

**COMMISSION OF INQUIRY INTO STATE CAPTURE**  
**HELD AT**  
**CITY OF JOHANNESBURG OLD COUNCIL CHAMBER**  
**158 CIVIC BOULEVARD, BRAAMFONTEIN**

**23 NOVEMBER 2020**

**DAY 310**



**Gauteng Transcribers**  
Recording & Transcriptions

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**TRANSCRIBERS:**

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 23 NOVEMBER 2020**

**CHAIRPERSON:** I have an announcement to make in connection with the events of last Thursday, the 19<sup>th</sup> of November, 2020 in this Commission, before we start.

Last week was set aside for Mr Jacob Zuma to take the witness stand and face questions from the Commission's Legal Team on various matters that are being investigated by the Commission on which he has been implicated by a number of witnesses.

10 On or about the 22<sup>nd</sup> of October 2020 a summons that had been issued and signed by the Secretary of the Commission, as required by the Commissions Act of 1947 was served at Mr Zuma's residence at Nkandla compelling him to appear before the Commission on 15 to 20 November 2020, both dates inclusive, in order to give evidence and be questioned. The summons made it clear that the purpose of summoning Mr Zuma was for him to give evidence on various matters being investigated by the Commission and that he be questioned on those matters.

20 Mr Zuma appeared before the Commission on Monday 16 November 2020, when I heard argument on his application for my recusal. On Tuesday Mr Zuma, through his Counsel, requested me to grant him permission not to be at the Commission on Wednesday the 18<sup>th</sup> November 2020 as he wished to attend a family funeral. I granted

permission but required that he should be back at the hearing on Thursday the 19<sup>th</sup> of November 2020.

On Thursday morning Mr Zuma appeared before the Commission. I delivered my ruling on his application for my recusal and dismissed his application after concluding that it had no merit whatsoever. Counsel for Mr Zuma informed the Commission that they would be challenging the ruling on review and that a complaint would be lodged against me with the Judicial Service Commission.

10           At that stage Mr Zuma's counsel also informed the Commission that they, including Mr Zuma, were going to excuse themselves from the Commission. Mr Pretorius, the Head of the Commission's Legal Team, indicated that Mr Zuma was not entitled to excuse himself unilaterally, as the summons that had been issued and served on him was still valid and binding, and that he required my permission to leave.

I adjourned the proceedings for the tea break. During the adjournment Mr Zuma left the Commission and  
20           did not return after the adjournment. He did so without my permission.

The summons directing Mr Zuma to attend and remain in attendance was at the time of his departure from the Commission still valid and binding and had not been set aside.

Section 6[1] of the Commissions Act Number 8 of 1947, which deals with attendance of a witness who has been summoned is clear, it reads:

“Any person summoned to attend and give evidence before a Commission who without sufficient cause fails to attend at the time and place specified in the summons, or to remain in attendance until he is excused by the Chairman of the Commission from further attendance shall be guilty of an offence.”

10 I read this section again:

“Any person summoned to attend and give evidence before a Commission who without sufficient cause fails to attend at the time and place specified in the summons, or to remain in attendance until he is excused by the Chairman of the Commission from further attendance shall be guilty of an offence.”

The decision by Mr Zuma to leave the Commission without obtaining permission and in the face of a valid and binding summons is a serious matter. It impacts on the integrity of  
20 the Commission, the Rule of Law and public accountability, and in this regard it is important that we all remember that the matters which this Commission is investigating and on which it seeks to question Mr Zuma are matters that happened largely when Mr Zuma was President of the Republic and had an obligation to account for what was

happening during his presidency as the President of the Republic.

The Rule of Law and public accountability are values that are fundamental to our Constitutional Order, also our Constitution promises all of us that we are all equal before the law. This is a principle of our Constitution that is fundamental to a society that is built upon the Rule of Law and it is one that goes to the foundations of our Constitutional Order.

10           Mr Zuma could not, it would seem, have been under any confusion about the need to request my permission on Tuesday because on Tuesday through his Counsel he did request my permission in order not to be in attendance on Wednesday. On Thursday before he left the Head of the Commission's Legal Team had made it clear that as long as the summons stood it was binding and it was not up to him to excuse himself. Nevertheless Mr Zuma did excuse himself.

20           His conduct may send a message to all other witnesses, who might not be comfortable to come and answer questions in this Commission that it is the right thing to do for a witness who has been summoned to decide to excuse himself and that witnesses who have been summoned can come and go as they please before the Commission. If that were to happen this Commission

would not be able to operate. It is therefore quite important for the proper functioning of this Commission that Mr Zuma's conduct be dealt with in a manner in which our law provides it should be dealt with.

This Commission is very clear about what should happen arising out of the events of Thursday and it remains determined to carry out its functions in accordance with the law and the Constitution. Given the seriousness of Mr Zuma's conduct and the impact that his conduct may  
10 have on the work of the Commission and the need to ensure that we give effect to the Constitutional provisions that everyone is equal before the law I have decided to request the Secretary of the Commission to lay a criminal complaint with the South African Police against Mr Zuma, so that the police can investigate his conduct and in this regard the Secretary would make available to the Police all information relevant as well as make information available to the National Prosecuting Authority. Most of the evidence is available because the proceedings of this  
20 Commission were live on television and exactly what happened from the time I began to deliver my ruling up to the time I adjourned the proceedings would be available.

Apart from that the Commission is going to take certain steps:

1. I am going to determine other dates when Mr Zuma

must appear before this Commission.

2. The Secretary will issue a summons to be served on Mr Zuma to appear before this Commission during those dates.
3. That summons will be served on Mr Zuma.
4. The Secretary of the Commission will make an application to the Constitutional Court on an urgent basis for the Constitutional Court to issue an order that will compel Mr Zuma to appear before the Commission in accordance with the summons that will be issued, in other words to comply with the summons and when he attends the proceedings of the Commission in compliance with the summons not to leave the proceedings without my permission.”

10

The order that will also be sought will include an order compelling Mr Zuma to comply with directives that are issued in terms of Regulation 10[6] of the Regulations of this Commission, which were promulgated by Mr Zuma when he was still President, which require him to furnish certain affidavits to the Commission.

20

That is what is going to be done. This Commission is quite clear about the steps that will be taken and those steps will be taken as a matter of urgency.

That is the end of the announcement.

**ADV PRETORIUS SC:** Noted, thank you Chair.



**CHAIRPERSON:** Thank you Mr Pretorius.

**ADV PRETORIUS SC:** May I be excused Chair?

**CHAIRPERSON:** Thank you; you are excused. Good morning Mr Chaskalson, good morning everybody again.

**ADV CHASKALSON SC:** Good morning Chairperson.

**CHAIRPERSON:** Yes.

**ADV CHASKALSON SC:** Chairperson the evidence this week is evidence that the flow of funds stream of the commission has gathered and it is evidence that does not  
10 neatly fit into any of the other streams of the commission that tend to focus on a single organ of state or in the case of the BOSASA stream a single enterprise.

The flow of funds stream has been supporting the other streams in relation to money flow issues arising out of their investigations. It has also been focussing on broader investigations relating to money flows that appear to be linked to the proceeds of crime arising out of corrupt procurement processes.

Much of its work has already feature in evidence led  
20 by other streams in particular where witnesses have been questioned around prima facie corrupt money flows relating to procurements in most cases it is the flow of funds investigators who have done the digging that supports that questioning.

But the flow of funds stream has also been

conducting its own broader investigation that cuts across the investigations of other streams and that does not fit neatly into the discreet topics.

At a later stage the flow of funds stream will be presenting extensive evidence of domestic and international money laundering linked to the Gupta enterprise.

However this week's evidence will start with testimony that is wholly unrelated to the Gupta family. Our  
10 first witness will be Mr Stephen van Coller the CEO of EOH Holdings.

His statement appears at Volume 1 of the Flow of Funds Bundle and it is Annexure VV1 which runs with annexures from pages 3 to 68 of that volume.

I will give an outline of Mr van Coller's evidence and then also a road map of where we are going with the rest of week Chairperson and then come back to lead the evidence of Mr van Coller.

**CHAIRPERSON:** Yes.

20 **ADV CHASKALSON SC:** We have chosen to begin with the evidence of Mr van Coller because we wanted to make the point that corruption relating to state procurement processes requires two principle parties.

On the one hand there are the corrupt officers of an organ of state but on the other hand there are also corrupt

bidders or corrupt contractors who distort the procurement processes by paying bribes or kickbacks to the corrupt officers of the organs of state.

So if we are going to sort out the problem of corruption in South Africa we need to address the problem from two different perspectives.

Obviously there is a need for mechanisms and processes that will make it more difficult for corrupt state employees and officials to interfere with procurement  
10 processes.

