

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

04 SEPTEMBER 2020

DAY 261



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 04 SEPTEMBER 2020

CHAIRPERSON: Good morning Mr Notshe, good morning everybody.

ADV NOTSHE SC: Good morning Chairperson.

CHAIRPERSON: Hm. Are we ready?

ADV NOTSHE SC: Chairperson we are ready to have the hearing and today Chairperson is the evidence of Mr Vincent Smith.

CHAIRPERSON: Hm.

10 **ADV NOTSHE SC:** And Chairperson recall this – Mr Vincent Smith features in the stream of BOSASA and his evidence is as a result of the evidence of Mr Agrizzi wherein he said that there were – said they met Mr – Mr Smith and then there were some agreements between Mr Smith and Mr Gavin Watson and there were payments made to Mr Smith.

And then there were also repairs that were made at the house of Mr Smith. Mr Smith after filed an affidavit in response to the evidence and the affidavit of Mr Agrizzi
20 and he – Mr Agrizzi likewise although very late filed an affidavit.

Mr Agrizzi's affidavit was filed – unsigned was filed last night and then the signed one I am instructed has just been filed. As a result, it is not in the file before you but it is going to be given to me and then handed up and then we

place it accordingly.

What we have today Chairperson in front of us is BOSASA Bundle 2 and this continues – BOSASA Bundle 2 contains some affidavit – some exhibits. It contains T20 and the one which we dealt with yesterday and it does not feature in these proceedings. And then it will contain once you have admitted the affidavit the evidence of Mr Smith but we will deal with it when – when I will apply for the submission. But so in the bundle the file before you is

10 Bundle – BOSASA Bundle 02.

CHAIRPERSON: Yes. I saw that it also contains correspondence that I would think is really not relevant for the purposes of the hearing so you might wish to reflect on that and for future matters members of the legal team must make sure that every document that is – that is placed before the commission is relevant.

ADV NOTSHE SC: Yes. Chairperson the only problem some of you will see – most of the correspondence is annexures to Mr Vincent Smith’s affidavit.

20 **CHAIRPERSON:** Oh okay well...

ADV NOTSHE SC: So they go in as annexures.

CHAIRPERSON: And if it is a – if it is annexures then you might not – you might not have – be able – you might not be able to do anything with that except that – except that...

ADV NOTSHE SC: Chair for instance you will see – you

will see from ...

CHAIRPERSON: The one at page 0 or 102 comes before Mr Smith's affidavit so it cannot be an annexure. It is a covering letter I think saying here is his affidavit.

ADV NOTSHE SC: Yes.

CHAIRPERSON: But we do not have to go through everyone just as long as you get a chance to apply your mind to the question whether everything that is here is relevant.

10 **ADV NOTSHE SC:** Yes.

CHAIRPERSON: Because there have been times when bundles are put up; you look at the bundle it is full but ultimately only half of the documents.

ADV NOTSHE SC: Yes.

CHAIRPERSON: That are being now referred to so the question is why are the other documents here?

ADV NOTSHE SC: No I get your point. And then it – it can get also confusing when the report has to be written.

CHAIRPERSON: Hm.

20 **ADV NOTSHE SC:** Now when one has to recall whether a certain issue was referred to.

CHAIRPERSON: Ja.

ADV NOTSHE SC: Then does it form part as – is it part of the record or if – by now I have - I understand.

CHAIRPERSON: Yes. So no that is fine. Yes, I think Mr

Agrizzi's evidence with regard to Mr Smith it was Mr Agrizzi's evidence together with that of Mr Le Roux.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Related to three matters. Well one it is that the thrust of Mr Agrizzi's evidence was that for a certain period of time they were trying to get Mr Smith to cooperate with BOSASA I use my own word when I say cooperate so that he could assist BOSASA with regard to certain matters and he was giving them any attention and
10 they had to speak to Mr Cedric Frolick to get Mr Frolick to talk to him and this he said after Mr Frolick had talked to him and I think after some meeting or meetings then Mr Smith according to Mr Agrizzi had a changed attitude towards them and cooperated. And he said that BOSASA gave Mr Smith money I think he said every month and then he said they gave him money for his daughter's studies. And then he said they also installed some security features at his house. I think those are the matters that he – they
20 went to Mr Smith's house to install certain security features. So that is – I think that the sum total of it.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Ja – okay alright.

ADV NOTSHE SC: And if I may add there Chair on the papers the real issue is – the real issue is whether there

were monthly payments because the amounts paid – two amounts paid for the daughter's university fees are admitted and the only issue there is whether it was a loan.

CHAIRPERSON: Ja.

ADV NOTSHE SC: Or it was merely monies given.

CHAIRPERSON: Ja. A bribe.

ADV NOTSHE SC: And then – yes it is a bride.

CHAIRPERSON: Or reward.

ADV NOTSHE SC: No, yes or...

10 **CHAIRPERSON:** Ja.

ADV NOTSHE SC: Or a present.

CHAIRPERSON: Hm.

ADV NOTSHE SC: And the – then insofar as equipment is concerned also there is no dispute there. The only dispute is about the amount of – the value of the equipment that was fitted.

CHAIRPERSON: Yes. Ja okay.

ADV NOTSHE SC: So as – I agree with the Chair that it is almost – the enquiry is almost – the evidence is almost on
20 limited issues.

CHAIRPERSON: Ja. Ja. Okay alright. You said you were ready but I understand that there may be a request for some time before we – some adjournment before we start?

ADV NOTSHE SC: Chair the ...

CHAIRPERSON: Or not.

ADV NOTSHE SC: We – the reason why there was an indication of a short adjournment and time is because the affidavits of Mr Agrizzi and Le Roux were received late and apparently there has not been sufficient time to consult with the client. But the legal representatives of Mr Smith are here and can they address you?

CHAIRPERSON: Ja.

ADV NOTSHE SC: And see what they want.

CHAIRPERSON: Yes they can place themselves on record.

10 **ADV NOTSHE SC:** Yes.

CHAIRPERSON: No, no let him go to the podium. That must be sanitised first.

ADV PHALANE: Morning Chair.

CHAIRPERSON: Good morning.

ADV PHALANE: Chair my name is Moraka Phalane junior counsel for Mr Smith. My leader is Malindi SC.

CHAIRPERSON: Hm.

20 **ADV PHALANE:** Who for reasons of being on duty as an acting Judge is unable to – to be present today? The – Mr Smith is very eager to proceed today.

CHAIRPERSON: Hm.

ADV PHALANE: Although there were documents that have material bearing on today's proceedings that we only received last night and I personally only saw them this morning.

He has however still given us a preliminary indication that he is still eager to – to proceed with the proviso that in the event that any of the documents that were delivered late are to be relied upon we would request a brief recess to apply ourselves to those.

I do not think it will exceed thirty minutes to consider those. But all in all, he is still eager to proceed with today's proceedings.

CHAIRPERSON: Yes. I can – I think it might be better
10 that I give you time or give him time to look at the documents before we start so that when we start it is smooth. We also avoid if we can an arrangement in terms of which he might have to come back and all of that.

We do sometimes just to avoid a witness coming back say we will send written questions and an affidavit can be prepared. But it is not ideal you know but sometimes it can be done. Looking at how narrow the issues are I have no doubt that there is enough time for us to finish with his evidence today.

20 So – because as I understand the position with regard to the payment for the daughter's studies, he does not deny that that payment was made. The only question is whether it was a loan or simply a bribe or reward for what may be seen by – may have been seen by BOSASA as cooperation and him assisting them.

With regard to the security features in his house in his affidavit he seems to accept that that was done although I came across something I think a statement that may have been issued by the ANC on his behalf which suggested that the security features at home were not installed by BOSASA.

But that statement was admitting the money that was paid in regard to the studies of the daughter but saying it was a loan. But it was saying that as far as
10 security features at home that had nothing to do with BOSASA. But obviously if I understood that statement correctly Mr Smith will deal with it. So the issues are quite narrow. So – so I think maybe I should give – give you some time.

We are at quarter past ten. I can give you up to eleven. That gives you forty-five minutes and I guess that should be enough.

ADV PHALANE: More than enough Chair.

CHAIRPERSON: Ja. And then we – we can start at eleven
20 then we will not have a tea break which we normally have at quarter past. We will then just go on.

ADV PHALANE: As you please Chairperson.

CHAIRPERSON: Is that fine?

ADV PHALANE: That is – that is in order Chair.

CHAIRPERSON: Okay alright.

ADV PHALANE: Thank you.

CHAIRPERSON: Alright then we – we are going to adjourn and we will resume at eleven o'clock.

ADV PHALANE: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

HEARING RESUMES

CHAIRPERSON: Are we ready to start?

ADV NOTSHE SC: Chair we are ready to roll.

10 **CHAIRPERSON**: Okay. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR SMITH: Vincent George Smith.

REGISTRAR: Do you have any objections to taking the prescribed oath?

MR SMITH: I do not.

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

CHAIRPERSON: I am sorry. Was that I have?

20 **MR SMITH**: I do not.

CHAIRPERSON: Oh you do not.

MR SMITH: I do not.

CHAIRPERSON: Okay.

MR SMITH: I do not.

CHAIRPERSON: Okay.

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

MR SMITH: 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.

MR SMITH: So help me God.

CHAIRPERSON: Thank you. If you do not have any
10 problem removing the mask that may help Mr Smith. Ja
okay thank you. Thank you. Yes Mr Notshe.

ADV NOTSHE SC: Mr Smith there is in front of you a file and I believe you have gone through it with your legal representatives and the file is BOSASA Bundle 02. You have it in front of you?

MR SMITH: I do Chair.

ADV NOTSHE SC: And what you should do is just go to what is written there is T20. You are on there?

MR SMITH: I do have it yes.

20 **ADV NOTSHE SC:** Mr Smith I think just keep it – or keep the...

CHAIRPERSON: Yes you may keep in on ja.

ADV NOTSHE SC: Keep it on it is going to – now Mr Smith can we take you – what we are going to use when we refer to numbers, we are referring to the black numbers.

MR SMITH: Yes.

ADV NOTSHE SC: It has got nothing to do with race but it is just the...

CHAIRPERSON: Those are the ones on the top left corner of each page.

MR SMITH: Yes.

ADV NOTSHE SC: Now Mr Smith.

CHAIRPERSON: Well actually that is not true because not every document in this bundle has got black numbers I
10 realise now. Those at the beginning do not seem to have but they have nothing to do with Mr Smith. I think all – probably all those that relate to Mr Smith have got the black numbers. But you will just have to make sure Mr Notshe that if you are going to have other documents in this bundle then there must be consistency then they must also have black numbers.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Otherwise these are the documents which they do not seem to relate to Mr Smith might have to go to
20 another bundle. If they were introduced at a time where there was the black numbers were not used.

ADV NOTSHE SC: Which documents are those Chair?

CHAIRPERSON: They relate to Ms Mokonyane.

ADV NOTSHE SC: No those – those documents Chair remember this – they are not - they do not form part of

T30.

CHAIRPERSON: No I am saying you have in this bundle a set of documents that have black numbers and red numbers.

ADV NOTSHE SC: Yes.

CHAIRPERSON: And then you have a set of documents that only have red numbers and not black numbers.

ADV NOTSHE SC: It is the ones relating to Mr Smith?

CHAIRPERSON: Yes. And I am saying that...

10 **ADV NOTSHE SC:** Which ones are those Chair?

CHAIRPERSON: Do you have a file that is different from the one I have?

ADV NOTSHE SC: No I do not. I do not believe.

CHAIRPERSON: Then you should know if we have the same file because the first page relates to NP Mokonyane.

ADV NOTSHE SC: On T30 is the first – is...

CHAIRPERSON: This is the file that is – that is here.

ADV NOTSHE SC: Yes. Is that BOSASA Bundle 2?

CHAIRPERSON: Yes.

20 **ADV NOTSHE SC:** Chair we are not dealing with Ms Mokonyane.

CHAIRPERSON: I know that.

ADV NOTSHE SC: I have taken the witness to...

CHAIRPERSON: That is why I am surprised but I expected you to know because my file must be the same as your file

and the witness' file.

ADV NOTSHE SC: Yes it is the same. If the – the...

CHAIRPERSON: But if you do not have that that means our files are not the same.

ADV NOTSHE SC: They are the same Chair but the...

CHAIRPERSON: But how can they be the same if you do not have at the beginning of the file Ms Mokonyane's documents and I do have.

ADV NOTSHE SC: I have that. But you remember I just...

10 **CHAIRPERSON:** Oh I thought you said you do not have?

ADV NOTSHE SC: No I did not say that Chair.

CHAIRPERSON: Hm.

ADV NOTSHE SC: All I said is that I have referred the witness to – when I – before we adjourned, I referred the Chair to Bundle – BOSASA Bundle 2 then I said to the Chair in it we have – we have T20.1 which we dealt with yesterday. And today we are going to deal with T30 when it is admitted. So today we are not dealing with T20.1.

CHAIRPERSON: I do not think you are listening to me.

20 **ADV NOTSHE SC:** I am listening to you Chair.

CHAIRPERSON: Okay no let me repeat. I know that in this bundle you have documents relating to Mr Smith.

ADV NOTSHE SC: Yes.

CHAIRPERSON: But I am saying you also have documents relating to Ms Mokonyane in the same bundle.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Okay. And you said that with regard to Mr Smith he must know that when you refer to pages – page numbers you will be referring to the black numbers.

ADV NOTSHE SC: Yes.

CHAIRPERSON: And then I then said I realise that not all documents that are in this bundle have got black numbers.

ADV NOTSHE SC: Yes.

CHAIRPERSON: There are those that do not have black
10 numbers at the beginning.

ADV NOTSHE SC: Yes.

CHAIRPERSON: And you asked which documents and I said they relate to Ms Mokonyane.

ADV NOTSHE SC: Yes.

CHAIRPERSON: And I was saying if they are going to be kept in this bundle.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Where there are some documents with red and black numbers then there must be consistency.
20 They must also have black and red numbers. But if that is not going to happen then they should go to another file which will have only the red numbers. That is what I was saying.

ADV NOTSHE SC: That is fine Chair.

CHAIRPERSON: But I thought you were saying you do not

have the Mokonyane ones.

ADV NOTSHE SC: No I have Mokonyane. All I am saying is...

CHAIRPERSON: And do yours also only have red ones – Mokonyane's ones?

ADV NOTSHE SC: Yes.

CHAIRPERSON: Yes. So that be dealt with later. I am just saying if it is in the same file it is going to be confusing if some pages – some documents have got black numbers
10 and red numbers and others only have red numbers. But that can be sorted out later.

ADV NOTSHE SC: No it is fine.

CHAIRPERSON: Ja. Okay alright.

ADV NOTSHE SC: Now Mr Smith can you – in your file there is a dividing written T30.

MR SMITH: I do have it.

ADV NOTSHE SC: And now on that on the black numbers can you then look at page 103; 103?

MR SMITH: I do have that.

20 **ADV NOTSHE SC:** Now there is the affidavit Vincent George Smith you saw – you see that?

MR SMITH: I do Chair.

ADV NOTSHE SC: And then can I ask you then to turn to page 135?

MR SMITH: Yes I am there.

ADV NOTSHE SC: There is a signature above the words – oh sorry above the name Vincent George Smith.

MR SMITH: Yes I see it.

ADV NOTSHE SC: Now whose signature is that?

MR SMITH: That is my signature Chair.

ADV NOTSHE SC: And then go and in the end look at – and is it correct let me put it that way that that document has got annexures and those annexures go to – they go to page 209?

10 **MR SMITH:** Yes I am there Chair.

ADV NOTSHE SC: Now Mr Smith is it correct that from 103 – page 103 to 209 that is your affidavit?

MR SMITH: That is correct Chair.

ADV NOTSHE SC: And you confirm the contents thereof this – that as – as your affidavit?

MR SMITH: I do.

ADV NOTSHE SC: Chair can I apply for leave that this affidavit of Mr Smith be admitted as Exhibit T30 together with annexures?

20 **CHAIRPERSON:** The affidavit of Mr Vincent George Smith appearing from page 103 is admitted and together with its annexures and will be marked as Exhibit T30.

ADV NOTSHE SC: Thank you Chair. Now Mr Smith this affidavit – your affidavit and your appearance today before this commission was as a result of the affidavit and the

evidence of Mr Agrizzi, is that correct?

MR SMITH: That is correct Chair.

ADV NOTSHE SC: And then you also had access and you responded to the affidavit of Mr Richard Le Roux?

MR SMITH: I did Chair.

ADV NOTSHE SC: And you start with your affidavit referring to some issues that there were before between your attorneys and the commission but on page 117 – page 117.

10 **MR SMITH:** Yes Sir.

ADV NOTSHE SC: On section C of your affidavit you deal with what you call financial assistance by business to Civil Servants and Activists. Can you in your own words tell the Chairperson what you – what you are saying there?

MR SMITH: Indeed.

ADV NOTSHE SC: And Mr Smith you are free to look and read from your affidavit if you so wish.

MR SMITH: No I will attempt to ...

CHAIRPERSON: Ja it is...

20 **MR SMITH:** To talk to it Chair.

CHAIRPERSON: It is much better if you talk.

MR SMITH: Yes.

CHAIRPERSON: And only refer to the affidavit to refresh your memory.

MR SMITH: Chair I was – I was attempting to

contextualise not only my affidavit but the situation in the country post the unbanning of the ANC.

CHAIRPERSON: hm.

MR SMITH: And I state there Chair that because many of our comrades came from outside and were unable to survive including those inside the country that were on the run.

CHAIRPERSON: Hm.

MR SMITH: It became clear that business or in fact
10 business adopted what we call the social – corporate social investments programme.

CHAIRPERSON: Hm.

MR SMITH: I suppose to assist people. And I think the intentions at the time were very noble that they assisted those that came from outside and those that were inside.

CHAIRPERSON: Hm.

MR SMITH: And many of them Chair and I hate using political parlance but we – we refer to them as the patriotic bourgeoisie in other words businesses that were – were
20 favourable to us.

CHAIRPERSON: Hm.

MR SMITH: And they assisted us in many ways in getting us to school, getting us education, getting us houses and so on.

CHAIRPERSON: Hm.

MR SMITH: And I believe that unintentionally could have been the beginning of this conflictual relationship between business and activists through politicians.

CHAIRPERSON: Hm.

MR SMITH: So what I am saying Chair that is not unique to post 1994. It was in fact as a result of the situation that we found ourselves in after the unbanning.

CHAIRPERSON: Hm.

MR SMITH: So that is the context in which I was trying to lay it Chairperson.

ADV NOTSHE SC: If we come to the case at hand involving BOSASA when did you – you say in your affidavit you met Mr Gavin Watson around about 1990. Was it part of what you have just testified about?

MR SMITH: Indeed, it was part of that Chair. And I raise it to illustrate that my relationship with the late Gavin Watson preceded my election to Parliament.

CHAIRPERSON: Hm.

MR SMITH: At the time of the unbanning the ANC had a program where we had to rebuild the structures in the country.

CHAIRPERSON: Hm.

MR SMITH: And also, to develop communities. And the way we did that was to approach friendly business people if I could put it that way. And one of those friendly

business people that we approach was the late Gavin Watson because he was a comrade. And he assisted us in many, many ways. So my relationship with Mr Watson – the late Mr Watson precedes my election as a Public Representative in 1994. And I wanted to put that in context and I will continue referring to that Chair so that people understand that it was not a Public Representative relationship. Thanks Chair.

ADV NOTSHE SC: Now at that time was Mr Watson having
10 a relationship with BOSASA? Did you know anything about that? What his relationship with BOSASA?

MR SMITH: No I did not have the intricate details of what his relationship was at BOSASA but I did know that Mr Watson was a business man. I did know Mr Watson was a comrade and I did know that every time we sought assistance, he never hesitated to assist us.

CHAIRPERSON: Hm.

ADV NOTSHE SC: Now when you were elected as a
20 Member of Parliament what Portfolio Committee did you occupy – were you part of?

MR SMITH: I – I was elected as a Member of Parliament in 1999 and I served in the Portfolio or the Standing Committee of Public Accounts. And I think I served in the Portfolio Committee of Public Enterprises Chair.

CHAIRPERSON: Hm.

ADV NOTSHE SC: And then – did you any stage serve in the Public – in the Portfolio Committee of Correctional Services?

MR SMITH: Yes, I did in the third parliament. In other words, from 2009 to 2014, I was the Chairperson for the Portfolio Committee on Correctional Services.

ADV NOTSHE SC: Now if I understand the work of the Portfolio Committee is, the work of the parliament sort of supervising, overseeing the work of the executive. Is that
10 correct?

MR SMITH: That is correct, Chair.

ADV NOTSHE SC: Now on a day-to-day basis of those committees, what do they do?

MR SMITH: We did many things, Chair. But in essence, I was asked to, as in say, do oversight over the Portfolio Committee. Over the department. I beg your pardon, Chairperson.

So we would ask questions of the department. We would engage with them. We would also engage with stakeholders
20 so that we, as the members of parliament, were clued up with the subject matter when it was Correctional Services or Justice or whatever the case was.

But that in essence was our work. And also, of course, passing laws and passing the budget.

ADV NOTSHE SC: And if I understand the work and

through part of your affidavit, the Portfolio Committees had the power to call the officials of the department to appear before you?

MR SMITH: Indeed we had that power. That was our core business to interact with the departments that we were responsible for.

ADV NOTSHE SC: And in that process, you would pose questions and investigate any that concern you regarding the rank of the department.

10 **MR SMITH:** Yes, we were able to do that. We had the power to do that.

ADV NOTSHE SC: And you would also question the issues of the award of tenders and if there is any sense of irregularities, you would raise that with the departments. Am I correct?

MR SMITH: Well, we would raise it with the department not because it came through us Chairperson. The way it worked is, that the Auditor General in his annual reports, if he picked up any irregularities, would be in the annual report.

20 And on the basis of the information of the annual report, we were at liberty to say but the Auditor General says that there was this and that, an irregularity, but it was not the core business of the Portfolio Committee.

That was a function of the Auditor General but there was nothing stopping us from saying that the Auditor General has

indicated: Please, explain Mr DG.

CHAIRPERSON: Okay. Mr Notshe is asking you on an issue that might be important in the context of your evidence but it is also important for other parts of the job of the Commission. And I want to take this opportunity to look at that before he goes into the meat of the today's evidence.

Now you have just said that was not part of our function, but we had the power to ask, this is what the Auditor General says but I did not understand what it is that you say was not
10 part of your function.

MR SMITH: Chair, what was not part of our function was to interrogate or to do the initial investigations of irregular unauthorised, that type of thing. That was the speciality of the Auditor General in his audits.

CHAIRPERSON: Okay.

MR SMITH: And on an annual basis, the department was obliged to publish annual report and that annual report was the Auditor General's report.

CHAIRPERSON: Yes, yes.

20 **MR SMITH:** So when we called the department, we were at liberty to look at any matters in the annual report which included the Auditor General's report. And if there were any red flags that the Auditor General has raised, we would ask the department to explain that to us. Yes, Chair.

CHAIRPERSON: H'm. H'm. And in terms of what you

could do – and again I am just going to something that is important for different reasons for the Commission – in terms of what you could do as the Portfolio Committee, if you found that you did not get satisfactory answers from the department or from the relevant minister or the DG or if you are from the view that things were getting out of hand, what is that, as the Portfolio Committee, you could do about this situation?

In other words, did your powers end with just talking or
10 would there be some concrete action that would follow if either the relevant minister or the DG and his or her officials were effectively refusing to do the right something about sorting out certain things in the department?

MR SMITH: The reality of the time Chair was that parliament only had powers of recommendation. We could not instruct the executive what to do or what not to do because of the doctrine of separation of powers as you are aware.

But I can now Chair say to you that in my other life, post
20 2019, I chaired the Committee on the Auditor General and the past... in 2013 or 2012, the Public Audit Act which gives the Auditor General significant powers to do the things you are talking about, including referring matters to law enforcement agencies which was not prior to the Public Audit Act being amended Chair.

So at the time, ours was just to raise the red flag but it was up to the department and the political authority to fix it up.

CHAIRPERSON: Yes. You may or you may not be able to express a view on this but I am going to put it. It seems to me that constitutionally one of the things that parliament can do in a situation where a Portfolio Committee are really unhappy how certain things are handled in a particular department, say Correctional Services, and they have called
10 the Director General and then there is this fight with the answers, they have called the minister, they are not satisfied but they can see that there are real problems.

It seems to me that the committee probably can report to parliament, to National Assemble and the National Assemble can, you know, deal with the minister in terms of him accounting in the National Assemble.

But ultimately, the parliament could say: We are going to pass a vote of no-confidence in the president if the president does not get this minister to fix this or will... we
20 will pass a vote of no-confidence in the cabinet because it looks like you can... parliament can pass a vote of no-confidence in the president or in the cabinet.

If it passes a vote of no-confidence in the cabinet, that means they do not have issues with the president. They just have issues with his cabinet. And then he must reconstitute

his cabinet.

But parliament can also pass a vote of no-confidence in the president and his cabinet. Obviously, that is quite drastic, but it seems to me that if there are really things that are going wrong in the government department and the Portfolio Committee or parliament have called the officials, the DG and the minister and have given them enough time to fix things and they are not fixing them, and they have asked the president to make sure that these things goes by the
10 minister and nothing is happening, that is an option that parliament always has. Is that something you have a view on?

MR SMITH: Yes, Chairperson I do. I agree with you. More than that Chairperson, we also and when I say we, I mean parliament, also on an annual basis approves the budget. So parliament, theoretically, could not approve that budget.

The difficulty with that Chair, is that, you will then be punishing South Africans who are the beneficiaries of whatever that service is at the expense of an official or two
20 or even a cabinet minister who might not be doing his job.

So yes, you could deny him that budget but in reality, the real casualties will be the South Africans. So it is a very difficult decision to make but theoretically it is possible.

CHAIRPERSON: It can be done. I guess, that if you have before you as parliament a real case of a stubborn

department, a stubborn minister, a stubborn DG...

Let us say there is rampant corruption and really nothing of any significance is being done, even after the relevant Portfolio Committee has been saying: Sort this out. Sort this out. And nothing is being done and they have run out of patience.

They could say: Well, as long as you are the minister of this department, we are not going to approve this because we have no confidence in you. We are not prepared to
10 listen. You cannot manage.

But if the president wants this to be passed, then he will have to change and get another minister because you have described that you are not prepared to listen. You are incompetent. So does that sound like something that would be an option?

MR SMITH: It does sound like that, Chair.

CHAIRPERSON: In other words, you, as parliament, the idea would not be that you do not want to pass the budget completely but you want to exercise your power in the
20 interest of the people.

Because you are saying, it is not in the interest of the people of South Africa that this minister continues in this portfolio because of A, B, C, D.

And you have clear evidence. And you say: We have even spoken to the president and nothing is being done. So

actually, allowing passing the budget so that this minister continuous with its... actually, going to... it cannot be in the interest of the people.

MR SMITH: Chairperson, there is a Public Finance Management Act that is very clear on how public funds must be spend and the consequences thereof. Admittedly, that was not implemented to the full. Had it been implemented to the full, we would have had less... half of the problems.

But secondly, Chair, as I have indicated. We have the
10 concern that parliament has given the Auditor General extensive powers post 2013 where even the Auditor General has the ability to raise these matters with the relevant law enforcement agencies.

So I think that will be their deterrent and no minister will in future him not found not be wanting, to be referred to the SIU or whatever it may be.

So I believe it is this, stepping in the right direction and once that kicks in, it is a year old when we passed the glass with my last year there.

20 But I think we will be able to see the fruits of that new Public Audit Act and the powers of the Auditor General, Chair.

CHAIRPERSON: No, that is fine. I will allow Mr Notshe to continue. But I just say, I have no doubt that the increase of the powers of the Auditor General in this context is really a

step in the right direction.

But my concern is that it would appear that a lot of people in the country do not really care who has what powers when it comes to wrongdoing.

I mean, if you think about the fact that this Commission has been sitting since 2018, hearing evidence of wrongdoing and corruption and so on and so on, you would not think that the kind of corruption that we are told about in regard to PPE would be happening.

10 But it is like you say, nothing will happen. So we can just continue as normal, you know. Nothing will happen and that may well be because they look around and say: What has happened to who? We would do things and nothing ever happens. So we will do them. Nothing will happen.

So I agree that it is a step in the right direction but it is quite concerning. I mean, if what one reads in the media about PPE corruption, it is frightening and it happens at a time when there is a Commission looking at corruption.

20 So it is like they say: Nothing will happen. I mean, it happens at a time when we have a lot of law enforcement agencies who were supposed to be specialising and dealing in corruption. But people just do not care.

But anyway. But thank you for your views in regard to this aspect that I wanted to explore with you. Thank you, Mr Notshe. You may continue.

ADV NOTSHE SC: Just to be specific. Just complete what the Chair asked you to do, just to give a sort of an overview. What is the role of the Portfolio Committee insofar as the approval of the appropriation bills? The appropriation of the budget of the department, what is the role of the Portfolio Committees?

MR SMITH: Well, initially, the department would present its annual strategic plan and its proposed budget to the Portfolio Committee in the first instance.

10 It is there where the real work gets done, where the Portfolio Committee will interrogate the department, trying to understand what it is that these parties were going to buy or do.

If the Portfolio Committee thereafter writes a report to parliament, in other words, 11 of the Portfolio Committees would write a report to the 400, saying: We have interrogated Department X and in our view, we think that this budget is appropriate.

