INQUIRY INTO THE RETIREMENT OF THE
FORMER COMMISSIONER OF POLICE

SUBMISSIONS ON BEHALF OF IAN MCGRAIL

In advance of First Preliminary Hearing, 22nd - 23rd June 2022, The Garrison Library

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Caoilfhionn Gallagher QC
Adam Wagner
Doughty Street Chambers, London

Charles Gomez
Nicholas Gomez
Charles A. Gomez & Co., Gibraltar

20th June 2022

A. INTRODUCTION

1. These submissions are made on behalf of Mr Ian McGrail, the former Commissioner of the Royal Gibraltar Police ("**RGP**"), in advance of the first Preliminary Hearing in the Inquiry into the Retirement of the Former Commissioner of Police ("**the Inquiry**"). Mr McGrail served in the RGP for over 35 years, from 1984 to 2020, and his career was a distinguished and highly decorated one. He served his county with distinction and honour, and had an unblemished record for over three decades. Sir Peter Openshaw, DL, has been appointed to Chair the Inquiry, and its purpose is to investigate the reasons and circumstances leading to Mr McGrail taking early retirement from the office of Commissioner of the RGP in June 2020. The Inquiry concerns issues of the utmost public importance, both nationally, within Gibraltar, and internationally.

2. These submissions are made in advance of the First Preliminary Hearing of the Inquiry, which is listed for 22nd and 23rd June 2022. Mr McGrail and his legal representatives are grateful to the Inquiry for providing a detailed draft agenda for the First Preliminary Hearing, attached to the Inquiry's letter of 14th June 2022; and for indicating likely items to be addressed at the Second Preliminary Hearing, now listed for 19th and 20th September 2022. At the outset, the legal team for Mr McGrail wish to indicate their firm agreement with the Inquiry's decision to vacate the September 2022 hearing dates for the Main Hearing, given the volume of work and preparation required in advance. We had intended to make submissions at the First Preliminary Hearing regarding the need for a revised, realistic timetable, with a Second Preliminary Hearing to take place in September 2022 and the Main Hearing to be relisted for 2023, but this has now been addressed by the Inquiry's letter of 14th June 2022.

3. These submissions are structured as follows, reflecting the issues identified in the Inquiry's Agenda of 14th June 2022 and our correspondence in reply of 16th June 2022:
   (a) Factual background in brief overview (see Section B below, at paras 4-17);
   (b) Legal background in brief overview (Section C, at paras 18-40);
   (c) Proposed Procedural Format of the Inquiry (Section D, at paras 41-52). This addresses the matters listed at Agenda item 3, and also includes the additional matters we identified in our prior correspondence; and

(d) Proposed Timetable for the Inquiry (Section E, at paras 53-55). This addresses the matters listed at Agenda item 4.

4. Public inquiries and commissions or tribunals of inquiry play a prominent part in public life in a number of jurisdictions. In Gibraltar, the Commissions of Inquiry Act, section 3 provides that an inquiry may be instituted by the Government *"into any matter in which an inquiry would, in the opinion of the Government, be for the public welfare."* In the UK, the touchstone in section 1 of the Inquiries Act 2005 is *"public concern"*: a Minister may cause an inquiry to be held under the Act in relation to a case where it appears to him or her that *"particular events have caused, or are capable of causing, public concern"* or *"there is public concern that particular events may have occurred."* The phrase used in the Tribunals of Inquiry (Evidence) Act 1921 (described as the English source for the governing Gibraltar legislation, and still on the Irish statute book governing their tribunals of inquiry system) is *"urgent public importance"* (section 1). Other jurisdictions have statutes which refer expressly to the types of matters which can be considered by commissions of inquiry: for example, in Canada *"the Governor in Council may, whenever the Governor in Council deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof"* (Inquiries Act 1985, section 2) and in Malta an inquiry may be instituted by the Government in respect of issues concerning the conduct of public officers, servants of a statutory body, or affecting a service of the Government (Inquiries Act 1977, section 3).

