

<p>1 (Monday, 8 April 2024) 2 THE CHAIRMAN: Well, good morning 3 everyone and welcome at last to the main 4 hearing of this Inquiry. Mr Ian McGrail 5 retired as the Commissioner of Police on 9 6 June 2020. The sequence of events which 7 led to him doing so, and whether he did so 8 voluntarily or not, gave rise to widespread 9 public concern. The Governor set up a 10 public inquiry to examine these matters, and 11 accordingly I was appointed Commissioner, 12 as it then was, to inquire into "the reasons 13 and circumstances leading to Mr Ian McGrail 14 ceasing to be Commissioner of Police in June 15 2020 by taking early retirement." The public 16 want to know what happened; they want the 17 facts. The experience of public inquiries in 18 the United Kingdom, and indeed here in 19 Gibraltar, gained over the last hundred years 20 and more is that an independent inquiry 21 finding the facts after a transparent and 22 public examination of all the relevant 23 evidence and information will help to 24 maintain or to restore public confidence, or at 25 least will be the soundest foundation for</p> <p style="text-align: center;">Page 1</p>	<p>1 on Friday, and in the circumstances I need 2 not say any more about that. Quite how, if at 3 all, the new Act will otherwise impact upon 4 the Inquiry remains to be seen, but it is 5 important that I make abundantly clear that 6 nothing in the new Act affects my resolve 7 (and indeed, my duty under the law) to find 8 and report on the facts, which I am 9 determined to do, assisted as I am by the 10 small but loyal, hard working and dedicated 11 Inquiry team. The next step is to hear 12 counsel's submissions in public, which 13 supplement their written submissions. The 14 oral submissions will be transcribed and 15 uploaded to the website, probably that same 16 evening; the written submissions will be 17 uploaded to the Inquiry website as soon as 18 we can effect the redactions made necessary 19 by the late service of the Restriction Notice. 20 I recognise that inquiries are expensive, and I 21 have a duty to keep costs to the minimum 22 necessary to find the truth. I have therefore 23 set strict timetables for submissions and for 24 questioning of witnesses, which I will apply 25 subject to any overriding counterargument.</p> <p style="text-align: center;">Page 3</p>
<p>1 informed public debate on the best way 2 forward. All inquiries, including this one, are 3 subject to the law as enacted by Parliament. 4 This Inquiry was set up under the 5 Commissions of Inquiry Act 1888; it is now 6 governed by the Inquiries Act 2024, by 7 which I am bound. Section 19 of the new 8 Act gave the Government the power to 9 impose a Restriction Notice, which they have 10 now done. The Notice is directed at only a 11 relatively few documents among the many 12 thousands of documents which have been 13 disclosed to us, and I am confident that the 14 Inquiry can properly proceed, since I will 15 hear and consider the restricted material, but 16 I must now do so in private, and when 17 making findings upon it and when I report 18 upon it I must now do so in private. That is 19 the consequence of the Restriction Notice 20 made by the Government which I must 21 follow, but I think that the number of 22 redactions which will be necessary to the 23 final report will be relatively few. I welcome 24 the minor clarification issued this morning to 25 the press release issued by the Government</p> <p style="text-align: center;">Page 2</p>	<p>1 We will keep regular hours: I will try to start 2 at ten o'clock prompt, we will rise for lunch 3 at or about one o'clock, with a mid-morning 4 break of ten minutes or so to assist the 5 transcribers, not to allow for an extended 6 coffee break. We will start again at about 7 two o'clock and rise as convenient at about 8 half past four, with another short break in the 9 afternoon for the transcribers. The 10 proceedings are now being livestreamed by 11 the GBC, which is subject to a protocol 12 which can be read on the Inquiry website. It 13 would be time-consuming to read it in its 14 entirety, but livestreaming is subject to a ten- 15 minute time delay so that we can prevent the 16 livestreaming of anything that should not 17 have been said or which should not be 18 broadcast. If any information subject to the 19 Restriction Notice is inadvertently revealed 20 the livestream will be paused, and the public 21 will be asked to leave the room briefly so that 22 I can consider how to proceed. I draw 23 attention to the prohibition of recording or 24 making onward transmission of the 25 livestream, so except as has been specifically</p> <p style="text-align: center;">Page 4</p>

<p>1 authorised no one can take screenshots, still 2 less to post them on social media. I should 3 also make clear that breaches of the protocol 4 can be treated as a contempt of court, and 5 deliberate breaches almost certainly will be. 6 Mobiles and other electronic devices are not 7 to be used in the public gallery otherwise 8 than with express prior permission which I 9 have granted. For the rest of today Mr 10 Santos, Counsel to the Inquiry, will outline 11 some of the issues into which we shall be 12 inquiring and give a brief account of the 13 procedures we will follow. For various 14 reasons I have changed the order of speeches 15 on Tuesday and Wednesday, with the result 16 that now on Wednesday morning Ms 17 Gallagher KC will give her opening oral 18 submissions on behalf of Mr McGrail, which 19 will finish by lunchtime. In the afternoon Sir 20 Peter Caruana KC will give his opening oral 21 submissions on behalf of the Government 22 Parties, which will finish by half past four. 23 Tomorrow morning, Tuesday, there will be 24 submissions by the other core participants, 25 which I aim to limit to an hour each,</p> <p style="text-align: center;">Page 5</p>	<p>1 wrote to the interim Governor, His 2 Excellency Nick Pyle, applying for early 3 retirement from his post. That application 4 was approved later that day by Mr Pyle, and 5 you as Chairman are tasked with inquiring 6 into the reasons and circumstances leading to 7 Mr McGrail's decision to take early 8 retirement and leaving his post. One might 9 have thought that the answer to that question 10 that you are required to inquire into was 11 simple enough, but experience has proved 12 that it is anything but, with participants in 13 this Inquiry having having fiercely different 14 views as to what those reasons and 15 circumstances are. In fact, you are faced 16 with at least two competing accounts as to 17 why Mr McGrail applied for early 18 retirement: one from Mr McGrail himself 19 and another from the Government Parties, the 20 Chief Minister, the then interim Governor 21 and the Attorney General. Mr McGrail's 22 account, in its briefest form, is that he fell 23 victim to the abuse of government power to 24 protect powerful figures in Gibraltar from a 25 criminal investigation. The interim Governor</p> <p style="text-align: center;">Page 7</p>
<p>1 although they may think that some need not 2 speak for that length of time to supplement 3 their written submissions; what matters is 4 that those submissions finish within the day. 5 We start hearing the evidence on Thursday at 6 ten o'clock; we have published a timetable of 7 the witnesses which I will keep under review. 8 We will not sit on various public holidays, 9 nor on some days of religious observance, all 10 of which are set out on the Inquiry website. 11 After the evidence finishes on Thursday 9 12 May we will adjourn to allow the parties to 13 produce their written final submissions. We 14 will have another short hearing on 25 and 26 15 June for the parties' final oral submissions; I 16 regret that although we have tried to do so we 17 simply have not been able to find a date 18 convenient for everyone. Those are my short 19 introductory remarks, and I will now hand 20 over to Mr Santos, Counsel to the Inquiry, to 21 introduce some of the issues into which we 22 will inquire. Yes, thank you. 23 MR SANTOS: Thank you, sir. Good 24 morning. On Tuesday 9 June 2020 the 25 Commissioner of Police, Mr Ian McGrail,</p> <p style="text-align: center;">Page 6</p>	<p>1 and the Chief Minister's account is that Mr 2 McGrail chose to retire knowing that the 3 Governor was about to call for his 4 resignation if he did not do so, because Mr 5 McGrail had lost the confidence of both the 6 interim Governor and the Chief Minister and 7 therefore could not realistically continue in 8 his position. The Attorney General supports 9 that case, and others, for example the 10 Gibraltar Police Authority (to whom I will 11 refer as the GPA), or the Royal Gibraltar 12 Police, do not advance a case, so to speak, as 13 to why Mr McGrail retired, but nevertheless 14 were involved in the final exchanges and 15 therefore have relevant evidence and 16 documents to provide to this Inquiry. This 17 Inquiry, commissioned by the Government 18 on 4 February 2022, was commissioned 19 under Section 3 of the Commissions of 20 Inquiry Act 1888, and according to the legal 21 notice commissioning the Inquiry you were 22 appointed to inquire, as I say, and as you 23 shall in in your absolute discretion consider 24 appropriate, "into the reasons and 25 circumstances leading to Mr Ian McGrail</p> <p style="text-align: center;">Page 8</p>

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<p>1 ceasing to be Commissioner of Police in June 2 2020 by taking early retirement." Those are 3 what we refer to as the Inquiry's "terms of 4 reference", and your task is to ascertain the 5 facts relating to those terms of reference and 6 report to the Government on them. For the 7 past 26 months this Inquiry team has 8 contacted all persons and bodies involved in 9 that process, and sought their accounts and 10 any documents they hold which might shed 11 light on the process. Now, in this opening 12 statement I intend to cover three main topics. 13 First, for the benefit of the public here today 14 and watching online or following in local 15 news over the coming weeks, I intend to give 16 a brief overview about what an inquiry 17 actually is: what the purpose of an inquiry is, 18 what its process entails, and perhaps just as 19 importantly what an inquiry is not. Second, I 20 will give a brief summary of the inquiry 21 process to date, and third (and this is going to 22 be the bulk of this opening statement) I will 23 introduce the issues that we will be 24 considering over the new five weeks. So, the 25 first part of this statement is to explain what</p> <p style="text-align: center;">Page 9</p>	<p>1 requiring those involved to give explanations 2 for their actions, their reasons for acting, and 3 if necessary identifying wrongdoing or 4 culpability. Also, restoring public confidence 5 or allaying public disquiet following an 6 event. This carries with it an element of 7 catharsis for the community through the 8 public ventilation and investigation of the 9 allegations that are made. There is no 10 question that the past few weeks and months 11 have been painful for Gibraltar, as this matter 12 has been the subject of increasingly frenzied 13 comment in the press and social media, and it 14 is time to finally ventilate these issues in a 15 fair and open process, so that the truth may 16 be determined and the public informed once 17 and for all. Finally, it is hoped that this will 18 serve the purpose, where appropriate, of 19 learning lessons and making 20 recommendations. Turning to what this 21 Inquiry is not: it is definitely not a criminal 22 or a civil trial. This is an inquisitorial, not an 23 adversarial, process. And, under Section 4 of 24 the Inquiries Act 2024 you are not to rule on, 25 and have no power to determine as</p> <p style="text-align: center;">Page 11</p>
<p>1 an inquiry is. There has been a cacophony of 2 public comment in recent days and weeks, so 3 I think it helpful to provide an insight into 4 what the purpose of this process is. There is 5 a very helpful quote in the first sentence of 6 Jason Beer KC's extremely helpful book on 7 public inquiries, which I regret to say has 8 lived mostly on my bedside table for the past 9 two years. Stephen Sedley QC, as he then 10 was, described an inquiry as "the organising 11 of controversy into a form more catholic than 12 litigation but less anarchic than street 13 fighting". So, one important aim of this 14 process is to introduce some order and some 15 structure to addressing this issue of public 16 importance, and to prevent a trial by media. 17 To allow all involved to have their say, and 18 for all the evidence and documents received 19 to be distilled so that you, as Chairman, may 20 issue your report setting out the relevant facts 21 as you find them. Because, the function of 22 an inquiry is just that: to establish the facts 23 and provide a full account of what happened. 24 By doing so, it is hoped it will also serve 25 purposes such as ensuring accountability:</p> <p style="text-align: center;">Page 10</p>	<p>1 Chairman, any person's civil or criminal 2 liability. But, the Act also clarifies that you 3 should not be inhibited, in finding the facts 4 and any recommendations you choose to 5 make, by a likelihood of liability being 6 inferred from those. So, just to make it 7 abundantly clear: there is no possibility of 8 this Inquiry determining that anyone has 9 acted criminally, or that anybody has 10 committed a civil wrong. Whether that can 11 be inferred is a different matter and should 12 not stop you in reporting the facts. Similarly, 13 you as Chairman have no powers to issue 14 remedies or sanctions, or to commence 15 proceedings on the back of your factual 16 findings; the Inquiry's natural ending is when 17 your report is filed. It is worth saying 18 something, as well, about the roles of the 19 Inquiry team. First, we have the Inquiry 20 Secretary, Maurice Turnock, who has been in 21 charge of the day-to-day management of the 22 Inquiry's logistics and administration, as well 23 as managing Inquiry finances. We also have 24 the Solicitor to the Inquiry, Charles Simpson 25 of Triay Lawyers, whose team includes</p> <p style="text-align: center;">Page 12</p>

<p>1 Sebastian Triay and Rupert Moffatt. As 2 Solicitor to the Inquiry, Mr Simpson has had 3 overall control over several of the Inquiry's 4 important functions, including evidence 5 gathering and organisation of that evidence. 6 For example, sending requests for evidence 7 to witnesses, conducting a very large 8 disclosure exercise, producing the electronic 9 documents platform and preparing the 10 enquiry bundles. He has also managed the 11 Inquiry's communications with core 12 participants and witnesses, has managed the 13 Inquiry' policies, assessed core participants' 14 legal expenses and managed the Inquiry 15 hearings. Finally, we have my own role as 16 Counsel to the Inquiry, in which I am assisted 17 by my brilliant and tireless junior, Hope 18 Williams. Our role is to assist you as 19 Chairman in establishing the facts in a fair 20 and orderly manner, including by preparing 21 written and oral submissions for hearings, 22 including the preliminary hearings and this 23 main hearing; questioning witnesses at this 24 hearing, and providing legal and other advice 25 where required in order to assist you with</p> <p style="text-align: center;">Page 13</p>	<p>1 documents and allegations, and where 2 relevant to explain their actions and 3 decisions. But, where I do challenge a 4 witness firmly that should not be taken to 5 mean that I necessarily disagree with their 6 case or favour another witness or 7 participant's case. Turning to the Inquiry 8 process to date. I have already mentioned the 9 phrase "core participants" a couple of times, 10 and I should explain for the benefit of the 11 public that a core participant is a person, 12 organisation or other entity with a significant 13 interest in the subject matter of the Inquiry, 14 and who has been designated as a core 15 participant in accordance with the Inquiry's 16 core participants policy. They enjoy 17 participatory rights, and are for example 18 entitled to receive disclosure of evidence and 19 documents, make opening and closing 20 statements at this main Inquiry hearing, in 21 some cases question witnesses, and in other 22 cases either apply for permission to question 23 witnesses or submit questions to the Counsel 24 for the Inquiry team. The Inquiry could not 25 force anybody to be a core participant; they</p> <p style="text-align: center;">Page 15</p>
<p>1 your decision-making. I want to make a 2 couple of things clear about my role, though. 3 First and most importantly: unless I indicate 4 otherwise, any submissions I make and any 5 questions I ask, I ask as Counsel to the 6 Inquiry, and reflect my own position and not 7 yours as Chairman. And, second, my role as 8 Counsel to the Inquiry is different to the role 9 of counsel in court proceedings; I have 10 already said this is an inquisitorial not an 11 adversarial process, and it is not my role to 12 advance the case for anyone. My role is to 13 assist the Inquiry in getting to the truth, and I 14 will maintain neutrality; I will not make 15 submissions in the way that others might do 16 where they are trying to advance a case, and 17 so my role may come across as more neutral 18 than that of other counsel. In terms of my 19 questioning, I will question firmly, and probe 20 and even challenge witnesses where 21 necessary, but it is not my role to conduct a 22 cross-examination as seen in high-drama 23 criminal jury trials, or to play to the gallery. 24 It is my role to ensure that witnesses have a 25 fair opportunity to address the facts,</p> <p style="text-align: center;">Page 14</p>	<p>1 needed to apply for that status, and then you 2 as Chairman would consider the factors in 3 paragraph five of the core participants policy 4 when determining that application. There are 5 eleven core participants at this Inquiry: the 6 former Commissioner of Police himself, Mr 7 McGrail; the interim Governor at the time, 8 Mr Nick Pyle; the Chief Minister, Fabian 9 Picardo KC; the Attorney General, Michael 10 Llamas KC; the Gibraltar Police Authority, 11 the Royal Gibraltar Police, former 12 Superintendent Paul Richardson, the 13 Gibraltar Police Federation and the three 14 individuals we refer to as the Operation Delhi 15 defendants (Sir Thomas Cornelio, Mr John 16 Pezez and Mr Caine Sanchez). Something 17 we have addressed in our written 18 submissions, but which I should repeat for 19 the benefit of the public, is that it is worth 20 emphasising before turning to the facts our 21 interpretation of the terms of reference, and 22 in particular the meaning of the phrase 23 "reasons and circumstances leading to". The 24 meaning of the word "reason" is a simple 25 one, and the Oxford Languages Online</p> <p style="text-align: center;">Page 16</p>

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<p>1 English Dictionary defines it as "a cause, 2 explanation, or justification for an action or 3 event." So, the inclusion of that word, 4 "reason", within the terms of reference 5 imposes upon you, sir, an obligation to 6 determine the causes, explanations or 7 justifications for Mr McGrail ceasing to be 8 Commissioner of Police. There are three 9 further general points that I would make 10 about "reasons". First, there can be more 11 than one reason for an event or an action; if 12 there is more than one reason some may be 13 of greater importance or significance as 14 causes for an event. Second, if a person 15 states that X is a reason why they acted in a 16 particular way, that may well be true even if 17 it may not be a good or justified reason, 18 objectively judged. In other words, a bad 19 reason or a mistaken reason may still be a 20 real reason, and this brings an element of 21 subjectivity into the equation. However, if a 22 reason put forward by a witness is seen to be 23 an illogical reason, for example, that could be 24 relevant to you when you decide whether it 25 was in fact that person's real reason for</p> <p style="text-align: center;">Page 17</p>	<p>1 Commissioner of Police. As I said at the first 2 preliminary hearing of this Inquiry in June 3 2022, the Inquiry team (including you as 4 Chairman) started this process with no 5 knowledge about the events under inquiry, no 6 information or documents at our disposal, 7 and purely with the terms of reference set out 8 in the legal notice. We have been entirely 9 dependent on receiving information and 10 documents from witnesses to learn about the 11 matters which we are required to look into, 12 so we started by approaching the four parties 13 who (according to the Police Act 2006) 14 would or at least could have played a 15 statutory role in Mr McGrail's retirement; 16 namely, Mr McGrail himself, the Governor at 17 the time, the Chief Minister and the 18 Chairman of the GPA (Dr Joey Britto). It 19 was only upon receipt of these statements 20 that we were able to widen our request for 21 evidence to other people whom we learnt 22 were involved in the process, and to start 23 defining the issues requiring addressing. 24 That has been an iterative process over the 25 course of these two years, with further</p> <p style="text-align: center;">Page 19</p>
<p>1 acting. The third thing I would say about 2 reasons is that even if a person gives a reason 3 for acting, that may not actually be the true 4 operative reason or the only operative reason 5 for acting; there may be other real reasons, 6 which are unstated or unidentified. As for 7 the word "circumstances", again the meaning 8 of that word cannot be in dispute: it is 9 defined by the same dictionary as "a fact or 10 condition connected with or relevant to an 11 event or action." The inclusion of the word 12 "circumstances" within the terms of reference 13 means that the Inquiry's remit is broader than 14 merely looking for direct causes of Mr 15 McGrail's decision to take early retirement, 16 and extends to looking at facts connected 17 with or relevant to that event. And, finally, 18 the words "leading to" reinforce the need for 19 a link between the "reasons and 20 circumstances" and the ultimate fact of Mr 21 McGrail ceasing to be Commissioner of 22 Police. But, we would submit that they 23 maintain the slightly broader nature of the 24 exercise than a pure assessment of the direct 25 causes of Mr McGrail ceasing to be</p> <p style="text-align: center;">Page 18</p>	<p>1 requests being made either to the same 2 witnesses or to different individuals and 3 organisations. I am told by the Solicitor to 4 the Inquiry that we have received 94 witness 5 statements, running to over 1,600 pages, and 6 about 16,000 pages of documents relevant to 7 these issues. Sifting through that has been a 8 monumental task, for which I am very 9 grateful in particular to Mr Triay and Mr 10 Moffatt. I should say that although there is 11 clearly fierce disagreement on some key 12 factual matters there is also plenty of 13 agreement (or at least lack of dispute) in 14 relation to background facts, and so with the 15 assistance of core participants we have 16 prepared a document which we refer to as 17 "the undisputed facts", which can be used as 18 a working chronology throughout this main 19 Inquiry hearing, although I would accept that 20 it is not a complete document given that there 21 are some important disputed facts. There are 22 two procedural issues that I should address 23 before I turn to the substantive content of this 24 statement. There has been significant media 25 attention in recent weeks and months on two</p> <p style="text-align: center;">Page 20</p>

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<p>1 matters: the first the introduction of the 2 Inquiries Act 2024, and the second the 3 allegations that incentives have been offered 4 to certain witnesses in exchange for them 5 giving evidence in the Inquiry. First, to 6 address the Inquiries Act 2024. Sir, you have 7 already referred to this Act; it commenced 8 less than two weeks ago on 28 March 2024. 9 The Inquiry team issued a fact sheet (which 10 is available on the Inquiry website) 11 explaining the changes that this brought 12 about, but there are two points in particular 13 on which I should elaborate. First, a 14 significant change under the new Act is the 15 position on the law on self-incrimination. 16 Under the old Act witnesses could not refuse 17 to answer questions on the basis that doing so 18 might incriminate them; however, any 19 answers which they did give could not be 20 admitted as evidence against them in civil or 21 criminal proceedings. All witnesses who 22 have given evidence to this Inquiry did so 23 under those rules. Section 22 of the new Act 24 changed the position: it says that the Inquiry 25 cannot require a witness to give evidence or</p> <p style="text-align: center;">Page 21</p>	<p>1 committed or been involved in a crime in 2 their evidence, if that were to happen, that 3 does not mean that they cannot be prosecuted 4 for that crime; it just means that their 5 evidence to the Inquiry cannot be the basis 6 for that prosecution and would not be 7 admissible in any criminal proceedings. The 8 other significant change brought about by the 9 new Act is Section 19, which introduces a 10 power on behalf of the Government to issue 11 restrictions notices requiring evidence only to 12 be hard in private. Under the old Act that 13 was purely a matter for you as chairman, and 14 under the new Act the Government has this 15 power to issue notices. 16 (10.30) 17 On Friday we received such a restriction 18 notice which you have already addressed at 19 the start. I do not need to comment further, 20 save to say that this has added a considerable 21 burden to the team in our final days of 22 preparation. In particular, the Inquiry's 23 bundles needed to be redacted and I am very 24 grateful to Mr Triay for arranging that at the 25 last minute.</p> <p style="text-align: center;">Page 23</p>
<p>1 disclosure which could not be required by a 2 civil court, which means that witnesses could 3 refuse to answer questions on the basis that it 4 might incriminate them. This is also the law 5 in the UK, and in the UK in the light of that 6 law many recent inquiries have requested 7 that the Attorney General provide an 8 undertaking that he or she will not use 9 evidence given to the inquiry in future 10 criminal proceedings. The aim of the 11 undertaking is to allow witnesses to give 12 evidence freely, knowing that they are not at 13 risk of subsequent prosecution on the basis of 14 the evidence that they give. In the light of 15 the change of the law to mirror the UK the 16 Inquiry followed the approach in the UK and 17 immediately requested an undertaking from 18 the Attorney General in terms that would 19 place witnesses in the same position as they 20 were under the old Act. The Attorney 21 General has provided this undertaking, and 22 the Solicitor to the Inquiry will shortly be 23 uploading it to the Inquiry's website. We 24 have reached this position knowing that just 25 because a witness reveals that they have</p> <p style="text-align: center;">Page 22</p>	<p>1 The Inquiry will endeavour to sit in public to 2 the maximum extent possible, and we 3 anticipate that this notice will require only 4 some of the witnesses to give a small amount 5 of their evidence in private. 6 The second procedural matter which I wish 7 to address is the allegations which were first 8 raised by Mr McGrail to the Inquiry in his 9 third affidavit that two police officers subject 10 to investigation for corrupt or improper 11 practices have been assured that they would 12 not go onto half pay and their futures would 13 be safeguarded if they came forward with 14 information about Mr McGrail during the 15 Inquiry. 16 Mr McGrail alleged that Number 6 Convent 17 Place was involved in making these offers, 18 including the Chief Minister and the 19 Government official Mr Michael Crome. 20 The Chief Minister denied any impropriety 21 on his part in his second affidavit, stating that 22 he acted on advice to ensure that 23 whistleblowers can give evidence to the 24 Inquiry. The Government also confirmed in 25 a press release dated 23 March 2023 that the</p> <p style="text-align: center;">Page 24</p>

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<p>1 Chief Minister's actions were in keeping with 2 the protected disclosure provisions of the 3 Employment Act 1932. 4 These allegations were aired further during 5 Mr McGrail's sexual assault trial last year 6 where he was found not guilty. Mr Crone 7 gave evidence at that trial where he stated 8 that he gave the complainant assurances that 9 if she wished to lay a statement before the 10 Inquiry she would be afforded protection 11 through whistleblowing law. 12 In March 2023 the Inquiry received 19 13 witness statements from current or former 14 members of the GPF, the Gibraltar Police 15 Federation, which raised a large number of 16 varied allegations about Mr McGrail and the 17 RGP's senior management. At the fourth 18 preliminary hearing on 19 July 2023 the 19 Inquiry was due to consider the relevance of 20 these allegations to the Inquiry and also 21 whether the Inquiry should investigate the 22 allegations of witness inducement that had 23 been made. However, the night before PH4 24 the Inquiry was informed that senior 25 investigating officer John McVea, an officer</p> <p style="text-align: center;">Page 25</p>	<p>1 individuals were granted whistleblower 2 status and what redeployment, payment or 3 other benefit had been offered to them in 4 exchange for their evidence to the Inquiry. 5 This evidence has not been received to date, 6 but the Inquiry is in ongoing correspondence 7 with the witnesses on this point. 8 Given the impending main hearing, we 9 decided to take a pragmatic approach to 10 investigating this issue. In the first instance, 11 this will be explored in questioning when 12 certain witnesses come to give their evidence 13 in the next few weeks. At the end of the 14 Inquiry hearing you, as Chairman, may 15 consider that this issue may need to be the 16 subject of further evidence, disclosure or 17 submissions. At this juncture, I only wish to 18 reassure the public that the Inquiry team is 19 firm in its view that these allegations fall 20 within the Inquiry's terms of reference. You, 21 as Chairman, have a duty to oversee and 22 safeguard the Inquiry's procedure so that you 23 can ensure the Inquiry is properly and 24 effectively carried out and the allegations, in 25 our submission, therefore need to be</p> <p style="text-align: center;">Page 27</p>
<p>1 of the RGP for the purposes of this 2 investigation, was already investigating these 3 allegations for the RGP. The Inquiry 4 therefore agreed to adjourn consideration of 5 these two issues to allow that investigation to 6 proceed. 7 In January 2024 SIO McVey updated the 8 Inquiry on the progress of that investigation 9 and indicated that the RGP did not object to 10 the main Inquiry hearing proceeding 11 alongside his investigation. 12 You, as Chairman, therefore ruled upon the 13 pending issues in a private ruling in March 14 this year and published a public summary of 15 that ruling on the Inquiry website. In 16 summary, you concluded that in order to 17 maintain the integrity of the Inquiry and to 18 retain public confidence, the Inquiry should 19 seek evidence and disclosure of the 20 circumstances in which the statements came 21 to be made. In accordance with that ruling, 22 the solicitor to the Inquiry has written to the 23 19 witnesses, to the Chief Minister and to Mr 24 Crone to request evidence and/or disclosure 25 of relevant documents as to which</p> <p style="text-align: center;">Page 26</p>	<p>1 thoroughly investigated. 2 Now I will turn to the third and main part of 3 my statement, which is the issues themselves. 4 As I explained earlier, our first requests for 5 evidence were sent to those who had a 6 statutory role under the Police Act. Each 7 witness gave differing accounts as to the 8 reasons and circumstances leading to Mr 9 McGrail ceasing to be Commissioner of 10 Police. I will summarise them, but it should 11 be noted that these are the witnesses' cases 12 and allegations and not the Inquiry's 13 conclusions or views. 14 The first statement that we received was from 15 Mr Nick Pyle, the interim Governor at the 16 time. His evidence is in Pyle 1, paragraph 13 17 onwards, at bundle A240, but I will 18 summarise it as follows. On 13 May 2020 19 Mr Pyle received a telephone call from the 20 Chief Minister saying he wished to discuss 21 an important issue surrounding the RGP with 22 him. Mr Pyle's response was that this was a 23 remarkable coincidence because he wanted to 24 discuss his deep concerns about the RGP's 25 leadership with the Chief Minister. They</p> <p style="text-align: center;">Page 28</p>