20 Parliament then has a second bite as a body when the Minister of Finance presents his budget to then approve the overall budget plus the various departmental budgets.

So there are two bites of the cherry. One at the Portfolio Committee level and one at the National Assembly level, Chair.

ADV NOTSHE SC: And you say at that level, at the

Portfolio level, the Portfolio Committee can then report to parliament that this department has respond to Item X and therefore Item X should either be reduced or either not be approved?

MR SMITH: Indeed, we do that, Chair. The way it works in reality is that the minister would... there would be a debate on the budget. The minister would present the budget and what it is what he or she hopes to achieve.

And members of the Portfolio Committee in response to
10 the minister's input would then be able to raise the issues that we have raised.

You asking for X Mr Minister or Ms Minister but this is what is happening at the department. So all members of the committee being able to respond to the proposals that the minister is putting and that is how the process works in parliament.

ADV NOTSHE SC: I see. Now Mr Smith, let us deal with the matter at hand. And you say in your evidence and in your affidavit and Mr Agrizzi also confirms this, that is the
20 first you met him was when he came to the parliament offices, and who brought him to the offices?

MR SMITH: In terms of who brought him to my offices, specifically was... in fact, he never came to my offices in... but parliament was facilitated by the Chairs of Chair, Mr Frolick who then indicated that there was a delegation that

wanted to see me. And at that point, I went to see them at a venue that Mr Frolick had arranged with the delegation.

ADV NOTSHE SC: Can you just tell the Commission what is this Chairs of Chair? What does that mean? What is that title?

MR SMITH: Portfolio Committees have chairpersons, various chairpersons but there is an individual who is responsible for all Portfolio Committees. So he is the chairperson of those who pass the chairpersons. So he was
10 overall in charge of the work of Portfolio Committees if I can put it that way.

ADV NOTSHE SC: From ...[intervenes]

CHAIRPERSON: Yes. Does that mean that there is a forum which consists of chairpersons of various Portfolio Committees and he is, therefore, the chair of that forum or there is not a formal forum?

MR SMITH: There is what we used to call the meeting of the Chair of Chairs. Once the... but I do not know what the irregularity was and the Chair of Chairs decided over that
20 meeting.

CHAIRPERSON: Yes.

MR SMITH: Where all chairpersons of committees were all in attendance.

CHAIRPERSON: Okay.

ADV NOTSHE SC: Do you remember the year when... it is

not clear on the affidavit, the year when this delegation was brought to you?

MR SMITH: Yes, I remember. The year was 2009. I was a little chairperson in 2009 and we really started our work towards the end of 2009.

And these... or this delegation was probably one of the first two or three stakeholders who had requested to have a meeting with me in order to introduce themselves to the new chairperson. So that was in 2009. In 2009, Chairperson.

10 **CHAIRPERSON:** You referred to the Chair of Chairs. Was that Mr Frolick at that stage or was that somebody else?

MR SMITH: I am not sure. In 2009, I am not sure but I do know that towards the end Mr Frolick was the chair. But you know I am not sure who was the chair.

CHAIRPERSON: I am referring to the person that you said that brought them, Mr Agrizzi and whoever to you or who said to you that there is this delegation. I thought you said it was the Chair of Chairs and I am asking whether that was Mr Frolick or that was somebody else?

20 **MR SMITH:** The point I am making Chairperson, it was Mr Frolick in terms of the human being.

CHAIRPERSON: Yes.

MR SMITH: But was he the Chair of Chairs at that point or was he not the chair, I am not sure.

CHAIRPERSON: Okay, okay.

ADV NOTSHE SC: Now, you met this delegation and it was Mr Agrizzi and Mr Njenje. Is that right? And it became clear, they introduced themselves as from BOSASA. Is that right?

MR SMITH: That is correct.

ADV NOTSHE SC: Now did the name BOSASA ring a bell to you at that stage?

MR SMITH: I beg your pardon?

ADV NOTSHE SC: Did the name of BOSASA as a company rang a bell to you at that stage?

10 **MR SMITH:** It rang a bell to me to the extent that I knew that Mr Watson was involved because BOSASA had a relationship with him but I was primarily in the Portfolio Committee and I really did not, at that point, get to grips with what it is with what they were providing or not providing to the department. So, yes, I knew the name BOSASA by virtue of my relationship with the late Gavin Watson.

ADV NOTSHE SC: Now ...[intervenes]

CHAIRPERSON: I am sorry, Mr Notshe. Going back to Mr Frolick. His role in introducing, if that is what he did, the
20 BOSASA delegation or mentioning to you that there is this delegation to wants to see you.

Are you able to say whether there was a role he had in parliament that might have made it understandable that he is the one who brought them to you.

For example, if he was Chair of Chairs, maybe it was

because you were the chairperson of this committee. So you were a member of the Chair of Chairs Forum, if you know what I mean?

But if he was simple a member of parliament and no special role, do you know whether his bringing them to you, might simple be because he bumped into them in the passage and they said: We are looking for Mr Smith's office. And he said: Okay, I will take you there. Or it might be because of some special role that he had at that time in
10 parliament.

MR SMITH: I do not have the answer to that. I do not know that, Chair.

CHAIRPERSON: Ja, you do not know.

MR SMITH: Ja, Chair.

CHAIRPERSON: Your impression at that time, was it like, he bumped into them or you cannot remember?

MR SMITH: Chair, if he was the Chair of Chairs at the time ...[intervenes]

CHAIRPERSON: Yes.

20 **MR SMITH:** ...I could understand that he wants to make the committees or parliament work better.

CHAIRPERSON: Yes, yes.

MR SMITH: Ja, if he was the Chair of Chairs at the time.

CHAIRPERSON: Yes, yes.

MR SMITH: As I say, I am not sure what portfolio he held at

the time.

CHAIRPERSON: Yes, yes.

MR SMITH: But other than that, I am afraid I do not know.

CHAIRPERSON: Yes, yes. Okay that is fine. Mr Notshe.

ADV NOTSHE SC: Now can you remember what part or the month in 2009 when they were brought to you?

MR SMITH: I beg your pardon, sir?

ADV NOTSHE SC: Do you remember what month of 2009 was this delegation introduced to you?

10 **MR SMITH:** No, I do not know. What month?

ADV NOTSHE SC: Yes.

MR SMITH: No, I do not.

ADV NOTSHE SC: And I understand it, that time in 2009, you were the Chairperson of a Portfolio Committee of Correctional Services?

MR SMITH: I was the Chair of the Portfolio Committee of Correctional Services. That is correct.

20 **ADV NOTSHE SC:** Yes. The reason why I am referring, asking you about the month is this. If you just turn to page 241?

MR SMITH: 241?

ADV NOTSHE SC: 241, ja. The one with the black numbers.

MR SMITH: Yes, sir. I am there, Chair.

ADV NOTSHE SC: Thank you. Now these are the minutes

of the Portfolio Committee meeting of the 14th of October 2009. Do you see that?

MR SMITH: I do, Chair.

ADV NOTSHE SC: Now if you turn... if you will be so kind as to turn the page to this items that starts 243? Item 3.3.

MR SMITH: Yes, Chair?

ADV NOTSHE SC: Well, it deals with nutritional services.

MR SMITH: I see that.

ADV NOTSHE SC: Now if you go over the page to 244. It
10 reads... I just want to read the minutes. It says:

“Mr Selfie noted that the latest BOSASA contract which was essentially a continuation of the earlier one costed the DCS...

I suppose that is the Department of Correctional Services...

“...R 838.3 million. This award had resulted in the transfer of then National Commissioner of Sports and Recreation Department.

BOSASA has been awarded the contract despite
20 being under investigation by the Special Investigation Unit.

According to the IS report, that still had to be presented to the committee, the SIU has uncovered evidence of corruption and/of the supply and demand tender specification.

The SIU recommended significant recoveries and seizures of assets and has referred to the matter to the National Prosecuting Authority, NPA, to sought clarity on how, despite the company having being under investigation by a state institution, the DCS did a contract with them again...”

So what I am trying to say is, we know from this minute, but in October the issues of corruption by BOSASA had risen and had been voiced in the Portfolio Committee.

10 **MR SMITH**: That is correct, Chair.

ADV NOTSHE SC: So when you met these people from BOSASA, had you already seen this report?

MR SMITH: Again, Chair I am not sure when we met them but chances are that we met them before we saw this report. This is the activity of the Portfolio Committee. My recollection is that most stakeholders wanted to meet or to introduce themselves to the chairs as soon as possible after.

And I think we... well, I was elected as a chairperson roundabout July. So if these minutes are in October, it would
20 probably be after the initial attempt to meet with me.

ADV NOTSHE SC: Now I am referring you to this minute because the evidence of Mr Agrizzi is that BOSASA was having a problem regarding allegations of corruption. So the suggestion was that an issue... they had to talk to you so that the noise can come down. And here it is clear that there

was an issue about the corruption of BOSASA. Do you see that?

MR SMITH: I do see that, Chair.

ADV NOTSHE SC: So when you make ...[intervenes]

CHAIRPERSON: Oh, I am sorry. Just ask?

ADV NOTSHE SC: So when you met them, did you know that these are the people who are accused of corruption?

MR SMITH: Chair, I did not meet them. Let me clarify that point. Mr Frolick brought me to the room where they were
10 sitting and because I was very uncomfortable with meeting them, I thought it was an ambush to use my own words.

I had no exchange with them. So, no I did not meet with them in terms of whatever. I think that at the end of the day, they just dropped a brochure with me. And that meeting lasted one minute, it was a long time.

CHAIRPERSON: Yes, because they did not make any appointment?

MR SMITH: Yes, Chair they have not made any appointment. And even if they had made an appointment, at
20 the time, I would have refused it because I was not up to speed with the workings and I had refused all other stakeholders until I got to grips with this.

CHAIRPERSON: Yes.

MR SMITH: So had they made an appointment, they would not have the opportunity to see me.

CHAIRPERSON: Yes.

MR SMITH: Because in principle, I was not aware... I was not up to speed with the workings of the department.

CHAIRPERSON: Yes, okay.

ADV NOTSHE SC: And in the documents, we have with the Commission, starting... going further to page 251.

MR SMITH: 251?

ADV NOTSHE SC: 251, yes.

CHAIRPERSON: I am sorry, Mr Notshe. Are these minutes
10 standalone documents or are they annexures to some affidavits?

ADV NOTSHE SC: No, no, no. They are standalone documents, Chair.

CHAIRPERSON: Because they will have to be admitted as exhibits in their own right if they are standalone.

ADV NOTSHE SC: Understand, Chair. They are standing alone. And Chair, you... Chair, can I... can we then... well, let me deal with them and them and of the minutes.

CHAIRPERSON: Ja, okay alright.

20 **ADV NOTSHE SC:** And then I will ask for the admission and then I will ask for an appropriate number.

CHAIRPERSON: Yes.

ADV NOTSHE SC: If it suits you. If I can just deal with them now?

CHAIRPERSON: Yes, that is fine.

ADV NOTSHE SC: Mr Smith, what I will do is, I do not want to waste time on these minutes but starting from... remember the first page I referred you was page ...[intervenes]

CHAIRPERSON: Well, what of course Mr Smith can do because I see it would appear, he signed them, is to confirm that they are minutes of the Portfolio Committee of Correctional Services relating to the meeting of that committee of the 14th of October 2009, if he is able to confirm that.

10 **ADV NOTSHE SC:** On page 250...

MR SMITH: Yes, sir.

ADV NOTSHE SC: It seems as if this is the confirmation of the minutes of the meeting of the 14 October, is that correct?

MR SMITH: That is correct, Chairperson.

CHAIRPERSON: And that is your signature above your name.

MR SMITH: That is correct, Chairperson.

20 **CHAIRPERSON:** Yes, okay. I think that is the appropriate time, Mr Notshe, to tell me what I must admit it as or if you are not ready then you can remember later on.

ADV NOTSHE SC: I will remember late on, I just need to discuss it with the records people but I will make a note of it.

CHAIRPERSON: Ja, okay.

ADV NOTSHE SC: Chair because my impression is that this can be admitted as T31 but that I just want to confirm it, let me confirm with...

CHAIRPERSON: Okay.

ADV NOTSHE SC: Can I do what, Chair, you suggested with the other hearing that I sit with these records people, we give the numbers to these and then one morning, before any hearing, I then come before you and then put on record what numbers were placed.

10 **CHAIRPERSON:** Well, I thought that that was not an ideal arrangement but we were forced into it. If we can, I was hoping that by the time at least at some stage we can – you can say what exhibit it should be. There is no reason why you would need to talk to the record people because – or, I think, as long as you know, which one is the first exhibit and which one is the next and we can deal – we can give them whatever exhibit numbers as long as the exhibit numbers will not cause confusion in terms of two documents sharing an exhibit number.

20 **ADV NOTSHE SC:** Yes.

CHAIRPERSON: But maybe during the lunch break you can apply your mind.

ADV NOTSHE SC: Yes, no I will. I will, Chair.

CHAIRPERSON: Alright, then let us continue.

ADV NOTSHE SC: And then just ...[intervenes]

CHAIRPERSON: These minutes then you will hopefully after lunch you can have them admitted.

ADV NOTSHE SC: No, that is fine.

CHAIRPERSON: Ja.

ADV NOTSHE SC: Mr Smith and then turn to page 251.

MR SMITH: I am there, Chair.

ADV NOTSHE SC: And this is a meeting – this is the minutes of the meeting of the Portfolio Committee, again Correctional Services, and it is dated – the minutes are
10 dated 17 November 2009.

MR SMITH: That is correct, Chairperson.

ADV NOTSHE SC: And you were the Chairperson of that committee meeting.

MR SMITH: I was, Chair.

ADV NOTSHE SC: Now this meeting again on page – if you look at page 151.

MR SMITH: 151?

CHAIRPERSON: 251 or 151?

ADV NOTSHE SC: I am so sorry, sorry, 254, I beg your
20 pardon.

CHAIRPERSON: 254.

ADV NOTSHE SC: 254, I beg your pardon.

CHAIRPERSON: And this is a different meeting from the meeting of the minutes?

ADV NOTSHE SC: It is a different meeting.

CHAIRPERSON: Oh.

ADV NOTSHE SC: It is a different meeting from the other.

CHAIRPERSON: Do we have a date of the meeting in the document somewhere?

ADV NOTSHE SC: It is at 251, Chair, at the top is the meeting of the 17th.

CHAIRPERSON: 251 or 254?

ADV NOTSHE SC: No, 251 is where the minutes begin.

CHAIRPERSON: Oh, okay. Oh, this is 17 November?

10 **ADV NOTSHE SC:** Yes.

CHAIRPERSON: The other one was October.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Okay, alright. So you said now we must go to ...[intervenes]

ADV NOTSHE SC: Actually, Chair, you will see, sorry, you will see that just the previous page at 250. 250, I think at the beginning of the meeting which starts at 251, it confirmed the minutes of the previous meeting. If you look at 250, 250 is ...[intervenes]

20 **CHAIRPERSON:** 250...

ADV NOTSHE SC: Where Mr Smith signs.

CHAIRPERSON: Yes, that says 17 November but that is not the date of the actual meeting, the date was [inaudible – speaking simultaneously]

ADV NOTSHE SC: It is the date of the confirmation.

CHAIRPERSON: It is 14 October.

ADV NOTSHE SC: Yes. All I am referring you, Chair, is that the minutes ...[intervenes]

CHAIRPERSON: It is the date when he signed.

ADV NOTSHE SC: When he confirmed the minutes.

CHAIRPERSON: When he signed.

ADV NOTSHE SC: When he confirmed it as the minutes, the meetings always say they confirm the minutes of ...[intervenes]

10 **CHAIRPERSON:** At the next meeting, yes.

ADV NOTSHE SC: Of the previous meeting at the next meeting.

CHAIRPERSON: Yes. No, that is fine, but ...[intervenes]

ADV NOTSHE SC: The next meeting was on the 17th of ...[intervenes]

CHAIRPERSON: 251 does reflect 17 November.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Ja, okay. You said we must go to 254, is that right?

20 **ADV NOTSHE SC:** 254, yes.

CHAIRPERSON: Yes.

ADV NOTSHE SC: Is it correct, Mr Smith, if you look at 254 item 3.3. Again, the issue of the investigation of BOSASA by SIU is raised.

MR SMITH: That is correct, Chairperson.

ADV NOTSHE SC: And if you look at 258, page 258, in February 2003, you then confirmed the minutes, these minutes as the correct minutes of that meeting.

MR SMITH: Yes, that is correct.

ADV NOTSHE SC: So we know now that in 2009 already the issue of the corruption in BOSASA had been raised and it had been raised in the Portfolio Committee and we know now that these people were brought to you, a delegation from BOSASA, when there was this cloud hanging over
10 BOSASA.

MR SMITH: That is correct, Chair.

ADV NOTSHE SC: Can you just tell the Chair do you know whether Mr Frolick would have been privy, would have known these minutes and the discussion of Portfolio Committee regarding the allegations against BOSASA?

MR SMITH: No, I am not sure that Mr Frolick could have known about it, Chair, because there was no obligation of Portfolio Committees to submit their minutes to anybody else, it was our minutes. So it is possible that Mr Frolick
20 never had sight.

ADV NOTSHE SC: Yes. And there is also in 259, page 259.

MR SMITH: Yes.

CHAIRPERSON: Before 259, I am sorry, Mr Notshe and Mr Vincent Smith, I see that at 254, 3.3 where it says:

“Similarities between 2004 and 2008 nutrition contracts Mr Selfe...”

It says:

“Mr Selfe thanked the SIU for its work and agreed that the presentation was one of the most shocking he has had since becoming a member. The revelations came at the end of a long saga spanning at least five years and he was pleased that there was some progress. He said that everyone knew who the companies at the centre of the investigation were and that therefore there was “no point in speaking”.

I just thought that might be important to say what is the picture that the committee got out of the presentation of the SIU at least in regard to one member of the committee. I seem that the picture that was presented by the SIU to the committee was one that was shocking to him.

MR SMITH: Indeed it was, Chair.

CHAIRPERSON: Yes.

20 **MR SMITH:** Just to put it into context.

CHAIRPERSON: Yes.

MR SMITH: The beginning of the investigation happened probably around about 2004/2005 before the current term of the Portfolio Committee.

CHAIRPERSON: Yes.

MR SMITH: Mr Selfe had been a member of the previous Portfolio Committee.

CHAIRPERSON: Yes.

MR SMITH: So he had institutional memory.

CHAIRPERSON: Yes, yes.

MR SMITH: Thus he says it is the most shocking one.

CHAIRPERSON: Yes.

MR SMITH: But regardless he had institutional memory, even the report itself when it came to us was a very
10 worrisome report, Chairperson.

CHAIRPERSON: Yes.

MR SMITH: And all of us in the Portfolio Committee unambiguously agreed with that position.

CHAIRPERSON: Okay, thank you.

ADV NOTSHE SC: Now to move on, Mr Smith, to page 259 and here is the minutes of the meeting of the same Portfolio Committee on the 13 October 2010 and if one looks at the ...[intervenes]

CHAIRPERSON: I am sorry, what page did you say we
20 must go to?

ADV NOTSHE SC: 259, Chair.

CHAIRPERSON: Okay.

ADV NOTSHE SC: Look at page 259, you look at the members of the committee, it seems as if ...[intervenes]

CHAIRPERSON: I am sorry, this is now, just to identify

the document, this is now a meeting of the Portfolio Committee o Correctional Services on the 13 October 2010, is that right?

ADV NOTSHE SC: Yes, Chair, yes.

CHAIRPERSON: Okay, continue.

ADV NOTSHE SC: And, Chair and Mr Smith, it seems as if you were still the Chairperson of that committee.

MR SMITH: Indeed, I was a Chairperson, Chair. My Chairpersonship ran from 2009 to 2014, it is a five year
10 term.

ADV NOTSHE SC: I see. And again – but let us just look at page 270. There is - the minutes are not signed but you have had a look at the minutes, do you confirm is there anything which you will say this would not be minutes of the meeting?

MR SMITH: I am not sure why they were not signed, Chair, but having looked at them and giving them a cursory glance it was in fact a true reflection of the minutes. The committee secretary at the time was very efficient, so I
20 have no reason to believe that it would have been a misrepresentation.

ADV NOTSHE SC: And also again in this – in 2010, the issue of BOSASA is raised and on page 261 there is Mr Selfe who refers to Royal Sechaba Holdings claim but then:

“At the discussion Ms Ngwenya thought it

necessary....”

I am reading the minutes.

“Ms Ngwenya thought it necessary for BOSASA the company in favour of whom Royal Sechaba had allegedly been disqualified to also appear before the BOSASA.”

So the committee - and then, over the page:

10 “BOSASA has over the past years received billions from its contracts with DCS. The committee approved the DCS budget each year yet knew nothing of this company which is such a major recipient of that allocation.”

CHAIRPERSON: I am sorry, Mr Notshe, I missed – did not hear what page you are reading at.

ADV NOTSHE SC: I am on page 262, Chair.

CHAIRPERSON: 262?

ADV NOTSHE SC: Yes.

CHAIRPERSON: Okay, alright.

MR SMITH: Yes, Chair.

20 **ADV NOTSHE SC:** Am I right?

MR SMITH: Yes, no, I was looking at the red one, it is right, yes.

ADV NOTSHE SC: So this issue of BOSASA is raised again. And this is – what is important for me is the fact that Ms Ngwenya, she says look, we have need, we do not

know about this company yet billions of rands have been awarded to this company and on a budget that we have approved. Do you see that?

MR SMITH: Yes.

ADV NOTSHE SC: Now if we go over the page – I have taken you to where it is not signed but you confirmed – you do confirm the minutes.

MR SMITH: I did.

ADV NOTSHE SC: But let us go to page 271. Now these
10 are the minutes of the Portfolio Committee of 18 October 2011 and you were still the Chair at that time.

MR SMITH: That is correct, Chairperson.

ADV NOTSHE SC: And then again if we look at the minutes, the issue of BOSASA is again raised in the minutes.

CHAIRPERSON: At what page are you?

ADV NOTSHE SC: On page 272 and at paragraph 3.2:

20 “DCS reported that the nutrition contract with BOSASA company which will expire – will expire at the end of 2012. DCS should provide the committee with measures in place to ensure that food services to inmates to the affected centres will not be compromised from March 2012.”

Now this was in October, Mr Smith, and by now you must have known about BOSASA, you have been – there had

been reports at the Portfolio Committee, is it correct?

MR SMITH: That is correct, Chair.

ADV NOTSHE SC: And yet we know that you met them at Sandton Hotel during that year.

MR SMITH: That is correct, Chair.

ADV NOTSHE SC: Now when you met them at Sandton Hotel, there were already these negative reports about them. What were you meeting them – why did you meet them at the hotel?

10 **MR SMITH:** Chairperson, as I indicated, that ordinarily when a new Chairperson is elected, stakeholders want to introduce themselves and that was the essence of the first meeting that was reported in 2009.

So in 2011 Mr Gavin Watson called me to do exactly what they wanted to do in 2009 and at that point I was more than comfortable to have a discussion because I understood what was happening in the department.

Let me hasten to say that it was not only BOSASA that I had met, most of the stakeholders. At that time, I
20 had then agreed to meet with them and I list them in my affidavit somewhere else.

So it was really for me an opportune time to understand what is it that stakeholders are doing and what is it that they can offer and my stock reply, Chair, was once they have briefed me, we advise them to either reduce it

into writing or to come to what we used to call a stakeholder meeting, formal stakeholder meeting where they were then presented to the Portfolio Committee.

So it was really an introductory, preparatory meeting that I was invited.

ADV NOTSHE SC: Mr Smith, I do not expect you perhaps to have this, but we have a record where you reported now to your Portfolio Committee that I met the much maligned BOSASA, met them at an hotel in Sandton and this is what
10 I discussed with them. Did you report that?

MR SMITH: No, I do not recall the detail, Chair, I have not seen it, but what would have normally happened is that, as I indicated earlier on, any stakeholder that I met I would either ask them to reduce it into writing or ask them to formerly come to a stakeholder meeting so it was not my decision, it would be a committee decision.

So, yes, I would not find it strange that after the meeting I would have gone back to report to the Portfolio Committee because ultimately, that is where decisions are
20 taken. No decisions are taken in one-to-one meetings with the Chairperson. So if indeed I went to report back to the Portfolio Committee it would par for the course.

ADV NOTSHE SC: But were you not uncomfortable to meet in an hotel a company that had been reported to be involved in corruption?

MR SMITH: Chairperson, when I was phoned by Mr Watson a day or two before the meeting, at that point I did indicate to Mr Watson that I was uncomfortable meeting him on my own because, by the way, it was not a Portfolio Committee meeting and Mr Watson was aware that I would come to Johannesburg weekends when I was in Cape Town.

So it was a simple request, can we meet when you are back in Johannesburg? I indicated to him that I would
10 be uncomfortable going on my own and I would be better if I went with somebody else from the Portfolio Committee so that when we report back it is not an individual view.

So I do not think that because – and by the way, Chair, if you look at the minutes, much prior to this meeting, I and the department – I and the Portfolio Committee had agreed that the SIU investigation must continue and once the SIU investigation has been concluded then it must come back to us and report to us in terms of what they were doing. So it was an ongoing
20 investigation and I did not find anything untoward meeting with a stakeholder as long as I was not on my own, as long as there were no decisions taken at that meeting and as long as I went to report back to the portfolio committee. That we met at a hotel, Chairperson, we could have met at a restaurant, we could have met anywhere else, I think it

was the most convenient place and I was not uncomfortable with that, Chair.

ADV NOTSHE SC: And I understand – you will excuse me, I have never been a member of parliament, I understand the Portfolio Committee has offices in Cape Town, am I right?

MR SMITH: No, the Portfolio Committee does not have offices, individual members of parliament have offices in Cape Town.

10 **ADV NOTSHE SC:** You have a chamber where you meet?

MR SMITH: Yes, there is chambers in parliament, what we call committee rooms that is shared by all committees. There are those in parliament, yes, sir.

ADV NOTSHE SC: Why did you not ask Mr Gavin Watson to meet you in Cape Town in your office?

MR SMITH: Chairperson, I did allude to it earlier on that my relationship with Gavin Watson precedes me being a member of parliament and on occasion, when I was in Johannesburg, we would meet and discuss politics of the
20 day, discuss my constituency responsibilities.

And, by the way, it is me and they were a delegation of three or four. Logistically I was coming to Johannesburg, they are based in Johannesburg and he asked that a day or two before and I agreed to that, when I am in Johannesburg, let us make time to meet and I could

well have called them to Cape Town but that would have had to happen during the week, I was – I live in Johannesburg, I come to Johannesburg weekends and I agreed with Mr Watson who I had been meeting anyway on other matters that okay, we find time and we meet.

So we could have met in Cape Town but it made perfect sense to meet in Johannesburg over the weekend when I was in Jo'burg.

ADV NOTSHE SC: Mr Smith, at that time, 2011, you knew
10 Mr Watson, you knew that he was the “owner” of BOSASA and you knew that there were allegations of corruption against BOSASA. Did you ever discuss that issue with Mr Watson to say comrades, there are these allegations against your company? Did you do that?

MR SMITH: I never discussed those with Mr Watson in the meetings that I met with Mr Watson but I have no doubt, Chairperson, that they were would have known that there these discussions because Portfolio Committee meetings are public. They were widely reported in the
20 media at the time anyway, but did I discuss them with Mr Watson? I did not discuss them with Mr Watson.

ADV NOTSHE SC: Are you able to tell the Commission why you did not discuss them with him? You said you have known him since 1990 as a comrade and a person who was assisting with a number of things. Here there are reports

that his company is corrupt, why did you not discuss this with him?

MR SMITH: Chairperson, we – and I am not sure which minutes they are but we alluded to them where I made an undertaking to the Portfolio Committee as Chair that there is nothing that we must do as member of parliament, I think it was with the IC – with the...

ADV NOTSHE SC: SIU.

MR SMITH: SIU, that there is nothing that we must do as
10 members that would sabotage the work of the investigation. So for me to go outside of that and to meet with – would be to go against a decision that I took in a meeting and that is why I was very clear to separate politics from my work as an MP at the time, Chair.

ADV NOTSHE SC: And you know, Mr Smith, that influence and perception is almost everything. Now if anyone were to say well, I met a member of parliament, a Chairperson of the Portfolio Committee at an hotel, that person would be seeming to go around with a big cloud to say I have the
20 member of parliament in my pocket, I met him in an hotel. Did you not think about that?

MR SMITH: Chair, I am indicating or I indicated earlier on that I have and did meet Mr Watson from 1990 or the early '90's onwards on matters that related to my constituency and normal ANC work. I also did indicate that I met many

stakeholders in various locations, Chairperson.

And the third point that I would like to make, Chairperson, is that whether Mr Watson had me in his pocket or not, as a perception, the separation of powers just did not allow a member of parliament to get involved in the day-to-day working of any department. So I could not have influenced the department just by virtue of the separation of powers, even if I wanted to.

So, yes, there could have been a perception
10 created and I must accept that there must be but then there could be with any other stakeholder that I met and I met many stakeholders over the time. This one might be because it was under investigation.

In retrospect maybe there could have been that perception but there was never ever anything untoward, it was a normal meeting with stakeholders and thus I said that I am not comfortable, seeing them on my own, I would rather see with others, that Portfolio Committee, I had no fear of any influence unduly put on – or pressure put on
20 me, Chair.