5. Although the specific statutory definitions vary, there are common threads in each of these definitions. They relate to matters of profound public interest in the broadest sense, including the operation of public authorities, and matters which have or could give rise to public concern. As a recent research paper regarding statutory public inquiries in the UK put it, *"inquiries into matters of public concern can be used to establish facts, to learn lessons so that mistakes are not repeated, to restore public confidence and to*

determine accountability."[1] The UK's House of Lords Select Committee on the Inquiries Act 2005 has identified a number of purposes of inquiries,[2] including:

> *"…*
> - *Establishing the facts, especially where these are disputed or the chain of causation is unclear.*
> - *Determining accountability.*
> - *Learning lessons, and making recommendations to prevent recurrence, often by improving the constitution and powers of regulatory bodies*
> - *Allaying public disquiet and restoring public confidence.*
> - *Catharsis: an opportunity for reconciliation between those affected by an event and those whose action caused it or whose inaction failed to prevent it.*
> - *Developing public policy.*
> - *Discharging the obligations of the State to satisfy the European Convention on Human Rights (ECHR)…"*

6. This Inquiry provides a means for the truth about a series of events of profound importance in Gibraltar to be reached by an independent and authoritative body, namely the Chair of the Commission of Inquiry. Its core purposes are in keeping with the Select Committee's approach, Mr McGrail submits: establishing the facts, determining accountability, learning lessons and making recommendations for change, allaying public disquiet and restoring public confidence, catharsis, and vindicating ECHR rights where applicable, including in particular Mr McGrail's rights. At this stage, as the Inquiry commences its work, Mr McGrail – whose reputation, treatment and conduct are at the heart of the Terms of Reference and the Inquiry's work – considers it vital that the Inquiry's proposed timetable and working methods are fit for purpose. It is of particular importance that the Inquiry be enabled to operate independently of the very Government and the very individuals it is tasked with investigating. The legal team for Mr McGrail makes some pragmatic (and we hope helpful) suggestions below, including our suggestion that the Inquiry should draw upon learning from the UK in recent public inquiries in respect of working methods and policies. We stand ready to assist the Inquiry in its work, and to ensure that it succeeds in meeting its vitally important aims.

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[1] Commons Library Research Briefing, 'Statutory public inquiries: the Inquiries Act 2005,' 14th March 2022 (House of Commons Library, Number SN06410), p. 5.

[2] 'The Inquiries Act 2005: Post-Legislative Scrutiny,' 26th February 2014, Box 1, available at https://publications.parliament.uk/pa/ld201314/ldselect/ldinquiries/143/14302 htm. We note that the Government of Gibraltar has previously indicated its reliance upon this Select Committee report in respect of the conduct of inquiries under the Commissions of Inquiry Act: see 'Government Position on Public Inquiries – 685/2020,' 2nd October 2020, available at https://www.gibraltar.gov.gi/press-releases/government-position-on-public-inquiries-6852020-6262.

B. FACTUAL BACKGROUND IN BRIEF OVERVIEW

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Issues of Commission

18. On 4th February 2022 the Government of Gibraltar convened a Public Inquiry, under the Commissions of Inquiry Act, into the retirement of Mr McGrail, the former Commissioner of Police. A legal notice, containing the 'Issue of Commission,' the document under the Public Seal of Gibraltar which formally convenes the Inquiry, was published on that date, along with a press statement from the Government.[3]

19. The following Issues of Commission were set out in the Notice of Sir David Steel: relevantly that the Inquiry shall inquire, as the Commissioner, Sir Peter Openshaw, DL, *"shall in his absolute discretion consider appropriate, into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement."* The Commissioner is to ascertain the facts and report to the Government on the above matters. The full report shall be published by Government, subject only to such redactions as the Commissioner may consider appropriate. Save as the Commissioner may in his discretion determine, the Inquiry is to be held in public at a venue, and to commence on a date, to be specified by the Government by notice in the Gazette.

20. The press statement issued by the Government on the same date announced the convening of the public inquiry; the appointment of the Chair; the Issues of Commission; the appointment of Counsel to the Inquiry ("**CTI**"), Mr Julian Santos; and the appointment of Counsel to represent the Government before the Inquiry (Sir Peter Caruana KCMG, QC). The press statement also included a quote from the CM, which referred to the need to *"guarantee independence and perception of independence."*

C. LEGAL FRAMEWORK IN SUMMARY

21. At this stage, we refer to and summarise some of the key pieces of legislation and relevant international instruments. We anticipate making more detailed legal submissions in due course, as required.

