
**INQUIRY INTO THE RETIREMENT OF THE FORMER
COMMISSIONER OF POLICE
RULING ON APPLICATION FOR CORE PARTICIPANT STATUS**

1. This is a ruling on the application made to the Inquiry for Core Participant (**'CP'**) status by Mr John Perez, Mr Thomas Cornelio and Mr Caine Sanchez (**'the Applicants'**). The Applicants are the three individuals who were charged following the Conspiracy Investigation, as defined in issue 5 of the Provisional List of Issues.¹ Their prosecution was discontinued on 21 January 2022.
2. The Applicants have already been granted public funding to prepare witness statements requested by the Inquiry's solicitors, and have each provided a witness statement to the Inquiry. However, CPs have participatory rights in the Inquiry proceedings which go above and beyond the role of a witness. For the reasons set out below, I have concluded that the Applicants should be granted CP status.

Timing of the application

3. The Inquiry's Core Participants Policy (**'the Policy'**) was settled at the Second Preliminary Hearing and published on the Inquiry's website on 22 September 2022.²
4. As explained in paragraph 8 of the Policy, the Inquiry initially granted CP status to four participants who, according to the relevant provisions of the Police Act 2006, could theoretically have played a role in Mr McGrail's retirement (see paragraph 8 of the Policy). These were: Mr Ian McGrail, the Chief Minister the Hon Fabian Picardo KC MP, the Interim Governor at the relevant time Mr Nicholas Pyle OBE, and the Gibraltar Police Authority. CP status was also granted to HM's Attorney-General for Gibraltar, Michael Llamas CMG KC.
5. Pursuant to paragraph 9, any other person was able to apply for CP status on or before 7 October 2022. The Inquiry received applications from the following parties:
 - a. The Royal Gibraltar Police;
 - b. The Gibraltar Police Federation (**'GPF'**);

¹ <https://coircomp.gi/wp-content/uploads/2022/09/Provisional-List-of-Issues-22.09.22.pdf>.

² The Policy is available on the Inquiry's website: <https://coircomp.gi/wp-content/uploads/2022/09/Core-Participants-Policy-22.09.22.pdf>.

- c. Retired Superintendent Paul Richardson; and
 - d. Her Majesty's Government of Gibraltar.
6. Each of those four parties were granted CP status, albeit in the case of the GPF, limiting their CP status to issue 6 on the Provisional List of Issues only.³
7. The Applicants applied for CP status on 17 February 2023, some four months after the deadline set in the Policy. Although no explanation has been given for that delay (other than that the Applicants were not previously in a position to apply to CP status due to financial restraints), I have decided to exercise my discretion to consider the application on the basis that the Inquiry did not approach the Applicants to give evidence until after the deadline for CP applications, and similarly their application for public funding (and my ruling on that application) was made after the deadline for CP applications. The timeline is as follows:
- a. On 22 September 2022, the Inquiry published the Core Participants Policy.
 - b. On 23 September 2022, the Inquiry issued a public call for evidence, with a deadline of 21 October 2022.
 - c. 7 October 2022 was the deadline for the Inquiry receiving CP applications.
 - d. On 14 October 2022, Attias & Levy contacted Mr Perez and Mr Cornelio to confirm their contact details in advance of sending them requests for evidence. Both replied on 17 October 2022 indicating that they were already planning to submit a joint response to the public call for evidence, along with Mr Sanchez.
 - e. On 19 October 2022, Attias & Levy sent formal requests for evidence to Mr Cornelio and Mr Perez. On 24 October 2022, a request was sent to Mr Sanchez, after his contact details were located.
 - f. On 21 October 2022, the Inquiry received an application for public funding of legal representation from the Applicants. My ruling granting public funding was published on 28 October 2022 (**the Funding Ruling**).⁴
8. As indicated in paragraph 1, I have concluded that this application should be granted. However, I stress that the Inquiry's timetable has already been fixed, including as to

³ See my rulings dated 20 October 2022 (<https://coircomp.gi/wp-content/uploads/2022/10/Ruling-on-CP-Applications-RGP-GPF-Richardson-20.10.22.pdf>) and 25 October 2022 (<https://coircomp.gi/wp-content/uploads/2022/10/Ruling-on-Gov-CP-Application-FINAL.pdf>).

⁴ <https://coircomp.gi/wp-content/uploads/2022/11/Decision-on-Funding-Cornelio-Perez-Sanchez-28.10.22.pdf>.

dates for disclosure, future preliminary hearings and the main Inquiry hearing. It is unlikely that the Inquiry will be able to accommodate requests from the Applicants for changes to that timetable, on the basis that they have only now been granted CP status.

