised the items in question who signed labels retrospectively. There were various instances of witnesses appending their signatures to labels, even though they could not remember the item in question, simply because they assumed the police records indicating their involvement with the item must be correct.

**6.13** In the submissions, such irregularities are highlighted in relation to particular items of debris in order to cast doubt upon their provenance and to imply deliberate interference with evidence by police or forensic witnesses. However, although the exercise of obtaining signatures on police production labels may have been worthless and ill-advised from an evidential perspective, the Commission does not take the view that in itself it suggests any sinister motive on the part of officers or undermines the integrity of the police investigation.

### *Agreement of evidence*

**6.14** A potential consequence of the questionable evidential value of HOLMES statements described above is that where, as often occurred, a police officer being precognosed by the defence simply recited the HOLMES statements attributed to him, the defence might have been led to believe that a witness could speak to something which in reality he could not. Although if this did occur it is clearly not satisfactory, the Commission has not come across any specific examples where such a difficulty arose. In relation to the recovery of debris, it is clear that the defence teams were well aware of the potential difficulties in establishing the chain of evidence of many of the items, and indeed had access to the Crown precognitions on the subject. The matter is canvassed in detail by one of the co-accused's solicitors in a briefing paper entitled "Debris Analysis" dated 20 August 1999. While the paper details the various irregularities in the recording procedures, the view taken is that these were not sufficient to justify a challenge to the admissibility of the debris evidence. The paper notes also that in assessing the matter the trial court would require to consider not only the question of fairness to the accused, but also the public interest in excusing the irregularities in the particular circumstances of the case.

**6.15** It is also clear that a good deal of consideration was given by the defence to precisely which items were to be included in joint minute number 1. Among the materials provided to the Commission by McGrigors, the firm which acted on behalf of the co-accused at trial, there is a substantial document which assesses the merits of agreeing the provenance of numerous items of debris. It is clear that the relative importance of each item was taken into account in reaching a decision on whether or not to agree its provenance. For example, although the defence thought it unlikely that the Crown would have difficulty establishing the provenance of items such as AG/145 (fragments of Toshiba circuit board) and PI/995 (from which the fragment of MST-13 timer was allegedly recovered), a decision was taken not to agree this evidence, but to call upon the Crown to establish its provenance. Among other factors which were taken into account was whether, if a difficulty arose in relation to the evidential chain of one item, the provenance of other items sharing a common origin was likely to be proved.

**6.16** In the Commission's view the defence adopted a careful, reasoned and realistic approach to the agreement of evidence in joint minute number 1, which in no way can be said to have contributed to a potential miscarriage of justice in the applicant's case.

*Enquiries regarding the Forensic Explosives Laboratory ("FEL"), Fort Halstead*

(i) RARDE photography

**6.17** Various submissions to the Commission, most notably those relating to the fragments of grey Slalom shirt (chapter 7), refer to photographs which were taken of items of debris at RARDE and raise questions about these, such as when they might have been taken. The Commission considered it an important step in assessing the provenance of the items of debris to establish the process by which photographs were taken at RARDE and, in particular, what records were kept of this.

**6.18** DC Steven Haynes was interviewed by a member of the Commission's enquiry team on 18 April 2005, in advance of the Commission's visit to FEL (see appendix of Commission interviews). DC Haynes, of Kent Police, was the senior photographer at RARDE during the Lockerbie enquiry. DC Haynes explained that once photographs were developed by the photographic laboratory, the prints and negatives would be returned to the photographer, and a number would be written on the back of each print. This number would correspond to the number ascribed to the negative from which the print was produced. Details of this negative number, and of the date on which the print was returned from the photographic laboratory, would be recorded in a log book along with other details about the particular job. As the date listed in the log book indicated the date on which the print was returned from the developing laboratory, it would normally follow that the photograph was exposed on a date prior to this. DC Haynes explained that he would generally wait until he had taken enough shots to make the processing job worthwhile, so that it might be a number of days after taking a photograph that the prints would be received. The log book would then be completed with the date on which the prints were received. DC Haynes confirmed that the log book should have been retained at Fort Halstead.

**6.19** The Commission thereafter obtained from D&G one of the original copies of the RARDE report, appended to which were the volumes of photographs bearing negative numbers on the reverse, as DC Haynes had described. D&G also provided a list which cross-refers these photographs and the corresponding negative numbers (see appendix). During the visit to FEL on 2 and 3 June 2005, further original versions of the photographic albums appended to the RARDE report were obtained, which again had negative numbers written on the reverse of each of the prints. Members of the enquiry team also examined various photograph log books and took photocopies of relevant pages from these (see appendix). Of particular interest was a log book (marked with a “1”) containing photograph reference numbers with the prefix “FC” (which DC Haynes later explained meant “full colour”). The vast majority of the photographs contained in the appendices to the RARDE report have negative numbers written on the reverse bearing the prefix FC.

**6.20** After the visit to FEL, copies of pages from log book 1 were sent to DC Haynes who confirmed that they originated from the book to which he had referred at interview. He also confirmed that the majority of the entries in this log book were inserted by him. His supplementary statement to this effect is contained in the appendix of Commission interviews.

**6.21** During a subsequent visit to FEL in March 2006, members of the Commission’s enquiry team examined a number of the original negatives of photographs which were considered significant to the review, and were satisfied that the negatives corresponded to the photographs.

**6.22** The result of these enquiries was that the Commission had what it considered to be a reliable method of establishing the latest date on which photographs of recovered debris could have been taken at RARDE. As can be seen in chapters 7 to 11, this proved to be of great assistance in addressing many of the submissions made by MacKechnie and Associates.

(ii) Investigations regarding Dr Hayes' notes

**6.23** A recurring theme in the submissions regarding the items of debris concerns whether Dr Hayes' examination notes are contemporaneous. In the initial stages of the police enquiry Dr Hayes was the forensic scientist principally responsible for examining the debris recovered in and around Lockerbie. His notes often contained the first description of an item of debris, beyond the sparse details recorded on the police label or in the Dexstar log. In alleging that a number of crucial debris fragments had been "reverse engineered", the submissions expressly or impliedly allege that Dr Hayes' notes had been altered to cover this up. A number of the submissions point to specific passages in the notes which it is suggested might be additions or alterations made after the date recorded on the page.

**6.24** The Commission obtained Dr Hayes' original file of notes (CP 1497) from D&G and instructed a forensic document examiner, John McCrae, to examine it. Mr McCrae obtained ESDA (Electrostatic Detection Apparatus) tracings of the pages of interest, in order to examine the patterns of indented writing and to identify any anomalies which might indicate that passages had been added or altered after the note was originally written. He also used VSC (Video Spectral Comparator) techniques to identify differences in ink, which again would assist in identifying any entries that might have been added at a later date.

**6.25** Mr McCrae's findings in relation to particular passages from Dr Hayes' notes are described in the relevant chapters below. However, in general he found that certain passages relating to items referred to in the submissions had been added to or altered after the original note was written. Indeed, he considered such additions and alterations to be "habitual". A copy of his report is contained in the appendix.

**6.26** The Commission interviewed Dr Hayes about this and other matters on 8 March 2006 (see appendix of Commission interviews). Dr Hayes' memory of his involvement in the Lockerbie enquiry had faded significantly, and his account must be treated with some caution. Nevertheless he appeared to be a credible witness who seemed to be doing his best to recall events and to answer questions as fully as he could.

**6.27** In respect of his evidence at trial that his notes were “contemporaneous”, Dr Hayes explained that what he meant by this was that they were written while he had the item in question before him: he did not examine an item and then write up his notes of this later. He added, however, that, although his notes recorded a date on which he had examined items, it was possible that he had revisited items at a later date and made further notes. He acknowledged that in such circumstances the date at the top of the page would not necessarily reflect the date on which the entirety of the note had been completed.

**6.28** Dr Hayes’ explanation is consistent with some of Mr McCrae’s findings, and in the Commission’s view it is significant that this explanation was offered by him prior to his being informed that his notes had been the subject of forensic examination. However, his account at interview appears inconsistent with his position in cross examination at trial, namely that by “contemporaneous” he meant that the note was written on the date specified on the page, and while he was carrying out the examination of the item in question (16/2592). On the other hand, Dr Hayes subsequently accepted in evidence, under reference to page 19 of his notes, that he had added wording to his notes after the date recorded on the page, and he was cross examined in detail about this by counsel for the co-accused (16/2613 et seq).