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<p>1 agreed to meet the next day. On 15 May 2 2020 during a meeting the Chief Minister and 3 Mr Pyle agreed that they had both lost 4 confidence in Mr McGrail as Commissioner 5 of Police for reasons that they discussed. Mr 6 Pyle's loss of confidence in Mr McGrail's 7 probity and integrity and his leadership of the 8 RGP had been progressive over a period of 9 time and by reason of a number of incidents 10 and matters. He listed five matters. 11 First, what we refer to as the airport incident 12 on 8 February 2017. This is where Mr Pyle 13 says his concerns over the leadership of the 14 RGP and the behaviour and judgment of Mr 15 McGrail in particular started. I will go into 16 this in more detail in due course but it relates 17 to a dispute between the Ministry of Defence 18 and the RGP as to jurisdiction over an 19 employee of the MoD who was suspected of 20 criminal activity. The dispute ultimately 21 resulted in a standoff on the runway at 22 Gibraltar Airport with RGP officers driving 23 vehicles onto the runway to prevent an RAF 24 plane on which the individual was boarded 25 from taking off and the subsequent arrest of</p> <p style="text-align: center;">Page 29</p>	<p>1 already causing him concern and causing him 2 to begin to lose confidence in him. Mr Pyle 3 also refers to anecdotal stories of bad practice 4 and behaviours by the RGP but says he did 5 not feel it possible to act on them, although 6 they contributed to his growing sense of 7 unease. 8 Fourth, there is the report by Her Majesty's 9 Inspectorate Constabulary and Fire and 10 Rescue Services, known as the HMIC report, 11 which was published in April 2020 and 12 which Mr Pyle says found that only two of 13 the eight recommendations in the prior report 14 in 2016 had been met. Mr Pyle describes it 15 as a damning report which he put down 16 culture and leadership. In Mr Pyle's view, 17 the report reflected deterioration rather than 18 progress at the RGP as a result of Mr 19 McGrail's management style, and to some 20 extent validated the GPS(sic) grievances. 21 Fifth and finally, there is the collision at sea 22 on 8 March 2020, a collision between an 23 RGP vessel and a rigid hull inflatable boat or 24 rib, as a result of which two persons on the 25 rib were killed, which was later discovered to</p> <p style="text-align: center;">Page 31</p>
<p>1 three senior MoD personnel on 1 March 2 2017. 3 Second, there is what we call the helicopter 4 pilot assault investigation. Mr Pyle refers to 5 a helicopter pilot and another member of 6 crew being assaulted in a bar in Gibraltar 7 with the pilot fracturing a cheek or jaw bone 8 preventing him from flying. He refers to the 9 RGP stating after several weeks that the 10 forensic evidence they collected was 11 inconclusive and says that the widely held 12 belief in MoD circles was that the RGP did 13 not investigate the crime correctly to protect 14 those involved in the attack. 15 Third, there is Mr McGrail's fractured 16 relationship with the Gibraltar Police 17 Federation, a Federation which represented 18 junior offices in the RGP. Mr Pyle puts this 19 down to Mr McGrail's management style and 20 says that the tension led to allegations of 21 bullying and intimidation regularly being 22 discussed by the Gibraltar Police Authority. 23 Mr Pyle says this was at a lower level of 24 gravity but fitted into the pattern of 25 behaviours by Mr McGrail which was</p> <p style="text-align: center;">Page 30</p>	<p>1 have taken place in Spanish waters. Mr 2 Pyle's main complaints are that, firstly, Mr 3 McGrail deliberately withheld from him 4 important information about the nature of his 5 understanding of the location of the collision, 6 only telling him that it was highly likely that 7 the incident took place outside British 8 Gibraltar territorial waters on 11 March, 9 three days later. Secondly, that a draft report 10 into the incident, known as the SOLAS 11 Report, found that there was a lack of marine 12 section management standards and oversight 13 over pursuit methods and patrols and there 14 was no proper training in pursuits of suspect 15 vessels. Mr Pyle's evidence is that he and the 16 Chief Minister agreed to seek a meeting with 17 the chairman of the GPA, Dr Britto, during 18 which they would ask the GPA to invite Mr 19 McGrail to retire under section 34 of the 20 Police Act, and that meeting was held at the 21 convent on 18 May 2020. I will go into the 22 procedure that followed later on, but for 23 present purposes it suffices to note that there 24 was a GPA process which the GPA 25 ultimately accepted to be procedurally</p> <p style="text-align: center;">Page 32</p>

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<p>1 flawed. Although he was a member of the 2 GPA, Mr Pyle did not participate in that 3 process, given his position as Interim 4 Governor. Mr Pyle then met with the Chief 5 Minister and the Attorney General and 6 agreed to speak to Mr McGrail on 5 June, the 7 Friday, and inform him that he was prepared 8 to call for his resignation under section 13 of 9 the Police Act, but that he would read all 10 relevant papers over the weekend and then 11 inform Mr McGrail of his decision on the 12 Monday, 8 June.</p> <p>13 On 8 June Mr Pyle again met Mr McGrail 14 and Mr McGrail confirmed his intention to 15 retire subject to terms being agreed. Those 16 terms were agreed late that night, and on 9 17 June Mr McGrail wrote to Mr Pyle 18 requesting early retirement on terms set out 19 in that letter, which we will turn to in due 20 course. That was approved by Mr Pyle and 21 Mr McGrail relinquished command at 6 p.m. 22 on 9 June 2020.</p> <p>23 The second statement which we received was 24 from Dr Britto, the chair of the GPA, who 25 confirms that the Interim Governor invited</p> <p style="text-align: center;">Page 33</p>	<p>1 on 26 May 2022. I can summarise his 2 evidence as follows. The immediate cause of 3 Mr McGrail's retirement, according to the 4 Chief Minister, was his email to the GPA on 5 5 June 2020 referring to the unfairness of his 6 treatment and the improper pressure put on 7 him to alter the course of a live investigation, 8 although the Chief Minister points out that by 9 that point Mr McGrail knew that both the 10 Governor and the Chief Minister had lost 11 confidence in him, and why that was the 12 case.</p> <p>13 As to why he lost confidence in Mr McGrail, 14 the Chief Minister refers to five matters 15 which overlap to some extent but not entirely 16 with Mr Pyle's.</p> <p>17 First, we have the airport incident which I 18 have already referred to in the context of Mr 19 Pyle's evidence.</p> <p>20 Second, we have the collision at sea, which 21 again I have referred to in relation to Mr 22 Pyle. From the Chief Minister's perspective, 23 there was the added issue of a failure by Mr 24 McGrail, as the Chief Minister saw it, to 25 inform him of claims being made against the</p> <p style="text-align: center;">Page 35</p>
<p>1 him to a meeting at the convent with the 2 Chief Minister on 18 May 2020 and that they 3 informed him that they had both lost 4 confidence with Mr McGrail and then asked 5 the GPA to commence the section 34 Police 6 Act procedure. Again, I will go into that 7 procedure in more detail in due course but Dr 8 Britto confirms that the GPA was advised by 9 its lawyer, Mr James Neish KC, that its 10 procedure had been fundamentally flawed 11 and so it ultimately withdrew its invitation to 12 Mr McGrail to retire. The GPA wrote to Mr 13 McGrail's lawyers, Gomez & Co., informing 14 them of this on 5 June 2020, and on the same 15 day Mr McGrail's lawyers wrote in response 16 stating that given the unfair treatment which 17 Mr McGrail had been subjected to and the 18 improper pressure put on him to alter the 19 course of a live criminal investigation, Mr 20 McGrail felt he must apply for early 21 retirement. Dr Britto had no further 22 involvement and learned on 8 June 2020 that 23 Mr McGrail was negotiating his retirement. 24 We next received a statement from the Chief 25 Minister, the Honourable Fabian Picardo KC,</p> <p style="text-align: center;">Page 34</p>	<p>1 RGP in respect of the collision. Again, I will 2 cover this in more detail later in this 3 statement, but the Chief Minister says that 4 this prompted him to request a factual report 5 from Mr McGrail on incident under section 6 15.1(a) of the Police Act 2006.</p> <p>7 Third, there is the HMIC report which the 8 Chief Minister says he only read in detail 9 some time after publication and which he 10 found to be very damning. He considered 11 that the report reflected on Mr McGrail's 12 ability to maintain the efficiency and 13 effectiveness of the RGP and was not 14 confident that Mr McGrail could be the 15 person to address the HMIC 16 recommendations given his failure to act 17 since 2018.</p> <p>18 Fourth, there is the relationship with the 19 Gibraltar Police Federation which the Chief 20 Minister says did not cause him to lose 21 confidence in Mr McGrail but was a 22 demonstration of his very fractious and 23 difficult approach to relationships.</p> <p>24 Fifth and finally is what the Chief Minister 25 gives evidence as being by far the most</p> <p style="text-align: center;">Page 36</p>

<p>1 important factor in his loss of confidence 2 which was his dealings with Mr McGrail in 3 respect of the criminal investigation, 4 Operation Delhi. Unlike the other matters, 5 this was not something raised by the 6 Governor Mr Pyle as having caused a loss of 7 confidence on his part in Mr McGrail. 8 Operation Delhi is a name for an 9 investigation arising from a complaint by 10 Bland Limited relating to the alleged conduct 11 of two of its former employees, Mr Thomas 12 Cornelio and Mr John Berris. The 13 investigation included matters relating to the 14 actions of a civil servant, Mr Sanchez, who 15 had been the private secretary to the Deputy 16 Chief Minister, the Honourable Joseph 17 Garcia. The investigation involved a new 18 entity formed by the former employees of 19 Bland Limited, 36 North Limited, in which 20 the partners of Hassans law firm held shares 21 through another company, Astalon Limited. 22 The Chief Minister attributes his loss of 23 confidence to a meeting between him, the 24 Attorney General and Mr McGrail on 12 25 May 2020, the day when the RGP attended</p> <p style="text-align: center;">Page 37</p>	<p>1 to him, he lost all confidence in his probity 2 and integrity in their dealings and lost all 3 confidence generally in him as a result. 4 We received Mr McGrail's evidence on 20 5 June 2022. Mr McGrail's contention is that 6 he was placed under improper pressure by 7 the Attorney General and the Chief Minister 8 in relation to the Operation Delhi 9 investigation. Again, I will address this in 10 full detail when I deal with the criminal 11 investigation in substance but to summarise 12 on 12 May at the meeting at Number 6 13 Convent Place, the day of the proposed 14 execution of the search warrants, Mr McGrail 15 says that he received what he calls a 16 dressing-down of his 26-year law 17 enforcement career from the Chief Minister. 18 He felt that the Chief Minister was 19 questioning an operational decision on a live 20 criminal matter and that this was not 21 appropriate. He specifically alleges that the 22 Chief Minister said that there would be 23 consequences if the RGP were found not to 24 have conducted themselves properly by a 25 court, which he perceived as a threat. He</p> <p style="text-align: center;">Page 39</p>
<p>1 the offices of Hassans with a view to 2 executing search warrants on the office and 3 home of the senior partner of Hassans, Mr 4 James Levy KC. The Chief Minister says 5 that in that meeting after he had made clear 6 to Mr McGrail that he considered that the 7 RGP had not acted properly in seeking to 8 execute a search warrant in respect of Mr 9 Levy, Mr McGrail said, among other things, 10 that he had taken the advice of the Attorney 11 General, something which Mr Llamas 12 denied, and that Mr McGrail then insisted 13 that he had sought the advice of the Director 14 of Public Prosecutions, Christian Rocca KC, 15 which the Attorney General later established 16 by talking to the DPP was not true. 17 Finally, the Attorney General also made the 18 point that he and Mr McGrail had agreed that 19 there should be no further action on the 20 criminal investigation without them speaking 21 further and that Mr McGrail had acted 22 contrary to that agreement. 23 The Chief Minister's position is that once he 24 established that Mr McGrail, the most senior 25 law enforcement officer in Gibraltar, had lied</p> <p style="text-align: center;">Page 38</p>	<p>1 was also reprimanded by the Chief Minister 2 for not having made the Attorney General 3 aware of the team's intentions, and adds that 4 the Attorney General stated in a highly 5 emotional tone that Mr McGrail had betrayed 6 him by breaking the agreement they had 7 reached. Mr McGrail says that that was 8 incorrect; no such agreement had been 9 reached and in any event it was improper for 10 the Attorney General to interfere on 11 operational matters. Mr McGrail's position is 12 that the Attorney General misunderstood 13 what was agreed which was that Mr McGrail 14 would revert to him with the proposed 15 charges but not before all the key enquiries 16 were completed including the search 17 warrants, as it would not make sense to do so 18 before then. 19 Subsequent meetings on 13, 15 and 20 May 20 with the Attorney General and others caused 21 Mr McGrail to feel that he was being 22 muscled out of progressing the investigation 23 with the Attorney General enquiring whether 24 Mr Levy could be interviewed not under 25 caution and influencing the officers present</p> <p style="text-align: center;">Page 40</p>

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<p>1 to consider ways to treat Mr Levy in a way 2 other than as a suspect. I should say at this 3 juncture that this allegation is firmly denied 4 by the Attorney General. 5 Mr McGrail denies the allegations levelled at 6 him in respect of the airport incident, the 7 collision at sea, the HMIC report, the Police 8 Federation and the helicopter pilot assault 9 investigation. 10 On 22 May Dr Britto met with Mr McGrail 11 and informed him that the Chief Minister and 12 the Attorney General had lost confidence in 13 his ability to lead and manage the RGP. Dr 14 Britto also provided Mr McGrail with a letter 15 formally notifying him of the exercise of the 16 section 34.1 power inviting him to retire and 17 inviting representations from him but 18 providing limited detail. A second more 19 detailed letter followed in response to a 20 request by Mr McGrail for more detail as to 21 the reasons for the GPA's invitation. There is 22 no dispute that the Chief Minister amended 23 that second letter to add more information as 24 to his and Mr Pyle's reasons for their loss of 25 confidence. The pressure of the situation led</p> <p style="text-align: center;">Page 41</p>	<p>1 to Mr Pyle citing the immense pressure 2 placed on him and his family and the grave 3 realisation that he can no longer count on the 4 impartiality of the most senior members of 5 Gibraltar's Government, which left him with 6 no choice but to apply for early retirement 7 subject to agreement of appropriate terms. 8 Following the meeting with Mr Pyle on 8 9 June, Mr McGrail considered that his best 10 option was to find the best way out, given 11 that his mental health was very badly 12 affected and he did not want to jeopardise his 13 pension entitlements. 14 Those are the accounts from the four parties 15 who are part of the statutory process, and is 16 largely based on those four accounts that we 17 formulated our provisional list of issues 18 which I am now happy to rebrand as the list 19 of issues. The issues therefore for us to 20 consider over the next five weeks are: issue 21 one, the airport incident; issue two, the 22 helicopter pilot assault investigation; issue 23 three, the collision at sea; issue four, the 24 HMIC report; issue five, the conspiracy 25 investigation; issue six, the Federation</p> <p style="text-align: center;">Page 43</p>
<p>1 Mr McGrail to seek medical help and he was 2 diagnosed as suffering from clinical 3 depression. 4 On 5 June 2020 after the GPA withdrew its 5 invitation due to the flawed process, Mr 6 McGrail's lawyers wrote to the GPA stating 7 that given how unfairly he had been treated 8 and the improper pressure put upon him to 9 alter the course of a live criminal 10 investigation, he felt that he must apply for 11 early retirement. On the following day Mr 12 Pyle emailed a letter to Mr McGrail asking 13 him whether he would be tendering his 14 resignation and this caused Mr McGrail great 15 stress and concern. He was worried that Mr 16 Pyle was already exercising his powers under 17 section 13 of the Police Act to call for Mr 18 McGrail's resignation as opposed to 19 retirement in an ultra vires manner, and he 20 also feared that if he was forced to resign he 21 would lose all his pension rights. He says 22 that by that point the loss of confidence 23 between him and the Chief Minister, Mr Pyle 24 and the Attorney General was mutual and 25 therefore on 7 June 2020 his solicitor wrote</p> <p style="text-align: center;">Page 42</p>	<p>1 complaints. Issue seven did not emerge from 2 these statements but rather from a WhatsApp 3 message disclosed by the Chief Minister in 4 the body of his first affidavit which can be 5 found in bundle A page 198. This is a 6 message sent at 9.49 in the morning on 14 7 May 2020. If we can go to bundle A page 8 198, at the bottom of the page we can see the 9 WhatsApp message which is from the Chief 10 Minister to Mr Pyle. It reads as follows: "Hi, 11 this article has just appeared. A civil claim 12 has been filed in Spain in Selta(?) by the 13 families of the deceased in the incident with 14 the RGP off the east side. This is obviously 15 going to cause us huge issues, damages, 16 claims, political problems, etc. I am totally 17 there to support the officers on the front line. 18 I am starting to have huge concerns about the 19 senior management of the RGP. I will alert 20 to a particular matter when we meet but in 21 terms of the past few months alone, (1) this 22 case of deaths occasioned outside of BGTW 23 where the statute gives him no status as a 24 police officer. (2) the HMIC inspection 25 issues. (3) the Federation bullying</p> <p style="text-align: center;">Page 44</p>

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<p>1 allegations. (4) the incident where we had to 2 go in to bat for them despite all aspects 3 having clearly been mishandled by the RGP 4 and parts of MoD also. (5) the continuing 5 saga of the Alcaressa(?) claims. I think I will 6 be asking Ian McGrail to provide more detail 7 and in writing as to what happened here and 8 what they are going to do to engage with 9 these claims before there is any requirement 10 that they do so. I am starting to lose 11 confidence here. Best wishes, Fabian." 12 Neither the Chief Minister nor Mr Pyle refers 13 in their evidence to the Alcaressa claims as a 14 reason for loss of confidence, but given the 15 reference to them in this contemporaneous 16 communication, we consider that this matter 17 needed to be investigated. 18 Issue 8 is the letter of 29 May 2020 sent by 19 Mr McGrail's lawyers, Charles Gomez & 20 Co., to the GPA in response to the GPA's 21 invitation to them to make submissions on 22 the section 34 decision to invite him to seek 23 early retirement. The Chief Minister and the 24 Governor say that this letter cemented their 25 loss of confidence in Mr McGrail, and the</p> <p style="text-align: center;">Page 45</p>	<p>1 the order they are set out in the list of issues 2 that is in chronological order, except for 3 issues two and seven which I will take 4 together. 5 Issue one is the airport incident. This 6 incident occurred in early 2017 when Mr 7 Eddie Yome was Commissioner of Police. 8 Mr McGrail was Superintendent responsible 9 for crime and protective services. At the 10 time, Leicestershire Police had reasonable 11 grounds to suspect that serving member of 12 the British Forces stationed in Gibraltar was 13 in possession of indecent images of children 14 on his IT devices. The serviceman was 15 initially arrested and his IT devices seized by 16 the Joint Provost and Security Units. The 17 Ministry of Defence believed that it had the 18 power to make the arrest under the UK 19 Armed Forces Act 2006. Commissioner 20 Yome instructed Mr McGrail to investigate 21 the matter and report to him, and Mr McGrail 22 led the operation in close consultation with 23 Commissioner Yome. They sought legal 24 advice from the Attorney General and Senior 25 Crown Counsel, Ricky Rolder KC, who</p> <p style="text-align: center;">Page 47</p>
<p>1 Attorney General says that this letter 2 deepened his loss of confidence in Mr 3 McGrail. 4 Issue nine is Mr Pyle's stated intention as to 5 his power under section 13 of the Police Act 6 to call for the resignation of Mr McGrail as 7 well as the imminent commencement of Sir 8 David Steel as Governor. As we have heard, 9 Mr McGrail cites Mr Pyle's intention as 10 having a significant impact on his decision to 11 seek early retirement. 12 Finally, as issue ten we have the GPA's 13 process and decision and its subsequent 14 withdrawal of that decision which is what Mr 15 Pyle says drove him to seek to exercise his 16 power under section 13. 17 I will now introduce each of these issues for 18 this main hearing by setting out the 19 background to them in order to provide 20 context of the evidence that we shall hear 21 over the coming weeks. In some instances I 22 will also refer to some of the key 23 contemporaneous documents that will also be 24 the context for that live evidence as well as 25 the witnesses' affidavits. I will take them in</p> <p style="text-align: center;">Page 46</p>	<p>1 advised that the serviceman's arrest and 2 detention and the seizure of his devices had 3 been unlawful. The RGP's position was that 4 if the serviceman's computer contained 5 indecent images of children, they were now 6 in the jurisdiction of Gibraltar and in breach 7 of Gibraltar law. This gave rise to a firm 8 disagreement between the MoD and the RGP 9 as to who had jurisdiction over the 10 serviceman's actions, which continued 11 despite meetings and calls between Mr 12 McGrail and other senior officers on the one 13 hand, and Provost Marshal Chris Collins and 14 Chief of Staff Colonel Frank Green on the 15 other. Eventually the RGP learned that the 16 MoD planned to place the serviceman on a 17 plane to the UK at the earliest opportunity. 18 Commissioner Yome and Mr McGrail both 19 attest that Mr Yome made many unsuccessful 20 attempts to contact the commander of British 21 Forces at the time, Commodore Mike 22 Walliker, in order to agree a cooperative 23 approach and that despite repeated requests 24 the MoD failed to disclose their plans in 25 respect of the serviceman to the RGP.</p> <p style="text-align: center;">Page 48</p>

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<p>1 Commodore Walliker has given evidence 2 that his reaction was to wonder why the RGP 3 felt compelled to insert themselves 4 unnecessarily in his view into a criminal 5 investigation being conducted by another 6 police force. Commissioner Yome also 7 telephoned the Governor at the time, 8 Lieutenant General Edward Davis, and 9 informed him of the events that had 10 transpired. Things came to a head on 8 11 February 2017. The RGP learned that a 12 military aircraft had landed at RAF Gibraltar 13 and that the serviceman and exhibits were to 14 be removed from Gibraltar on the aircraft, 15 something which Commissioner Yome 16 thought was unacceptable. At the same time, 17 Mr McGrail applied for a search warrant in 18 the Supreme Court with a hearing listed for 3 19 p.m. The warrant was granted at 3.20 20 although the Chief Justice opined that it was 21 not a good day for law enforcement when 22 one law enforcement agency had to take 23 executive action against another agency in 24 this fashion. While Mr McGrail was at court, 25 Commissioner Yome instructed Richard</p> <p style="text-align: center;">Page 49</p>	<p>1 taken off the aircraft. The search warrant 2 was not executed and the exhibits were 3 handed over voluntarily to the RGP. Mr 4 McGrail maintains that the escalation of 5 tension was not down to lack of will on the 6 RGP's part to resolve the issues in a grown- 7 up manner but that there had been a serious 8 breach of trust and confidence by Colonel 9 Green, Provost Marshal Collins and Station 10 Commander Hutchison. The Governor at the 11 time did not and still does not think that the 12 RGP obstructing the runway to prevent a 13 military aircraft from taking off was an 14 appropriate way for the civil and military 15 authorities to conduct themselves and 16 believes that matters should not have reached 17 such a stage. However, he telephoned CBF 18 Walliker and instructed him to keep the 19 serviceman in Gibraltar until the RGP 20 completed preliminary enquiries and to hand 21 the computer over to the RGP. CBF 22 Walliker opines that the RGP's behaviour on 23 8 February 2017 was bizarre, potentially 24 dangerous and unbecoming, and PM Collins 25 is of the view that the encroachment onto the</p> <p style="text-align: center;">Page 51</p>
<p>1 Ullger, now Commissioner of Police, of 2 course, to attend the RAF station and 3 investigate whether the MoD intended to 4 remove the serviceman and exhibits. The 5 flight manifest did not record that the 6 serviceman or exhibits were on board. 7 Commissioner Yome then learned that the 8 serviceman and exhibits had already been 9 taken on board the aircraft and that the 10 aircraft was proceeding to its take-off 11 position, so he instructed RGP officers to 12 drive police vehicles onto the runway to 13 prevent it from taking off. There was, in 14 particular, confrontation by the north barrier 15 between Inspector Berrera and Station 16 Commander Liz Hutchison, who then spoke 17 to Mr Ullger over the phone. Mr Yome's 18 evidence is that Commodore Walliker 19 eventually phoned him and, although he 20 originally stated that neither the individual 21 nor the competing questions were on the 22 aircraft, once Mr Yome warned him that he 23 may be obstructing police he stated that the 24 aircraft would return to its stand. Shortly 25 afterwards, the person and computer were</p> <p style="text-align: center;">Page 50</p>	<p>1 runway was a vastly disproportionate act. 2 In terms of the aftermath of 8 February 2017, 3 it is clear that both sides felt that they were in 4 the right following the incident. As an 5 example, we can look at CBF Walliker's 6 statement which is in bundle A at 1386. At 7 paragraph 6 he says as follows: 8 "Notwithstanding my concerns over the 9 issuing of a warrant, general behaviour of 10 RGP officers on 8 February from the very 11 top down was bizarre, potentially dangerous 12 and unbecoming. When I arrived back on the 13 Rock I received a full debrief from my chief 14 of staff, the RAF Station Commander and the 15 Provost Marshal. I made my feelings known 16 to His Excellency the Governor and the Chief 17 Minister and upwards through my command 18 chain via a second Naval officer, Chief of 19 Staff, Joint Force Command, to the Joint 20 Force Commander, a four-star General. I 21 recommended that an inquiry be conducted 22 as a matter of urgency as the narrative on the 23 Rock appeared to eulogise the actions of the 24 RGP whilst demonising the actions of the 25 MoD. During an interview with the Chief</p> <p style="text-align: center;">Page 52</p>

<p>1 Minister a few days after the incident I was 2 able to correct a couple of errors of fact in 3 the RGP's report of the incident but I could 4 not alter his view that his police force had 5 behaved exceptionally well but that MoD 6 personnel had not. To his mind, the RGP had 7 saved the MoD from itself, and to my mind 8 they had behaved disgracefully. My opinion 9 has not changed since that date. The report 10 by Superintendent McGrail into the incident, 11 dated 10 February 2017, was given to me by 12 the Deputy Governor and it confirmed my 13 view that the RGP had not behaved correctly. 14 The report itself was poorly written and the 15 fact that Superintendent McGrail did not use 16 the correct spelling for the surname of the 17 RAF Station Commander caused me to 18 conclude that the administration of the RGP 19 was sloppy and suboptimal. When I 20 suggested that the report should be corrected 21 I was told that I should not have been given 22 access to it, a deeply worrying statement 23 from the then Commissioner of Police." 24 As for His Excellency the Governor at the 25 time, Lieutenant General Davis, if we can go</p> <p style="text-align: center;">Page 53</p>	<p>1 execute search warrants at the office of the 2 CBF, the Naval Provost officers, and the 3 RAF Station Commander's office, and those 4 were granted by the Stipendiary Magistrate. 5 Mr McGrail then advised Commissioner 6 Yome that there was sufficient evidence to 7 proceed against the Chief of Staff, the Naval 8 Provost and the RAF Station Commander, 9 and it was agreed that they should be 10 arrested. On 28 February 2017 the Attorney 11 General received a joint opinion from Lord 12 Pannick KC and Emile Neale, which advised 13 that the Provost Marshal's department did not 14 have the powers to arrest the serviceman in 15 Gibraltar, nor to seize his devices, and so 16 their actions were unlawful. On 1 March 17 2017 the RGP arrested Colonel Green, 18 Station Commander Hutchison and Provost 19 Marshal Collins on suspicion of obstructing 20 the police and attempting to pervert the 21 course of justice. They were the three most 22 senior MoD members of staff in Gibraltar. 23 Mr McGrail was involved in the execution of 24 the warrant at the British Forces Gibraltar 25 HQ, known as The Tower, and arrested</p> <p style="text-align: center;">Page 55</p>
<p>1 to A 1410 at the bottom of the page, 2 paragraph 14, he says as follows: "My sense 3 at the time was that there was a potential for 4 significant and long-term damage to relations 5 between Gibraltar and the UK. I therefore 6 saw my role as concentrating on getting both 7 parties back to working together in a 8 mutually supportive and appropriate way as 9 soon as possible. Accordingly, this was the 10 focus of my deputy, Mr Pyle, and I upon my 11 return to Gibraltar." 12 Over the page at paragraph 17, he says: "At 13 some stage during this period I also had a 14 telephone call with the then Minister for 15 Europe to give him my account of the airport 16 incident and to recommend that an 17 independent review be conducted. It was 18 then agreed between the Governor, 19 Commissioner Yome and CBF Walliker that 20 the RGP would investigate whether sexual 21 offences had been committed in Gibraltar. 22 Commissioner Yome also instructed Mr 23 McGrail to conduct a thorough investigation 24 into the actions of the senior MoD officers. 25 He sanctioned Mr McGrail's request to</p> <p style="text-align: center;">Page 54</p>	<p>1 Colonel Green. MoD property, personal 2 devices and motor vehicles were also seized. 3 CBF Walliker gives evidence on this too", 4 and that is at page 1387 of bundle A. He 5 says as follows at paragraph 8: "Turning to 6 the arrests, I can add little to any statements 7 that the Inquiry has presumably sought from 8 the three UK armed officers who were 9 subjected to unnecessary and 10 disproportionate treatment. It was an open 11 secret that the three officers were being 12 investigated on suspicion of conspiring to 13 pervert the course of justice and I had spoken 14 personally to both the Commissioner of 15 Police and Superintendent McGrail in the 16 days leading up to the arrests and confirmed 17 that all three were happy to report to New 18 Mole House accompanied by a solicitor. My 19 aim was to avoid a public arrest which I 20 believed to be in the interests of all. 21 (11.10) 22 My assessment is that the RGP intended to 23 humiliate the MD in as public a place as 24 possible and I personally witnessed RGP 25 officers giving each other high fives outside</p> <p style="text-align: center;">Page 56</p>

