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

RULING ON APPLICATION FOR CORE PARTICIPANT STATUS

1. This is a short ruling on the application for Core Participant ('CP') status by His Majesty's Government of Gibraltar ('HMGOG'). I have already published my ruling on the applications made by the Gibraltar Police Federation, Retired Superintendent Paul Richardson and the Royal Gibraltar Police,¹ but deferred my ruling on this application until I had an opportunity to consider HMGOG's response to certain queries made by the Inquiry team.
2. HMGOG's application asserts that the first consideration under paragraph 5 of the Policy is engaged by "*the fact that the acts and omissions of the Chief Minister, and the Financial Secretary, the Attorney General (save in respect of his responsibility and functions relating to the prosecutive powers of the state) and other Government employees in relation to each issue in the provisional list of issues ... were as members or officers or employees of the Government, and on its behalf*". I am satisfied that each of the three considerations in paragraph 5 of the Policy is engaged by HMGOG's application.
3. First, I accept that persons within Government played a significant role in the matters to be inquired into. HMGOG submits that it meets this consideration in relation to "*each issue in the provisional list of issues*". Whilst I need not rule on whether HMGOG played a significant role in relation to each of those issues, I am satisfied that members of Government played a significant role in at least some of the issues, namely Issues 1 (the Airport Incident), 3 (the Incident at Sea), 4 (the HMIC Report), 5 (the Conspiracy Investigation) and 9 (the Section 13 Issue).
4. I note that Mr McGrail appears to accept that the Government played a significant role in various events to which the Inquiry relates. In his submissions on 23 August 2022, Mr McGrail argued (in the context of an argument about the Inquiry's IT services) that HMGOG was "*in effect a Core Participant, or alternatively it is implicated in the events through the fact that the Chief Minister is both a core Participant and implicated...*" (para 37).

¹ <https://coircomp.gi/wp-content/uploads/2022/10/Ruling-on-CP-Applications-RGP-GPF-Richardson-20.10.22.pdf>.

5. Second, I consider that HMGOG has a significant interest in those events, as well as in the outcome of the Inquiry, particularly because Mr McGrail is making serious allegations of corruption and impropriety within Government. By way of example, Mr McGrail argued in his submissions of 20 June 2022 that:
 - a. “*The Inquiry concerns issues of the utmost public importance, both nationally, within Gibraltar, and internationally*” (para 1);
 - b. “*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*” (para 6);
 - c. “*...the probity of Gibraltar’s institutions is at issue in this Inquiry*” (para 49); and
 - d. “*...allegations of corruption are a substantial part of the subject matter of the Inquiry*” (para 52).
6. I have also had regard to the fact that HMGOG called and convened the Inquiry and that the subject matter of the Inquiry touches upon the Government’s powers under the Police Act 2006, which are exercised by the Chief Minister on its behalf under section 15. I consider that these two matters also give the Government a significant interest in the Inquiry.
7. Third, and relatedly, whilst this ruling makes no prejudgment of HMGOG’s actions, there is force in the argument that the Government and its officers, are likely to be significantly criticised in the proceedings, particularly by Mr McGrail (and indeed have already been the subject of some criticism). As I noted in my Amended Judgment following the First Preliminary Hearing dated 25 August 2022, the principles of open justice give the public a right to know what is being alleged, and what answer the Government makes to the allegations made against it (para 26). In my judgment, it is only fair that HMGOG be granted an opportunity to respond to any significant criticism, for which it will require participatory rights in the Inquiry.
8. As explained in my earlier ruling, paragraph 6 of the Policy gives me a wide discretion in respect of CP applications, and I am not obligated to designate CP status to HMGOG because one or more of the paragraph 5 considerations are answered in the affirmative. Nevertheless, I have determined that I should do so for the following reasons:
 - a. As HMGOG submits, it is “*the custodian*” of many documents which might be the subject of a claim for privilege and public interest immunity. HMGOG will

be well placed to decide whether it would be justified, or even required, to claim public interest immunity, and to assist the Inquiry by making submissions on the point.

- b. Granting the Government status as a Core Participant will not add time or cost to the Inquiry, since HMGOG are represented by the same legal team as currently represents Mr Picardo KC MP, Mr Llamas KC and Mr Pyle.

9. I therefore grant CP status to HMGOG.

Sir Peter Openshaw, DL

25 October 2022