**6.29** The Commission’s enquiries show that Dr Hayes’ notes cannot be regarded as containing a definitive record of the dates on which particular items of debris were examined. The implications of this are considered below in relation to particular items of debris.

## **Conclusion**

**6.30** In the absence of further material evidence, the Commission is not prepared to view the deficiencies of the evidence discussed in this chapter as suggesting the existence of a conspiracy on the part of the forensic and police authorities to tamper with or create evidence. In these circumstances the Commission does not consider that the deficiencies indicate that a miscarriage of justice may have occurred.

## CHAPTER 7

### THE SLALOM SHIRT

#### **Introduction**

**7.1** Various submissions were made to the Commission regarding the provenance of the fragments of clothing listed at section 5.1.3 of the RARDE report (CP 181), which were accepted by the trial court as having formed part of a grey “Slalom” brand shirt contained within the primary suitcase.

**7.2** In volume A reference is made to the finding and handling of one of these clothing fragments, PI/995. It was suggested that the date on which Dr Hayes examined PI/995 and extracted from it various items was not 12 May 1989 as indicated in his handwritten notes (CP 1497). This is said to be important given the trial court’s acceptance that one of those items, PT/35(b), a fragment of circuit board identified as having originated from an MST-13 timer, was found by Dr Hayes within PI/995 on this date. The timer fragment was crucial evidence which turned the focus of investigation away from Palestinian organisations and towards Libya. If it could be shown that the timer fragment had not been extracted at the time specified in Dr Hayes’ notes, but in fact had been discovered later, that would support the proposition in the application that evidence of the fragment had been fabricated with the intention of directing the investigation away from Palestinian organisations, with links to Syria and Iran, at a time when the co-operation of those countries was necessary for the Gulf War.

**7.3** It was also submitted in volume A that the anonymous witness “the Golfer” (see chapter 5) had information regarding a change which was made to the police label attached to PI/995.

**7.4** On 2 June 2004, MacKechnie and Associates lodged substantial further submissions regarding the fragments of grey Slalom shirt. An additional note on the subject was submitted by them on 2 February 2005. Copies of these submissions are contained in the appendix of submissions.

7.5 In order to address them effectively, the Commission has divided the submissions into three broad grounds, each of which is detailed and addressed below. In light of its conclusions on these three grounds, a fourth ground, which alleges irregularities in respect of the finding and handling of the three other fragments of the grey Slalom shirt (PK/1978, PK/1973 and PK/339), is addressed in the appendix rather than in the statement of reasons. Based on the results of its enquiries, the Commission has no reason to doubt the provenance of any of these items.

**Ground 1: photograph 116 of the RARDE report depicting PI/995 “before dissection”**

7.6 MacKechnie and Associates sought to question the contents of Dr Hayes’ notes which suggest that he extracted PT/35(b) from PI/995 on 12 May 1989. In support of this, reference is made in the submissions to the following passage of the RARDE report relating to PI/995:

*“This is a severely damaged fragment of grey cloth which is shown after its partial dissection in photograph 117, and at the bottom centre of photograph 116 (before dissection)”* (section 5.1.3, p 66).

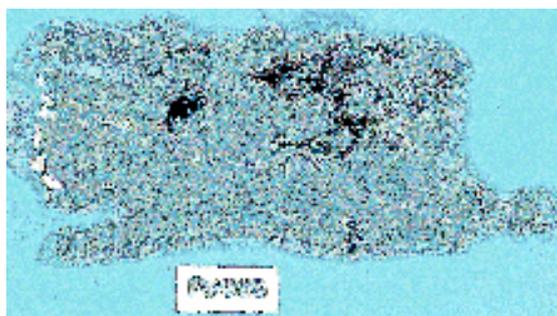
7.7 In evidence (16/2484), Dr Hayes confirmed that photograph 116 depicts PI/995 prior to dissection.

7.8 Central to the submissions is the allegation that photograph 116 cannot have been taken prior to 12 May 1989, the date on which PI/995 was purportedly dissected; and therefore that the date of dissection must have been later. In particular, the submissions suggest that, as at 12 May 1989, the three other fragments of grey Slalom shirt pictured in photograph 116 alongside PI/995 – PK/339, PK/1973 and PK/1978 – had not been identified and examined in detail at RARDE. Reference is made in the submissions to a number of sources said to confirm this. For example, Dr Hayes’ notes record that he examined PK/1973 and PK/339 on 22 May 1989 and PK/1978 on 10 October 1989 (CP1497; pp 75, 76 and 112). In addition, police statements, reports and a memo by Dr Hayes, all dated August 1989, refer to PK/339, PK/1973 and

PI/995 having been identified as of common origin, but do not mention PK/1978. It is submitted that, because PK/1978 had not been associated with the other three fragments by August 1989, the four fragments could not have been photographed collectively by 12 May 1989.

**7.9** As explained below, the Commission accepts the submission that photograph 116 could not have been taken on or before 12 May 1989. Therefore, it is not necessary to address in detail all the evidence referred to in the submissions which seeks to prove that point.

**7.10** During a meeting with MacKechnie and Associates on 29 July 2004, it was suggested by members of the enquiry team that the passage in the RARDE report quoted above might simply contain an error, and that in fact photograph 116 might not depict PI/995 prior to dissection. In response to this, it was submitted that the appearance of PI/995 in photograph 116 was noticeably different to its appearance in photograph 117 of the RARDE report, the latter supposedly depicting the fragment post-dissection. It was argued that these differences in appearance were attributable to the process of dissection and that, therefore, photograph 116 must depict the fragment pre-dissection. Reference was also made to a third photograph of PI/995, contained in Crown production number 435 (a booklet of photographs purportedly compiled in August 1989 for police officers to take to Malta). It was suggested that the photograph in production number 435 also showed PI/995 in a pre-dissected state, and that it appeared to be an image of PI/995 in the same condition as, but showing the reverse side of, the fragment as it appeared in photograph 116 of the RARDE report. Close-ups of PI/995 in the three photographs are recreated below (from images stored on the flip drive):



Close up from photograph 116



Close up from production 435



Close up from photograph 117

**7.11** The submissions concerning the appearance of PI/995 in the various photographs were repeated and expanded upon in the note submitted by MacKechnie and Associates on 2 February 2005. It was suggested that production number 435 might contain the same photographs as the booklet referred to by Allen Feraday in his handwritten notes (CP 1498, p 61) as PT/18. Specifically, Mr Feraday referred in his notes to various negative numbers relating to the photographs in PT/18.

### **Consideration of ground 1**

**7.12** If the submissions were to prove correct that photograph 116 depicted PI/995 prior to dissection, and that the photograph must have been taken long after 12 May 1989, that would indicate that the fragment of timer (PT/35(b)) could not have been extracted until a point later than that specified in Dr Hayes' notes. This might, in turn, lend support to the proposition that evidence of the timer fragment had been fabricated to implicate Libya.

### *Enquiries regarding photographic records*

**7.13** The enquiries undertaken by the Commission with the RARDE photographer, DC Haynes, and at the Forensic Explosives Laboratory ("FEL"), have been detailed in chapter 6. The result of these enquiries is that the Commission has established a means of identifying the likely point at which photographs of particular items were taken at RARDE.

*Photograph 116*

**7.14** On the reverse of the original print of photograph 116 obtained by the Commission, DC Haynes has noted its negative number as “FC4374”. The entries in photograph log book number 1 which correspond to this number (see appendix to chapter 6) are as follows:

<b>Date</b>	<b>Neg No</b>	<b>Subject</b>	<b>Originator</b>	<b>Remarks</b>
6-4-90	FC4373 to 86	PP8932 Lockerbie Clothing	A Feraday	Restricted

**7.15** This indicates that photograph 116 was taken at the instruction of Allen Feraday before or, at the very latest, on, 6 April 1990, along with other photographs in the sequence FC4373 to FC4386. Confirmation of this finding was obtained following enquiries at FEL in March 2006. Members of the Commission’s enquiry team gained access to the negative corresponding to photograph FC4374, as well as to those relating to various other photographs. These negatives were stored in sheaths, each of which was date-stamped and bore the reference numbers of the negatives contained inside. The negative for FC4374 was found to correspond in appearance to photograph 116, and the date stamp on the sheath in which it was contained was “6 April 1990”, consistent with the contents of the photographic log book.