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<p>1 the tower as my chief of staff was being 2 placed under arrest. The Provost Marshall 3 was arrested in the arrivals section of 4 Gibraltar Airport as he stepped off an aircraft 5 following a short spell back in the UK. That 6 was wholly unnecessary. I personally 7 witnessed the behaviour of Superintendent 8 McGrail on the day of the arrests. It was 9 utterly unprofessional and from that moment 10 on I had lost any confidence in him. I felt 11 that he had acted with only self-interest in 12 mind and without a shred of integrity or 13 emotional intelligence. 14 Mr McGrail denies that CBF Walliker made 15 such an offer in terms of attending New Mole 16 House and maintains that all officers behaved 17 professionally throughout, displaying due 18 respect and courtesy. He also points out that 19 he continued to work with CBF Walliker 20 when he was appointed Commissioner, right 21 up to the end of the CBF's posting in 22 Gibraltar. 23 On 6 and 8 March emails were sent by CBF 24 Walliker and Chief of Staff Rear Admiral 25 Radakin apologising for the events of 8</p> <p style="text-align: center;">Page 57</p>	<p>1 RGP accepting that they had honestly but 2 erroneously believed that they were acting 3 lawfully and therefore were released from 4 arrest and the RGP gave them formal 5 warnings. 6 The examination of the serviceman's devices 7 in Gibraltar by the RGP failed to identify any 8 indecent images and he was effectively 9 cleared and released, but upon his return to 10 the UK forensic experts retained by the MOD 11 found more than 40,000 indecent images of 12 children, some at the most serious level. He 13 was ultimately convicted in the Crown Court 14 and sentenced to imprisonment. 15 On 9 May 2017 the Chief Minister requested 16 that the GPA inquire into the airport incident. 17 On 5 September 2017 after investigating the 18 matter and seeking information and 19 documents from Commission Yome, the 20 GPA came to the firm conclusion that the 21 actions of and the restraint shown by the 22 relevant RGP officers during the incident 23 were considered, deliberated, entirely 24 proportional and highly commendable. As 25 such we do not doubt the effectiveness and</p> <p style="text-align: center;">Page 59</p>
<p>1 February. Rear Admiral Radakin accepted 2 that the MOD's view at the time as to 3 jurisdiction was not correct and expressed 4 regret at the altercations between the forces. 5 Apology letters were subsequently issued by 6 each of the three arrested MOD personnel. 7 On the same date a member of FCO staff 8 emailed the Chief Minister, copying the 9 Attorney General Mr Pyle and the Governor, 10 stating that he had updated Sir Alan Duncan, 11 Foreign Secretary, as to the events and that 12 the Minister was very happy that we 13 appeared to have reached a good outcome 14 and had expressed his personal gratitude to 15 the Chief Minister and the Commissioner of 16 Police for helping to get to that point. On 10 17 March 2017 the Governor at the time sent an 18 email to Commissioner Yome, copied to the 19 Chief Minister and to the Attorney General, 20 offering his deep gratitude to Commissioner 21 Yome and his officers for the efficacy and 22 the manner in which the RGP had conducted 23 the investigation, which he described as a 24 very tough job very well done. 25 The officers were not ultimately charged, the</p> <p style="text-align: center;">Page 58</p>	<p>1 probity of the policing demonstrated by the 2 RGP in respect of the incident. We would 3 take the liberty of adding, though it may not 4 be our place to do so, that the actions of 5 certain MOD personnel in respect of the 6 incident deserve censure and that you should 7 consider whether a full inquiry ought to be 8 undertaken by a body independent of the 9 RGP and the MOD so that lessons may be 10 learned from this incident. 11 Two junior MOD personnel made a 12 complaint to the Police Complaints Board 13 two years later, in August 2019. Those 14 complaints centred around Detective Chief 15 Inspector Tunbridge's execution of the 16 warrant but also complained about comments 17 allegedly made by Mr McGrail which he 18 denied having made. Those complaints were 19 dismissed on the grounds of insufficient 20 evidence and the GPA deemed the decision 21 not to qualify for an appeal. 22 Finally, Lieutenant General Davis confirms 23 that it was ultimately considered that an 24 independent review would be detrimental to 25 the significant progress that had been made</p> <p style="text-align: center;">Page 60</p>

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<p>1 in strengthening the relationship and 2 cooperation between the RGP and the MOD 3 in the aftermath of the incident. 4 In terms of where the airport incident is 5 relied upon and by whom in this inquiry, this 6 issue is particularly relied upon by Mr Pyle. 7 If we can turn to Pyle 1 at paragraph 21.4 to 8 21.11, which is page 246, starting in 21.4 he 9 says in the second sentence: 10 "These events naturally became public and 11 caused considerable consternation given the 12 close and friendly nature of the constitutional 13 relationship between the UK and Gibraltar 14 and indeed the very friendly relations that 15 have always existed between the MOD and 16 Gibraltar." 17 Jumping ahead to halfway down 21.5: 18 "One of them, the Provost Marshall, was 19 with quite unnecessary drama removed from 20 a civilian commercial flight from the UK as 21 soon as it landed in Gibraltar. Colonel Green 22 was arrested in front of his superior, the 23 Commander of British Forces Gibraltar 24 Commodore Mike Walliker. Station 25 Commander Hutchison was arrested in front</p> <p style="text-align: center;">Page 61</p>	<p>1 Their report exonerated the GPA. The GPA 2 methodology, however, was in my opinion 3 seriously flawed, not least as they did not 4 conduct any interviews with the MOD nor 5 did they seek any information from them." 6 Jumping to the bottom of the page 21.10, he 7 says: 8 "Issues over the forensic capabilities of the 9 RGP also came to light during this incident. 10 The RGP insisted that they conducted the 11 forensic examination of the suspect laptop 12 and phone, et cetera. I cannot recollect the 13 exact timeframe but remember being told 14 that the RGP investigation should only take a 15 couple of weeks, after which the equipment 16 would be handed over to MOD. Some two 17 months or so later, with delays resulting from 18 the RGP forensic officer being off work with 19 stress, the RGP pronounced there was no 20 incriminating evidence on the suspect 21 computer, which was then handed over to the 22 MOD. Within two weeks MOD forensic 23 examination identified the most serious of 24 imagery on the computer, resulting in the 25 accused being found guilty and given a</p> <p style="text-align: center;">Page 63</p>
<p>1 of a team at RAF Gibraltar's station 2 headquarters. The manner of the arrests were 3 unpleasant. Also on 1 March the RGP 4 entered HM Naval Base and seized and 5 removed service personnel equipment 6 including computer terminals and a white 7 board. They then took one officer to her 8 home to take possession of her personal 9 phone. These actions were taken by the RGP 10 notwithstanding that the incident had been 11 resolved. 12 "I raise my concerns over the RGP's above 13 behaviours and in particular Mr McGrail's 14 formally on numerous occasions with the 15 GPA, the Governor and the Chief Minister 16 and with the Foreign Commonwealth and 17 Development Office. Some of the actions 18 and behaviours were described to me by 19 senior MOD people as a cross between the 20 Sweeney and Life on Mars and extremely 21 and unnecessarily discourteous. I pushed 22 hard for a review, not an inquiry, into the 23 incident to expose the RGP behaviours. This 24 was accepted by the Chief Minister, who 25 tasked the GPA to conduct their own review.</p> <p style="text-align: center;">Page 62</p>	<p>1 custodial sentence. Over 1,000 images were 2 recovered. 3 "It is difficult to overestimate the strain 4 which the relationship between the MOD and 5 Gibraltar was placed and the damage done to 6 it by this incident and the RGP conduct in 7 relation to it. It required ministerial 8 intervention in both UK and Gibraltar and 9 military intervention at the highest level in 10 the UK to draw a line under it." 11 If we can now turn to A186, this is the 12 evidence of the Chief Minister in relation to 13 the airport incident. I am just quoting some 14 paragraphs from there. At 21 he says: 15 "Mr McGrail led this investigation and the 16 operations in question. It became apparent to 17 me that the manner in which Mr McGrail had 18 led the investigation was unnecessarily 19 institutionally confrontational in respect of 20 the MOD. While I believe that the policing 21 objectives were meritorious in the pursuit of 22 the investigation in question and I gave the 23 RGP my full and public support in that 24 respect, that objective could and should have 25 been more quickly, effectively and easily</p> <p style="text-align: center;">Page 64</p>

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<p>1 achieved by a more collaborative and 2 conventional route. 3 "I was clear in my view that while the MOD 4 had not handled the matter well either, Mr 5 McGrail had led the RGP into a dangerous, 6 difficult and damaging situation for Gibraltar 7 in terms of its relationship with the MOD, 8 which would and subsequently did require a 9 lot of my time and effort to mitigate. In fact, 10 working with the Attorney General Michael 11 Llamas QC and the now Chief of Defence 12 Staff, formerly First Sea Lord Tony Radakin 13 we were able to put in place new procedures 14 to ensure that there was never a reoccurrence 15 of events such as those which Mr McGrail's 16 approach had resulted in." 17 In paragraph 24 he emphasises the vitally 18 important relationship with the MOD and 19 then goes on to say at 25: 20 "Very considerable damage was done to the 21 relationship with the MOD by Mr McGrail's 22 handling of and conduct during this incident. 23 Despite this and despite the political and 24 diplomatic efforts required to resolve it, I felt 25 that Mr McGrail was not displeased with the</p> <p style="text-align: center;">Page 65</p>	<p>1 team: 2 "Ian, I have tried calling CBF, goes into 3 answering machine. Told HE," 4 his Excellency 5 "and CM, HE wants a pragmatic approach 6 and to speak to CBF. I have texted CBF, 7 waiting for him to call me. CM wants us to 8 go for the jugular." 9 If we can go to C142, please, this is an email 10 by the Chief Minister of 8 February 2017 to 11 Commissioner Yome, Mr McGrail and others 12 of the senior management team as well as the 13 then Minister for Justice Neil Costa and the 14 Attorney General. It reads as follows: 15 "Gents, I just want to say as a Gibraltarian 16 how proud I am of the work you have 17 properly done today. Asserting our 18 jurisdiction properly and reasonably for all 19 the right reasons and within the law is what 20 future generations would have expected us to 21 do. It is a pity the MOD have not been more 22 elegant in the way they have approached this. 23 We have taught them a number of lessons 24 today. You have done Gibraltar proud. 25 "There are a number of obvious questions</p> <p style="text-align: center;">Page 67</p>
<p>1 manner of his actions and not for one 2 moment remorseful of the consequences for 3 Gibraltar and that his leadership of the 4 operation had resulted in." 5 In response Mr McGrail maintains that he 6 was merely carrying out his duties diligently 7 and professionally and made efforts to 8 deescalate the situation. He refers to the 9 GPA's report to the Chief Minister which 10 commended the RGP's actions as well as the 11 advice of London counsel obtained by the 12 Attorney General and the apologies given by 13 Rear Admiral Tony Radakin and the three 14 senior ranking military officials. He 15 describes the Chief Minister's criticisms as 16 false and self-serving and refers to a number 17 of communications by the Chief Minister at 18 the time, both public and directly to the RGP. 19 He refers, for example, to a message from 20 Commissioner Yome to the RGP senior 21 management team Whatsapp group with 22 instructions on 7 February 2017 on the eve of 23 the incidents. If we can go to bundle C, page 24 757, please. this is that message. Just reading 25 from it, it is from Commissioner Yome to the</p> <p style="text-align: center;">Page 66</p>	<p>1 arising as to how some people behaved 2 today, whether the people lied to you or were 3 lying to themselves is going to be a relevant 4 question in coming days. We must not 5 exacerbate matters but we cannot allow 6 people to get away with having misled the 7 RGP or having obstructed you. The law is 8 the law for all of us and an Armed Force 9 uniform does not suspend application of the 10 law to an individual or of whatever rank. 11 That is what the UK taught us and we are not 12 going to allow them to talk us out of it when 13 it applies to some, but those are issues for 14 tomorrow. 15 "You have enjoyed my full support today at 16 every stage of the way. Excellent work. 17 Please pass my sentiments if not my email to 18 those who have been on the front line today." 19 Mr McGrail also refers to a meeting with the 20 Chief Minister and Assistant Commissioner 21 at the time Ullger in mid-February 2017 22 when the Chief Minister thanked and 23 congratulated them for the manner with 24 which they had dealt with the incident, 25 describing the three senior MOD officials as</p> <p style="text-align: center;">Page 68</p>

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<p>1 "fucking idiots" and expecting them to face 2 due process for their actions. 3 He also refers to bundle C207, which is an 4 email of 3 March from the Chief Minister to 5 Mr Yome and the Attorney General two days 6 after the arrests, which reads as follows: 7 "Eddie, Michael, I have now read this and 8 Michael's response. My impression and clear 9 understanding is that the MOD have now 10 fully understood the position and the 11 nonsense and bravado being displayed by 12 fools such as those you refer to below in fact 13 illustrates how and why we have found 14 ourselves in this unnecessary unpleasant 15 situation. If it requires another turn of the 16 screw, which I will not hesitate to support 17 you in, it will once again have been brought 18 by those who failed to recognise the need to 19 show proper and genuine contrition and 20 respect for the RGP and for our constitution. 21 Failing to respect our constitution is not to 22 fail to respect just Gibraltar, it is to fail to 23 respect the UK Parliament and the same 24 monarch that these clowns in uniform have 25 sworn an oath to."</p> <p style="text-align: center;">Page 69</p>	<p>1 Pyle's inert activity in relation to the incident 2 contributed to the unfortunate escalation, 3 something with which Mr Pyle disagrees. He 4 asserts that Mr Pyle knew from very early on 5 that the UK services police had no 6 jurisdiction and so his recollection is biased. 7 He denies that there was any unnecessary 8 drama and insists that the officers were very 9 discreet and accommodating. He also alleges 10 that Mr Pyle never raised any concerns about 11 the incident. 12 Finally, while he acknowledges that the RGP 13 failed to find indecent images on the devices 14 and that this was embarrassing, he says that 15 cannot be laid at his door and does not 16 detract from the MOD's unlawful actions. 17 Having summarised the facts of that incident, 18 I turn to consider whether that was a reason 19 or circumstance. This incident of course 20 took place in early 2017, long before Mr 21 McGrail was appointed Commissioner. It 22 was not mentioned by Dr Britto in his 23 meeting with Mr McGrail on 22 May nor in 24 the letters from the GPA to Mr McGrail of 25 the same day. None of the three letters from</p> <p style="text-align: center;">Page 71</p>
<p>1 Just to jump ahead by two paragraphs: 2 "I can also tell you that Gibraltar will not be 3 home for the people in question for long and 4 we won't be blocking the tarmac for a 5 moment to delay the plane when the time 6 soon comes for them to wave goodbye to the 7 best place these idiots have ever had the good 8 fortune to live in their petty lives. Good 9 riddance, and goodbye won't come soon 10 enough. I can tell you one thing, Eddie, 11 Gibraltar, its Chief Ministers, its government 12 and its people are proud of their police and 13 the SMT Commissioner and their Attorney 14 General. The UK as a whole conversely has 15 been embarrassed by its senior ranks on the 16 rock, as can be seen by the reports in the 17 newspapers of actions taken here. I would 18 rather be in your shoes than theirs." 19 Mr McGrail refers also to an email which he 20 says was drafted by the Chief Minister for 21 Commissioner Yome to send to the CBF on 5 22 March 2017 and a media interview where the 23 Chief Minister congratulated the RGP's 24 actions. 25 In response to Mr Pyle, he alleges that Mr</p> <p style="text-align: center;">Page 70</p>	<p>1 the Chief Minister, Mr Pyle and the Attorney 2 General refer to it directly, although Mr Pyle 3 does refer to already existing concerns, 4 which may well be a reference to this. 5 It was, however, mentioned by the Chief 6 Minister in his text at the time on 14 May, as 7 I said earlier, where he refers to the runway 8 incident where we had to go into to bat for 9 them, despite all aspects having clearly been 10 mishandled by the RGP and parts of the 11 MOD also. It does appear from Mr Pyle's 12 evidence that the airport incident and reports 13 he received may have coloured his mind as to 14 his impression of Mr McGrail, even though 15 he does not appear to have raised it during 16 the application process for Commissioner of 17 Police in 2018. 18 So that deals with issue one. I just wonder 19 whether now is an opportune time to have 20 our mid-morning break before I turn to issues 21 two and seven. 22 THE CHAIRMAN: Yes, I think that is a 23 good idea. But it is a short break -- 24 MR SANTOS: Five minutes. 25 THE CHAIRMAN: ... not a coffee break.</p> <p style="text-align: center;">Page 72</p>

<p>1 MR SANTOS: Yes. 2 THE CHAIRMAN: Okay. 3 (Adjourned for a short time) 4 THE CHAIRMAN: Well done, everyone 5 back on time. Yes, Mr Santos. 6 MR SANTOS: Mr Chairman, we move now 7 to issues two and seven, the helicopter pilot 8 assault investigation and the Alcaidesa 9 claims. I can deal with these two issues 10 fairly briefly. Both again predate Mr 11 McGrail's appointment as Commissioner of 12 Police and neither was mentioned in the 13 meeting between Dr Britto and Mr McGrail 14 on 22 May 2020. The GPA's letters to Mr 15 McGrail of the same day also do not mention 16 them, or do the three letters, again other than 17 perhaps as part of Mr Pyle's already existing 18 concerns. In terms of the Alcaidesa claim, of 19 course I have explained how that arises, 20 which is in the Whatsapp message of 14 May 21 2020. 22 Just dealing with the issue two first, the 23 helicopter pilot assault investigation. As I 24 said, this investigation followed an incident 25 on 11 March 2017, hot on the heels of the</p> <p style="text-align: center;">Page 73</p>	<p>1 investigation being conducted whatsoever 2 and that Mr McGrail had subsequently told 3 him that the helicopter pilot was drunk and 4 abusive and therefore deserved what he got. 5 The Inquiry sought disclosure from the RGP 6 in relation to this and established that there 7 was an investigation with 18 witness 8 statements obtained and a forensic report 9 prepared but ultimately the officer in charge 10 concluded that there was insufficient 11 evidence and the chances of a conviction 12 were non-existent. Based on the evidence 13 available, it appears that there was a 14 thorough and professional investigation. 15 Mr McGrail's evidence is that his 16 involvement was limited to receiving 17 updates. He describes Mr Pyle's evidence as 18 absurd and insulting and denies that he would 19 have ever said what former CBF Walliker 20 claims he said. Mr Pyle stands by his 21 evidence, so this is something that we will 22 have to address in questioning. 23 Issue seven is the Alcaidesa claims, as I say. 24 This issue only appears in the list of issues 25 due to the reference by the Chief Minister to</p> <p style="text-align: center;">Page 75</p>
<p>1 airport incident and arrests, when two 2 members of the British Royal Navy serving 3 as helicopter crew were assaulted and 4 suffered injuries. Two men were identified 5 on CCTV and arrested but following 6 investigation the RGP concluded that the 7 likelihood of a conviction was non-existent. 8 Mr Pyle refers to this in his first affidavit at 9 paragraph 22, if we can go to bundle A, page 10 248, please. He says as follows: 11 "In March 2017 during a stopover in 12 Gibraltar, a helicopter pilot and another 13 member of the crew were assaulted in a bar 14 in Gibraltar, the pilot so severely that his 15 cheek or jawbone was fractured, which 16 prevented him from flying. Despite 17 witnesses and I believe CCTV, charges were 18 never pressed. It took the RGP several 19 weeks to state that the forensic evidence they 20 had collected was not conclusive. The 21 widely held belief in MOD circles is that the 22 RGP did not investigate the crime correctly 23 to protect those involved in the attack." 24 Former CBF Walliker addresses this too, 25 asserting that there is no evidence of any</p> <p style="text-align: center;">Page 74</p>	<p>1 it in his Whatsapp message of 14 May 2020 2 listing things which were causing him to start 3 to lose confidence in the senior management 4 of the RGP. It is not relied on by the Chief 5 Minister of Mr Pyle in their evidence. 6 As background, this incident goes back to 7 August 2010 when officers of the RGP 8 entered a flat in Alcaidesa, Spain, on two 9 occasions without a warrant and removed 10 property belonging to the tenant. Mr 11 McGrail was not one of the RGP officers 12 involved. The Inquiry has looked into this 13 issue, including the RGP's internal 14 investigation into the matter. The 15 investigation culminated in a report 16 recommending disciplinary proceedings for 17 discreditable conduct against seven officers. 18 On 26 November 2018 five individuals, 19 including two serving RGP officers, were 20 sentenced in a Spanish court in relation to the 21 incident. We are not aware of any claims in 22 a civil sense, although there were, as I say, 23 criminal proceedings. The matter was 24 reported upon in local media in June 2019 25 but again this does not feature in the Chief</p> <p style="text-align: center;">Page 76</p>

<p>1 Minister's or Mr Pyle's evidence and so we 2 will seek to clarify the position in 3 questioning. 4 So much for issues two and seven, now 5 turning to issue three, the collision at sea. 6 On 8 March 2020 a collision took place 7 between an RGP vessel and a RIB following 8 a nine minute high speed chase. The vessel 9 was suspected of either engaging in or 10 assisting illicit activities. The best 11 information from later reconstructions is that 12 the collision occurred at about 3.38 with 13 coordinates N36 9.96 minutes and W5 12.51 14 minutes. This was at least 5.1 nautical miles 15 inside Spanish territorial waters. One of the 16 persons aboard the RIB was killed 17 immediately on impact and a second 18 individual was seriously injured, later dying 19 of those injuries. During the chase and 20 collision the RGP vessel's GPS and chart 21 plotter were turned off, meaning that the 22 vessel's automatic identification system or 23 AIS was not operative. 24 The RGP arranged for two independent 25 investigations into the events, both arriving</p> <p style="text-align: center;">Page 77</p>	<p>1 a Whatsapp message from Mr McGrail 2 informing me of a collision at sea involving 3 an RGP vessel, as a result of which two 4 people were killed. I replied at 9.25 thanking 5 him for his message and expressing the hope 6 that his men were okay. I asked whether he 7 needed help from HMG. 8 "Whilst walking my dog past New Mole 9 House at around midday on 8 March I 10 decided to call in and ask to see Mr McGrail. 11 He was there and agreed to see me. Given 12 the possibility of a diplomatic and political 13 situation with Spain about this incident, 14 which being external affairs would be the 15 responsibility of the Governor and Her 16 Majesty's Government of Gibraltar, my 17 primary concern was to establish the location 18 of this incident and whether it had occurred 19 in Spanish territorial waters. I therefore 20 asked Mr McGrail about the location and 21 whether it was inside or outside BGTW. He 22 replied with a slightly flippant waving of his 23 hands: 'Could be in and could be out, it's 24 difficult to tell at night'. 25 "Following that meeting with Mr McGrail I</p> <p style="text-align: center;">Page 79</p>
<p>1 on the Rock on 13 May 2020. First, a team 2 from the Directorate of Professional 3 Standards of the Metropolitan Police, led by 4 Detective Chief Inspector Gary Smith, and 5 second from Captain Richard Michael, an 6 independent investigator with Solis Marine 7 Consultants. 8 In terms of reliance on this issue, this is a 9 matter which features very high on Mr Pyle's 10 list, possibly even at the top, in terms of 11 reasons for his loss of confidence in Mr 12 McGrail. If we can go to his witness 13 statement first of all, it is at A251 paragraph 14 25. Just reading from there: 15 "Without doubt, the most serious incident 16 that was the tipping point for my growing 17 concerns changing to recognising that things 18 could not go on as they were and that change 19 was needed arose in relation to this incident, 20 which set in motion a chain of events that led 21 me to lose confidence in the abilities of the 22 Commissioner to effectively lead his police 23 force and indeed caused me to lose 24 confidence in his probity. 25 "At 6.05 on Sunday 8 March 2020 I received</p> <p style="text-align: center;">Page 78</p>	<p>1 sent him a Whatsapp message at 13.33 hours 2 on 8 March in the following terms: 'Thanks 3 for the briefing. I'll do a quick note for 4 London for when it hits the press. Line will 5 be: investigation ongoing, Spanish national 6 from Cueta - did you say one person was 7 Portuguese? Not sure in whose waters 8 incident took place. RGP seeking assistance 9 from UK police authorities. No assistance 10 needed from FCO at this stage.' 11 "Mr McGrail replied by two Whatsapp 12 messages, also on 8 March, at 13.46 stating: 13 'Yes, all correct, indeed one was Portuguese,' 14 and at 13.47 stating: 'Trying to clarify exact 15 position of the collision.' 16 "On the evening of 8 March the Attorney 17 General and I agreed that we needed to see 18 Mr McGrail the next day to get details and 19 clarity of the incident, not least given the 20 Gibraltar EU exist negotiations with Spain 21 which were then ongoing and which were 22 scheduled to continue that week. I said I 23 would set up a meeting and did so. 24 "On 9 March the Attorney General and I met 25 Mr McGrail at New Mole House. I again</p> <p style="text-align: center;">Page 80</p>

