**INQUIRY INTO THE RETIREMENT OF THE**

**FORMER COMMISSIONER OF POLICE**

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# SUBMISSIONS FOR THE FIFTH PRELIMINARY HEARING ON BEHALF OF IAN MCGRAIL

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**17th October 2023**

## A. Introduction

1. These submissions address the following issues:

    (a) The discontinuance entered in the criminal proceedings relating to the Op Delhi Defendants ('**the Discontinuance**');

    (b) The proposed amendment to Issue 6 and the relevance of evidence relating to that issue;

    (c) The applications for restriction orders by HMGOG and the RGP.

## B. Submissions

### *(i) The Discontinuance*

2. The Inquiry have asked a number of questions which are answered in turn below:

***Q1: What was the legal basis on which the prosecution was discontinued: (a) section 59 of the Gibraltar Constitution; (b) section 223 of the Criminal Procedure and Evidence Act; (c) both; or (d) some other basis?***

3. The Attorney General ('**A-G'**) has not stated on what basis he considers that he discontinued the prosecution. In *Thomas Cornelio and Ors v Rex* (2023/GSC/029) ('***Cornelio'***) Dudley CJ in the Supreme Court of Gibraltar at §3 stated that the A-G entered a *nolle prosequi* in the exercise of powers conferred to him by section 59 of the Gibraltar Constitution Order 2006 ('**the Constitution'**) "*and all other enabling powers"* (quotation in original) – it is unclear where that quotation comes from.

4. In any event, it follows from the constitutional structure of Gibraltar that when discontinuing proceedings, the A-G is exercising his power under s.59 of the Constitution, the procedure for which is prescribed by the more detailed provisions in s.223 of the Criminal Procedure and Evidence Act 2011 ('**CPEA'**):

    (a) The Constitution states that laws made by the Legislature are "*subject to this Constitution*" (s.32) and all existing laws "*shall be construed with such modifications, adaptions, qualifications and exceptions as may be necessary*

*to bring them into conformity with the Constitution"* (Annex 2, s.2). It is therefore clear that all Gibraltar laws must comply with the Constitution;

(b) The Attorney General is a creature of statute – by s. 59 of the Constitution – and the power to discontinue proceedings is contained in s.59 itself. It therefore follows that any exercise of his power to discontinue proceedings must ultimately arise from the s. 59 power;

(c) The more detailed provisions in the CPEA provide the procedure for exercising the s.59 power, but do not purport to alter that power – indeed, they could not as all Gibraltar legislation is subject to the Constitution.

***Q2. In the factual context of the Inquiry, is it relevant to ask why the Attorney General discontinued the prosecution?***

***Q3. If so, is it within the Terms of Reference of the Commission to ask the question?***

5. The answer to both questions is "yes". The reasons for the Discontinuance are relevant because it is Mr McGrail's contention that:

(a) The Chief Minister triggered and then directed the events which forced Mr McGrail to take early retirement;

(b) The Chief Minister's motive was the personal and political danger posed to him and his government by the Op Delhi investigation, in which key suspects were a senior civil servant, Caine Sanchez, and the Chief Minister's close friend, mentor and business associate, James Levy; the Chief Minister himself was potentially implicated;

(c) The A-G played a key enabling role and was at all material times acting under the instruction of the Chief Minister;

(d) The process which led to, and the reasons for, the Discontinuance are relevant as if the reasons were (for example) protecting the political reputation of Gibraltar, this is evidence of a course of conduct which began with forcing Mr McGrail out of his post as Commissioner of the Royal Gibraltar Police, and also of the Chief Minister's and/or A-G's motivations in taking the relevant actions;

(e) The A-G has given reasons why he says he did not discontinue the proceedings to the Inquiry (see para. 28 below), but has provided no documentary or other evidence to support his assertions. It is relevant for the Inquiry to explore that evidence further by asking the A-G questions relating to it. It would be strange if the A-G was able to give such evidence to the Inquiry but the Inquiry were precluded from asking him any questions about it.

(f) If there is evidence that the stated reasons for the Discontinuance were different to the real reasons (for example if documentary evidence contradicted the reasons the A-G states in his Second Affidavit were *not* relevant – namely protecting the political reputation of the Chief Minister), this would undermine the A-G's credibility as relates to his involvement in the Op Delhi investigation and the events under investigation, and raise the inference that the steps taken in May/June 2020 were also taken for an ulterior motive;

(g) The Government has stated publicly that the A-G took the Discontinuance decision "*entirely independently and without consultation with the Government*" and that the Chief Minister was "*only informed by the Attorney General of his decision AFTER he entered the Nolle*"[1]. If this were contradicted in evidence provided to the Inquiry (such as contemporaneous documentary records), it would undermine both the A-G and the Chief Minister's credibility and demonstrate a propensity to mislead as to why they have taken certain actions relating to Op Delhi.

***Q4. If so, can the Attorney General properly be asked why he discontinued the prosecution?***

6. The starting point is the Commissions of Inquiry Act 1888 which gives broad powers to an inquiry. Crucially, the Commissioner of an Inquiry may require a person to attend and answer relevant questions. Section 8 provides (emphasis added):

> Power to summon witnesses
>
> 8.(1) The commissioners, by a summons under the hand and seal of any one of them, may require the attendance before them, at a place and time to be mentioned in the summons, which time shall be a

[1] https://www.gibraltar.gov.gi/press-releases/hmgog-responds-to-gsd-tg-statements-on-nolle-prosequi-572022-7632

> reasonable time from the date of such summons, of any person whose evidence in the judgment of such commissioners may be material to the subject matter of any inquiry to be made by the commissioners under this Act, and may require such person to bring before them all such books, papers and writings as to such commissioners may appear necessary for arriving at the truth of all matters to be inquired into by them under this Act.
>
> (2) Every such person shall attend before the commissioners and shall answer all such questions as may be put by the commissioners touching the matters to be inquired into by them, and shall produce all books, papers and writings required by them, and in his custody or under his control, according to the tenor of the summons. […]

7. The only qualification in the underlined sentence is that questions must be "*touching the matters to be inquired into"* – in other words, the questions must be relevant to the terms of reference. For the reasons set out above, matters relating to the Discontinuance are relevant.