**7.16** If photograph 116 was indeed taken some time in the days before 6 April 1990, rather than prior to 12 May 1989, this would be consistent with the dates on which other items depicted in photograph 116 were examined, including PK/1978 on 10 October 1989. It would also be consistent with the passage of Dr Hayes’ evidence (16/2609), in which he stated that composite photographs (ie photographs of more than one item of debris), and those relating to control samples, may have been taken at a time after the examination of each fragment was carried out. Photograph 116 is a composite photograph of the four fragments of grey Slalom shirt, and a number of the other photographs in the sequence FC4373 to FC4386 are of control samples.

**7.17** The movement records of the four fragments of grey Slalom shirt are also consistent with photograph 116 having been taken some time shortly before 6 April 1990. According to the police and RARDE records, while fragments PI/995, PK/339 and PK/1973 were all stored at RARDE from January or February 1989 until July 1991, PK/1978 left there on 9 March 1989 and was only returned on 25 September 1989. Thus, PK/1978 was not within RARDE's control on or around 12 May 1989 when, if the RARDE report and Dr Hayes' evidence were accurate, photograph 116 would require to have been taken. After being returned to RARDE on 25 September 1989, PK/1978 was released again on 5 January 1990, before returning to RARDE on 27 February 1990, where it remained until July 1991. It was therefore present at RARDE, along with the three other fragments, from 27 February 1990, which would be consistent with photograph 116 having been taken on or shortly before 6 April 1990. Copies of the relevant pages of the RARDE movement records obtained by the Commission from the FEL are included in the appendix. Also included are copies of the relevant pages from DP/29, which comprises informal records kept by the productions officer, DC Brian McManus.

*The other photographs of PI/995*

**7.18** The Commission has also established the likely point at which the other photographs of PI/995, referred to above, were taken.

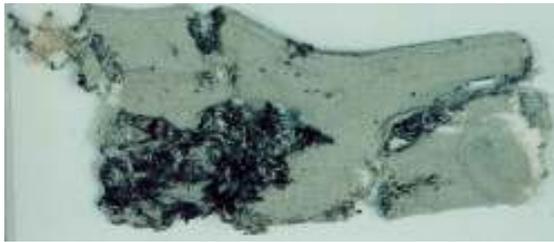
**7.19** With regard to the photograph contained in Crown production number 435 as this is a Polaroid there is no direct record of when it was taken, but the booklet of photographs designated PT/18 contains an identical image of PI/995, suggesting that it was taken at the same time as the Polaroid in production 435. Photograph log book number 1 indicates that the photographs in PT/18 were taken at Dr Hayes' instruction before, or at the very latest on, 23 August 1989. Such a date would be consistent with the police label attached to PT/18, which is dated 23 August 1989, as well as with the fact that Crown production number 435 is recorded as having been taken to Malta by police officers on 30 August 1989 (see DCI Bell's statement S2632C in the appendix to chapter 10; the police label on CP 435 is dated 28 August 1989).

**7.20** Similarly, by cross-referring the negative number on the original print of photograph 117 (FC3521) with the corresponding entry in photograph log book 1, it appears that the photograph was taken before, or at the very latest on, 22 May 1989, which again is reflected in the date stamped on the sheath containing the negative. Photograph 117 clearly depicts PI/995 following dissection, and if taken shortly before 22 May 1989, would be consistent with page 51 of Dr Hayes' examination notes, which indicates that his examination of PI/995 took place on 12 May 1989.

**7.21** If the records in photograph log book number 1 are accurate, then clearly the passage in the RARDE report quoted above, in which photograph 116 is said to depict PI/995 prior to dissection, is not. Similarly, if one accepts the contents of the log book one must reject the submission made on behalf of the applicant that the photograph of PI/995 in Crown production number 435 was taken prior to its dissection.

**7.22** However, as indicated, MacKechnie and Associates allege that PI/995 appears differently in photograph 116 (and in production number 435) than it does in photograph 117, and that this is because only the latter image shows the item after dissection. If that were to prove correct, the records in the photograph log book could not be regarded as accurate, and there would be considerable uncertainty concerning the provenance of PI/995. In particular, doubt would be cast upon 12 May 1989 as the date on which the item was examined and PT/35(b) extracted.

**7.23** It is apparent from the images of PI/995 above that the fragment appears somewhat differently in photograph 117 from how it appears in the other two photographs. The Commission has investigated whether these differences may have been caused by dissection of the fragment. During a visit to Dumfries Police Station on 17 March 2005, two members of the enquiry team examined PI/995 and were present when a scenes of crime officer photographed the fragment. Prints of these photographs were developed and handed to the members of the enquiry team the same day. Close-ups of three of the photographs are recreated below, and are compared with the images of PI/995 referred to above.



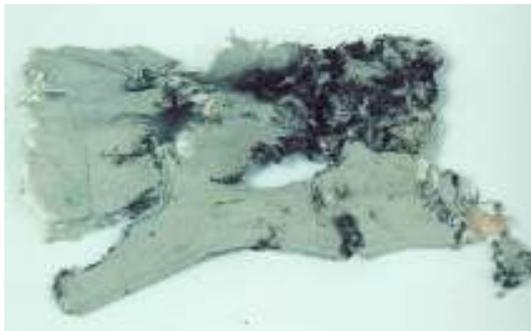
Photograph 1 taken at Dumfries 17/3/05



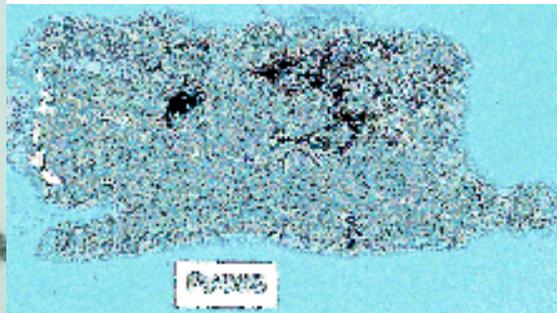
Close-up from photograph 117 of RARDE report

**7.24** As one would expect, PI/995, as depicted in photograph 1, is similar in appearance to the item pictured in photograph 117 (albeit the latter appears to have been taken at a shallower angle and in different lighting conditions).

**7.25** After photograph 1 was taken, one of the enquiry team in attendance at Dumfries examined the fragment and found that it was folded along a crease. The fragment was thereafter unfolded and further photographs taken.

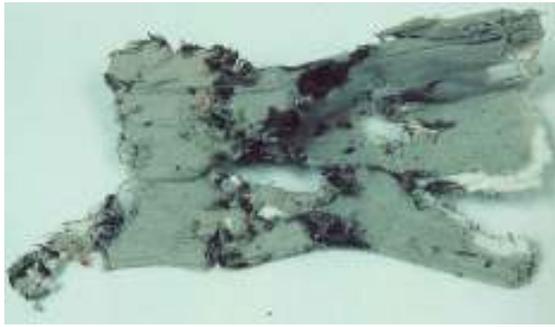


Photograph 2 taken at Dumfries 17/3/05

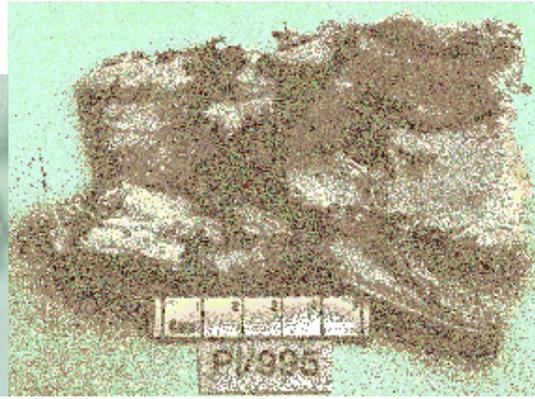


Close up from photograph 116 of RARDE report

**7.26** Photograph 2 depicts the fragment unfolded. In the Commission's view, its appearance corresponds closely with the fragment as depicted in photograph 116 which, according to the RARDE report, shows PI/995 prior to dissection.



