

INQUIRY INTO THE RETIREMENT OF THE

FORMER COMMISSIONER OF POLICE

**OPEN SUBMISSIONS FOR THE FOURTH PRELIMINARY HEARING
ON BEHALF OF IAN MCGRAIL**

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14th July 2023

Key: CTIO §1 = Counsel to the Inquiry revised open skeleton

A. INTRODUCTION

1. These open submissions are made on behalf of Ian McGrail.

B. AGENDA ITEM 4: PROCEDURE AT THE MAIN INQUIRY HEARING

(a) Inquiry timetable

2. We agree with the timetable proposed at CTIO §15.

(b) Witness examination procedure

3. We agree with CTI's proposed 'hybrid' and 'traditional' models, varied according to the centrality of the witnesses, set out at CTIO §§17-20. We consider that this will achieve a reasonable balance between the various factors in play.
4. We respectfully propose one addition to the procedure, which is in line with the procedure generally adopted by public inquiries in the UK: that, during the questioning of a witness by CTI, if a CP considers that there is an additional question or questions which are necessary but have not been addressed by CTI, they can submit a form – either by email or in physical form – proposing additional questions. This is not intended as a means of avoiding the 7 and 14-day deadlines for submission of areas of questioning/questions/applications to question as sensibly proposed by CTI, but rather to fill in any gaps which could arise during the oral evidence sessions. Inevitably, answers to questions by witnesses will raise new and unexpected issues which CPs will want to be further explored. We therefore propose there being a formal procedure which will allow this to take place during the hearings – allowing, of course, that CTI may reject the requests.

(c) Witness list

5. It is clearly not possible to finalise the list at this stage given that the evidence gathering process is still incomplete, as CTI accepts. The responsive witness statements and agreement of facts (if it is possible) will demonstrate the extent to which important facts remain in dispute, and therefore which witnesses are required to provide oral evidence.

6. We therefore propose that an updated list is provided by the Inquiry in the coming weeks, and written submissions (or oral submissions at a further Preliminary Hearing, perhaps held on MS Teams) are invited by the CPs in order to finalise the list.
7. We agree on a provisional basis with the “*Unrestricted Witnesses*” list at CTIO §20.
8. As regards the preliminary categorisation of witnesses in the table which begins at CTIO §23, we provisionally agree with the categorisation. We propose adding one witness to Category 1 (restricted): Lloyd De Vincenzi as he has potentially important evidence to give on the Chief Minister’s motivations in ‘losing confidence’ in Mr McGrail, and the concerns Mr De Vincenzi expressed to him at the time of the relevant events, and also in relation to a meeting between the Attorney General and Mr McGrail on 7th April 2020.

C. AGENDA ITEM 5: FINALISATION OF THE INQUIRY LIST OF ISSUES AND CONSIDERATION OF AGREED FACTS

9. In *Lewis, R (on the application of) v HM Coroner for the Mid and North Division of the County of Shropshire & Anor* [2009] EWCA Civ 1403, the inquest process was described at §26 as follows: “*the inquest process can be visualised as a funnel: wide at its opening, but narrowing as the evidence passes down it so as to exclude non-causative factors from the eventual verdict*”. The same can be said of a public inquiry: the issues which were widely stated at the outset can now be narrowed as the process approaches its conclusion.
10. In relation to CTIO §24, we do not consider that Issues 2 or 7 had any real bearing on the “*reasons and circumstances leading to Mr Ian McGrail ceasing to be the Commissioner of Police in June 2020 by taking early retirement*”. None of the evidence filed so far the Inquiry on these issues takes the Inquiry any further to determining the facts in issue. Our view from the outset is that these issues should not have been included on the Preliminary Issues List (see our submissions of 24th August 2022, §§9-16¹). We submit that they should now be removed from the list of issues as part of the natural narrowing of the issues identified in *Lewis*.

¹ Available here: https://coircomp.gi/wp-content/uploads/2022/09/REDACTED-McGrail-Written-Submissions-24-August-2022-v2-js_REDACTED.pdf

11. We have raised concerns in our Closed Submissions relating to the manner in which the Inquiry is interpreting Issue 6 and do not restate those submissions here.

12. We agree to CTI's proposed process for agreeing facts (CTIO §26).

D. AGENDA ITEM 6: PROPOSAL BY GBC TO BROADCAST INQUIRY PROCEEDINGS

13. In our written submissions for the First Preliminary Hearing (at §§49-53) we made submissions on open justice. We submitted, in summary that:

(i) The issues in the Inquiry go to the probity of Gibraltar's institutions. Maximum transparency is essential given the issues raised (§49);

(ii) The constitutional principle of open justice applies to this Inquiry (§50), as stated by Toulson LJ (as he was then) in *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] 3 All ER 5519 at §XX – this submission was developed further in our submissions of 6th July 2022 at §§3-27;

(iii) Applying those principles, we submitted, amongst other matters, that all inquiry hearings should be live-streamed.

14. The Commissioner ruled on 17th August 2022 (amended on 25th August 2022) that the principle of open justice applied to the Inquiry. Although the Commissioner accepted that he had the power to authorise live streaming, he decided not to permit it (§44).

15. We maintain the same position as previously, for the same reasons. If anything, the reasons have strengthened as the matters being investigated by the Inquiry have generated acute public concern. We therefore strongly agree with the proposal summarised at CTIO §§27-30 for GBC to livestream the Main Inquiry Hearing. We also agree with the proposed outline of a future protocol on live streaming at CTI §34 which is both sensible and practical.

E. AGENDA ITEM 7: RESTRICTION ORDERS

16. We agree to the approach proposed by CTI at CTIO §§33-37. We request advance notice of any further applications by CPs if they are to be addressed at the Fourth Preliminary Hearing.

F. AGENDA ITEMS 8 and 9 – THE 19 WITNESS STATEMENTS

17. We address Agenda Item 8 in our Closed Skeleton.
18. We do not agree that Agenda Item 9 should be addressed in a closed session. We give reasons for this in our Closed Skeleton.

ADAM WAGNER

Doughty Street Chambers

14th July 2023