ADV NOTSHE SC: Mr Smith, the problem is this. Now we have Mr Agrizzi telling the Commission that they had a problem with investigation by SIU and as a result of that they were advised to see you and he tells the Commission and he confirmed that you met them at a hotel.

Now we know by the time you met at the hotel there is an investigation by SIU and this has already been reported to parliament and to the portfolio committee chaired by you and here now is the Chairperson of the Portfolio Committee with some members meeting in an hotel with a company that is being investigated. Does this not make Mr Agrizzi's testimony credible?

MR SMITH: No, Chair, it does not and I am glad that we are dealing with the minutes. These minutes span from
10 2009 to 2013. According to Mr Agrizzi's testimony to you, the 2011 meeting was intended to, to use my words, soften my attitude.

The facts of the minutes negates that argument, Chair, I was anti-outsourcing, I was never anti-BOSASA, I was anti-outsourcing in 2009, I remained anti-outsourcing up to 2013 and BOSASA was one of those that were outsourced.

So this narrative that the 2011 meeting had the sole purpose of softening me up is not borne out by the minutes
20 that we have. Every minute that is here indicates not only mine but the committee's strongest dissatisfaction with outsourcing generally, Chairperson, and BOSASA was one of those outsourcing but there was outsourcing even of private business, we objected to it.

There was outsourcing of day-to-day maintenance,

there was outsourcing of BOSASA – on nutrition, not BOSASA, of nutrition, from 2009 until the time I left, my attitude and the attitude of the department did not change. So the notion that I was called to a meeting, I was given R45 000 to soften my attitude to BOSASA is not borne out in the minutes and these minutes span pre and post 2011.

ADV NOTSHE SC: You know, when I looked at your affidavit and read that part of the affidavit, I went to the minutes and then I found – I read them with bated breath
10 that I am going to find a place where you were coming out strongly, you were coming out strongly against the continued award of tenders to BOSASA. Can you take me –perhaps I had missed the part, take to those minutes wherein you come out strongly and criticising the outsourcing and criticising – sorry, are you looking for something?

MR SMITH: I was looking for something and I anticipated that question but...

ADV NOTSHE SC: Do you want to ...[intervenes]

20 **CHAIRPERSON:** Are you looking for something that help you ...[intervenes]

MR SMITH: I want to answer that question by way of the minutes, Chair, and yesterday, when I was preparing...

CHAIRPERSON: Yes?

MR SMITH: I actually wrote it down that I want to refer

the evidence leader to, to answer exactly this question. I am not sure what happened to my ...[intervenes]

CHAIRPERSON: Just look for it, take time.

MR SMITH: It will me a few seconds to find it.

ADV NOTSHE SC: No, that is fine.

CHAIRPERSON: I think your attorney might have it.

MR SMITH: I think he will have it, yes, but I had Speaker's notes that – or not Speaker's notes but I had – in anticipation to these kind of questions ...[intervenes]

10 **CHAIRPERSON:** If you able to tell your attorney where ...[intervenes]

MR SMITH: I will put it here, Chair, that...

CHAIRPERSON: Yes.

ADV NOTSHE SC: What you can do – Chair, if I may, if I may?

CHAIRPERSON: No, fine.

ADV NOTSHE SC: We can proceed with other stuff.

CHAIRPERSON: With – ja, and then during the lunch break he could have a look.

20 **MR SMITH:** I am sure it will here now, Chairperson.

CHAIRPERSON: Ja.

ADV NOTSHE SC: You know, instead of Mr Smith looking at them, rushing, let us deal with the other stuff.

MR SMITH: Okay.

ADV NOTSHE SC: And then ...[intervenes]

CHAIRPERSON: During the lunch break you can have a look at your notes.

MR SMITH: Yes.

ADV NOTSHE SC: Ja, can you quickly do this for me, they are the minutes of the 12th of – no, 22 February, they appear in A274.

MR SMITH: 274.

ADV NOTSHE SC: I just want you to confirm the minutes so that – and then they are confirmed on the 15 March at
10 284. Look at 274 and then 284.

MR SMITH: Yes, sir. Yes, Chair.

ADV NOTSHE SC: And you confirm those are the minutes of that and they were adopted?

MR SMITH: I do, Chair.

ADV NOTSHE SC: And then at 285 they are the minutes of 6 March and then they are signed – they are unsigned on the 24 April

MR SMITH: Yes, sir.

ADV NOTSHE SC: You have looked at these, do you
20 confirm that these are also the minutes?

MR SMITH: Yes, Chair, I do confirm that these are the minutes.

ADV NOTSHE SC: Okay. What we will do, Mr Smith, we will leave the minutes for now and then look at that and then we will deal with them after you have found whatever

you are looking for. Is that alright?

MR SMITH: We can do that, Chair, we can do that.

ADV NOTSHE SC: Now the – I have got the minutes and then we know what the position is from BOSASA. Now you then – there is an amount of money which you have admitted was paid to your company by BOSASA.

MR SMITH: Yes.

ADV NOTSHE SC: And the first amount is in 2015 and it is an amount of R267 667.90.

10 **CHAIRPERSON:** I am sorry, I am sorry, Mr Notshe, I think, Mr Smith really wishes to have these documents.

ADV NOTSHE SC: Ja, okay.

MR SMITH: If you can give me two seconds.

CHAIRPERSON: I will take two minutes adjournment.

ADV NOTSHE SC: Two minutes, I think, ja, [inaudible – speaking simultaneously]

CHAIRPERSON: Ja, I am taking two minutes so that he comfortable.

ADV NOTSHE SC: Answer these questions, yes.

20 **MR SMITH:** Please. Please, Chair.

CHAIRPERSON: We adjourn.

MR SMITH: Oh, I beg your pardon, they are here, they were on the floor. They were on the floor.

ADV NOTSHE SC: You know what, it happens to us ...[intervenes]

MR SMITH: No, they were on the floor.

ADV NOTSHE SC: He will tell you it happens to us all the time.

MR SMITH: So you can go back to the minutes.

ADV NOTSHE SC: Ja, okay. It happens to us all the time. You are in court, you know you have made minutes – you have got notes...

CHAIRPERSON: You found the documents Mr Smith?

MR SMITH: Thanks for your indulgence Chair, I found it
10 and I would like to respond to that.

CHAIRPERSON: Okay thank you.

ADV NOTSHE SC: And Chair fortunately that has got nothing to do with me, the losing of documents.

MR SMITH: They were on the floor.

ADV NOTSHE SC: We found them on the floor and it had nothing to do with me.

CHAIRPERSON: Yes, okay, alright.

MR SMITH: Yes, Chairperson the questions that was
20 raised was there would have been an expectation for me to come out unequivocally. I would like to refer you Chair to page 276, 2.1. The Chairpersons comments, 2.1 on page 276 Chair. The portfolio committee on the correctional services has always made it very clear that it was not in favour of the outsourcing of the nutritional services that is my comment.

CHAIRPERSON: Yes.

MR SMITH: I do not think that that there was any doubt what it was meant.

CHAIRPERSON: Yes.

MR SMITH: Over the page Chairperson on 231, 2.3.1.

CHAIRPERSON: I am sorry over the page?

MR SMITH: Page 278.

CHAIRPERSON: Oh 278.

MR SMITH: Yes and bullet not bullet point but paragraph
10 2.3.1.

CHAIRPERSON: Ja.

MR SMITH: It says members were unconvinced by the National Commissioners assurance that the DCS would be ready to deliver. Now that is a decision of the committee, the committee that I chaired. So it was part of my decision.

CHAIRPERSON: Yes.

MR SMITH: I then want to refer you to 2.3.4 Chair I think it is on the same page. The last paragraph on that 2.3.4.

20 **CHAIRPERSON:** Okay there is a 2.8 here.

MR SMITH: 2.3.4 Chair on page 280.

CHAIRPERSON: Ja, yes.

MR SMITH: It reads the committee had on numerous occasions voiced its dissatisfaction with DCS outsourcing of services that it should be doing on its own. Again, their

Chair and I can take you – and those are the minutes in 2012.

CHAIRPERSON: Yes.

MR SMITH: Post the 2011 meeting that Agrizzi talks about.

CHAIRPERSON: Yes.

MR SMITH: And if you so wish I could take you to similar things in 2013 if the Chair wants that.

CHAIRPERSON: Let us do that, ja.

10 **MR SMITH:** Okay. Let us go then – there are minutes dated the 6th of March I will just find the...[intervene]

CHAIRPERSON: They are at page 285.

MR SMITH: Yes it is the next yes Chair.

CHAIRPERSON: Ja.

MR SMITH: And then if we go to 371 Chair which would be, I beg your pardon 317.

CHAIRPERSON: That is now the paragraph now.

MR SMITH: That is on page 293.

CHAIRPERSON: Yes.

20 **MR SMITH:** On bullet point 3.1.7.

CHAIRPERSON: Yes.

MR SMITH: These are recordings of a meeting that took place in March 2013.

CHAIRPERSON: Yes.

MR SMITH: Two years after the so-called meeting.

CHAIRPERSON: Yes.

MR SMITH: It reads the Chairperson felt strongly that should the debate around the constitution of core functions be resolved – in other words Chairperson we were arguing that we must debate whether the core functions because we felt strongly that it should not be outsourced and those are my comments. And in his closing remarks - we raised it in 3.1.8 Chair.

CHAIRPERSON: Yes.

10 **MR SMITH:** We talk to that same matter again and this is in 2013 after I was supposedly soften up. So to answer your question Chair I have no doubt that my stance and the stance of the committee throughout my tenor was not anti-BOSASA but it was anti-outsourcing and BOSASA had a major role to play in that.

So it was not an attack on a company but it was an attack on the management style for want of a better word. So there were no wholly cows, BOSASA was not a wholly cow and I do not understand Chair that if I was getting R45
20 000,00 to do a job in other words to be soft on them.

Three years later I am still as harsh as I am and they continue to give me that money it does not make sense to me. So I want to debunk that notion that this was what was discussed in the meeting of 2011.

ADV NOTSHE SC: Now Mr Smith now when I took you to

the minutes of 2009 with the report about BOSASA, 2011 report about BOSASA, right. Now you met BOSASA people in 2011 and the allegation is to soften you. Now are you able to do what you have done now take the Commission where you come strongly and say there is a corrupt company and DCS keeps on awarding tenders to this company. Are you able to do that?

MR SMITH: No Chair I am not able to do that in the minutes because I do not think when we dealt with
10 minutes, we dealt with individuals per say in terms of stakeholders we would deal with the principle. I did indicate earlier on that the Auditor General was the final abattoir for want of a better word in terms of whether there was irregular expenditure or not. Secondly the SIU had embarked on an investigation which we encouraged and we asked them to do which was specifically on BOSASA.

But if the Commission is asking me to show a line here where I said this company is – it is not there, it is not their Chair. But throughout the minutes it is very clear that
20 we supported the action that has been taken on that matter specifically with the SIU. So no there is no line item where I said so.

ADV NOTSHE SC: Smith look in your favour and in fairness to you let us look at page 278

MR SMITH: Page?

ADV NOTSHE SC: 278.

MR SMITH: 278, I am there Chair.

ADV NOTSHE SC: Ja, these are the minutes of the meeting between the 2nd of February 2012 and now in the middle on paragraph 2.3.1 the second paragraph of that paragraph it says long standing members of the committee express surprise that the same reasons are advanced for 2008 extension of the BOSASA contract were provided as reasons for the 2012 extension. In the absence of a
10 credible reason for the extension the committee was left with no alternative but to believe that the contract was extended because somebody in DCS's ranks had a vested interest in it being extended. It claim that the accounting officer only became aware of the true state of affairs in 2011 was met with incredulity resulting in some members calling for an enquiry into the most recent extension. So there in 2012 an issue is raised by the members of the committee unhappy about the extension of BOSASA. Do you see that?

20 **MR SMITH:** I do see that Chair and...[intervene]

CHAIRPERSON: And I think the point that Mr Notshe is making to you is that he wants to be fair to you he says here is a part where even if there is no special mention to you but it is reflected that the members of the committee that this was their attitude when you were part of that

committee. And that is the point that he wants to make in fairness to you.

MR SMITH: Thank you very much Chair.

ADV NOTSHE SC: But then let us take the minutes of the 6th of March 2013 on page 285.

MR SMITH: 285, yes sir I am there.

ADV NOTSHE SC: Now if we turn to page 291 at paragraph 2.1 there is again a discussion about BOSASA where it says while the report – I am reading the 3.1.1,
10 while the report makes a mention of contracts awarded to BOSASA company it made no mention of the large contracts awarded to the company's Sondolo and Phezulu. Let me just stop there did you know at this time that Sondolo and Phezulu were also related to the BOSASA company?

MR SMITH: I did Chair.

ADV NOTSHE SC: Alright let us proceed. The contracts awarded to the three companies far exceeded the R15million mentioned in relation to BOSASA and clarity
20 was – can you see that?

ADV NOTSHE SC: As I am referring you to this for two purposes 1, I do not read the Chairpersons unhappiness about BOSASA because you can see there is a company which has been here 2009 and 2013. I do not read the Chairperson express unhappiness about this, do you notice

that?

MR SMITH: Chair I thought I had answered that question maybe I should try again. I am a member of the portfolio committee. I referred the Commission to at least five areas where as a collective we were totally unhappy and also supported the SIU. Now if the Commission is asking is there a line that says Vincent Smith did it, you are not going to find that Chair. But I am convinced that if it is a committee decision that I was part of the adopting I would
10 imagine that I am party to that decision. So I am not sure how further to add it but I did express my dissatisfaction not with BOSASA but with the outsourcing processes of which BOSASA was part of it Chairperson. So in retrospect maybe I should have put that item in my name but I do not think it was necessary Chair.

ADV NOTSHE SC: I do understand. Now I have taken you to a number of minutes of meetings where BOSASA is mentioned. Now in 2015 it is not in the minutes, in 2015 you then go and borrow money according to you. You go
20 and borrow money from the same company that had been part of a discussion in the portfolio committee, a company that you knew have been referred to SIU for corruption. Why did you do that?

MR SMITH: Chair I am not sure that I heard the question correctly but if I did...[intervene]

ADV NOTSHE SC: No let me repeat it before you answer or the simple question is why would you go and borrow money from a company that had been – that is clearly, not clearly that has been reported to have been involved in corruption and even referred to a law enforcement agency.

MR SMITH: Thanks Chair I thought that is what I heard. Just to clarify Chair I did not borrow any money from any company. The loan agreement was between me and Angelo Agrizzi and there are, there is correspondence to
10 that effect by way of an SMS. My loan agreement was with Angelo Agrizzi and the reason why I have this agreement with Angelo Agrizzi in 2015. A few months I do not know the timeframe prior to that Angelo had come to me too ask for instance to help him with an unemployed son. I do this all the time in my constituency and he came to me and I indeed was able to do that.

I in turn also went to him when my own son developed behavioural problems and he referred me to a service provider who could help him with that. So the point
20 I am raising Chair is that there was some sort of a cordial agreement with me and Angelo and my loan - and it is born out in the correspondence was with Angelo.

The final point that I want to make on that one Chair is that nowhere in the records of the deposit for a want of a better word is there any reference to BOSASA it was not

BOSASA. I had gone to Angelo Agrizzi on the basis of the relationship that we have created and made a personal loan with Angelo Agrizzi.

The money was put into my account, I paid for the school fees, it was never ever a BOSASA agreement it was an Angelo Agrizzi agreement so I just wanted to correct that and that I never made a loan with a company it was with an individual.

ADV NOTSHE SC: Mr Smith you must have thought about
10 this answer and this is your answer, you must have thought about it clearly and you are serious about it.

MR SMITH: I am serious about it.

ADV NOTSHE SC: But you knew Agrizzi...[intervene]

CHAIRPERSON: I am sorry Mr Notshe maybe just before we proceed what were the terms of this loan between you and Mr Agrizzi?

MR SMITH: Chair it was a very simple loan Chair. I through the companies that I presented to Mr Agrizzi Euro Blitz hold shares in, a minority share not a BEE shares as
20 Mr Agrizzi says it is a black owned company, I own shares and those shares were to mature in 2023. So it was a matter of cash flow.

I went to Mr Agrizzi and I said I need to pay school fees, I want to pay it in one lump sum so that there is no variation with the whatever please advance me the money

and when my shares mature for want of a better word I would repay it. To the extent that I presented the – what do you call it the shareholder agreement between me and the company as comfort that this is really what is happening and also it is in my annexures also a projection of what my cut of the shareholding was.

So it was a very simple – I need to pay school fees immediately please give me X amount I will give you that back to you and it was with Mr Agrizzi. The last point that
10 I want to make on that one Chair is that the fact that I gave Mr Agrizzi my company bank account was because for me it was a legitimate agreement. In fact, my audited financial statements will show that those transactions are raised as a loan in the company, in the audited financial statements. If it was for any other reason Chair, chances are I would have gone to Mr Agrizzi or to anybody and say look you guys give me a R100 000,00 according to you per month let me use that R100 000,00 and do it.

I knew that there was an EFG I gave them my
20 company account, I have that company account audited and the audited financial statements indicate it is a loan. I have shares that I own which were going to mature, it was a legitimate loan Chairperson that I was intending or I am intending to repay and that is why it was not undercover or camouflaged or anything else.

It is there and it has been audited and reported. So the terms to answer your question I am sorry Chair. The terms were I have a cash flow problem or it is prudent for me to pay overseas in one lump sum and Mr Agrizzi we have this relationship is it possible for you to afford it to me, he did and I was going to pay him back.

CHAIRPERSON: And what was the amount that you asked for?

MR SMITH: I did not ask for an amount Chair I had
10 received from the university the fee structure.

CHAIRPERSON: Yes.

MR SMITH: And I gave that to him and said this is what – in fact I had paid the initial deposit which was about I think 2 000 pounds for the registration having paid that myself. The account came from the university that says these are the fees and your child has been accepted so go on and pay the fees. So I gave that whole document to him as proof that it was for a legitimate purpose.

So I gave him the account statement that I had
20 received from the university and in year one because of the rand valuation, in year one I think it was R200 000 and in year two it was three hundred and odd thousand but the figures are there Chair and in both instances I gave him proof of what it was intended to be and I raised it accordingly in my books.

CHAIRPERSON: So the amount that he ultimately gave you was it in accordance with the amount that you were going to have to pay to the university in terms of the documents that you gave him?

MR SMITH: Yes, Chair.

CHAIRPERSON: Yes.

MR SMITH: In his reply affidavits that I received yesterday I think there is even a handwritten note where I think translates and I am not saying, I am saying he but I
10 do not know who did it but there is a translation from pounds to rands.

CHAIRPERSON: Yes.

MR SMITH: Because it was specifically for that amount not any other frills.

CHAIRPERSON: Yes.

MR SMITH: Everything else in terms of day to day living and whatever I paid for my own purposes.

CHAIRPERSON: And he was happy to give the loan there was no difficulty when you were discussing – when you
20 introduced the subject?

MR SMITH: Chair there was no difficulty I say and somewhere there is an SMS ag not an SMS an email where I say to him chief this is what we had discussed here are the proof of it and there was no now I do not know what you are talking about or I do not have it.

I said that and the money was put into the account that I had given him. So my interpretation of that was that there was no difficulty. I am not sure where he got the money from or who gave it to him but as far as I am concerned, I had made that agreement with Mr Agrizzi and there is an email correspondence to that effect Chair.

CHAIRPERSON: Mr Notshe.

ADV NOTSHE SC: Let us start with this when you asked for the money you send him an email. Is that right?

10 **MR SMITH:** Yes, correct.

ADV NOTSHE SC: Now the email appears on page 470. Is that correct?

MR SMITH: 470?

ADV NOTSHE SC: Yes.

MR SMITH: I am there Chairperson.

ADV NOTSHE SC: And the email is dated the 11th of May it is from you, Vincent Smith ...[intervene]

MR SMITH: Yes.

ADV NOTSHE SC: And it is to Mr Agrizzi.

20 **MR SMITH:** That is correct Chair.

ADV NOTSHE SC: The subject matter is daughter's study 2015, university of - how do you pronounce that name?

MR SMITH: Aberystwyth.

ADV NOTSHE SC: Aberystwyth sorry...[intervene]

CHAIRPERSON: Ja it cannot be an easy word because

there is no vowel, is it a vowel A.B.C.D there is no vowel.

ADV NOTSHE SC: There is only two.

CHAIRPERSON: Ja only two.

ADV NOTSHE SC: And Chair I am a boy from a rural village in the Eastern Cape, so it is...[intervene]

CHAIRPERSON: It is Aberystwyth.

ADV NOTSHE SC: Aberystwyth. Now if it says – what I am interested is in Mr Smith the last part...[intervene]

CHAIRPERSON: Well maybe read the whole thing.

10 **ADV NOTSHE SC:** Let me read the whole thing.

CHAIRPERSON: Oh ja or he can read it.

MR SMITH: I can.

CHAIRPERSON: Yes, ja do so Mr Smith.

MR SMITH: Chair it is an email from me it is dated the 11th of May 2015 and it is to Angelo Agrizzi subject matter daughter study 2015. Hi chief this email refers to our discussion earlier this year. My daughter has been accepted to study at Aberystwyth University in Wales.

20 She commences in September 2015 and I am in the process of finalising her trip. She leaves towards the end of June to finalise varsity accommodation and other related matters. I am in the process of sorting out funding requirements for her and hereby request any assistance in this regard. Funds can be deposited directly to the institution if that is more acceptable and I have thus

attached relevant documentation correspondence and it is from me.

CHAIRPERSON: Ja.

MR SMITH: And it was addressed to Mr Agrizzi and nobody else.

CHAIRPERSON: Yes.

ADV NOTSHE SC: Now do you agree with me that there is no in this email, there is no reference to application or a request for a loan, it is asking for funds. Am I right?

10 **MR SMITH:** Yes Chair you are right Chair that in this one there is not but the very first line says this email refers to our discussion earlier this year.

ADV NOTSHE SC: Yes.

MR SMITH: And that discussion was exactly that but this email does not have that line in it.

ADV NOTSHE SC: And if I understand you said to the Chairperson earlier that once your child had been admitted to the university then they told you your child has been admitted this is X amount owing and then you went to Mr
20 Agrizzi and you asked for a loan. Am I right?

MR SMITH: That is correct Chair.

ADV NOTSHE SC: So you had an exact amount that you asked for, am I right?

MR SMITH: That is correct Chair.

ADV NOTSHE SC: But if you read the last line of this

email it said I am in the process of sorting out the funding requirements for her and hereby request any assistance in this regard. It did not say I am requiring the amount we had agreed upon, so it is as if you are now begging for money. Am I right?

MR SMITH: Chairperson if you go further it says thus I am attaching the relevant documentation. Now I do not know if my English is not up to speed Chair but if you read the whole sentence and not part of it. I say I am asking for
10 any amount but here is the school fees, the official statement.

CHAIRPERSON: I think you may be speaking at cross purposes at this stage. I thought Mr, Mr...[intervene]

ADV NOTSHE SC: Notshe.

CHAIRPERSON: Notshe's question was this, if you had discussed with Mr Agrizzi a loan why is it that in this email you make no reference to a loan but instead you say you hereby request any assistance in this regard and I think he added you make as if you are begging now.

20 **ADV NOTSHE SC:** Yes.

CHAIRPERSON: I think that is what he was saying, so that is his question.

MR SMITH: No that was not the only, I take the point Chair that that is certainly not what was intended in this email maybe that is how it is interpreted but I make

reference to an earlier discussion.

CHAIRPERSON: Yes.

MR SMITH: I make reference to this is the official obligation that I have to the university and that was my understanding of what I was asking for Chairperson. I do take your point that that line that says any funding might be out of place.

CHAIRPERSON: For any assistance.

MR SMITH: For any assistance I beg your pardon might
10 be out of place but that was the intention and that was the essence of our discussions Chairperson.

CHAIRPERSON: Mr Notshe.

ADV NOTSHE SC: Now Mr Smith are there any documents you can present to this Commission showing where the agreement was concluded the interest on the loan or are there no such documents?

MR SMITH: No Chair there were no such documents and if the Commission is asking was there a written loan agreement there was no such documents. I am not a
20 lawyer but I do not - my understanding is that this particular transaction did not need a written agreement because there was no such agreement.

ADV NOTSHE SC: Now Mr Smith let me go back to my initial question by this time by the 11th of May 2015 you knew Mr Agrizzi was working for BOSASSA. Am I right?

MR SMITH: Yes, that is correct Chair.

ADV NOTSHE SC: Did you know his position financially how much money he had personally?

MR SMITH: No Chair I did not know how much money he had in the bank personally Chair.

ADV NOTSHE SC: And you had just dealt with him on the basis that he is employed by BOSASA.

MR SMITH: Chair I had earlier alluded to the need for funding. I would have assumed that if it was not possible
10 at that point somebody would have said to me look it is not possible Chairperson.

ADV NOTSHE SC: Now...[intervene]

CHAIRPERSON: Maybe, I am sorry Mr Notshe maybe let us go past this question. As I understand the position the loan if this was a loan that you asked Mr Agrizzi to give you totalled about six hundred and something thousand, R700 000.

MR SMITH: Six hundred and something thousand yes, Chair.

20 **CHAIRPERSON:** Six hundred and something thousand which was paid over two years in succession, is that right?

MR SMITH: Correct Chairperson.

CHAIRPERSON: So it is quite a lot of money to ask from an individual. Is it not?

MR SMITH: Correct Chairperson.

CHAIRPERSON: Yes, Mr Notshe.

ADV NOTSHE SC: And you said despite that there was no written loan agreement and no terms discussed about interest?

MR SMITH: No there was no written agreement Chair.

ADV NOTSHE SC: And...[intervene]

MR SMITH: Sorry...[intervene]

ADV NOTSHE SC: No continue sir.

MR SMITH: There was no written agreement Chair as I
10 indicated earlier on I think it was a matter of trust and if
indeed there was going to be a requirement for a written
agreement I do not think it would have been a problem it
would have been a one liner because in my own financial
statements that are audited it is raised as a loan
Chairperson. So there is – in my mind there was nothing
untoward about it, it was there, it is still there now it is
public knowledge and I do not recall either myself or Mr
Agrizzi insisting on it being reduced into writing Chair.

ADV NOTSHE SC: But you knew this company, he works
20 for a company that had been alleged to be involved in
corruption. It did not ring to you that it is inappropriate for
me as a member of a portfolio committee on correctional
services to borrow money from a company that has been
awarded tenders continuously by the same department and
here am asking money from this company. Did you not see

that as inappropriate?

MR SMITH: Chairperson in 2015 I was no longer the Chair of correctional services. I had ceased being the Chair in April 2014. So it is not correct that I was the Chair of correctional - it was post my tenor year or so later from being the Chair of correctional services.

CHAIRPERSON: Were you still a member of the committee or no longer a member either?

MR SMITH: Chair in parliament we have what we call
10 alternate members and full members, I at that point been appointed to at least two other portfolio committees. So I spent all my time in the other portfolio committees. I hardly ever attended the portfolio committee proceedings of correctional services because I was Chair of at least two other committees Chair and I was no longer a – or the Chair of the committee at the time is my senior politically and I would never be able to undermine him in terms of influencing whatever happened. I was not the Chair of that committee at the time.

20 **CHAIRPERSON:** And going back to that discussion between you and Mr Agrizzi about the loan. Did Mr Agrizzi raise any concerns about this transaction that you were asking the two of you to enter into. Did he raise any concerns?

MR SMITH: No he did not...[intervene]

CHAIRPERSON: He did not.

MR SMITH: Because it happened in 2015 and it happened again in 2016.

CHAIRPERSON: Yes, but I am going back to the first.

MR SMITH: So to me – no in the first he did not sir.

CHAIRPERSON: Yes.

MR SMITH: Sorry I beg your pardon he did not Chairperson.

CHAIRPERSON: Yes so in the first discussion where you
10 approached him and asked for a loan, he did not raise any concerns?

MR SMITH: He did not raise any concerns Chairperson, no.

CHAIRPERSON: Now at that time already was the position that – was the understanding that in 2015 he would pay part of the six hundred and something amount and then in 2016 he would then pay another part because in accordance with the requirements of the university?

MR SMITH: No Chair it does not work like that.

20 **CHAIRPERSON:** Ja.

MR SMITH: The university gives you fees for that particular year.

CHAIRPERSON: Ja.

MR SMITH: She was first year so the bill only was R200 000,00.

CHAIRPERSON: Yes.

MR SMITH: In 2015.

CHAIRPERSON: Okay.

MR SMITH: So that was settled.

CHAIRPERSON: Yes, yes.

MR SMITH: In 2016 there was no obligation on the 2015 anymore.

CHAIRPERSON: Okay.

MR SMITH: There was a new fee structure with a new
10 amount Chair so it is not a continuation of R600 000,00.

CHAIRPERSON: Oh okay. But when you spoke to him for the first time, I am asking for a loan did you speak to him in 2015 only in regard to 2015 and then in 2016 you spoke to him in regard to 2016 or did you cover both years in your first discussion?

MR SMITH: No Chair I did not cover both years and it is simply because there was no guarantee that my daughter would continue at that university or she would be alive or whatever the case may be.

20 **CHAIRPERSON:** Okay.