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<p>1 asked Mr McGrail about the location of this 2 incident. Mr McGrail said he was still not 3 sure. I queried why the GPS AIS systems 4 could not provide this information. Mr 5 McGrail replied that the instruments had 6 been switched off. I asked why the officers 7 would do that. Mr McGrail replied: 'You 8 know what it is like in the heat of the 9 moment'. I said I did not, adding that surely 10 standard operating procedures dictated that 11 such equipment should always be on. I said 12 that this was a vitally important issue given 13 the state of negotiations with Spain. 14 "On 11 March 2020 I sent an email at 18.58 15 to Mr McGrail asking whether we are clearer 16 as to where the collision took place. London 17 keen to know whether inside or outside 18 BGTW and if latter by how far. Mr McGrail 19 responded by email on the same day at 19.07 20 stating that: 'We are getting there on 21 establishing exact coordinates of where 22 collision took place. We are tying up some 23 loose ends and probing from WHSS and 24 should be able to confirm soon. It is highly 25 probable that it did occur outside BGTW.'</p> <p style="text-align: center;">Page 81</p>	<p>1 chaired by Mr McGrail was advised at 09.40 2 by DCI John Field that the collision occurred 3 36 degrees 9 minutes north and 5 degrees 12 4 minutes west, approximately 6.54 east of 5 Playa de Santa Barbara and that at 10.10 Mr 6 McGrail had briefed the Attorney General to 7 that effect. This obviously placed the 8 location of the incident well within Spanish 9 territorial waters. 10 Furthermore, at 09.49 on 8 March Mr 11 McGrail had sent a Whatsapp to the Chief 12 Minister stating that the information suggests 13 that the collision took place outside BGTW, 14 approximately 6 nautical miles east off the 15 runway Santa Barbara beach. 16 On 11 March 2020 at 7.09 Mr McGrail sent a 17 Whatsapp to the Attorney General saying 18 that: 19 "HE, Nick, is asking for confirmation of 20 where collision took place as London are 21 keen to know. I have informed him along the 22 same lines that you advised CM, i.e. that it is 23 highly probable that it happened outside 24 BGTW. This was a reference to a Whatsapp 25 sent by the Attorney General to the Chief</p> <p style="text-align: center;">Page 83</p>
<p>1 We are getting it plotted which will provide a 2 better understanding in terms of distanced 3 from BGTW.' 4 "My strong sense and suspicion at the time 5 that Mr McGrail was answering my 6 questions prior to 11 March about the 7 location of the incident was that Mr McGrail 8 was deliberately withholding from me 9 important information about the nature of his 10 understanding of the location of this incident, 11 which were matters of prime importance to 12 myself as Governor and to HMG in terms of 13 our responsibility for Gibraltar's external 14 affairs. My suspicions were later confirmed 15 when I discovered from sight of the section 16 15 report prepared by Mr McGrail for the 17 Chief Minister that Mr McGrail had 18 information very early on 8 March, just a few 19 hours after the incident, which suggested and 20 that had caused him to believe with 21 reasonable clarity that the incident had 22 occurred well inside Spanish waters." 23 He refers to an email timed at 8 March at 24 10.11 from Paul Richardson to Mr McGrail 25 discloses that a Gold command meeting</p> <p style="text-align: center;">Page 82</p>	<p>1 Minister copied to Mr McGrail on 8 March at 2 11.40 in which the AG informed the Chief 3 Minister that it was virtually certain it was 4 outside BGTW eastern side opposite runway. 5 "Accordingly, Mr McGrail's email to me of 6 11 March at 7.07 hours referred to in 7 paragraph 24.7 above was the first time, 8 nearly three full days later, that Mr McGrail 9 disclosed to me information that he had had 10 since 09.40 hours on 8 March, a few hours 11 after the incident, and had communicated at 12 the time to others, namely the Attorney 13 General and the Chief Minister. He had 14 thereby caused me to report to London on the 15 basis of incomplete, indeed erroneous, 16 information and less information than was 17 available." 18 On to the next paragraph: 19 "On 12 March 2020 I received an update 20 from Mr McGrail in which he confirmed that 21 not only did the collision take place in 22 Spanish waters, so did the whole of the 23 pursuit that preceded it. No part of the 24 incident had taken place in British Gibraltar 25 Territorial Waters."</p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 The next paragraph: 2 "I had in fact learned on either 18 or 19 3 March from a debrief by Acting Detective 4 Superintendent Gary Smith of the 5 Metropolitan Police that all indications were 6 that the incident happened in Spanish waters, 7 possibly up to three miles out of BGTW." 8 Then finally over the page Mr Pyle refers to 9 the Solis report: 10 "The Solis report was commissioned by RGP 11 to investigate the collision. The draft report 12 to the Commissioner of Police is dated 30 13 April 2020. The report found among other 14 things that: (a) pursuit methods are therefore 15 developed and understood by the cockswains 16 but without RGP Marine Section 17 management standards or proper established 18 oversight in place; (b) Marine Section 19 managers do not apply effective oversight 20 into how their patrols are being carried out; 21 and (c) there was no proper training in 22 pursuit of suspect vessels for the cockswain 23 who would be required to take evasive 24 action." 25 It is also a matter which the Chief Minister</p> <p style="text-align: center;">Page 85</p>	<p>1 the occurrence of the incident in Spanish 2 territorial waters in the early hours of 8 3 March 2020. I was first alerted to the 4 incident by Mr McGrail himself by 5 Whatsapp message at 06.05," 6 and the message reads: 7 "CM, we are dealing with a critical incident. 8 One of our boats has been involved in a 9 collision with a smuggling RIB with four on 10 board. Two on the smuggling RIB are 11 fatalities. Our crew are uninjured but clearly 12 shaken and shocked. I am invoking post- 13 incident procedures and planning for 14 consequence management. Once I have 15 further updates I will let you know." 16 "I replied at 07.24 hours and further more 17 detailed Whatsapp exchange occurred 18 between us that day as follows. I made clear 19 in my questions that I wanted to know if 20 there was an involvement of Spanish law 21 enforcement." 22 Just looking at the message three from the 23 bottom at 07.41 from the Chief Minister, it 24 reads: 25 "Also, what time did it occur and was it</p> <p style="text-align: center;">Page 87</p>
<p>1 refers to, albeit with a different emphasis. If 2 we can turn to 194, at the bottom of the page, 3 paragraph 56: 4 "The matter of the collision at sea in Spanish 5 territorial waters on 8 March 2020 between 6 an RGP fast launch and a suspect vessel in 7 which two Spanish nationals died has caused 8 serious financial, legal and political problems 9 and consequences for Gibraltar. I understand 10 that this incident is referred to by the RGP as 11 Operation Kram." 12 Just over the page and skipping to paragraph 13 58: 14 "Since early in my tenure of office as Chief 15 Minister, I have made it clear to successive 16 commissioners that I do not consider it 17 jurisdictionally appropriate for the RGP to 18 operate outside of BGTW other than in the 19 instances already set out by me. I have 20 expressed similar sentiments to the collective 21 Customs in respect of the use of their 22 maritime assets for law enforcements. 23 Customs had not had any instances reported 24 to me of operations outside of BGTW. I was 25 very concerned when I received the report of</p> <p style="text-align: center;">Page 86</p>	<p>1 firmly within BGTW or questionable?" 2 Over the page, at 07.43, the third message 3 down, Mr McGrail responds: 4 "Collision occurred at approximately 03.40 5 hours. Location still to be confirmed." 6 In the next paragraph the Chief Minister 7 says: 8 "In my above Whatsapp of 07.41 hours I had 9 asked Mr McGrail specifically about the 10 location of the events, asking if it was firmly 11 within BGTW or questionable, and I set out 12 specifically that we should be transparent 13 about what happened. With sensitive, 14 ongoing negotiations in Spain we could not 15 afford to have a situation where we failed to 16 be transparent about what might have 17 happened. Importantly, by 09.49 hours on 18 the day of the incident, some two and a half 19 hours after the first communication with me, 20 I was told by Mr McGrail that the incident 21 had occurred approximately 6 nautical miles 22 east of Gibraltar, north of the easterly 23 runway, i.e. clearly in Spanish territorial 24 waters." 25 Then we see the message exchange at 09.49,</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 first from Mr McGrail to the Chief Minister: 2 "CM, the information suggests that the 3 collision took place outside BGTW 4 approximately 6 NM," 5 nautical miles, 6 "east off the runway Santa Barbara beach," 7 and then: 8 "When a death arises from police contact it is 9 best practice to engage with independent 10 investigating team and I am studying how to 11 achieve this." 12 The reply from the Chief Minister says: 13 "Okay. We need to liaise with AG on this 14 and ensure we are transparent on this." 15 "Yes, agreed." 16 "Any necessary additional expenditure will 17 be approved," 18 to which Mr McGrail replies: 19 "Many thanks." 20 Over the page, the Chief Minister deals with 21 the point that he emphasises, which is claims 22 arising from the collision at sea and his 23 exchanges and meeting with the governor. 24 Just reading through this: 25 "On 14 May 2020, two days after the</p> <p style="text-align: center;">Page 89</p>	<p>1 dealings with me. Now I had found out from 2 a newspaper that there were claims being 3 made in foreign courts, which was no 4 surprise as I had expected they would come, 5 involving the RGP and of which I had not 6 been made aware of despite my 7 responsibilities for public finance. The self- 8 explanatory Whatsapp exchange is set out in 9 its entirety hereunder, as follows." 10 I have already read that message out, but 11 relevantly it refers to - I will read the first bit, 12 which says: 13 "This article has just appeared. A civil claim 14 has been filed in Spain in (Sotha?) by the 15 families of the deceased in the incident with 16 the RGP off the east side. This is obviously 17 going to cause us huge issues - damages, 18 claims, political problems, etc. I am totally 19 there to support the officers on the front line. 20 I am starting to have huge concerns about the 21 senior management of the RGP. I will alert 22 to a particular matter when we meet but in 23 terms of the past few months alone: (1) this 24 case of deaths occasioned outside of BGTW 25 where the statute gives them no status as</p> <p style="text-align: center;">Page 91</p>
<p>1 meeting in my office in respect of Operation 2 Delhi, which had resulted in my loss of 3 confidence in Mr McGrail, an article 4 appeared in a regional newspaper in (Sotha?), 5 the home of one of the deceased in the 6 collision, which set out that claims were 7 being filed by the survivors and the 8 relatives/dependants of the deceased and 9 homicide charges brought against the 10 relevant serving officers of the RGP." 11 He provides a translation of that article. 12 "The article appeared barely 48 hours after 13 the meeting I held in my office with Mr 14 McGrail in which I had determined that he 15 had lied to me over the issue of the advice he 16 had received from the DPP in relation to the 17 search warrant executed at the home and 18 office of James Levy. I wrote to the 19 Governor about this article and set out my 20 concerns about it in a Whatsapp exchange 21 which resulted in our agreeing to meet. By 22 this stage I was very concerned about the 23 leadership of the RGP. I had already had to 24 think hard about my view of Ian McGrail and 25 his probity as a result of the integrity of his</p> <p style="text-align: center;">Page 90</p>	<p>1 police officer." 2 He finishes, after listing other matters: 3 "I think I will be asking Ian McGrail to 4 provide more detail and in writing as to what 5 happened here and what they are going to do 6 to engage with these claims before there is 7 any requirement that they do so. I am 8 starting to lose confidence here. Best wishes, 9 Fabian." 10 Then he provides a link to the article. The 11 response by Mr Pyle says: 12 "Agree. As we thought at the time, wrong 13 appointment. Remind me to tell you about 14 the recruitment process, which was abject. 15 Should we meet tomorrow after or before 16 Platinum?" 17 The Chief Ministers responds: 18 "After Platinum best from my point of view. 19 I am also concerned about ensuring our 20 coroner gets this right. We cannot afford to 21 be anything other than a hundred per cent 22 transparent on this and show that 23 accountability is the hallmark of what we do 24 as a government, even if that means dragging 25 RGP kicking and screaming to that higher</p> <p style="text-align: center;">Page 92</p>

<p>1 standard. Who polices the police? is such 2 overused shorthand but it is important." 3 Then if we skip over to page 202, paragraph 4 75 at the bottom of that page: 5 "On 20 May at 13.48 hours I was sent an 6 email by the Attorney General forwarding to 7 me a communication from the then 8 Superintendent Cathal Yeats. In that email 9 Mr Yeats is seeking funding for legal 10 representation for the RGP in respect of the 11 damages claims communicated to the Force 12 and arising from the collision at sea. I 13 responded to that email by writing to the 14 Attorney General within half an hour, 14.14 15 hours, setting out my concerns that, on a 16 matter as fundamental as that, Mr McGrail 17 had not been in contact with me. 18 (12.00) 19 I stated the following specifically: 20 'I think it is entirely inappropriate for this 21 matter not to have been raised with me in the 22 first instance by the Commissioner. This 23 matter raises issues of fundamental human 24 rights, the right to life, potential payment of 25 huge amounts of damages, the potential</p> <p style="text-align: center;">Page 93</p>	<p>1 and all other aspects of this matter. In the 2 interim I do not authorise the incurring of 3 any expenditure in free briefing out of this 4 matter at this stage. Please refer both the 5 GPP and Superintendent Yeats to my 6 response." 7 The Chief Minister also forwarded a copy of 8 that response to the Governor, Mr Pyle. He 9 then says at 77: 10 "My response to the Attorney General was 11 forwarded by him to Mr Yeats and he 12 forwards it on to Mr McGrail. Mr McGrail 13 responded to me some hours later at 1753 14 hours, also on 20 May and his email stated as 15 follows: 16 'Dear CM, 17 I refer to the below thread which includes 18 your response to the AG and which has been 19 forwarded to me. You are evidently very 20 disappointed but I want to reassure you that it 21 has never been my intention to withhold 22 anything from you concerning this very 23 serious matter. I provided you with an 24 overview on the day of the incident and then 25 engaged with the AG as per your suggestion</p> <p style="text-align: center;">Page 95</p>
<p>1 extradition and liberty of serving police 2 officers being at stake, the issue of standard 3 operating procedures which may be in place 4 and the management thereof, all of that is in 5 addition to the huge potential political 6 exposure that arises for Gibraltar as a result 7 thereof and the concomitant and dangerous 8 issues of sovereignty and the United Nations 9 Convention on the law of the sea. Indeed, it 10 is difficult to think of an issue as 11 fundamental as this affecting the RGP, 12 certainly in the time I have been in office.' 13 There is no consideration in the email below 14 of claims or offences going beyond the 15 officers crewing the vessel which is also, in 16 my view, an issue that may also need further 17 consideration. As you know, it comes 18 against the backdrop of the very unflattering 19 report from the HMIC FRS. I am therefore 20 surprised and greatly disappointed that these 21 issues have not been the subject of a detailed 22 submission to me by the Commissioner in 23 respect of the events in question and the 24 issues which now arise. I shall therefore be 25 writing directly to the Commissioner on this</p> <p style="text-align: center;">Page 94</p>	<p>1 and have been doing so ever since. I will 2 hopefully be in a better position to brief you 3 on the full details of the incident once I 4 receive the report of the findings of the 5 independent investigation team we called in. 6 This team has to return early to the UK 7 because of the Covid-19 crisis and because of 8 the lockdown in the UK. They have been 9 unable to progress the matter as 10 expeditiously as we all would have wanted. 11 The letter from local counsel representing the 12 families and suggesting a future claim for 13 damages was only received a few days ago, 14 which is what triggered our inquiry with the 15 DPP only yesterday concerning legal 16 representation. I am of course available to 17 discuss all the points you allude to at your 18 earliest convenience.' 19 It seemed to me that Mr McGrail was making 20 excuses for not having provided me with 21 timely information about the claims and I 22 was even more disappointed to learn that the 23 RGP had received the damages claims some 24 days earlier and I had not been told. In fact, I 25 had been left to read the start of the process</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 of the potential claims in the newspaper 2 reports when the RGP had clearly already 3 received notice of these. In the end, it would 4 be my responsibility as Minister of Public 5 Finance to find the funding for the inevitable 6 payment of damages that would eventually 7 likely result and to deal with the political 8 fall-out and public reactions and 9 explanations. Shortly after I received the 10 email from Mr McGrail I forwarded it to the 11 Governor. In forwarding that email I added a 12 note which read as follows: 13 'Please see below which I have just received 14 from the COP. Given the seriousness of the 15 matter, I would appreciate the opportunity to 16 discuss with you my intended response. I 17 consider this is a trigger, the only appropriate 18 response to which will be the exercise of my 19 powers under section 15(1)(a).'</p> <p>20 In the circumstances and having considered 21 the matter further, I concluded that I had no 22 choice but to exercise my power under 23 section 15(1)(a) of the Police Act to seek a 24 factual report from the RGP on the collision 25 at sea. I was required by section 15(2) of the</p> <p style="text-align: center;">Page 97</p>	<p>1 damages claims from the media before we 2 were informed by the RGP. We also could 3 see that whilst I had been told almost 4 immediately after the incident that it had 5 occurred several nautical miles outside of the 6 BGTW, the same information had been 7 withheld from the Governor, despite the 8 nature of this incident and his responsibility 9 in respect of external relations." 10 Jumping one paragraph to 85: 11 "I received the factual report I requested by 12 email on 28 May at 1621 hours within the 13 seven day period of time I had provided in 14 my letter of request." 15 Then to the next paragraph: 16 "It is clear from this timeline of 17 communications that I was told one thing 18 about the location of the incident hours after 19 it had occurred and the Governor was not 20 given the same information until three days 21 later. As I set out in paragraph 6 above, 22 matters of external relations remain the 23 formal responsibility of the Governor under 24 the Gibraltar constitution subject to a 25 requirement for consultation with the Chief</p> <p style="text-align: center;">Page 99</p>
<p>1 Police Act to keep the Governor informed of 2 any exercise by me of that power which I did 3 and discuss the exercise of the power with 4 him." 5 Jumping ahead to paragraph 82, reading from 6 the quotation of the section 15 request it 7 states: 8 "As a result in the light of the above, I have 9 no confidence that you have expeditiously 10 provided me with all the information and 11 documentation that I should have been 12 provided with in the context of the 13 seriousness of the events in question. In 14 particular, I have no confidence that either 15 the Government or the office of the Governor 16 with whom I am discussed this matter at 17 length, have had the timely candour and 18 transparency we would have expected from 19 you in the circumstances arising in respect of 20 this incident. My discussions with the 21 Governor had led us both to conclude that we 22 had no confidence that we were being 23 provided with all information in respect of 24 the collision at sea. We now knew that we 25 had found out about serious and substantial</p> <p style="text-align: center;">Page 98</p>	<p>1 Minister. In respect of this very serious 2 matter, Mr McGrail was failing to provide 3 information to the Governor on a matter of 4 external relations and, to make matters 5 worse, was providing one version of the truth 6 to me and another to the Governor. This 7 further sustained our loss of confidence in Mr 8 McGrail as Commissioner of Police. 9 Mr McGrail denies the criticism and says that 10 Mr Pyle knew from very early on that the 11 collision had most likely occurred in Spanish 12 waters based on contact between Mr 13 McGrail, Mr Pyle and the Attorney General. 14 In particular he makes the point that he was 15 in very regular contact with the Attorney 16 General who was feeding information 17 upwards." 18 Mr Pyle's response to this is at A264. He 19 says at 19: 20 "I note that a general theme running 21 throughout Mr McGrail 3 is that Mr Llamas 22 the AG was my legal adviser and that Mr 23 McGrail therefore assumed that the AG was 24 relaying to me all of the information that he 25 was passing to the AG, including information</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 about the location of the collision on a timely 2 basis. As to this I comment as follows. As 3 the evidence shows, I asked IM directly on 4 numerous occasions if he was able to confirm 5 whether the incident had taken place in 6 Spanish waters. On 11 March 2020, three 7 days after the incident, he was still telling 8 that he was getting there. The simple fact is 9 that I repeatedly asked IM a simple and 10 direct question to which he did not reply 11 candidly with the best information available 12 to him. He withheld highly relevant 13 information from me. The first response I 14 was given by IM 'could be in could be out', 15 gave me the impression that it was on the 16 line, so in or out of BGTW by less than 100 17 yards. The fact is that it was out of BGTW 18 by three miles so not even close." 19 Jumping one paragraph: 20 "Furthermore, the AG is not the Governor's 21 lawyer in the sense of a solicitor/client 22 relationship in a matter such that the 23 information conveyed to the solicitor is 24 thereby conveyed to the client. The AG is a 25 legal adviser to the Governor in the sense</p> <p style="text-align: center;">Page 101</p>	<p>1 collision and communication between the 2 RGP, the Chief Minister and the Attorney 3 General and Mr Pyle about legal claims 4 arising from the incident. The standard 5 operating procedures at the time provided 6 that marine crews would only operate outside 7 BGTW when called upon to attend a 8 lifesaving situation. 9 If we can go to bundle C, page 135, this is an 10 email from Inspector Albert Buhagiar on 8 11 June 2015. It is to the marine section and it 12 says: 13 "Gents, the following are the revised 14 instructions to be adhered to forthwith. (1) 15 previous instructions allowing crews to leave 16 BGTW at the invitation of the Guardia Civil 17 whilst in pursuit of a vessel and with the 18 authority of the duty inspector or other senior 19 officers are revoked. RGP vessels will not 20 operate outside BGTW other than in support 21 of a search and rescue operation led by the 22 Gibraltar port authority. In summary, PMB 23 will not operate outside BGTW in pursuit of 24 criminal activity. PMB may operate outside 25 BGTW in support of search and rescue</p> <p style="text-align: center;">Page 103</p>
<p>1 that he provides legal advice to the Governor 2 on matters of Gibraltar law and constitution 3 as the Governor may request of him. The 4 information conveyed to the AG is not 5 thereby conveyed to the Governor, nor can 6 anybody reasonably assume that whatever is 7 said to the AG will be conveyed by him to 8 the Governor. IM knew that I was repeatedly 9 myself asking him for this information 10 directly." 11 Mr McGrail also makes the point that the 12 Metropolitan Police investigation team did 13 not criticise him or uncover any management 14 failings. The detailed factual history relating 15 to this issue has been addressed most fully in 16 the undisputed facts agreed by core 17 participants and what we did in our written 18 submissions was to focus on the three matters 19 that are identified in the list of issues, namely 20 whether faults or failings in operational 21 instructions or procedures of the RGP 22 contributed to the collision, the 23 communication between the RGP and the 24 Chief Minister, the Attorney General and Mr 25 Pyle about the location of the chase and</p> <p style="text-align: center;">Page 102</p>	<p>1 operations coordinated by the Gibraltar Port 2 Authority." 3 If you can move now to bundle B, page 1703, 4 the second paragraph on that page which is 5 from the Solis Report, records another email 6 sent by Inspector Buhagiar on 17 February 7 2016 which says: 8 "I would like to remind all of the current and 9 existing instructions that under no 10 circumstances are you allowed to police 11 patrol outside the limits of BGTW. The only 12 exception would be in a GPA led SAR 13 (search and rescue) operation or of a vessel 14 or persons in distress. In any case, you 15 should first seek authority from either 16 myself, Sergeant Stone or the duty officer. 17 Furthermore, the AIS on the vessel being 18 used will be switched on at all times." 19 Then if you can go to C5251, this is a Marine 20 Section Instructions published on 8 July 2016 21 and it says at number 3: 22 "International waters high seas, officer not 23 authorised to operate outside BGTW and in 24 international waters unless when responding 25 to a situation as described in paragraph 3(a)</p> <p style="text-align: center;">Page 104</p>

26 (Pages 101 to 104)

<p>1 or (b) - 2 (a) participating in a search and rescue 3 operation; 4 (b) responding to an incident where there is 5 an imminent and serious risk to life. 6 4. Spanish territorial waters. Officers are 7 not authorised to operate outside BGTW and 8 in Spanish waters unless when responding to 9 a situation as described in paragraph 4(a) - 10 (a) participating in a search and rescue 11 operation at the invitation of Spanish 12 authorities. 13 This was sent to the Marine Section by 14 Sergeant Stone on 16 September 2016." 15 The Misconduct Report prepared by 16 Detective Chief Inspector Smith states that 17 Marine Sections officers were reminded of 18 the instructions on 21 January 2020. There is 19 also a record of a daily taskings group 20 meeting on 19 April 2017 which says 21 "Marine Section only use vessels with AIS." 22 Given the position of the collision and 23 pursuit, it appears clear that the RGP vessel 24 was contravening the formal policy position, 25 but an important question for questioning is</p> <p style="text-align: center;">Page 105</p>	<p>1 with in private. This is a redaction made at 2 the request of the RGP, which is not 3 controversial and agreed by everybody, but I 4 will not deal with it as it is redacted. 5 If we can move to 1705, 2.10.7: 6 "Anecdotal evidence from the RGP Marine 7 Support Unit's senior marine mechanic stated 8 that hot pursuits into Spanish waters could be 9 permitted with the approval of the Guardia 10 Civil." 11 I should say that in the final version of this 12 report, this was amended to "had historically 13 been permitted with the approval of the 14 Guardia Civil, however this was not the case 15 at the time of the incident." 16 Then, if we go to 1713, 3.2.3, the final 17 sentence says: 18 "It would also have been clear to the officers 19 with significant experience of operating in 20 the area that they were in Spanish waters and 21 well to the north of BGTW." 22 Then 1716; 23 "While the limits of BGTW were known to 24 the crew of Sir John Chapple, the 25 engagement chase and collision with the</p> <p style="text-align: center;">Page 107</p>
<p>1 whether those officers' actions reflected a de 2 facto practice of RGP vessels entering 3 Spanish waters for pursuits and, if so, 4 whether Mr McGrail knew or ought to have 5 known about this practice, and if he knew, 6 whether he sanctioned the practice. The draft 7 Solis Report dated 30 April 2020 made 8 several relevant findings. If we can look at it 9 at bundle B1692, at 1.8.6 reads as follows: 10 "The radar was turned on and the GPS chart 11 plotter was left off as officer one stated that 12 the equipment reduced his night vision. The 13 chart plotter also activated the vessel's AIS 14 which was therefore also not turned on." 15 Then over to page 1700, 2.3.1: 16 "Sir John Chapple was fitted with chart 17 plotter, however the GPS that provided the 18 navigation data to the radar plotter and the 19 chart plotter was turned off. No navigation 20 data was recovered from the vessel. No AIS 21 data was transmitted and therefore the GPS 22 position, speed over the ground, heading and 23 course over the ground were not recorded." 24 Just jumping two pages to 1702 please, this is 25 a matter which actually I will have to deal</p> <p style="text-align: center;">Page 106</p>	<p>1 suspect RIB were all carried out at least 1.5 2 nautical miles beyond the limits of BGTW in 3 Spanish waters. While the limits of BGTW 4 were not visible to the coxswain on the chart 5 plotter, the area of the northern limit of 6 BGTW is generally indicated by reference 7 the lights from Gibraltar Airport. As Sir 8 John Chapple was significantly to the north 9 of the airport and off the Spanish port, it 10 would have been clear to the officers with 11 significant experience of operating in the 12 area that they were in Spanish waters and 13 well to the north of BGTW." 14 Then 1731 please, just at the bottom: 15 "There has been no evidence produced to 16 support officer one's statement that the 17 brightness of the chart plotter interfered with 18 night vision or that the alleged issue had 19 previously been reported to managers. There 20 was a clear instruction that the vessel's AIS 21 system should always be turned on when in 22 service and neither officer one nor officer 23 two complied with that instruction." 24 I should make clear that in the final Solis 25 Report this was amended to read, "The</p> <p style="text-align: center;">Page 108</p>

27 (Pages 105 to 108)

<p>1 dimming facility of the chart plotter was 2 tested and found to dim the display as would 3 be expected for use in nighttime navigation 4 and would, if set correctly, not have 5 interfered with the coxswain's night vision." 6 Then over the page, 3.12.1: 7 "The chart plotter and the GPS units that fed 8 the radar display were turned off for the 9 duration of the deployment. With no GPS 10 and no chart plotter displayed the two marine 11 officers were reliant on visual navigation and 12 the radar picture." 13 Then the final sentence: 14 "There were apparently no guidance 15 instruction orders as to what navigation 16 equipment was to be used when on patrol 17 either in daylight or at night." 18 Then 3.12.3: 19 "By not using the available navigation 20 equipment while navigating at night with no 21 position monitoring other than by eye, the 22 crew of Sir John Chapple showed that a poor 23 standard of navigation was being practised at 24 the material time. The instructions were 25 clear that the area of operation for law</p> <p style="text-align: center;">Page 109</p>	<p>1 in pursuits was learned on the job, watching 2 more experienced coxswain as they trained. 3 Pursuit methods are therefore developed and 4 understood by the coxswains but not without 5 RGP marine section management standards 6 or proper established oversight in place." 7 Then over the page to 3.17.5: 8 "From the instruction provided to the marine 9 crews, the marine section senior officers 10 were aware and accepted that the high speed 11 pursuits were being routinely carried out. 12 Instructions had been issued for the use of 13 PPE when faced with missiles being thrown. 14 They must also have been aware that pursuits 15 also strayed into Spanish waters and records 16 should exist internally or with the Guardia 17 Civil of any previous operations taking place 18 where boundaries were crossed." 19 That sentence was changed in the final 20 version, it was deleted and replaced with a 21 sentence that read: 22 "The RGP maintained a database of police 23 actions which included when chases of 24 suspect vessels occurred and recorded 25 whether these events were inside or outside</p> <p style="text-align: center;">Page 111</p>
<p>1 enforcement was solely within BGTW. It is 2 not known why the coxswain and the two 3 officers headed into Spanish waters to 4 intercept suspect RIB and to continue to 5 chase the RIB in Spanish waters until the 6 time of the collision. The instructions stated 7 that they will pursue suspect vessels in a 8 determined though safe manner within our 9 territorial waters and liaise with our Spanish 10 counterparts. The instructions also stated 11 that the safety of the crew was a priority, 12 however the crew of Sir John Chapple placed 13 themselves so close to the suspect RIB as to 14 place themselves and the crew of suspect 15 RIB in considerable danger. The crew of Sir 16 John Chappel did not comply with 17 instructions that were issued." 18 Over the page 3.15.1: 19 "The two qualified marine crew had training 20 in professional skills and for pacing its speed. 21 However, there was no training in carrying 22 out pursuits of suspect vessels who would be 23 taking evasive action to avoid being 24 apprehended. While numerous pursuits have 25 been carried out, the coxswain's experience</p> <p style="text-align: center;">Page 110</p>	<p>1 of BGTW. An internal review by the RGP 2 showed that between 1 April 2017 and 1 June 3 2020 of the 59 entries that involved a chase, 4 two, including this case, had concluded 5 outside BGTW." 6 The report continues: 7 "From the evidence reviewed to date, it 8 appears that the marine section managers did 9 not apply effective oversight into how their 10 patrols were being carried out." 11 Then over the page, 4.2: 12 "Management Oversight 13 The RGP's marine section's management 14 structure and operation requires further 15 examination. With the instructions and 16 guidance provided to the response teams 17 oversight of operations, patrols and high 18 speed pursuits and the management's review 19 processes should be better understood. The 20 operational arrangements, both formal and 21 informal, that exist between the RGP and the 22 Guardia Civil requires further investigation." 23 Both of those paragraphs were deleted in the 24 final reports. Then further down, 4.3.1, the 25 second sentence:</p> <p style="text-align: center;">Page 112</p>