[3] 'GOVERNMENT ISSUES COMMISSION FOR MCGRAIL INQUIRY - 84/2022,' 4th February 2022, available at https://www.gibraltar.gov.gi/press-releases/government-issues-commission-for-mcgrail-inquiry-842022-7658.

(i) The Commissions of Inquiry Act

22. The Commissions of Inquiry Act 1888-01 is the key piece of governing legislation regarding the conduct of the Inquiry. It is a short piece of legislation, with only 14 sections, including the appointment of commissioners (s. 3), protection of commissioners (s. 4), staff to commissioners (s. 7), the power to summon witnesses (s. 8), the power to examine on oath (s. 9), the non-liability of persons for statements or disclosure in evidence (s. 10), the entitlement to the appearance of counsel for certain persons (s. 11), the penalty for non-attendance or refusing to give evidence (s. 12) and expenses (ss. 13 and 14).

23. There is no equivalent of the detailed procedural rules in the UK's Inquiry Rules 2006, which included detailed provisions regarding matters such as the entitlements of core participants in an inquiry, the governing of disclosure, the order of questioning, warning letters and records management.

(ii) The Police Act 2006

24. Section 3(1) of the Police Act 2006 ("2006 Act") establishes the Gibraltar Police Authority ("**GPA**").

25. Part I sets out the responsibilities and powers of the GPA. Section 5 relevantly includes responsibilities: "*to secure the maintenance of an efficient and effective police force for Gibraltar",* "*to ensure high standards of integrity, probity and independence of policing in Gibraltar", "to establish, operate and supervise the process for investigating complaints against police officers under this Act"* and "*to hold the Commissioner to account for matters which are the responsibility of the Authority."*

26. Part II sets out the Governor's and the Government's responsibilities for policing. Section 13 provides for the Governor's powers "*in default by the Authority*", which are exercisable only where the Authority "*has failed to discharge or perform a responsibility imposed on the Authority under this Act*". The powers include "*where in the opinion of the Governor the integrity, probity or independence of the police has been compromised or is at risk, to direct the Force to take appropriate action to remedy the situation or*

avoid the risk" and "*to suspend from duty, or call for the resignation of the Commissioner".*

27. Section 15(1) provides that the Chief Minister may exercise various powers on behalf of the Government, including (a) requiring factual or assessment reports from the Force or the Authority on any policing matter, provided that there may be withheld from any such report any fact disclosure of which is likely to prejudice the effective operation of the Force.

28. Part IV provides for the establishment of the RGP. Section 32(1) provides for the appointment of the Commissioner of Police by the Governor, acting on the advice of the Authority, subject to any provision of the Constitution; for such that the Authority may advise and as shall be set out in the instrument of appointment.

29. Section 33(1) provides that the Commissioner shall, subject to the provisions of this Act, have command, superintendence, direction and control of the Force, and shall be responsible for the efficient administration and government of the Force and for the proper expenditure of all public moneys appropriated for the service (section 33(2)).

30. Section 34 provides for the removal of the Commissioner by the GPA, as follows:

> *"34.(1) The Authority acting after consultation with the Governor and the Chief Minister and with the agreement of either of them, may call upon the Commissioner to retire, in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar.*
>
> *(2) Before seeking the approval of the Governor and the Chief Minister under subsection (1), the Authority shall give the Commissioner an opportunity to make representations and shall consider any representations that he makes.*
> *(3) Where the Commissioner is called upon to retire under subsection (1), he shall retire on such date as the Authority may specify or on such earlier date as may be agreed upon between him and the Authority."*

(iii) International Standards Concerning Corruption and Protection of Whistleblowers

31. The concept of good governance, as a general underpinning principle, has some recognition in the main international human rights instruments, but it has been more fully developed in a series of regional and international treaties focused on corruption, including the first global treaty in this field in 2003 – the United Nations Convention Against Corruption ("**UNCAC**").[4] UNCAC expresses recognition of the problem of corruption, a political commitment to cooperate to address it, and it establishes standards to do so.

