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

**A ruling on other issues outstanding from PH5**

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**The categorisation of witnesses**

1. At the last preliminary hearing (PH4), Counsel to the Inquiry provisionally listed those witnesses who might be called to give live oral evidence and those witnesses whose evidence might be received by way of written statement and those witnesses who probably will not be called to give evidence at all. This was a provisional list and the parties were asked to make submissions. I have been asked to reconsider the category of two witnesses.
2. Mr Cruz, on behalf of the RGP, and Mr Gibbs KC, on behalf of Supt Richardson, submit Mr Devincenzi should be moved into the category of witnesses who should give oral evidence. Counsel to the Inquiry supports these submissions. Before the application was made for the search warrant against Mr Levy, Mr Devincenzi attended various meetings with Mr McGrail, with Supt Richardson, and with DI Wyan. Those meetings – or most of them - are evidenced by contemporaneous notes. Perhaps most importantly, he was present at the meeting attended by the Attorney General and by Mr McGrail. That meeting took place on either 7 April or 4 May; the date perhaps does not so much matter but there is a keen issue of fact about what was said at that meeting. The Attorney General contends that he and Mr McGrail had reached a clear understanding that the RGP would not take further steps in the investigation without again consulting the Attorney General, which Mr McGrail strongly denies. The Attorney General therefore considered that in applying for a search warrant against Mr Levy, without again having consulted him, Mr McGrail was in breach of that undertaking. Mr Devincenzi did not make notes of that but his evidence as to what was said at that meeting is – or at least maybe - important. I think he should be called to give oral evidence about that.
3. I am not presently confident that he will be able to give much, if any, evidence about the other meetings. I note that he also attended the meeting of 13 May, but Mr McGrail covertly recorded this meeting, and so there can be no dispute as to what was said. But he can be asked about these other meetings.

4. I am not impressed with the suggestion that he should be called to give evidence about the decision to discontinue the prosecution, since he is entitled to refuse to answer any such questions, and there is no point to call him just to refuse to answer questions. But the other reasons suggested for calling him are valid and he should be called to give evidence in person.
5. I turn to consider the status of Mr Lavarello, a member of the Gibraltar Police Authority ('the GPA'). Mr Neish KC, on behalf of the GPA, has pointed out that there is a conflict of evidence as to what passed at a meeting of the sub-committee of the GPA convened on 5 December 2017, to consider whom they should appoint as Commissioner of Police. Mr Lavarello, one of the committee members, has stated in his witness statement that Mr Pyle said he would not support either candidate. Mr Pyle denies that he said that. This may have a bearing on the circumstances leading to Mr McGrail's retirement, since, if Mr Lavarello is right, it might suggest that Mr Pyle had formed strong views about Mr McGrail even before his appointment. Furthermore, Mr Lavarello can also give evidence as to whether any complaints about Mr McGrail were made to – or discussed by – the GPA, and it may be a good idea to hear from another member (in addition to Dr Britto) as to his recollection. His evidence will be short. His attendance will not greatly add to the costs and I am persuaded that he should be called.

#### **Proposed amendments to the provisional List of Issues**

6. I move on to consider a number of proposed amendments to the List of Issues, which the Inquiry Team raised with the Core Participants by letter dated 2 October. No one has raised any objection to the suggested amendment to the wording of Issue 1 or Issue 5, and I can deal with these very briefly.
7. I start with Issue 1 ('The Airport Incident'). Since the employee of the MoD had been arrested but had been 'de-arrested' before being taken to the airport, it is necessary to make a small amendment to delete the words 'who was under arrest ...' and to replace them with the words: 'who had previously been arrested ...'.
8. In Issue 5, because the search warrant was not 'executed', it is necessary to delete the word 'executed ...' and to replace it with the words: 'stated intention to execute ...'. Similarly, in paragraph 5.1 it is necessary to replace the words "as to the execution of" with "regarding"; and in paragraph 5.3 it is necessary to replace the words "execution of" with "intention to execute".
9. The proposed amendments to Issue 6 are not agreed and require more consideration. Issue 6 presently requires me to inquire (as far as I consider it necessary to do so) into: 'Any complaint(s) made by the Gibraltar Police

Federation ... and/or its members to the Gibraltar Police Authority about Mr McGrail'.  
Two points are made.