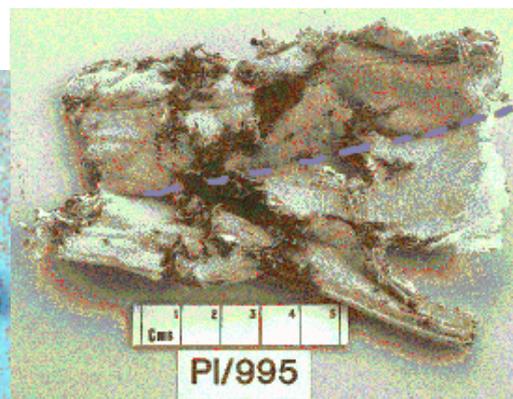
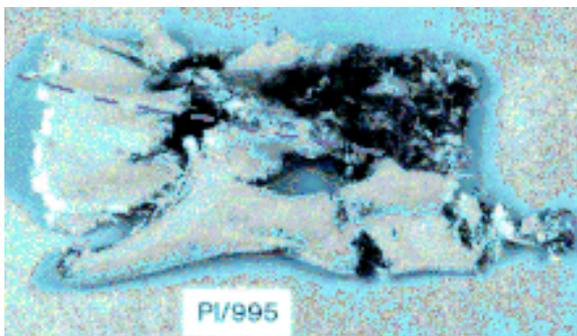
Photograph 3 taken at Dumfries 17/3/05



Close up from Crown production 435

**7.27** Photograph 3 shows the reverse side of the unfolded fragment. In the Commission's view, its appearance corresponds closely with the fragment as depicted in the Crown production number 435, which MacKechnie and Associates submit was also taken prior to its dissection.

**7.28** Based on these photographs, the Commission sees no basis for the submission that the dissection of PI/995 has altered its shape and size. In the Commission's view, any difference in appearance can be explained, quite simply, by the fact that in photograph 117 the fragment is pictured folded along a crease, whereas photograph 116 and production number 435 show the fragment in an unfolded state. The crease is clearly visible in the latter two photographs, and is marked by the broken line:



Close-ups from photograph 116 (left) and production 435 (right) with broken line showing crease.

### *Interviews of forensic scientists*

**7.29** Allen Feraday and Dr Thomas Hayes were interviewed by members of the Commission's enquiry team on 7 and 8 March 2006, respectively (see appendix of Commission interviews). Both witnesses accepted that, based on the records in the photograph log book and those indicating that PK/1978 was not at RARDE in May 1989, the passage in the RARDE report in which photograph 116 is said to depict PI/995 prior to dissection was an error. Mr Feraday accepted that the differences in appearance of the fragment between photographs 116 and 117 might be attributed to it having been folded when the latter photograph was taken. Dr Hayes, on the other hand, expressed some surprise at this, as he would normally have expected efforts to be made to show the full extent of the fragment. He suggested, however, that greater importance was attached to photographing the various items that had been extracted from PI/995 than to PI/995 itself.

### *Conclusions on ground 1*

**7.30** In summary, the Commission has concluded that: photographs 116 and 117, the photograph of PI/995 in production number 435, and the photograph of PI/995 in booklet PT/18, all depict the item after dissection; that the reference in the RARDE report in which photograph 116 is said to depict PI/995 prior to its dissection is simply an error; and that the apparent differences in PI/995's appearance between photographs is attributable to the fact that it was folded at the time of its depiction in photograph 117, but unfolded when the other photographs were taken.

**7.31** In light of these enquiries, the Commission does not believe that the submissions concerning the photographs of PI/995 cast doubt on the evidence that this item was dissected on 12 May 1989, as recorded in Dr Hayes' notes.

### **Ground 2: the size of shirt from which the fragments originated**

**7.32** The second broad submission made by MacKechnie and Associates relates to the size of the garment from which the four fragments of grey Slalom shirt, PI/995, PK/339, PK/1973 and PK/1978, originated.

**7.33** According to the submissions, the trial court accepted that the four fragments originated from the size 42 grey Slalom shirt which the witness Anthony Gauci testified he had sold to a Libyan on an occasion in 1988. The submissions state that the trial court was not entitled to make this evidential link. In evidence (16/2480), Dr Hayes (quoting the RARDE report) stated that the grey fragments came from a smaller size of shirt than a size 42 control sample grey Slalom shirt (given police reference DC/398). Accordingly, on the evidence, the shirt in the primary suitcase must have been of a smaller size than the one which Mr Gauci said he had sold on the occasion in question.

**7.34** The submissions go on to suggest that the fragments might not have originated from a grey Slalom shirt at all. Reference is made to the “difficulties” encountered by the police in establishing a link between PK/1978 and the shirts sold by Mr Gauci and, in particular, to police statements obtained from two Maltese clothing manufacturers, Tonio Caruana and Godwin Navarro, in January 1990. Both these witnesses are recorded in their statements as being of the opinion that PK/1978, which includes part of a pocket and part of a buttonhole seam, or placket, came from a child’s size of shirt. The submissions also refer to the police statement of Joe Calleja, a salesman for Alf Mizzi and Sons (the owners of the Slalom brand), dated 22 January 1990, in which he states that plain Slalom shirts such as the grey one supposedly sold by Mr Gauci were made only in adult sizes. It is suggested in the submissions that if this evidence had been available at trial, the court would have been precluded from drawing a link between the grey shirt fragments and the shirt Mr Gauci said he had sold.

**7.35** According to the submissions, the witnesses Caruana, Navarro and Calleja were all precognosed by MacKechnie and Associates in April 2004 and maintained the views they had expressed in their police statements. Another individual, John Sultana, was also precognosed at that time. He too had given a police statement in January 1990, when he was a sales manager for Johnsons Clothing, the company which manufactured the Slalom shirts on behalf of Alf Mizzi and Sons. In the statement Mr Sultana explained that he could not tell from PK/1978 what size of shirt it had come from because the distance between the pocket and the placket varied from

shirt to shirt. According to the submissions, however, when precognosed in 2004 Mr Sultana disputed the terms of his police statement and claimed that he had in fact informed the police of his opinion that PK/1978 had originated from a child's size shirt. When shown a photograph of the fragment in 2004, he maintained this view.

**7.36** Furthermore, according to Mr Calleja's police statement, the stitching in which the Slalom name appears on the label should, for grey shirts, be blue in colour, whereas the colour of the stitching on the label attached to PK/1978 is in fact brown. MacKechnie and Associates found on Mr Calleja's account and the apparent irregularities in the size of PK/1978 to suggest that the Slalom label which adheres to PK/1978 might have been attached during the police investigation in order to fabricate a link between that fragment and the clothing sold by Mr Gauci.

**7.37** The statements and precognitions of the witnesses referred to above are contained in the appendix. A number of other issues are raised by MacKechnie and Associates under this head, but given the conclusions reached below, the Commission does not consider it necessary to detail them here.

## **Consideration of ground 2**

### *The evidential link between Mr Gauci's evidence and that of Dr Hayes*

**7.38** At paragraph 10(3) of its judgment the trial court recounts the evidence that four charred fragments of grey cloth were found to have come from the primary suitcase and that in terms of colour, weave and texture these were consistent with having originated from a grey Slalom brand shirt. No mention is made in that paragraph about the size of the shirt, although at paragraph 12 the court narrates Mr Gauci's evidence that he sold to the man, among other things, two Slalom shirts, collar size 16½ (which equates to size 42). The court also states at paragraph 12 that it is "satisfied... that [Mr Gauci's] recollection of these items is accurate", and concludes that it is "entirely satisfied that the items of clothing in the primary suitcase were those described by Mr Gauci as having been purchased in Mary's House". Accordingly, the court appears to have concluded that fragments PI/995, PK/1978, PK/1973 and PK/339 originated from a size 42 shirt.

**7.39** Given Dr Hayes' evidence that the fragments originated from a shirt smaller than size 42, the trial court appears to have had no foundation for this conclusion. In the Commission's view, however, this apparent error is of little materiality. Even in its absence, the fact remains that Mr Gauci claims to have sold to the purchaser a Slalom brand shirt of a type recovered from the crash site, and linked to the primary suitcase. In reaching the conclusion that these items were one and the same, the trial court would have been entitled to place more weight on these factors, than on the apparent discrepancy in the precise size of the item, particularly when one considers the similarities between the other items Mr Gauci claims to have sold and those linked to the primary suitcase.