MR SMITH: So at the time when the obligation became payable then I would go and say look this is now the new one we have dealt with the old one and this is how I am going to repay you because there was no issue about my inability to repay.

CHAIRPERSON: Yes, how did Mr Agrizzi know that there would be no problem with you paying back in what eight years – when you spoke to him in 2015 it seems to me that on what you have said the plan was that you would repay him in eight years' time, 2023.

MR SMITH: Yes.

CHAIRPERSON: How did he know that you would be able to pay him at that time, it is a long time?

MR SMITH: Chair I think I...[intervene]

10 **CHAIRPERSON:** You referred to your shares I know about that.

MR SMITH: Yes, I submitted it in these things.

CHAIRPERSON: Yes.

MR SMITH: I in 2011 had a shareholding or as a partner in a company and therefore I had the share agreement in 2011 already.

CHAIRPERSON: Yes, yes.

20 **MR SMITH:** In 2015 I received from the company correspondence that says as things stands now in 2015 – because it was very clear it was a long term investment. It was going to take about 12 years for it to mature because it is a development of property.

But in 2015 I received correspondence that says as things stands now this is if today everything stopped this is what would be due to you per your shareholding. And it

was that that I gave as comfort that look it is going to be possible for me to pay it Chair, yes and that is part of my affidavit, my annexures Chair.

CHAIRPERSON: And did the documents from the company reflect that in 2023 you would get enough to pay him back the amount that he – you were asking for?

MR SMITH: Yes, it did Chair more than that.

CHAIRPERSON: More than that?

MR SMITH: Far more than that Chair.

10 **CHAIRPERSON:** Yes.

MR SMITH: It did reflect that as of 2015 on the basis of your shareholding even at that point it far exceeded and five or seven years down the line it would just be far, far more Chair and it is reflected there

CHAIRPERSON: Yes I am sorry I interrupted you.

MR SMITH: No, no I said I did – those documents are in there.

CHAIRPERSON: Yes but did he take them; did he keep some of those documents for his own peace of mind?

20 **MR SMITH:** Chair I do not know if he kept them for his own peace of mind but I do know even from his own affidavit that he was aware of them because initially he speaks about me being a BEE partner which is not correct and secondly he says he knows that I had this business interest. So I am not sure if he actually took the

documents but he certainly had sight of them at some point.

CHAIRPERSON: Yes, well my recollection is that in his affidavit he says maybe in both affidavits that he refers to you – him. He says there was a time when you approached him for a loan that you wanted him to give you against your shares.

Now I cannot remember whether he said you wanted to sell him the shares or whether the shares were going to be the guarantee but he separates it and says that was
10 after this transaction of payment for your daughter. That is what he says as far as I remember.

So if your version is correct you had the discussion with him in which 2015 you ask for a loan and you were going to use your shares as kind of security to say look this is where you will get your money in eight years' time. On his version the transaction relating to the payment of your daughter's university fees happened on a different occasion and he says he did not discuss that with you as I
20 understand what he says. He says Mr Gavin Watson was the one who instructed him. He says on another occasion later you approached him for a loan and you sort o use the shares either he says that was going to be security or he says you wanted him to buy the shares and he says I rejected that. That is my understanding of his version.

MR SMITH: Correct Chair the email that I read earlier on referred to school fees and that is why I provided the statement. On a different occasion outside of the school fees because that had been settled I went to Mr Agrizzi because again I said it was a cash flow problem. I said you know what can we discuss a loan separate from that one because my security is sufficient to cover it and that discussion went nowhere because, it just did not happen.

CHAIRPERSON: Yes.

10 **MR SMITH:** But it was that one that he refers to where he says that I was prepared to sell my shares. The agreement the shareholder agreement does not allow for that to happen so there was never an intention – I could not sell my shares to a third party without going through my partners in any case. So it was never about selling shares it was about look – there is no reason not to accept that I would be in a position to pay you back that is what it was.

CHAIRPERSON: Mr Notshe.

20 **ADV NOTSHE SC:** Chair just to follow up and then to follow up what the Chair has raised. Turn to page 213.

MR SMITH: Page 213?

ADV NOTSHE SC: Yes.

CHAIRPERSON: I will let you have five minutes Mr Notshe I see we are at **one or 13:00**. So I will let you go on for five minutes.

ADV NOTSHE SC: I will just finish up this issue.

CHAIRPERSON: Ja.

MR SMITH: Page 213?

ADV NOTSHE SC: 213, yes. What I want to do is Mr Smith is whilst your looking, 213.

MR SMITH: Yes, I am there.

ADV NOTSHE SC: Yes, and this is the issue about the loan. On paragraph – this is the affidavit of Mr Agrizzi.

MR SMITH: Yes, I do.

10 **ADV NOTSHE SC:** At paragraph 24.10 he says subsequent to this payment - that is the payment for your daughter. I became aware of the fact that Vincent Smith had an interest in Euro Blitz a payment for Vincent Smith's daughter following year of study was paid to Euro Blitz. So he said subsequent to the first payment he discovered that you have got Euro Blitz. So it seems as if when he made the first payment, he did not know that you have got Euro Blitz.

MR SMITH: No that cannot be, Chair that cannot be
20 possible because the payments were made to the same company. So it cannot be subsequent to the first payment he found out that I owned Euro Blitz when the first payment was made, I provided the banking details of the company and in fact deposit slips proved that it was paid into that very same account. So I do not understand what it means

when he says subsequent to - or the following year only he became aware.

CHAIRPERSON: I think what he maybe meaning because he uses the word interest now that might be using that word in a legal sense. What he maybe meaning is somebody could give you an entity's account and say put that money into that account.

They might not be shareholders, they might not have directors, they might not be a director in that
10 company but they know what arrangements they have made with the director or CEO of that company about that money. But if the person is a director or is a shareholder that might be something else.

So what he might be meaning is not necessarily to say he was hearing for the first time that you have some connection with this entity. He might have heard earlier that you have some connection because that is the entity you told him about but that you have, you are a shareholder he might be meaning that is what he was –
20 what he found out after. That is my thinking he might not be meaning that but that is my thinking.

ADV NOTSHE SC: That is also my thinking that is why I referred this.

CHAIRPERSON: Yes.

ADV NOTSHE SC: That he – you see also Mr Smith if you

add what the Chair is raising a paragraph above in 24.14 he confirms the money was paid, the first money was paid to Euro Blitz but then he says only after that that he got to know that you have an interest in that company. It is not just a company with an account number but you have an interest.

MR SMITH: Chair I am the sole shareholder of Euro Blitz I am the sole shareholder of Euro Blitz. Euro Blitz has been declared at parliament in member's interest since its
10 inception.

So it was not a matter of I am a part or a shareholder with many other, I was the sole shareholder of Euro Blitz Chair. And even the documentation that regulates my shareholding indicates that Euro Blitz is my company where I hold total shares and therefore the shareholding is for me.

So it is not – we should not confuse Euro Blitz and for want of a better word the joint venture. Euro Blitz is my company where I am alone am a shareholder and it is
20 that company that I used for the loan so that I could pay it back because my shares would come into that company and through that company I would pay to whoever gave me the money that is it. So I was the sole shareholder that is the point that I am making of Euro Blitz.

CHAIRPERSON: I think the position would be on your

version he may have known or he would have known that you were the shareholder actually maybe the sole shareholder from the first discussion you had with him. But on his version, it might not follow that he knew that you were the shareholder but he acknowledges that that is the name of the entity that you gave to him as the entity into which the money should be paid.

MR SMITH: Yes I think that is it.

CHAIRPERSON: Ja.

10 **ADV NOTSHE SC:** Just before we adjourn Mr Smith you referred it to us I want to look at it during the lunchtime. This document you say it is the loan document, the document which proves your investment?

MR SMITH: Yes. Which document is that?

ADV NOTSHE SC: The one you say it proves.

MR SMITH: Ja Chair I am asking about the page number were you asking me to find it for you?

ADV NOTSHE SC: Yes, please. What you can do Mr Smith you do not have to look for it now let us
20 adjourn...[intervene]

CHAIRPERSON: Ja, you can look at it during lunchtime.

ADV NOTSHE SC: Lunchtime you can tell me during lunchtime or when we come back to it.

MR SMITH: Chair yes I will certainly do that Chair but even if it is not in here, I can certainly make it provide it

before of end of business today.

CHAIRPERSON: Yes.

MR SMITH: But I would look at it in lunchtime.

CHAIRPERSON: Yes okay no that is fine. Okay we will take the lunch adjournment now it is five minutes past we will resume at five past two.

ADV NOTSHE SC: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

INQUIRY RESUMES

ADV NOTSHE SC: What is the daily value?

CHAIRPERSON: What valuation?

ADV NOTSHE SC: Hospital valuation.

CHAIRPERSON: Ja.

ADV NOTSHE SC: Because this shareholding is in a hospital.

CHAIRPERSON: Ja.

20 **ADV NOTSHE SC:** And now there is an email which demonstrates the value of the shares.

CHAIRPERSON: Yes.

ADV NOTSHE SC: And he has asked that although they are numbers.

CHAIRPERSON: Ja.

ADV NOTSHE SC: That the numbers not be mentioned.

CHAIRPERSON: Ja.

ADV NOTSHE SC: Because he fears his relatives might start asking for perhaps some loans and all that you know.

CHAIRPERSON: I am sure Mr Smith did not say that. But you will...

ADV NOTSHE SC: Well he is criticizing.

CHAIRPERSON: No you do not have to use – mention the numbers.

10 **ADV NOTSHE SC:** Yes. Chair I have that here and we made copies.

CHAIRPERSON: Ja.

ADV NOTSHE SC: And then the cross-examination – not the cross-examination the questioning will continue on the basis that I have seen the document, I have seen the numbers.

CHAIRPERSON: Ja get somebody to make copies in the meantime. You have no junior today?

ADV NOTSHE SC: No, no – all the time I do not have a junior.

20 **CHAIRPERSON:** Well the officials can arrange for somebody to make copies.

ADV NOTSHE SC: I fly solo.

CHAIRPERSON: Well the Reverend was here there he is.

ADV NOTSHE SC: Will you make for me and for the Chair – two copies will be fine Chair.

CHAIRPERSON: No make four copies.

ADV NOTSHE SC: Four copies. Now Mr Smith let us get this clear. The document you have shown me it is the – the agreement by your company with other companies about shares, am I right?

MR SMITH: That is correct Chair. There are two documents. The first document is what you and I maybe would call a shareholders' agreement that reflects my shareholding. The second document is the valuation of my shares at that point in 2017. That says at that point I had to
10 get my dividends, this is what it was worth. And gives a projection for what it would be worth in 2023. So those are the documents Chair.

CHAIRPERSON: I may have misheard but you seem to say 2017 I guess you meant 2015?

MR SMITH: No Chair the – the valuation.

CHAIRPERSON: Ja.

MR SMITH: Correspondence that I received from the consortium.

CHAIRPERSON: Ja.

20 **MR SMITH:** Is dated 2017.

CHAIRPERSON: Yes okay.

MR SMITH: Yes which says as at 2017.

CHAIRPERSON: Yes.

MR SMITH: You are worth X amount of money.

CHAIRPERSON: Yes. Yes.

MR SMITH: Yes.

CHAIRPERSON: But I thought your evidence was that you showed Mr Agrizzi in 2015 what the shares were worth at that time or what they were – what it was estimated they would be worth in 2023.

MR SMITH: No at the time Chair there is a shareholder's agreement.

CHAIRPERSON: Ja.

MR SMITH: That says these are your shares.

10 **CHAIRPERSON:** Ja.

MR SMITH: And what the input costs were at the time that this is what..

CHAIRPERSON: Yes.

MR SMITH: The – the shareholding – not shareholding would be worth but this is what the revenue is.

CHAIRPERSON: Yes. Yes.

MR SMITH: And in 2017 they did the actual calculations Chair.

20 **CHAIRPERSON:** Yes. Yes. So but I just want to – to make sure that I understood your evidence correctly. You did not say – did you not say that in 2015 you showed Mr Agrizzi documents relating to your shares.

MR SMITH: Yes.

CHAIRPERSON: Which reflected that from those shares in 2023 you would be able to repay him. You did not say

anything to that effect? I thought you said something to that effect.

MR SMITH: No Chair.

CHAIRPERSON: Hm.

MR SMITH: In 2015 when I took the first out it was just the – the – my shareholding in the development.

CHAIRPERSON: Hm.

MR SMITH: And you will recall that after the second payment I did one in 2015 and did one in 2016.

10 **CHAIRPERSON:** Hm.

MR SMITH: In 2017 when I asking for the – for a totally different one that we discussed.

CHAIRPERSON: Hm.

MR SMITH: At that point I then had this evaluation that says look even if we take those two into consideration and anything else it will far exceed what it was. Yes Chair.

CHAIRPERSON: Yes. Does that mean that in 2015 when you asked Mr Agrizzi for a loan on your version you did not show him any documents that showed what the value of the
20 – of your shares were at that time or what the value of the shares were – was likely to be in 2023?

MR SMITH: I did not show him a document because I received that document Chair in 2017.

CHAIRPERSON: In 2017. Yes.

MR SMITH: But at the onset of the project we all knew that

this project was going to be worth so much but I would not have had a written...

CHAIRPERSON: Yes, yes.

MR SMITH: Proof from the consortium.

CHAIRPERSON: Yes.

MR SMITH: If you want to call it.

CHAIRPERSON: Yes.

MR SMITH: Yes Chair.

CHAIRPERSON: Yes, yes. Because you remember I – I
10 think I did ask the question whether he – he that is Mr Agrizzi when you asked him for the loan looking at the amount involved whether he asked you for anything that would give him peace of mind that come 2023 you would be able to pay – to pay back? I thought I asked that question and my recollection was that you said you showed him the documents that showed that you would be able to – to more than – or what you had would be more than what you were asking for from him. That is my impression of our exchange.

MR SMITH: Yes.

20 **CHAIRPERSON:** Is your impression different?

MR SMITH: No, no Chair I – I am saying we can – or the transcripts will probably prove it but – but the reality is Chair.

CHAIRPERSON: Yes.

MR SMITH: That I would not have been able to give him the

Rand valuation.

CHAIRPERSON: Yes.

MR SMITH: Into 2015.

CHAIRPERSON: Yes, yes.

MR SMITH: I could only give that to him at the earliest.

CHAIRPERSON: Yes.

MR SMITH: When I received from the consortium.

CHAIRPERSON: Yes.

MR SMITH: After three years what I was worth.

10 **CHAIRPERSON:** Yes. So on that basis would it not be correct then to say when you asked him for a loan in 2015 there was nothing that you showed him that would have given him peace of mind that in 2023 you would be able to afford paying him back such a lot of money. Would it be correct to say that was the position?

MR SMITH: I am – yes Sir. Yes Chair in terms of the Rand value but in terms of the quantum of shares that I had.

CHAIRPERSON: Yes.

20 **MR SMITH:** It would have been possible to calculate it but in terms of the Rand value I agree with you Chair.

CHAIRPERSON: Yes. Okay. Mr Notshe.

ADV NOTSHE SC: So you then...

CHAIRPERSON: Maybe – I am sorry – I am terribly sorry Mr Notshe. Maybe let me just put this as well Mr Smith. Would you agree that reliance on – on shares on the value of the

shares going up over a certain number of periods – by a certain number of years would be a little risky? Maybe not a little risky it would be risky in the sense that the share value of – of shares of the company can go up and down anytime if certain things happen to that company or in the markets you know. The company that – whose shares today cost X Rands in a weeks' time if something happens they can just go down and those share are worth very little after that event.

MR SMITH: This was not the case in this particular one
10 Chair. Because the shares went up...

CHAIRPERSON: And not general proposition you accept that?

MR SMITH: As a general proposal we accept that ja.

CHAIRPERSON: I am saying in this yes.

MR SMITH: Yes Chair.

CHAIRPERSON: You say in this case it was different.

MR SMITH: Yes it was not in the stock market for instance.

CHAIRPERSON: Yes, yes.

MR SMITH: This was for a physical project.

20 **CHAIRPERSON:** Yes.

MR SMITH: That we knew would cost so much and bring this return.

CHAIRPERSON: Okay.

MR SMITH: As opposed to a stock market where ...

CHAIRPERSON: Yes.

MR SMITH: Shares go up and down according to the market sentiment.

CHAIRPERSON: Yes. Okay.

ADV NOTSHE SC: But just following up what the Chair has raised is so you say the loan was advanced to you without Mr Agrizzi having security at all?

MR SMITH: In terms of security in writing or ceding something to him no Chair.

ADV NOTSHE SC: And without him seeing the valuation of
10 the shares you have?

MR SMITH: That is correct Chair without seeing the Rand valuation of the share we had other than my shareholding and everybody knows the extent of the development that was taking place there Chair.

CHAIRPERSON: Hm.

ADV NOTSHE SC: I see. Now the – after the first request for payment did, he confirm to you that he had made the payment? Did he confirm the – because remember your evidence was that the payment was going to be made in that
20 university in Whales. Did he confirm to you – come back and says we have made the payment to the university?

MR SMITH: The payment was made into my company account Chair and...

CHAIRPERSON: First payment at least I think?

MR SMITH: Both of them were made.

CHAIRPERSON: Oh both of them.

MR SMITH: To the company Euro Blitz that we are talking about.

CHAIRPERSON: Oh I thought the second one was paid directly.

MR SMITH: No both of them were.

CHAIRPERSON: Oh okay.

MR SMITH: So I could have...

CHAIRPERSON: Yes.

10 **MR SMITH:** Even on my own.

CHAIRPERSON: Yes.

MR SMITH: Checked that monies have been deposited. Whether he physically came to me and said hey listen that transaction has now been done I am not a hundred percent sure.

CHAIRPERSON: You cannot remember.

MR SMITH: But just a cursory glance at my own bank balance in the company would have shown that there was this payment made Chair.

20 **CHAIRPERSON:** Hm.

ADV NOTSHE SC: Can you remember now whether you were given the proof of payment of the money?

MR SMITH: No I was not given proof of payment of the money Chair. As I say I saw it in the bank account. I get my own bank statements on a monthly basis and in the bank

statements it would have reflected that there were indeed those payments. After all Chair as the money came in I immediately then made payment to the institution. So I was aware that indeed the money had cleared.

CHAIRPERSON: Hm.

ADV NOTSHE SC: And do you confirm to the commission that even the second payment of R395 076.00 there were no written loan agreement, there was no security given?

MR SMITH: I confirm.

10 **ADV NOTSHE SC:** And you confirm that the amount was also paid into your company?

MR SMITH: I confirm that the amount was paid into the Euro Blitz company and the rationale is simple Chair. I wanted it to be paid into that account because my dividends would have been paid into that same account and therefore it would have offset each other. As opposed to the loan being put into my own private account. It was there for audit purposes. So the money went into Euro Blitz and my dividends would be paid to Euro Blitz not to Vincent Smith.

20 And Euro Blitz then would pay the loan.

CHAIRPERSON: Well I...

ADV NOTSHE SC: So...

CHAIRPERSON: I am – I wanted to find out about that because as I understand the position it was a personal loan that you asked for.

MR SMITH: Yes.

CHAIRPERSON: To you as Mr Smith. It was not a loan by your company. A loan your company asking for a loan from Mr Agrizzi. And you wanted it for purposes of paying for your daughter's university fees. It was very personal as I see it. So I wondered why you would have wanted it go to the company which had nothing to do with it other than that you were hoping to use the money that would come from the shares in order to pay back. But as I understand it your –
10 your right to the shares or to dividend that was your personal – it was personal that that money would come to you you know and you had an obligation to pay for your daughter and not your company had an obligation to pay for your daughter. So I was just wondering why say the money must go to the company when it could just put – be put into your account – personal account and then you pay over.

MR SMITH: As I indicated Chair the company for me was the most convenient vehicle for audit purposes and audit share purposes. It could well have gone into my account
20 Chair. I do not know at the time but if hypothetically my account had an overdraft facility – or an overdraft that money would have been swallowed up there. Whereas in the company the company never had an overdraft facilities. I – it could – and the company and Vincent I mean I was the sole shareholder to the company so I could advance a loan

from the company.

CHAIRPERSON: Ja.

MR SMITH: And then pay this – the fees.

CHAIRPERSON: Yes.

MR SMITH: But it might be around about way.

CHAIRPERSON: Yes.

MR SMITH: But today I have proof that it is – the loan has been raised and that is how I thought about it at the time.

CHAIRPERSON: Yes okay. Mr Notshe.

10 **ADV NOTSHE SC:** But if one were to look at the source of the payment no one will see the name Vincent Smith being credited with this amount.

MR SMITH: No nobody would have seen Vincent Smith because the amount went into the company.

ADV NOTSHE SC: So if – if you wanted – you did not want your name to appear in the accounts of the company that was paying – paying to the company the convenient way.

MR SMITH: No it would not be a convenient way because I was the sole shareholder of the company. It could not have
20 been hidden that this money ultimately would be money that Vincent Smith would use in whichever way. Whether it is to pay his water and lights or salaries so it was paid into a vehicle where I and only I was the shareholder of the company. So it could not have been a mechanism of – of masking who the ultimate beneficiary would have been Chair.

CHAIRPERSON: But I think what – the point that Mr Notshe is making I think is this one. That if let us say BOSASA had to reflect – I know that you have made the point repeatedly that you borrowed from Mr Agrizzi not from BOSASA. But let us say for argument sake if this was a loan from BOSASA to you BOSASA would have had to reflect that in the – in their books and what would be reflected is a loan by BOSASA to Vincent Smith. And the name Vincent Smith is quite well known – Public Representatives, Senior Member of
10 Parliament, Chairperson of or former Chairperson of the Correctional Services Portfolio Committee does that it – somebody might just pick that up. Whereas if what is written is it is a loan from BOSASA to company ABC on the face of it you will not see that ABC is Mr Vincent Smith's company unless you have personal knowledge or unless you have reason to go and dig up who owns this company. But on the face of it you will not connect Mr Smith with this loan. I think that is the point he is making.

ADV NOTSHE SC: Yes.

20 **MR SMITH:** May I say this Chair without arguing about it?

CHAIRPERSON: Yes.

MR SMITH: As a Member of Parliament you are obliged on an annual basis to reflect all your assets in the Members Register. This was declared. So anybody who knew I was a Member of Parliament if you went and said let us see what

Vincent Smith owns would have picked up that Vincent Smith is the owner of –

CHAIRPERSON: Hm.

MR SMITH: So – so it is out there in the public for exactly the same reason you are talking about Chair. But I am saying it is not inconceivable that it could be used but the Members Register is to deal with exactly that. And the Members Register is public – or it is accessible to all public men – to everybody in the public.

10 **CHAIRPERSON:** Hm. But somebody who just sees for example BOSASA books and sees the name Euro Blitz or whatever the name of the company was nothing necessarily attracts them to this transaction because at that stage it does not relate to anybody in the public eye. Unlike if they would look at the books and they see Vincent Smith then they might dig. But if somebody were to say who is this Euro Blitz or whatever the name of the company then they go and dig then they obviously find out that it is owned by Mr Vincent Smith and then they check in Parliament whether the
20 company was declared and so on. But will – without somebody going digging on the face of it they might just see some unknown company. You understand that?

MR SMITH: I accept that Chairperson.

CHAIRPERSON: Yes okay.

ADV NOTSHE SC: And just to add to that. If one looks at

BOSASA records and see Euro Blitz no one is going to immediately think ah I must look at Members of Parliament declaration account. Am I right?

MR SMITH: No Chair you are right but I am – may I say this without disputing it?

CHAIRPERSON: Yes.

MR SMITH: In retrospect it might have been good that I did not go to a company and I went to an individual.

CHAIRPERSON: Yes.

10 **MR SMITH:** Yes.

CHAIRPERSON: Yes.

ADV NOTSHE SC: Can I – then when you looked at – you said you saw in the – in Euro Blitz account that the money had been paid. Who was the payee who reflected in Euro Blitz books – Euro Blitz bank account?

MR SMITH: Chair the first payment was – or not the first payment. One of the payments was a cash payment and the second payment was a payment from a lawyers trust account. Not one of them had any reflection of BOSASA or
20 anybody like that and that is what was reflected in my bank statements. So there was no ways that even if it did come from BOSASA that from my records I would have known that it came from BOSASA because there was no reference that made – or there was no reference made of BOSASA.

ADV NOTSHE SC: I see. And let us deal with the first one.

It is R267 000.00.

MR SMITH: Yes.

ADV NOTSHE SC: The first one was R267 000.00 and 60 cents. R267 667.00. You agree with me?

MR SMITH: I agree Chair.

ADV NOTSHE SC: It is a lot of money to be paid in cash. Did that not raise queries with you? A lot of money. Well...

CHAIRPERSON: Particularly when you know as you did in 2015

- 10
1. That on your version the person you were asking the loan from was Mr Agrizzi.
 2. You knew that Mr Agrizzi was a high ranking official of BOSASA.
 3. A number of years had lapsed since that meeting I think in 2011 or 2010 or when your committee was shocked by the presentation from the SIU about the corruption that seemed to be happening which allegedly involved BOSASA.

20 So I am saying as you answer this – that question from Mr Notshe to say were you not concerned about such a lot of money being paid in cash in circumstances where you knew that on your version this was a loan from somebody who was a high ranking official of a company that to your knowledge had all kinds of allegations of corruption against it?

MR SMITH: Honestly Chair at the time I was not. In

retrospect now and going through it as we have systematically went through it now maybe it should have rung a bell but honestly at the time it never registered either way. I want to be very honest with you Chairperson that yes it is – it could be conceived that way but I did not register it at the time.

ADV NOTSHE SC: Now the second payment you say it was from a lawyer? The second payment you say it was from a lawyer? It was from an attorney?

10 **CHAIRPERSON:** A law firm?

ADV NOTSHE SC: A law firm. The second payment it was from a law firm. Which law firm was that?

MR SMITH: No I – I know that in retrospect Chair.

CHAIRPERSON: Yes.

MR SMITH: From what I have here.

CHAIRPERSON: Yes.

MR SMITH: In my records it did not say it was from a lawyer. I am saying I know that only now.

CHAIRPERSON: Afterwards?

20 **MR SMITH:** Afterwards yes.

CHAIRPERSON: Yes.

MR SMITH: At the time in my records it just shows repayment for the car accident. That is what it says actually.

CHAIRPERSON: Hm.

MR SMITH: Yes. Not – not – not came from lawyer – X

lawyer – Lawyer X – I beg your pardon from Lawyer X or Lawyer Y.

ADV NOTSHE SC: You see I was getting there. You stole my thunder now. I was getting to this part that it must have reflected as a car accident settlement, am I right? And you had no dispute about the car settlement with Mr Agrizzi did you?

MR SMITH: No I did not and let us be honest on that one again Chair. And the bank statements are there. Page 1 of
10 the bank statement just shows the amount. It is the subsequent bank statements that would show what the references were for.

CHAIRPERSON: Hm.

MR SMITH: In my head I – I am expecting R10.00 I get R10.00 and I know it is coming from the Judge the R10.00. It is when these allegations were raised that I said let me as I did homework now to find those things out. I – I was shocked when I realised that this thing was reflected as a car accident. Because indeed there was no car accident due
20 to me from – from Mr Agrizzi. Mine was a loan from Mr Agrizzi and he was going to give me that money from his sources not – I never questioned where it came from.

CHAIRPERSON: Hm.

MR SMITH: Yes.

ADV NOTSHE SC: Yes. Would you agree with me that to –

or before we get there. Let us go to page 334.

CHAIRPERSON: What page?

ADV NOTSHE SC: Page 334 Chair.

CHAIRPERSON: 334.

ADV NOTSHE SC: 334 yes Chair.

CHAIRPERSON: Okay.

ADV NOTSHE SC: Chair I notice Mr Smith when he talks about it he gives an example about Judges. He limits the R10.00 and not more. I do not know why he is doing it.

10 **CHAIRPERSON:** Is that connected Mr Notshe with why you are not on the bench?

ADV NOTSHE SC: Yes Chair. Chair I must confess I did not expect – I did not expect that one. Mr Smith look at page 334.

MR SMITH: I am there Chairperson.

ADV NOTSHE SC: This is an email from Mr Angelo Agrizzi at the top.

MR SMITH: Yes I see that.

20 **ADV NOTSHE SC:** And then it is to Mr Carlos Bonifacio and Andries Van Tonder.

CHAIRPERSON: I am sorry. I am sorry. Because you were talking about other things Mr Notshe I looked at red numbers instead of black numbers.

ADV NOTSHE SC: Oh sorry Chair.

CHAIRPERSON: So I went to a wrong..

ADV NOTSHE SC: Problem of [00:26:23]. Sorry.

CHAIRPERSON: You see Mr Notshe want to – wants to continue talking about those things. Yes 334.

ADV NOTSHE SC: Chair – so Mr Smith you agree this is from Mr Agrizzi and it is to Mr Carlos Bonifacio and Andries Van Tonder.

MR SMITH: Yes that is what the communication says Chair.

ADV NOTSHE SC: Yes. It says:

“Subject payment trust account.”

10 And then it says:

“This is for specific consultant that we cannot do cash.”

You see that?

MR SMITH: I do see that Chairperson.

ADV NOTSHE SC: And then..

CHAIRPERSON: I am sorry where – where about is that?

ADV NOTSHE SC: I am reading at the top Chair going down. After subject.

20 **CHAIRPERSON:** This is for – this is for a specific consultant.