8. The starting point is therefore that questions may properly be asked about the Discontinuance.

9. The onus is on those suggesting a derogation from this starting point to explain and justify why it should not apply. The canvassing of potential arguments to that effect below, in an effort to show why they are misplaced, should not be regarded as increasing their force. Nor should it be taken to undermine this central, simple submission: namely, that the starting point by virtue of the wording of s.8 is that questions may properly be asked on this topic.

10. Nonetheless, to assist the Inquiry, and to ensure that any necessary rebuttal is set out in writing, Mr McGrail below deals with one argument that it is anticipated might be made, to the effect that the inquiry lacks jurisdiction to inquire into these matters, because of their particular nature. In other words, whether there is something specific about the nature of an order of discontinuance made by the A-G, that alters the usual position.

11. For the reason set out above, the A-G exercised the power granted to him by s.59(2) of the Constitution, which relevantly provides:

> The Attorney-General shall have power in any case in which he considers it desirable so to do […] to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

12. Section 223 of the Criminal Procedure and Evidence Act 2011 also gives the Attorney General the power to enter what is described as a *nolle prosequi* and stop a prosecution, however for the reasons set out above we submit that this section is subject to s.59(2) of the Constitution:

> In any criminal case, at any stage before the verdict or judgment, as the case may be, the Attorney-General may enter a nolle prosequi, either by stating in court or by informing the court in writing that the Crown intends that the proceedings are not to continue.

13. It is clear from the Constitution that any decision to discontinue a prosecution is subject to the jurisdiction of the Gibraltar courts. The Constitution states (at s.59(5)) that *"[i]n the exercise of the powers conferred upon him by this section the Attorney-General shall not be subject to the direction or control of any other person or authority*", however the effect of this section is subject to s.83, entitled "*Saving for jurisdiction of courts*", which provides:

> No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

14. Given that they are substantively identical powers, and given a constitutional statute has expressly retained the courts' power to review the use of s.59, a decision taken under s.223 would be found by a Court to be similarly subject to the control of the courts. Indeed, this follows the ordinary rule that a body exercising powers whose source is a statute, is subject to judicial review: see, for example, *R v Panel on Take-overs and Mergers, Ex p Datafin plc* [1987] QB 815, at 847, cited in *Mohit v DPP of Mauritius* [2006] 1 WLR 3343 ("***Mohit***") at §20. By extension, there would be no bar to an Inquiry investigating such events.

15. It might be argued that the constitutional position in Gibraltar of the A-G should warrant caution as to their decisions being subject to judicial control. Such an argument might draw a comparison with English Attorney-General, whose decisions to discontinue a

prosecution have previously been considered non-justiciable: see *Gouriet v Union of Post Office Workers* [1978] AC 435, at p.487, cited at §14 of *Mohit*. (By comparison, and for the avoidance of doubt, individual prosecutorial decisions taken by the Crown Prosecution Service, under the control of the DPP, are susceptible to judicial review in the UK – albeit that the Courts will disturb a decision only in highly exceptional cases).[2]

16. Such an argument would be misplaced. As noted in *Mohit*, many of the English Attorney-General's powers, including the power to enter a *nolle prosequi*, are non-statutory powers deriving from the Royal Prerogative. By contrast, Gibraltar's A-G is a creature of statute, namely s.59 of the Constitution. As such, the principled basis upon which the English Attorney General's powers may be regarded as non-justiciable does not apply in Gibraltar. This reflects the reasoning in *Mohit*, in which the Court held that the Mauritius DPP did not have immunity from suit in the same way as the English Attorney-General. That the Mauritius DPP was not answerable to Parliament, had no prerogative power and had power derived from the Constitution, were all relevant factors: see *Mohit*, at §21.

17. Indeed, the comparison between the Attorney-General of Gibraltar and the DPP of Mauritius is particularly apt. Both are created by a statute using very similarly worded sections.[3] Both constitutions include an identically worded saving provision about the courts' jurisdiction.[4] That Gibraltar did not have a DPP until 2018,[5] and the 2006 Gibraltar Constitution did not create one, further supports this comparison between the nature of and role of the Attorney General of Gibraltar and the DPP of Mauritius. The reasoning in *Mohit* is therefore transferable to the present facts.

18. Moreover, in *Mohit* the Privy Council observed that provisions similar to those in the Mauritius Constitution (and by extension, similar to those in the Gibraltar Constitution) had been the subject of judicial consideration in Guyana, Barbados, Jamaica and Fiji, and in none had the DPP's statutory power to discontinue proceedings been held to be immune from judicial review: see *Mohit*, at §11.

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[2] See, for example, Archbold Criminal Pleading Evidence and Practice at 1-417, citing *R(Corner House Research) v Director of the Serious Fraud Office [2009] 1 AC 756.*

[3] Compare section 72 of the 1968 Constitution of Mauritius (quoted at §10 *Mohit*) and s.59 of the Gibraltar Constitution Order (quoted above).

[4] See s.119 of the 1968 Constitution of Mauritius (quoted at end of §10 *Mohit*) and s.83 of the Gibraltar Constitution Order (quoted above).

[5] See e.g. https://www.gbc.gi/news/barrister-christian-rocca-named-gibraltars-first-director-public-prosecutions

19. Even if the comparison with the English Attorney-General were compelling (which it is not), it is in any event eminently possible that, if a Court were to consider the question afresh today of whether a discontinuance decision by the English Attorney-General may be judicially reviewed, it would reach a different decision.[6] The decision in *Gouriet* was taken 45 years ago, and there has been much constitutional water under the bridge since. Indeed, the Privy Council in *Mohit* at §21 seem to anticipate this possibility when they note that the DPP of Mauritius cannot rely on the immunity enjoyed "*at any rate in the past*" by the English Attorney General. Today, it is recognised that prerogative power can be justiciable.[7] The question "*is simply whether the nature and subject matter of the decision is amenable to the judicial process.*"[8]

20. Finally, even if it were to be held that a decision by the Attorney General of Gibraltar to discontinue a prosecution could not be judicially reviewed, it does not follow that such a decision could not be investigated by a statutory inquiry. As emphasised in the recent UK case of *R (Cabinet Office) v Chair of the UK Covid-19 Inquiry* [2023] EWHC 1702 (Admin), at §52, the nature and approach of an inquiry are fundamentally different from that of litigation:

> Public inquiries are convened to address matters of public concern. The matters of public concern are identified by the Terms of Reference […] It is well established that regard must be had to the investigatory and inquisitorial nature of a public inquiry. An inquiry is not determining issues between parties to either civil or criminal litigation, but conducting a thorough investigation.