28 (Pages 109 to 112)

<p>1 "A study of AIS data over a period of several 2 months would provide an insight into the 3 operating patterns of these vessels and the 4 frequency at which they operate outside 5 BGTW. A preliminary analysis has 6 identified that AIS data is available to 7 provide an effective study." 8 Then 1738, finally: 5.11: 9 "From the evidence reviewed to date, it 10 appears that marine section managers did not 11 have an effective oversight of how their 12 patrols were being carried out." 13 But that was replaced in the final version 14 with: 15 "Marine section managers could have had a 16 more effective oversight of how their patrols 17 were being carried out." 18 The summary of evidence prepared by 19 Detective Chief Inspector Smith on 1 20 December 2020 is at B2891. Again on this 21 page actually, all that I refer to is the 22 penultimate paragraph which says: 23 "The GPS chart plotter was left off due to the 24 bright backlight which is safer not to have on 25 in order to be able to see more totally at</p> <p style="text-align: center;">Page 113</p>	<p>1 agencies in the area have a degree of 2 professional cooperation, primarily regarding 3 tackling organised criminal networks 4 (OCNs). This is evidenced by the fact that 5 the Guardia Civil are able to communicate 6 directly with the RGP marine section." 7 Skipping a paragraph: 8 "RGP instructions regarding BGTW are very 9 clear. RGP vessels must only enter Spanish 10 territorial waters at the invitation of the 11 Spanish authorities and only for the intention 12 of search and rescue." 13 Then 2919, towards the bottom: 14 "Gibraltar. Both officers are qualified RGP 15 mariners and evidence shows that they knew 16 or ought to have known that there were 17 standing orders to use the navigational 18 equipment on board marine section vessels 19 when deployed at sea." 20 Then over the page, half way down, 2920: 21 "The manner in which the SJC was navigated 22 whilst in pursuit of the RIB is considered to 23 be far below the standard expected of trained 24 mariners." 25 The next paragraph:</p> <p style="text-align: center;">Page 115</p>
<p>1 night." 2 That is the evidence of officer one. Then, if 3 we can go to 2910, previous pursuits: 4 "A review was conducted on a number of 5 chases at sea which took place involving 6 RGP marine vessels between 1 April 2017 7 and 1 April 2020. This identified 192 OB 8 entries. Of these 59 entries involved a chase 9 at sea. With regard to BGTW, 57 of the 10 chases were terminated due to arriving at the 11 limit of territorial waters. One officer was 12 known to be involved in 18 of the chases, 13 though it should be noted that these are only 14 reports were made by him or on which he 15 was mentioned. It is possible that colleagues 16 have recorded chases he was involved in but 17 not named. Based on these figures, it is clear 18 that the officer was aware of his obligation to 19 remain inside BGTW, as many of the chases 20 he was involved in were terminated prior to 21 leaving territorial waters." 22 Then 2915 please: 23 "While there are no formal arrangements 24 between the Governments of Spain and 25 Gibraltar, it is clear that the law enforcement</p> <p style="text-align: center;">Page 114</p>	<p>1 "Following the collision, no first aid was 2 provided to the crew of the RIB and no 3 distress signal was sent, May-Day." 4 The following day, 2921: 5 "The relevant acts we are concerned with 6 here appear to be the wilful failure to follow 7 the correct procedures by not using the 8 navigation equipment on board the SJC." 9 Then 2924, these are organisational learning 10 recommendations. Number 3 says: 11 "It is recommended Royal Gibraltar Police 12 ensure their police marine vessel's automated 13 identification system and global positioning 14 system equipment is always activated when 15 the vessels are deployed at sea in accordance 16 with relevant laws. 17 4. It is recommended Royal Gibraltar Police 18 introduce additional or updated training for 19 police marine section officers, staff, crew, to 20 include pursuit scenarios. 21 ... 22 6. It is recommended Royal Gibraltar Police 23 issue renewed instructions to the police 24 marine section officers, staff, crew to not 25 leave British Gibraltar territorial waters</p> <p style="text-align: center;">Page 116</p>

<p>1 unless for search and rescue missions, life-saving." 2 Similar findings were made in the 3 Misconduct Report dated 4 June 2021 and a 4 new Police Vessel Patrol and Pursuit Policy 5 was issued on 23 October 2020, reiterating 6 that officers are not authorised to enter 7 Spanish waters except for search and rescue 8 at the invitation of Spanish authorities and 9 only when incidents are being coordinated by 10 the port authority. 11 At the Coroner's Inquest, the officers 12 maintained that they believed at all times that 13 they were within BGTW. That Inquest 14 resulted in a finding of unlawful killing and 15 has subsequently been the subject of a 16 judicial review which was dismissed, but is 17 now pending a judgment in the Court of 18 Appeal. 19 Looking at the location of the chase and 20 collision and the history of facts relating to 21 that and in particular the communications 22 between the CPs, the collision, as I say, 23 occurred on the early morning of 8 March 24 2020 and was first reported to the RGP via 25</p> <p style="text-align: center;">Page 117</p>	<p>1 reading to the words ...) stating that 2 according to COS radar tracing of the 3 incident, the approximate coordinates of the 4 collision were 36O9N 512W, which was 5 approximately 6.54 miles east of Santa 6 Barbara Beach. GC stated that this data was 7 subject to confirmation by technical 8 extraction from their SIV system. DCI Field 9 contacted and informed of this." 10 Then the next entry is at 0940 hours: 11 "DCI Field advises that collision occurred at 12 36 degrees 9 minutes north, 5 degrees 12 13 minutes west. Approximately 6.54 east of 14 Playa de Santa Barbara." 15 Which is said to be from Superintendent 16 Richardson's notes dated 8 March 2020 at 17 1011 hours. 18 (12.30) 19 Can we go to 1680 now, please. This is an 20 email of 1011 in the morning which was 21 referred to by Mr Pyle in his evidence. It is 22 an email from Superintendent Richardson to 23 Mr McGrail, Mr Ullger, Mr --- and DCI 24 Field. It says that a Go Meeting was 25 convened at the Commissioner's office on 8</p> <p style="text-align: center;">Page 119</p>
<p>1 the duty inspector at New Mole House at 2 3.48. Mr McGrail's evidence is that the 3 command team met at 5 in the morning in Mr 4 McGrail's office and DCI Field provided a 5 verbal briefing. At 6.05 Mr McGrail sent 6 identical WhatsApp messages to the CM and 7 to Mr Pyle. If we can go to B86 we will find 8 them. The first message there at 605, which I 9 have already read out, notifying the Chief 10 Minister of the incident. If we jump ahead to 11 the next page, there is that message that Mr 12 Picardo, the Chief Minister, refers to: 13 "Also what time did it occur and was it 14 firmly within BGTW or questionable?" 15 And the answer: 16 "Collision occurred at approximately 0340 17 hours location to be confirmed." 18 If we can go to B1303 now, this is Mr 19 McGrail's timeline that he prepared as part of 20 the section 15 report. If we now go to 1319, 21 entry 125 is a message on 8 March at 0935 22 hours, and its source is said to be a file note 23 from Detective Inspector Chipolina. It says 24 as follows: 25 "Call received by DI Chipolina from (...</p> <p style="text-align: center;">Page 118</p>	<p>1 March at five in the morning attended by the 2 Commissioner of Police, Superintendent 3 Richardson and DCI Field and the brief is "a 4 collision at sea occurred at approximately 5 0240 today between the RGP Bravo and 6 suspect vessel following a chase. Incident 7 believed to have occurred at approximately 3 8 nm within BGTW." Then under "actions," 9 number 1, "critical incident declared." Two, 10 "COP consider calling UK force to 11 investigate." Six, "Advise (a) CM, (b) HE," 12 so acknowledging the need to advise both of 13 those parties as well as others. Then 7, 14 "Advise Windmill Hill and port to secure 15 evidence." 16 Then over the page at 13, "Need to determine 17 location of incident ASAP," and then 14, 18 "Slower time actions, extract training records 19 for PNB crew, extract standing instructions 20 for chase at sea." 21 Then there is a log which says that the Go 22 group was convened at five and at 0605 23 there is reference to the Commission of 24 Police briefing his Excellency and the Chief 25 Minister and then at 0940 there is an entry</p> <p style="text-align: center;">Page 120</p>

30 (Pages 117 to 120)

<p>1 which says, "JF," a reference to Field, DCI 2 Field, "advises the collision occurred 36 3 degrees nine minutes north, five degrees 12 4 minutes west, approximately 6.54 east of 5 Playa de Santa Barbara." Then at 1010 the 6 Commission of Police briefs Michael Llamas 7 --- sorry, the AG, Michael Llamas. 8 DCI Field's evidence is that he briefed Mr 9 McGrail, Paul Richardson and the AG on the 10 suspected exact coordinates at 1105 although 11 it appears clear from the email that we have 12 seen that he must have told Mr McGrail at 13 0940 or, at any rate, by 1011 when the email 14 was sent. Mr McGrail's evidence is that 15 despite having those coordinates, he was 16 nonetheless working on a provisional 17 hypothesis that the pursuit had taken place in 18 BGTW and that this was based on the 19 standing instructions in place at the time 20 which I have just referred to. 21 If we can go back now to B87, which is the 22 WhatsApp messages exchanged with the 23 Chief Minister, there we have at 0949, 24 halfway down the page, Mr McGrail to the 25 Chief Minister, "CM the information</p> <p style="text-align: center;">Page 121</p>	<p>1 and halfway down it records that the GC 2 stated that the approximate coordinates 3 supplied previously to DI Chipolina stood 4 and that the SIVE technicians had yet to 5 extract and validate such data. They 6 confirmed that the approximate collision 7 location was 6 to 6.5 miles off Santa Barbara 8 beach and again this emerges from a file note 9 from DI Chipolina but I emphasise that that 10 is the following day at ten in the morning. 11 Going back to 8 March, with apologies for 12 that detour, at ten past ten Mr McGrail gave a 13 briefing to the Attorney General at New 14 Mole House. The Attorney General's 15 recollection is that Mr McGrail referred to 16 the fact that the chase had straddled BGTW 17 and Spanish waters and it seemed highly 18 likely that the collision had occurred in 19 Spanish waters but he was waiting for formal 20 technical confirmation of this. 21 At B1345 towards the bottom, we have a 22 message which was sent by the Attorney 23 General to Mr McGrail or it appears to have 24 been intended for the Chief Minister. It is 25 not clear whether it was indeed sent to the</p> <p style="text-align: center;">Page 123</p>
<p>1 suggests that the collision took place outside 2 BGTW, approximately 6 nm east off the 3 runway of Santa (Inaudible - Spanish) 4 beach." That is at 0949. At 0953 he says, 5 "When a death arises from police contact, it's 6 best practice to engage with an independent 7 investigating team and I am studying how to 8 achieve this." The Chief Minister responds 9 very shortly afterwards, "Okay, we need to 10 liaise with AG on this and ensure we are 11 transparent on this." "Yes." "Agreed, any 12 additional expenditure will be approved," to 13 which Mr McGrail replies, "Many thanks." 14 So here we have Mr McGrail, nine minutes 15 after being briefed by DI Chipolina or DCI 16 Field as to coordinates, informing the Chief 17 Minister of the updated position. 18 Then if we go to 1321, please, which at 145 19 there is an entry at 10 for 9 March which is 20 the following day --- I have jumped ahead 21 but we may as well deal with it while we are 22 here. That is the following day, a meeting 23 held at HQ between Comandante Paulo of 24 (Inaudible - Spanish) Captain Gomez 25 (Inaudible) and DI Chipolina and DI Pereira,</p> <p style="text-align: center;">Page 122</p>	<p>1 Chief Minister but it reads as follows, "Been 2 in New Mole for the last hour or so, 3 cooperation RGP Spanish LEAs very good, 4 new RGP press release today, will say good 5 cooperation with ES, drug related activity, 6 two deaths are Spanish nationals of North 7 African descent, investigation continues. PR 8 [which is a reference to the press release] 9 will not say where incident occurred, but it is 10 virtually certain it was outside BGTW 11 eastern side opposite runway, it also seems 12 that part of the chase was within BGTW." 13 Then over the page at 133 --- actually we will 14 come back to that shortly because the 15 Attorney General says he is not clear that he 16 actually sent that to the Chief Minister but it 17 does show the language that was used at the 18 briefing. Mr Pyle joined the briefing at 1215 19 and he says in his statement that he just 20 happened to be walking his dog past the 21 station at that time. Mr McGrail says that Mr 22 Pyle did not raise any particular query and 23 that Mr Pyle, on the other hand, says that this 24 is a point where he asked about the location 25 and whether it was inside or outside BGTW</p> <p style="text-align: center;">Page 124</p>

1 and Mr McGrail replied with a slightly
 2 flippant waving of his hands, "could be in
 3 and could be out, it's difficult to tell at night."
 4 The AG's evidence is that Mr McGrail told
 5 Mr Pyle he was still not certain where the
 6 collision had occurred.
 7 Then we can go to this message that I have
 8 just referred to at 1346 which is on 8 March
 9 2020 where Mr Pyle messages the
 10 Commissioner of Police, "Thanks for the
 11 briefing, I'll do a quick note for London for
 12 when it hits the press. The line will be
 13 investigation ongoing. Spanish nationals
 14 from --- did you say one person was
 15 Portuguese. Not sure in whose waters
 16 incident took place. RGP seeking assistance
 17 from UK police authorities. No assistance
 18 needed from FCO at this stage." In response,
 19 Mr Grail says, "Yes, all correct, indeed one
 20 was Portuguese, trying to clarify exact
 21 position of the collision." "Okay, thanks,"
 22 from the governor.
 23 Then if we go to 1746, please, this is an
 24 email from Mr Pyle to the FCDO on 8 March
 25 at 0209 he says, "I have just met with the

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1 the previous evening. This will have to be
 2 clarified in questioning."
 3 At 10.15 Mr Pyle messaged Mr McGrail
 4 saying he had been with the AG the previous
 5 night and requested an update saying that
 6 they were keen to reach out to Spain, given
 7 talks that week in London. Mr McGrail
 8 stated that it was clear to him that from very
 9 early on Mr Pyle knew that the collision most
 10 likely occurred in Spanish waters as Mr Pyle
 11 and the AG had been working together on the
 12 matter. Mr McGrail also states that during
 13 the course of the morning he was informed
 14 that the GC was still of the view that the
 15 collision had occurred in Spanish waters but
 16 were waiting confirmation by technicians.
 17 That is a reference to that entry in the
 18 timeline that I took you to earlier.
 19 At 1210 a meeting took place between Mr
 20 McGrail, the AG and Mr Pyle. Mr McGrail
 21 says that he informed both that the exact
 22 coordinates had still not been confirmed but
 23 cannot recall whether the provisional
 24 coordinates were discussed. He thinks that
 25 they were mentioned but with a caveat that

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1 Commissioner of Police who kindly gave me
 2 a briefing on the incident. The facts have yet
 3 to be determined and the investigation is
 4 ongoing but initial headlines are as follows.
 5 The incident happened at 0400 hours, though
 6 it is not yet known whether it took place in
 7 BGTW waters or just outside."
 8 Then if we go to 1748, two pages later, this is
 9 a subsequent email at 0757 on the following
 10 day, 9 March and Mr Pyle says, "There may
 11 be complications around yesterday's incident
 12 in that it might have happened as much as six
 13 miles inside Spanish waters. If true, it's hard
 14 to fathom quite what the RGP were doing
 15 chasing a vessel so deep into Spanish waters
 16 and one can only hope that it was at the
 17 invitation of the Spanish but this may be why
 18 GOG have kept details very close and have
 19 asked for no social media speculation."
 20 Jumping one sentence, "Let's hope this is all
 21 resolved quickly between the agencies and
 22 there is no negative impact on Thursday's
 23 talks with the Spanish. It is not clear from
 24 whom Mr Pyle obtained this information and
 25 whether it came from the Attorney General

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1 they needed verification and he said that the
 2 pursuit was believed to have lasted ten
 3 minutes in and around BGTW. Mr Pyle's
 4 account is that Mr McGrail said he was still
 5 not sure about location and that the RGP's
 6 vessel, GPS AIS instruments had been
 7 switched off which Mr McGrail attributed to
 8 the officers being in the heat of the moment.
 9 Mr Pyle is clear that coordinates were not
 10 mentioned, otherwise he would have
 11 immediately passed them on to the FCDO
 12 and the British Embassy in Madrid. There is
 13 a note by Superintendent Richardson of the
 14 meeting which reads, "Exact coordinates of
 15 collision still not determined, an element of
 16 chase within BGTW."
 17 Following that meeting Mr Pyle emailed the
 18 FCDO twice but still conveying uncertainty
 19 as to the location of the collision. Two days
 20 later, on 11 March at 1858, if we go to 1351
 21 this is back to the timeline and there is
 22 another exchange between Mr Pyle and Mr
 23 McGrail, "Ian, good to hear about progress re
 24 met help, are we any clearer as to where the
 25 collision took place? London are keen to

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<p>1 know whether it was inside or outside 2 BGTW and, if the latter, approximately by 3 how far, regards Nic." The response from 4 Mr McGrail is, "Nic, we are getting there on 5 establishing exact coordinates of where the 6 collision took place. We are tying up some 7 loose ends and probing further from WHSS 8 and should be able to confirm soon. It is 9 highly probable it did occur out BGTW. We 10 are getting plotted which will provide us 11 better understanding in terms of distance 12 from BGTW, best regards, Ian." 13 Then two minutes later, there is a message 14 from Mr McGrail to the Attorney General 15 which says, "HE, Nick, is asking for 16 confirmation of where collision took place as 17 London are keen to know. I have informed 18 him along the same lines that you advised 19 CM; i.e., that it is highly probable that it 20 happened outside BGTW." The AG replies, 21 "Ian, that seems fine to me, factual whilst 22 being amenable to further precision once you 23 obtain further details," and the reply from Mr 24 McGrail, is "Okay," with a thumbs up emoji. 25 Those exchanges will have to be the subject</p> <p style="text-align: center;">Page 129</p>	<p>1 message down is the Chief Minister's 2 response, "Thank you, Ian, location does not 3 worry me so much, helps us in a way, will 4 discuss directly with you." 5 The Inquiry asked the Chief Minister to 6 explain this remark and he provided an 7 explanation at A230, paragraph 20, of his 8 second affidavit and he said, "The reason I 9 said that the location could help us was two- 10 fold; first, in demonstrating to the general 11 public in Gibraltar that in some instances 12 police cooperation involves cross-border 13 activity and that our own police may stray 14 into Spanish waters in the same way as 15 Spanish police often stray into British 16 Gibraltar territorial waters. Secondly, I 17 thought that although it was to cause huge 18 diplomatic issues in the negotiations on foot 19 with Spain at the time, it would be helpful in 20 showing our Spanish counterparts that our 21 police officers were seeking out illicit 22 activity." Mr McGrail's evidence is that he 23 then updated Mr Pyle in the same vein as the 24 WhatsApp group and Mr Pyle confirmed 25 that this did indeed occur and he then</p> <p style="text-align: center;">Page 131</p>
<p>1 of questioning but according to Mr Pyle, this 2 was the first time that Mr McGrail disclosed 3 this information to him. Mr McGrail, on the 4 other hand, says that the WHSS had not 5 confirmed their coordinates and the RGP 6 were trying hard to plot the chase and 7 collision using non-technical means by this 8 point with the aid of the port authority. 9 On 12 March there was an exchange on the 10 maritime incident WhatsApp group which is 11 at B100. This is a WhatsApp group between 12 the Chief Minister, Dr Britto, Mr McGrail, 13 Mr (Inaudible - Spanish) also of the GPA and 14 Mr Greck, then the chief secretary. If we 15 pick it up over halfway down the page, at 16 1613 there is an update provided by Mr 17 McGrail and at the bottom line it says, "In 18 terms of the investigation proper, the 19 evidence points at the pursuit and collision 20 occurring outside BGTW, not the best news 21 we wanted to hear." Then over the page --- 22 firstly, I should say that it is unclear what 23 evidence prompted that description of "not 24 the best news," is something to take up in 25 questioning. Then over the page the fourth</p> <p style="text-align: center;">Page 130</p>	<p>1 updated the FCDO accordingly. 2 Turning to the legal claims, I will not go into 3 as much detail but there was some discussion 4 between Mr McGrail and the Attorney 5 General as to possible civil claims for 6 compensation at a meeting on 17 March 2020 7 and a WhatsApp message exchange between 8 them on the following day, 18 March 2020 9 which Mr McGrail also sent to Dr Britto. On 10 22 April 2020 Mr McGrail met with the 11 Attorney General and the DPP to discuss a 12 letter from Robert Fischel KC suggesting a 13 civil claim. Mr McGrail's evidence is that 14 the DPP and the AG advised him that there 15 was no need to appoint Crown counsel at that 16 stage and the Attorney General undertook to 17 keep the matter alive with the Chief Minister. 18 On 14 May 2020, as we have already seen, 19 there was the article in El Faro De (Inaudible 20 - Spanish), referring to a denuncia, or a 21 complaint in Spain against the Gibraltar 22 police for the crime of reckless homicide in 23 relation to the collision at sea and also 24 referred to a complaint being made in 25 Gibraltar. The Chief Minister sent the link at</p> <p style="text-align: center;">Page 132</p>

<p>1 0936 to the Attorney General and this can be 2 found at B1417. Just to the bottom --- sorry, 3 the bottom section of the page there is the 4 link being sent at 0936 and it is followed up 5 by a message that says, "This has appeared 6 today." The response from the Attorney 7 General was, "Couldn't make it up." Then 8 the Chief Minister, "Hi, this article has just 9 appeared." Well, this is 14 May 2020 10 message which by now we are familiar with 11 referring to the civil claim which he then sent 12 --- or at the same time sent to Mr Pyle. 13 On the same day, 14 May, Mr Fischel sent a 14 letter to Mr McGrail on behalf of one of the 15 injured crew notifying him a claim for 16 damages and seeking information. At 1139 17 Superintendent Yeats emailed the DPP 18 informing him of the official letter and 19 seeking a meeting the following week to 20 discuss the defence of the claim and the 21 meeting was arranged for 19 May. On 18 22 May the DPP sent a WhatsApp message to 23 the Attorney General referring to the claim 24 and on 19 May Superintendent Yeats sent the 25 letter to the DPP and met him to discuss.</p> <p style="text-align: center;">Page 133</p>	<p>1 serious matter. I provided you with an 2 overview on the day of the incident, then 3 engaged with the AG as per your suggestion 4 and have been doing so ever since. I will 5 hopefully be in a better position to brief you 6 on the full details of the incident once I 7 receive the report of the findings of the 8 independent investigation team we called in. 9 This team has had to return early to the UK 10 and because of the Covid crisis and because 11 of the lockdown they have been unable to 12 progress the matter as expeditiously as we all 13 wanted. The letter from local counsel 14 representing the families and suggesting a 15 future claim for damages was only received a 16 few days ago, which is what triggered our 17 enquiry with the DPP only yesterday 18 concerning legal representation." I have just 19 realised that I did read that one out earlier 20 before, so there is no need to go through it 21 all. 22 The Chief Minister considers that Mr 23 McGrail was making excuses for not 24 providing timely information about the 25 claims and was even more disappointed to</p> <p style="text-align: center;">Page 135</p>
<p>1 The DPP determined that Crown counsel 2 could not act for conflict reasons and a 3 further letter was then received from Mr 4 Fischel that day seeking further information. 5 On 20 May the DPP asked Superintendent 6 Yeats to email the Attorney General, seeking 7 the Attorney General's views on 8 representation which Superintendent Yeats 9 did. The Attorney General then forwarded 10 the email to the Chief Minister. We have 11 seen that email at C4090 and it is the email 12 where the Chief Minister complains --- well, 13 he opines that it is entirely inappropriate for 14 it not to have been raised with him. I will not 15 re-read that. 16 The Chief Minister's position --- sorry, I 17 should take you to the response from Mr 18 McGrail which can be found a few pages on 19 at 4100. Mr McGrail says, "Dear CM, I refer 20 to the below thread which includes your 21 response to the AG and which has been 22 forwarded to me. You are evidently very 23 disappointed but I want to reassure you that it 24 has never been my intention to withhold 25 anything from you concerning this very</p> <p style="text-align: center;">Page 134</p>	<p>1 learn that the claims had been received some 2 days earlier and he had not been notified. It 3 is fair to say, however, and the Chief 4 Minister concedes that he had already lost 5 confidence in Mr McGrail by the time of that 6 email. 7 If we can now go to 4117, the Chief Minister 8 forwards the exchange to the governor and 9 expresses his decision or his --- yes, his view 10 that he needed to seek the section 15 report. 11 Mr McGrail then expressed confusion to the 12 Attorney General as to why the Chief 13 Minister had reacted as he had. 14 Can we now go to B1249 this is the section 15 15 report sent by the Chief Minister to Mr 16 McGrail. Mr McGrail says that this letter 17 was completely at variance with his 18 WhatsApp exchanges with the Chief Minister 19 on the maritime group which were 20 supportive. He sent his report back on 28 21 May at 1621. There is some disagreement as 22 to when it was actually received but that can 23 be clarified in questioning. I will not go 24 through the report in its entirety but just 25 highlight a couple of points. On 1253 the</p> <p style="text-align: center;">Page 136</p>

34 (Pages 133 to 136)

<p>1 section entitled, "The concerns of the 2 government," "First and foremost I am 3 concerned about the physical and mental 4 welfare of the officers of the RGP in question 5 that night and of the potential for multi- 6 jurisdictional legal action against them. The 7 Government will agree to fund the legal 8 advice and representation that the individual 9 officers may require on a without prejudice 10 basis and on such other bases or conditions 11 which the Attorney General may consider 12 and advise may be appropriate. The 13 Government will also assist with any support 14 required in respect of the mental or physical 15 health of officers in question." 16 I am sorry, yes, I am told correctly that I 17 described it as a report but it is a request for 18 the report. "I want to specifically record that 19 the Government supports our frontline police 20 officers, especially those who risk their own 21 lives at sea in keeping Gibraltar safe and 22 keeping drug traffickers from using our 23 waters to tranship narcotics. In particular, 24 however, the incident may give rise to 25 breaches of the Act and to large potential</p> <p style="text-align: center;">Page 137</p>	<p>1 background to this issue. Obviously there 2 are disputes of fact and in particular as to 3 communications and as to the legal claims 4 that we can address in questioning. The 5 collision was identified in contemporaneous 6 documents as the reason for the Chief 7 Minister and Mr Pyle losing confidence and 8 the GPA's decision to invite retirement fairly 9 consistently. If Mr Pyle and the Chief 10 Minister's evidence is accepted, then it is 11 plain that the incident at sea constituted not 12 just a circumstance but a reason leading to 13 Mr McGrail ceasing to be commissioner of 14 police but obviously there is, as I say, plenty 15 of exploration to do through questioning. 16 So that deals with issue 3, the collision at sea 17 and I now move on to the HMIC report. I 18 see the time which is five to one. 19 THE CHAIRMAN: Yes, it obviously is a 20 convenient time to break. 21 MR SANTOS: I am happy to break now and 22 perhaps we can start five minutes earlier just 23 to make sure we do not --- 24 THE CHAIRMAN: We will start at five to 25 two.</p> <p style="text-align: center;">Page 139</p>
<p>1 claims in damages against HMGOG which 2 would be funded by taxpayers of Gibraltar. 3 It raises serious issues as to the operational 4 welfare of officers of the RGP at sea and, 5 additionally, given the sensitivity of the 6 relationship between Gibraltar, Spain and the 7 United Kingdom I am concerned that the 8 events in question can provide grounds for a 9 serious setback for Gibraltar in the context of 10 the relationship with our Spanish 11 counterparts at political level." 12 Over the page --- sorry, the next paragraph, 13 "Moreover, given the contents of the 14 paragraphs on territoriality above, the 15 government is concerned that the officers of 16 the RGP who find themselves operating 17 outside of the territory of Gibraltar may in 18 fact not have the powers or protections 19 provided for them in the Act and, finally, the 20 government is concerned about the 21 sovereignty implications for Gibraltar and the 22 United Kingdom. I will not further detail the 23 nature of these concerns here as they are 24 particularly sensitive." 25 So that sets out as full as I can today the</p> <p style="text-align: center;">Page 138</p>	<p>1 MR SANTOS: Yes, thank you. 2 (12.55) 3 (Luncheon adjournment) 4 (13.57) 5 MR SANTOS: Good afternoon, Mr 6 Chairman. The next issue I was going to turn 7 to was the HMIC report, but it occurs to me 8 that Issue 5 (the conspiracy investigation) is 9 particularly lengthy and relied on heavily by 10 all parties, so I have decided that it is perhaps 11 best to deal with that first, and then come 12 back and deal with HMIC with whatever 13 time is left in the afternoon. There is also, 14 obviously, the Police Federation and then 15 issues 8, 9 and 10, both of which can be 16 taken a bit more briefly. So, Issue 5, the 17 conspiracy investigation. This issue revolves 18 around the RGP's Operation Delhi (an 19 investigation into the alleged hacking of the 20 National Security Centralised Intelligence 21 System, NSCIS) and search warrants 22 obtained by the RGP in relation to the office 23 and home of Mr James Levy KC in the 24 context of that investigation. To provide 25 some background, on 15 October 2018 the</p> <p style="text-align: center;">Page 140</p>