32. The Council of Europe ("**CoE**") considers *"the fight against corruption"* to be a priority area.[5] They state:

> *"Ever since antiquity, corruption has been one of the most widespread and insidious of social evils. When it involves public officials and elected representatives, it is inimical to the administration of public affairs. Since the end of the 19th century, it has also been seen as a major threat in the private sphere, undermining the trust and confidence which are necessary for the maintenance and development of sustainable economic and social relations. It is estimated that hundreds of billions of Euros are paid in bribes every year. The [CoE] exists to uphold and further pluralist democracy, human rights and the rule of law and has taken a lead in fighting corruption as it poses a threat to the very foundations of these core values. As it is emphasised in the Criminal Law Convention, corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society."*

33. In 1999 the Group of States against Corruption ("**GRECO**") was established by the CoE to monitor States' compliance with the organisation's anti-corruption standards. GRECO monitors the United Kingdom, including Gibraltar, for compliance with CoE standards.

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[4] United Nations General Assembly resolution 58/4 of 31st October 2003. Predating UNCAC were the 1996 Inter-American Convention against Corruption; the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the Council of Europe 1998 Criminal Law and 1999 Civil Law Conventions; and the 2003 African Union Convention.

[5] See further https://www.coe.int/en/web/greco/about-greco/priority-for-the-coe.

These standards include the CoE's *Criminal Law Convention on Corruption* ("**the CoE Corruption Convention**") of 27th January 1999 and the Recommendation on Codes of Conduct for Public Officials, Rec. No. R (2000) 10.

34. The CoE Corruption Convention states in its preamble that, "*corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society".*[6] Each Party to the CoE Corruption Convention shall adopt measures to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure.

35. Rec. No. R (2000) 10 recommends the adoption of national codes of conduct to combat corruption, and tasks GRECO with monitoring compliance.

36. The need for effective protection of whistleblowers and whistleblowing-type activity is also recognised in international and regional instruments, including in particular the CoE's *Committee of Ministers' Recommendation on the protection of whistleblowers,* Recommendation CM/Rec (2014) 7, adopted on 30th April 2014. The definition of *"whisteblower"* is set out at page 6 of the Recommendation: it *"means any person who reports or discloses information on a threat or harm to the public interest in the context of their work-based relationship, whether it be in the public or private sector". "Public interest report or disclosure"* means *"the reporting or disclosing of information on acts and omissions that represent a threat or harm to the public interest." "Report"* means *"reporting, either internally within an organisation or enterprise or to an outside authority."*

37. It relevantly states in the preamble that "*freedom of expression and the right to seek and receive information are fundamental for the functioning of a genuine democracy"* and it refers to *"recognising that individuals who report or disclose information on threats or*

[6] https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007f3f5.

harm to the public interest (whistleblowers) can contribute to strengthening transparency and democratic accountability".

38. Paragraph 21 of the Recommendation states: "*Whistleblowers should be protected against retaliation of any form, whether directly or indirectly, by their employer and by persons working for or acting on behalf of the employer. Forms of such retaliation might include dismissal, suspension, demotion, loss of promotion opportunities, punitive transfers and reductions in or deductions of wages, harassment or other punitive or discriminatory treatment."* Protection from retaliation is clearly a matter of fundamental importance in the present Inquiry, particularly when, we submit, the victim was the principal law enforcement officer of the Crown in Gibraltar.

39. The preamble to the Council of Europe *Code of Police Ethics*[7] states that "*the criminal justice system plays a key role in safeguarding the rule of law and that the police have an essential role within that system".* Paragraph 15 provides: "*The police shall enjoy sufficient operational independence from other state bodies in carrying out its given police tasks, for which it should be fully accountable".* Paragraph 34 states "*Public authorities shall support police personnel who are subject to ill-founded accusations concerning their duties".*

The European Convention on Human Rights

40. By a declaration dated 23rd October 1953, the UK extended the European Convention on Human Rights ("**ECHR**") to Gibraltar. Section 18(8)(a)(i) of the Constitution of Gibraltar now provides that a court or tribunal determining a question which has arisen in connection with one of the rights and freedoms set out in the Constitution, or the limitations thereto, *"must take into account any judgment, decision, declaration or advisory opinion of the European Court of Human Rights."*

41. The European Court of Human Rights ("**ECtHR**") has repeatedly emphasised that corruption threatens the rule of law, and the importance of whistleblower protection, citing the standards referred to above. There have been a number of cases where sanctions imposed on whistleblowers have been found to breach Article 10 ECHR – in cases

[7] Adopted 19th September 2001: https://rm.coe.int/16805e297e.

involving the dismissal of public servants this has sometimes been articulated as an attack on reputation protected by Article 8 ECHR.