ADV NOTSHE SC: Yes.

CHAIRPERSON: That we cannot do cash.

ADV NOTSHE SC: Yes.

CHAIRPERSON: That is an email from Mr Agrizzi to Mr Carlos Bonifacio – Bonifacio and Andries Van Tonder dated 5

August 2016. Yes okay.

ADV NOTSHE SC: And just to pause there you were not a consultant to them were you?

MR SMITH: I beg your pardon I never heard that.

ADV NOTSHE SC: You were not a consultant to Mr Agrizzi were you?

MR SMITH: No I was not a consultant I was a Member of Parliament Chair.

ADV NOTSHE SC: I see. Now and then the blow that there
10 is an earlier – there is an earlier email so one minute apart.
It is also from Mr Agrizzi and it is to Mr Van Wyk, Andries Van Tonder and – at BOSASA and then Mr Carlos Bonifacio and then – and then it says subject Payment Trust Account. And then if you read further it says:

“Morning Christo could you please effect payment – then settlement from the Trust Fund you have currently under BOSASA Operations Pty Ltd account to the following account.”

20 Now he gives the account First Bank and then Euro Blitz – Euro Blitz 48 Pty and then he gives the amount and then this is – this is the account of Euro Blitz I suppose. Am I right?

MR SMITH: I beg your pardon Sir.

ADV NOTSHE SC: This is the account of Euro Blitz?

MR SMITH: That is the account number that I provided to Mr

Agrizzi Chair and it is the account that belongs to my company.

ADV NOTSHE SC: And then it is a reference car accident settlement?

MR SMITH: I see that Chair.

ADV NOTSHE SC: Would you agree with me that this reference and also what appeared in your statement clearly was hiding who the money was paid to, what was the purpose of the money?

10 **MR SMITH:** No I would not know Chair. The honest fact again is these documents – first of all I was not copied in any of these correspondence. I am seeing this as part of Mr Agrizzi's evidence. I was not aware of this correspondence. It has never been copied to me and I had never seen it Chair so reading it now I agree with – with the commission but I had nothing to do with it and I was not even aware of this type of communication Chairperson.

CHAIRPERSON: Hm.

ADV NOTSHE SC: I see.

20 **CHAIRPERSON:** You see the – the – the question that arises is this. This is 2016 when this Mr Agrizzi sends these emails okay. It is not 2018 when he gave evidence in this commission. It is 2016. It is at a – it is the same year when even on your version I would imagine the two of you are getting well.

You – you can ask – approach him for a loan. He gives you a loan. He makes payment. He does not even insist on a written agreement. He does not even ask you to put up security. He does not even seek anything that assures him that in 2023 he will be able to get his money back. He does not insist on anything like that.

But he writes to certain people and he seems to wish to conceal the true nature of this arrangement. That is now if your version is correct that this was a loan. He seems to
10 be – he seems not to want to acknowledge that it is a loan. He seems to want to hide the true nature because you have said there was no car accident claim that you were involved in. But he says what you are being paid – the amount – the money that will paid to your company is for a settlement of a car accident.

So the question is, if he knew that as you say he knew that the arrangement between the two of you was a loan why would he not be saying this is a loan? Why would he say this is a settlement arising out of a car accident?

20 **MR SMITH:** Chair I cannot – I cannot – I cannot speculate as why he says that Chair. For me the reason why I presented my company account that is audible was because it was above board.

For me my understanding that this was a personal loan person to person. When one reads this it is very clear

that the source of the funding might have come from a different source and that is – could be – one – I am not saying it is.

It could be one of those reasons but I had nothing to conceal and that is why it went to a company via EFT or via normal payment which is traceable and it was raised as a loan in my books that were audited. So I want to reiterate Chair from my side it was a legitimate – a transaction. Otherwise I would have found more creative ways of doing it
10 and I cannot speculate as to why he adopted this approach
Chairperson.

CHAIRPERSON: You see there are these two versions and of course ultimately, I have to – got to weigh them up and make findings. But there are these two versions. On your version this payment was in terms of a loan, a verbal loan agreement that you concluded with Mr Agrizzi in 2015. On his version this was corruption.

On his version he took a stand at a certain stage for whatever reasons and I am sure different people would give
20 different reasons as to why but he took a stand or he made a decision that he was going to expose what he knew as corruption that he was – he said he was taking place or had been taking place at BOSASA.

And he said I am not saying I did not involve myself in that corruption. He said I too was involved in that

corruption. But I am exposing it now. And if I must be punished that is fine. But I am exposing it now. This is the corruption that Mr Watson and I and others were involved in. You will remember he came to the commission. He showed videos of cash being prepared and all of that.

Now what he would be saying is, I had to – I had to say this was for a car accident settlement so that it looked legitimate. Now if indeed Mr Smith and I had concluded the loan arrangement it would have been legitimate for me to
10 write it as a loan to say it is a loan. I put it down as a car accident settlement because I had to look for something and because there was no loan arrangement I said – car accident settlement. That is the kind of explanation that is possible. Do you want to comment on that?

MR SMITH: Yes Chair I want to comment guardedly because I do not want to...

CHAIRPERSON: Yes but to speak freely.

MR SMITH: But – speculation but in my view Chair.

CHAIRPERSON: Yes.

20 **MR SMITH:** And...

CHAIRPERSON: Feel free to explain.

MR SMITH: Yes.

CHAIRPERSON: Because I need to look at both sides and I need to hear what your perspective is on these things.

MR SMITH: In – In looking at it now Chairperson and taking

into consideration that all along Mr Agrizzi had indicated that this was an instruction from Gavin Watson.

Nowhere here does it – in fact all these instructions are from Mr Agrizzi. So where he sourced the funds from could – might have been his challenge because I do not believe that there was an instruction from BOSASA if you can call it BOSASA to pay this money. My loan was with Mr Agrizzi and not Gavin Watson.

So I am saying without speculating that that could
10 have been it. Because if he had said to me, I do not have cash but I am going to go and source cash from the company I would have then gone to Mr Watson with whom I have a relationship and asked him for it.

So I was very clear that I do not want to have anything to do with the organisation. I was dealing as I indicated earlier on, I had a relationship with him from helping each other.

So that was how I understood it Chairperson. It is – it is my version. It is something that you would have to take
20 a judgment on but that is from the bottom of my heart what I firmly believed in until these things came to the fore where these informations were given to us. But at that time, it certainly was not something that I was aware of.

CHAIRPERSON: Mr Notshe.

ADV NOTSHE SC: Just on that can you turn to – firstly you

turn to page 354.

MR SMITH: 354?

ADV NOTSHE SC: 354.

MR SMITH: Yes Sir.

ADV NOTSHE SC: This is the bank statement of Euro Blitz and the statement is dated the 31 August 2016.

MR SMITH: Yes Sir.

ADV NOTSHE SC: And you must have received the statement shortly after that date. You must have?

10 **MR SMITH:** The statement?

ADV NOTSHE SC: The statement yes.

MR SMITH: Yes Sir.

ADV NOTSHE SC: Sorry am I speaking softly?

MR SMITH: No, no. Sorry Chair.

ADV NOTSHE SC: You must have received it shortly after that date. But go over to 355. There is an item there of – on 6 August it says: General credit domestic tree – car accident settlement and then there is the amount. You see that?

20 **MR SMITH:** I do see that Chair.

ADV NOTSHE SC: And...

CHAIRPERSON: Sorry let me see where that is. You said 355?

ADV NOTSHE SC: At page 355 I think that is the second page of the statement Chair.

CHAIRPERSON: Ja.

ADV NOTSHE SC: And then there is an item on the 6 August.

CHAIRPERSON: Oh oh yes. General credit domestic tree car expense settlement.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Ja I can see that.

ADV NOTSHE SC: Now firstly when you noticed this there is nothing which about Mr Agrizzi here. There is no indication
10 of – there is no name of Mr Agrizzi here.

MR SMITH: That is correct Chair.

ADV NOTSHE SC: And then the only thing is the amount of R395 076.00, am I right?

MR SMITH: That is correct Chair.

ADV NOTSHE SC: Now how did you link this with Mr Agrizzi?

MR SMITH: Chair I indicated earlier on that with every loan I had given the information to Mr Agrizzi from – in other words the university's bill and I knew that R300 000.00 per
20 my arrangement with Mr Agrizzi was due in this account to be paid over. I knew because there is no other source that would have come into this account unless it was a mistake from somebody else. So I was expecting this kind of money from an arrangement that I had made with an individual Chairperson.

ADV NOTSHE SC: And then the amount comes. When you saw this you see it said car accident settlement. It did not – it did not worry you that this has not come as a loan of Mr Agrizzi it has come as a car accident settlement?

MR SMITH: I never noticed that Chairperson and if I did I at the time did not reflect it. I must be honest I did not reflect upon it at the time Chairperson.

ADV NOTSHE SC: But you – you agree with me that when you look at it now anyone looking at this on your statement
10 hides that the money is from Agrizzi or from BOSASA it does not show there?

MR SMITH: I agree Chairperson. I agree.

ADV NOTSHE SC: I see. Now the – in your – in discussing the loan what you call a loan with Mr Agrizzi what was the interest of – what was the interest that is going to be and what – that you are going to pay on this loan?

MR SMITH: Chair, I have been advised by my legal team to ask you that question not be answered because it could potentially incriminate. That is what I was advised by my
20 team, Chair.

CHAIRPERSON: Okay. Mr Notshe, what do you say?

ADV NOTSHE SC: Chair, it is his right to... if he feels that the question will incriminate... the answer will incriminate him and he refuse to answer it on that basis. But what I would appreciate from him, I must say, I will appreciate is.

Unlike some other people we have had in this Commission, who refuse just in to come. He has come, he has answered a lot of questions, and this particular question.

And this is, for me, what I would expect if he feels that it is going to incriminate him.

But Chair, I would ask the Chair to then inform Mr Smith that the fact that he refuses to answer the question, does not prevent the Commission to make a finding on the basis of what is there and of where there has been no answer.

10 **CHAIRPERSON:** No, I think what we will do, Mr Smith. Well, let me say one thing is that I wanted to mention. I thought it was quite a good thing you did that when you furnished the Commission with your affidavits, you have put your version of what happened.

Because of what you know had gone before, namely, there had been issues about whether you would submit an affidavit to the Commission or testify. Whether you would feel that you might wish not to give evidence because there might be criminal charges.

20 Because of that that discussion that have been going prior to you furnishing the affidavit, one could expect that you might not come out with your version.

So when we have read your affidavit so that you put up your version, my feeling was, you know, that this is good, you know.

Because I thought you might have taken the view that I am public representative, a member of parliament, issues a reason. I will put up my version and the Commission will decide or will decides but I will put up my version. I will tell South Africa what my version is.

But having said, the Commission will respect your right if you feel that in regard to a specific question, you would like not to answer the question for fear of incriminating yourself.

10 So if you say that is your position, we will move onto another question. But as Mr Notshe indicates, in the end when I weigh up the evidence of the witnesses and seek to establish where the truth lies, I will have a situation where in regard to your version, there is this one question or there may be more question s that you might have said: I refuse to answer this.

And maybe Mr Agrizzi might have said there is no question that I am not able to answer the Commission on my version. I will tell the Commission everything that it was
20 about my version.

So that is the position. But in the end, if you wish to exercise that right, feel free to exercise it. That is... we will respect that.

MR SMITH: That was the advice given to me by my legal team, Chairperson.

CHAIRPERSON: Yes. Okay. No, that is fine. Let us move on.

ADV NOTSHE SC: Now Mr Smith, is it correct that ...[intervenes]

CHAIRPERSON: Or maybe... maybe I should just say this Mr Smith. I had formed the impression - and maybe I should not have formed it - that your discussion with Mr Agrizzi about the loan did not include an interest, simple because...

You will remember before lunch there was a time when I
10 said: What were the terms of these loan agreement? And you answered in the way you answered.

But you do not have to clarify that or anything in case it might go against the advice you have received.

MR SMITH: [No audible reply]

CHAIRPERSON: Okay. Mr Notshe.

ADV NOTSHE SC: Mr Smith, I have or have included in your... in the bundle with you... before you... no, in front of you, starting from page 404

CHAIRPERSON: Did you say we must go to 404?

20 **ADV NOTSHE SC:** 404.

CHAIRPERSON: Okay.

ADV NOTSHE SC: Up to 424.

MR SMITH: I am there, Chairperson.

ADV NOTSHE SC: You will confirm... I do not want to go through all these documents but you confirm that these

contain your declaration to parliament?

MR SMITH: That is correct, Chairperson.

ADV NOTSHE SC: And you confirm that in these documents, there is no declaration of a loan made either to you or to your company.

MR SMITH: No, Chair there is on page 405 a declaration of Euro Blitz (Pty) Ltd on 405.

ADV NOTSHE SC: 405?

MR SMITH: Yes.

10 **ADV NOTSHE SC:** I see.

MR SMITH: Yes, Euro Blitz (Pty) Ltd.

ADV NOTSHE SC: And just to be on record ...[intervenes]

CHAIRPERSON: I think, unless I misunderstood Mr Notshe, I think he was not talking about declaration of the company but of the laws.

MR SMITH: I was getting there, Chairperson.

CHAIRPERSON: Oh, you will get to it?

MR SMITH: Yes, Chair.

CHAIRPERSON: Okay alright. Okay.

20 **MR SMITH:** My understanding, and I have canvassed it at the time... well, not at the time but when these things were raised, was that most MP's or whoever would say I have shares in this company but would not put a line-item.

CHAIRPERSON: Would not put...?

MR SMITH: The line-items ...[intervenes]

CHAIRPERSON: Oh, okay.

MR SMITH: ...of all the transactions, Chairperson.

CHAIRPERSON: Yes. Ja.

MR SMITH: But in that discussion, somebody was saying: Well, that was implied that you put the line-item. Now I did not put it in here. I put the company here. And people could go to the audited financial statements.

And I am just thinking from my side, giving my understanding. If that was the expectation Chair and I had
10 500 loans, I give it as an example, it would mean that I must put 500 line-items here.

That is what it would mean in practise in Chair and that is now how I understood it. And there was that debate within parliament. Do you put the line-items? Or do you say: I own shares here? And so on.

And by the time I had left, I have not reached any conclusion, other than saying: Here is my company. And if somebody wanted to, to go and look at the transactions, they probably could have gone to look at the transactions.

20 But to answer the question of the Commission. There is no declaration of that line-item but there is a declaration of the companies.

CHAIRPERSON: Mr Notshe.

ADV NOTSHE SC: But Mr Smith, this is not helpful because the loan was to you, not to Euro Blitz. Am I right?

MR SMITH: [No audible reply]

ADV NOTSHE SC: In your version, Mr Agrizzi lent money to you, not to Euro Blitz.

MR SMITH: I suppose technically, the Commission is right that the money was loaned to me but it went through the company because that was the vehicle that I have used, Chairperson. So if the money was lent to me as a person... and maybe indeed it should have been, I received this benefit here. But by the version of this register, I had just
10 reflected the company.

CHAIRPERSON: Well, the position is that as far as parliament is concerned, there is nothing that you did to disclose to parliament that you had been given a loan of the amounts that you are talking about, to you personally. But also, there was nothing indicating that Mr Agrizzi had given a loan to Euro Blitz. Those two statements are correct, is it not?

MR SMITH: They are correct, Chairperson.

CHAIRPERSON: They are correct.

20 **MR SMITH:** Yes, Chairperson.

CHAIRPERSON: So anybody looking here, looking at these disclosures would not see that there was this transaction between Mr Agrizzi and yourself or even between Mr Agrizzi and Euro Blitz. You accept that?

MR SMITH: I accept that, Chairperson.

CHAIRPERSON: Yes.

ADV NOTSHE SC: And do you also accept... do you also confirm that you remained a committee member even after you had... you are no longer a chairperson but you were still a member of the Parliamentary Committee which on... I mean, Correctional Services. You confirm that?

MR SMITH: I did indicate earlier on, Chairperson that incorrect... in parliament – I beg your pardon – you are a member, a full member or you are an alternate member. And
10 I indeed was an alternate member that never participated because I had chaired three other committees. Yes, Chair.

ADV NOTSHE SC: And you were privy... you... well, you would not been given the minutes of the committee discussions?

MR SMITH: No, Chair I would not be given the minutes of the committee discussions.

ADV NOTSHE SC: So even ...[intervenes]

CHAIRPERSON: Would you be entitled to them if you ask for them?

20 **MR SMIT:** Every member of parliament would be entitled to them, Chairperson.

CHAIRPERSON: Yes.

MR SMITH: Not only members of the committee.

CHAIRPERSON: Committee members, ja.

MR SMITH: Yes, every member of parliament.

CHAIRPERSON: Yes.

MR SMITH: If indeed they wanted to participate or read, members will be entitled to it, Chair.

CHAIRPERSON: Yes, but as alternate member, you would also participate in a meeting if somebody else was not attending? In other words, if somebody was not there, then you would come in or, what did it mean to say you are an alternate member in the context of parliament?

MR SMITH: You know, Chair. Any member of parliament
10 can attend any committee ...[intervenes]

CHAIRPERSON: Yes.

MR SMITH: ...whether he is a member or not of the committee.

CHAIRPERSON: Yes, yes.

MR SMITH: I think this term alternate would mean if you need a quorum for instance.

CHAIRPERSON: Yes.

MR SMITH: And A is not there, you could go there. But the
20 practice that even if A was not there and I was an alternate member, if they needed a quorum, you would affect the quorum.

But the basic understanding, or certainly my basic understanding was, that full-time members were expected to make sure that the business of the committee works.

An alternate member, if and when he is available or

required, should be, in other words, a resolve if you put it that way Chairperson. That is how I understood it.

CHAIRPERSON: Ja.

ADV NOTSHE SC: Now Mr Smith, the other issue here is, BOSASA hired a car for ...[intervenes]

CHAIRPERSON: Before you go there because I think you are moving away from parliament.

ADV NOTSHE SC: Yes.

CHAIRPERSON: I just want to... With regard to the
10 disclosure of the transaction between yourself and Mr Agrizzi to parliament... I think you said, you did on the over how it should be disclosed and whether if you just write the name of the company, that you have got shares in the company, that is enough. Or whether you should put what you called line-items. Is that right? That is what you said?

MR SMITH: That is right so, Chair.

CHAIRPERSON: Yes. Now that seems to suggest to me that the issue of this transaction was uppermost I your mind at the time. Am I... do I understand your evidence correctly?

20 **MR SMITH:** At which point was ...[intervenes]

CHAIRPERSON: At the time of making this disclosure. I am assuming this disclosure... or this is what, 2018? But there would be some for every year, is it not? 2017 and twenty, and so on.

MR SMITH: [No audible reply]

CHAIRPERSON: A disclosure in parliament in annual, is it not?

MR SMITH: It is annual, Chair. Yes.

CHAIRPERSON: Yes, yes. So this one that we are looking at 404 and 405, it seems it was 2018. Is that right?

MR SMITH: That is the date of it. Yes, Chair.

CHAIRPERSON: Yes. So my question is whether when you had to make the disclosure here, am I right to think that the question of the transaction on your version, the question of
10 the transaction that you have had with Mr Agrizzi, namely the loan, was uppermost in your mind as to in what way you were required to disclose it. Am I right to think that is the position or that is not necessarily the position?

MR SMITH: No, that is not necessarily the position, Chair.

CHAIRPERSON: Yes.

MR SMITH: Because as you have indicated, this was done annually. And I am...

CHAIRPERSON: Yes?

MR SMITH: And I am sure if you went to twenty... because
20 this company was from 2011.

CHAIRPERSON: Yes.

MR SMITH: I am sure if you went from 2011 onwards, this is how I had registered. So it was not on the basis of ...[intervenes]

CHAIRPERSON: Ja, uppermost ...[intervenes]

MR SMITH: Uppermost in my mind. No, it is not.

CHAIRPERSON: Oh, okay alright. But I would have expected it to have been uppermost in your mind, that list from 2017, because you, on your version, the loan was some time in the course of 2015. Actually, from 2016. The loan transaction in regard to the 2015 academic year was in 2015 and the arrangements with regard to the 2016 academic year for your daughter was in 2016. Is that right?

MR SMITH: Correct, Chair.

10 **CHAIRPERSON:** So what I am raising with you is that when you made the disclosures that you needed to make in parliament in 2016 - and I guess it was probably done earlier in the year - when you had to make the disclosure in 2016, you would have... I expect that you would have remember that there is this loan that you had with... from Mr Agrizzi in regard to 2015 which he had paid and you would have wanted to disclose that. Is that... would that not have been the position?

MR SMITH: That was my position at the time, Chair.

20 **CHAIRPERSON:** Yes.

MR SMITH: Chair, maybe from an ignorance point of view that it was in the company and the company reflected the transaction. It was not uppermost in my mind, Chairperson.

CHAIRPERSON: Yes. But I have difficulty in understanding why it as not because my understanding of your evidence is

that this was a personal loan.

Mr Agrizzi personally was giving you a loan personally for you to discharge your personal obligations as a parent to your daughter.

And that it went into the account of your company that may have been convenient or that may have been because, as you have put it, the repayment will come from the dividends in the company.

But I would have thought that from your point of view, if
10 your version is correct, you would have regarded yourself as somebody who have received this loan from Mr Agrizzi.

And when it comes to you making a disclosure to parliament, you would have wanted to disclose this loan and you would not disclose this loan by listing Euro Blitz as your company because what you disclosed in regard to Euro Blitz is that it is a company in which you have an interest. It said nothing about this transaction.

MR SMITH: Chair, sitting here now, I suppose you are correct Chairperson. But I just want to bring to our attention
20 and I am not saying it is a justification.

CHAIRPERSON: Yes, yes.

MR SMITH: This transaction happened after I had exited being Chairperson of Correctional Services and had no influence one way or the other over the department, Chairperson.

CHAIRPERSON: Yes.

MR SMITH: So I am not disputing. I am saying, in retrospect, you are absolutely correct.

CHAIRPERSON: Yes, yes.

MR SMITH: But I would not want the... or I should not say I would not because it is your decision. From my view was that from where I was not being a chairperson, not participating at all or very little.

I do not think I participated more than two or three
10 times, if it all, that it would not... I would not have had any difficulty if somebody had, at the time said to me:

You must declare the line-item. Because I did not see any conflict and there was no ways at that point that I was able to have a *quid pro quo* type of arrangement, Chairperson.

That is what I want to put. But ultimately, yes you will have to take that decision, Chair.

CHAIRPERSON: But you, is it correct that even if you are not a member or you are no longer a member of Correctional
20 Services Portfolio Committee, just because you are a member of parliament, this was a transaction, this was a loan, you had an obligation to disclose to parliament or not.

MR SMITH: No, I am agreeing with you, Chair. That is why I am saying, I am agreeing with you on that one.

CHAIRPERSON: Yes, okay.

MR SMITH: Yes, Chair.

CHAIRPERSON: Yes, okay. Of course, somebody listening to this and listening to your evidence and having listened to Mr Agrizzi's version about this payment, might say, the reason why you did not disclose it, is because it was not legitimate to make loan. There was no loan.

If it was a loan, which you regarded as legitimate, you would have easily disclosed it. In other words, you... somebody might say: We have a situation where on Mr
10 Agrizzi's side, he wants to hide. He does not say this is a loan.

But now in parliament, you also do not disclose it. And yet, if it was a legitimate loan, a loan, one would have expect that you would disclose it if you thought there was no problem with it. What do you say to that?

MR SMITH: I am expecting your version of what you are saying, Chairperson. But from where I am sitting, and I could well have been incorrect, that transaction was reflected as a loan in the company.

20 I accept that you are saying it was personal and not a company. It was or is reflected as a loan in the company, repayable.

Where I am sitting, the fact that I had reflected it, the fact that it is audited, said to me, from where I am sitting that this is something that I have got to pay back at some

point.

Whether it was Vincent Smith personally or the company, I take your point that maybe I should have reflected it personally.

But honestly, from where I am sitting, there was never ever the intention to hide or to get it in return for something else.

That is just the point that I am making. It could be the impression created. I am giving you my truth.

10 **CHAIRPERSON:** Now, another point that I ... another question that I want to raise with you is this. As I understand the position, Mr Agrizzi came up with this allegation publicly for the first time in 2018. Is that correct? Or was when he gave evidence when he was here in 2019? I cannot remember.

MR SMITH: I think it was September 2018, Chair when ...[intervenes]

CHAIRPERSON: Was it 2018?

MR SMITH: Yes.

20 **CHAIRPERSON:** Yes, yes. Now, at that time, he had left BOSASA, is that right?

MR SMITH: That is correct, Chair.

CHAIRPERSON: And he had left BOSASA after being employed by BOSASA, as I recall, or close to 20 years if not more, if I recall correctly. You might not be able to say?

MR SMITH: No.

CHAIRPERSON: Just from his evidence. But he had been employed by BOSASA for a very long time. Now, why would Mr Agrizzi, who, on your version, had a loan agreement with you involving a lot of money, over R 600 000,00, to say to the Commission and to the world there was this money that was paid to Mr Vincent Smith.

Effectively, it was part of corruption. When by saying that, it would mean that he is not going to be entitled to
10 demand this money back from you.

And yet, if he did not say this was not corruption money and indeed, as I recall were in documents that are in the bundle, when he heard that where you had said in parliament this was a loan.

He said: No, it was not a loan. But if he said: No, Mr Smith is actually...it is true. This was a loan. Or, my memory has been jogged. This was a loan.

Then he would know that in 2023, he is going to be entitled to demand a lot of money from you. But if he
20 continued to say: No, it was corruption money.

He would be depriving himself of getting this money paid back to him. It seems strange that somebody who knows himself to be entitled to this money being paid to him because it was a loan, would actually denounce and disentitle himself to the payment of this money. Well, what

do you say to that?

MR SMITH: Chair, I have... I do not know what was the motivation by Mr Agrizzi, why he did or why he did not.

CHAIRPERSON: You can understand the logic that you would expect that if somebody has given somebody a loan and especially when it is such a lot of money, that one would expect that they would not do anything to disentitle themselves to the repayment of that money. And yet, his version means that he can never demand that money from
10 you.

MR SMITH: Except Chair if he himself knew that it was not his money.

CHAIRPERSON: Yes.

MR SMITH: If he himself knew that.

CHAIRPERSON: Yes.

MR SMITH: And that is why I am saying, I am the last one to get into that argument.

CHAIRPERSON: Yes.

MR SMITH: Because I do not know what were the
20 dynamics. In fact, at the time, as you say, he was no longer a member... he was no longer an employee.

CHAIRPERSON: Yes of BOSASA.

MR SMITH: So I do not understand what caused that.

CHAIRPERSON: Yes.

MR SMITH: I do not want to venture into that.

CHAIRPERSON: Yes.

MR SMITH: Into that area, Chair.

CHAIRPERSON: Yes, yes. Of course, he, as far as I know, as I remember, of course, he does not say it was his personal money. He says it was BOSASA money because he says he was instructed by Mr Agrizzi to affect the payment. That is what he says. But you said what you have to say on that question. Is that right?

MR SMITH: [No audible reply]

10 **CHAIRPERSON:** Mr Notshe.

ADV NOTSHE SC: Thank you, Chair. Chair, before I move to the topic I was going to start with. Mr Smith, can I ... I am handing back the document you gave me.

MR SMITH: Yes.

ADV NOTSHE SC: Right, these are the copies we have made. Unfortunately, we did not stapled them but we will deal with... oh, they are stapled. We will deal with them. Bearing in mind what the request of Mr Smith. Mr Smith, the only thing I want to raise with you is this. At the top, there is
20 a single document, a single page that flies on its own, which is ...[intervenes]

MR SMITH: Which document is that?

ADV NOTSHE SC: Sorry?

MR SMITH: Is it the document that you gave?

ADV NOTSHE SC: Yes.

MR SMITH: Yes.

ADV NOTSHE SC: The hospital evaluation.

MR SMITH: Yes.

ADV NOTSHE SC: Now, it seems as if someone made an entry by hand to reflect '23. Am I correct?

MR SMITH: Yes, correct Chair.

ADV NOTSHE SC: Was it someone who wanted to doctor this to be in line with what you are saying that this will mature in 2023?

10 **MR SMITH:** No, Chair. I am sure if you went through the source, you would probably be able to find that that was not my... we received the document in that fashion.

CHAIRPERSON: I am sorry. Mr Notshe ...[intervenes]

ADV NOTSHE SC: Chair ...[intervenes]

CHAIRPERSON: ...should we not paginate these documents first? Are you looking at the covering letter or at the actual agreement?

ADV NOTSHE SC: Chair, the... no, they did not go together although they are bounded.

20 **CHAIRPERSON:** Oh, okay.

ADV NOTSHE SC: One is standing alone and the other one is standing alone.

CHAIRPERSON: Oh, are you looking at the email or letter?

ADV NOTSHE SC: The email, yes.

CHAIRPERSON: Dated 17...

ADV NOTSHE SC: November.

CHAIRPERSON: 17 November. Okay alright.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Just... I see that the... I think you must first read what is said there and then indicate what is handwritten and what was typed ...[intervenes]

ADV NOTSHE SC: Yes.

CHAIRPERSON: ...first before you ask the question.

ADV NOTSHE SC: Chair, the email is dated Thursday, the
10 16 November 2017. It is from Brian Landman at Waterfall to
Mr Vincent Smith at ANC.