But there is also a need for mechanisms and processes that will ensure that the private sector does not engage in corrupt practices that interfere with procurement from outside the state.

There tends to be a disproportionate focus on the first perspective and not enough of a focus on the second perspective. But the second perspective is very, very important but to state the obvious if no-one in the private sector was willing to pay bribes in respect of public  
20 procurement processes there would be no problem of corruption in respect of state contracts.

And if the private sector had more reflective mechanisms in place to prevent corruption in respect of their dealings on state contracts there would be much less scope for corruption to take place in respect of state

contracts.

And that is why we regarded the evidence of Mr van Coller as so important. As we will hear when he testified Mr van Coller is an executive who was brought in as CEO from – of EOH from outside the company in September 2018.

Soon after he joined EOH he became aware of the fact that the company for which he was now responsible had been engaging in questionable practices in the past.  
10 So he did what far too few South African CEO's have done. He proactively investigated what his company had been doing and when he found prima facie evidence of corrupt practices he not only took steps to remove the responsible individuals from EOH but he also took steps to correct the harm that they may have caused.

So he proactively engaged the SAPS; the Directorate of Priority Crime Investigations and the Special Investigation Unit to report what his investigations had identified about his own company.

20 And where these investigations showed that improper conduct within EOH had caused organs of state to pay EOH amounts to which it was not entitled through the SIU he initiated processes to identify the amounts that EOH should repay the state.

And he also put in place a series of mechanisms in

an attempt to prevent in the future the problems of the past taking place again.

Mr van Coller's evidence today will provide an overview of what he found at EOH and what he has done to put that right. It provides a useful starting point for a discussion that we hope to take further in the commission relating to the responsibilities of the private sector in South Africa in remedying our corrupt past and in trying to prevent a corrupt future.

10 I want to emphasise Chairperson that Mr van Coller will not discuss the details of individual cases of tenders involving improper conduct within EOH. Those details will be addressed in the evidence of Mr Stephen Powell at least some of those details will be addressed in the evidence of Mr Stephen Powell who will be testifying on Wednesday.

Mr Powell is the head of ENS Forensics and ENS Forensics were engaged by Mr van Coller to conduct EOH's investigation into its own past.

20 Mr Powell's statement is Annexure VV2 together with the reports and annexures that it refers to his statement runs from Volume 1 page 70 to Volume 2 page 387.

Mr Powell will be testifying on four EOH contracts with organs of state and presenting the findings of his

investigations thus far into those contracts. Two of the contracts involve the City of Johannesburg; one involves the NPA and one involves the South African Police Service.

Before we got to Mr Powell on Wednesday we were due to hear the evidence of the Executive Mayor of Johannesburg Mr Geoff Makhubo. But in view of the fact that Mr Makhubo's evidence will respond to Mr Powell's evidence with your consent we have agreed with Mr Makhubo's legal representatives that he will now be  
10 testifying on Friday after Mr Powell's evidence.

To give you a guide to where Mr Makhubo's evidence is to be found his witness statements and the documents to which he will be referred in evidence are Annexure VV3. They commence at FOF Volume 2 page 389 and they run to the end of Volume 3.

Mr Makhubo's legal representatives are endeavouring to submit a – or to put together a supplementary affidavit for him before Friday and if that comes it will be added to the bundle.

20 Mr Makhubo was the Treasurer General of the ANC greater Johannesburg region from 2008 to 2018. He is going to be testifying about donations to the ANC made by EOH and by other companies including Regiments Capital.

He was also MMC for Finance when the City of Johannesburg concluded two IT contracts with EOH that Mr

Powell addresses and he will be testifying about his role in relation to those contracts.

The last topic that will be traversed in the evidence of Mr Makhubo is his relationship with Regiments Capital which is the 100% owner of Regiment Fund Managers a company which one contracts managed the sinking fund of City of Johannesburg.

On Thursday we will be hearing the evidence Mr Phetolo Ramosebudi. His witness statement and  
10 documents to which he will be referred in evidence are Annexure VV4 and they comprise the whole of Volume 4.

Mr Ramosebudi has been the Treasurer to ACSA, SAA and Transnet and he will be testifying about his relationship with Regiments Capital and various transactions concluded by Regiments Capital on behalf of ACSA, SAA and Transnet while he was Treasurer of those organs of state.

Now with that outline of where we are going to go this week I would like to call Mr van Coller to testify as our  
20 first witness this week?

**MR VAN COLLER:** Thank you Mr Chaskalson. Please administer the oath or affirmation.

**REGISTRAR:** Please state your full names for the record.

**MR VAN COLLER:** My name is Stephen John van Coller.

**REGISTRAR:** Do you have objections to taking the

prescribed oath?

**MR VAN COLLER:** No I do not.

**REGISTRAR:** Do you consider the oath to be binding on your conscience?

**MR VAN COLLER:** Yes I do.

**REGISTRAR:** Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, so help me God.

10 **MR VAN COLLER:** So help me God.

**REGISTRAR:** Thank you.

**CHAIRPERSON:** Thank you; you may be seated Mr van Coller. Mr Chaskalson you confirm that the bundle that we will be using for the duration of Mr van Coller's evidence will be Flow of Funds Bundle 1?

**ADV CHASKALSON SC:** That is correct Chair.

**CHAIRPERSON:** Is that right?

**ADV CHASKALSON SC:** And where I have referred to volumes in that opening address it is bundles.

20 **CHAIRPERSON:** Yes. Yes. Yes. Ja okay.

**ADV CHASKALSON SC:** Mr van Coller I will need to ask you to confirm the correctness of the contents of your statement in Bundle 1 but before I do so can I take you to one correction which needs to be made at paragraph 43.7 on page 10?



**CHAIRPERSON:** And just to confirm the page numbers that we will be using are the black numbers on the left hand corner of each page.

**ADV CHASKALSON SC:** So at – at page 10 if I have the ...

**CHAIRPERSON:** The black 10 Mr...

**ADV CHASKALSON SC:** Black 10 that is correct.

**CHAIRPERSON:** You confirm the black 10?

**ADV CHASKALSON SC:** Black 10.

10 **CHAIRPERSON:** Okay. Ja.

**ADV CHASKALSON SC:** So at the – at the – towards the end of the page paragraph 43.7 there is a paragraph at the end of which is the link address to a mobile whistle blowing application that EOH has developed. I understand that since you furnished your statement the relevant web address has changed and is now to be found at <https://www.eoh.co.za/exposeit/>.

**MR VAN COLLER:** That is correct.

20 **ADV CHASKALSON SC:** Subject to that change can I ask you confirm the contents – that the contents of your statement are correct?

**MR VAN COLLER:** Confirmed.

**CHAIRPERSON:** And of course the signature at the bottom of page 12 is your signature; is that right?

**MR VAN COLLER:** That is correct.

**CHAIRPERSON:** And your affidavit – your statement is actually an affidavit you took it before a Commissioner of Oaths?

**MR VAN COLLER:** That is correct.

**ADV CHASKALSON SC:** Mr van Coller at the start of your affidavit you identify yourself. Can I ask you just briefly to take us through paragraphs 1 to 4 where you describe who you are?

**CHAIRPERSON:** Before we do that Mr Chaskalson would  
10 you like me to admit his affidavit as an exhibit or not yet?

**ADV CHASKALSON SC:** I would – sorry Chair yes. Can we make it Exhibit VV1?

**CHAIRPERSON:** Mr Stephen van Coller's affidavit starting at page 3 is admitted as Exhibit BB1.

**ADV CHASKALSON SC:** Chair I have just been informed that it needs to be VV1.1.

**CHAIRPERSON:** Oh okay. It will be admitted as Exhibit BB1.1. Okay thank you.

**ADV CHASKALSON SC:** Thank you Mr van Coller. Could  
20 you then tell the commission who you are and how you came to be who you are?

**MR VAN COLLER:** So – thank you. Currently I am the Group CEO at EOH. Prior to that I was on the Group Executive at MTN for two years as the Digital and Data and Corporate Development Officer. Prior to that I spent ten

years at Barclays Africa or now ABSA Africa. For the last seven of that I was the Chief Executive Officer of the Corporate Investment Bank.

We had businesses across obviously South Africa but – twelve African countries. Prior to that I spent ten years at Deutsche Bank in South Africa. At the end of it being a Managing Director and on the Executive Committee and prior to that I did my articles – my accounting articles at Ernst and Young.

10 Show my age I started with Arthur Young and they joined with Ernst when they need to become Ernst and Young. At the time I had a B.Com Honours from Stellenbosch. I have a higher diploma in Accounting from the University of Natal. A registered Chartered Accountant in South Africa.

