

McGrail's statement of factual position for Second PH

20 September 2022

1. On 12th May 2020 the Royal Gibraltar Police moved to execute a search warrant against a subject in "Op Delhi", an investigation into the alleged hacking and sabotage of the National Security Centralised Intelligence System ("NSCIS") and into a conspiracy to defraud a private company which was operating the system.
2. The Chief Minister has, and had at the relevant time, a close relationship with the subject. The subject indirectly owned part of the company which was at the heart of the Op Delhi investigation, and which stood to gain financially from the alleged fraud. The Chief Minister also owned (as a partner of Hassans) part of the same company and therefore also stood to gain financially from the alleged fraud.
3. The Chief Minister was also mentioned in the Op Delhi investigation documents.
4. On 12 May, the same day on which the search warrant was executed, the Chief Minister and Attorney General called Mr McGrail into a meeting. They berated him for the intervention. The Chief Minister in particular was extremely angry and used intemperate language. The Chief Minister accused Mr McGrail of acting improperly.
5. The Attorney General was concerned, amongst other things, about the potential of the search warrant to cause serious reputational damage to Gibraltar. The Attorney General claimed that Mr McGrail and he had agreed that no further steps would be taken in the investigation generally without them speaking further. Mr McGrail denies that any such agreement was made.
6. In the days that followed, pressure was placed on Mr McGrail and other members of the RGP, particularly by the Attorney General, to change their approach to the Op Delhi investigation.
7. The Chief Minister says that the fact that he believed Mr McGrail had lied to him about having been advised by the DPP about the search warrant, which Mr McGrail denies, was central to his loss of confidence in Mr McGrail.
8. On 14th May 2020, the Chief Minister privately messaged Mr Pyle, then Acting Governor, citing a number of issues relating to Mr McGrail. They met the following day, 15th May, and planned together to cause the Gibraltar Police Authority ("GPA"), a body which is supposed to be independent from government, to invoke its powers under section 34 of the Police Act to remove the Commissioner from his post.
9. Mr Pyle, for his part, claims to have also lost confidence in Mr McGrail because of the HMICFRS report into the Royal Gibraltar Police and the incident at sea, particularly that he considered he was not fully informed by Mr McGrail on the location of the collision, which Mr McGrail denies. In relation to the HMICFRS report, he had not communicated any criticism to Mr McGrail to that date or indicated that lie was concerned. In relation to the incident at sea, this was subject to an independent investigation by the Metropolitan Police ordered by Mr McGrail himself which had, at the date that Mr Pyle apparently lost confidence in him, not yet reported even on an interim basis.
10. On 18th May 2020, the Chair of the GPA was invited to meet the Chief Minister and Mr Pyle, the then-Acting Governor, at the Convent, when he was informed about the supposed loss of confidence. It is unclear whether the details of the criminal investigation, the close

relationship between the Chief Minister and the subject, or the fact that the Chief Minister owned part of the company which stood to benefit from the alleged fraud were made known to Dr Britto or indeed, to Mr Pyle.

11. In the days that followed, the Chief Minister stage-managed the attempted exercise of the section 34 powers, which vest in the GPA and not himself. He was in regular communication with the GPA Chair, he set down the sequencing of events in writing for the Chair and approved GPA correspondence.

12. At 9am on 22nd May 2020, Mr McGrail met with Dr Joey Britto, the Chair of the GPA. Dr Britto informed Mr McGrail that the Chief Minister and Acting Governor had lost confidence in him and therefore the GPA would be invoking the section 34 power which would require him to retire. Mr Britto handed him a letter which stated the GPA's decision but contained no detail as to why. Mr McGrail asked for a letter setting out the detailed reasons so he could respond.

13. Later that evening, a second letter was sent to Mr McGrail from Dr Britto on behalf of the GPA containing more detailed reasons why the Chief Minister and Acting Governor had lost confidence in him. Although the letter was signed by Dr Britto, the Chief Minister had in fact written substantial sections of it. The letter made no mention, however, of what the Chief Minister now says was the single or principal reason for losing confidence in Mr McGrail, namely the issues around the execution of the search warrant against the subject .

14. In Parliament on the 27th July 2020 the Chief Minister confirmed that at the time of the matters referred to above, the Governor intended to use his powers under section 13. Hansard lines 1866-1871

“Hon K. Azzopardi: Mr Speaker, the Police Act, in section 13, makes clear that the Governor can call for the suspension or resignation of the Commissioner, but if he does so he needs to keep the Chief Minister informed. Did the Governor intimate to the Chief Minister that he intended to exercise any power under section 13 in relation to the Commissioner?”

Hon Chief Minister: Yes, sir.”

15. On 5th June 2020, the GPA, having taken legal advice, informed Mr Pyle and the Chief Minister that they could not, in fact, proceed with the section 34 process as it was procedurally flawed and was vulnerable to challenge on grounds of bias. The invitation to retire was withdrawn.

16. Following the withdrawal of the section 34 process, on the same day, 5th June, Mr Pyle called Mr McGrail into a meeting. Mr Pyle asked him to return on Monday (the 8th) when he said he was considering invoking his powers under section 13 of the 2006 Act to call for Mr McGrail's resignation. Mr McGrail would have been legally required to comply (if the exercise of the powers was lawful). The new Governor, Vice Admiral Sir David Steel KEE, DL, had at this stage already been appointed and was arriving in Gibraltar on Wednesday 10th June.

17. This sequence of events was hugely stressful for Mr McGrail and his family. He was also concerned that if he was forced to resign (as opposed to retire) this would put his pension rights at risk. Despite knowing that he was being muscled out because of the issues surrounding Op Delhi, he took the extremely difficult decision to succumb to the pressure and retire from the role which represented the pinnacle of his career. After a short negotiation of terms, he submitted his resignation at 0830 on 9 June 2020.