CHAIRPERSON: Maybe, before you proceed. Who is Brian
Landman?

MR SMITH: Those are the accountants of the consortium
for a want of a better word, Chairperson.

CHAIRPERSON: In which you have shares?

MR SMITH: Yes, of that. Yes.

CHAIRPERSON: Yes, okay. Okay. Maybe I must get this
clear. The shares are... that you are talking about from
20 which you are going to get money to pay back Mr Agrizzi.
There is not shares in Euro Blitz. It is shares in some other
entity or the positions that Euro Blitz had shares in another
entity.

MR SMITH: Chairperson, it is a holding company that was
called Waterfall Investment Company.

CHAIRPERSON: Yes, yes.

MR SMITH: It had three shareholders, as you see on the agreement at the bottom.

CHAIRPERSON: Ja. Yes.

MR SMITH: And Euro Blitz was one of those three shareholders.

CHAIRPERSON: Okay, okay, okay. Now I understand. Okay Mr Notshe, then you can read the... and Mr Brian Landman was one of the... was an accountant ...[intervenes]

10 **MR SMITH:** Was an employee for WIC, the top company.

CHAIRPERSON: Oh, okay alright. Thank you. Mr Notshe, continue.

ADV NOTSHE SC: And then he writes:

“Hi, Vincent. I apologise for the delay. I have discussed details with Werner this afternoon. Werner confirms that dividends will only be distributed once all loans have been settled. This will be August ‘26.”

And then there is a line drawn across. It says:

20 “Dividends would obviously be payable only after annual income tax is settled by the company to SARS for each year.”

And then there is a handwritten ‘23. It says:

“5% Equity Evaluation as at November 2017.”

And then it gives the valuations. So my issue is about

August '26 which seems to have been crossed.

MR SMITH: That was not my adjustment, Chair. I am saying it would have been there. And I am saying that Chari because there was always clarity that the repayment there where it says less debt, was always going to be... if you look at the net asset value box, the bottom... the second... or the table. Let us put it that way there.

It was always our understanding that that loan would take twelve years. And that is why I indicated earlier on that
10 it is a long-term loan, Chairperson.

So if you took – and we can verify it with the authors – if you took the time that this thing was agreed upon in 2011 and you add the 12 years, it would come to 2023.

So my answer to you is that that adjustment was not my adjustment and it can be easily verified by the authors of this transaction. Oh, not the transactions. The witness of the email.

CHAIRPERSON: Well, the year 2026 is crossed out and you skip a line and below the next line, the number 23 is
20 written. I... it seems to me that you have understood that 23 and it does not 2023, it says 23, you have understood that 23 to be have been intended to be 2023. Is that right.

MR SMITH: I understood it and that is what I have received from Mr Landman when I spoke to him.

CHAIRPERSON: Yes.

MR SMITH: Yes, Chair.

CHAIRPERSON: Yes. Did you ever speak to him to clarify that or you left it on the basis that is how you understood it?

MR SMITH: No, I left it on the basis that is how it ease.

CHAIRPERSON: Yes.

MR SMITH: Because it is not in the financial statements.

CHAIRPERSON: Yes.

MR SMITH: As a shareholder, you are entitled to financial statements. So it would have been at the next financial
10 statements clarified.

CHAIRPERSON: Yes.

MR SMITH: Yes. This was just for me to say where I am now but I am sure the financial statements would have shown differently and the audited financial statements are there.

CHAIRPERSON: Yes.

MR SMITH: And as a shareholder, I mean entitled to the books.

CHAIRPERSON: Yes.

20 **MR SMITH:** So that is easily available. And if you wanted it as the Commission, I am sure you could source it and give it to you.

CHAIRPERSON: Yes. No, no. I think if there is some document that would show that this August... this 23 was meant to be August 2023, I think that it would be... you might

wish to provide that. Or if there are other documents on the basis on which one can say, if this document says 20 August 2023, then August 2023 is what must have been meant here, that is fine as well.

MR SMITH: I am sure we can source it from WIC.

CHAIRPERSON: Yes.

MR SMITH: And if they have, I will make it available Chair.

CHAIRPERSON: Yes, okay. Mr Notshe, continue.

ADV NOTSHE SC: Now you received this document on the
10 16th of November 2017. Am I right?

MR SMITH: Correct, Chairperson.

ADV NOTSHE SC: Now, how could you have told Mr Agrizzi that you will pay him in 2023 if you received this only in 2017? How could you have told him in 2015 that you receive his money back in 2023?

MR SMITH: Chairperson, we signed the shareholder's agreement in 2011 and at that time it was clear to all us, in fact, it was indicated to all us, maybe not here, that it is a 12-year agreement Chairperson.

20 And I am saying that information – I have not gone through this to see if it was there – but that information is attainable. That you can expect after 12 years, ordinarily, that the loan... not the loan, that the input costs would have been covered and you will start getting dividends.

That was made clear to us Chairperson. And it was on

that basis that I made the decision. But again, if you wanted something to that effect, I am sure we can go and get the confirmation, Chair.

I was very clear – and let me put it to the Commission that when I participated here, I knew that this was when this money was going to come available so that I could fund my daughter's... this was, in fact, prosperity for my children.

So I knew that this was the timeframes that ordinarily, unless there is a crisis, you could expect the returns to
10 come.

That was discussed even when we were agreeing to the shareholding that: Look, guys. It would you take you about so long before we start seeing dividends. That was the basis of the shareholding agreement, Chairperson.

ADV NOTSHE SC: Alright. Now Mr Smith, let us move on. You do not dispute that BOSASA hired a vehicle that was used by your daughter, right?

MR SMITH: I do not know, Chair.

ADV NOTSHE SC: You do not dispute that?

20 **MR SMITH:** No, I do not dispute that.

ADV NOTSHE SC: And ...[intervenes]

CHAIRPERSON: Sorry, he does not dispute what?

ADV NOTSHE SC: That BOSASA hired a vehicle ...[intervenes]

CHAIRPERSON: Oh, ja.

ADV NOTSHE SC: ...that was used by his daughter. You do not dispute that?

MR SMITH: No, I do not dispute that, Chair.

ADV NOTSHE SC: Yes. And without wasting time, you will not dispute that you did not disclose that to parliament that you got a benefit from BOSASA in the form of a vehicle hired for your daughter?

MR SMITH: No, I did not declare it, Chairperson. But just to put context.

10 **CHAIRPERSON:** Yes.

MR SMITH: And I am not disputing it.

CHAIRPERSON: Yes.

MR SMITH: It is in my affidavit. My daughter came home from school. I had approached a friend: Listen, give me a little run around. And I approached Gavin Watson for it. I received it, Chairperson that little run around.

And that is why I am saying, I am not... at the time, it was no indication that it was going to be rental car. There was no indication.

20 Today, after the... no, today but after the invoices that were given to me, I then... not after the invoices. When we went to get the car, it became clear that this was a car that was rented from whoever.

And I... yes, to answer his question. I did not declare that. I had received this benefit in kind. No, I did not.

ADV NOTSHE SC: And this one, I mean, this one you knew, it was from BOSASA. It was not from Agrizzi. It was from BOSASA.

MR SMITH: That is what I knew, it was from Gavin Watson, Chairperson. A friend of mine who had... in fact, in the past helped me all along. And in fact, when I raised it with him, he had indicated to me: Listen, man. If it happens again that you need it, let us have a discussion.

So I had approached Gavin Watson as I would have
10 normally approach and he had given it to me, Chairperson. And again, I never asked him whether he is going to source it from the company or whatever but now when you look at the blank invoices, it is clear that it came from there. Yes, Chairperson.

CHAIRPERSON: Let us talk about the distinction you emphasised repeated, levelled whether it is the company or an individual. The fact of the matter is - I think somebody gave evidence or I read somewhere that Mr Gavin Watson was for all intents and purposes Mr BOSASA. You know.

20 Legally, BOSASA is a separate entity or was a separate entity but as I understand, I think somebody's evidence, he really... everyone knew that Mr Gavin Watson was BOSASA.

Now, of course, once you got to know Mr Agrizzi, my expectation is that he would also know that, as I see it, it looks Mr Agrizzi was Mr Gavin Watson's right-hand man in

the group of companies.

So I am not sure that if you were asking for a benefit of a financial nature or any benefit from Mr Agrizzi or Gavin Watson in your own mind being aware of all the allegations of corruption, you know, relating to BOSASA that you had been told about in the Correctional Services Portfolio Committee from around 2010/2011 that you ought to have been seeking to make a distinction that this benefit that I am asking for, I am getting from Mr Gavin Watson
10 and not from BOSASA, this one I am getting from Mr Agrizzi and not from BOSASA because if BOSASA – if the allegations, the serious allegations of corruption that you had heard about relating to BOSASA were true, what are the chances that the top people at BOSASA would not have been involved in that corruption because companies act through human beings, they do not act on their own and, therefore, I would expected that if, because of the allegations of corruption that you have heard over the years about – relating to BOSASA, you would be concerned
20 to get any benefit from BOSASA. I would have thought that even a benefit from Mr Gavin Watson, whom you had known for some time, you would be concerned because he was effectively, you know, the owner or one of the owners of BOSASA. What do you say to that kind of thinking?

MR SMITH: Chair, I distinguished between the individual

and the company, as you said, because even earlier on, when I said that Euro Blitz and Vincent Smith, you said to me but one is personal and one is the company.

CHAIRPERSON: Yes, no ...[intervenes]

MR SMITH: It is what you – I beg your pardon, it is what the Commission had said, Chairperson.

CHAIRPERSON: H'm.

MR SMITH: So long before I knew or long before, for instance, these things came out of SIU, I had a
10 relationship with Mr Watson and I would have dealt with him at that level Chairperson and I – if had time, I would look, I think even somewhere where I raised – and I think it was the documents that came last night. Mr Agrizzi somewhere said look, this I was not doing on BOSASA or anybody else, doing it as me.

So everybody distinguished, whether for convenience or otherwise, to this is me and this is the company and this is me and this is the company.

In my case, I am not sure that is the Commission
20 suggesting to me that I would – or however wrong, not be able to have a relationship in terms of being assisted by somebody who might at company level, or wherever, I do not know that, Chair, but I am just saying to you, from where I am sitting, I made that distinction very clearly, that I have a personal friend called Gavin who in the past I

would go to and say give us tee-shirts for the ANC, he will do it from the company.

I want to reiterate, Chair, that now we are having this honest and frank discussion, in retrospect the lines were blurred or possibly were blurred. I want to make that upfront, I do not want to fudge that, Chairperson.

CHAIRPERSON: Yes.

MR SMITH: I want to be upfront with you that hindsight is always where one learns.

10 **CHAIRPERSON:** Yes, yes. No, that is fine. Maybe I would just add this just to underline something about making the distinction between a personal relationship or somebody as a person representing their company, you have a company called Euro Blitz and you are the sole shareholder in that company, if there are all kinds of allegations of corruption that your company called Euro Blitz is alleged to have been involved in, even if you were my friend I would think that, you know, I need to think carefully about this relationship because there are all
20 these allegations around this person which, if true, mean that he is a very bad person.

Now maybe, I do not know if it is true or not, but I would be concerned about being seen to be friends with this person who has – who is alleged, let us say for argument's sake to be a bank robber and all kinds of

things. So if your company, and you are the sole shareholder, I am making example, there are all those allegations, I might want to place some distance between myself and yourself even if before those allegations came up, we were quite close because what if they are true? It looks like maybe during the day you are such a nice person but you do all kinds of wrong things. One day they might be proved to be true, maybe not true, but it is something that I would imagine would concern me.

10 Of course it depends what the allegations are, some allegations, you know, might not be so serious, but – so I am just saying that in a certain situation you might say look, I am not going to be drawing distinction because, for example, Mr Smith is the only shareholder of this entity, so if these things are true there is no way he is not part of it. You might wish to say something on that or you might not wish.

MR SMITH: Nothing other than to say I take your wise counsel, Chairperson.

20 **CHAIRPERSON:** Yes, yes. Okay, thank you.

ADV NOTSHE SC: Tell me, is this view – is this the view you hold, is that why you did not disclose to parliament that you were friends with Mr Gavin Watson whose company was involved in this alleged corrupt activities?

MR SMITH: Could you please repeat the question?

ADV NOTSHE SC: Why is your view that there is a distinction between Mr Watson and BOSASA the reason for not disclosing to parliament, that you were friends with Gavin Watson?

MR SMITH: Not, it is not my view, Chairperson.

ADV NOTSHE SC: Did you disclose?

CHAIRPERSON: Yes, I am not sure whether there is an obligation to disclose friendship in parliament, I think there is a [inaudible – speaking simultaneously]

10 **ADV NOTSHE SC:** Let me put it the other way. Your – you saw in the Portfolio Committees that there were discussion about BOSASA, am I right?

MR SMITH: I was aware in the - will you please repeat your question?

ADV NOTSHE SC: You were aware that the Portfolio Committee on DCS, Department of Correctional Services was discussing now and again the issues of BOSASA.

MR SMITH: I was aware, I was part of it, yes, Chairperson.

20 **ADV NOTSHE SC:** But did you disclose then to the members of the committee that this company is owned by a friend of mine? When I say mine, I mean yours.

MR SMITH: No, Chair, I did not disclose that and I have friends that own – and I am not justifying it, I am just trying to follow the logic that if – this particular one I agree has

this problem but I did not disclose it because there was no need for me to – not there was need, I am saying I never disclosed any other friendship and I do not think any other member of parliament does it.

So to answer your question, no, I never disclosed it and again I am saying, Chair, my understanding is that even if he was my friend, with the doctrine of separation of powers, a member of parliament is unable to influence positively or negatively the operations of the departments,
10 Chair.

I never saw any conflict at that level, Chair, and depending what the Commission is asking me, it makes it even more pronounced for me if these transactions happened after I have ceased being a – I was still a member of parliament but I had ceased any active role in direct oversight over the committee, Chairperson. That is how I understand it.

ADV NOTSHE SC: Sorry, just to be clear, Mr Smith, are you saying a member of parliament is entitled to sit in a
20 Portfolio Committee meeting wherein issues are discussed about serious issues of corruption, are discussed about a company who is – one of the directors is a friend. You say that a member of parliament is not entitled – is not obliged to disclose that to the Portfolio Committee members?

MR SMITH: No, Chairperson, I – and again I could be

wrong, I think that my obligation to recuse myself because I think that is what is being alluded to, it is only when there are decisions or whatever but in the broad general discussion, I do not understand – it happens in parliament, Chairperson, so would it then automatically mean that when there is a discussion of this matter in the National Assembly I would have – I understood that if there were to be decisions taken, that I must declare and/or recuse myself, Chairperson.

10 But if it was a broad discussion in a committee, I could be wrong but I did not see the need to say by the way, the company you are talking about, I have friends that are directors or shareholders in that company, Chairperson.

ADV NOTSHE SC: I see. Now Chair, I am going to move to another item. The issue of ...[intervenes]

CHAIRPERSON: I am sorry, the issue of BOSASA hiring a car or cars for your daughter, I think to be complete you need to – Mr Notshe, need to cover the question of was
20 that a once-off thing or did it happen over a certain period of time? Mr Smith, do you want to just talk to that? As far as you know, how often did that happen?

MR SMITH: It happened three times, Chairperson, and ...[intervenes]

CHAIRPERSON: How many times?

MR SMITH: Three.

CHAIRPERSON: Three times? Oh.

MR SMITH: Yes, I speak under correction.

CHAIRPERSON: Yes.

MR SMITH: But I think that is what is here and it was – my daughter would come home twice a year.

CHAIRPERSON: Ja.

MR SMITH: Midyear, for them, that is ...[intervenes]

CHAIRPERSON: Ja, from overseas.

10 **MR SMITH:** And yes, midyear and end of the year.

CHAIRPERSON: Yes.

MR SMITH: And it happened four ten days when she was hear and midyear and so it was a three – there were three invoices, let me put it to you that way.

CHAIRPERSON: Yes.

MR SMITH: Yes, Chair.

CHAIRPERSON: Well, I made a note somewhere, I picked up either three or four occasions when in terms of the invoices from Blake's Travel, which was the travel agent
20 used by BOSASA and on some of the occasions the – at least some of the occasions, I do not know if it is all of them, the period during which they hired a car for her was about a month. I think there is one that was from 11 June, I think 2016, to 11 July 2016. There was another one that was, I think, sometime in December, I do not know whether

2016 or 2015, to January the following year. So does that more or less reflect your own understanding or is that something you have not looked at closely in terms of how long the periods were?

MR SMITH: No, Chair, you can look at page 464, it was 17 days.

CHAIRPERSON: 464?

MR SMITH: Yes.

CHAIRPERSON: One second, Mr Smith?

10 **MR SMITH:** 464, Chair, yes, the black 464.

CHAIRPERSON: One second? 464 you said?

MR SMITH: 464, Chair.

CHAIRPERSON: Okay.

MR SMITH: I am just reading that one because I had remembered it was there.

CHAIRPERSON: Yes. Yes, I am at 464.

MR SMITH: 17 days, Chair.

CHAIRPERSON: That one is 17 days?

MR SMITH: Yes.

20 **CHAIRPERSON:** And I think I saw one that is 17 days but I certainly saw either one or two ...[intervenes]

ADV NOTSHE SC: Can I just ...[intervenes]

CHAIRPERSON: That was 30 days or so.

ADV NOTSHE SC: Can I expedite this?

CHAIRPERSON: Ja.

ADV NOTSHE SC: By referring to them and then we can just collect all of them.

CHAIRPERSON: Ja, let us do that, ja.

ADV NOTSHE SC: Mr Smith, turn to page 381.

CHAIRPERSON: 381?

ADV NOTSHE SC: 381.

CHAIRPERSON: Oh yes, ja.

MR SMITH: I am there, Chair.

ADV NOTSHE SC: You see there, Mr Smith, is the invoice
10 BT26840, it is from the 11 July 2016 to 5 August 2016. Do
you see that?

CHAIRPERSON: That would be about three weeks, or
what?

MR SMITH: Yes, Chair.

ADV NOTSHE SC: Yes.

CHAIRPERSON: About three weeks.

MR SMITH: Three weeks, yes, Chair.

CHAIRPERSON: Ja, about three weeks or just over three
weeks.

20 **ADV NOTSHE SC:** It is about 25 days.

CHAIRPERSON: Ja and according to that invoice from
Blake's that seems to have cost BOSASA R7 954.08, is
that right?

MR SMITH: That is correct, that is the invoice, Chair.

CHAIRPERSON: Yes.

ADV NOTSHE SC: And then the next invoice is on page 385 and it is invoice BT28727 and it is from ...[intervenes]

CHAIRPERSON: 18 December.

ADV NOTSHE SC: 18 December to 5 January.

CHAIRPERSON: 18 December 2016 to 5 January 2017.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Maybe that is another about three weeks as well.

ADV NOTSHE SC: 17 days.

10 **MR SMITH:** Yes.

CHAIRPERSON: Yes, 17 days and that is the total of that invoice – that seems to have cost BOSASA R12 444.83, is that right?

MR SMITH: Correct.

CHAIRPERSON: Okay.

ADV NOTSHE SC: Yes, Chair.

CHAIRPERSON: Yes, take us to another one.

ADV NOTSHE SC: And then the following one where there is a small amount for a fine, on 385, was merely a fine.

20 Then there is the next one, there is at page 395 ...[intervenes]

CHAIRPERSON: Well, before 395 you have got 392.

ADV NOTSHE SC: Oh sorry, I beg your pardon, 392.

CHAIRPERSON: That one is for the period 11 June 2016 to 11 July 2016. I think that is the one I was saying was 30

or 31 days, I am not sure.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Can you see that one, Mr Smith?

MR SMITH: 392?

ADV NOTSHE SC: Yes.

CHAIRPERSON: Page 392, yes.

MR SMITH: Yes, Chairperson, I am there.

CHAIRPERSON: Yes.

ADV NOTSHE SC: That is 30 days.

10 **CHAIRPERSON:** You see that one is for about a month?

MR SMITH: Correct, yes.

CHAIRPERSON: Yes and the amount is R9 151.98 or 93 cents. I think 98.

ADV NOTSHE SC: 98 cents.

CHAIRPERSON: Yes, okay. Is there another one?

ADV NOTSHE SC: No, there is no – 295 is just an invoice from Avis.

CHAIRPERSON: Yes.

ADV NOTSHE SC: But it is for that invoice, 392.

20 **CHAIRPERSON:** Okay. I do not know what the total of those amounts is but it should not be difficult to work it out, it might be about what, 20 000?

MR SMITH: It was about 26 000, I saw somewhere, Chair.

CHAIRPERSON: Oh, about 26 000?

MR SMITH: I speak under correction.

CHAIRPERSON: Yes.

MR SMITH: But it was about 22 000 something like that there, Chairperson.

CHAIRPERSON: Okay. Okay, no, that is fine. Yes, Mr Notshe, you may proceed. But you wanted to move away or you have some question?

ADV NOTSHE SC: No, I was about to move away from this.

CHAIRPERSON: Okay.

10 **ADV NOTSHE SC:** But the record – for the record, that is about R26 000 you did not disclose to – as a benefit.

MR SMITH: Correct, Chairperson.

CHAIRPERSON: Yes. I want to put this also. The thrust of Mr Agrizzi's version is that from a certain time BOSASA was looking after you. I am using those words, I think we all understand what they mean and he says in support of that version, he says one, initially Mr Smith was not entertaining us as BOSASA and yet we want to have – to talk to him so that from the Portfolio Committee on
20 Correctional Services he could make sure that the tenders that we were getting from Correctional Services did not stop. But he was not entertaining this idea, he was not interested in meeting us until we had to speak to Mr Frolick and then Mr Frolick approached him and from a certain time, he changed his attitude to us.

And then he says, BOSASA paid him R45 000 a month or whatever the amount is, he says, that is what we paid him and we paid for his daughter's university fees and we hired cars for his daughter.

Now if you look at the part relating to them hiring your – cars for your daughter for these kinds of periods and not charging you, one might say that does appear to be people who are looking after you. What would you say to that?

10 **MR SMITH:** Chair, we canvassed the first part, I do not which part you asked me but the first part, as I start with that ...[intervenes]

CHAIRPERSON: Ja, no, no, the first part we have dealt with, I am talking more about their conduct in extending this benefit to you through your daughter, if there is anything. You might not have anything to say.

MR SMITH: No, there is not anything I want to say, Chair.

CHAIRPERSON: Yes.

MR SMITH: Except that, Chair, if – and we can do the
20 sums, I think it was R26 000 or R22 000.

CHAIRPERSON: Yes, yes. Yes, yes.

MR SMITH: Honestly, if they were looking after me in any other way it would be easier to take that money and pay this so that there is no track record about it, Chair.

CHAIRPERSON: Yes, yes.

MR SMITH: It was an honest – a run-around for my daughter.

CHAIRPERSON: Yes.

MR SMITH: You gave that to me. If it was anything else, as Mr Agrizzi, they were looking after me, I would have used that looking after, whatever, to do it. That is all that I want to say on that, Chairperson.

CHAIRPERSON: Okay, thank you.

ADV NOTSHE SC: Thank you, Chair. Now there is no
10 dispute, you do not dispute this, that BOSASA installed security cameras at your place and after there was a break-in. Am I right?

MR SMITH: That is correct, Chair.

ADV NOTSHE SC: And you did not pay for that.

MR SMITH: I beg your pardon?

ADV NOTSHE SC: You did not pay for that, or did you?

MR SMITH: Chair, when the incident happened, I had canvassed at least three individuals or organisations for quotations, one of which was Gavin company. He made
20 arrangements for Mr le Roux to come and do a site visit, like all the others did and to return a quotation to him, which was done, in terms of him doing the site visit, Chairperson. A few days or a week, I am not sure how the timeframe is, but they came to do the job.

At the completion of the job I requested Mr Watson

for the invoice. Not only then, on at least three other occasions, Chairperson, I had asked the late Gavin Watson to provide me with the invoice because this job had been done. So it was not that it was a freebie, I had requested for an invoice from Gavin Watson which was never forthcoming, Chairperson.

ADV NOTSHE SC: And by that time, you knew – you knew, when you asked for this service that this was a company that had been involved in – alleged to be involved
10 in corruption and which issue had been brought before the Portfolio Committees, am I right?

MR SMITH: Chair, you are correct and I will – and please forgive me, Chairperson, and maybe if I am wrong, you indicate it immediately so that I do not return to it, Chairperson. When this incident happened, I was no longer active in the committee. I had no ways of benefiting the company even if I wanted to, Chairperson. And therefore, I did not see it – I did not see it as any risk from a conflict point of view, Chairperson, because I had no
20 direct oversight over the company ...[intervenes]

ADV NOTSHE SC: Not over the company.

MR SMITH: Yes, at a parliamentary level, Chairperson. And even if there was, my contention is the separation of powers does not allow MPs – there could be a conflict of interest because it is in the committee you are working

with.

But, Chairperson, there was no ways that any member of parliament could influence it because then it means anything that comes to the National Assembly, MPs would be reluctant to do it because you might be doing – and I am being maybe facetious about the whole thing, Chair – if you want to go to the bank do you worry that the bank, because you do business with it?

So, in my case my reasoning was I have no direct
10 responsibility where I can influence it one way or the other.

Secondly, the separation of powers does not even allow it even if you have direct responsibility.

So there was never an intention that I am doing this for you because in return you will do that for me. That was never ever on the table, Chair.

CHAIRPERSON: Of course one could have a situation where a company that wants to engage in corruption and benefit from corruption in a government department, for example, where such a company could have certain people
20 both inside the relevant department or outside, which could include parliament, for argument's sake, where they would say look, do this for us to make sure we continue these benefits, this is where we think you fit in, you know, and we will look after you.

Maybe we will not look after you now because it

might be difficult but we will look after you after you have left here. Theoretically that is possible.

Or they might say, we will give you something now but even after you have left, we will continue.

In this regard I make one example. The evidence that I have heard in regard to BOSASA and the Department of Correctional Services includes evidence from Mr Agrizzi that says Mr Gillingham was working for the Department of Correctional Services.

10 They talked to him and for a long time while he was an official of the Department of Correctional Services, he was working with them to make sure that they got certain contracts and so on and so on.

 When he left the Department of Correctional Services they continued to look after him, even when therefore he could do nothing for them anymore. Actually, if I remember correctly, the evidence from Mr Agrizzi is that when you left the Department of Correctional Services they were paying him a certain amount per month but after he
20 had left he said you see now, now that I have left, you people have got to increase the amount in order for me to, I think, get effectively what I was getting before I left. And according to Mr Agrizzi, when he left BOSASA they were continuing to make that payment.

So I am just saying theoretically you could have

that situation. You understand that?

MR SMITH: Yes, I accept that theoretically.

CHAIRPERSON: It might not have applied in your situation but theoretically.

MR SMITH: Absolutely, Chairperson.

CHAIRPERSON: Okay.

ADV NOTSHE SC: And when this in the newspaper got wind of these payments to you, why did you deny that the security features like CCTVs were installed by BOSASA at
10 your home?

CHAIRPERSON: I think, Mr Notshe, it is better that we refer to these newspapers first. I think you are referring to page 346.

ADV NOTSHE SC: 356, yes.

CHAIRPERSON: Ja, 346, Mr Smith. Have you got that? Have got page 346? It has got your picture and there is somebody else next to you. Have you got page, 346?

MR SMITH: Oh, I beg your pardon, sir. I am sorry, yes, I am there. I beg your pardon, sir.

20 **CHAIRPERSON:** Alright. Now that – I do not know from which newspaper that is but it says opinion there and at the top it reads – must read, then it says:

“Vincent Smith’s response to BOSASA payment claims is dated 4 September 2018.”

Then it has got your picture and somebody else next to you

and below your picture it says:

“Vincent Smith says he borrowed me at least R600 000 to pay his daughter’s tuition fees.”

And then below that it says:

“ANC NPM co-chairperson for parliament’s Constitutional Review Committee, Vincent Smith, responds to allegations that he was irregularly paid R670 000 by facilities management group BOSASA over the past three years.”

10 Then it says:

“In the light of the allegations that were made in the media over the past weekend I have since consulted with the leadership of the ANC in caucus. We are all in agreement that I am obliged to respond. I confirm having entered into an agreement for a personal loan with Mr A Agrizzi which is repayable by me. This loan was processed to me in two separate payments, an amount of R220 000 in 2015 and R395 000 in 2016. The loan was for the
20 university tuition fees of my daughter in year one (2015) and year two (2016).”

Then the next paragraph and that is the one I think Mr Notshe was talking about.

“I deny any further assistance, financial or otherwise, including the installation of CCTV

cameras at my home from him or any other person or company. The cameras that are at my home were paid for by myself.”

Do you know what newspaper that is or what publication that is?

MR SMITH: No, I do not remember.

CHAIRPERSON: Yes. Did you see this publication at some stage in 2018?

MR SMITH: Did I see this publication?

10 **CHAIRPERSON:** In 2018, this article?

MR SMITH: I do not recall, Chair, but I could have seen it, I do not recall, Chair.

CHAIRPERSON: Okay, alright. What do you have to say about the content of what I have just read?

MR SMITH: Chairperson, this report apparently was in – the date there is 20 ...[intervenes]

CHAIRPERSON: Oh, I am sorry, I am sorry, Mr Smith, actually it continues in the following page. I did not realise that.