The application

9. Upon receipt of an application for CP status, paragraph 5 of the Policy requires me to consider, in particular, whether:
 - a. the person played or may have played a significant role in relation to matters to which the Inquiry relates (**'the First Consideration'**);
 - b. the person has a significant interest in an important aspect of the matters to which the Inquiry relates (**'the Second Consideration'**); or
 - c. the person may be subject to significant criticism during the Inquiry proceedings or in its final or any interim report (**'the Third Consideration'**).
10. However, as explained in paragraph 6 of the Policy, I am not obligated to designate anyone a CP on the grounds that one or more of the circumstances are found to exist in the case of a particular applicant. Rather, I have a wide discretion, and will also have regard to the need to act fairly and to avoid any unnecessary or disproportionate cost or expense.
11. This application is made on the basis of all three considerations. I take each in turn.
12. **The First Consideration.** This overlaps with the first consideration when assessing whether to grant public funding of legal representation – namely that *“the conduct of the applicant is the subject of the inquiry; and/or the applicant is in any way implicated or concerned in the matters under Inquiry”* (para 4a, Inquiry Protocol Relating to Legal Representation at Public Expense). However, the First Consideration arguably imposes a higher bar as the person must have played a *“significant”* role.
13. In the Funding Ruling, I found that *“The Applicants are intimately implicated and concerned in a matter under Inquiry, namely the Conspiracy Investigation in Issue 5”* (para 11(a)). I remain satisfied that this is the case. In particular, I agree with the Applicants' submission that they *“were alleged to have played a significant role in relation to matters to which the Inquiry relates and were central to the investigation that led first to the charges being brought and then overturned on all counts”*.
14. I make this finding subject to the requirement that the Inquiry's investigation must remain focused on its Terms of Reference, as now defined in the Provisional List of

Issues. Issue 5 does not require (or indeed permit) me to conduct something equivalent to a criminal trial of the Conspiracy Investigation, or even an assessment of the merits of the charging decision in respect of that investigation, and I would warn against the Applicants from seeking to use the Inquiry for either of these purposes. The focus of Issue 5 must remain on the RGP's handling of the investigation including the execution of the search warrants on 12 May 2022 (and particularly the matters identified in paragraphs 5.1 to 5.3 of the Provisional List of Issues, including whether inappropriate pressure was placed on Mr McGrail regarding the investigation or search warrants). Ultimately, my consideration of Issue 5 (as well as the nine other issues) will only be as a means of ascertaining (a) the relevant facts (to the extent necessary to address the matter under inquiry) and (b) the extent to which the issue constituted a reason or circumstance leading to Mr McGrail taking early retirement. The Applicants will be able to provide evidence directly relevant to Issue 5, in particular as to the involvement (if any) of other Core Participants or witnesses in the Conspiracy Investigation.

15. **The Second Consideration.** For the same reasons, I accept that the Applicants have a significant interest in an important aspect of the matters to which the Inquiry relates.
16. **The Third Consideration.** The Applicants argue that they have suffered “*substantial reputational damage which has continued with the public reporting of this Inquiry*”. I again note the overlap between the consideration in the Policy and the Inquiry Protocol Relating to Legal Representation at Public Expense. Paragraph 4(a) of the Funding Protocol states that a relevant consideration is whether “*significant criticism of the applicant may be inferred from the material contained in the Inquiry Bundle and/or the applicant may be subject to significant criticism in the course of the Inquiry’s proceedings or in its final or any interim report*”. In the Funding Ruling, I concluded that “*Given the Applicants’ implication in the Conspiracy Investigation, they may (without any prejudice) be subject to significant criticism in the course of the Inquiry’s proceedings, particularly by other witnesses*” (para 11(b)). I remain of this view, and consider that the Applicants should have the opportunity to be represented throughout the Inquiry’s consideration of the Criminal Investigation, given that it directly concerned them, and given that there are likely to be many documents placed before the inquiry which either explicitly or impliedly criticise them.
17. I have considered whether the Applicants could adequately present this case as witnesses, rather than as CPs. However, I have concluded that although they have already had the opportunity to give their side of the story through their affidavits, there

may be further relevant contributions which they may wish to make during the Inquiry process through their legal representatives. In particular:

- a. The Applicants would benefit from being represented by counsel throughout the proceedings, who can respond to any criticism of the Applicants that they consider inaccurate or unfair. Whilst I stress again that the Inquiry will not be a forum to conduct a quasi-criminal trial of the Conspiracy Investigation, fairness dictates that, if serious criticism is made of the Applicants during the proceedings, counsel for the Applicants must be able to respond, particularly where the RGP, Mr McGrail and Mr Richardson will all be represented by counsel at this Inquiry. As argued by the Applicants: *“Only with CP status will the Applicants be able to respond to the allegations of criminality that will undoubtedly be made, as and when they are made”*.
- b. Further, as the Applicants submit, they have provided extensive evidence to the Inquiry and are *“best placed to assist counsel to the Inquiry with the relevance of its voluminous materials, how they can be deployed at the live hearings and appropriate questions for the live evidence when the key protagonists attend.”* The Applicants are represented by experienced criminal counsel, and I consider that the Inquiry would benefit from their submissions and wider involvement subject to what I have set out in paragraph 14 above.

18. I therefore grant CP status to Mr John Perez, Mr Thomas Cornelio and Mr Caine Sanchez in relation to Issue 5 only.

Sir Peter Openshaw, DL

1 March 2023