21. The animating concerns behind the potential non-justifiability of certain executive decisions simply do not bear in the same way on considerations around whether such decisions may be explored by a statutory inquiry – a process which, by its nature, cannot determine liability nor overturn or alter the executive decision.

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[6] It is of note that in *Belhaj v DPP* [2019] AC 593 , Lord Sumption commented at §16 that "*[t]he High Court's review jurisdiction extends in principle to the exercise of any official's functions in relation to the criminal process. These include […] decisions of the Attorney General whether to take over a prosecution or enter a nolle prosequi (Mohit v Director of Public Prosecutions of Mauritius [2006] 1 WLR 3343)*".

[7] This follows the judgment in *GCHQ* (*Council of Civil Service Unions v Minister for the Civil Service [1985] A.C. 374; [1984] 3 WLR. 1174)* in which the House of Lords held that it was no longer constitutionally appropriate to deny the court supervisory jurisdiction over a governmental decision merely because the legal authority for that decision rested on prerogative rather than statutory powers.

[8] See *R v Secretary of State for the Home Department Ex p Bentley* [1994] Q.B. 349 at 453, quoted in De Smith's Judicial Review, 9th Edition, at 3-041.

22. In the context of this statutory inquiry, the Government could in its Commission of Inquiry have expressly excluded investigation of the Discontinuance, was announced a week before the Issue of Commission was promulgated (26th January 2022 and 4th February 2022 respectively). The dates are so close that it is inconceivable that the Government did not have the Discontinuance firmly in mind when issuing the Commission). It did not do so, and instead set the terms of reference in widest possible language, that the Commissioner is "*to inquire, as he shall in his absolute discretion consider appropriate*". It is therefore the Commissioner's duty to investigate any matter which is relevant to "*the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020",* without limitation.

***Q5. If so, is the Attorney General entitled – or even required – by law to decline to answer the question in (2) above? (for the avoidance of doubt, the "question" referred to is that set out in (2), namely why the Attorney General discontinued the prosecution)***

23. There is no express statutory or common law provision permitting a refusal to answer that would appear to cover the present scenario.

24. The Commissions of Inquiry Act 1888 says at section 10:

> No person who shall give evidence upon any inquiry under this Act shall be liable to any civil proceedings or criminal prosecution for or in respect of any statement or discovery made by such person concerning any matter connected with such inquiry, and no person shall be excused from answering any question put to him by the commissioners on the ground of any privilege, or on the ground that the answer to such question will tend to incriminate such person

25. This is accompanied by s.8 which says that a statement made to the inquiry shall not, except in cases of perjury, be admissible in any civil or criminal proceedings.[9] In other words, the statute makes clear that there is no right in this inquiry to remain silent in order not to incriminate oneself, and – further – there is no right to remain silent on the grounds of "*any [other] privilege*". No exception is made to s.8 for the A-G in the context of a discontinuance – it would have been open to those drafting the

[9] Specifically, s.8(2) provides that *"that no statement made by any person in answer to any question put by such commissioners shall, except in cases of indictment for perjury committed in such answers, be admissible in evidence in any proceeding civil or criminal."*

Constitution, who must have been well aware of the Commission of Inquiries Act, to include one.

26. Any purported entitlement to decline to answer the questions about the discontinuance, would therefore need to be argued on some other basis than privilege or self-incrimination. The conclusion of the Privy Council at §22 of *Mohit* ("*it is for the DPP to decide whether reasons should be given and, if reasons are given, how full those reasons should be*") do not apply to the context of an Inquiry under the Commission of Inquiries Act in light of the powerful wording of s.8.

27. It is also difficult to see how the A-G could now argue that he is unable to answer questions about the basis of the Discontinuance when he has already given reasons, supporting his own position, in his Second Affidavit: see §47 ("*the reasons why I entered the nolle two years later had nothing to do with protecting the Office of the Chief Minister. My decision was based on matters that were brought to my attention over a year after the events of May/June 2020"*) and §51.1 ("*the nolle entered two years later had nothing to do with protecting the Chief Minister"*). It would be an abuse of the Inquiry's process for the A-G, a public official, to decline to answer questions about a particular issue on grounds that he is legally prohibited from doing so, when he has already provided (self-exculpatory) evidence on that very issue.

28. Moreover, the findings in *Cornelio* do not contradict the above analysis.

29. The relevant paragraphs are §§21-23. In the first paragraph, Dudley CJ notes that the A-G does not need to give reasons at the time of entering a *nolle prosequi*. The second paragraph explains why the Judge is fortified in that view by *Mohit*. The third starts by repeating this conclusion. The Judge then says, in the third paragraph: "*To seek any such reasons from knowledge which may have been acquired by the DPP would be to subvert the statutory provisions and HMAG's right not to provide them*."

30. It is respectfully submitted that these conclusions do not mean that the A-G can decline to answer the question at (2) (nor that the Inquiry ought to avoid asking such a question):

    (a) First, the ruling does not apply or purport to apply to the present context and can therefore be distinguished. It was in a wholly different context, namely the jurisdiction of the Supreme Court under CPEA s.589 to order costs when a person sent for trial is not ultimately tried. It is an "*elementary principle*" that

"*the words of a statute should be construed in the context of the scheme of the statute as a whole*".[10] The Supreme Court in *Cornelio* considered the meaning of the discontinuance procedure in the CPEA in the context of the application of the costs jurisdiction granted by the same Act. The conclusion that seeking the A-G's reasons indirectly, via the DPP, in costs proceedings would "*subvert the statutory provisions"* appears to be an application of principles of statutory interpretation. However, it does not apply in the context of proceedings under the Commissions of Inquiry Act, whose purpose is to allow for investigations in the public welfare (s.3(1)). There is no reason in principle why this could not include investigation into the discontinuance of criminal proceedings. Indeed, the current inquiry demonstrates why such a discontinuance can be a matter of acute public concern.