**ADV CHASKALSON SC:** Thank you Mr van Coller. I am going to come back to your banking experience at the end of your evidence because I am going to ask you to comment on lessons that you may have learnt from your  
20 experience at EOH which may have implications for the banking sector. But for now I want to take you to paragraph 8 of your statement where you explain the context in which EOH has been engaging with the Zondo Commission. Would you tell the Chairperson about that context?

**MR VAN COLLER:** Yes when this happened in February we obviously it was huge for the company not so much in monetary directly because the markers of contracts that we will talk about were not big in our lives but obviously having your partnership withdrawn for no reason or for convenience was a big black cross across our name.

So the board got together and we decided that the best course of action if we were not going to blacklist was to get an independent firm with credibility to run the  
10 process. It would allow me and the management to build the company and it would keep the investigation independent.

Clearly I was part of the sub-committee that regular feedback but we basically gave ENS the forensic team under Advocate Powell unfettered access to our books and records and they then conducted their investigation. And the idea was that we could cooperate freely with any regulatory bodies that were doing investigations; wanted to investigate and we could also make sure that we met our  
20 legal and regulatory obligations and with the segregation of duties it would be clearly factual and no emotion attached to it and this is why once again we thought it would be a good idea to split the evidence here so that Stephen Powell – Advocate Stephen Powell who does not work for EOH's gotten – he can be purely factual.

**ADV CHASKALSON SC:** Mr van Coller you – maybe you have gone ahead of where I was intending to take you because I am not sure the Chairperson is aware of Microsoft and that background. Maybe if I can ask you to explain to the Chairperson when you joined EOH and how first and then we will...

**MR VAN COLLER:** Sure. So I was approached by the founder who was the CEO at the time in early 2017. He was – they were busy concluding quite a huge loan from  
10 the South African banking sector – about R3.2 billion and it was what we call a leverage loan in that it was quite a lot for such a company and he had realised that he needed some professional management; someone with banking experience to come and reorganise the company into something that would be able to repay this loan.

He was also worried that he had accumulated a whole lot of businesses 272 in total and they never really been consolidated into a single business. So there was lots of issues. It was very complex and looking back I can  
20 see that they were struggling to manage the complexity of it.

At that time he wanted me to become – to come and be the Chief Operating Officer. Some advice I had been given that if you are going to go and change a company someone has built up the best thing is that they do not

hang around otherwise they obviously do not want you to change what they have built. We could not agree terms at that time and so our – I went onto – you know back to MTN. He then appointed Zunaid Mayet who had been there for I think over ten years and had come from Siemens but he was running one of the divisions and he made him the Group Chief Executive Officer.

In around June of 2018 the founder Mr Asher Bohbot came back as the Chairman and then approached  
10 me again and said that they had not quite got it right after the year – over the year and they wanting me to come back but this time he wanted me to come back as the Group Chief Executive Officer and that he would resign at the end of that financial year after I got there which would have been the 31 July 2019 to ensure a smooth transition.

And on that basis I agreed to come because then I would have the ability to make sure I could put in place what I needed to put in place. And that was how I came to here – it is just to give some background. I was very  
20 excited about EOH for a few reasons.

One was that when I spoke to all my customers having come out of the corporate investment bank and have served a lot of them for the ten years I was at Barclays Africa; ABSA and the ten years I was at Deutsche Bank when I spoke to them about EOH they told me about

the wonderful products and services they got from the company and they used them a lot and I found that they were in many, many of my customers.

In fact when you have a look at it now we have got over 5000 customers. So very systemic to South Africa and the heart of the SASSA's; COJ; the big banks, those are the – the first thing and so I thought that given that they have got great product and great people to turn it into a profitable business I should be able to do that.

10           The second thing was that that they had a great youth development program that had been very successful in taking youngsters out of school; out of university and training them in relevant ICT programming and products and actually employing them.

In fact I think they have done over 10 000 over their lifetime and they had nearly an 8f3% success rate of getting people jobs and I have always been passionate about social inclusion and social equality.

20           It was one of the reasons why I moved to MTN because there they had a big mobile money operation and obviously that goes under the banks' radar and would have been great. So I thought this would be a great opportunity for me and that was why I actually left and joined.

**ADV CHASKALSON SC:** So you joined in September 2018?

**MR VAN COLLER:** That is correct 03 September.

**ADV CHASKALSON SC:** And you went in with great optimism and excitement that quite soon you discovered things that were not so good. Can you – can you explain to the Chairperson?

**MR VAN COLLER:** Yes the first thing it was quite evident to me that when I actually got access to more detailed numbers was that the company was in trouble. And when I looked back it looks almost like that R3.2 billion loan that  
10 was made was almost a rescue package and like we have seen they were then using that money to actually repay the interest and the debt so they were not generating cash. It is almost like using one credit card to pay the other credit card.

And when I got there they had just concluded or were in the final throws of concluding a Black Empowerment deal that someone would inject R700 and – or actually up to R1 billion but the first tranche was R500 million and short after – shortly after they put in 750. So  
20 having a look at that I thought well there should be enough cash to sort this out.

The problem was – is when I had a look under the books and records there was a few problems, big problems. One was the fact that they did not account by legal entity – they accounted by business unit.



So when they came to do their final accounts it was very difficult to actually get the legal entities to stack up. They did the consolidation of 272 legal entities on an Excel spread sheet which clearly was sub-optimal.

There were not any proper controls that I have – would have expected in a listed entity. In fact the FD a Mr John King had extraordinary authority across all the entities.

There was not a clear what we call Delegation of  
10 Authority from the board down into what was really the operating company, EOH Mthombo so they basically ran on their own. When I asked for the submissions and minutes from the last six months Executive committees to look at and go through and catch up I was told that they did not exist and they did not have an Executive committee. It all got funnelled through the founder and the then CEO and when I was there the Chairman Asher Bohbot.

And so the first thing I had to do was get approval from the board to change the CFO. So within the first two  
20 months of me being there we asked the FD who had been the FD for sixteen years – Financial Director to resign which he did.

I then appointed a treasurer because once again we had over 232 bank accounts. We had 3.2 billion of debt – actually more if you add on the amounts owed from the

acquisitions closer to 4.1 billion of debt. And – but we had because of the 750 million that had been subscribed for we had around R1 billion in the bank accounts and this was clearly very inefficient because you have got this negative carry of your bank – your money in the bank account earns a lot less than you pay on your loans.

So we employed a treasurer. She came in – in December or actually the end of November 2018 and started trying to manage the cash flows because clearly  
10 this was going to be very important and if you do not have confidence in the actual accounting system the only way you can manage your finances is through a bank account because that is real. That is how much money have got every day.

The new FD started in mid-January and we then – and then on top of that I had asked for a few things.

One was I asked ENS at the time to please have a look at specific contract which was with the Department of Water Affairs. The reason I did that is there was – there  
20 was a media report around it and I wanted to make sure that we knew everything about what we had got involved in and so they started on that.

I then did a road trip to all our staff – talking with ENS and we did a presentation around anti-bribery and corruption – the zero tolerance on corruption – that we

were going to take going forward. And I then – because we had only one compliance person for 10 000 employees and 272 legal entities I needed to started a program to put in the proper rules. We did not have a risk officer or a risk team. We did not have a compliance team. We did not have internal audit. These were things that I just expected in a listed entity and purely I surely from my past life I had seen all of those.

So we got ENS. We also got PriceWaterHouse  
10 Coopers and I got the University of Stellenbosch Centre for Corporate Governance and Africa to come and have a look at what we had. Do some training first of all but start creating a new framework and I am sure we will go through everything we did.

And then I started the search to get a head – a Chief Risk Officer that would be an Executive Director. I found one probably in around March – she served out her three months' notice and I think she started around June 2019. And I am sure we will get back to some of that later.

20 **MR VAN COLLER:** Can I – can I take you now back to Microsoft which you deal with at paragraph 23 of your – of your statement. It is at page – black page 5 of Volume 1? Can you tell the Chair what happened in February 2019 in relation to the Microsoft agreements with EOH?

**MR VAN COLLER:** Yes on the 8 February which was a

Friday I got a phone call probably about four o'clock in the afternoon from one of our coverage officers who said they have received a letter from Microsoft to say that they were giving us thirty days and they were going to terminate our – their partnership with us for convenience.

The first thing I do is, I ask for the letter. The letter came. I had a look at the letter. It was signed by a person. When I looked at the person's name and went on LinkedIn, they did work for Microsoft and they were... there  
10 designation was Trainee Legal Assistant. So I thought this was strange.

I tried to contact, at that point, the current CEO of – the then CEO of Microsoft. I had done some work with him. His name is Zoaib(?) Hoosen(?). Previously, when I was at Barclays Africa and I tried to find out what was going on.