20 “My sole directorship of Euro Blitz 48, a company through which the loan was processed, is fully declared in the register of members’ interest and this has been the basis the acquisition of the company. I am in total support of being held accountable and I therefore welcome any

investigation to my personal loan transaction. I will fully participate the parliament process led by the ethics committee, a process which I have no doubt will absolve me completely. I am also going to present myself to the ANC Integrity Commission at their earliest convenience in the interest of being held accountable by my own organisation.”

And then it continues. And it says:

10 “This is the unedited text of the statement released by the ANC on behalf of Vincent Smith.”

Do you want to comment on this statement or article?

MR SMITH: Indeed, Chair, I am saying if we went – if we started with page 2, for instance, that all happened, Chairperson.

CHAIRPERSON: It all happened.

MR SMITH: Yes, I am saying page 2.

CHAIRPERSON: Yes.

MR SMITH: That I am a sole director.

CHAIRPERSON: Yes.

20 **MR SMITH:** I voluntarily stepped down and so on.

CHAIRPERSON: Yes, yes.

MR SMITH: Everything on page 1 I also agree to, Chair. That last statement, the last paragraph.

CHAIRPERSON: Ja, on page 346.

MR SMITH: On page 1, what I am calling page 1.

CHAIRPERSON: Ja, 346.

MR SMITH: On 346, I beg your pardon, that is what I should say, Chairperson. In 2018 and even as I speak today, the CCTV equipment is equipment that I had installed and paid for, Chairperson. Yes, that is my understanding from that. In 2018 it was equipment that I had installed.

Now to the long – maybe have a fight about it, if you read it there it says:

10 “I deny the installation of cameras at my home.”

I mean, if I am paraphrasing that one there, Chair, that last line, yes.

“I deny installations at my home.”

There were indeed installations at my home initially, as I indicated, which after a while I have asked them to remove and I put my own cameras which are there now, Chairperson. That is the state of affairs.

CHAIRPERSON: But the ones that you admit as having been installed by BOSASA, when were they installed?

20 **MR SMITH:** They were installed at the time of the break-in 2014.

CHAIRPERSON: In 2014.

MR SMITH: Around about 2014, Chair.

CHAIRPERSON: 2014. But you say they were taken out at some stage?

MR SMITH: Yes. Yes, Chair.

CHAIRPERSON: When was that? 2018?

MR SMITH: 2017, I think the end of 2017, Chairperson.

CHAIRPERSON: End of 2017.

MR SMITH: 2017, 2018, around about there.

CHAIRPERSON: Yes and they put in ones that you bought for yourself.

MR SMITH: Those had become very unreliable.

CHAIRPERSON: Yes.

10 **MR SMITH:** They were, in my words, become obsolete.

CHAIRPERSON: Yes.

MR SMITH: I had been asking Mr Watson to invoice me for a long time.

CHAIRPERSON: Yes.

MR SMITH: And when it became clear that I needed to upgrade, even of those upgrades I asked them to remove their stuff and I put superior, if you could put it, that equipment, yes, Chairperson.

CHAIRPERSON: Yes.

20 **MR SMITH:** And that was in 2018.

CHAIRPERSON: Yes. The removal was in 2017.

MR SMITH: I think it was the end of 2017 beginning of 2018.

CHAIRPERSON: Okay, alright, Mr Notshe?

ADV NOTSHE SC: But why did you not just come upfront

and say there were cameras installed by BOSASA but I had them removed? Why did you not say that in this statement?

MR SMITH: Perhaps I should have said that, Chairperson, I have no answer to that. I am saying perhaps I should have said that there, but at the time when I made this statement, they were my ones, I could have said I initially had that and I put those ones in. Yes, I cannot dispute that.

10 **ADV NOTSHE SC:** Mr Smith, when were the – just be careful about this, please be careful.

MR SMITH: Okay.

ADV NOTSHE SC: Was it these – were the cameras not removed in October 2018 from your place?

MR SMITH: No, Chair, they were not. They were not, I mean, I do not have the date but it was – they would not have been removed in October 2018 because I had my own cameras installed in 2018 for which I have invoices and proof of payments. So they were not removed in October
20 2018, Chairperson.

ADV NOTSHE SC: Were these cameras at your place, the ones installed by BOSASA, not removed after this article appeared?

MR SMITH: No, they were not.

ADV NOTSHE SC: Alright, turn to page 342.

CHAIRPERSON: Maybe before he does so. Mr Smith, you know, this statement at the end of that paragraph, last paragraph of page 346 of the article.

MR SMITH: Oh, I beg your pardon, yes, I am there.

CHAIRPERSON: Ja, what you call the first page of the article.

ADV NOTSHE SC: Yes.

CHAIRPERSON: Ja, that denial, one must look at it in the context of why you issued the statement, is that right? As
10 I understand it, you were responding, according to the document, to the allegations made by Mr Agrizzi.

MR SMITH: Correct, Chair.

CHAIRPERSON: Yes.

MR SMITH: Yes.

CHAIRPERSON: Now Mr Agrizzi – two of the allegations that Mr Agrizzi had made against you were that:

1. BOSASA had paid for your daughter's tuition fees.

2. BOSASA had installed CCTV cameras at your home.

Alright. Now, in response to those allegations, you admit
20 that – well, at least you say that Mr Agrizzi and yourself had a loan agreement in terms of which Mr Agrizzi made certain payments to you which you used for your daughter's tuition. Yes, that is the version you put up.

And then with regard to the other allegation, namely Mr Agrizzi's allegation that BOSASA also installed CCTV

cameras in your home, you addressed that by saying I deny any further assistance, financial or otherwise including the installation of CCTV cameras at my home from him or any other person or company. The cameras that are at my home were paid for by myself.

That last sentence may be factually correct, may have been correct at that time but remember you are responding to specific allegations and one of the allegations is BOSASA installed CCTV cameras in your
10 home.

So if you then make a sentence, a denial like this it must mean you are saying the only that Agrizzi did, the only thing that I know is the money which was the subject of the loan. Any other thing, including the installation of CCTV cameras that Mr Agrizzi is talking about is not true. That is how I understand that if I look at the context. It may have been different if you were talking just in general and saying well Mr Agrizzi and I had this loan agreement and then you say as for my situation at home I paid for my
20 own CCTV cameras without responding to any allegations, one could understand that but where you are responding to a specific allegation about BOSASA having installed CCTV cameras in your home it's difficult to say you were not denying that in this statement, what do you say? Because you are responding to specific allegations you're not just

talking in general, if you meant to admit – if you meant to say the cameras that are in my house right now were paid for by myself but you did not intend to deny allegations by Mr BOSASA – by Mr Agrizzi that BOSASA had installed CCTV cameras in your house, one would expect you to say, I admit, that indeed, BOSASA did, sometime back install CCTV cameras in my house, these were the circumstances under which it happened, I asked Mr Agrizzi for or Mr Gavin Watson or whoever for an invoice, two times, three
10 times they never gave it to me but as we speak now, those were removed and the ones that are in my house were paid for by myself, that is what one would expect if the intention was not to deny what Mr Agrizzi had said, what do you say to that?

MR SMITH: It's very difficult at this point, Chairperson, what you are saying makes sense, let me put it to you that way, that what you are saying makes sense, Chairperson, yes.

CHAIRPERSON: Yes, okay, alright thank you.

20 **ADV NOTSHE SC:** Now Mr Smith, I'm referring you to page 342, are you there Mr Smith?

MR SMITH: I beg your pardon, I'm sorry I am there Chairperson.

CHAIRPERSON: I'm terribly sorry Mr Notshe and Mr Smith, I'm going to take you back to something that we dealt with

a long time ago because there's a question that I should have asked and I keep on forgetting it and I don't want to forget it and I'll remember only tomorrow. Please don't move away from the page where you are. I wanted to say to you, Mr Smith, it seems strange to me, I'm going back to the log of Mr Agrizzi, it seems strange to me that when you needed a loan, on your version, you went to Mr Agrizzi and not to Mr Gavin Watson, whom you had known for a long time even before you went to Parliament and the person
10 that you would have known as, effectively Mr Agrizzi's employer, you know, because he was the top person at BOSASA, so I wondered why you didn't go to Mr Watson, somebody that you had known for a long time, you went to this person that you had known as long as that, as Mr Watson and somebody, who maybe, could be thought was likely to have more money than his employee, Mr Agrizzi, do you want to say something on that?

MR SMITH: Chair, I tried to contextualise it earlier on.

CHAIRPERSON: Yes.

20 **MR SMITH:** That at that period of 2015, we had a relationship ourselves.

CHAIRPERSON: Mr Agrizzi and yourself?

MR SMITH: Yes, by virtue of assisting the son getting a job and assisting my son and so on and it was, I guess, in that period that I just raised it with him. It was nothing

planned or unplanned, I guess if Mr Gavin Watson was in the – at the time, I would have asked him probably and anybody else.

CHAIRPERSON: Okay, ja okay. Sorry Mr Notshe I disturbed you in your plan, you can go back to your plan now.

ADV NOTSHE SC: Look, just taking you to that page there is a photograph...[intervenes].

CHAIRPERSON: And that is 342?

10 **ADV NOTSHE SC:** 342 Chair.

CHAIRPERSON: Ja okay.

ADV NOTSHE SC: I'm sure you have seen this photograph a number of times.

MR SMITH: I have.

ADV NOTSHE SC: And this is a photograph at your home.

MR SMITH: That's correct.

ADV NOTSHE SC: And I'm told this is a photograph of technicians taking down the cameras that had been installed by BOSASA, correct?

20 **CHAIRPERSON:** Maybe we should start by asking the question – prior question, who removed the BOSASA CCTV cameras in 2017 or beginning of 2018 because you said they were removed in 2017 or early 2018, who did the actual removing and where were they taken, what happened to them?

MR SMITH: No, Chair, I don't know who did the actual removal, I had requested Gavin Watson to remove them, Chairperson, so the individuals who did them – I'm not even sure if I was at home at the time, to be quite honest.

CHAIRPERSON: Oh, okay, no that's fine okay but at least, I think from what you say, whoever removed them, you expected that there would have been instructed by Mr Gavin Watson to do so or by somebody instructed by Mr Gavin Watson?

10 **MR SMITH:** Correct, Chairperson.

CHAIRPERSON: Yes, okay alright, Mr Notshe?

ADV NOTSHE SC: And the date and time there on the screens, on the two screens, do you see that?

MR SMITH: I do Chair.

ADV NOTSHE SC: What are the dates that are shown there?

MR SMITH: 1st of October 2018 and the second one, I think was also the 1st of October or the 6th of October 2018.

20 **ADV NOTSHE SC:** And it seems as if, on this screen, they were removed in October 2018?

MR SMITH: Chairperson these are screenshots of – I don't know where they came from. I am saying to the Commission that I put my cameras in prior to these, I've got proof of payment thereof and the invoice thereof. Now

I am seeing this here now, Chairperson and I'm not suggesting anything else but I can prove that mine were installed and it's not inconceivable that the dates and times on the recorder could not be in sync, it's not inconceivable Chairperson. In fact, and I again speak under correction, there was a News24 video, I think, round about this time that exposed me – my security by showing it and I think that one also indicates the date of January Chairperson so, is this accurate, is this doctored, it's a
10 black and white picture. I want to say to the Commission those cameras were removed in 2017/2018 Chairperson.

ADV NOTSHE SC: And Chair, to add to what Mr Smith is saying, there is – actually I had not verified it properly because the camera's also have this tendency of using the American way of date, starting with the month and then, so it could be the 10th of January in all fairness it could be the 10th of January and I wouldn't want Mr Smith to commit himself.

CHAIRPERSON: Yes.

20 **ADV NOTSHE SC:** On this one, in fairness to him.

CHAIRPERSON: Doesn't Mr Le Roux say something about when they are removed?

ADV NOTSHE SC: He says, they were removed, it doesn't give...[intervenues].

CHAIRPERSON: He doesn't say when.

ADV NOTSHE SC: Yes all he does recognise is the people and the cars that they were BOSASA cars and BOSASA person but ...[indistinct] doesn't deal with the times of – dates of removal.

CHAIRPERSON: Yes.

ADV NOTSHE SC: But it would be unfair to push Mr Smith to comment on – when there's a possibility that it could be 10 January or...[intervenes].

CHAIRPERSON: No that's fine.

10 **ADV NOTSHE SC:** Mr Smith, let's move on to the affidavit of – the latest affidavit of Mr Agrizzi. In it, Mr Agrizzi's attached some SMS messages, can you go to page 460.

CHAIRPERSON: What is the page number?

ADV NOTSHE SC: 460, Chair.

MR SMITH: I am there Chair.

ADV NOTSHE SC: Mr Smith, Mr Agrizzi attaches these...[intervenes].

CHAIRPERSON: One second – yes continue.

20 **ADV NOTSHE SC:** Mr Smith, before we deal with this, the context in which they are attached here, if you read the affidavit of Mr Agrizzi, he demonstrate to the Commission, he says, you continued to assist them. Now the first one is on 460 and then says Gavin Watson and then says, 27 August 2016, do you see that.

MR SMITH: I do Chair.

ADV NOTSHE SC: It says,

“No further payments were needed, we need to have a meeting before we get too involved and embroiled in the fight with the EFF, this is going to be ugly. Nomvula is being sucked in as well with the funders which could backfire on us...[indistinct 2.18.47] has also confirmed this, God bless”,

This is...[intervenes].

CHAIRPERSON: What is this, is this a SMS, is it a
10 WhatsApp message?

ADV NOTSHE SC: This is a SMS, Mr Agrizzi referred to it on page – let me check now...[intervenes].

CHAIRPERSON: Is it Mr Gavin Watson sending it to Mr Agrizzi?

ADV NOTSHE SC: Just a minute, Chair, I’m just going to – and on page 347 Chair, Mr Agrizzi deals with it, he says,...[intervenes].

CHAIRPERSON: Ja just say what he says.

ADV NOTSHE SC: On 12.7 he says,
20 “Vincent Smith, was knowingly, fully assisting the late Gavin Watson and BOSASA and was in contact with the design makers and...[intervenes].

CHAIRPERSON: Okay, I’m sorry Mr Notshe, I think Mr Smith needs to see that and he couldn’t find it, just let’s wait for him to find the page.

ADV NOTSHE SC: 437.

CHAIRPERSON: Oh, I'm at 460, I thought you said 460?

ADV NOTSHE SC: No, he has found 460 but he's looking for what I'm reading, yes.

CHAIRPERSON: Oh, okay, 437, okay.

MR SMITH: 437?

ADV NOTSHE SC: 437 yes.

CHAIRPERSON: That is Mr Agrizzi's affidavit?

10 **ADV NOTSHE SC:** Affidavit yes.

MR SMITH: Yes, I'm there Chair.

ADV NOTSHE SC: And at 12.7 he says..[intervenes].

CHAIRPERSON: And maybe you can just read again, Mr Notshe, now that Mr Smith has found the page.

ADV NOTSHE SC: He says at 12.7,

“Vincent Smith was knowingly, fully assisting the late Gavin Watson and BOSASA and was in contact with the design makers and people at DCS. Annexure of messages are attached as AG1”,

20 Then AG1 is on 460, it starts from 460.

CHAIRPERSON: Yes, you want to read 461 – or 460.

ADV NOTSHE SC: 460, is a message it says – on the 27th of August 2016, it says,

“No further payments, we need to have a meeting with them before we get too involved and embroiled

in their fight with the EFF, this is going to be ugly. Nomvula is being sucked in as one of the funders which could backfire on us, Clove has also confirmed this, God Bless”,

Do you know of this?

MR SMITH: No I have no clue what’s happening here Chairperson, I don’t know what reference this has to me.

CHAIRPERSON: Yes, okay.

ADV NOTSHE SC: And then over the page at
10 461...[intervenues].

CHAIRPERSON: But I think, what you need to say, Mr – okay I think Mr Agrizzi puts up this message as support for what he says in his affidavit and what he says, is that as at this time, we’re talking August 2016, he says Mr Smith was knowingly assisting Mr Gavin Watson, you know, what he says at 437 and he puts up this message as showing what was being discussed between himself and Mr Gavin Watson and I think he seeks to say, when you read what is said in this message, it’s connected with Mr Smith being involved.
20 So, you might wish to comment on that, whether this message supports that or not, as you understand it.

MR SMITH: Chairperson page 460 makes no reference to me, Chairperson yes and I’m indicating to you that I’m not aware what this was about, Chairperson.

CHAIRPERSON: Yes okay.

ADV NOTSHE SC: No, that's fine, let's go over the page, now Mr Smith, when I read this, bear in mind what the Chair has put to you, that Mr Agrizzi tried to show that you are working with them, now he says – it seems as if this is from Gavin...[intervenes].

CHAIRPERSON: This is from Gavin Watson to Mr Agrizzi as well?

ADV NOTSHE SC: Yes, it says,...[intervenes].

CHAIRPERSON: AG1.2?

10 **ADV NOTSHE SC:** AG 1.2, yes.

CHAIRPERSON: At page 461, okay.

ADV NOTSHE SC: It says,

“Vincent Smith just got hold of me, he says let's wait until Tuesday because he is having a meeting tomorrow with ZM and Sal Burger, God bless”,

And then Agrizzi says,

“He called me as well, what he said was to continue the prep meetings, drafting documents we'll convene on Tuesday at 14h00 the review our approach and adjust the [indistinct 2.23.56] approach but he didn't say we should halt it, then he says, tried to call you on WhatsApp”,

20

Do you see that?

MR SMITH: I do see that Chair.

ADV NOTSHE SC: Now your name is mentioned and as

Chair was putting to you, Agrizzi is trying to prove that you were still working with them, they're talking about you.

MR SMITH: I'm sorry Chair, I never heard the question...[intervenes].

CHAIRPERSON: Oh, the question is, Mr Agrizzi is putting up this message to support his version or statement that in 2016 you were still assisting them and he used the word, knowingly assisting Mr Gavin Watson, and then he's putting up this message, it's a conversation between
10 himself and Mr Gavin Watson but it's a conversation about you and them. So, you need to be able to say, what you have to say about Mr Agrizzi saying, one, in 2016 you were knowingly assisting Mr Gavin Watson and saying this message supports what he's saying, that you were working with them on something.

MR SMITH: First of all, I note my name here Chairperson it's a conversation between Gavin and Agrizzi. In response to your question, at that time I was no longer the Chairperson of Correctional Services. The Chairperson of
20 Correctional Services, as I indicated earlier, I think, was my senior. I would never, undermine my senior by going to work with officials in a Department where Mr – where I'm not the Chairperson. I don't – not I don't understand, I understand what they're trying to say here Chairperson but I'm not privy here to what they were discussing here

Chairperson.

CHAIRPERSON: At that stage, how was your relationship with Mr Agrizzi, how was your relationship with Mr Gavin Watson, 2016?

ADV NOTSHE SC: Mr relationship with Mr Watson was consistent until his untimely passing.

CHAIRPERSON: Yes, it was fine.

ADV NOTSHE SC: Yes.

10 **CHAIRPERSON:** Mr – with Mr Agrizzi, at that time, it probably was fine Chairperson, I think that only after the 2018 that I took a decision not to but 2016 there had been no reason so it had been as we had been operating.

CHAIRPERSON: As before.

MR SMITH: Yes Chair.

CHAIRPERSON: Also, with Mr Agrizzi, your relationship was fine?

MR SMITH: Yes Chair.

20 **CHAIRPERSON:** Yes okay. Now, they make a reference there – or Mr Gavin Watson makes a reference in his message to Mr Agrizzi to ZM, do you have any idea who ZM may have been?

MR SMITH: I don't know who they are referring to Chair, but if I had to speculate, I would assume that ZM would have been the National Commissioner at the time, Mr

Modise.

CHAIRPERSON: Mr Modise?

MR SMITH: Yes, but I don't know.

CHAIRPERSON: That's what comes to my mind as well but they don't put a full name.

MR SMITH: Yes Chair.

CHAIRPERSON: And Mr Smal – or Smalberger do you have...[intervenes].

MR SMITH: Smalberger is a Senior Manager, I think, in
10 the Department, I'm not sure what his responsibility is.

CHAIRPERSON: Yes, okay, what Mr Gavin Watson says is that, one, you got hold of him, you called him, you said they must wait until Tuesday because you were going to have a meeting the following day with ZM and Smalberger. If ZM referred to Mr Modise who was the Commissioner of Correctional Services at the time, and if Smalberger referred to Mr Smalberger who was also in Correctional services at the time, it would appear that what they were saying is, what Mr Gavin Watson was saying was, you said
20 there was something that, either you were working on with them or they were working on which you said they must hold on because the following day you were going to have a meeting with ZM and Sal Burger, that's the gist of the message, you accept that, that's what it says?

MR SMITH: I'm accepting that, that's what the message is

saying Chairperson.

CHAIRPERSON: Yes okay, alright and then Mr Agrizzi, in response to Mr Gavin Watson, says,

“He called me as well, what he said was to continue the prep meetings, drafting documents, we will convene on Tuesday at 14h00 then review our approach and adjust the three-pronged approach but he didn’t say we should halt it”,

Now it seems to me that what – if, indeed, you had
10 called Mr Agrizzi, and if indeed you had said what he says you said, then what you said to him was that they must continue with preparations for meeting and they must continue with drafting documents and then there would be a review of an approach and a three-pronged approach would be adopted. If that is true, it does seem to reflect that you were working on something with them, would you accept that as a fair understanding of this, if it is true?

MR SMITH: If it is true, it’s a fair understanding, Chairperson.

20 **CHAIRPERSON:** Yes.

MR SMITH: But I can...[intervenes].

CHAIRPERSON: Yes, you maintain you know nothing about it?

MR SMITH: Yes, Chairperson, I know nothing about it and I’ve...[intervenes].

CHAIRPERSON: Yes, are you able to say, in 2016 there was nothing you were working with them, on or are you saying – or are you able to say, there was something we were working on, I'm not sure if they're talking about it but this is what we were working on – that I was working on, with them?

MR SMITH: Chairperson, in 2016 there was nothing that I could have been working with them on. As I indicated, the Chairperson of the Portfolio Committee was somebody
10 else. Unless there's context given to this, the realities is, I've seen this thing this morning.

CHAIRPERSON: Yes, it doesn't seem to ...[intervenes].

MR SMITH: It doesn't resonate with me, Chairperson, no, what exactly are they talking about here and what is it that – I can also indicate to you that I don't recall ever meeting with Mr Modise and Mr Smalberger in 2016, I don't know why they would come to me when they have a Chairperson, I don't know Chair.

CHAIRPERSON: But let us say, maybe, whatever it is
20 they were talking about, or let me put it this way could there have been something that you may have been working with them on, that may have nothing to do with the Portfolio Committee in Correctional Services, is there anything that you may have been working with them on that might not be what they're talking about or is the position

that, for all intents and purposes, really, you were out of the Correctional Services Committee and you had nothing to work with them on or could there have been personal matters that you were dealing with, with them at a personal level?

MR SMITH: Chair, reading this it refers to current, at the time, officials in the Department. So, I can't see me working on matters outside of that, it's just my reading of it Chair, to answer your question, could it be something else,

10 no.

CHAIRPERSON: Okay, thank you.

ADV NOTSHE SC: In fact, Mr Smith, that SMS goes over and continues on page 463, go to 463.

MR SMITH: I am there, Chair, I'm sorry I am there.

ADV NOTSHE SC: The it says – remember in 461 Mr Agrizzi tried to call you on WhatsApp then over 463, he says,

20 "I agree it's a three-pronged approach, our approach, Vincent's approach, Cedric's approach. It is for meeting for Tuesday to give us more information how to approach this thing, this is why he is having a meeting with Smalberger to give us more information on what's taking place at DCS",
And Mr Watson says,

"Okay understood but by 8h30 I need – sorry

Agrizzi, okay understood but by 8h30 I need confirmed drafting papers otherwise we miss the deadline, I will send you and explanatory”.

Do you see that?

MR SMITH: I do see it Chair.

CHAIRPERSON: Well this part seems, when one reads it at page 463, seems to emphasize that they were certainly working on something and whatever it is that they were working on, it was connected with DCS which is
10 Department of Correctional Services and Mr Smalberger had something to do with it and according to them, you – I mean I take it the reference to Vincent, is a reference to you because they’ve referred to Vincent Smith and then they’ve also referred to Cedric. They have not, on these messages, indicated the surname of this Cedric that they are referring to but they are saying, Vincent’s approach and Cedric’s approach, they talk about that approach. So, it appears that, certainly they’re talking to each other about something that relates to the Department of
20 Correctional Services and they seem to reflect that you have an input on whatever it is they were discussing, would that be a fair understanding?

ADV NOTSHE SC: That would be a fair interpretation of what the text says.

CHAIRPERSON: What the text says?

MR SMITH: Yes, it's a fair interpretation.

CHAIRPERSON: Yes, thank you.

MR SMITH: May I?

CHAIRPERSON: Yes sure.

MR SMITH: This was reflected in, I think, Mr Agrizzi's first affidavit or one of those and in that one it's very clear that he talks about Cedric Frolick.

CHAIRPERSON: Yes, okay, okay.

MR SMITH: On reading it the first time, I approach
10 Cedrick Frolick to say, this is what I'm reading here because I think he said, he spoke to Cedric and Cedric said something to him, something to that effect.

CHAIRPERSON: Yes.

MR SMITH: And I asked Mr Frolick, Cedric Frolick, what does this refer to, Cedric denies any of these things, that he never or he is not aware of what is being said here. I, certainly, was not party to any planning with Cedric Frolick, I don't understand how would I. In 2016, Cedric Frolick, I think, was definitely Chair of Chairs, I was not in that
20 department so there would be a need for context in this thing, if any Chairperson, but I, as I'm standing here has said to you, I approached Mr Frolick on this matter, he denies having spoken to Mr Agrizzi so that, or saying to Mr Agrizzi I'll talk to Vincent or I've discussed it with Vincent or whatever the case may be. What is the context, he

didn't understand, the context? So from my side I didn't follow it up any further, I certainly didn't meet with Mr Smalberger and with Mr Modise at any point in 2016 to discuss matters of DCS because it would just be undermining the Chairperson, the current – the incumbent at the time, Chairperson because I would assume some point or the other he would have got wind that I'm talking to his departments or to officials of his departments and I would not undermine the Chairperson in that fashion. So, 10 my plea is, I received last night, though this morning. If it is at all possible for somebody to elaborate on it, I'm prepared to respond in writing that says, this is the context but I think at this point, my answer is I don't know what they're talking about.

CHAIRPERSON: No, no that's fine. I think after today if – well, one it may be necessary to call Mr Agrizzi so that he can clarify the context of this and you should be able to get an opportunity to react to it, to react to Mr Agrizzi's evidence after he has given context and either by coming 20 back for a short time to put your side of the story as you understand it after the context has been given or by putting up an affidavit to say, I've heard what Mr Agrizzi says about this, this is what I have to say about it. The one thing which may need to be borne in mind is that, as I understand the position from Mr Agrizzi's evidence at this

time in 2016 or during 2016 Mr Agrizzi is still working at BOSASA, Mr Gavin Watson is his boss and I think they were in good terms, you know and from what you have said your relationship with each one of them had no problems. They are not writing something to give to a third party, they're talking between themselves as the CEO and COO of BOSASA, I think and they're talking about – they seem to be talking about something that they're working on and then they mention your name, they mention somebody
10 called Cedric, maybe that is Mr Cedric Frolick but Mr Agrizzi might have to come and just give more context but at that stage the relationship between the two of them, that is Mr Gavin Watson and Mr Agrizzi seems to have been fine in their relationship individually and collectively with you seems to have been fine as well.

MR SMITH: May I just say one thing?

CHAIRPERSON: Yes.

MR SMITH: I agree Chairperson.

CHAIRPERSON: That's fine.

20 **MR SMITH:** I would have, and I don't, like I say, I don't understand what's happening here but my relationship with Mr Gavin Watson is such, that I'm sure that he would have either copied me or there would have been something that said, I said that, John said that, Vincent said that, that's all that I'm saying, Chairperson.

CHAIRPERSON: No, no that's fine and feel free, if you want to investigate these messages, you know, to do that as well because as you say you are not copied, you don't know anything. So, I'm simply emphasising that it's important to hear, fully your side about it, so when you do respond after Mr Agrizzi has given context, feel free to look into it fully.

MR SMITH: Thank you Chairperson.

CHAIRPERSON: Thank you, Mr Notshe.

10 **ADV NOTSHE SC:** Also – but are you saying, despite the fact that you just got this now and you don't know this you never had – in 2016/2017 you never had any interaction with Mr Modise or Smalberger?

MR SMITH: No, what I'm saying is, that I never had a meeting, now the reality, Chair is, because I don't want to be caught in a trap. When you travel to Cape Town on a Monday and there are officials going, chances are you will bump into them or even yourself.

CHAIRPERSON: Yes.

20 **MR SMITH:** When you travel on Tuesdays so – if I say to the Commission, I never had any contact and somebody locates me in the airport with them, I would have fallen foul, so I'm saying in relation to this matter...[intervenes].

CHAIRPERSON: You can't remember.

MR SMITH: Yes, Chairperson, so not that I never had any

relationship with – or bumped into them.

CHAIRPERSON: Contact ja.

ADV NOTSHE SC: But you are saying, according to this you had planned to meet them on Tuesday and you are saying...[intervenes].

CHAIRPERSON: No, he's not saying that.

ADV NOTSHE SC: No, no I'm saying the message.