(b) Second, *Cornelio* should be confined to its narrow context, which is costs proceedings following the discontinuance of criminal proceedings. The Supreme Court concluded by offering the cautionary observation that *"costs applications must not be allowed to become in reality cases in which the underlying merits of a claim have to be determined".* The same logic would not apply, for example, to judicial review proceedings which are anticipated by s.83 of the Constitution, a saving provision which reserves jurisdiction for a court "*in relation to any question whether that person or authority has performed [any] functions [under this Constitution] in accordance with this Constitution or any other or should not perform those functions."* In the context of judicial review, the opposite conclusion to that in *Cornelio* applies. So as to enable a court to fulfil its supervisory jurisdiction, the Supreme Court (for example) could order disclosure of documentary and other evidence of the reasons behind a discontinuance. This applies equally to statutory inquiries, whose purpose is to investigate matters in the public welfare. It is notable that s. 83 is not referred to in *Cornelio.*

(c) Third, even if the logic of *Cornelio* applied in the current context, it is important to distinguish between requiring the A-G to answer a question or questions and requiring him or others to provide documents. There is likely to be documentary

[10] *R(BA (Nigeria)) v Secretary of State for the Home Department* [2010] 1 AC 444, §27

evidence relating to the discontinuance – at the least a document which communicated the A-G's decision to the Court, but potentially other notes, emails and messages. If the Commissioner concluded that to require the A-G to provide reasons would subvert the statutory schemes relating to discontinuance, there is no reason why – in the context of a public inquiry – that this need apply to relevant documentary evidence. The Court in *Cornelio* does not appear to preclude the disclosure of documentary evidence relating to the Discontinuance.

***Q6. Is the Inquiry entitled to draw inferences from a failure by the Attorney General to answer the question in (2) above?***

31. Lord Bingham in *Mohit* held at §22 that, in the event of a judicial review of a discontinuance decision by the Mauritian DPP, the Court could draw inferences as it considered proper from the information given – or not given – by the DPP in that particular context:

> That evidence will include any reasons the DPP may choose to give. But it is for the DPP to decide whether reasons should be given and, if reasons are given, how full those reasons should be. The English authorities cited above show that there is in the ordinary way no legal obligation on the DPP to give reasons and no legal rule, if reasons are given, governing their form or content. This is a matter for the judgment of the DPP, to be exercised in the light of all relevant circumstances, which may include any reasons already given. The Supreme Court must then decide on all the material before it, drawing such inferences as it considers proper, whether the appellant has established his entitlement to relief.

32. This reflects a point of general principle. In both a civil law and regulatory context, it has been held that adverse inferences may be drawn from absence or silence.[11] The case of *R (Kuzmin) v General Medical Council* [2019] 1 WLR 6660, at §31, provides a helpful first-principles analysis of what is occurring when a court draws inferences.

33. If, and only if, this Inquiry were to conclude that either (a) the Attorney General cannot be asked about the *nolle prosequi*, or (b) the Attorney General is required by law not to answer any questions put to him, then as a matter of basic procedural fairness it would

[11] In the civil context, see *Wisniewski v Central Manchester Health Authority* [1998] PIQR P324, which made clear that a civil court is entitled to draw adverse inferences from the absence or silence of a party who might be expected to have material evidence to give in relation to an action of a party who might be expected to have material evidence to give in relation to an action. In the regulatory context, see *R (Kuzmin v General Medical Council) [2019] 1 WLR 6660.* By contrast, there exist some statutory protections against self-incrimination in a criminal context: see Halsbury's at 345.

appear that inferences (adverse or otherwise) could not properly be drawn from the lack of answers on this point.

34. However, if the Attorney General is permitted to answer question 2, the question is asked, and he declines to give an answer, then it would be perfectly appropriate for this inquiry to draw inferences from his refusal.

**Q7. In relation to questions (2) and (4) above, is the Inquiry either bound by, or alternatively required to afford persuasive weight to, the Judgment?**

35. The Inquiry is not bound by a judgment of the Supreme Court of Gibraltar unless the decision was a judicial review of a decision by the Inquiry. This is because the Inquiry is not a court of law and is not therefore bound by the usual system of precedent. The reason it is bound by a judicial review of itself is because it is a public authority, not because it is a court.

36. A first instance judgment may nonetheless be afforded persuasive weight where it is determinative of a legal question before the Inquiry. However, for the reasons stated above the *Cornelio* judgment is in a different context and is not determinative of the questions presently being considered by the Inquiry. Seeking to deploy the conclusions from *Cornelio* in this different context would therefore involve extending its principles, not applying them.

### *(ii) The proposed amendment to Issue 6*

37. We have set out concerns relating to the proposed expansion of Issue 6 in Charles Gomez's letter of 6th October 2023. We do not repeat the detail of that letter. To summarise:

(a) The Inquiry has reached an advanced stage in its evidence gathering process. The issues which were widely stated at the outset can now be narrowed as the process approaches its conclusion, following the approach identified in the well-known case of *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, where the inquest process was described at §26 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".*

(b) The Inquiry's proposed amendment to Issue 6 would do the opposite: by significantly expanding its scope. The original wording of Issue 6 carefully limited its scope to complaints made by the GPF to the GPA about Mr McGrail. We are particularly concerned by the reference in the proposed amendment to "*[t]he difficult relationship between Mr McGrail and the Gibraltar Police Federation",* followed by the words "*in particular*".