**7.40** It is worth noting that although Mr Gauci recalled in evidence selling a pair of size 36 Yorkie trousers (31/4732 et seq) and also (at first at least) a babygro of size 2 years (31/4744), the fragments linked to the primary suitcase indicated that the Yorkie trousers (PT/28) were in fact size 34 and the babygro (PK/669) size 12-18 months. These discrepancies were made apparent during Mr Gauci's evidence, but they did not lead the trial court to reject the link between the two sets of items. In the Commission's view, the court's approach to this issue was rational and logical, and would have been no different regarding the grey Slalom shirt had the discrepancy regarding the size of shirt been appreciated.

*Enquiries regarding the size of shirt from which PK/1978 originated*

**7.41** Joseph Calleja's assertion in his police statement (S5220) that the grey Slalom shirts were made only in adult sizes is borne out by John Sultana's police statement (S5166) and by Crown production number 510, which contains papers relating to the order for shirts made by Alf Mizzi and Sons to Johnsons Clothing. Production number 510 indicates that the grey flannel shirts were to be made in adult sizes 37, 38, 39, 41, 42, 43 and 44. If it is correct that PK/1978 came from a child's size shirt, as the submissions suggest, this might cast doubt either about the provenance of PK/1978, or upon the records which suggest that grey Slalom shirts were made only in adult sizes.

**7.42** The Commission notes firstly that there is evidence beyond that contained in the RARDE report to support the conclusion that the fragments of grey material originated from a Slalom shirt. Firstly, Alexander Bugeja, former assistant general manager at Johnsons Clothing, confirmed in evidence (14/2169-2170) that PK/1978 originated from one of the Slalom shirts his company manufactured. Secondly, prior to trial the defence commissioned a forensic report from Dr Ann Priston of the Forensic Science Service who, following a microscopic comparison of the constituent fibres, concluded that PI/995 was consistent with having originated from the collar of a shirt like DC/398. A copy of her report is contained in the appendix. Neither of these sources was mentioned in the submissions to the Commission. Nevertheless, given the seriousness of the allegation made in the submissions, the Commission considered it important to make further enquiries, in order to remove any possible doubt.

**7.43** In his police statement (S5149), Mr Caruana is recorded as having given the following reasons for his opinion that PK/1978 came from a child's size shirt: the narrowness of the placket; the size of the button holes; the size of the pocket; and the distance between the placket and the pocket. Likewise, Mr Navarro in his police statement (S5150) referred to the narrowness of the placket and to the size of the pocket as factors which indicated that the shirt was made to fit a boy.

**7.44** Another Maltese individual interviewed by the police in January 1990, but not referred to in the submissions, was a tailor, Saviour Abela (S5163), who sold men's clothing including Slalom shirts. According to his statement, Mr Abela provided two sample Slalom shirts to the police. The first was a grey Slalom shirt, size 41 (given police reference DC/399), which he indicated had a 16 inch collar; the second was a beige Slalom shirt, size 37 (given police reference DC/403), which had a 14½ inch collar. After comparing PK/1978 to the control sample shirts, Mr Abela concluded that PK/1978 appeared to come from a shirt smaller than the size 41 grey shirt. However, he found that the dimensions of PK/1978 were the same as the size 37 beige shirt, which made him conclude that PK/1978 came from a similar size of shirt. As indicated, the documentation from Johnsons Clothing (CP 510) records that the smallest size of grey Slalom shirt was size 37. Mr Abela's opinion, as recorded in

his statement, was that a shirt with a 14½ inch collar (ie size 37) would be for a small man of normal build, or a boy with a similar build to a small man.

**7.45** The witnesses Caruana and Navarro were interviewed by members of the enquiry team (see appendix of Commission interviews). According to the Maltese authorities, the other witnesses referred to in the submissions (Mr Sultana and Mr Calleja) either could not be traced or were unwilling to cooperate. Given the outcome of its enquiries in this area, the Commission did not consider it necessary to pursue those witnesses further.

**7.46** At interview, both Mr Caruana and Mr Navarro were shown an image of PK/1978 on which had been noted the various dimensions of the fragment itself, the pocket, the placket, the button holes and the distance between the placket and pocket, all as described in the RARDE report and Dr Hayes' notes. Neither witness had a good recollection of the events surrounding their respective police interviews in 1990, and neither recognised the image as being of the item the police had shown to them. More significantly, neither witness was as clear that the fragment had originated from a child's shirt as their police statements and precognitions appeared to convey. Indeed, Mr Caruana expressly stated that he thought the fragment originated from a small size of adult shirt. While in the precognition obtained from him in 2004, Mr Caruana is recorded as having believed that PK/1978 came from a 13½ or 14½ inch shirt, at interview with the Commission both witnesses accepted (consistent with Mr Abela) that shirts with a 14½ inch collar could be considered a large boy's or small adult's size.

**7.47** During a visit to Dumfries Police Station on 17 March 2005, members of the enquiry team examined PK/1978, PK/339 and DC/403 (the size 37, 14½ inch collar beige shirt obtained by the police from Mr Abela as a control sample) and took measurements of their various features. These measurements can only be regarded as approximate because of the creased and warped condition of the fragments. Nevertheless, they were compared with each other and, despite some discrepancies, the measurements were sufficiently similar to satisfy the Commission that the fragments PK/1978 and PK/339 could have originated from a shirt of a similar size to DC/403.

**7.48** In light of the foregoing enquiries, the Commission is satisfied that PK/1978 originally formed part of a shirt of size 37 or larger, which is consistent with it having come from a grey flannel Slalom brand shirt.

*The Slalom label*

**7.49** Allegations that the investigating authorities have tampered with fragments of the clothing feature commonly in the submissions made to the Commission by MacKechnie and Associates. It is alleged throughout the submissions that manufacturer's labels or marks may have been added to fragments in order to fabricate a link between the items deemed to have been within the primary suitcase and those sold by Mr Gauci. It is in this context that the allegation concerning the proper colour of the Slalom label is made.

**7.50** The RARDE report (section 5.1.3) and Dr Hayes' notes (CP 1497, p 155) both refer to the fact that the stitching of the word "Slalom" as it appears on the label attached to PK/1978 is brown in colour, whereas the same stitching on the label attached to the control sample grey shirt (DC/398) is blue. In his police statement, Mr Calleja explained that this may have occurred because the person who made the shirt was supplied with the wrong colour of label. A similar explanation was given by the former department manager of Alf Mizzi and Sons, Edward Gatt, who was interviewed by members of the Commission's enquiry team. According to Mr Gatt, as Slalom shirts were "down-market" he would not have been overly concerned about such production errors and would not have classed the shirt as a second on this basis.

**7.51** Moreover, during the visit to Dumfries Police Station on 17 March 2005, members of the enquiry team examined DC/399, the size 41 grey Slalom shirt obtained by the police from Saviour Abela in January 1990. On inspection of the label attached to the pocket of DC/399, it was noted that, as with PK/1978, the stitching forming the word "Slalom" is brown in colour, as opposed to blue.

**7.52** There are also numerous references to the Slalom label in records which pre-date the police enquiries in Malta in January 1990. For example, the Dexstar log (CP

114) contains a description of PK/1978, inserted on 1 February 1989, which specifically includes the word “Slalom”. Likewise, the police Request for Forensic Examination form (known as an “LPS form”) which accompanied PK/1978 to RARDE on 25 September 1989 (CP 288, LPS 417) makes reference to “Slalom”, and a detailed description and drawing of the Slalom label is contained in Dr Hayes’ examination note dated 10 October 1989 (CP 1497, p112). This timeline dispels any notion that the evidence linking the fragment of shirt to Malta was introduced retrospectively.

**7.53** In the Commission’s view the results of these enquiries serve to refute totally the allegation made by MacKechnie and Associates that the Slalom label was somehow fabricated in order to link PK/1978 to the items sold by Mr Gauci. Given this conclusion, the Commission does not consider it necessary to address the other matters raised by MacKechnie and Associates directed to casting doubt upon this item.