Basically, he had said to me that he had been told by his legal team in Dublin that they have to exit. He had been given the details and he could not help me.

Clearly what I did is, I then reported it then to the board  
20 and to some of the executive committees to try and find out what the story was. We had a few meetings over the weekend.

Clearly, we were going to need to deal with the investors and the media because we were JSE listed and we started preparing a statement but we needed to get more

information.

And then on - I think it was the Monday morning, I got a call from a reporter called Duncan McLeod from TechCentral. He said to me that he had been contacted by a whistleblower.

He had been given access to some documents and basically that EOH had over charged the Department of Defence when they procured licenses from EOH, that EOH had circumvented SITA and that EOH had invoiced for more  
10 licenses than have actually been delivered.

**ADV CHASKALSON SC:** Sorry. Mr Van Coller, can you explain to the Chairperson what SITA is.

**MR VAN COLLER:** SITA is the state agency that all the procurement happens at.

**ADV CHASKALSON SC:** That is procurement in the IT Sector?

**MR VAN COLLER:** Correct, yes.

**ADV CHASKALSON SC:** Can I take you back to your statement at paragraph 30 where you talk about the steps  
20 that you took in response to discovery or the breaking of the Microsoft news?  
Microsoft news?

**MR VAN COLLER:** Yes, I... This is where it gets a little bit more complicated for a number of reasons. The first thing was, I then went and put out a notice to the senior employees. I need to know what is going on.

I need people with information to come forward. And one – if you understand the constructive EOH at that time, as you got this head office but you got 272 operating entities underneath it, all doing different things for, what I call a checkerboard, in an ICT company.

Any corporate needs to buy a computer, needs to put software on it, needs to maybe store data. These were all run by different parts of EOH.

And so often, when a tender came, they would need to  
10 be consolidated together. But I went directly to the head of the – our Microsoft business at the time. It was a man called George Grants.

And I said to him, you know, does he know anything about this. Can they please give me the documents and the invoices. As it turned out, the investigating on this had actually started in December of 2017.

My understanding – I do not have all the detail but it actually came out of the Auditor General – there was a query because of the bypassing of SITA.

20 Microsoft had got involved through their lawyers and there was a number of emails backwards and forwards between the Microsoft lawyers and EOH.

The trial, eventually, went dead in about July or August of 2018, just before I joined and nothing had happened. But there was a lot of documentation and it was clear, very

quickly, that there was a problem.

George Grants had actually raised to his senior manager or the CEO of his division at that time, that there was a problem. That was a Rob Godlonton and he had then raised it to Zune(?) Mayete(?), who was the Group CEO and he had raised it with the Founder and then Chairman, Ashe Abbott, to say there is a problem.

The invoices do not match to the licenses actually delivered. There are some differences in pricing and there a  
10 number of sub-contractors in this account that were not part of the tender.

Clearly, then I had evidence. I called in ENS Forensics, led by Advocate Stephen Powell and I said to them: Well, here is the information.

We need to do a proper investigation on large government contract for the last five years. So he went back to 2014. But I said: Please, focus on this one first because clearly we are going to have to deal with it quickly because the last thing we wanted to do was get blacklisted. And I  
20 can take you through some of the things we did, should it be required but...

So we got the new Finance Director to get all the information, the accounting information of the invoices and the flow of money and we gave ENS access to our whole email server that is set on Mimecast and we gave the access

to our Accounting Books of Record and that allowed ENS then to go and do key-word searches and starting to actually look at the whole contract.

**ADV CHASKALSON SC:** If I can take you page 10 of the bundle, paragraph 44 where you briefly described the conclusions that were reached in relation to the Microsoft contract after ENS had its investigation. Can you explain those to the Chairperson?

**MR VAN COLLER:** So the findings – and I can go through  
10 the detail. There is also some interest in the approach that – I can also give just to give an understanding or the thoroughness of this because ...[intervenes]

**ADV CHASKALSON SC:** I would like to take you back ...[intervenes]

**MR VAN COLLER:** Okay.

**ADV CHASKALSON SC:** ...to the approach because the approach is much broader than Microsoft but while we are on Microsoft, if you can just tie it up.

**MR VAN COLLER:** There were basically six findings. One  
20 was serious governance and control failures. Two was collusion with original equipment manufacturers or the software owners. There were tender irregularities and I can take you through you all the detail underneath that.

There was inappropriate gifting, sponsorships, donations, bad timing and then there was suspect payments.



We found payments where it would have been right at the beginning of a contract.

We have not even signed or have not got first payment. It will be round numbers. They were not be repetitive. Normally with a, you know, a sub-contractor, it is time and material.

It is not a round number like a million rand or two million rand or – it will have rands and cents attached to it. Would you like to me go through these?

10 **ADV CHASKALSON SC:** Yes. Maybe – I mean, you... Well, let us first identify the findings that you reported at your annual results presentation in July 2019. You talked about those at page 7, paragraph 36.

And the presentation, the relevant part of the presentation is at pages 39 and 40. So maybe if you can take the Chair through?

First identify the document at pages 39 and 40 as that annual results presentation and then take the Chair through those findings that you describe there.

20 **MR VAN COLLER:** Okay so, the first thing I talked about earlier was the Delegation of Authority and given that there was no spread of this Delegation of Authority. It is significant responsibilities to a very few executives and that is normally a red flag. We had an artificially inflated software.

**ADV CHASKALSON SC:** Sorry, Mr Van Coller. Can you maybe explain to the Chair why this Delegation of Authority is a problem inside the company?

**MR VAN COLLER:** Normally, and what we have got now, is you will have a split of authority because what you do not want, as we say, we do not want people to be poacher and game keeper.

For example, right now is the CEO of EOH. I cannot sign a check. I cannot make a payment that is specifically  
10 for the Chief Finance Director or the Chief Financial Officer. The Chief Financial Officer, also, cannot onboard a supplier.

So, unless that has gone through the Chief Risk Officer, she is going to want to pay. So in that way, you make sure there is always a segregation of duty and it needs to go through a number of hoops.

**ADV CHASKALSON SC:** And can I... And the logic of that would be, if it is a corrupt process going on, you have various different people who ...[intervenes]

**MR VAN COLLER:** Correct.

20 **ADV CHASKALSON SC:** ...who have to be onboard.

**MR VAN COLLER:** It makes it very difficult for people to collude because you have to go through a number of different gates and then different departments.

What happened in our situation. Because there were not controls, proper controls in place, the same people who on

boarded a sub-contractor could sign an invoice, could pay it, get it paid, could get it allocated into the accounting system.

So just one person could basically do all of that on their own. It was very similar when you have a look at the acquisition strategy.

It was basically done by one or two people and it happened. So there was not a process to ensure that it was above board. So just allow people to then subvert the system or steal money because there is no control or little control.

**ADV CHASKALSON SC:** The next point you identified, 38.2 is Artificial or Inflated Software Licence Sales. Can you explain to the Chair what that refers to?

**MR VAN COLLER:** Yes. Actually, 38.2 and 38.3 are the nub of what happened. 38.2 was where people in EOH colluded both with the purchasing – a client, as well as the software or original equipment manufacture or OEM as we call them, to bypass SITA to then inflate prices and to get those invoices paid. We have three of those, which I am sure we will talk about the detail but there were two ...[intervenues]

**ADV CHASKALSON SC:** Well, maybe we can talk. You deal with those three at... Sorry, I lost my note. You deal with those three at page 11, paragraph 44.1.1. Maybe if you can quickly take the Chair there and explain them?

**MR VAN COLLER:** I can. So basically, what happened

there. There were two Microsoft licensing deals with the Department of Defence and there was one SAP licensing deal with the Department of Water Affairs. In both cases, there was over-invoicing and under delivering of licenses.

So in one of them, for example, we charged for 20 000 licenses. We only delivered 15 000, and plus we charged that above the normal rates, that if the Department of Defence had gone directly via SITA to Microsoft where they have a master's Services Agreement, they would have got a  
10 much better rate. So those were those three contracts.

Those have been – are, you know, busy with the SIU at the moment, the Special Investigation Unit.

In fact, on the two Microsoft license deals, we have actually come to a settlement agreement or an agreement of debt and that was for this over-licensing portion and we are busy repaying that and we are working with the SIU on the Department of Water Affairs, and hopefully, we will sign a similar one.

The second about this potential tender irregularities are  
20 really where, in my view, people were stealing money from EOH to ...[indistinct], a political donations which I will get to on 38.6, or just stealing money for themselves. Because in most of the cases, they were in the accounts sub-contractors for a contract.

The excuse being that we needed 30% enterprise

development for a government contract but in nearly all of our tenders, these companies never featured actually in the tender but it was hidden in the accounts that way.