CHAIRPERSON: Ja, no but you are saying he is saying.

ADV NOTSHE SC: Oh, sorry, according to the – no
10 according to this message the message seems as if to say that you are going to meet them on Tuesday, am I right?

MR SMITH: According to the message, that's correct Chairperson.

ADV NOTSHE SC: But you say to the Commission now, you never had plans and you never met Mr Modise or Smalberger, you had never planned to meet them on a Tuesday.

MR SMITH: No Chairperson.

CHAIRPERSON: Well he says, he can't remember
20 whether he had any contact with them but certainly he had no contact with them in regard to this matter, am I right?

MR SMITH: That's what I'm saying Chairperson.

CHAIRPERSON: Yes.

MR SMITH: And also, if I may, Chairperson, if this document had dates on it, that's why it's important to get

the context because it says Tuesday.

CHAIRPERSON: Yes.

MR SMITH: Which Tuesday are we talking about, if it gave us a date, it's also easy to indicate to you Chair, that on Tuesday the 18 I was in Cape Town or – all I'm asking for is that if this could be elaborated upon for me to give an intelligent answer. As it stands here, which Tuesday are they talking about.

CHAIRPERSON: No, that's fair enough ja.

10 **ADV NOTSHE SC:** No it's – I concede it's fair to get more information.

CHAIRPERSON: Ja.

ADV NOTSHE SC: Chair on that I do not have any further questions for the witness. What is left for me to do is to put together – go back and look at the individual Exhibits and then approach you, either here or in chambers and then deal with those individuals if – on those Exhibits.

CHAIRPERSON: Ja, no that's fine. So, you have no further questions?

20 **ADV NOTSHE SC:** I have no further questions for the witness, yes.

CHAIRPERSON: Are you going to seek re-examination? Yes, okay alright, how long do you think you might be?

ADV PHALANE: Ten, fifteen minutes at the most Chair.

CHAIRPERSON: Yes, maybe we could take a short break

and then come back, of ten minutes, then I'll give you time to re-examine. We adjourn now we'll resume at five past five, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV PHALANE: Mr Smith has requested an indulgence that at the end of my question if he can perhaps address you for about three minutes.

CHAIRPERSON: No that – that...

10 **ADV PHALANE:** Just in terms of summing up how he understands his evidence.

CHAIRPERSON: That is fine.

ADV PHALANE: Okay Mr Smith if I can refer you to page 106 of the bundle being referred to.

CHAIRPERSON: 106?

ADV PHALANE: 106

CHAIRPERSON: Okay.

ADV PHALANE: Are you there?

MR SMITH: I am there Chair.

20 **ADV PHALANE:** You will see there in paragraph 134 of your affidavit you speak about your understanding of the commission's Terms of Reference and what I want to ask you is, in the context of the Term of Reference of the commission did you at any point facilitate any unlawful awarding of tenders whether it is BOSASA or any other entity?

MR SMITH: Sorry Chair I am not – I did not get which paragraph you talking about.

ADV PHALANE: Oh sorry paragraph 13.

MR SMITH: 13

ADV PHALANE: On page 106 you are in?

MR SMITH: Yes, yes Chair.

ADV PHALANE: So paragraph 13 you will see there there is a in bold TOR1.4 which refers to Term of Reference 104 of the commission’s Terms of Reference, do you see that?

10 **MR SMITH:** Yes I do Chair.

ADV PHALANE: Now I do not want to read the entire paragraph. In bold there is a – there are words that read:

“By facilitating the unlawful awarding of tenders.”

Do you see that?

MR SMITH: I do Chair.

ADV PHALANE: Now what I am asking you is, during your tenure as a Member of Parliament have you facilitated any unlawful awarding of tenders?

20 **MR SMITH:** The answer Chairperson is no. I have not even going through my own evidence seen any allegations to that effect. The second point that I want to make just on that one is a – had said earlier on. I do not believe that a Portfolio Committee or a Member of Parliament taking into consideration the separation of powers would be able to meddle in the adjudication and awarding of tenders. So I

have not facilitated any unlawful awarding of tenders Chair.

ADV PHALANE: Okay.

CHAIRPERSON: I guess you would say you have not facilitated even lawful tenders.

MR SMITH: I have never any tenders lawful or unlawful Chairperson.

ADV PHALANE: If you – if you then go overleaf.

CHAIRPERSON: But – before – before you go to your next question. The – the reference – your reference to the
10 separation of powers is good if you are dealing with somebody who does not intend to do anything wrong. But if somebody intends to do wrong – intends to facilitate corruption they would not bother about the separation of powers, would they?

MR SMITH: They would not I agree Chair they would find means and ways of getting around these things.

CHAIRPERSON: Yes. Yes. Thank you.

ADV PHALANE: Okay if you can then go overleaf to page
107.

20 **MR SMITH:** I am there Chair.

ADV PHALANE: The very first paragraph on the top.

CHAIRPERSON: What page?

ADV PHALANE: 107 Chair.

CHAIRPERSON: Okay.

ADV PHALANE: You will see one of the matters the

commission is to determine whether any Member of the National Executive [including the President] Public Official, well close brackets. Then Public Official, Functionary of any organ of state influence the awarding of tenders to benefit themselves, their families or entities in which they held personal interest. The question to you Mr Smith is, have you played any role in influencing the awarding of tenders to benefit yourself, your family members or entities for personal interest?

10 **MR SMITH:** No Chair I played no role in the awarding of tenders legal or illegal Chair.

ADV PHALANE: Okay. Then you were referred to various minutes of the Portfolio Committee that you chaired spanning the years 2009 to 2013. Mr Agrizzi's testimony in essence suggested that prior to 2013 – sorry 2011 you were very opposed to BOSASA and following a meeting that took place in Rivonia which you have admitted to having attended your stance on BOSASA softened. Now having considered the minutes although they arrived late yesterday have you found
20 anything that remotely suggests that there is a change in tone in how you applied yourself as the Chairperson of the Portfolio Committee?

MR SMITH: Chair I think the first point that I want to make so that it is very clear is that neither for me as an individual or the committee were anti BOSASA. What we strongly

objected to was the practice of outsourcing services whether it was BOSASA or whether it was anybody else. So that is what we were anti Chair. And that stance of being anti-outsourcing started when I was first elected Chairperson in 2009 and it continued until the very last day that I was a Chairperson. And the minutes as Counsel is alluding to illustrates that very clearly that there was no all of a sudden after 2011 a softening because that was the allegation that mine was to make sure that the committee ensure that there
10 was no negative publicity for want of a better word. Because that negative publicity would make it difficult for BOSASA to get further contracts and that was the essence of the R45 000.00. Our stance and my stance from 2009 until 2014 remained the same that we were opposed and remained until the very end opposed to all sorts of outsourcing including that that BOSASA was doing Chair.

CHAIRPERSON: Hm. Maybe let me ask this question as a follow up to that – as a follow up to that question. Let me ask this question. You pointed to certain parts of the
20 minutes and said they reflected the committee's attitude against outsourcing. And you indicated that quite early in the life of your committee as Chair of the Correctional Services Portfolio Committee 2009/2010 you were informed of what seemed to be shocking corruption allegedly happening in the Department of Correctional Services

involving BOSASA, is that right?

MR SMITH: That is correct Chairperson. Sorry.

CHAIRPERSON: Yes. Now if one goes through the minutes of the meetings of that – of your committee from 2009 to 2014 and I know that what we have is not all the minutes but I would like to have them and I am going to ask you later on what role you can play to getting us those minutes. Would one find an emphatic attitude from the committee that said, no to this corruption at the Department of Correctional
10 Services involving BOSASA or any company? Would one find something in the minutes over the years that you were horrified as a committee that BOSASA continued to get tenders or continued with the – getting contracts from the Department of Correctional Services and that you were saying to officials of the department why can you not stop this corruption? Why can you not stop these contracts? Or is the position that you would say, your stance against outsourcing was effectively your stance against corruption?

MR SMITH: Chair yes I think even in these minutes and I
20 speak under correction.

CHAIRPERSON: Yes.

MR SMITH: I think there are at least the – that is if I remember just from..

CHAIRPERSON: Yes that there was ...

MR SMITH: Warnings, discussion.

CHAIRPERSON: Ja there was earlier on.

MR SMITH: Where it alluded to members that were there even prior who said it is the most horrific report that – I think it was the SIU Report at the time. Another area was I think with the access control or something Chairperson where we were very emphatic whether it was an individual putting the point but adopted ultimately by the committee. To the extent Chairperson where almost every meeting where we had budget preparations or strategic plans our [00:11:18] always
10 was when are you going to take over the core functions of Correctional Services and not outsource them?

CHAIRPERSON: Hm.

MR SMITH: Chair there was a massive debate in our time about the wisdom or otherwise of private prisons which is also a form of outsourcing Chairperson. So yes I have no doubt that if we went through all the minutes at any given point where you

CHAIRPERSON: It will come out.

MR SMITH: Where this thing was discussed it is very
20 unambiguous that the entire committee just did not support it Chairperson.

CHAIRPERSON: Hm.

MR SMITH: Many a time we were told that to change [00:11:58] immediately might create a problem because we do not have the capacity as the department.

CHAIRPERSON: Hm.

MR SMITH: But we were not ambiguous of you have to find that capacity at some point Chairperson.

CHAIRPERSON: Hm.

MR SMITH: So yes we were – we were throughout my tenure anyway and I am sure it could be borne out in the minutes.

CHAIRPERSON: Okay no I will come back to it. I will allow your Counsel to finish because I will come back to it and
10 think about it.

ADV PHALANE: Thank your Chair. During your testimony earlier the Chair asked you whether you will accept that the loan arrangements between yourself and Mr Agrizzi were risky considering that he had nothing to hold onto, do you recall that?

MR SMITH: I recall that yes Chair.

ADV PHALANE: Now as I understand it, the development, the property development you are referring to, is a fairly well-known development. Is that correct?

20 **MR SMITH:** That is correct, Chair.

ADV PHALANE: Is it also correct to assume or rather to conclude that you would have informed Mr Agrizzi about which development you were referring to?

MR SMITH: Yes, I would have. And I think at some point even in his affidavit he alluded the development project that

we are talking about, Chairperson. So I think he was quite aware of where the investment had taken place.

ADV PHALANE: And so he would have possibly taken comfort in the fact that that type of development your investment was in is likely to yield the investment return you were hoping for in eight years' time?

MR SMITH: I would have thought that he would have taken comfort in that Chair but I do not want to speak on behalf of anybody but ordinarily ...[intervenes]

10 **CHAIRPERSON:** You do not know it for sure but you say ...[intervenes]

MR SMITH: But ordinarily people will look at that and it has been born out over and over that it was a less risky investment than most other investments, property development.

CHAIRPERSON: H'm. H'm. H'm.

ADV PHALANE: If I can refer you to page 470?

MR SMITH: I am there, Chairperson.

20 **ADV PHALANE:** That is the email that you sent to Mr Agrizzi on the 11th of May 2015. Now there was much asked about what appears to be a clandestine arrangement in respect of this loan agreement. If you can just read for the Chairperson's benefit the second paragraph in that email, please Mr Smith?

MR SMITH: The paragraph that starts with I?

ADV PHALANE: Yes.

MR SMITH: Yes.

“I am in the process of sorting out the funding requirements for her and hereby request any assistance in this regard. Funds can be deposited directly with the institution if that is more acceptable and I have thus attached relevant documents/correspondence. Kind regards.”

ADV PHALANE: So to the extent that there may have been
10 an intention to conceal this arrangement, you would not have
been open to the idea of a payment been made directly to
the institution. Is that correct?

MR SMITH: That is correct, Chairperson. More than that, if
there was – I am talking for myself – if there was an attempt
of concealment, I would not even have wanted to have an
arrangement where the transaction at any audit trial. I would
have looked for another means. But yes, if... the fact that I
have said paid directly, for me it is an indication that it was
legit, above-board and I think an honest request from my
20 side, Chair.

ADV PHALANE: And then if you go to page 335...

CHAIRPERSON: Of course, if it is paid directly to the
institute, to the university, apart from you and Mr Agrizzi of
BOSASA, it is only the people at that university who may
have known who paid for you and they are out of South

Africa. You accept that?

MR SMITH: That is true, Chair.

CHAIRPERSON: Yes.

MR SMITH: I mean, that would have been even more fool proof, if you want to call it hiding of it, because nobody else would have known if you had done it directly. It would not have gone through any records that could be linked to me Chairperson.

CHAIRPERSON: Yes, but the point I am making is that, that
10 made it more unlikely. It made it more unlikely that anybody who could pursue anything would know that you had been assisted by BOSASA or Mr Agrizzi, because it would be people in ways who know who paid.

Whereas, if the payment maybe was within the premises of within the country and if it was reflected that the payment was from BOSASA, that might raise eyebrows even within the university and that would be internal and the information could be leaked.

And the next thing you know, it is in the media that
20 BOSASA paid for M Smith's daughter's fee, as intuition fees. Whereas, because you are dealing with an institution that is overseas, it was unlikely that anybody there would not know anything about BOSASA. They receive their money and that is it.

MR SMITH: I agree.

CHAIRPERSON: Do you accept that?

MR SMITH: I accept that, Chairperson.

CHAIRPERSON: Yes, okay.

ADV PHALANE: Mr Smith, sorry, it is 355 actually, not 335, 355.

MR SMITH: 355?

ADV PHALANE: Yes.

MR SMITH: I am there, Chairperson.

ADV PHALANE: So the transaction itself into Euro Blitz
10 was on the 6th of August 2016. Is that correct?

MR SMITH: That is correct, Chairperson.

ADV PHALANE: So this reference to again a car accident settlement which implies an attempt by somebody to conceal the true nature of the payment. At the time of receiving the payment, you were not aware of the reference attached to the payment. Is that correct? As on the 6th of August.

MR SMITH: That is correct, Chairperson.

ADV PHALANE: Because the statement, if you go a page before... no, two page... oh, ja a page before, on 354, there
20 is a statement that only came out in 2016. So you only really would have become aware of the ...[indistinct] [dip in audio recording] attached to the paint, only some 20 odd days later. Is that correct?

MR SMITH: That is correct, Chairperson.

ADV PHALANE: Chair, that is the bulk of the questions I

had for Mr Smith.

CHAIRPERSON: Okay.

ADV PHALANE: Thank you for the indulgence.

CHAIRPERSON: Thank you very much. Mr Smith, I may have just a few questions and some of them will relate to them to the question of oversight, parliamentary oversight. And I am sure by now, you have a good idea that it is a subject that this Commission is very interested in just from what we have said in the public domain.

10 One of the concerns that I have with regard to BOSASA and all the allegations of corruption and the evidence, corruption that has been given to the Commission about BOSASA and the Department of Correctional Services, Department of Justice and Constitutional Affairs and other departments is, how it was possible for a company against whom there were such serious allegations of corruption over many years, how it was possible for that company to continue getting more contract and more contracts, jobs from government departments and no prosecution of the company
20 and no prosecution of anybody within the company about such corruption?

I mean, from what you have said, when you came into the Portfolio Committee of Correctional Services in 2009, you indicated that the committee that had been there before had been grabbling, as I understand it, with allegations of

corruption involving BOSASA in the previous years before that.

But we know that nothing seems to have been done in terms of prosecution of anybody in BOSASA until at least 2019. So from around, what, 2005/2006, I am not sure, to 2009, from 2009 to 2014 during your time, that five year period and your own after 2014, BOSASA just continued getting a lot of contracts and having some contracts extended within government departments.

10 Nothing seems to be happening. Nobody was stopping this thing. That concerns me, to say: What were people who were supposed to prevent this, doing? Where were they? What were they doing?

And when I ask that question, I also look at parliament and say: But parliament has got Portfolio Committees that relate to various government departments. What did they do about this?

What mechanisms were there at their disposal to stop this thing if they wanted to stop it? Was it a problem of
20 there being no mechanisms or was the problem that of no willingness of commitment to stop this corruption at the Department of Correctional Services?

You may or may not be able to say something about it but that is one of my concerns and I certainly want to ask you whether, after today, you might be willing to assist the

Commission in any way by putting together documentation to say, during your time as Chairperson of the Portfolio Committee of Correctional Services, 2009 to 2014, these are the issues that came to your attention about Correctional Services as a committee.

This is what you did about these things. Maybe in hindsight, you see that there are many others who did not look at which you should have looked at.

Maybe these are the reasons why you did not look at
10 them. But this is what your committee did. And one of the questions I would be interested in is, when in 2010 you had this presentation from the SIU which shocked all of you about what was happening.

How did it happen that five years later when you got out of the committee, BOSASA was still just continuing and so on and so on. So you might wish to say something now about what I am saying but you might wish to say I am willing to assist the Commission in the way that has been suggested and maybe I will prefer to deal with this
20 substantively when I have look at everything that we may have been doing when we did and so on.

MR SMITH: No, Chair, I am more than willing to ...[intervenes]

CHAIRPERSON: To assist.

MR SMITH: To assist the committee in terms of my

experience and my institutional memory.

CHAIRPERSON: Yes, yes.

MR SMITH: I will certainly try and put a paper or something ...[intervenes]

CHAIRPERSON: Yes, yes.

MR SMITH: But, Chair – and this is a self-criticism when I am raising it because I was in the system at the time ...[intervenes]

CHAIRPERSON: Well, I must say, before you say that,
10 that we need a lot of people who are able to self-criticise because I think a lot of things in our country are not going right because people do not want to self-criticise, they are averse to any criticism and yet criticism can be very important in order to improve. Yes.

MR SMITH: Yes, Chair. I wanted to say that I am part of it. That I think in the former years, certainly since I have been in parliament, we were accused of being a very docile parliament, at the time because I think there was an emphasis of yours is only to recommend or to make
20 suggestions without any bite. I think the bite and those things came when you started getting people like the Public Protector and so on.

Even the Auditor-General, Chair – and I have been through at least three of them, all of them lamented the fact that year in year out reported on what we called, in my

time, serial offenders, the things you are talking about, people continually did everything and all we could do, whether it was public accounts or a Portfolio Committee, was to go and write a report to the House and say this is ours because portfolio committees on their own are subdivisions, if you want to call it, of parliament. It is the Speaker and parliament as a whole who would request some sort of intervention and I think that that was the problem then, Chair.

10 I can indicate now that, for instance, we have strengthened the Auditor-General tremendously. I think there is a greater awareness even from committees, SCOPA and everybody that we need to put pressure in terms of asking tough questions in terms of being on top of and doing proper follow-up on these types.

So I think in all honesty parliament today is a totally different animal to parliament when I joined it, in terms of oversight and so on. But there is a long way to go and with correct political will, which I think is probably there
20 now with the current Speaker and other people, I would expect that things will continue to improve.

But, Chair, it is a journey, it is not an event, it will take a change of culture in even how, as Portfolio Committees, but I think we need to keep on raising the flag, keep on raising our concerns, keep on self-criticising

and eventually we will reach there, Chairperson. I think it is doable but I do not think it is going to be doable tomorrow.

CHAIRPERSON: Yes, well I would like to believe that there is a change of attitude but I am not sure about it. I have an observation which may or may not be correct about parliament, namely that when there is a new President in the country, in terms of parliamentary oversight, sometimes one gets the perception that – at
10 least in the past, you know? One gets the perception that member of parliament, certainly from the ruling party's side, you know, would treat the President and maybe his ministers – I must say we have only had male presidents – in a certain way which might be different from the way they treat that President and some of his ministers maybe towards the end of that President's second term, so – and an outsider like me looking from outside says oh, so maybe when they know this President is not going to be there in the next – after the next elections, the attitude changes,
20 but at the beginning there seems to be an approach that seems to handle the executive very softly.

I may be wrong but if you observe – I think towards the end of President Mandela's time, towards the end of President Mbeki's time, towards the end of President Zuma's time, certainly there seemed to be – probably it

does not mean with everybody but maybe just some. But I think that what is important is that we need to try and see whether the oversight mechanisms that parliament has are adequate, number one, in order for them to do a proper job.

Number two, what can be done to make sure that when a member of a Portfolio Committee or a member needs to perform oversight functions, needs to ask difficult questions to Members of the Executive, whether it is the
10 President or a Minister or in a Portfolio Committee, a DG, they feel that they can ask them those difficult questions without hearing that they might be labelled as if they are opposition member of parliament to say why do you ask our Ministers as if you are a DA member? Do you not know this is our Minister? Why are behaving like an opposition member? We need to look at what it is that can be put in place that will enable even members of the ruling party in parliament because they are in the majority, to perform that function properly even if – or despite the fact that the
20 Minister may be in the same party as them and so on and the President and that even the ruling party does not make people feel that if you ask too many questions of our Ministers you are behaving like an opposition party.

MR SMITH: Chair, I will make an undertaking to include it in the assignment that you have given me, but just

upfront...

CHAIRPERSON: Yes.

MR SMITH: ...I can indicate to you, Chair, that we have, when I was member of parliament and I guess it is the same now, lamented the fact that parliament is woefully under capacitated relative to the executive.

CHAIRPERSON: Yes, yes.

MR SMITH: A member of parliament has no support.

CHAIRPERSON: Yes, yes.

10 **MR SMITH:** A department has access to all sorts of support. So it is very difficult for somebody to be able to read up and do real oversight if you do not even have a researcher and the department can call on everybody else.

CHAIRPERSON: Yes, yes.

MR SMITH: So I am saying, Chair, it is never going to happen until you capacitate parliament.

CHAIRPERSON: Ja.

MR SMITH: I know that if you compare our MPs to MPs in Germany or everywhere else, just from a capacity point of
20 view, it is chalk and cheese. So I am saying those are the kinds of things that I will try and put in this paper if you ask me to do them.

CHAIRPERSON: Yes.

MR SMITH: But it is that kind of kind of thing that I think would be ...[intervenes]

CHAIRPERSON: Assist.

MR SMITH: Allowing us to go to the next level of oversight.

CHAIRPERSON: Yes, yes.

MR SMITH: The capacity of member of parliament.

CHAIRPERSON: Yes. No, I think that is a very important part as well because you might have a commitment if you do not have capacity, you are going to be, you know, hampered. If you have capacity but you do not have the
10 commitment, the capacity does not help, does not serve its purpose. So you need to have both.

But to the extent that in assisting the Commission on this assignment you need any assistance from the Commission there will be people who can assist in terms of drawing affidavits or whatever, there will be people that can assist. I think you can make contact with the legal team – the evidence leaders here or your lawyers can make contact and there is somebody that is looking at that issue and they can assist.

20 But I just want to say before I leave that subject that earlier this year the Commission wrote to almost all the political parties who were represented in parliament before the 2019 general election, same letter, and that includes the ruling party, but everybody, and it said – it was saying one of the areas that the Commission is looking

at is precisely this to say to the extent that we can all see that a lot of wrong things have happened in various government departments and SOEs over the past years, one of the things we need to look at is where was parliament when these things were happening Because they had a constitutional obligation or oversight, what did they do? Did they have enough mechanisms to deal with these challenges or is it a problem of capacity or is it a problem of whatever mechanisms, oversight mechanisms
10 there were, they were not enough to deal with these problems.

We said to the various political parties tell us what your Members of Parliament, what their experiences have been with regard to trying to perform oversight over the executive over the years, tell us if you think the mechanisms of oversight were not adequate. Make suggestions or recommendations as to what should be done to make sure that Parliament will be able to exercise its oversight functions effectively but unfortunately I have
20 heard that apparently one of the parties didn't get the letter but not a single one of the political parties has shown interest in that and it is difficult to think all these political parties didn't receive those letters, actually those letters were sent twice, first they were sent before the lock-down started and later on they were sent again to say

in case you didn't get them they were sent, but there seems to be no interest and it is very difficult to understand why it is that they would not be interested in something so important to their function.

I have spoken to the Speaker of Parliament and the Chairperson of the NCOP, they are fully committed to assisting the Commission in regard to those matters and they will be assisting but I am just saying I would have expected the political parties themselves will be interested
10 but it doesn't look like, but I am very grateful that you are prepared to assist in whatever way you can.

I think the only other matter I want to mention, and again you might not be able to say anything, you know if Mr Agrizzi's evidence before this Commission is true or some of it is true one gets the impression that BOSASA may have wanted to capture some people in Parliament, Legislature, some people in Cabinet and even the President during President Zuma's time.

I am saying this because they have given evidence,
20 Mr Agrizzi gave evidence about alleged payments that he said were being made by BOSASA to the Jacob Zuma Foundation through Ms Dudu Myeni, that if I understand Mr Agrizzi's evidence correctly were meant for the then President and then of course he has given evidence about some people, some Ministers, he has given evidence about

people in the legislature. It may well be that if his evidence is true BOSASA sought to do this. Again, it is something that you might not be able to say anything about.

MR SMITH: No Chair certainly there is nothing I can say about it Chairperson, because as you said those are allegations and so on.

CHAIRPERSON: Yes, ja, ja.

MR SMITH: I suppose at some point, very much like this
10 exercise, we can learn lessons from this.

CHAIRPERSON: Yes, yes. No thank you very much. There is nothing arising counsel from this? Nothing, okay, thank you very much Mr Smith, I think you wanted to say something for a few minutes. I give you that chance now.

MR SMITH: Chair thank you very much for this opportunity, it is really just four brief points that I would want to put to contextualise my understanding and my participation.

The first point that I wish to raise Chairperson is
20 that immediately that these allegations surfaced in September 2018 I as a person voluntarily stepped down, because I did not want to contaminate Parliament any further, but also because I was informed by the resolutions of the ANC at NASREG that rather step aside until you have had this kind of opportunity to do it, so I wanted to

put it on record that I voluntarily stepped down and allowed for the process.

I think the second point Chairperson, and we probably canvassed it earlier on, that I would like to lead, is that personally my relationship with the Late Gavin Watson precedes my being a Member of Parliament and it spans over almost twenty five years Chairperson, until his untimely death, so it was not a matter of me and the late Gavin knowing each from 2019, and as we alluded to that,
10 it was born from the ANC's programme of rebuilding organisation and rebuilding communities and we had to go through people who are able to assist us, so that is how my relationship with Gavin Watson – or that's the relationship that I had with Gavin Watson until his untimely death and I wouldn't want the impression created that it was just a 2019 or a 1999 exercise, and then the third point and again you also cautioned me against it Chair is that I wanted to talk about the intention of this separation of powers to be able to say nobody interferes in anybody
20 and everybody is independent, and if operated the way it was intended I think it will go a long way that I cannot dictate the judiciary and so on, because if that is working Chairperson then no member of Parliament would be able to even go near adjudicating of tenders and so on and so forth, and I thought, I thought I wanted to put that on the

table that says it is true even for MP's, if you believe in the separation of powers I cannot get involved in the day to day work of the departments Chair.

I also wanted to say Chairperson that I think that the systems that Parliament uses of Portfolio Committees where the media is able to have access, where any civil society, organisation or even the public has access, where there are multi-party members in that committee, bodes well because they have transparency so it cannot be
10 anything, even – almost all committee meetings today are publicised live, so I think it brings out transparency and it will make it very difficult, if not impossible for any single individual or political party to dictate or impose his or her will on the functioning of Parliament, by the way committees are the engine room of Parliament so I think that transparency bodes well.

Chair the – this morning we discussed, well not really discussed but we went through what I thought when I received them last night were all the minutes where there
20 was reference to BOSASA and I am raising it Chairperson because there was an impression created, rightly or wrongly, I am not even talking about the merits of it, that there is this individual who was very anti, he then has a meeting and he becomes very pro, to the extent that he works even after he has left the Portfolio Committee and I

am not saying that it is right or wrong, that is yours Chairperson but I don't think the minutes that we discussed, at least these that we discussed now, the facts that we discussed don't bear out that perception, I thought I want to put it on the table Chair that at least from my side I am happy that – it was a blessing in disguise that those minutes came late last night, because I would not have had opportunity to prove to you that my attitude and that of the department didn't change Chair.

10 So to that extent Chair I am hoping that what came out today and this debunking of that narrative that Smith or others were up for cash I am hoping that when you look at the report or anybody else you take that into consideration.

 I want to end Chair by saying that I did not have the authority and neither did any member of Parliament have the authority to award or to influence who got tenders or contracts in the department, but I never once enabled any undue, illegal awarding of tenders personally, I never once influenced undue or illegal tenders to any individual or to
20 any other company or to any institution, that is my – and Chair and other people will be the judge of that ultimately.

 And I thought that if I said that Chairperson at least there will be closure from my side in terms of I hope you understand where it is, and I thank you for your indulgence Chair.

CHAIRPERSON: No, thank you very much Mr Smith and thank you for coming to give evidence to the Commission and thank you in advance for the assistance you are going to give to the Commission with regard to the performance of oversight functions by the Correctional Services Portfolio Committee from 2009 when you were Chairperson up to 2014 when you were Chairperson so as to give us, give the Commission more light and more information into what kind of issues in relation to Correctional Services the
10 Committee was aware of, what kind of information it asked for, what kind of decisions, if any, it made about those matters and what step it sought to be pursued to deal with the problems, thank you very much, you are excused now.

MR SMITH: Thank you Chair.

CHAIRPERSON: Thank you. I must thank everybody for their cooperation for us to be able to sit until this time in order to finish, we appreciate that very much. We are going to adjourn, next week the Commission will be hearing evidence relating to Eskom, in particular the suspension of
20 various executives and that is what the Commission will be dealing with next week.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 7 SEPTEMBER 2020