#### *Conclusions regarding ground 2*

**7.54** The Commission is satisfied that fragments PI/995, PK/339, PK/1973 and PK/1978 originated from a grey Slalom shirt and sees no basis whatsoever for the allegation that these were somehow interfered with by the investigating authorities. While the Commission believes that the trial court may have misdirected itself in concluding that the Slalom shirt was of the size spoken to by Mr Gauci in evidence, it does not consider this sufficiently material to have led to a possible miscarriage of justice in the applicant’s case.

#### **Ground 3: issues regarding the provenance of PI/995**

**7.55** Various submissions were made regarding the police and RARDE records relating to PI/995 and the other fragments of the grey Slalom shirt. One aspect of this, the suggestion that photograph 116 of the RARDE report could not have been taken on or prior to 12 May 1989, has been addressed above. However, the submissions also contain various allegations about the provenance of PI/995 and the other fragments.

7.56 The first submission on this issue concerns the police label attached to PI/995 and the evidence at trial that the description on this had been changed from "Cloth" to "Debris". The submissions recount the evidence of DC Gilchrist, the recorded finder of PI/995, who was cross examined on the matter and whose position altered as to whether he had made the change. Reference is made to the court's conclusion that DC Gilchrist's evidence was "at worst evasive and at best confusing". At section 14.3(2) of volume A, the trial court is criticised for accepting that there was no sinister inference to be drawn from the change to the label. It is highlighted that the only reason given by the trial court for accepting the evidence was the fact that the officer who corroborated the find, DC Thomas McColm, was not cross examined about the change of label. The doubts about this evidence, it is suggested, arise not only because the officers concerned could have tampered with the label, but because "others unknown" might have done so.

7.57 The submissions also refer to information provided by the Golfer that,

[REDACTED]

[REDACTED]

[REDACTED]

7.58 Reference is also made in the submissions to an examination of a photograph of the label by a handwriting expert, whose preliminary conclusions were that the change was made by DC Gilchrist. The submissions suggest that there are other irregularities in the label, specifically the signature of the officer who corroborated the find, DC McColm, which, it is alleged, overwrites another signature on the label (that of DS Robert Goulding) and therefore must have been added long after the item was supposedly found. According to the submissions, DC McColm was precognosed by MacKechnie and Associates following the appeal and confirmed that, after his involvement in the Lockerbie enquiry had ended, he was recalled to Dumfries to sign various police labels.

7.59 In addition, various submissions are made which seek to cast doubt on the Dexstar log entry for PI/995, and the RARDE records relating to this item. In particular, the submissions revisit another issue raised at trial, namely page 51 of Dr

Hayes' notes dated 12 May 1989, which records his examination of PI/995 and the extraction of PT/35(b). At trial Dr Hayes was cross examined about changes made to the numbering of the pages of his notes which, it was suggested, demonstrated that page 51 had been inserted at a later date. Reference is also made in the submissions to Dr Hayes' failure to follow his normal procedures in that he did not draw the fragment of circuit board, as well as to the fact that he had no real recollection of finding the item, independent of his notes. The court's handling of this evidence is criticised in that it allegedly failed to address the difficulties presented by the evidence of Dr Hayes' notes, and simply referred to matters such as the miniscule size of the timer fragment, a fact which, it is submitted, has no bearing on Dr Hayes' handling of the item. The submissions suggest that the provenance of PI/995 is far from proved, and that further investigation is required of the forensic notes, particularly given Dr Hayes' description of the changes to the page numbers as an "unfathomable mystery".

### **Consideration of ground 3**

*Police label attached to PI/995*

**7.60** The trial court's position regarding the label attached to PI/995 is narrated at paragraph 13 of its judgment:

*"We now turn to another crucial item that was found during the search of the debris. On 13 January 1989 DC Gilchrist and DC McColm were engaged together in line searches in an area near Newcastleton. A piece of charred material was found by them which was given the police number PI/995 and which subsequently became label 168. The original inscription on the label, which we are satisfied was written by DC Gilchrist, was "Cloth (charred)". The word 'cloth' has been overwritten by the word 'debris'. There was no satisfactory explanation as to why this was done, and DC Gilchrist's attempts to explain it were at worst evasive and at best confusing. We are, however, satisfied that this item was indeed found in the area described, and DC McColm who corroborated DC Gilchrist on the finding of the item was not cross-examined about the detail of the finding of this item."*

7.61 According to the submissions, the Golfer [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

7.62 For the reasons given in chapter 5, the Commission does not consider the Golfer to be a witness capable of being believed by a reasonable court and accordingly is not prepared to accept what he has to say. Nevertheless, given the significance of PI/995 to the case, the Commission carried out a number of enquiries concerning the police label.

7.63 In his Crown precognition (dated 22 April 1999, see appendix), DC Gilchrist is recorded as saying the following about PI/995:

*"I have signed the label and written on it that it relates to "debris (charred)" found at grid reference 502-858 on 13 January, 1989."*

*I have no specific recollection of this piece of debris. It does not look familiar to me after this period of time.*

*I am satisfied that this is a piece of debris that I was involved in finding. I would have no other reason to complete the production label bearing the reference PI995."*

7.64 The precognition also records that DC Gilchrist was shown a map which allowed him to confirm that the grid reference on the label related to a point south west of a forest near Newcastleton, an area DC Gilchrist could recall searching in January 1989. Nowhere in the precognition is there any reference to the change to the label. In the Commission's view if the issue had been raised with DC Gilchrist at all, one would have expected this to have been recorded in the precognition for the benefit of others, such as Crown counsel.

**7.65** DC Gilchrist's initial position in evidence was consistent with his Crown precognition, namely that all the entries on the PI/995 label were completed by him (5/809). It was only after the change to the description was put to him in cross examination that he began to question this. His final position in re-examination was that although the other entries on the label were inserted by him, he could not be certain that the description of the item was in his handwriting. He did not recall making the change, and was not convinced that the word "Charred" had been written by him (5/861).

**7.66** Given the importance of PI/995's provenance, the Commission instructed the forensic document and handwriting expert, John McCrae, to examine the label. For comparison purposes, he was provided with labels attached to other items which DC Gilchrist and DC McColm were recorded as finding.

**7.67** A copy of Mr McCrae's report, dated 15 December 2005, is contained in the appendix. Mr McCrae concluded that the entries on the PI/995 label as to the date, the description of the item, the grid reference and the signature of DC Gilchrist were all in the same ink and by the same author. In particular, he found that the words "Cloth" and "Debris" were written by one person, in the same ink and by the same pen. He also considered it probable that the words "Cloth" and "Charred" had been written at the same time, prior to the insertion of the word "Debris". Mr McCrae concluded that the author of the entries on the PI/995 label and the author of the entries on two comparison labels, PK/1973 and PI/990, are one and the same. In his opinion, the ink used to insert the entries and DC Gilchrist's signature on the PI/990 label was the same as that used to insert the entries and DC Gilchrist's signature on the PI/995 label.

**7.68** In both his Crown precognition and in evidence DC Gilchrist confirmed that he completed the entries on the labels for PI/990 and PK/1973. In evidence his final position was that the entries on the PI/995 label, other than the description, had been written by him. Mr McCrae's conclusion that the entries on the labels for PI/990, PI/995 and PK/1973 were written by the same author supports the conclusion that it was in fact DC Gilchrist who wrote the description on the PI/995 label, and that it was he who changed the word "Cloth" to "Debris". In the Commission's view, this

finding refutes any notion that the label might have been altered by “others unknown”, as suggested in the application.

**7.69** It is also important in considering whether the change to the label might support a sinister inference as to the provenance of PI/995, to consider when the change might have been made. The evidence of Sergeant Kenneth Findlay is of some assistance here. He worked in the property store at the Dexstar warehouse during the enquiry and confirmed in evidence that the description of PI/995 in the Dexstar log was written by him (9/1071). He also confirmed that the description of PI/995 in the Dexstar log is the same as that recorded on the PI/995 label: “Debris (Charred)”. There is no evidence that the entry in the Dexstar log originally read “Cloth”. It is apparent from Sergeant Findlay’s evidence that details inserted in the Dexstar log were taken from the police label attached to the item being logged. In the Commission’s view, these factors support the conclusion that the change to the PI/995 label was made before the entry was inserted in the Dexstar log. As the entry in the log is dated 17 January 1989, it can therefore be inferred that the change to the PI/995 label was made on or prior to that date.