And there are some instances where we can see that there is discussions between parties about confidential information, the tenders. In some cases, EOH employers are actually writing the content of the tender and some case, obviously, to exclude other bidders but in some cases, to make us more likely to win the tender. There is swopping of  
10 information.

Interestingly, in some cases we – or in most cases, from what I can see, we would win the tender almost at any cost. So our costings and what we put in the tender documents did not really make a difference and we can see that in our accounts.

We have written off on these problematic contracts, as I call them, the written off of nearly R 900 million of work because we under-tendered and we could not deliver.

And what we were expecting to do and we saw some of  
20 it, is to change orders later and inflate the contract. I think maybe it was because there were some political changes in some of the net-close(?) at the time, it were different people and then that we got caught on the bad side of a wrong contract. There was...

Also, we used – there was misuse of a single source

procurement exception and Regulation 32. We saw instances of that.

I have talked about this, the regular sharing of confidential information from within, inside the organisation who was doing the tender. We have got emails to show that.

Then if you go on to 9.4. We used Middleman. This was exactly the problem that the banks or the banking sector faced in 2009, using what they call introducers and then not knowing what the introducers do.

10 So then paying a fee for them to help you get new things, win contracts, et cetera, being politically influential.

**ADV CHASKALSON SC:** Sorry. At that point Mr Van Coller. Can I take you back to your statement at paragraph 7 and... I am so sorry. Page 7, paragraph 38.5, where you talk about payments made to sub-contractors in circumstances where there is no evidence that work was done by them. Can you elaborate on that?

**MR VAN COLLER:** Yes. So, to my earlier point and number  
20 of them that we paid, and we can go through the numbers in a minute, were for no work done or dubious work done.

And some of them are obvious because when you go and speak to the project manager who was on the contract, they have no recollection of that sub-contractor being on the project.

Two is, we have got no evidence of time-sheets. Three is, they were not part of the original bid. And four is, we are paying the round numbers.

In some cases where it is dubious work done, you will have descriptions like, consulting services. The other thing that also raised alarm bells. These specific contractors, sub-contractors, we did teaming agreements with that were no specific contract.

They were just a general – here is a teaming agreement  
10 and we will use you as and when. And that also, obviously, raised alarm bells. So when we did our original review, we came up with just shy of R 1,2 billion worth of suspects suspicious payments.

We, subsequently, worked through those and we ended up worth about R 865 million to date as at the end of the submission. ENS tell me R 700 million is for no work done and most of that is, is not – most of the payments are not related to any contracts. They just find themselves into the contract accounting. So in a way hidden.

20 There is about R 160 million for dubious work done, consulting services or that, with no specific things. And the reason why we started with the R 1.2 billion was – I suppose it was a bit like, if you know you have got skin cancer, you do not go and cut neatly around the edge. You have to take a bigger piece out to make sure that you do not miss

anything.

And that goes back to the in-depth and the conscious decision that EOH made to do, to be very conscientious around doing their investigation.

**ADV CHASKALSON SC:** At your statement at paragraph 41, you talk about the limitation at EOH spaces because it does not have any cohesive information gathering counts. It can just look at what is inside its own books.

How do you engage with the estate agencies in relation  
10 to all of these potentially corrupt contracts that you have discovered?

**MR VAN COLLER:** So there was a lot we did and ENS have, you know, helped us a lot with that. We used actually – we have our own internal forensic department called Extend. They actually made the rand. They exposed that for us.

But basically, we put all the information together and we have – because we were unable to follow the money, I can only see where it got paid to. I cannot see what happened  
20 afterwards.

We do have one or two cases where we see one of our employers then invoiced the sub-contractor that we had paid and they had signed off, and clearly, it was, you know, possible they have made a – made payments out of their own pockets and were trying to get the money back or they were



just blatantly stealing.

But we have engaged with SAPS. We engaged with the Director of Priority Crimes Investigations, the Special Investigating Unit. We have spoken to SITA. We have spoken to the National Treasury. We have spoken to the South African Revenue Services.

And we have also made – we have actually done affidavits for criminal prosecution. And we have completed about ten reports, Section 34 reports in terms of the  
10 Prevention and Combating of Corruption and Corrupt Activities Act. That is that.

**ADV CHASKALSON SC:** But... Yes ...[intervenes]

**MR VAN COLLER:** If you wanted, of course ...[intervenes]

**ADV CHASKALSON SC:** That answers my question. You speak about the ENS.

**CHAIRPERSON:** Advocate Chaskalson. We are at quarter past eleven.

**ADV CHASKALSON SC:** Alright.

**CHAIRPERSON:** We could take the tea-break now or  
20 depending on how long we will be, we might take it later. What do you think?

**ADV CHASKALSON SC:** DCJ, my answer is, if we look at the time, it is ...[intervenes]

**CHAIRPERSON:** Yes, okay alright. We will take the tea-adjournment and resume at half-past eleven. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Let us continue.

**ADV CHASKALSON SC:** Thank you, Chair. Before we wrap up on the core findings of the ENS investigation might I – Mr van Coller, can I take you back to the slides that are on page 39 and 40 of the bundle. Those, if I understand and I would ask you to confirm, are an extract from the 2019 annual results presentation.

10 **CHAIRPERSON:** What was the page, Mr Chaskalson?

**ADV CHASKALSON SC:** 39.

**CHAIRPERSON:** Thank you.

**MR VAN COLLER:** That is correct.

**ADV CHASKALSON SC:** Thank you and can you explain to the Chairperson starting on page 39 what that slide describes?

20 **MR VAN COLLER:** So this describes - just going back to the original 1.2 billion, one of my colleagues actually broke it down, we found 350 in our valid work and then the 935 then gets split into at 1 – loans written off, I will come back to that, what we call ghost contracts, these invoices for no work done and then 180 was various places where we had overbilled various customers.

The loans, it seems to me, towards the end, they were getting this small group of rogue employees in the

public sector vertical were getting pushback from the project managers or the business unit owners for these invoices that kept getting slipped into their management accounts and you can see this pushback on email, where does this invoice come from, we never contracted these people and then that invoice then gets allocated to another project to try and, you know, obviously wash it through the accounts and then all of a sudden they came up with the idea of giving subcontractors loans and then just writing  
10 the loans off at a later stage because then that did not have to go into a contract account. It would circumvent that, so we wrote off around R90 million worth of these fictitious loans that they had given the people money, in some cases signed a loan agreement but when we went to recover the money there was absolutely no intent to repay it. In fact we got some fairly aggressive legal letters back on the fact.

**ADV CHASKALSON SC:** And at the bottom of that slide you, under 935, which is the 935 million of suspect  
20 payments you have identified 50 ED partners that had now been blacklisted.

**MR VAN COLLER:** Ja, we eventually – I mean, this was in September or October of 2019. To date we have blacklisted about 85. And I think that is dealt with a little bit over the page on page 40 where we talk about the 16

EOH employees, 50 is now 85 and then you have got the 12 government employees and that Section 39 reports are now at 10.

**ADV CHASKALSON SC:** Section 74?

**MR VAN COLLER:** Seven Section 34, yes, they are now ten.

**ADV CHASKALSON SC:** It is now ten, yes.

**MR VAN COLLER:** Yes.

**ADV CHASKALSON SC:** And that Section 34, the  
10 Prevention and Combating of Corruption Act.

**MR VAN COLLER:** Correct.

**ADV CHASKALSON SC:** Thank you. If I can then ask you to go to page 8 where you talk about some of the remedial measures that you have taken in paragraph 43. Can you take the Chair through paragraph 43 starting with paragraph 43.1 and just explain the significance of each one of these measures?

**MR VAN COLLER:** Obviously what is – this is a shortlist of a much longer list but – and I can go through it, but the  
20 real issue here is that – what we talked about earlier, is when you do not have the basic policies in place, employees can either use that to their advantage or in fact they then have no cover because if they are asked by a supplier or a client to do something, they do not know what are the boundaries that the organisation had set.

So a lot of what I put here, in my personal view, is very basic – almost, as I say, 101 for any listed company and none of this was actually in place.

I also believe strongly it comes from the top as they said the fish rots from the head first and this is very much the case in an organisation. If the board and the executive committee are not walking the walk, people will follow them and they will do whatever they are doing and so it is a very important thing and we started with that coming from the  
10 top which was the leadership commitment, anti-bribery and corruption.

We did a lot of face-to-face training, dedicated anti-bribery and corruption training for employees. We have actually now set up a digitally-based training which interestingly we can now offer to our customers but as of the end of this month we would have been over 95% completion rate. We had good attendance.

