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## INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

### MR IAN MCGRAIL (THE "INQUIRY")

*WRITTEN SUBMISSIONS ON BEHALF OF THE GIBRALTAR POLICE AUTHORITY (THE  
"GPA") IN ADVANCE OF THE SECOND PRELIMINARY HEARING  
(19/20 SEPTEMBER 2022)*

**8<sup>th</sup> SEPTEMBER 2022**

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We have been invited by the Commissioner to make any written submissions on the Provisional List of Issues and Draft Policy Documents in advance of the Second Preliminary Hearing by 4pm on 09 September 2022, and in the light of previous submissions made by the other Core Participants and the Commissioner's preliminary views following consideration of those matters. We hereafter make the following submissions on behalf of the GPA.

#### **I. PROVISIONAL LIST OF ISSUES**

**The provisional issue which touches upon the GPA's actions under Section 34 of the Police Act**

1. We submit that the additional text proposed by Counsel for Mr McGrail (proposed issue 12) as specified in the appendix to their submissions dated 24<sup>th</sup> August 2022 ('Proposed Amendments to Preliminary Issues List' (the "Appendix") is unnecessarily wide for the reasons set out below.
  - a. The relevant facts (proposed 12.1 of the Appendix) have been deposed to by Dr Britto in his sworn witness statement dated 13<sup>th</sup> May 2022 and supporting documentary evidence has been produced. Those facts are accordingly well established and any further investigation of them would constitute an unnecessary exercise.
  - b. As regards proposed 12.2 of the Appendix, the GPA took the view after taking legal advice that the process which it had followed under section 34 of the Police Act was flawed and consequently, withdrew its invitation to the Commissioner of Police for him to retire. The GPA already having formed the view that its process was flawed, we would submit that there is no need for this matter to be investigated further.
  - c. For the same reason as set out in (b) above, proposed 12.3 of the Appendix is otiose. The Section 34 process was flawed and it was inconsequential to its outcome whether or not the Chief Minister's actions were appropriate.
  - d. The only additional issue which we would submit is reasonable is that raised at proposed 12.4 of the Appendix. We respectfully submit that the Commissioner's

proposed additional issue is unduly wide and, in any case, wider than that raised by Counsel for Mr McGrail at 12.4.

2. We therefore submit that the sole additional issue in this regard should be that proposed at 12.4 of the Appendix.

## **II. POLICIES**

### Documents Protocol

#### ***Invocation of Privacy and Public Interest Immunity***

1. Our client does not envisage making applications on grounds of privilege or public interest immunity. We therefore only make brief submissions on this matter and that is because we have invited to do so by the Commissioner.
2. We would submit that the express provisions of Section 10 of the Commissions of Inquiry Act 1888 are very wide and would therefore submit as set out below in relation to the specific questions posed by the Commissioner concerning the scope of Section 10. We answer using the same lettering as adopted in his letter. The provisions of Section 10:
  - a. extend to all forms of privilege;
  - b. Apply to the production of documents to the Inquiry as well as answering questions;
  - c. Reserve a discretion to ask questions on the Commissioner's part
3. However, due weight should be given to the well-established principles of privilege and public interest immunity. We submit that the Commissioner should exercise his discretion to find a fair balance and ensure that the right to claim privilege and public interest immunity is not unnecessarily undermined.

**James Neish QC**

**Shane Danino**

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