**7.70** As indicated, Mr McCrae concluded that the same ink as was used to write the word “Debris” on the PI/995 label was used to write the original description, and that the same ink was also used to insert the entries in the PI/990 label. PI/990’s label records that it was found at the same grid reference as PI/995, an area which DC Gilchrist confirmed in evidence he had searched on one occasion. The inference to be drawn is that PI/990 was found on the same date as PI/995. In the Commission’s view, the facts that the labels for both items are written in the same ink, and that the change to PI/995’s label was also made in that ink, support the conclusion that the alteration to PI/995 was made around the time when the label was completed, rather than at some unknown later date.

**7.71** A separate allegation made about PI/995’s label relates to DC McColm’s signature which is alleged to have been written over the signature of DS Robert Goulding. According to the submissions, DS Goulding was the police liaison officer at RARDE, and therefore would only have signed the label once PI/995 had been

submitted there, which the records indicate was on 8 February 1989 (CP 288, LPS 305).

**7.72** Mr McCrae's report refutes this allegation. In his view, DC McColm's signature on the PI/995 label was written before that of DS Goulding. In addition, the signatures of DC McColm on PI/995 and PI/990 were in the same ink, despite superficially appearing different, which offers further support for the conclusion that DC McColm did not sign the PI/995 label at a later date.

**7.73** The process whereby officers obtained signatures on police labels, long after the items themselves were found, has been addressed in detail in chapter 6. As indicated, the majority of the labels signed during this exercise are recorded in DC Buwert's statements, and in various police messages. Several labels are listed as having been signed retrospectively by DC McColm, but PI/995 was not one of them. The only reference to PI/995 in DC Buwert's statements is in relation to DC Stuart Robertson, who is recorded as having signed its police label on 2 June 1992. DC Robertson's sole involvement with PI/995 was when he conveyed this and other items to RARDE along with DC McColm.

*The Dexstar log entry*

**7.74** Certain observations are made in the submissions about the Dexstar log entry for PI/995. It is pointed out that in evidence Sergeant Findlay claimed the entry in the log was made by him. However, reference is then made to PC David McCallum's Crown precognition (see appendix) in which he states that the entry for PI/995 bears to have been made by him, but is not in his handwriting; and to the label for PI/995 which contains PC McCallum's signature but not that of Sergeant Findlay. It is submitted that while the explanation for the discrepancy in the log is that another officer made the entry in PC McCallum's presence, this does little to establish a proper chain of evidence. In particular, it is unclear to whom DC Gilchrist handed PI/995 which, according to the submissions, lay "unaccounted for" between 13 and 17 January 1989.

**7.75** The fact that PI/995 was recorded as being found on 13 January 1989 but only logged at Dexstar on 17 January was addressed at paragraph 13 of the trial court's judgment:

*“As far as the late logging is concerned, at that period there was a vast amount of debris being recovered, and the log shows that many other items were only logged in some days after they had been picked up. Again therefore we see no sinister connotation in this.”*

**7.76** The fact that items might only be processed days after first arriving at Dexstar is spoken to by Sergeant Findlay in evidence (9/1073) and is referred to in the HOLMES statements of various police officers (eg DC Ian Howatson's statements S4463O and S, see appendix). In the absence of any evidence to infer interference or bad faith in the handling of PI/995 the Commission, like the trial court, is satisfied that no sinister connotation can be drawn from this delay.

**7.77** Although the entry in the Dexstar log for PI/995 is not in the handwriting of the officer recorded as having received that item, again this is not a situation unique to PI/995. In fact, of the seven items to which PC McCallum was referred in his Crown precognition as having been received by him, the entries in the log for four of them (PD/131, PI/1050, PI/1684 and PI/995) are not in his handwriting. A clear explanation for this is provided by PC McCallum in his Crown precognition. There he states that because officers would sometimes wear protective clothing when examining items they would be unable to complete the log entry, which would require to be inserted by another officer acting as a “scribe”. According to the Crown's summary and analysis document for this chapter of evidence, normally the scribe would fill out his own details on the Dexstar sheet, but one officer, Sergeant Findlay, departed from this approach by recording the details of the officer who actually examined the item. In evidence, Sergeant Findlay confirmed that sometimes one officer would insert the log entry while another officer picked up the item, and that it was not necessarily the writer's details which were recorded in the log as receiver (9/1090). In the Commission's view, this explains how the discrepancy arose in the log entry for PI/995 and other items.

**7.78** The submissions also refer to the record in the Dexstar log to the effect that PI/995 was taken to RARDE by an officer identified as “IH D/C”. It is pointed out that this is inconsistent with LPS form 305 in Crown production 288, which records that PI/995 was taken to RARDE by DC McColm.

**7.79** In fact, contrary to the submissions, it is apparent that the “Time/Date Out Purpose Officer” section in the log was not signed by the officer responsible for transporting the item to RARDE. Rather, it appears that this part of the log was completed by a productions store officer when the item was removed from its place in the store for transmission to RARDE. According to the HOLMES statements of DC McColm (S32DA), DC Stuart Robertson ((S2657AE), who accompanied DC McColm and the productions to RARDE on the occasion in question) and DC Brian McManus (S3070FE), it was DC McManus who passed PI/995 to DCs McColm and Robertson for transmission to RARDE. Copies of these statements are contained in the appendix.

**7.80** The entry in the log “IH D/C” refers not to DC McManus, but most likely to DC Ian Howatson who, in terms of his HOLMES statements and other Dexstar entries, carried out duties in the productions store. There is clearly nothing sinister in this slight discrepancy in the records, and in fact the situation is not unusual. A large number of productions (listed in LPS forms 291 to 306) were provided to DC McColm on 6 February 1989 for transmission to RARDE and many of these are recorded in the Dexstar logs as having been removed by “IH D/C” (in particular, those recovered from sector I). Other officers are also identified in the logs as having removed some of the items. In the Commission’s view, a perfectly reasonable explanation for this would be that the officers recorded in the logs as removing the items from the store were not responsible for handing the items directly to DC McColm for transmission to RARDE. Rather, it is likely that these officers removed the items and deposited them with DC McManus at the special interest section of the Dexstar warehouse, which was set aside for items identified as requiring forensic examination. Such an explanation is supported by the log entries for other items which were sent to RARDE: the “time/date out, purpose, officer” sections for items such as PI/917 and PI/952, for example, specifically state that these were sent “To SI Store for RARDE”. This suggests that when an item was identified as requiring

forensic examination, a productions officer would fill out his details in the Dexstar log and then pass the item to DC McManus. DC McManus would then complete the LPS form for submission of the item and have the form signed by the officer responsible for transporting the items to RARDE. In a Crown precognition (see appendix), DC McManus confirmed that he had sole responsibility for the “SI store” and confirmed that property of “special interest” was usually brought to him by officers conducting searches of the debris in the Dexstar warehouse. According to the precognition, much of DC McManus’ work in the early stages involved organising transportation of such items to RARDE.

**7.81** It should also be noted that, contrary to the suggestion in a number of the submissions to the Commission, there was no separate “special interest log”. It is apparent that, once items were submitted to the SI store, the only further records that were completed were the LPS forms and a separate consolidated list of movements kept by DC McManus (given police reference DP/29 and referred to above). The Commission has examined the entries in DP/29 relating to PI/995 and the various other fragments which are subject to submissions to the Commission, and is satisfied that they correspond with the other available records. Copies of the entries regarding the grey Slalom shirt fragments are included in the appendix.

**7.82** In light of the explanation above, and given the complete absence of any evidence of malfeasance on the part of the investigating authorities, the Commission does not consider the matters raised concerning the Dexstar log give rise to any concern about the provenance of PI/995.

*RARDE records and page 51 of Dr Hayes’ examination notes*

**7.83** LPS form 305 records PI/995 as having been uplifted from the productions store on 6 February 1989 and delivered to RARDE on 8 February 1989 by DC McColm. The next record of the item is in Dr Hayes’ examination notes (CP 1497) in which PI/995 is listed along with numerous other items as having been examined on 15/16 February 1989. Each item on this page of Dr Hayes’ notes is marked with an “R” (indicating its “possible significance”) or a “G” (indicating that that it was considered to be of “no significance”). It is clear from the movement records that

items considered to be of no significance were returned to the Dexstar store whereas items of possible significance were retained at RARDE. PI/995 is marked with an “R”. Chronologically, the next record of PI/995 in the productions is at page 51 of Dr Hayes’ examination notes, dated 12 May 1989, in which the examination of the item and extraction of various fragments are recorded.