It just shows you that the core of a staff generally are wanting to do the right thing and wanting to get  
20 guidance and if I can just go back to page – because I think it is an interesting slide and it just puts things in context which we want 38, I think it was, I think it is 37, if I remember correctly. It is 35, if you just go to page 35 and this is what we call a risk control framework and largely deals with the seven pillars of governance. If you have a

look in May it was largely red and yellow, so nonexistent and this – if ...[intervenes]

**ADV CHASKALSON SC:** Sorry, Mr van Coller, I think you are using red page 35, so it is black 37.

**MR VAN COLLER:** I was right on 37. On 37, you can see this is just the seven pillars of governance and this what we call the checkerboard and if it is red, it means it is nonexistent, if it is yellow there is something, there is work to do and the idea is that you have programmes in place to  
10 get it in green. You will see we will publish an updated one in our yearend accounts this year and a couple of days and you will see that has largely gone to green but you can see how very quickly, because the stuff in not complex, how we went from May to September, a lot of the red has gone and we continued to do it but these are basic things for a listed company and I think they are really important so just to go through a shortened list but the anti-bribery and corruption policy, especially Sections on introducers or middlemen, strategic transaction risk.  
20 So when you are putting together a bid and you need subcontractors, how do you make sure as the main contractor you are managing that risk. The fraud risk policy, what to look for, what you can and cannot do. This gifts and entertainment policy is really important. This the banks did as well in 2008 because there are a number of

instances where a people were spending lots and lots of money on entertaining clients with very expensive things and this was obviously pushing the line but we have it in our industry as well and I have actually done some work with the World Economic Forum specifically on this and we put in something that now if the gifts is more than a R1 000 you have to go through a whole process and we have been careful on not going to what they call educational something where they fly you to somewhere nice in the  
10 world, they do an hour or half a day on education and then there is, you know, lots of entertainment around it, we just have – we have put in something that is more financial services [indistinct – dropping voice]

Whistle blowing policy, I think this is where ...[intervenes]

**ADV CHASKALSON SC:** Can I just take you back to gifts and entertainment policy because it is an issue that we will canvass in more detail when Mr Powell comes to testify but you have now a section in your gifts and entertainment  
20 policy that extends to donations, to political parties. Can you speak to that?

**MR VAN COLLER:** Yes, that is a good point. I mean, one of the things we found, we found both undisguised donations and disguised donations. The undisguised donations, the issue is the size and the fact that it is to a

single political party, ANC, it is normally in a listed company you will give balanced donations but – and then two – and I can go through some of that detail and then two, it will come out. We have got disguised donations where we get asked to make a donation officially and then a donation actually gets challenged through one of the subcontractors or these entities that we have got a teaming agreement with where they just give us an invoice that dubious and in fact I think Adv Powell will give you some  
10 evidence around that it actually runs as a tab, the money goes in and then invoices go against it and eventually we are nearly finished this money, we may need more and so you will see some of that later. I can get into that detail if you would like.

**ADV CHASKALSON SC:** No, I will be taking Stephan Powell through - to that detail.

**MR VAN COLLER:** Okay.

**ADV CHASKALSON SC:** You were talking about the whistle blowing policy?

20 **MR VAN COLLER:** Yes, the whistle blowing policy I think is critical. My experience is that most people in businesses are actually wanting to do the right thing and they are actually your best policemen, in a way. If you give them the capability to be your policemen and so the few things are one, make it easy, we did it on an app, in



fact our app can be – this Expose It app can be downloaded by anyone, it is free of charge on Google Play and on the app or App Store on iTunes and you can then – it works almost like an anonymous Whatsapp. You can send videos, you can send documents, you can send whatever you want to, there can be two way communication. It is only if you choose to do an affidavit or make your name public, you can.

The second thing is – so it needs to be anonymous, 10 they need to be comfortable it is anonymous. The second thing that is very important is you need to give feedback. So if people have come forward and told you stuff, once you have done your investigation, give them feedback. In some instances it is just wrong perception, lack of information, in other cases they just want to know that they have actually helped and, you know, the third thing is you actually – you fundamentally have to protect them to make sure that there is no comeback because often there is lots of pressure and we should actually be elevating them 20 because they are actually the bravest of everyone.

We then did anti-money laundering, terrorist financing and sanctions policies. These are all sort of standard. We have a share dealing policy that we put in place. This was not in place and actually some of the issues with the share price falling was directors selling

their shares and not getting proper approvals. We had regulatory change in relations policy, procurement policy obviously key given we are doing lots procurement, there needs to be a process to make sure it is independent and, you know, how people need to act within that and then a competition compliance policy. There were clearly other things – would you like me to go through 43.4? That obviously carries for...

**ADV CHASKALSON SC:** Yes, I am interested in – can you  
10 identity to the Chair where these were appointments. You list, for instance, all the way up to 43.4.9 appointments that were made. Can you identify where it was actually positions, new positions that you were creating as opposed to simply appointing new individuals.

**MR VAN COLLER:** Sure.

**ADV CHASKALSON SC:** And where you created new positions what the importance of the position is.

**MR VAN COLLER:** Sure. So this was obviously as a result of the work at ENS, PwC and the University of  
20 Stellenbosch, Centre of Corporate Governance in Africa did for us. Clearly the existing position of the new CEO, we got a new financial director that was an existing position but someone had been in that job for 16 years, so getting a new brush was absolutely important.

We did not have a Chief Risk Officer who was an

executive director before this, is new, and underneath that position is risk compliance, regulatory, government oversight - and that is really important. Underneath that position there is also the internal audit and the legal department. So a very important position.

We had – we did not have a head of risk so that was clearly a new position, clearly important, given where we ended up. We had a head of compliance but it was a single person. We now have a compliance department  
10 and you can see we got someone out of the financial services world because obviously there are a lot of lessons to be learnt for the rest of corporate South Africa.

Out of the financial services we appointed head of legal, we had one but they were largely doing contracting. This is much broader than that, that does even our own legal cases. We did not have any internal audit and so we appointed a head of internal audit and this position is critical because it is what the external auditors need to rely on in terms of the work they do.

20 In normal listed companies, where you have what we call three lines of defence, you train the frontline, the people that are out there in the business and so that they know what the boundaries are, what the policies are.

You then have this, you know, second line which is compliance and internal audit and then your third line of

defence is the external auditors who then do, you know, checking of the checking, if I can put it that way, and that is very normal for a listed company. That is not abnormal, some people feel that that is a lot.

**ADV CHASKALSON SC:** You speak in 43.4.8 of the new independent board aligned with King IV principles. Can you explain which principles you needed to – or which principles had not been complied with?

**MR VAN COLLER:** The main one was just the  
10 independence of the board. The King IV says you need to have more independent directors, non-executive directors, than non-independent and a non-independent would be someone with a large shareholding, someone who has been an executive for a period of time and has not gone through a three year cooling period or someone who has been on the board for more than 10 years and in our case the Chair was the founder, so he had been there for 20 years. He had been the CEO a year previously and had not gone through the full three year cooling off period.

20 There was a head of HR who had resigned as an executive two years before, had not gone through the three years cooling period. There was also an original founder, Rob Sporen, who had been on there for 20 years and then there was the head of the IT committee who had just gone through his ten year stint and was still on the board. So

there were at least four board members that were non-independent.

**ADV CHASKALSON SC:** And do you have any views on remuneration of board member and independents.

**MR VAN COLLER:** Sorry, say that again?

**ADV CHASKALSON SC:** Remuneration of board members and independents.

**MR VAN COLLER:** Ja, there is – interesting is that you need to split out your remuneration committee from the  
10 Chairman, you need to split out your Chair of your audit committee from you Chairman just like you need to have the head of – or the Chief Risk Officer reporting directly to the Chair of the risk and the board not just to me because obviously as the CEO because that does not create independence. Ditto for the finance director to the audit com Chair and then obviously Remcom needs to be separate so that you can appoint independent board members away from the Chairman. These are just basic controls.

20 The issue, I suppose, in all of these boards is something that I think may need to be looked at. I think is what you are asking me, is sometimes board members are being paid quite a large sum of money to be a board member and this is why you need to have this limitation on their time so that it does not become a job, actually they

are there for the good of the shareholders, not because they need a job and this is why it was so important to make sure that you get this rotation right and you do not let board members stay there for long periods of time.

**ADV CHASKALSON SC:** You have touched on 43.4.10 which is your new risk governance framework. Is there anything that you want to amplify there?

**MR VAN COLLER:** Not really, I mean, I think we have been through it, there is a lot of detail of everything we did  
10 but it was very important that we actually got that up and running, got proper information, we are managing the various risks, we are having this – a discussion independently with the board and getting the board to understand what risks sat within the business and what policies and procedures we had to actually manage them and I think that is just such an important of a board and if you have a look at that slide 37 that I had showed earlier, there was basically very little in play at all which I think for a listed company is bad.