42. In *Guja v. Moldova (No. 1)* [2011] 53 EHRR 16, for example, the Grand Chamber held unanimously that there had been a violation of Article 10 (freedom of expression). The applicant was Head of the Press Department of the Moldovan Prosecutor General's Office. The case concerned his dismissal for giving a newspaper two letters received by the Prosecutor General's Office which disclosed interference by a high-ranking politician in pending criminal proceedings. The Court balanced the conflicting factors under Article 10 and concluded there had been a breach:

> *"[72] ... The Court thus considers that the signalling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large."*

43. Article 8 ECHR includes the right to protection of reputation.[8] As stated in *Axel Springer AG v. Germany* [2012] ECHR 227, judgment (Grand Chamber) of 7th February 2012, paras. 83-84:

> *"... [T]he right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life ... In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life ...*"

[8] *Denisov v. Ukraine* [GC], paras. 111-112 and 115-117.

D. PROCEDURAL FORMAT OF THE INQUIRY

44. The Agenda for the First Preliminary Hearing contains, as item 3, the heading, *"proposed procedural format of the main hearing."* On behalf of Mr McGrail, we submit that this agenda item should be expanded to include the procedural approach of the Inquiry overall, and not only to the final, substantive hearing. This is of particular importance given the absence of detailed procedural rules for the conduct of inquiries in Gibraltar, and so this Inquiry must implement its own policies and working standards. This is a complex task even in inquiries which have the benefit of a detailed procedural framework: see, for example, the detailed policies and procedures adopted by the Independent Inquiry into Child Sexual Abuse ("**IICSA**") in respect of a wide range of matters, including document management, redactions, whistleblower protection, anonymity, and procedural matters such as the process to be followed to call for applications for Core Participant status and the determination of such applications.

45. We suggest that a new sub-item be added to this agenda item, concerning working practices and policies.

Agenda Item 3(a) – (c)

46. In respect of items (a) – (c) which appear under agenda item 3 (outline of proposed procedure, format of oral evidence and publicity and reporting of Inquiry hearings), the Inquiry has not yet set out its proposed procedure so it is not possible to respond to particular proposals until the Preliminary Hearing itself. We will address these matters orally in light of the submissions made by CTI on the day, although as we are unsure of the proposals it is likely that we will need to take instructions as the details emerge, and it may be necessary to provide follow-up submissions in writing if there are any matters arising which we cannot address fully 'off the cuff'.

47. We have already indicated in correspondence to the Inquiry that we consider it sensible and efficient to review whether, going forward, an approach could be adopted akin to that which has been in place in many inquiries in the UK in recent years (including IICSA, Leveson and the Undercover Policing Inquiry), and large scale inquests concerning multiple deaths (such as the 7/7 London Bombings, Hillsborough, Grenfell and the Manchester Bombing Inquests): namely, that CTI circulates proposals to Core

Participants in writing in advance, and Core Participants then respond to CTI in writing in advance, which allows the issues to be crystallised and narrowed, and, importantly, advice given and instructions taken prior to an oral hearing. It also enables the Chair to consider the issues in advance, with the benefit of targeted written submissions, and, if required, supporting authorities. We commend this approach to the Chair and suggest it would be a sensible course to take going forward. We recognise it will not now work for the First Preliminary Hearing at this stage, but we respectfully request that it be considered for the Second Preliminary Hearing in September 2022. In our experience, this would be more efficient and would be of greater assistance to the Chair. We also anticipate that it would allow for many issues to be resolved in advance, or at least narrowed down, and would thus save time and resources and result in a saving to the public purse.

48. Although we are unaware of the proposals which CTI will make under headings 3(a)-(c), the following principal submissions are made.

49. The factual summary above outlines that the probity of Gibraltar's institutions is at issue in this Inquiry. [redacted]

50. The constitutional principle of open justice is of fundamental importance. Toulson LJ (as he then was) said in *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] 3 All ER 551[9]:

> *"Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? It is an age old question. Quis custodiet ipsos custodes - who will guard the guards themselves? In a democracy, where power depends on the consent of the people governed, the*

[9] Approved unanimously by the UK Supreme Court in *Cape Intermediate Holdings Ltd (Appellant/Cross-Respondent) v Dring (for and on behalf of Asbestos Victims Support Groups Forum UK) (Respondent/Cross-Appellant)* [2019] UKSC 38.

answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse."