**7.84** One of the points made in the submissions is that there is no record in the examination which took place on 15/16 February 1989 of the various fragments said subsequently to have been extracted from PI/995. Again, the Commission does not consider that any sinister inference can be drawn from this. It is apparent that on 15/16 February 1989 a sifting exercise of numerous items took place in order to identify those which appeared to warrant further examination. This is borne out both by Allen Feraday’s recollections when interviewed by members of the Commission’s enquiry team, and by William Williamson’s defence precognition (which reflects the terms of his HOLMES statement S872W, see appendix). Of the items listed in this section of Dr Hayes’ notes, it was not only PI/995 from which items of significance were subsequently extracted. For example, according to Dr Hayes’ notes (CP 1497, p53), PK/1455, which was examined on 15/16 February 1989 and marked “R”, was subsequently examined on 15 May 1989 when various fragments were recorded as having been removed from it.

**7.85** The submissions also revisit the matter explored at trial concerning the changes to the page numbering of Dr Hayes’ examination notes and, in particular, the submission that pages 52 to 56 were originally numbered 51 to 55. In cross examination of Dr Hayes, the suggestion was made that the original page 56 of his notes had been removed and pages 51 to 55 renumbered as 52 to 56 in order to create space for a new page 51 to be substituted. It was suggested that the entry on the original page 56 had then been inserted, out of sequence, at the bottom of page 49 (17/2582 et seq). Reference is made in the submissions to Dr Hayes’ response that the matter was an “unfathomable mystery”. In re-examination, however, Dr Hayes explained that he had numbered the pages at a later stage and had made an error by numbering two pages as page 51. He had realised his mistake after numbering a few more pages, and corrected it.

**7.86** The possibility that page 51 of the notes was inserted at some later stage was considered by the forensic document examiner instructed by the Commission, Mr McCrae. In particular, he obtained ESDA tracings of various pages of Dr Hayes' notes, including page 51 and those surrounding it, to detect indented writing. His report, dated 26 April 2005, is contained in the appendix to chapter 6.

**7.87** It is apparent from Mr McCrae's findings in relation to the pages surrounding page 51 that, in the main, the indentations taken from one page match the writing on the preceding page. Thus most detail from the writing on page 52 is visible in the ESDA trace of page 53; most detail from page 53 can be seen in the trace for page 54; most detail from page 54 is visible in the trace of page 55; most detail from page 55 is visible on the trace of page 56; most detail from page 56 can be seen in the trace of page 57; most detail from page 57 can be seen in the trace of page 58; and most detail from page 58 is visible in the trace of page 59. The inference to be drawn from these findings is that, for these pages, the entries have been made on the same pad of paper and have been completed in the sequence in which they appear in Dr Hayes' file.

**7.88** As regards the indentations recovered from page 51, Mr McCrae's finding was that much of the detail from page 50 was visible on the trace of page 51. The Commission considers this to be a strong indication that page 51 was not inserted into Dr Hayes' notes at a later date, but rather was completed in sequence after page 50 (pages 50 and 51 are both dated 12 May 1989). No indentations from the entries on page 50 were found in the trace of page 52 (which might have supported the contention made in cross examination that page 52 had originally been page 51, and had been renumbered as 52 to create space for a new page 51). There is also an absence of any indentations on page 52 that might correspond to the examination of another item from the Lockerbie enquiry (which might have supported the more straightforward contention that an original page 51 of the notes was removed to allow the present page 51 to be inserted).

**7.89** In the Commission's view, these findings greatly assist in rejecting any sinister inference sought to be drawn from the changes made to the page numbers of Dr Hayes' notes.

**7.90** Given the pattern of indentations on the other pages of the notes, one might have expected that the trace of page 52 would contain details from the entries on page 51. In fact it does not: the indentations recovered from page 52 appear to relate to a matter unconnected to the Lockerbie enquiry. Specifically, the trace of page 52 revealed what appeared to be a number, “PP 8922”, and part of a date, “17/ /89”. A trace of the words “...bag with ---label marked...” was also found.

**7.91** Mr Feraday confirmed at interview with members of the Commission’s enquiry team that numbers with the prefix “PP” were RARDE references relating to possible terrorist cases (the case reference for the Lockerbie enquiry was PP8932). It appears from the photograph log books that the case with reference PP8922 was dealt with by Dr Hayes in the period March to May 1989 (see appendix to chapter 6). In particular, there is a record in one of the log books of photographs for case PP8922, taken at Dr Hayes’ request, being returned from developing on 25 May 1989.

**7.92** A possible explanation for the indentations on page 52 is that, between finishing the examination recorded on page 51 on 12 May and commencing the examination on page 52 on 15 May 1989, Dr Hayes used the same pad of paper to record examinations he carried out relating to PP8922. This would not, however, be consistent with the contents of a memo recorded on the HOLMES system dated 5 April 1989 (D4008, see appendix) which indicates that as of that date Dr Hayes was to work exclusively on the Lockerbie enquiry.

**7.93** The above matters were explored with Dr Hayes at interview. While Dr Hayes’ memory of events from his time at RARDE was very limited, he maintained that there was nothing sinister in the changes to the page numbers, which he described as a “rotten coincidence”. Despite the terms of the memo of 5 April 1989, he accepted that he might have worked on the case numbered PP8922 between his examinations on 12 and 15 May 1989, although he was unable to offer any explanation regarding the partial date found in the trace of page 52 of his notes. In any event, the Commission does not consider the indentations found on page 52 relating to case PP8922 undermine its conclusion as to the validity of page 51 of Dr Hayes’ notes.

**7.94** Three further points in the submissions require to be addressed. Firstly, it is said that Dr Hayes did not follow his normal procedures in that he did not make a drawing in his notes of the fragment, PT/35(b). Secondly, it is highlighted that Dr Hayes had no memory, independent of his notes, of having extracted PT/35(b). Thirdly, the trial court's approach to the provenance of PI/995 is criticised and it is submitted that the "combination of oddities" called for greater scrutiny than was given.

**7.95** The first and second points were raised with Dr Hayes in cross examination (16/2596 and 2607). As regards the second point, Dr Hayes acknowledged that after the lapse of time he was heavily dependent on his notes and the photographs for virtually all his recollections, and not only the discovery of PT/35(b). In the Commission's view, one could hardly expect anything else in the circumstances. It is worth noting, however, that while Allen Feraday was not specifically asked in evidence about PT/35(b)'s discovery, he is recorded in a Crown precognition dated 30 March 2000 (see appendix) as specifically recalling the dissection of PI/995. Although Dr Hayes had carried out the examination, Mr Feraday recalled being invited in to see the pieces embedded in PI/995 before Dr Hayes removed them. In particular, he recalled the extraction of PT/2 (the fragments of Toshiba manual) and PT/35(b).

**7.96** As regards Dr Hayes' alleged failure to draw PT/35(b) in his examination note, this point loses any possible sinister connotation if one accepts (as the Commission does) that the photographic logs accurately record photograph 117 of the RARDE report as having been taken on or before 22 May 1989. The fragment of circuit board is clearly depicted in that photograph.

**7.97** Given its findings, the Commission sees no basis for the criticism levelled at the trial court's approach to the provenance of PI/995.

### *Conclusions regarding ground 3*

**7.98** In the Commission's view, based on the enquiries narrated above, there is nothing in the police label, the Dexstar log entries, the RARDE records or Dr Hayes' notes which leads it to doubt the provenance of PI/995.

### **Overall conclusions**

**7.99** It is clear that the police and RARDE records do not record perfectly every aspect of the handling of items of debris, including PI/995. In the Commission's view, given the scale of the investigation and the number of items involved, this is hardly surprising and does not, in itself, provide a basis for doubting the integrity of those involved in the original investigation. In particular, there is nothing in the submissions on this topic which leads the Commission to suspect that police officers, forensic scientists or anyone else were involved in somehow manipulating or fabricating evidence relating to the fragments of grey Slalom shirt. On the contrary, evidence such as the photographic log books has assisted in satisfying the Commission as to the provenance of these items. Accordingly the Commission does not believe that a miscarriage of justice may have occurred in this connection.