10. The first point is made by Mr Neish KC, on behalf of the GPA, who submits that words 'Any complaint(s) ...' pre-supposes that such a complaint was made, which he does not accept. He reminds me of the statements of the many members of the GPA to the effect that no such complaints were made. I do not agree with his construction of the words to which he refers; but I am prepared to make a slight amendment to accommodate him. Issue 6 will therefore start: 'The complaints, if any...'. Mr Neish KC orally indicated that he was content with this amendment.
11. I turn to another point. Counsel to the Inquiry pointed out that Issue 6 as presently drafted does not properly reflect paragraph 23 of the First Affidavit of Mr Nicholas Pyle OBE dated 12 May 2022, which reads as follows:

*23. Fractured relationship with the Gibraltar Police Federation*

*23.1 Mr McGrail's management style resulted in a fractured, almost hostile relationship between him and the Gibraltar Police Federation, the representative body of rank and file and more junior officers in the RGP and in poor morale within the RGP.*

*23.2 The resulting tensions between the RGP leadership and the Police Federation culminated in formal complaints from the Federation to the GPA about Mr McGrail. The GPA regularly spoke at its meetings about the allegations of bullying and intimidation by Mr McGrail. As evidence of this, an email from the Federation Chairman to the GPA dated 22 June 2020 states "It is no secret we have had numerous issues with Mr McGrail due his management style and lack of respect" [at NPI/59].*

*23.3 While this issue was a concern of a lesser order of gravity, it nevertheless fitted into the pattern of behaviours by Mr McGrail which was already causing me concern and causing me to begin to lose confidence in him.*

*23.4 In similar vein, I often heard numerous anecdotal stories of bad practice and behaviours by the RGP that, given the volume of such stories, were hard to ignore, including numerous stories from different sources of the RGP turning a blind eye with crimes committed by people they know.*

*These were rumours and anecdotal, and therefore, despite some of the sources being credible, were not things on which I felt it was possible to act. They nevertheless contributed to my growing sense of unease.*

12. Accordingly, he tentatively put forward a draft which required me to inquire into the 'The difficult relationship between Mr McGrail and the Gibraltar Police Federation ... '. Mr Wagner pointed out that such an amendment would amount to a considerable, and he submitted an unjustified, extension of the allegations made against Mr McGrail and would include points which were unknown to the Chief Minister at the time and which could not have amounted to a reason why he (the Chief Minister) lost confidence in him. Furthermore, as Mr Wagner on behalf of Mr McGrail points out, the proper investigation of 'the difficult relationship' will lead to further disclosure from Mr McGrail and indeed from the RGP, and will require the expenditure of much time and resources and, as it seems to me all to no useful purpose. I think there is force in these points.
13. In response to these submissions, Counsel to the Inquiry put forward a revised formula for Issue 6, which narrows the scope of the amendment to encompass the difficult relationship between Mr McGrail and the GPF only to the extent that it came before the GPA.
14. After hearing a long debate, I have come to the conclusion that the revised formula put forward by Counsel to the Inquiry allows Mr Pyle to develop the points made (as referred to in paragraph 11 above) and the Chief Minister to develop the points made in paragraphs 110 and 111 of his Affidavit dated 26<sup>th</sup> May 2022, subject to the revised wording of issue 6 and without the need to open up and hear evidence concerning the whole of the allegedly difficult relationship between Mr McGrail and the GPF. So, allowing for the point I made in paragraph 10 above, issue 6 will now read: '6. The complaint(s), if any, made by the Gibraltar Police Federation ("the Federation") and/or its members to the Gibraltar Police Authority about Mr McGrail (including as to the difficult relationship between Mr McGrail and the Federation), and any allegations of bullying or intimidation by Mr McGrail discussed by the Gibraltar Police Authority ("the Federation Complaints").'
15. I will arrange for the revised Provisional List of Issues to be uploaded onto the Inquiry website.

Sir Peter Openshaw DL

Commissioner