51. The constitutional principle of open justice applies equally to public inquiries. As stated by Lord Toulson (with whom Lord Neuberger and Lord Clarke agreed) in *Kennedy v The Charity Commission* [2014] UKSC 20:

> *"The considerations which underlie the open justice principle in relation to judicial proceedings apply also to those charged by Parliament with responsibility for conducting quasi-judicial inquiries and hearings. How is an unenlightened public to have confidence that the responsibilities for conducting quasi-judicial inquiries are properly discharged?"*

52. Given the principles summarised above, as well as the fact that allegations of corruption are a substantial part of the subject matter of the Inquiry, and in light of the constitutional importance of unearthing corruption and protecting whistleblowers as set out in the international standards and authorities above, it is imperative that the Inquiry is held in public and that there is maximum transparency. Open justice should also be a central principle in making any decisions relating to the hearings, and in particular the venue for the Inquiry, access for the press and the availability of live streams, transcription and online publication of transcripts, statements, exhibits, rulings and the final report. We also highlight the fact that this Inquiry raises issues of public concern and public interest both for Gibraltar itself, and outside Gibraltar.

53. Applying those principles, it is submitted that:
    a. All Inquiry hearings should be open to the public and press, in terms of physical attendance at the venue in Gibraltar itself;
    b. All Inquiry hearings should also be open to the public and press remotely, via online attendance;
    c. All Inquiry hearings should be live-streamed (we make this submission in respect of both the Preliminary Hearings and the Final Hearing);

d. The timetable for hearings should be published in good time in advance, on the Inquiry's website, to enable press and public to consider and plan their attendance;

e. All submissions should be published on the Inquiry website in advance of hearings, subject to redactions which should be made if strictly necessary. A redaction policy should be formulated and published and a procedure should be put in place so that Core Participants can apply for such redactions to be made;

f. All witness statements, documentary evidence and exhibits should be published on the Inquiry website in good time, for example, on the day that they are considered at the Main Hearing. Again, this process can be subject to redactions where strictly necessary, and there should be a process to enable Core Participants and/ or witnesses to apply for such redactions prior to publication;

g. All Inquiry hearings should be transcribed and the transcripts made available on the Inquiry website as soon as is practicable after hearings, subject to any redactions which are strictly necessary. This should be done on the day of the hearings in question, as is common in inquiries in other jurisdictions;

h. All Inquiry rulings and the final report should be published on the Inquiry website.

New Proposed Item for Agenda: Further Policies

54. We have proposed that agenda item 3 be amended to include the procedural format of the overall process, and we have proposed a new item (d) be inserted, to consider further policies and working practices. We suggest that this matter be dealt with under item 3 rather than left to be dealt with under the 'AOB' agenda item 5. That is because this is a fundamental issue regarding the operation of the Inquiry, which goes to the building blocks of how the process works, and a decision regarding it will impact on other matters. Thus, it does not appear to us logical to consider the format for the final hearing (agenda item 3 as it stands) and the timetable going forward (agenda item 4) before addressing this. However, we are of course in the Chair's hands and will address this matter at the time he wishes to hear it.

55. We propose that the Inquiry produce the following further policies:

(i) First, an **Information Management Policy**. The Inquiry is subject to the Gibraltar General Data Protection Regulation (the "**Gibraltar GDPR**") and the Data Protection Act 2004. The provisions of the same are not set out in any detail. It is, however, submitted that in order to comply with the Gibraltar GDPR the Inquiry should set out the basis upon which it will be processing personal data in the form of documentary evidence and the use to which such data will be put: see the Gibraltar Information Commissioner's Guidance Notes, Note 17[10] and particularly paragraph 3 which sets out the information which should be provided to individuals when their personal data is collected from them. This should be in the form of an Information Management Policy or similar. We do not envisage this being an overly onerous task and we anticipate that the Inquiry could draw upon the learning from recent other inquiries: see, for example, the information management policies of IICSA and the Grenfell Tower Inquiry (here and here).