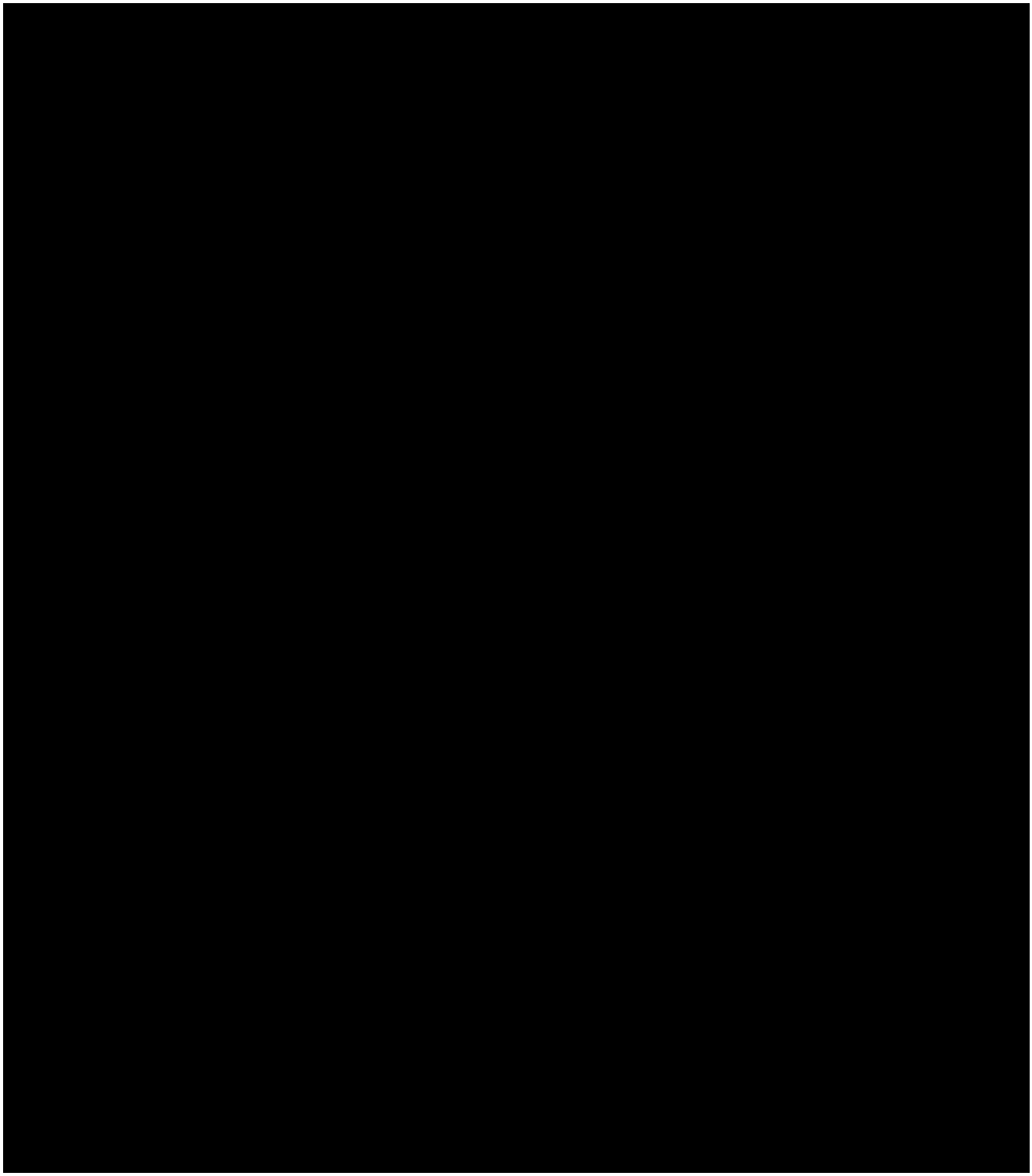
(c) Notwithstanding the qualifications set out in the Inquiry's letter of 6th October, the change to the wording will undoubtedly bring within scope a wide range of incidents, disputes and grievances which in reality had no relevance to Mr McGrail ceasing to be Commissioner of Police, but which will require a large amount of time, resources and potentially further disclosure from Mr McGrail and, we expect, the RGP.

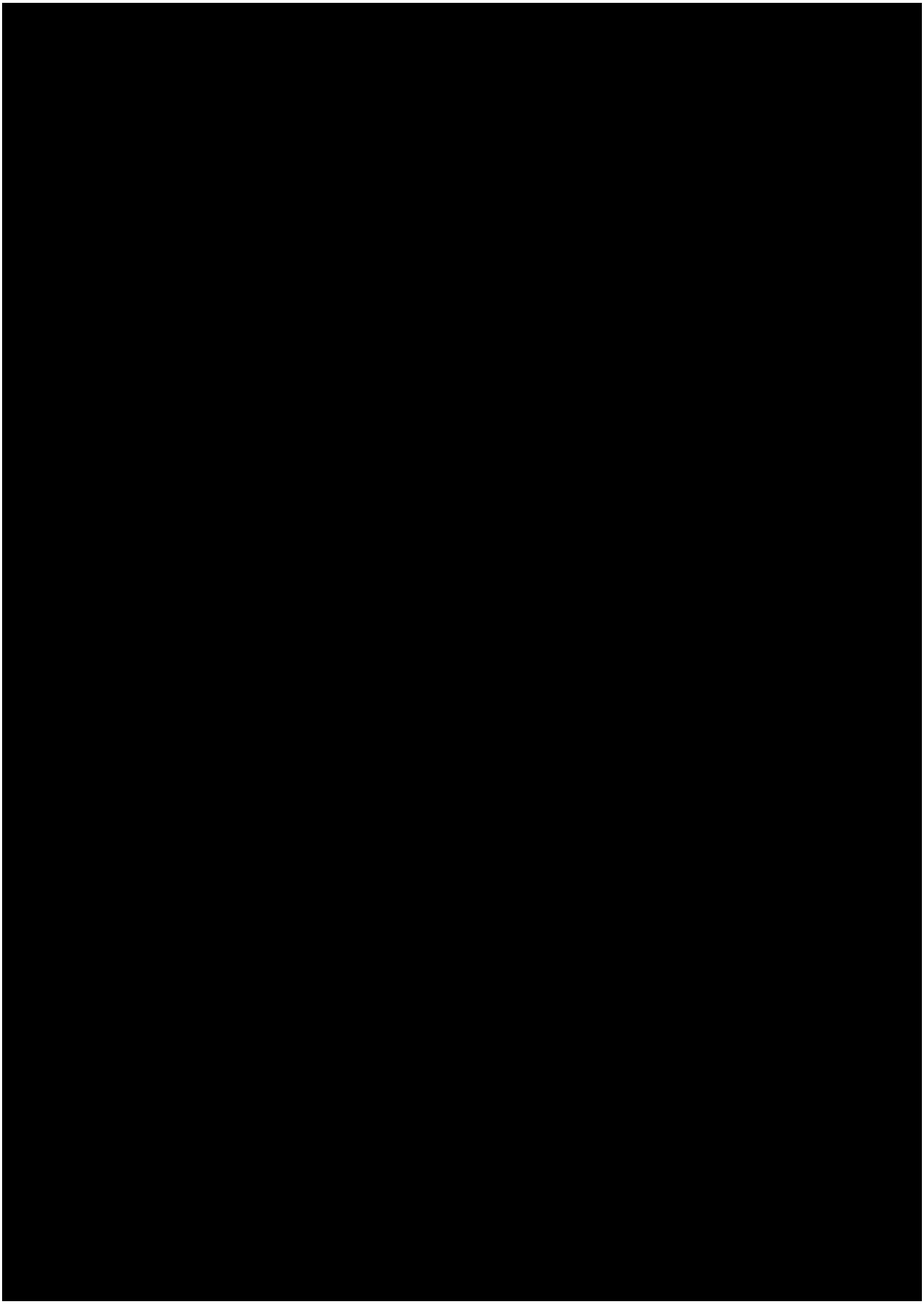
(d) The evidence currently before the Inquiry does not support the expansion of Issue 6. In his first statement, Mr. Fabian Picardo states that the relationship between the GPF and Mr McGrail "*did not cause me to lose confidence in Mr McGrail"*" (§111). Mr. Nick Pyle's first and second statements provide no other source for his concerns about Mr McGrail's relationship with the GPF than "*formal complaints from the Federation to the GPA about Mr McGrail*" and the fact that the "*GPA regularly spoke at its meetings about the allegations of bullying and intimidation by Mr McGrail"* (§23.2). The sum total of the evidence therefore restricts this issue to any discussions at and/or complaints to the GPA.