35 (Pages 137 to 140)

<p>1 RGP commenced a criminal investigation 2 into the alleged hacking and sabotage of the 3 NSCIS, a platform designed to monitor and 4 control Gibraltar's border with Spain. This 5 was alleged to be part of a wider conspiracy 6 with John Perez, Caine Sanchez and possibly 7 others, to try to transfer the intellectual 8 property of the NSCIS from Bland Limited to 9 a company called 36 North Limited. 36 10 North Limited was a company owned 33 11 percent each by Mr Cornelio (through a 12 company called ICODE Limited), Mr Perez, 13 and a company named Astelon Limited 14 whose beneficial owners were the partners of 15 Hassans Law Firm. That shareholding was 16 given to Hassans in exchange for a loan of 17 £476,000. Through his partnership of the 18 firm Mr Levy owned just over ten percent of 19 36 North, and the Chief Minister owned just 20 under three percent. The Chief Minister 21 describes Mr Levy KC in his evidence as "a 22 mentor in my previous legal practice, a 23 supporter in my current political career and a 24 close personal friend". The allegation at the 25 centre of criminal investigation was that</p> <p style="text-align: center;">Page 141</p>	<p>1 footage. The meeting was cordial, and Mr 2 Levy repeatedly thanked Superintendent 3 Richardson for his sensitivity. During the 4 meeting, Superintendent Richardson handed 5 Mr Levy a letter inviting him to a voluntary 6 police interview under caution at 10 am on 7 18 May 2020, six days later. Nine hours 8 later, Mr Levy agreed to hand over his 9 devices voluntarily so that the warrants did 10 not need to be executed. In the days that 11 followed extensive correspondence passed 12 between the RGP, Hassans and the 13 magistrates' court, in which Hassans sought 14 the return of the devices and threatened a 15 judicial review. The RGP later agreed to 16 accept a written statement from Mr Levy in 17 lieu of a proposed interview, and he 18 submitted that statement on 9 June 2020. Mr 19 Levy was not ultimately charged, nor did he 20 proceed with a judicial review of the search 21 warrants. Mr Levy's personal devices were 22 later returned without being opened. In 23 September 2020 Mr Cornelio, Mr Perez and 24 Mr Sanchez (to whom we will refer as the Op 25 Delhi defendants) were charged with</p> <p style="text-align: center;">Page 143</p>
<p>1 Thomas Cornelio had hacked and sabotaged 2 the NSCIS system. A dispute arose in the 3 context of that investigation as to whether the 4 intellectual property in the NSCIS was 5 owned by Bland Limited or the Government. 6 From late December 2018 Superintendent 7 Paul Richardson was the Senior Investigating 8 Officer, and from May 2019 Detective 9 Inspector Mark Wyan was the officer in 10 charge of the investigation. The complainant 11 was Bland Limited, through its chairman Mr 12 James Gaggero. In May 2019 Mr Perez, Mr 13 Sanchez, Mr Cornelio and another individual 14 were arrested. On 7 May 2020 the RGP 15 applied for and obtained from the Stipendiary 16 Magistrate warrants to search the home and 17 office of Mr Levy, on the basis that there 18 were grounds to suspect him of having 19 committed conspiracy to defraud contrary to 20 the common law. On 12 May 2020 a team of 21 RGP officers led by Superintendent 22 Richardson attended Hassans to execute the 23 warrants. Superintendent Richardson met 24 with Mr Levy in a Hassans boardroom; the 25 meeting was recorded on body-worn camera</p> <p style="text-align: center;">Page 142</p>	<p>1 conspiracy to defraud. Mr Cornelio was 2 further charged with 14 computer misuse 3 offences, and Mr Sanchez was charged with 4 misconduct in public office and aiding and 5 abetting unauthorised access to computer 6 material. On 21 January 2022 the Attorney 7 General discontinued the proceedings against 8 Mr Cornelio, Mr Perez and Mr Sanchez 9 under Section 59(2)(c) of the Gibraltar 10 Constitution Order 2006, citing the public 11 interest. What are the main allegations in 12 relation to this issue? The Chief Minister's 13 evidence as to why he lost confidence in 14 relation to this issue can be picked up at 15 A190, paragraph 37. He says, "My only 16 intervention in relation to this case has been 17 to express my views to Mr McGrail about his 18 decision to obtain and execute search 19 warrants at the home and professional office 20 at Hassans of James Levy CBE QC, and that 21 was after the event." In 38 he explains his 22 relationship with Mr Levy, which I have 23 summarised. In 39 he says, "In the context 24 of Operation Delhi, I became aware from Mr 25 Levy himself that he was one of the persons</p> <p style="text-align: center;">Page 144</p>

36 (Pages 141 to 144)

<p>1 who was of interest to investigators. On 12 2 May 2020 I received a WhatsApp message 3 from Mr McGrail that said, 'CM, before you 4 hear it from anyone else I want to inform you 5 that detectives are executing a search warrant 6 at Hassans for JL in relation to the case 7 against Perez, Cornelio and Sanchez. It's 8 been done in the most discreet of ways, and 9 we're hoping there is cooperation. Regards.' 10 Worthy of note is the fact that Mr McGrail 11 described the case as being against persons 12 that did not include Mr Levy. I responded 13 nine minutes later, also by WhatsApp, as 14 follows, 'Ian, thank you for the courtesy of 15 this information. I think that is a bad 16 decision. A search warrant should only have 17 been sought if you believed that the person in 18 question was not going to cooperate and will 19 try to destroy evidence. If as you say you are 20 hoping for cooperation, especially in a case 21 involving a senior silk and head of Gibraltar's 22 largest legal firm, you should in my view 23 first have sought to contact that person and 24 obtain cooperation. Given my close personal 25 relationship with JL I won't comment further.'</p> <p style="text-align: center;">Page 145</p>	<p>1 making the same point if any other senior 2 member of the legal profession had been 3 involved." Just jumping over to 45, he says, 4 "I recall telling Mr McGrail that the 5 communications devices of senior lawyers 6 were likely to include legally privileged 7 material which would have to be sifted 8 through the RGP in a warrant type situation 9 such as this one they had brought about, an 10 expertise which the RGP did not have in 11 dealing with white-collar crime. Then, 12 jumping to 47, "During the course of this 13 conversation I was both angry and seriously 14 concerned about the effect of the RGP's 15 actions. I told Mr McGrail that I could 16 imagine that the government might face 17 financial consequences from claims for 18 damages for breaches of privacy, 19 confidentiality and other claims. I told Mr 20 McGrail that Mr Levy and we were all 21 officers of the court. In circumstances such 22 as these, the duties of an officer of the court 23 would require us to cooperate and provide 24 such information as we might have available 25 on the basis of an order, be it a Production</p> <p style="text-align: center;">Page 147</p>
<p>1 Just after sending my response, I was 2 informed that Mr McGrail was actually at 3 that moment in 6 Convent Place on an 4 unrelated matter. I therefore asked that he 5 should come up to my office to see me, 6 which he did. The Attorney General, 7 Michael Llamas QC, who I believe was with 8 me at the time that I received the WhatsApp 9 from Mr McGrail, was present during the 10 whole of this meeting. Although that 11 conversation was now two years ago, I 12 believe I have a good recollection of it. I set 13 out in the following paragraphs my memory 14 of that conversation, and the upshot of it for 15 me." And I will just quote some parts of that, 16 because it is rather lengthy, but at 44 he says, 17 "I made clear in firm and forthright language 18 to Mr McGrail that I considered that the RGP 19 had not acted properly in the execution of a 20 search warrant in respect of a senior lawyer 21 like Mr Levy. I repeated the points made in 22 my WhatsApp reply. In person, I robustly 23 told Mr McGrail that he should not think that 24 I was making this point because I was close 25 to Mr Levy. I told him that I would be</p> <p style="text-align: center;">Page 146</p>	<p>1 Order or another type of order, to disclose 2 information or for discovery of documents 3 and data. I added that I believed that Mr 4 McGrail knew that my position in respect of 5 his investigation was that it should of course 6 continue, and that if evidence was found with 7 corruption in public office of one of the 8 persons being investigated, who was a civil 9 servant, I had been clear that the Government 10 would be the complainant in those 11 circumstances." Skipping over a paragraph, 12 "Mr McGrail then retorted that he had taken 13 the advice of the Attorney General on this 14 matter. Mr Llamas, who was in the room 15 with us throughout, stated that this was not 16 true. Mr McGrail then insisted that he had 17 sought the advice of the Director of Public 18 Prosecutions on whether to obtain a search 19 warrant or a production order for Mr Levy. 20 Mr McGrail then specifically told me that the 21 advice of the DPP was that they should 22 proceed by way of a search warrant. The 23 Attorney General said that he did not believe 24 that the DPP had given such advice; I 25 responded by saying that I too did not believe</p> <p style="text-align: center;">Page 148</p>

37 (Pages 145 to 148)

<p>1 that would have been the advice of the DPP, 2 with whom I have never discussed the matter, 3 but if that was the advice of the DPP then I 4 would have to disagree with the DPP also. 5 Further, the Attorney General made the point 6 (of which I was not aware until that moment) 7 that Mr McGrail had indeed sought his 8 advice in respect of this matter, and that he 9 and Mr McGrail had agreed that there should 10 be no further actions in that respect without 11 them speaking further. The Attorney General 12 told Mr McGrail that he felt seriously let 13 down by him as a result of the RGP's actions 14 being contrary to their latest agreed position 15 in respect of this very sensitive matter. I 16 believe I told Mr McGrail as that meeting 17 ended that I was greatly disappointed by the 18 manner in which the RGP had acted, and that 19 I believed that they had acted improperly and 20 outside the law. I was very angry about this 21 turn of events and Mr McGrail's attitude in 22 the meeting, and used robust language 23 throughout the meeting, very likely laced 24 with expletives. At the end of that fractious 25 meeting with Mr McGrail I felt very</p> <p style="text-align: center;">Page 149</p>	<p>1 the DPP had not in fact advised the RGP to 2 proceed by way of search warrant in respect 3 of Mr Levy. Confirmation from the DPP that 4 he had not advised that the evidence from Mr 5 Levy should have been obtained by search 6 warrant was confirmation that Mr McGrail, 7 the most senior law enforcement in Gibraltar, 8 had lied to me, the most senior elected 9 representative of the people of Gibraltar, in 10 my office. The DPP's assertions were totally 11 contrary to Mr McGrail's express statements 12 to me, and on that day (12 May 2020) I lost 13 all confidence in his probity and integrity in 14 his dealings with me, and generally in him as 15 a result." The Chief Minister makes no 16 secret that his decision to express concerns to 17 the GPA was principally for what he says was 18 deception by Mr McGrail in respect of the 19 warrants. He denies that he was interfering 20 in the live criminal investigation, maintaining 21 that the extent of his intervention in the 22 matter was to ensure that the contract 23 remained with Bland when the issues were 24 brought to his attention. He makes clear that 25 he gave a statement to the investigation on 25</p> <p style="text-align: center;">Page 151</p>
<p>1 disappointed in him. I believed that he had 2 misled me over the question of the Attorney 3 General's position on the issue of the search 4 warrant. I also felt sure that the advice of the 5 DPP would not be as he had stated it to have 6 been, and that he had lied to me. In fact, for 7 me the meeting ended worse than it had 8 begun. I had not just established that the 9 totally incorrect procedure that had been 10 followed in a sensitive matter; I was left with 11 the feeling that Mr McGrail believed that the 12 RGP under his direction could act almost 13 with impunity and with no regard to 14 established principles of criminal procedure 15 that are designed to protect suspects and 16 others who may be able to assist the police 17 with their inquiries. After Mr McGrail left 18 the short and ill-tempered meeting with us", 19 this is one paragraph later, "I subsequently 20 asked the Attorney General to confirm for me 21 whether or not the DPP had in fact agreed 22 that a search warrant was the correct manner 23 for the RGP to seek to obtain relevant 24 evidence from Mr Levy. The Attorney 25 General subsequently confirmed to me that</p> <p style="text-align: center;">Page 150</p>	<p>1 June 2021, over a year after Mr McGrail's 2 retirement, and that the Government 3 continued to provide information and 4 statements to the police and the prosecution 5 throughout, with charges being brought. He 6 also makes clear that he intervened to ensure 7 that the contract remained with Bland, 8 despite Hassans' part-ownership of (and 9 therefore his own interest in) 36 North 10 Limited. His evidence is that the sole 11 consideration in his mind was the security of 12 Gibraltar and the well-being of the people of 13 Gibraltar. The Attorney General gives a 14 supportive account at A274. It starts at 15 paragraph 16, where he says, "My 16 involvement in the criminal investigation was 17 initiated by Mr McGrail himself, when on 11 18 May 2019 he sent an email to the Chief 19 Minister, the Minister for Justice, the Chief 20 Secretary, the Financial Secretary, the 21 Director of Public Prosecutions and myself, a 22 copy of which is now produced and shown to 23 me, stating the following, 'Dear all, I believe 24 you are aware of the investigation we are 25 conducting following the complaint filed by</p> <p style="text-align: center;">Page 152</p>

38 (Pages 149 to 152)

<p>1 James Gaggero, Chairman of the Bland 2 Group. Yesterday we carried out executive 3 action on three ex-Bland Group employees, 4 and they are now on police bail. Immediate 5 inquiries post to our intervention have 6 revealed issues of serious concern, which I 7 require to brief you on. Please advise when 8 we could meet, the sooner the better. I would 9 ask that this request to meet is not shared 10 with anyone other than those copied in this 11 email.' That meeting took place on 13 May 12 2019." Just skipping over to paragraph 20, "I 13 myself had no further involvement with the 14 criminal investigation until about 11 months 15 later, even though I was aware that the 16 investigation was continuing." Then, at 21, 17 "It was not until early April 2020 that the 18 criminal investigation was brought to my 19 attention again, on this occasion it was as a 20 result of a call I received from the DPP, 21 Christian Rocca QC, who wished to discuss 22 with me certain aspects of the RGP's 23 investigation. I would like to point out that 24 the DPP very rarely seeks to discuss criminal 25 cases with me, and typically acts completely</p> <p style="text-align: center;">Page 153</p>	<p>1 rationalised, ideally after dealing with the 2 issue of ownership of the NSCIS platform, 3 which was still live and needed to be dealt 4 with. It seemed clear to both of us that the 5 ownership was a key to viability of a number 6 of the proposed charges, and that on one 7 possible ownership outcome a number of the 8 proposed charges would necessarily fall 9 away. Each of the matters set out above, and 10 still more so all of them in combination, 11 raised matters of considerable public 12 importance, and also to my mind had the 13 potential to cause serious reputational 14 damage to Gibraltar, very especially at a time 15 when negotiations were (and still and 16 remain) afoot with the EU and Spain in 17 relation to vital related matters for Gibraltar." 18 And then over the page, 26, "I considered 19 then, and still consider, that I have a 20 legitimate public interest role and function, 21 indeed a responsibility, in respect of such 22 matters. Namely, the unwieldy number and 23 the viability (?) of proposed charges, 24 particularly in relation to a case that exposed 25 serious failures in the national security of</p> <p style="text-align: center;">Page 155</p>
<p>1 independently from me. The fact that he 2 called me gave me cause for concern that 3 there was something seriously wrong. 4 During our discussion the DPP confirmed to 5 me that on the basis of the information that 6 was available to the DPP at the time it was 7 clear that there had been serious failures of 8 the national security system of Gibraltar, that 9 Hassans held shares in the rival company (36 10 North Limited) and that Mr Levy was 11 potentially a person of interest, that a senior 12 civil servant (Mr Sanchez) was one of the 13 suspects, that the Chief Executive Officer of 14 the Borders and Coastguard Agency may also 15 have been implicated, and that ownership of 16 the NSCIS platform was contested and there 17 was no formal written contract between the 18 Government and Bland Limited in this 19 regard. The DPP also informed me that the 20 RGP had drawn up a list of 76 charges 21 against Messrs Cornelio, Perez and Sanchez; 22 this was news to me. The DPP told me that 23 the excessive number of charges seemed 24 wholly inappropriate and that he was of the 25 view that the charges needed to be</p> <p style="text-align: center;">Page 154</p>	<p>1 Gibraltar by the public agencies responsible, 2 and possible misfeasance by public officers. 3 The DPP and I therefore agreed that I should 4 seek a meeting with Mr McGrail about the 5 quantity and rationalisation of the charges. 6 Contrary to Mr McGrail's accusations against 7 me and the improper motives that he imputes 8 to me, I would not have known about this or 9 intervened at all if the DPP had not himself 10 called this matter to my attention and 11 requested me to act as aforesaid." Turning to 12 7 April, he refers to a meeting on the 7th with 13 the senior legal advisor Mr Lloyd 14 DeVincenzi, Mr McGrail and DS 15 Richardson, which he says is the first time 16 that he met with Mr McGrail and the RGP. 17 And at 29 he says, "In that meeting Mr 18 McGrail and I agreed that, as he had said in 19 his original meeting of 11 May 2019, the 20 investigation did indeed raise issues of 21 serious concern. I therefore advised Mr 22 McGrail that I considered it vital that the 23 investigation should proceed, and be 24 conducted prudently and with tremendous 25 care. With this in mind, I explained to Mr</p> <p style="text-align: center;">Page 156</p>

39 (Pages 153 to 156)

<p>1 McGrail that I was deeply concerned that the 2 RGP were proceeding without first resolving 3 the ownership dispute, since it seemed to me 4 that that issue would likely have an impact 5 on some of the proposed charges. I told him 6 that I was also concerned about the proposed 7 number of charges (76), which seemed 8 wholly excessive. I reminded Mr McGrail of 9 the general wisdom of focusing charges 10 appropriately. During this meeting, Mr 11 McGrail himself raised with me other matters 12 relating to this investigation; for instance, he 13 said that the Chief Minister, another minister, 14 a member of the Opposition and the 15 Financial Secretary were all partners of 16 Hassans. I interpreted Mr McGrail to mean 17 that, through their partnerships in that law 18 firm and that law firm's shareholding in 36 19 North Limited, these persons had an indirect 20 ownership interest in that company. 21 Although it did not appear to me that there 22 was any suggestion being made of possible 23 wrongdoing on their part, it was clear to me 24 that there were obvious potential reputational 25 issues for Gibraltar." Just skipping a</p> <p style="text-align: center;">Page 157</p>	<p>1 investigation or change its course or 2 approach, or anything other than entirely 3 appropriate advice and assistance in the 4 context of those specific issues, and nor did 5 Mr McGrail suggest otherwise to me." Then, 6 over the page he deals with 12 May 2020, 7 and I apologise for reading this out but it is a 8 very important meeting, he says, "Without 9 any further communication between me and 10 Mr McGrail or anyone else in the RGP in this 11 case, on 12 May 2020 the RGP executed 12 search warrants at the home and offices of 13 Mr Levy. Mr McGrail informed me of this 14 by WhatsApp, in terms very similar to the 15 message he sent to the Chief Minister." And 16 then, over the page he says, "This took me by 17 surprise, since it was a clear violation of what 18 Mr McGrail and I had agreed in our meeting 19 of 7 April 2020. I was very disappointed 20 with his action, and I responded to him two 21 minutes later, also by WhatsApp, as follows, 22 'Ian, we had agreed that you would come to 23 me with a rationalisation of the charges 24 before doing anything.' We then had the 25 following exchange, also by WhatsApp." Mr</p> <p style="text-align: center;">Page 159</p>
<p>1 paragraph... well, I may as well read that 2 out, "I also recall that, possibly in the context 3 of his reference to Hassans, Mr McGrail also 4 made a reference to Mr Levy, and his hope 5 that he would assist the investigation. I do 6 not recall engaging in any discussion with 7 him on this. After a long and from my 8 recollection amicable discussion we reached 9 what for me was a very clear understanding 10 between us; namely, that the RGP would not 11 take any further action until they had: one, 12 clarified the question of the ownership of the 13 NSCIS platform; two, rationalised the 14 charges, which the DPP had told me it was 15 extremely possible to do; and three, 16 whereupon Mr McGrail would meet with me 17 and the DPP before taking any further steps. 18 It was clear beyond peradventure that 19 nothing other than what we had agreed to 20 would happen until we met again. There was 21 nothing in what I said or in the manner in 22 which I said it that Mr McGrail, DS 23 Richardson or anybody else in the RGP could 24 reasonably or properly have interpreted as 25 interference or pressure to stop the</p> <p style="text-align: center;">Page 158</p>	<p>1 McGrail says, "We agreed we'd do that when 2 all the loose ends were tied up, and this 3 included the inquiries with JL." The 4 Attorney General replies, "No, that was not 5 what we agreed." Mr McGrail says, "I am in 6 the bunker. Will come around to the office as 7 soon as I finish here." Then, skipping a 8 paragraph, he says, "My recollection of the 9 meeting, which could not have lasted more 10 than around 20 minutes, is that the Chief 11 Minister was angry, and expressed to Mr 12 McGrail in robust and no uncertain terms his 13 view that the RGP's decision to execute the 14 search warrants on My Levy was wholly 15 inappropriate and ill-advised." Then over the 16 page, skipping to 42, he says, "My 17 recollection is that Mr McGrail defended his 18 decision on two grounds. Firstly, he stated 19 that the warrants had been granted by a 20 judge, who must therefore have been 21 satisfied that the relevant threshold was met. 22 The Chief Minister replied that that did not 23 address the fact that the RGP had 24 conspicuously failed to ask Mr Levy to 25 voluntarily produce the documents and</p> <p style="text-align: center;">Page 160</p>

40 (Pages 157 to 160)

1 devices, and that warrants were in any event
 2 normally granted without detailed legal
 3 examination. Secondly, Mr McGrail sought
 4 to defend his decision by making two
 5 comments which startled me. He at first said
 6 that he had been taking advice from me, and
 7 intimated that I had approved of the course of
 8 action the RGP had taken. This was totally
 9 untrue, and I said so. I could not believe he
 10 had said that. In fact, we had only discussed
 11 the criminal investigation once, in the
 12 meeting of 7 April 2020, during which we
 13 had not discussed the issue of a search
 14 warrant on Mr Levy at all. When I refuted
 15 this, Mr McGrail then said that he had been
 16 taking advice from the DPP, and that the DPP
 17 had advised him that the RGP should proceed
 18 by way of a search warrant. The Chief
 19 Minister and I told Mr McGrail that we
 20 found that very difficult to believe that he
 21 could have received such advice from the
 22 DPP. In this meeting I referred to the
 23 understanding Mr McGrail and I had reached
 24 in our meeting of 7 April 2020: that he would
 25 take no further action until the charges had

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1 down; a serious breach of trust has occurred."
 2 Mr McGrail replies, "I respect your view not
 3 to meet, but totally refute any breach of trust.
 4 We'll agree to disagree." Then, finally
 5 turning to Mr McGrail's response to these
 6 accounts, if we can go to A9 first of all,
 7 please. Just picking it up from paragraph 32,
 8 after the exchange of messages, Mr McGrail
 9 says, "I was called out from the meeting I
 10 was in and requested to go to see the CM and
 11 AG, who were asking to see me. I excused
 12 myself from the meeting, and went up to see
 13 the CM and AG. I was seen into the Cabinet
 14 Room, where I waited for a few minutes
 15 before the CM and AG entered the room
 16 from the CM's office. I distinctly recall the
 17 AG was wearing a t-shirt and jeans. There I
 18 received the dressing-down of my 36-year
 19 law enforcement career. I was asked by the
 20 CM in a condescending tone what was I
 21 doing executing a warrant on JL. In what
 22 was a barrage of comments, the CM stated
 23 words to the effect in both the English and
 24 Spanish language: what are you doing, Ian,
 25 this is a complete blunder, why go with a

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1 been rationalised. I told Mr McGrail that
 2 there had been a breach of trust between us,
 3 since he had acted in complete disregard to
 4 what we had agreed. After Mr McGrail left
 5 the meeting, the Chief Minister asked me to
 6 ask the DPP whether or not it was true that he
 7 had advised the RGP to proceed by way of a
 8 search warrant against Mr Levy. The DPP
 9 confirmed to me that he had never given such
 10 advice. I passed the information to the Chief
 11 Minister. I had a further exchange of
 12 WhatsApp messages with Mr McGrail later
 13 that same day, as follows". Mr McGrail says,
 14 "Michael, we are both disappointed but I just
 15 can't leave the matter as it is. I'd like to meet
 16 face-to-face. We have to work together, and
 17 your wrong impressions about me need
 18 clearing up." The AG responds, "Ian, it
 19 would not be constructive to meet, at least
 20 not for now. For me it was abundantly clear
 21 what we had agreed, and there is therefore
 22 very little to discuss about that. All I have
 23 tried to do is help you in all of this, and to
 24 protect Gibraltar PLC which is what I have
 25 spent all my life doing. I feel very, very let

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1 warrant? Do you suspect Heine (?) (JL) has
 2 committed a crime? Look, Heine (?) can be
 3 many things, and he has been in messes
 4 before, but he is not a criminal. He is a
 5 senior silk, head of the Jewish community,
 6 helps out the RGP if needed. He is the head
 7 of the biggest law firm in Gibraltar, and he
 8 has a very good reputation as a lawyer. Are
 9 you suggesting that Heine (?) would destroy
 10 or dispose of evidence? You know Gibraltar,
 11 this will get out. You are managing this
 12 investigation very, very wrongly. Why didn't
 13 you ask him to give you what you needed?
 14 The CM's tone caused me serious concern,
 15 and I thought carefully of what I should be
 16 responding with. I said that what the team
 17 were after were devices which we knew JL
 18 would not hand over unless compelled to do
 19 so with a warrant. CM said words to the
 20 effect that: have you asked him? I felt the
 21 CM was questioning an operational decision
 22 on a live criminal matter, and that this was
 23 not appropriate. He stated that he would be
 24 calling in the RGP's senior command team to
 25 address us on how inept we (the RGP) were