20 **ADV CHASKALSON SC:** Unless there is anything you want to add to over the page on page 10 to 43.4.12 through to 43.4.14, I want you to elaborate on the details of the bid review but is there anything that you would want to add in respect of 43.4.12 to 43.4.14?

**MR VAN COLLER:** I think two things was really this real

zero tolerance against bribery and corruption. You need to reiterate it and you have got to walk the talk and you have got to have your backing of your board on it, which we did, you have got to make those policies open and you need to in some cases actually put those into your contracting. So if you are contracting with people, they need to adhere to your policies because you are the main contractor.

What was interesting is we did not really have a conflicts management control room and this is to do with  
10 not only employees who are within the business and have maybe got other businesses or their partners have got other businesses, we need to manage that conflict so that when you go through procurement those conflicts are properly highlighted but also, having a look for politically exposed people or influential persons especially when you are dealing with a third party. We had none of that. It seemed to be, you know, not worried about it at all.

And then the last bit, the 14 bit, was just making it easy for people to adhere to these things, the anti-bribery  
20 and corruption attestations they have to do every year, the conflicts of interests and the gift and entertainment registrations to get it signed off, so we have actually got a view on it so that we can match up to make sure that none of these gifts and entertainment are happening at bad times around, you know, bids and things like that. And

actually, if you - today if you have not done your anti-bribery and corruption attestations, you have not done your compliance training and/or you have not done your conflict of interest disclosure, you are gonged out for any bonus for that year, it does not matter how well you performed and that has been a very good date for us.

**ADV CHASKALSON SC:** Then if you can describe the bid review, just to give the Chairperson a sense of the scale of the internal investigation that has taken place at your  
10 instance.

**MR VAN COLLER:** So the bid reviews, obviously we are getting a lot of bids, 272 entities, lots of them doing good work, good honest work with – and together with the public sector but often these big bids come in over R10 million and this is where things can go wrong if you get the wrong partners involved and so ENS originally conducted, as you say, 559 bid reviews, they were very important and we have now, with the help of ENS, trained our own people and got a capacity and we have combined all our bids into  
20 a single bid review place, so it all has to come through a single gate and has a single standard vetting process and these are now obviously interrogated by specialists in the various disciplines, compliance, legal, finance, risk.

And it is not only for the bribery and corruption thing, it is also around what guarantees are you signing,



are they sensible, what are the terms of the contract, are people paying you on time or are you just being their bank account because they are going to pay you, you know, 120 days or something like – so it is the whole importance of the bid because one the things that gets hidden off a balance sheet is when you sign guarantees for work to be performed, you do not actually see those as a liability on the balance sheet and certainly we had quite a few of those to sort out.

- 10 **ADV CHASKALSON SC:** You speak of your anti-bribery management system assessment at 43.6. Can you explain that to the Chairperson?

**MR VAN COLLER:** Yes, there is actually a very interesting – in the UK there is the ISO 37001 and it gives six principles and it is actually an international standard. We decided that – and it is actually higher than the South African standard, interestingly, and we decided with ENS this is a good framework for us to go through and so we have been assessed on that.

- 20 We continually assess ourselves and this is what the continual improvement progress in EOH is driven by and I would encourage anyone in corporate South Africa to have a look at it because it is a great framework, it is an easy framework and it is an international best practice framework.

**ADV CHASKALSON SC:** You have already touched on the whistle blowing mechanism and spoken about the app. Is there anything else you want to say in that regard?

**MR VAN COLLER:** No, that is – I think we have covered that.

**ADV CHASKALSON SC:** Then we have already dealt with the initial over-invoicing issue in relation to the Department of Defence and the Department of Water Services. The ENS investigation that you instituted back in  
10 2019, is that still ongoing, the broader investigation?

**MR VAN COLLER:** The broader investigation has concluded. However, as we get queries from various regulatory bodies and agencies, in some cases we can do the – or ENS does the keyword searches and bring documents out. It also helps us because you can then package them into themes and streams and so ENS remain available as they were for this Commission to fill specific information out for specific transactions. Clearly all that information has been given to the SIU, has been given to  
20 the Financial Intelligence Centre, has been given in to SAPS or in to the DPCI and they remain available to assist wherever required.

**ADV CHASKALSON SC:** And then in paragraph 45 you speak of other changes in respect of enhanced governance. Can you take the Chair through these and

elaborate where you see fit?

**MR VAN COLLER:** Yes, some of these are business-related but I think they are important. What had happened is although we had 272 entities, they were allowed to do public sector work on their own and so what happened is this small group of rogue former employees created their own little vertical, as they call it, they then found tenders that they felt they could influence and they would then go and tender, win the work but then subcontract internally  
10 into EOH so that those subcontractors within EOH did not know what was happening on the other side.

The second thing, though, that happened was that because they were not going through the actual company where the product excellence sat, they would import in some cases.

And one crazy example that is just extreme, to just belabour the point, is we had a contract with over a hundred people on it, only three of them were EOH employees, the rest were largely contractors, a big chunk  
20 of them coming from India because they were obviously wanting to keep that contract separate.

And so what we have done now is we have taken all our work, it does not matter whether it is private or public sector, they sit in what we call these centres of excellence, where the product excellences, so whether you are a public

sector client or a private sector client you get the same level of service.

The second thing is we have separate bid offices, this is how they also were able to circumvent, they had their own bid office, pretended to do all the checks but did not. We have now got one and that one was just part of the segregation of duties so that everyone has to go through the same gate and the same standard.

We have also got – I put together a new public  
10 sector business risk framework and this is largely to make sure that we are dealing with the politically exposed person issues properly, we are dealing with the subcontractors because you are required, because the enterprise development requirement of 30% that you have done those checks, that you have gone through and checked the validity at CIPC in terms of the company, that there is real people there doing real work, that they have a track record, etcetera, rather than some of these empty entities that we found that Advocate Stephan Powell will  
20 talk a little bit more about it yesterday (sic).

In the finance department, which we did not have these enhanced controls was one, the delegation of authority that is actually taking some of the power away from the FD so they cannot be a gamekeeper, cannot onboard or approve a supplier and pay it, needs to be done

separately, enhance internal controls just around the financial statement closed process, now actually managing legal entities, giving them balance sheets and making sure that we check that people do not hide invoices on the balance sheet, that people actually report when they have signed a contract so we can record it. These are important.

There is a monthly results to Exco and the board and that comes in a standard format, that includes balance  
10 sheet, includes income statement, includes risk, includes legal, includes internal audit.

We have got an investment committee now for mergers and acquisitions and disposals so that it is done properly and above a certain level it has to go to the board or above a certain level it comes to Exco and above that it goes to the board.

**ADV CHASKALSON SC:** Can I just stop you there? In relation to acquisitions, what was the problem in the past in relation to acquisitions and in particular the experience  
20 of corrupt procurement?

**MR VAN COLLER:** Ja, so if we go to – and it is page – no, not that one – beginning of this document because I think it is – it just shows what can happen. It is page 25 of the pack and you can see here – actually the underlying businesses at EOH are actually very good because if you

just take these five issues that happened – and this was due to lack of governance because this should have gone through a board approval process but they invested R900 million into Zimbabwe. In some cases they were actually paying for OEM licences in South Africa but delivering them to clients in Zimbabwe, collecting cash in Zimbabwe but obviously the cash would not come to South Africa, it stayed in Zimbabwe.

So once you put 900 million in you have got to find  
10 900 million from somewhere else. Even if it is a great business in Zimbabwe, you do not get 900 million out in the time you need to pay your debt and I will correlate that back in a minute.

We bought – we spent R750 million largely on international acquisitions for assets. We used debt to buy acquisitions that were not generating cash so we needed to find other businesses to generate cash to repay the debt.

We had this inefficient contracting, as I call it, this was where they wanted to just get these contracts in so  
20 that they could put invoices again and steal money and here, at the time of this, this was October 2019, we had written off about 750 million of cost overruns, that is close, that is just shy of a billion at the moment.

We invested R400 million in a business with a single customer. So they only had one contract and yet we

were able to pay R400 million for it. Clearly when the contract came to an end and the customer went away, we had paid 400 million and the business we had was worth zero.

And then obviously this lack of governance and controls allowed around 930 million to be extracted or stolen from EOH. That money has gone. And what is interesting, if I have a look at the numbers, if I just add down and that is that left hand column, just those five  
10 issues cost the company about R3.7 billion in costs and we had raised in 2017 3.4 billion as they used that money to, you know, plug these big mistakes that they made and this is really what made the company so difficult. So I think that is just an important point.

**ADV CHASKALSON SC:** I know that Stephan Powell will deal with this in more detail but one of the issues that he will address is that how certain of the companies that EOH had acquired seemed to have a business model that involved corrupt procurement. Can you speak to that at  
20 all?