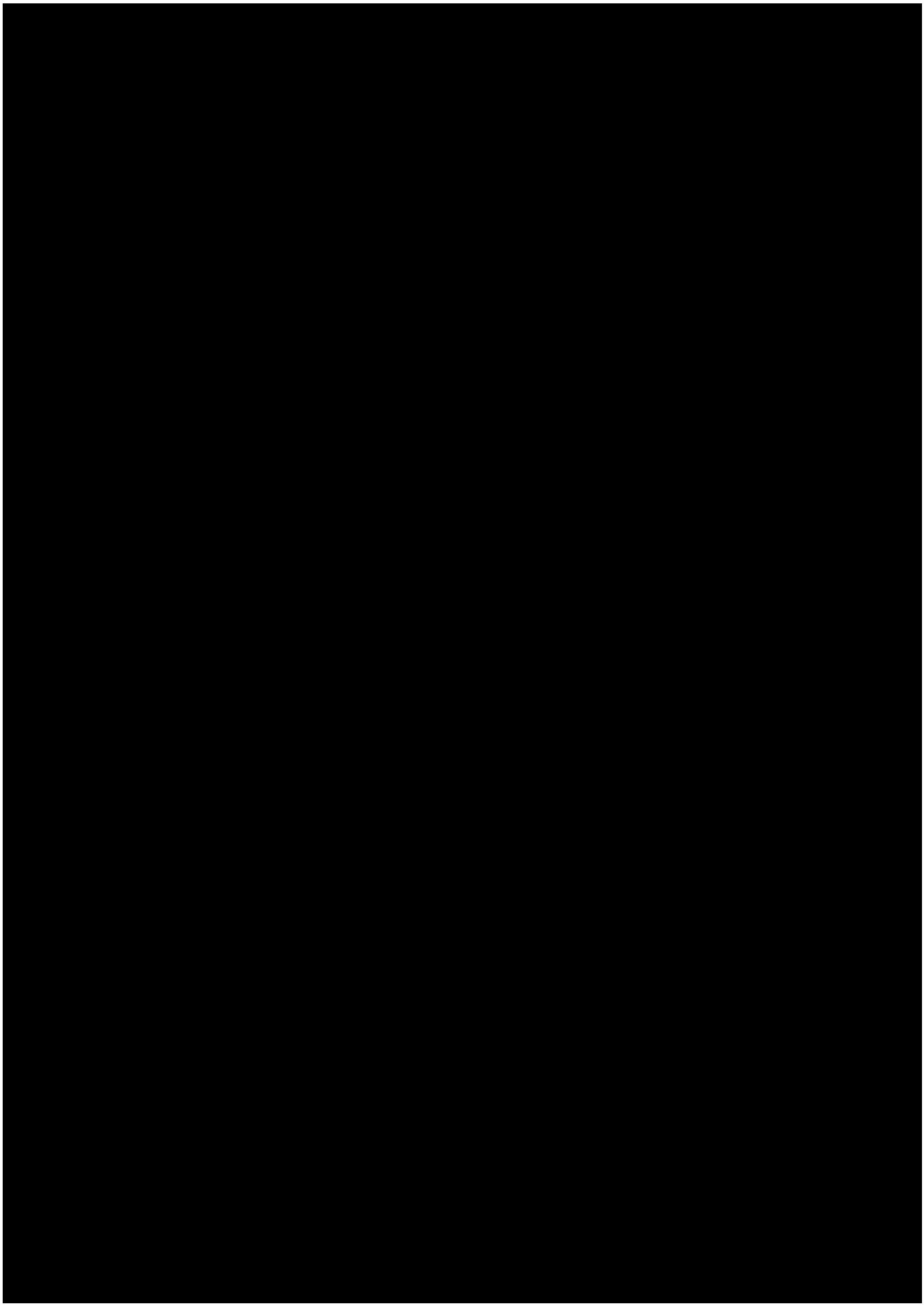
(e) As the GPA have pointed out in their letter of 6th October 2023, it is important context that the extensive evidence from those who have been members of the GPA over Mr. Pyle's tenure as a member of the GPA does not support his evidence of discussions or complaints to the GPA. This suggests Issue 6 should be narrowed not expanded.