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<p>1 at investigating white-collar crime. I advised 2 him that the warrant had been signed by a 3 judge who was satisfied with the information 4 which had been laid before him, and that all 5 the grounds (?) to deal with JL had been 6 consulted with the DPP. The CM arrogantly 7 exclaimed that it was very easy to obtain a 8 search warrant, and (?) that we had been 9 wrongly advised. It was evident that the CM 10 was very angry, and that we had obtained the 11 warrant without considering the voluntary 12 handing over of the material we were after. I 13 posed the question whether he genuinely 14 believed JL would be handing over the 15 material if asked without a warrant. CM said 16 he would not, and that if he represented JL he 17 would advise him not to make any comment 18 during interview. There was a heated debate 19 on whether the actions of the team were 20 proper or not, with me saying they were and 21 the CM saying they were not. I stated that it 22 should be left for the courts to decide who 23 was right or wrong. I said this because CM 24 said that JL should not hand over his mobile 25 device to the RGP but should do so to a</p> <p style="text-align: center;">Page 165</p>	<p>1 previously stated in this statement, I did not 2 enter into any agreement with the AG to 3 suspend the carrying out of further inquiries 4 until after we had discussed charges that 5 could be proffered. The AG appeared to 6 have misunderstood what we arranged: yes, I 7 had agreed to revert (?) to him with the 8 proposed charges, but certainly not before all 9 the key inquiries were completed. It would 10 not make any sense to do so beforehand, and 11 I would have expected the AG for Gibraltar 12 to have understood this. I felt totally 13 cornered and hounded, having to explain a 14 tactical decision on a live criminal 15 investigation. The AG said words to the 16 effect: Ian, I liked you and how you worked, 17 but as from today I cannot entertain you 18 again. This really shocked and hurt me. The 19 AG could not be more mistaken; it was not a 20 position that the RGP had put itself in, we 21 had been following proper lines of inquiry 22 and the team had acted appropriately without 23 fear or favour. I was fully cognisant of the 24 potential reputational damage in a number of 25 quarters, but stood by the investigating team</p> <p style="text-align: center;">Page 167</p>
<p>1 court. He said he hoped that I was right and 2 that he was wrong, as there would be 3 consequences if he was found to be right in 4 that we had not conducted ourselves properly 5 in this matter. I took this as a sort of threat 6 from the CM. I was struggling to understand 7 how the CM was seemingly aware of parts of 8 the evidence gathered in Op Delhi, eg he was 9 challenging the need to obtain JL's devices 10 when, he claimed, the investigating team 11 already had the data we needed from other 12 suspects." Just jumping to 35, "I was further 13 reprimanded by the CM for not having made 14 the AG aware of the team's intentions." If we 15 can then move forward to 13, paragraph 43, 16 "For his part the AG stated in a highly 17 emotional tone that I had betrayed him, 18 because the action carried out by the team 19 was not what had been agreed with him. 20 Notwithstanding that what the AG stated was 21 incorrect, the AG has no operational remit 22 and his address to me in this regard was 23 wholly improper. More so when he had on a 24 previous date said that he was steering clear 25 from advising on the criminal case. As</p> <p style="text-align: center;">Page 166</p>	<p>1 in what I considered to be a thorough and 2 worthwhile investigation that they were 3 doing." Skipping a paragraph, "I left the 4 Cabinet Room quite shaken, and in utter 5 disbelief. I had somehow expected there to 6 be reactions post to the search warrant's 7 being executed on JL, but never did I 8 anticipate the level of chastisement I was 9 subjected to. I have had a few previous 10 unpleasant encounters with the CM, but none 11 reached the levels I experienced on that day." 12 If we can now jump to page 119. This is Mr 13 McGrail's third statement, just one paragraph 14 there, subparagraph E, where there is a 15 reference to the Chief Minister's letter to the 16 GPA. Mr McGrail says, "The CM insists in 17 his letter that I told him that the Op Delhi 18 investigation team had executed the search 19 warrant on the advice of the DPP. This was 20 not the case. What I was referring to was 21 that the status of suspect for JL had been the 22 subject of a consultation and agreement with 23 the DPP, who had advised the team generally 24 on the investigation throughout. 25 Notwithstanding, it is abundantly clear from</p> <p style="text-align: center;">Page 168</p>

42 (Pages 165 to 168)

<p>1 my account and the letter in question that the 2 CM raised a number of operational issues 3 with me concerning Operation Delhi, but yet 4 in Parliament claimed he had not." 165 next, 5 please. This is the fifth statement from Mr 6 McGrail, and it is in response to the Chief 7 Minister's position, which is that he only 8 addressed the search warrant after the event. 9 Mr McGrail says, "This statement by the 10 Chief Minister is totally misleading. The fact 11 is that FP did interfere with the investigation, 12 not before or after the warrant but more 13 worrying during its execution. The 14 investigating team hadn't yet not (?) asserted 15 their authority under the warrant when I was 16 called by FP and the AG and intemperately 17 rebuked for the team's actions. This was a 18 totally inappropriate thing for FP and AG to 19 do." And then 179, this is in response to the 20 Attorney General's affidavit. In paragraph 21 180, "In paragraph 11 page 6 of his affidavit 22 the AG says that I did not at any stage 23 complain to him or others that his 24 interventions amounted to improper 25 interference. Discussions on criminal cases</p> <p style="text-align: center;">Page 169</p>	<p>1 Once I'd pieced together all of the AG's 2 involvement, I formed the view that the AG 3 was effectively improperly interfering with 4 the Op Delhi investigation." Can we now 5 turn to B7, please. Seven four, sorry, thank 6 you. This is an email sent by Mr McGrail to 7 himself on the evening of 12 May at 10.05. I 8 do not propose to go to any part of that, 9 because his statement draws heavily from it; 10 I just propose to refer to the fact that he 11 emailed himself that evening with an account 12 of what had occurred. 13 (14.30) 14 The Attorney General denies improperly 15 intervening in Operation Delhi, pointing out 16 that Mr McGrail wanted to remain in his post 17 even by his lawyers' letter of 29 May which 18 post-dated all of their conversations on 19 Operation Delhi. As to their exchanges on 20 Delhi, the Attorney General addresses this 21 matter further in his second affidavit, A 285. 22 At 58 he says: "Mr McGrail appeared to take 23 umbrage with what was being said to him." 24 This is in reference to a subsequent meeting, 25 the DPP telling the meeting at which Mr</p> <p style="text-align: center;">Page 171</p>
<p>1 is common before law officers and police. In 2 my discussions with the AG I tried to steer 3 these to what I felt was the correct 4 approaches the investigating team were 5 taking, and convince/influence the AG 6 accordingly. And, as long as the investing 7 team were still doing the right thing I was 8 satisfied that the improper suggestions made 9 by the AG were not having a negative impact 10 on the case. Equally, it got to the stage 11 where I was trying to suss out the extent of 12 the AG's possible brief. I had to keep these 13 thoughts well close to my chest in order to 14 uphold operational security on the matter. It 15 was not until the meeting on 13 May, when 16 the AG asked me to remain behind after the 17 others attending left his office, that I felt the 18 AG was in a somewhat awkward and 19 compromised position with Op Delhi, and I 20 told him as much. By this, I meant that the 21 AG seemingly held the brief to ensure the 22 case was not progressed further. However, I 23 had to be diplomatic, but on one reading of 24 what was happening the AG appeared to be 25 potentially in a position of serious conflict.</p> <p style="text-align: center;">Page 170</p>	<p>1 McGrail and the Attorney General were 2 present that he had given the charging advice 3 and given views on the evidential position 4 but had not on the operational side of things. 5 He says at 58: "Mr McGrail appeared to take 6 umbrage with what was being said to him. I 7 recall from the defensive nature of their 8 replies later to be confirmed by the 9 statements made in the 29 May letter, that 10 both he and DS Richardson appeared to think 11 that I, or the DPP and I, were seeking to 12 interfere with the conduct of the criminal 13 investigation in the sense of closing off 14 certain aspects of it. Alternatively or in 15 addition, that we were questioning his 16 integrity. I recollect that Mr McGrail even 17 referred to his high standards of integrity and 18 said something along the lines that if he had 19 to leave his post he would do so with his 20 head held high. I listened to this with 21 disbelief. I could not understand why he said 22 that or reacted in this way to what the DPP 23 and I were saying to him at that meeting, 24 none of which warranted any such reaction. I 25 concluded that it could possibly be a reaction</p> <p style="text-align: center;">Page 172</p>

43 (Pages 169 to 172)

<p>1 to his meeting with the Chief Minister the 2 previous day. What became clear to me, as I 3 already said in my reply of 5 June 2020 to 4 the GPA, was that Mr McGrail considered 5 that he was immune to having his actions 6 disapproved of or criticised and that he 7 equated both to improper interference with 8 the conduct of a criminal investigation and a 9 violation of police independence. The reality 10 is that while the RGP is undoubtedly entitled, 11 indeed required, to investigate the possible 12 commission of crimes independently and 13 without improper interference from others 14 that does not exempt it from comment or 15 criticism, still less from being tendered 16 advice by the Attorney General and the DPP, 17 and indeed in respect of comment and 18 criticism from anyone else. In this regard, it 19 is ironic that Mr McGrail should cite against 20 me paragraph 15 of the Council of Europe 21 Code of Police Ethics which states that the 22 police shall enjoy sufficient operational 23 independence from other State bodies in 24 carrying out its given police tasks for which 25 it should be fully accountable."</p> <p style="text-align: center;">Page 173</p>	<p>1 strongly advised against a search warrant." 2 The Chief Minister responds [speaks 3 Spanish], which means in English: "Well 4 then, he lied to both of us." The Attorney 5 General replied: "Exactly. He certainly gave 6 us the impression that SW decision was 7 sanctioned by DPP." Then he says at the 8 same time, he follows that up with another 9 message that says: "COP has since called 10 DPP trying to cover his back with him. I've 11 told DPPP not to say or do anything without 12 speaking to me first." The Chief Minister 13 replies: "Incredible. There is some game 14 afoot here." Then at the bottom actually are 15 two messages which the Attorney General 16 had exchanged with Mr McGrail which I 17 referred to earlier which he was forwarding 18 to the Chief Minister. 19 There are some important documents to go to 20 as background to Operation Delhi. The first 21 of these is the National Decision Model 22 Assessment regarding the involvement of Mr 23 Levy with 36 North, which was sent by 24 Superintendent Richardson to Mr McGrail on 25 25 February 2020, and that is at B3453. Just</p> <p style="text-align: center;">Page 175</p>
<p>1 I have tried to read the most relevant parts of 2 that. No doubt all parties will think that I 3 have missed out some important parts and 4 they can add to those in their openings. 5 Just to complete this, the DPP, Christian 6 Rocca KC's evidence is that he did not advise 7 the RGP on the use of a search warrant and it 8 is unlikely that the RGP would ever seek 9 advice on operational matters which were for 10 the RGP. His view is that it would have been 11 more suitable and appropriate to seek a 12 product order against Mr Levy. 13 Nevertheless, he considered the RGP's 14 position would be defensible on judicial 15 review. 16 At 3.43 in the afternoon, after that meeting 17 on 12 May 2020, the Attorney General 18 reported back to the Chief Minister after 19 speaking with the DPP, and that was in an 20 exchange of messages at B 1417. At the top 21 of that page: "Are you free two minutes?" 22 That is at 12.30. It is the next message, 23 15.41: "Spoken to DPP. He is categorical 24 that whilst he told RGP that an interview 25 with JL would likely be necessary, he</p> <p style="text-align: center;">Page 174</p>	<p>1 picking it up at 15, it says: "An examination 2 of the messages between TC, JP and CS has 3 shown that each has been communicating 4 with JL with regard to the NSCIS platform. 5 JL's knowledge of the plan to remove the 6 NSCIS platform management from Blands in 7 favour of 36N predates the departure of TC 8 and JP from Blands and even the set-up of 9 36N itself. Emails recovered forensically 10 show that EA had drafted a business proposal 11 for 36N and intended for JL as far back as 12 February 2018 in which the revenue streams 13 include the maintenance of the NSCIS 14 platform. Evidence of communications from 15 CS to JL have shown that a civil servant was 16 passing on confidential information to him 17 about NSCIS and offering him good 18 proposals for investment. Evidence of 19 communication from TC and JP to JL 20 suggests that JL is in a position of influence 21 with the CM and he has often requested to 22 arrange meetings or disclose or find out what 23 is being decided with regard to 36 North's bid 24 to take over the NSCIS platform." 25 Over the page: "There is a significant amount</p> <p style="text-align: center;">Page 176</p>

44 (Pages 173 to 176)

<p>1 of evidence that suggests that JL was acting 2 unethically in his dealings regarding the 3 NSCIS platform. The question is whether 4 this unethical behaviour is dishonest and 5 crosses the line into the realms of criminality. 6 JL is a senior partner in Gibraltar's largest 7 law firm. A summary of some of the key 8 facts that assist in determining this question 9 are found at appendix A." 10 Just jumping ahead to B3455 at the top of the 11 page: "The question is whether the agreement 12 to deprive Bland Limited of the NSCIS 13 maintenance contract was to do so by 14 dishonesty. The grounds to suspect that this 15 was the case are based on the following. JL 16 was receiving business proposals/information 17 directly from a civil servant, was aware that 18 businesses such as Carnival Cruises and STP 19 initiated by Bland were being taken by 36N, 20 was aware that TC continued to access the 21 National Security platform after TC had 22 terminated his consultancy and that this 23 information was being withheld from Bland, 24 was aware that TC had access to the system 25 and performed a full review of the National</p> <p style="text-align: center;">Page 177</p>	<p>1 that an offence of conspiracy to defraud has 2 been committed." 3 Just moving forwards to 25A, it says: "In 4 order to investigate this matter it is necessary 5 to obtain further evidence by interviewing 6 JL, conducting a digital forensic examination 7 of devices that he used to communicate with 8 the other relevant parties. As we have 9 reasonable grounds to suspect that JL has 10 participated in the offence under 11 investigation, the interview should be under 12 caution. I have considered whether JL 13 should be arrested and wider searches 14 conducted, as was the case with TC, JP, EA 15 and CS." 16 Just jumping to 30: "The necessity to arrest 17 JL will not be met in the event that he 18 consents to a voluntary attendance police 19 interview. In the absence of such consent, an 20 arrest would have to be made to secure his 21 attendance to allow the prompt and effective 22 investigation of the offence and secure 23 evidence by questioning. There is no longer 24 a need to prevent conferring between 25 defendants and a wider search of Hassans'</p> <p style="text-align: center;">Page 179</p>
<p>1 Security platform despite the fact that 36N 2 were not contracted to maintain the platform, 3 was contacting/facilitating access to the CM 4 with a view to discussing 36N and NSCIS 5 platform. In October 2018 spoke to TC 6 about the forensic team investigating whether 7 he was tampering with the system. It is 8 reasonable to suggest that TC informed him 9 that he had been sabotaging the system. 10 Despite this information, JL continued to 11 support TC and 36N in obtaining the 12 platform and did not distance himself from 13 this conduct." 14 The conclusion at 24A is: "We have 15 reasonable grounds to suspect that JL has 16 dishonestly used his influence with the CM, 17 CS, and possibly AM the FS to induce the 18 relevant persons to transfer the maintenance 19 contract of the NSCIS platform from Blands 20 to 36N, a company in which he holds a 10.56 21 per cent personal stake. B. There is no 22 evidence that the CM nor AM were aware 23 that TC had compromised the operation of 24 the NSCIS platform by sabotage. We 25 therefore have reasonable grounds to suspect</p> <p style="text-align: center;">Page 178</p>	<p>1 legal premises would in my view be 2 disproportionate. The seizure of the digital 3 devices referred to in paragraph 25B should 4 be by search warrant obtained in advance of 5 approaching JL for interview." 6 33 says: "The examination of any contents 7 seized from JL may be complicated by 8 claims of legal privilege. In that event the 9 material will be reviewed by a lawyer first 10 using key word searches provided. We do 11 not, however, believe that JL maintained a 12 lawyer/client relationship with any other 13 person linked to this investigation and his 14 dealings with them appear to be restricted to 15 a business relationship." 16 35: "Given the political sensitivities and 17 potential reluctance for a JP to issue a 18 warrant for Hassan Law Practice, the warrant 19 should be requested from the Chief Justice." 20 Then at the final page, 3457: "Identify 21 options and contingencies. Given the 22 political sensitivities of the persons involved, 23 the least disruptive and most diplomatic 24 means of police intervention will be 25 deployed."</p> <p style="text-align: center;">Page 180</p>

45 (Pages 177 to 180)

<p>1 Then 39: "It is expected that any allegation of 2 impropriety or legality will be vigorously 3 attacked using Hassans' considerable legal 4 resources to protect the integrity of 5 investigation and avoid any misconstruing on 6 the actual words said during the police 7 intervention, Hassan body worn footage will 8 be taken." 9 Then we have the charging report sent by 10 Superintendent Richardson to the DPP on 1 11 April 2020 to obtain legal advice on 12 charging. That identified 76 possible 13 charges. If we go to B 3630, we have there 14 at 132, on 19 October Cornelio wrote to Levy 15 saying: "Morning, James. Very confidential. 16 Note Cajero(?) has brought in a forensic team 17 of six to look at anything John and I may 18 done to tamper with the system, etc. Cajero 19 is going all out, it seems." 20 At 133, in a text to Berres the same day, 21 Cornelio stated that he had spoken to Levy 22 and was told not to worry. 23 Then 134: "The evidence indicates that Levy 24 discussed the forensic team with Cornelio 25 and that he had given him advice about the</p> <p style="text-align: center;">Page 181</p>	<p>1 advice. At the end of that report at 362 there 2 is a reference to the search warrants and 3 arrests that had previously been carried out. 4 Then at 3665 at the bottom of the page: "In 5 light of the evidence proffered above, it is 6 requested that the 76 proposed charges be 7 considered in accordance with the Code for 8 Prosecutors, these being" - and those are 9 listed on the following page. 10 Then at 338: "In addition to the proposed 11 charges, advice is also sought as to whether, 12 based on the above evidence, there are 13 reasonable grounds to suspect that Levy has 14 committed the offence of conspiracy to 15 defraud and/or any other criminal offences." 16 At 339: "In the event that there are 17 reasonable grounds to suspect Levy has 18 committed any offence, the police will 19 consider whether it is necessary to conduct 20 further investigations in the form of search 21 warrants, interview under caution." 22 Can we now turn to 3280. This is one further 23 document. If you just go up to 3278 first, 24 this is what we can an options report. It is 25 considering the options in terms of how best</p> <p style="text-align: center;">Page 183</p>
<p>1 situation." 2 135: "By 2019 Levy was in no doubt that 3 Cornelio and 36 North had not been 4 contracted to maintain the NSCIS platform. 5 Despite this fact, he did not question 6 Cornelio accessing the system in April 7 2019." 8 Then 136: "On 11 April 2019 Cornelio wrote 9 to Levy, 'I am preparing a report for 10 (inaudible) with regards to the failures of the 11 National Security platform. Leslie is 12 preparing a legal letter for your review in an 13 attempt to speed up the process. This is 14 okay?' He went on to say, 'We are going to 15 have a field day on the National Security 16 report. Just wait until you see it. For now, I 17 am reviewing every single module one by 18 one.'" 19 Finally at 137, on 23 April 2019 he wrote to 20 Levy: "Note, I provided Albert Mena with a 21 report on the National Security system. Has 22 he made any comment to you about this? 23 The report would have been delivered to him 24 via King." 25 So that report was sent to the DPP for his</p> <p style="text-align: center;">Page 182</p>	<p>1 to interview Mr Levy in the context of Covid 2 restrictions which were in place at the time. 3 It says: "Based on the advice offered by the 4 DPP, it is our intention to interview Mr Levy 5 on the basis of a conspiracy to defraud." If 6 we go forward to page 3280 which we were 7 just looking at, at 15 it says: "Mr Levy could 8 be requested to attend a police station. In 9 doing so, he could be asked to bring any 10 devices for analysis and to submit to an 11 interview. However, this would notify Mr 12 Levy of our intentions and would thereby 13 risk the loss of evidence. This would be 14 contrary to the way we have dealt with the 15 other suspects, although we could argue that, 16 given the amount of time, he will be well 17 aware of the arrests and of the police 18 investigation. Moreover, we would still 19 expose Mr Levy to a risk of exposure to the 20 virus." We do not have to trouble ourselves 21 with that. 22 Then the conclusions start at 18. The 23 conclusion is to approach him at work. Then 24 at 20, expediting the case is proposed, and I 25 think that we can move on from that.</p> <p style="text-align: center;">Page 184</p>

46 (Pages 181 to 184)

<p>1 Can we now turn to 3808, please. "On 6 and 2 7 May 2020 DS Clarke applied for the 3 warrants from the Stipendiary Magistrate 4 with Superintendent Richardson also present. 5 The information laid before the magistrate 6 was predominantly taken from the charging 7 report..." [that we have already seen] and DS 8 Clarke says that he read it out to the 9 magistrate. 10 3808 is the conclusion as to Mr Levy's 11 involvement. At 319 it reads as follows: 12 "The above paragraphs demonstrate Levy 13 was involved in a plan to remove the NSCIS 14 contract from Bland at an early stage. 15 Messages between Levy and Sanchez show 16 communication discussing moving the 17 contract away from Bland in early 2018. 18 Levy was instrumental in the creation of 36 19 North, firstly by owning 33 per cent of shares 20 of Astelon Limited, who in turn own 33 per 21 cent of shares in 36 North. Of behalf of 22 Hassans he injected a large sum of money 23 into 36 North. He was using his influence 24 with the Chief Minister to the advantage of 25 36 North. He was regularly contacting both</p> <p style="text-align: center;">Page 185</p>	<p>1 investigation. The evidence showed 2 complete and incomplete exchanges between 3 Mr Levy and his alleged co-conspirators 4 currently under investigation. Mr Levy being 5 at this stage a suspect and the information 6 being sought concerns his involvement in an 7 alleged criminal conspiracy, I did not 8 consider that the legal professional privilege 9 was engaged and that, for the same reason, 10 the material sought was not special procedure 11 material. Since that material sought is 12 electronically digitally stored, I was further 13 satisfied by the officers that means exist by 14 which data is shifted so that only material 15 relevant to the investigation is retrieved." 16 So in terms of the search warrant procedure, 17 we as counsel to the Inquiry have conducted 18 a detailed analysis of these documents and 19 have identified what we would say in our 20 submission are two key deficiencies in the 21 basis put forward for the search warrants. 22 First, there were two alternative procedures 23 open to the RGP under Schedule 1 of the 24 Criminal Procedure and Evidence Act 2011, 25 namely either (1) seeking a search warrant</p> <p style="text-align: center;">Page 187</p>
<p>1 Cornelio and Perez in relation to 36 North 2 whilst they were still employed by Blands 3 and following their resignations. 4 Communications show he was aware of the 5 computer misuse offences committed by 6 Cornelio." The warrants were granted. 7 Can we just look at 3809, at the bottom, 324: 8 "Other methods of obtaining the material 9 have not been tried because it appeared they 10 were bound to fail. The material sought is 11 held by a subject in this case and it is feared 12 if notice was given to the subject to provide 13 this material to the OIC the subject would 14 destroy, alter, deface or conceal the material 15 sought." 16 The magistrate's reasons were recorded on 13 17 May 2020. That is at C6728. The operative 18 parts of that say: "I was satisfied that the 19 evidence presented disclosed sufficient 20 grounds on which the warrants sought could 21 be issued. The evidence pointed to the 22 existence of a conspiracy involving Mr Levy 23 as a participant. That being so, issuing the 24 warrants was justified in order to obtain and 25 preserve existence necessary for the police</p> <p style="text-align: center;">Page 186</p>	<p>1 which authorises a police officer to enter and 2 search premises and seize material; or (2) a 3 production order which requires the person in 4 possession of the material to produce it to a 5 police officer within seven days. The reason 6 provided by the RGP for seeking a warrant 7 was that, because Mr Levy was a suspect, he 8 was highly likely to destroy evidence. That 9 is in our submission unsatisfactory and 10 generic and indeed would apply to all 11 suspects and mean that production orders 12 would never be obtained against suspects. 13 The information did not deal with the 14 pertinent point made by DI Wyan in the 15 options report, namely that Mr Levy had 16 been aware of the other arrests and 17 investigations for some time and therefore 18 the risk of deletion or destruction in defiance 19 of a production order could be said to be 20 lessened. A similar point was made by the 21 DPP in the meeting of 15 May 2020. 22 Second, there is no power under the CPEA to 23 execute a search warrant authorising entry on 24 premises for the purposes of seizure of 25 legally privileged material or material</p> <p style="text-align: center;">Page 188</p>

47 (Pages 185 to 188)

<p>1 including legally privileged material, 2 although the RGP may well have been 3 correct that the communications of interest to 4 the investigation were not privileged. This 5 does not grapple with the fact that Mr Levy's 6 devices would almost certainly have 7 contained privileged material pertaining to 8 his other clients. Mr Cruz for the RGP has 9 kindly flagged in advance of today that his 10 client takes issue with my written 11 submissions on this point and with the 12 principle of the Inquiry looking into the basis 13 of the warrants which he argues are 14 irrelevant. I am grateful to him for his 15 characteristic courtesy in raising it with me in 16 advance. However, I must respectfully 17 disagree with his position. The lawfulness of 18 the warrant is relevant in particular to the 19 conversation between the Chief Minister, the 20 Attorney General and Mr McGrail of 12 May 21 2020 and the ensuing conversations and 22 correspondence relating to the warrant. If 23 there were procedural defects or flaws in the 24 basis for the warrant, that is relevant context 25 to, for example, the Chief Minister's and the</p> <p style="text-align: center;">Page 189</p>	<p>1 considered view as to the basis of the 2 warrants. Similarly, I submit that it is 3 necessary for the Inquiry to look into this 4 point too, given that the search warrants are 5 the context to some of the most important 6 exchanges in this Inquiry. 7 That said, I should make three matters clear. 8 First, our submissions are just that, 9 submissions. Our considered view on the 10 basis for the warrant obviously does not bind 11 you, sir. Second, we do not invite you to rule 12 upon or even arrive at a definitive 13 determination as to the lawfulness of the 14 warrants. Third, I do not understand it to be 15 your intention to arrive at such a definitive 16 determination. 17 Now, it is also clear that this Inquiry has no 18 power to and may not rule on or determine 19 criminal liability on anybody's part. It 20 suffices to note that the Op Delhi defendants 21 deny the charges raised against them, and 22 similarly Mr Levy denies any participation in 23 a conspiracy to defraud or any other criminal 24 activity. There is also a question which arose 25 after the search warrants as to whether the</p> <p style="text-align: center;">Page 191</p>
<p>1 Attorney General's conduct towards Mr 2 McGrail. However, I should make clear that 3 even if it were accepted that there were flaws 4 in the procedure, that is not necessarily a 5 justification of the Chief Minister's or the 6 Attorney General's subsequent actions. It is 7 only relevant context. Even if you form the 8 view that a production order was more 9 appropriate than a search warrant, it does not 10 necessarily follow, for example, that the 11 Chief Minister was justified in all of his 12 actions on 12 May 2020. It is plainly open to 13 you that the Chief Minister raised valid 14 points and yet that his raising of those points 15 or the manner in which he raised them or his 16 other actions on 12 May 2020 amounted to 17 inappropriate interference in the 18 investigation. These are matters which will 19 need to be considered carefully at the main 20 Inquiry hearing, including the Chief 21 Minister's knowledge as to any alleged flaws. 22 But in my submission it would be a glaring 23 omission on our part, as counsel to the 24 Inquiry, in our role and our duty to advise 25 you, for us not to look into and give you our</p> <p style="text-align: center;">Page 190</p>	<p>1 common law offence of conspiracy to 2 defraud at common law was abolished by 3 section 35 of the Crimes Act 2011. Certainly 4 this is supported by the Crime and 5 Miscellaneous Provisions Amendment Act 6 2023, but we would not invite you to resolve 7 this issue of law. 8 It is impossible for me to give a detailed 9 account of the facts relating to the issue in 10 the time available to me today. The fullest 11 set of the facts is in the undisputed facts and 12 in our written submissions we have focused 13 on three sub-issues, the three that feature in 14 the list of issues which is very kindly put on 15 the screen by Mr Triay. Those are the advice 16 from the DPP on the search warrants, the 17 agreement between Mr McGrail and the 18 Attorney General regarding rationalisations 19 and resolving the ownership issue and 20 whether that prevented any further action by 21 the RGP until a further meeting, and the 22 alleged inappropriate pressure by the 23 Attorney General or the Chief Minister on 24 Mr McGrail or interference with the 25 investigation.</p> <p style="text-align: center;">Page 192</p>

48 (Pages 189 to 192)