**MR VAN COLLER:** Yes, I mean – and I am sort of – this is just my summary. When I have a look at everything Stephan and them presented to me, they obviously – or to the board subcommittee, it is quite interesting that very quickly in their investigation they found this small group of

people and the more they broadened it, it was the same. It was almost like someone had taken a big pantehnicon and driven it through a big sugar cane field, it was very easy to follow. It was, you know – and it was the same thing going over and over again and my sense is there were two businesses that were bought.

One of them I think Stephan is giving evidence on. Advocate Powell is giving evidence on, on Wednesday, and that was a company called TSS and it looks like those  
10 practices were imported because the owner of that business, a person called Jehan MacKay, is one of the two architects. If you have a look, him and a person called Ebrahim Laher who bought the SAP business into – not the SAP, SAP licensing business into the business, those is where nearly 96% of all the issues come from and the two of them and some of their direct reports were the people that signed on nearly all of these invoices that had no work done around the teaming agreement.

So it looks like as those businesses came in it then  
20 got – that is, if I had to guess what would happened. I do not – as we cannot follow the money and follow everything, I just have to – that is my summation of it.

**ADV CHASKALSON SC:** Have you – in relation to your investment – I mean, the mandate of your investment committee that now operates, are there any mechanisms in



place in relation to vetting potential acquisitions in that context?

**MR VAN COLLER:** There is – that is a - phew, that is a much bigger – a discussion. I think some of these things around due diligence and, you know, being an ex-banker I was just saying to some of my colleagues there is some basic due diligence that I think needs to be done in an acquisition, when you are lending money, when you are subscribing for shares and it goes around to just some of  
10 the basic controls that I have spoken about, you know, if you had just gone and had a look, does this company have board meetings, can I see the minutes, can I see the board packs, are they quality?

Then you go down to the executive committee, do they have meetings, you know, do they have packs, do they have minutes, what is the quality of those and then move into the things like the risk committee and internal audit and you can very quickly see what is the culture of a company and are they prepared to do these things  
20 especially if they are large companies.

A small company can often, because it is so small you can manage it easily because it is all within your sight, but when you have got 272 legal entities, it is incredibly difficult and unless there is proper process there is always going to be a high probability of some kind

of failure. So I do think that there are some basics that I would hope that investors, who are investing pensioners' money, banks who effectively are licensed by the government to be able to provide loans and savings and using depositors' money to give loans to corporates, they actually run through just a few of these, you know, basic controls.

It is quite interesting now given some of the issues with the auditors, we have just been through a process  
10 with PwC as new auditors and it is very encouraging to see the new processes that they put in place just to make sure that these pillars are in place, segregation of duties, controls are actually there because then, if things happen, they are normally contained but they normally get caught by the systems so they do not get to fester for long periods of time.

If you have a look at our investigation, we started in 2014, there was some of it going on but not a lot, '15, '16 and '17 was probably over 80, 85% of what – when it  
20 just got out of control. If there had just been some process and policies in place you would have controlled it and it would have been able to be in a manner – and in hindsight now, you know, this group of rogue former individuals and the directors at the time nearly destroyed 10 000 people's jobs and, you know, that I think

personally is unforgiveable.

**ADV CHASKALSON SC:** Mr van Coller, I do not have any further questions for you unless there is anything in particular that you would want to emphasise beyond what you have already said, those are really my questions for you.

**MR VAN COLLER:** No, I think my - my last bit, I have done quite a lot on LinkedIn and in the newspaper just around lessons learnt. Just going to the previous  
10 question, I am not going to go through the detail, but I will just run quickly through the sort of five or six things, I think it is important because some of these need to almost form part maybe of a King V code or a best practice code, I do not know, for JSE but I always say businesses are not corrupt, people are and if you allow a few people to do something they will and it is really about culture.

The culture in an organisation is critical and I think when you are lending money, investing money, have a look at the culture, have a look at who is running the  
20 company and do you think that this is a culture you like because culture beats strategy every single day. You can drive a strategy but if it is not - the culture at the top is not one of zero tolerance, there is a problem.

Complex corporate structures, if you cannot understand a company, there is a reason why you cannot

understand it, it is as simple as that. I would not invest there, you know, personally. There is limited governance and compliance, very earlier indicators I have talked enough about that but it is very easy to go and have a look at it.

I think broad independence is absolute critical, especially in a listed company or one that you are doing a lot of work with because if they are not independent, the meetings are not happening properly, you are not getting  
10 the checks and balances.

I have talked about making it easy for whistleblowers. Most people are honest and they are your policemen, make it easy for them and it is a very courageous thing to do and if they do not feel support and valued they will not use it.

I would not use a middleman. The financial sector had this problem, they had to root it out. I see it, you know, quite widely in the services sector. There is a problem, they are using your brand, you do not control  
20 them.

And I suppose, lastly, just to shout out to the whole of corporate South Africa who both, you know, private and public sector. And I want to say they have been brilliant in this process because they could have quite easily just closed our doors and walked on but they have been very

supportive, as long as we did the right thing. Right, it is, you know, if you stand for something you stand for nothing and I think, you know, once you are compromised, if you make one – one little bit of compromise you are eternally compromised and that makes it very difficult and your staff will see when you do that and I think you really need to make sure, as South Africa, that we are accountable for what we are doing because it is in the interests of the country.

10           My point, I suppose the last thing is, I have been quite vocal, it is quite interesting that a few rogue employees can make such a big difference to 10 000 people's lives. The problem is, is that they take the money and they run off and maybe this is a problem with capitalism or the way corporate structure works is the legal entity remains with all the problems even though the money is gone and so the people working in that entity now have to repay all the money that the others stole.

20           So it is – it almost does not feel fair that the new EOH is paying for the past even though it is a different company and, you know, somehow we have to get that right.

          But the fact that EOH has, you know, come through this difficult period so successfully, personally, it has just been the hard work and determination by so many people,

not just the employees but a lot of the new board members who, when I reached out to them, were prepared to put their shoulder to the wheel even though, you know, there was an issue and a smell there or a noise there, some of my executive committee members who were also were not part of, you know, previous management agreed to come even though their knowing it was going to be late nights, weekends and people, you know, trying to be difficult and it is just amazing and it shows you if you just  
10 do the basics right you can actually turn an amazing business around and now that we are well clear of those few dishonest, greedy individuals, I like to call them, we are really looking to move forward.

We have learnt a lot, I mean, I have learnt a lot, even though coming out of 20 years of banking, but just, I suppose, my last bit to, you know, corporate South Africa, it does two to corrupt and as the advocate said in the beginning, you cannot steal from yourself there is always, you know, someone bribing and someone paying the bribe  
20 and it is so easy to blame the government, you know, blame the private sector but in many cases it is the public sector actually making the payments and in some cases, that I found quite disappointing, you know, people say well, we have to do it, it is the way you do business otherwise you do not get it. I think that is nonsense and I

really want to get South African corporate to make this as, you know, a big priority because otherwise we are going to lose the essence of everything we have done.

You know, we need to have zero tolerance. We have seen the effect of the corruption, we have seen in this country over the past decade and it really has an effect on the masses. It steals the very essence of what a lot of people in this country fought for for so long, they fought for equality and, you know, corruption steals this  
10 equality from their fingertips.

We obviously at EOH, at the new EOH now done the best we can, our circumstances, we have promised to continue to focus now solving for our clients, we will continue to assist the authorities through ENS so that they can follow the proper, you know, paper trail and do the rest and, if I may, just a last one indulgence, just a quote from Nelson Mandela who really, to me, gave all South Africans hope for our children and he said:

“For to be free is not merely to cast off one’s  
20 chains but to live in a way that respects and enhances the freedom of others.”

And I think that is all our duty as South Africans at the moment. Thank you very much.

**ADV CHASKALSON SC:** Thank you, Mr van Coller.

**CHAIRPERSON:** Thank you very much, Mr van Coller, for

making yourself available to give evidence before the Commission, we appreciate very much. If a need arises we will ask you to come back but thank you very much and you are now excused.

**MR VAN COLLER:** Thank you, Chair.

**CHAIRPERSON:** Yes, Mr Chaskalson?

**ADV CHASKALSON SC:** Chair, we are in the unfortunate position now because of scheduling difficulties and the rearrangement of Mr Makhubo's evidence that the next  
10 evidence will be on Wednesday which will be Mr Powell's evidence. I apologise for the lost time.

**CHAIRPERSON:** Yes. No, that is fine. We will adjourn then for the day and tomorrow there will be no sitting and then we will resume on Wednesday. We adjourn.

**INQUIRY ADJOURNS TO 25 NOVEMBER 2020**