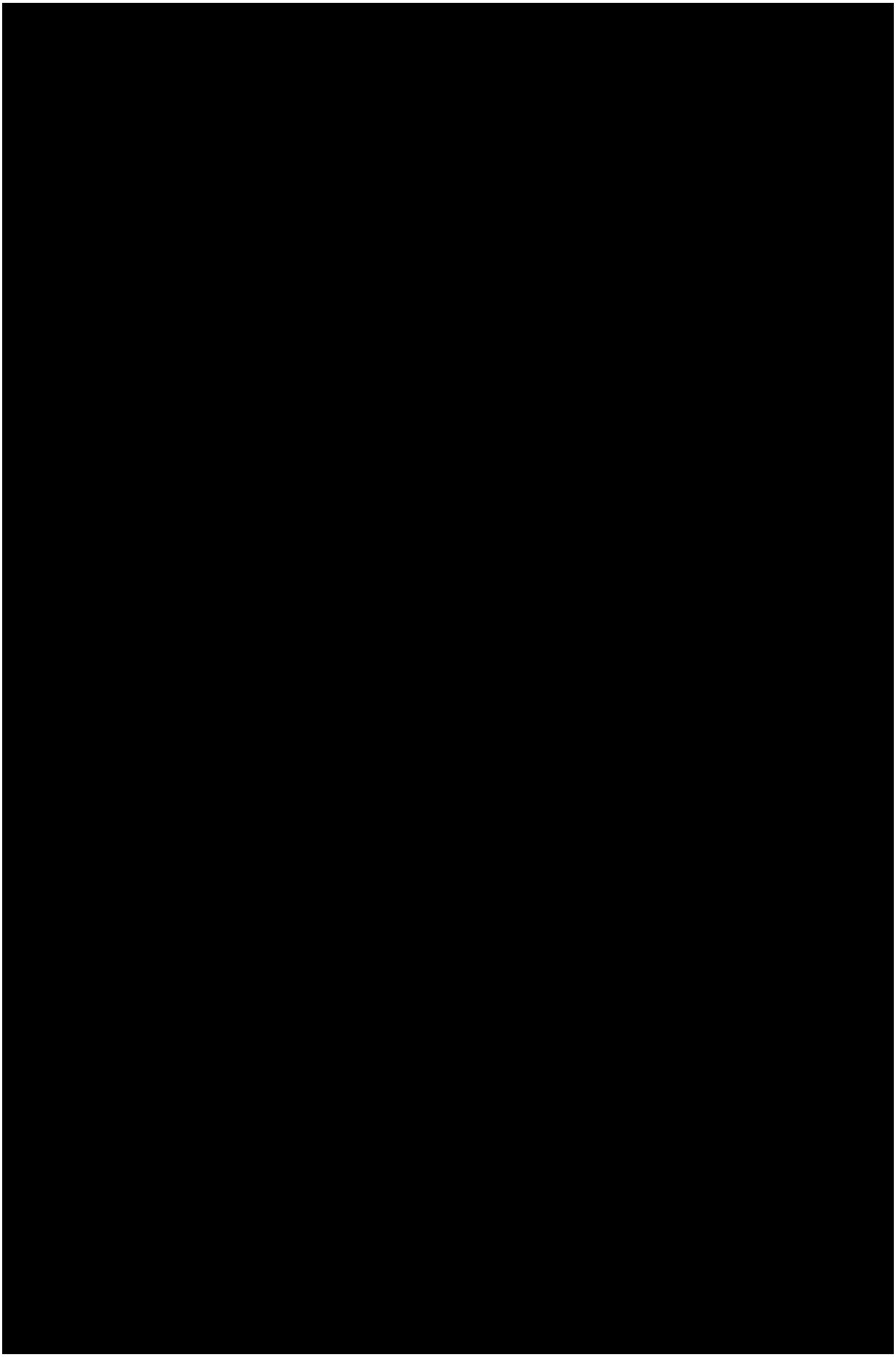
(f) In the circumstances, we request that there is no need to make any change to the wording of Issue 6. Alternatively, the change should be in the following terms, adopting the proposed wording in the GPA's letter of 5th October:

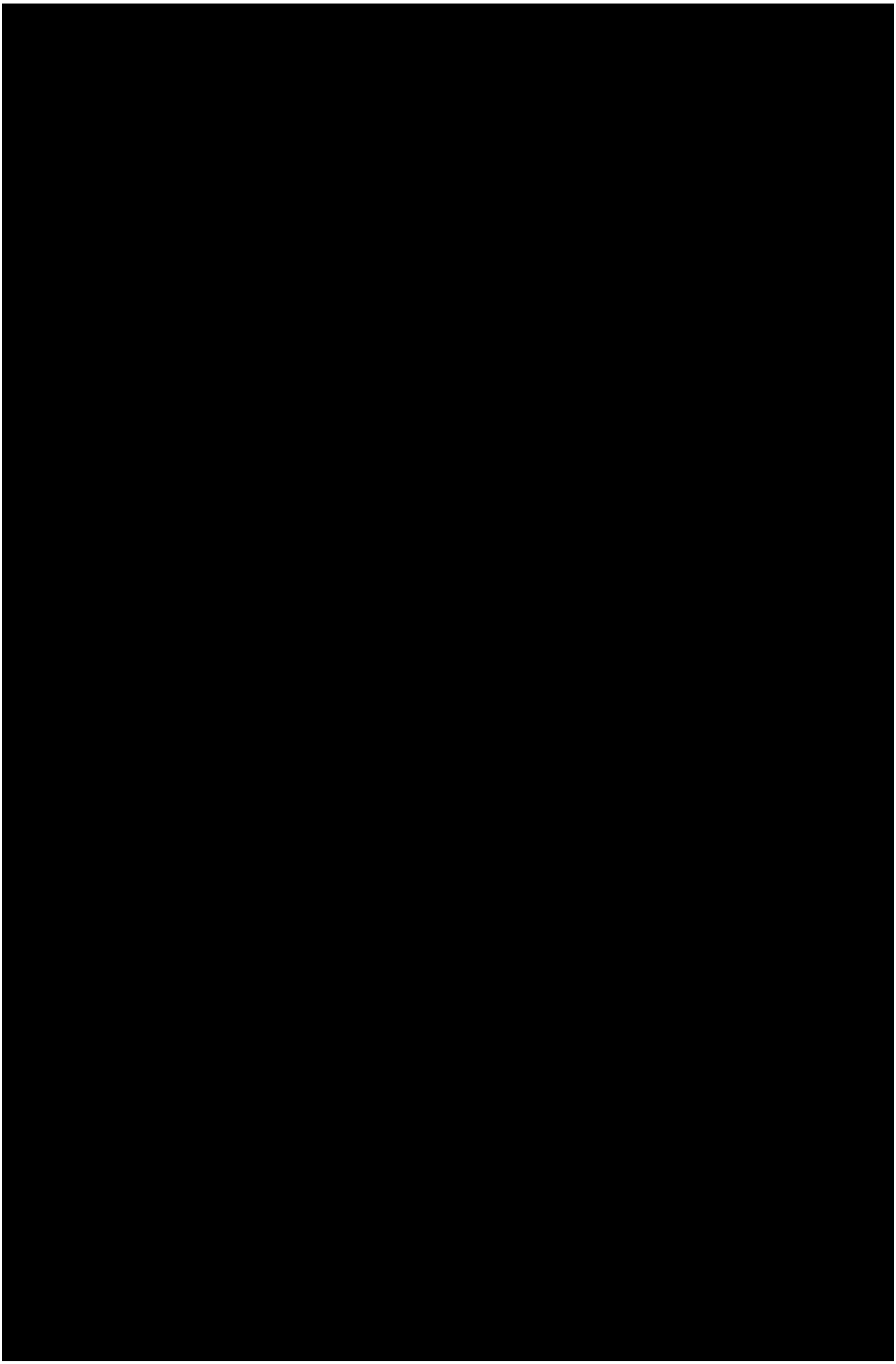
***"Whether any, and if so what complaint(s) were made by the Gibraltar Police Federation ("the Federation") and/or its members to the Gibraltar Police Authority about Mr McGrail and the Gibraltar Police Federation and whether any allegations of bullying or intimidation by Mr McGrail were discussed by the Gibraltar Police Authority ("the Federation Complaints")."***

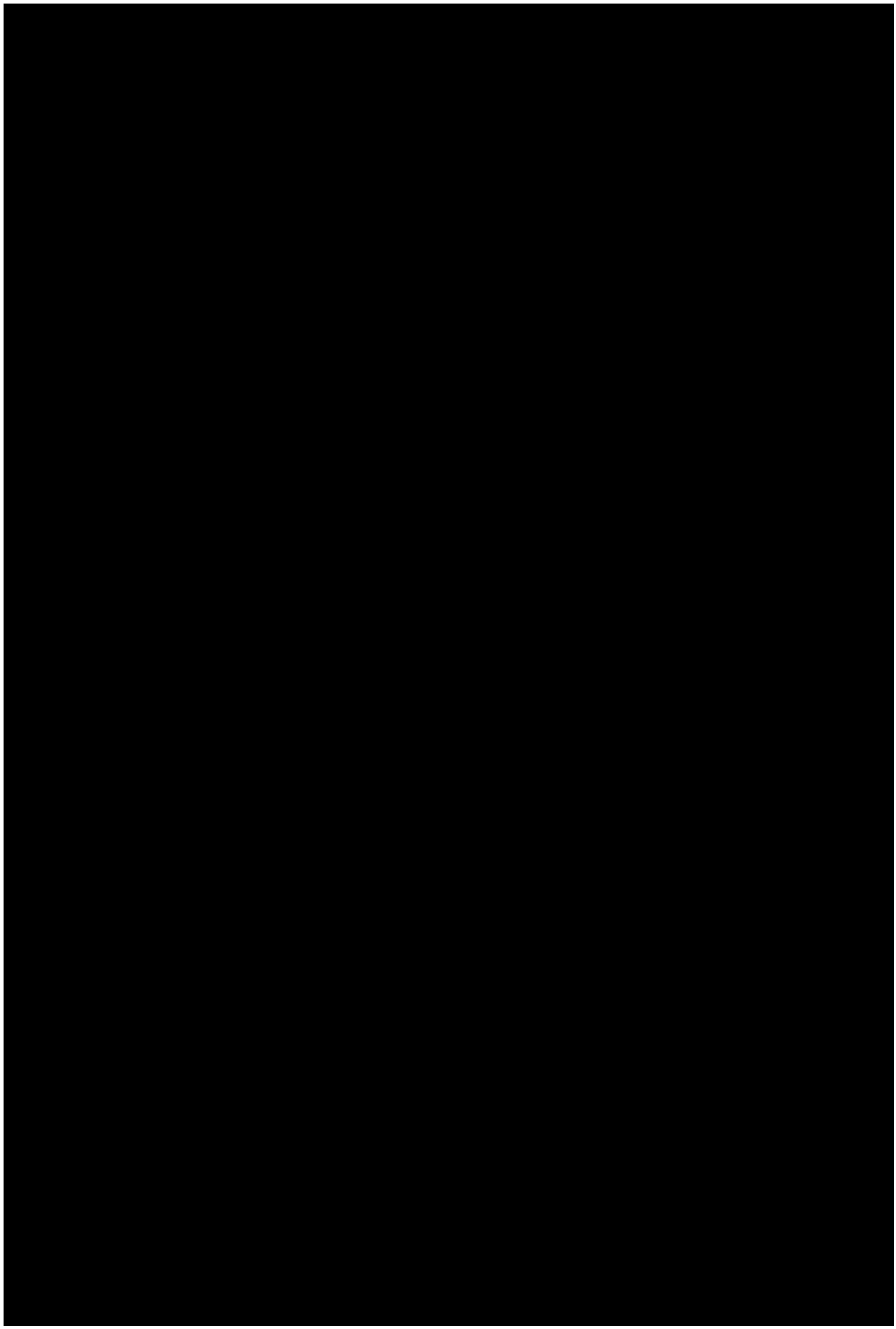












[redacted]

***(v) Categorisation of witnesses***

49. We have no submissions to make on this issue.

**ADAM WAGNER**

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17th October 2023