(ii) Secondly, a **Redactions Policy**, unless this aspect is incorporated into the Information Management Policy. If the Inquiry intends to apply redactions to certain classes of information, there should be a clear policy set out in advance, and Core Participants should be entitled to make submissions regarding the policy itself prior to it being settled, should they be so advised or should they so wish; and there should be a mechanism to challenge proposed redactions if there is disagreement. Again, such policies have been used in many recent public inquiries in the UK: see, for example, the redaction policy for IICSA here.

(iii) Thirdly, a policy relating to **protective measures for witnesses and/or Core Participants**. Given the sensitive subject matter of the Inquiry, it stands to reason that there may be potential witnesses who wish to give evidence anonymously, which would necessitate the putting into place of protective measures such as screening, redaction of transcripts/ published documents and any other measures which the Commissioner considers to be appropriate. In order to ensure that those witnesses are encouraged to give evidence, a policy setting out how such protective measures can be applied for and how such applications will be addressed.

[10] https://www.gra.gi/uploads/documents/data-protection/Documents/Guidance/GDPR17.pdf

(iv) Fourthly, a **Core Participants** policy which sets out on what basis core participant status is to be assigned and what this status means in practice. This policy, we suggest, should be published as soon as possible, and should make clear how individuals or entities can apply to the Inquiry if they wish to make an application for Core Participant status;

(v) Fifthly, a policy relating to **conflicts of interest in the Inquiry team**. Gibraltar is a small jurisdiction where there is often significant crossover between the personnel of different institutions. In order to avoid the likelihood of conflict of interest issues, and potentially applications for recusal, arising later in the process, it is submitted that a policy should require each member of the Inquiry staff to declare potential conflicts of interest (for example, professional or personal relationships between staff and potential witnesses), and if they exist whether and if so how potential conflicts will be mitigated, and for such declarations to be published on the Inquiry website, or, at a minimum, provided to the Core Participants. In addition to addressing potential issues of actual bias, this would also tackle the question of perception of bias. This is a matter of fundamental importance: the Inquiry and all aspects of its operations must be seen to be scrupulously independent of those involved in the process.

E. TIMETABLE FOR THE INQUIRY

56. Agenda item 4 is headed 'Proposed timetable for Inquiry.' Again, we have no advance knowledge of what will be proposed, and so we are limited in what we can say on this matter in advance of the hearing itself. However, we have also considered timetabling and we make certain proposals of our own, for the Chair's consideration.

57. The following timetable is proposed up to the Second Preliminary Hearing, on behalf of Mr McGrail:

a. Information Management Policy to be published within 14 days of the First Preliminary Hearing (by 6th July 2022);

b. Core Participants Policy to be published within 14 days of the First Preliminary Hearing (by 6th July 2022);

c. Conflicts of Interest Policy to be published within 14 days of the First Preliminary Hearing (by 6th July 2022), and any declarations of potential conflicts of interest to be published, or in the alternative provided to Core Participants, by 20th July 2022 (four weeks after the First Preliminary Hearing);

d. General call for evidence published on Inquiry website on 6th July 2022, giving a 6 week deadline;

e. Further policies (redactions and whistleblower protections/ anonymity) to be published by 13th July 2022 (three weeks from the First Preliminary Hearing);

f. Disclosure and witness statements to be provided to Inquiry by Core Participants by 20th July 2022 (four weeks from Preliminary Hearing);

g. Disclosure to be made by the Inquiry to Core Participants by 17th August 2022 (four weeks after disclosure made by Core Participants to the Inquiry);

h. Provisional list of issues and proposals for Inquiry procedure to be provided by Inquiry to Core Participants by Monday 5th September 2022;

i. Written submissions to be made by Core Participants for Second Preliminary Hearing by Monday 12th September 2022, to be shared by Inquiry with other Core Participants;

j. Authorities Bundle for Second Preliminary Hearing (if required) to be prepared by consensus between CTI and the Core Participants by no later than Wednesday 14th September 2022, and to be circulated electronically;

k. Second Preliminary Hearing (already set for 19th – 20th September 2022).

58. We hope that these submissions are of assistance.

CAOILFHIONN GALLAGHER Q.C.

ADAM WAGNER

Doughty Street Chambers, London

20th June 2022