<p>1 The crux of the first two sub-issues is the 2 interaction between Mr McGrail and the AG, 3 the DPP and the Chief Minister. Sub-issue 4 5.3 is not a reason for the Chief Minister or 5 the AG losing confidence in Mr McGrail, but 6 rather a reason why Mr McGrail gives as to 7 why he felt that he must retire. Mr McGrail 8 also alleges that it is the true motive of the 9 Chief Minister in bringing out his retirement, 10 namely protecting Mr Levy and seeking 11 retribution for the search warrants. An 12 important aspect of that sub-issue is the 13 allegation that the Chief Minister and the 14 Attorney General improperly communicated 15 with Mr Levy and his lawyer, Lewis 16 Baglietto KC, about Operation Delhi, the 17 search warrants, and indeed Mr McGrail's 18 position as Commissioner, which I will deal 19 with in due course. 20 In terms of 5.1 and 5.2, there does not appear 21 to be a dispute as to whether the Attorney 22 General or the DPP in fact advised on 23 whether to obtain a search warrant. All 24 relevant CPs accept that that did not happen 25 and that the DPP subsequently made clear</p> <p style="text-align: center;">Page 193</p>	<p>1 General contends was agreed. He accepts 2 that the AG wanted to be consulted and that 3 at the end of the meeting the Attorney 4 General asked the police officers to revert to 5 CM once they had listed all the charges that 6 had been uncovered. Mr De Vincenzi also 7 provides evidence as to that meeting, and that 8 will have to be considered in questioning. 9 There are also notes of the meeting by 10 Superintendent Richardson. 11 A video meeting took place on the following 12 day on 8 April between the DPP and 13 Superintendent Richardson at which the DPP 14 is said to have agreed that there were 15 reasonable grounds to question Mr Levy as 16 there were questions which needed to be 17 answered and there was lingering doubt as to 18 involvement. There is also a record of that 19 meeting in Mr Richardson's papers. 20 I have already summarised the differing 21 accounts of the meeting of 12 May. Then in 22 terms of the aftermath of the 12 May 23 meeting, at 11.03 on the same day the 24 Attorney General received an email from 25 Lewis Baglietto KC on behalf of Mr Levy.</p> <p style="text-align: center;">Page 195</p>
<p>1 that he would have preferred the RGP to 2 have proceeded by way of production order 3 although he believed the search warrants 4 were defensible against the judicial review. 5 The dispute is therefore as to whether Mr 6 McGrail in fact stated at the 12 May 2020 7 meeting that the AG and/or the DPP had 8 advised them and that the advice of the DPP 9 was that they should seek a warrant. 10 We have summarised the meetings and 11 communications that took place in the lead- 12 up to 12 May 2020 in our written 13 submissions, and there is insufficient time to 14 deal with that today, but it will be addressed 15 in questioning of the various persons 16 involved. 17 As to the understanding between the AG and 18 Mr McGrail on the rationalisation of the 19 charges and the ownership issue, there was a 20 crucial meeting on 7 April or 4 May, and 21 perhaps there were meetings on both dates, 22 between the Attorney General and 23 Superintendent Richardson with Lloyd De 24 Vincenzi also present. Mr McGrail disputes 25 an agreement on the terms that the Attorney</p> <p style="text-align: center;">Page 194</p>	<p>1 That is at B 1902. 2 (15.01) 3 This says: "Dear Attorney, I write on behalf 4 of my firm's senior partner, James Levy 5 QC in relation to the attendance of the RGP 6 at his home and office addresses earlier 7 today. I am extremely concerned ..." 8 just jumping to the second paragraph, 9 "I am extremely concerned by the apparent 10 gross abuse of power that this conduct 11 amounts to and that the RGP has seen fit to 12 proceed in this matter. Although Mr Levy 13 has asked me to confirm that the officers in 14 attendance were personally courteous to him 15 at all times, it is absolutely unconscionable 16 that they should have threatened to execute a 17 warrant in order to secure entry so that police 18 search powers could be used. Moreover, it is 19 completely inexplicable how the RGP could 20 have thought that any warrant was proper, let 21 alone that any court could have considered 22 that the statutory preconditions for the issue 23 of a warrant were met. The issue of a 24 warrant was unnecessary, oppressive and 25 highly distressing to Mr Levy and his family.</p> <p style="text-align: center;">Page 196</p>

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<p>1 It directly impugned Mr Levy's reputation 2 and dignity as an officer of the court, the 3 senior partner of Gibraltar's largest law firm 4 and a highly respected member of the local 5 community. 6 Putting aside the ridiculous notion that he is 7 suspected of having been involved in this 8 serious criminal activity, it is not even clear 9 that a production order under section 13 10 could have been properly obtained. How 11 could it even have been properly suggested 12 that the entry to the premises would not be 13 granted unless a warrant was produced or 14 that the purpose of a search would be 15 frustrated or seriously prejudiced?" 16 Mr Baglietto proposed a meeting with the 17 Attorney General but Mr McGrail did not 18 consider such a meeting appropriate. He, Mr 19 McGrail, prepared a substantive response to 20 that email defending the RGP's actions and 21 the basis for the warrant. I am not going to 22 have time to go to that. There was further 23 correspondence between the RGP, the 24 Magistrates' Court and Hassans, and then 25 there were meetings on 13 May, 15 May and</p> <p style="text-align: center;">Page 197</p>	<p>1 maintains that it was a case of Mr McGrail 2 thinking he was immune to criticism, which 3 he equated with interference. Third, there are 4 some notable references by the Attorney 5 General to the involvement of the Chief 6 Minister and the Chief Minister's office, 7 which we will have to consider in 8 questioning. In his second statement the 9 Attorney General stresses that he was 10 referring to the office of the Chief Minister 11 and not the person. 12 We will not have time to go through that 13 because I am being told I have to speed up, 14 but at the second meeting it was agreed that 15 Mr Levy would provide a statement before 16 considering whether to interview him. At the 17 same meeting the DPP expressed concern as 18 to whether Superintendent Richardson had 19 misrepresented the position in terms of the 20 DPP giving advice of the warrant which 21 could taint the prosecution. 22 On 20 May there was a further meeting and it 23 was agreed that they would allow Mr Levy 24 seven days to provide a written voluntary 25 statement, and on 28 October 2020 DI Wyan</p> <p style="text-align: center;">Page 199</p>
<p>1 20 May between the Attorney General, the 2 DPP, Mr McGrail and Superintendent 3 Richardson. Mr DeVincenzi attended the 4 first two of those and DI Wyan the second 5 and the third. Unbeknownst to the Attorney 6 General and the DPP and perhaps others in 7 attendance, Mr McGrail recorded those 8 meetings, saying that he did so in order to 9 safeguard himself from further issues and 10 given the events of 12 May 2020. 11 Again it is impossible for me to summarise 12 those meetings in this opening and we will 13 have to examine them closely in questioning 14 because, first, there was further discussion 15 between the Attorney General and Mr 16 McGrail about the understanding they had 17 reached prior to 12 May 2020. Second, Mr 18 McGrail says that these are the meetings 19 where the Attorney General sought to 20 interfere with the investigation, enquiring 21 whether Mr Levy could be interviewed not 22 under caution and influencing the officers 23 present to consider ways to treat JL in a way 24 other than as a suspect. This allegation is 25 firmly denied by the Attorney General who</p> <p style="text-align: center;">Page 198</p>	<p>1 emailed Mr Baglietto confirming that Mr 2 Levy was no longer a suspect in the matter. 3 There is an email of 8 March 2021 which we 4 can go to briefly, C5871. This is an email 5 from the DPP to the Attorney General and it 6 says: 7 "I set out below the matters that have been 8 highlighted expressly or implicitly by 9 defence counsel in this case," 10 and he raises a number of matters, for 11 example paragraph 1: 12 "The RGP is awaiting a witness statement 13 from the CM. His evidence is very important 14 in relation to the conspiracy charge, 15 particularly in light of the matters raised by 16 the defence and also to deal with possible 17 hearsay problems. Certainly the clear 18 indication from the defence is that they 19 would be asking the CM to give live 20 evidence at the trial. Equally, the Crown 21 would need to call him if his evidence was 22 not accepted by the defence." 23 There is also references to communications, 24 the fairness of Mr Levy's treatment, the 25 interdiction of Mr Sanchez. There is a</p> <p style="text-align: center;">Page 200</p>

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<p>1 reference to the Financial Secretary as a 2 witness: 3 "Unfortunately the defence will of course 4 raise the beneficial ownership issue, given 5 that the Financial Secretary was a partner of 6 Hassans," 7 parallel investigations and interrelated 8 investigations, and the final paragraph on that 9 page says: 10 "I hope the above gives you a flavour of the 11 issue and matters that are coming to the fore 12 and most of which have been raised by 13 counsel for Messrs Bevis and Cornelio in 14 their letter which has been copied to you, 15 asking for you to consider whether this 16 matter should proceed. You have also been 17 provided with a copy of my response." 18 Then over the page: 19 "Finally, I would say there is nothing in the 20 communications that I have seen in relation 21 to," 22 it is just on 5872, sorry. (Pause) 23 Yes, 24 "Finally, I would say there is nothing in the 25 communications that I have seen in relation</p> <p style="text-align: center;">Page 201</p>	<p>1 May 2020 shows, it was IM himself who 2 raised the matter, not me, and I dismissed his 3 invitation to consider doing it. Further, in 4 any event, the reasons why I entered the Noli 5 two years later had nothing to do with 6 protecting the office of Chief Minister. My 7 decision was based on matters that were 8 brought to my attention over a year after the 9 events of May/June 2020." 10 So the discontinuance took place on 21 11 January 2022 and the Attorney General 12 clarified at the time that he had been advised 13 by the DPP that there was enough evidence 14 for there to be a realistic prospect of 15 conviction at trial, but there were matters in 16 the wider interest that required him to 17 discontinue. 18 I wonder whether that is a convenient 19 moment to pause for five minutes before we 20 have the last session of the day? Thank you. 21 (15.09) 22 (Adjourned for a short time) 23 (15.18) 24 THE CHAIRMAN: Yes? 25 MR SANTOS: One final factual inquiry, Mr</p> <p style="text-align: center;">Page 203</p>
<p>1 to the CM or FS that concern me." 2 I wonder whether, before I go into - there is 3 just two points to make before I need to 4 suggest a break, sorry, from my note. 5 Mr McGrail's case is that it was those 6 concerns raised by the DPP and a desire to 7 protect the Chief Minister rather than any 8 genuine public interest concerns which gave 9 rise to the Attorney General's discontinuance 10 of the prosecution. The Attorney General 11 addresses that allegation that the nolle was on 12 his mind at this time at A310. That is in 13 paragraph 47. He says: 14 "As to paragraph 18 and as I have already 15 stated above, all of my references to 16 defending the Chief Minister were references 17 to the office of the Chief Minister and not to 18 whoever the individual office holder may 19 happen to be, and that I would defend that 20 office from any investigation that exposed 21 the office on flimsy grounds because of the 22 vital importance of that office to the 23 reputation of our jurisdiction. In any event, 24 nolle was nowhere near my mind at the time 25 and as the transcript of the meeting on 13</p> <p style="text-align: center;">Page 202</p>	<p>1 Chairman, which relates to the interference 2 allegation is that of communications between 3 the Chief Minister, the Attorney General and 4 Mr Levy, including through Mr Levy's 5 lawyer Mr Lewis Baglietto KC, from 12 May 6 2020 onwards. 7 The Chief Minister's evidence is set out in a 8 number of affidavits. His first affidavit states 9 that he became aware from Mr Levy himself 10 that he was one of the persons who was of 11 interest to the investigators. His second 12 affidavit deals with this point at A224, 13 paragraph 10: 14 "At paragraph 137 Mr McGrail says that he 15 was under threat of litigation mounted by 16 Hassans in relation to the James Levy 17 warrant devices, with whom I knew he was 18 in contact, in reference to me. The intended 19 insinuation appears to be that I was in 20 cahoots with Mr Levy in relation to the threat 21 by him to litigate against Mr McGrail in 22 relation to the warrant issue. I respond as 23 follows. I recall I had communications with 24 Mr Levy about these claims. He was 25 incensed at what had occurred and what was</p> <p style="text-align: center;">Page 204</p>

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<p>1 very clear in his view that damages/claims 2 would be made against the Government for 3 the RGP's failures under Mr McGrail's 4 leadership. None of these communications in 5 any way amounted to be encouraging, 6 supporting or otherwise promoting Mr Levy's 7 claims. What I did think was right was for 8 Mr Levy to challenge the issue of the warrant 9 even though it had been granted and the 10 procedure which had been followed in that 11 respect as, from what I could see, such a 12 warrant should never have been issued in 13 respect of Mr Levy or any such similar 14 individual from whom information should 15 have been sought by way of production order 16 rather than search warrants." 17 If we go to 233, contact with Mr James Levy 18 on his being a person of interest, the Chief 19 Minister in his second affidavit says: 20 "I recall that I discussed with Mr James Levy 21 on a very large number of occasions the fact 22 that the RGP had suggested that he might be 23 a person of interest in the investigation. He 24 raised this with me constantly when I spoke 25 to him on other matters. I consistently</p> <p style="text-align: center;">Page 205</p>	<p>1 evidence, that is common ground between 2 relevant CPs. I have considered from the 3 first moment I was informed of it that a 4 search warrant in respect of Mr Levy's home 5 and offices were unnecessary and 6 inappropriate. I was and remain entitled to 7 that view and to express it to the 8 Commissioner of Police, to Mr Levy and 9 whomever else I pleased and I did so in the 10 terms that I, as was also my right, considered 11 appropriate. 12 "The evidence before the Inquiry, in 13 particular retired Superintendent Richardson 14 in his third statement, demonstrates that 15 Superintendent Richardson agreed that Mr 16 Levy KC's status as suspect was borderline, 17 especially in the view of the DPP. 18 Additionally, the statement discloses that no 19 careful consideration appears to have been 20 given to whether the threshold for obtaining a 21 search warrant instead of a production order 22 had been met." 23 11: 24 "My frequent conversations with Mr Levy 25 KC about the search warrants were mostly</p> <p style="text-align: center;">Page 207</p>
<p>1 replied to him that I was sure that the 2 investigation would exonerate him given 3 that, from what I knew of him, I was sure 4 that he would not have acted in a manner 5 which was contrary to law. In fact this was 6 also the conclusion reached by the police 7 when they made the decisions about who to 8 charge in consequence of their Op Delhi 9 investigation. 10 "There are no notes of these discussions 11 between Mr Levy and me as this was an issue 12 that was raised with him on the occasions 13 when I spoke to him, which more often than 14 not was during informal telephone 15 conversations. Any document or other 16 communication recorded in documentary 17 format which relates to any such discussion 18 would already have been disclosed in the 19 context of the disclosure I have already 20 provided and no additional records exist as 21 far as I am aware." 22 Paragraph 8: 23 "I have frequently discussed with Mr Levy 24 KC the issue of a search warrant in respect of 25 him. As the Inquiry will now be aware from</p> <p style="text-align: center;">Page 206</p>	<p>1 telephonic. As I have already said, there is 2 no record beyond those already disclosed." 3 He says there are no other records, and then 4 at 12: 5 "I recall because the date is noteworthy by 6 virtue of these events that I spoke to Mr Levy 7 on the telephone on 12 May. I do not recall 8 the time at which I spoke to him. I expressed 9 to Mr Levy my consternation at how the 10 police had acted in executing a search 11 warrant at his home. I do not recall the 12 precise method by which we spoke. I may 13 have been able to reach him on his home 14 number or the office number as Mr Levy has 15 an office extension at his home. I also recall 16 speaking to Mr Levy KC in addition to the 17 warrants about his position and concerns as 18 leader of the Jewish community on access to 19 places of worship, which was then a thorny 20 issue in the context of lockdown. I cannot 21 recall the order in which these issues were 22 discussed." 23 He talks about looking at Gib Telecom logs 24 and says that there were no records of calls to 25 Mr Levy, and then that the data may have</p> <p style="text-align: center;">Page 208</p>

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<p>1 been lost. Then he says in the final sentence 2 of that paragraph: 3 "I am, however, entirely content to confirm, 4 as I have done above, that such calls 5 occurred." 6 Then paragraph 17: 7 "Finally, I wish to say that I do not share Mr 8 McGrail's exaggerated and self-serving view 9 and descriptions of my having spoken and 10 expressed my views to Mr Levy KC on the 11 day the search warrant had been executed at 12 his home. I do not consider that it was 13 inappropriate behaviour to do so. To the 14 contrary, I believe and continue to believe 15 that it was entirely proper, natural and 16 appropriate, not least given my very close 17 friendship and relationship with him. The 18 high office that I held and continue to hold 19 does not disqualify me from doing so, still 20 less that it require me to engage in an 21 unnatural omission to do so to avoid the 22 speculative and reckless suspicions of Mr 23 McGrail or anyone else." 24 Then if we can go to 1447, please. This is as 25 to meetings with Mr Baglietto and Mr Levy</p> <p style="text-align: center;">Page 209</p>	<p>1 of his human rights," 2 and then at 12: 3 "I spoke to Mr Baglietto KC repeatedly about 4 this and about how let down I felt by Mr 5 McGrail and about the fact that I would 6 never be able to trust him again because I 7 believed he had, as I have already stated in 8 my earlier affidavits, lied to me about the 9 advice he had taken and received about the 10 appropriateness of the execution of the 11 search warrant as opposed to a production 12 order." 13 Just going on: 14 "Mr Baglietto and I discussed at length how 15 best he should raise these issues in his 16 representation of Mr Levy KC. We 17 discussed whether Mr Levy KC should be 18 advised to judicially review the RGP's 19 actions in this respect. In this context I 20 believe, though I have no precise recollection 21 of the detail of discussion, that I would have 22 shared with Mr Baglietto KC also the fact 23 that I was very open with the Gibraltar Police 24 Authority and the then Governor that Mr 25 McGrail no longer enjoyed my confidence</p> <p style="text-align: center;">Page 211</p>
<p>1 KC. 2 "I am further asked in this inquiry letter to 3 clarify certain matters by affidavit, namely 4 whether meetings took place with Mr 5 Baglietto, in particular whether meetings 6 took place on 12 May, and then what was 7 stated in those meetings." 8 Just moving to 9, it says: 9 "As can be seen from the Whatsapp 10 messages disclosed, I met with Mr Baglietto 11 KC on a number of occasions during that 12 period. Those meetings occurred nearly four 13 years ago and I cannot recall the detail of 14 what was discussed. I can, however, assisted 15 by references in the Whatsapp messages I 16 have disclosed, recall the general tenor of the 17 discussion. In those meetings I believe that I 18 shared with Mr Baglietto KC, who is 19 incidentally one of my closest personal 20 friends, my outrage at the RGP in my view 21 improperly obtaining a search warrant in 22 respect of Mr Levy instead of a production 23 order. My view was that the mechanism 24 employed to seek documents and information 25 had been inappropriate and had been a breach</p> <p style="text-align: center;">Page 210</p>	<p>1 and my views as to the mechanisms to see 2 Mr McGrail removed and the consequences 3 thereof. 4 "I recall seeing Mr Levy KC also at this time 5 on one occasion with Mr Baglietto KC. I 6 believe I saw him at my home, the security of 7 which is incidentally provided by OSG who 8 have live video feeds. I recall also that Mr 9 Levy KC was at this time both incensed but 10 also deeply embarrassed by the events of his 11 home and office being searched. At the 12 meeting with Mr Levy KC I remember we 13 discussed again how legally improper it had 14 been in our view for the RGP to have 15 proceeded by way of search warrant and not 16 production order, how outraged I was by the 17 fact that I believed that Mr McGrail had lied 18 to me about the advice he had had in that 19 respect and my subsequent complete loss of 20 confidence in him. 21 "The key issue in that meeting, however, was 22 that Mr Levy KC, as a result of the acute 23 embarrassment he had felt, had wanted to see 24 me to offer me his resignation as the 25 Chairperson of Gibraltar Community Care</p> <p style="text-align: center;">Page 212</p>

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<p>1 Trust, a post he has held for over 30 years. I 2 told Mr Levy KC in that meeting that I 3 continued to have full confidence in him and 4 his integrity, and I did not believe it was 5 necessary for him to resign from the 6 chairmanship of Community Care Trust." 7 That evidence confirms for the first time that 8 discussions with Mr Baglietto and Mr Levy 9 went beyond the search warrants and 10 criminal investigation and also addressed the 11 Chief Minister's loss of confidence in Mr 12 McGrail and even, at least with Mr Baglietto, 13 the mechanisms to see Mr McGrail removed. 14 This is consistent with the Whatsapp 15 exchanges between the Chief Minister and 16 Mr Baglietto. 17 Mr Levy's evidence is that he voiced his 18 objection to his treatment to the Attorney 19 General on a single occasion, that he never 20 discussed Mr McGrail's position as 21 Commissioner of Police and the decision to 22 invite him to retire with the Chief Minister or 23 the Attorney General, that he did not 24 communicate with the Chief Minister while 25 the RGP's officers were at his office, that he</p> <p style="text-align: center;">Page 213</p>	<p>1 the following day. He recalls speaking to the 2 Attorney General on 15 May, when the 3 Attorney General confirmed that the RGP 4 would accept a voluntary statement. 5 He acknowledges that his Whatsapp 6 exchange with the Chief Minister suggests 7 that they had arranged to meet on 17 May but 8 does not recall that meeting or the telephone 9 conversation that appears to have happened 10 on the same day, and does not recall the 11 contents of any other oral communications 12 with the Attorney General, although there 13 appear to have been calls to both the AG and 14 the Chief Minister on 20 May. He does not 15 recall ever discussing Mr McGrail's position 16 with the Chief Minister or the Attorney 17 General or anyone else, and was not advising 18 Mr Levy or anyone else on that matter. 19 We have received some of the Whatsapp 20 communications at the time, although we are 21 told that not all of them are available, and we 22 should just look at them briefly. 23 Mr Levy called the Attorney General twice 24 unsuccessfully on 12 May 2020. The 25 Attorney General accepts that the did speak</p> <p style="text-align: center;">Page 215</p>
<p>1 did not attend a meeting with the Chief 2 Minister and Mr Baglietto on 12 May 2020. 3 Mr Levy's evidence is that Mr Baglietto 4 communicated with the Attorney General as 5 his legal representative, which was legitimate 6 and proper, and he did not seek to remove Mr 7 McGrail from his post and was not involved 8 in the process. 9 Mr Baglietto's evidence is that he has no 10 recollection of the contents of his discussions 11 with the Chief Minister about the warrants. 12 He recalls conversations with the Attorney 13 General about the warrants and whether the 14 RGP would accept a voluntary statement. It 15 is likely he would have called the Attorney 16 General on 12 May to initially protest and 17 express concerns and let him know Hassans 18 would be writing, and possibly seeking a 19 meeting with the Attorney General and Mr 20 McGrail. He does not recall the 21 conversations that appear to have happened 22 with the Attorney General and the Chief 23 Minister on the following day. He notes 24 messages with the Chief Minister on 14 May, 25 which he believes to relate to a letter sent on</p> <p style="text-align: center;">Page 214</p>	<p>1 either late that day or the next day and that 2 the AG told Mr Levy that he should speak to 3 the DPP who was handling the matter. 4 (15.31) 5 If we go to B 1422, this is an exchange 6 between the Chief Minister and Mr Baglietto 7 which starts on 12 May. The first two 8 messages are not relevant. 13 May is Mr 9 Baglietto asking to talk. The Chief Minister 10 says: "Give me five." Then on 14 May the 11 Chief Minister sets out dismissal or total loss 12 or reduction of pension benefit. That appears 13 to be a reference to a disciplinary provision 14 on disciplinary regulations. They do not 15 actually apply to the Commissioner of Police 16 but it is a disciplinary measure that can be 17 used against officers. Mr Baglietto replies 18 saying: "Many thanks." Then the Chief 19 Minister refers to section 76 of the Police Act 20 and sets that out, and that is a power to make 21 orders to return property taken by the police 22 in a criminal investigation. Mr Baglietto 23 replies to that saying: "Thanks. We are 24 drafting a letter. Let me think about this 25 provision but we prefer not to have to go to</p> <p style="text-align: center;">Page 216</p>

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<p>1 court but for the CPO to return due to clear 2 unlawfulness." The Chief Minister says: "I 3 understand." 4 If we can go to C 6883, just at the bottom of 5 the page, these are the messages between Mr 6 Baglietto and Mr Llamas where Mr Baglietto 7 is asking to call, we are informing him that 8 they are delayed with the letter, and further 9 messages about calling on 20 May, as Mr 10 Baglietto acknowledges in his statement. 11 If we can go to A289, this is a message from 12 Mr Levy to Mr Llamas which is set out in Mr 13 Llamas's statement, his first affidavit, at 14 paragraph 68 Mr Levy by WhatsApp at 20.57 15 on 13 May, which is the day after the search 16 warrants: "On the other matter, I feel I've 17 been hung out to dry, certainly not by you." 18 And the answer from Mr Llamas one minute 19 later is set out below. I should say what Mr 20 Llamas says here. He says: "I assume that he 21 was referring to the execution of the search 22 warrants against him the previous day and I 23 interpreted his statement that it was certainly 24 not by me to mean that he correctly assumed 25 that I had not been involved in the decision to</p> <p style="text-align: center;">Page 217</p>	<p>1 personal reasons. 2 Then at 09.51 on 17 May there is a reference 3 to: "12 noon, he says", and then a few missed 4 phone calls over the next few minutes. The 5 Chief Minister then says: "Okay, let me 6 know when you are on your way up." Mr 7 Baglietto: "Okay." Chief Minister says: 8 "How are you going?" Mr Baglietto picking 9 up now. That, the Chief Minister and Mr 10 Baglietto appear to accept, is a reference to 11 the meeting that they believe took place at 12 the Chief Minister's residence. 13 Later that evening there is some media which 14 is sent which has been omitted from here, 15 and the Chief Minister says: "That is page 13 16 of the HMIC report published last week. 17 Look at the bit I have highlighted in red. 18 Boom." The response is: "Shocking but 19 sadly does not come as a surprise. Thanks 20 for your time today bro, I think it reassured 21 him a lot." Then the Chief Minister: "I think 22 the above is of major to the issues raised this 23 week. It will be important. Remember the 24 HMIC report is public." Mr Baglietto: "Yes, 25 excellent, we can put it to good use for sure."</p> <p style="text-align: center;">Page 219</p>
<p>1 obtain and execute the search warrants. As a 2 matter of courtesy to him, I replied but I 3 wanted to do so without commenting or 4 being drawn into conversation with him 5 about the matter, so I replied one minute later 6 as follows, 'Don't worry.' I thereby sought to 7 and did end the exchange. In fact, what I had 8 agreed with Mr McGrail in our meeting 9 earlier that day was that the RGP would 10 continue to hold Mr Levy's devices and 11 would proceed with the interview under 12 caution, the precise things that Mr Levy's 13 lawyers were complaining about in their 14 letter of 12 May 2020." 15 If we go back to B 1422, please, there we 16 have - we can pick it up again on 16 May 17 towards the bottom of the page. It is from 18 Mr Baglietto: "Bro, sorry to disturb but can 19 we speak some time tomorrow morning?" 20 The Chief Minister replies: "Sure, what time 21 is good for you?" Mr Baglietto: "Thanks, 22 any time and what's the best way? 23 WhatsApp call or landline?" "I don't mind, 24 I'll call you now." "Perfect, thanks. Mobile 25 or" - and a number that is redacted for</p> <p style="text-align: center;">Page 218</p>	<p>1 The Chief Minister: "I have sent to JL. Let 2 me know if he sees it", to which Mr Baglietto 3 replies with a thumbs up. 4 The image that was sent is at C 6761. That is 5 page 7 of the HMIC report. I do not know if 6 we can bring that down. There is clearly an 7 emphasis on this section on investigative 8 support which refers to officers using their 9 personal devices to examine offenders' 10 phones which HMIC considered was not 11 good practice and did not meet best evidence 12 standards. 13 On 29 May there is another message between 14 Mr Baglietto and the Attorney General 15 informing him that he had emailed him the 16 article, and the Attorney General later 17 confirmed receipt, but no email has been 18 received by the Inquiry. We have not been 19 provided with WhatsApp or other messages 20 between the Chief Minister and Mr Levy. 21 That is something to address in questioning. 22 It is clear from the evidence, particularly that 23 of the Chief Minister and the 24 contemporaneous documents, that there was 25 very regular communication between the</p> <p style="text-align: center;">Page 220</p>

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<p>1 Chief Minister and the AG on the one hand. 2 Well, the Chief Minister certainly and Mr 3 Baglietto and Mr Levy and, in the AG's case, 4 there is that one exchange with Mr Levy and 5 then more with Mr Baglietto. 6 As to where the conspiracy investigation now 7 was relied on to finish this issue off, it was 8 clearly the most important issue for the Chief 9 Minister. We have already seen his 14 May 10 message that refers to a matter that he wanted 11 to alert Mr Pyle to when they met, and he has 12 explained in evidence that he was referring to 13 the issues of the execution of the search 14 warrant in respect of Mr Levy and his views 15 in respect thereof. It was referred to again 16 consistently in the meeting of 17 May, the 17 meeting of 18 May, the GPA meeting of 21 18 May. The letter of 22 May from the GPA to 19 Mr McGrail does not mention it explicitly 20 but refers to the Chief Minister's dealings 21 with Mr McGrail which I believe the Chief 22 Minister's case is that that was a reference to 23 it, but again that is a matter for questioning. 24 And then the three letters also mention the 25 matter, obviously in different ways.</p> <p style="text-align: center;">Page 221</p>	<p>1 public on 7 May 2020. The 2016 report 2 identified eight areas for improvement by the 3 RGP with seven addressed to the 4 Commissioner and an eighth for the Minister 5 of Finance. Mr McGrail's application for the 6 Commissioner of Police made specific 7 reference to this report and to setting up a 8 working group in order to address the report 9 as part of his action plan. He assumed the 10 role of Commissioner of Police in May 2018 11 and in August and September 2018 he 12 decided to ask the GPA to request a new 13 report. He says that he was fully cognisant 14 that they were pending recommendations but 15 it was imperative to demonstrate openness, 16 transparency and progress following 17 criticism which the RGP had received in the 18 Panorama newspaper and a survey conducted 19 by the GPF which referred to discontent 20 among the rank and file complaints of 21 bullying. Commissioner Ullger who was 22 assistant commissioner at the time and 23 Assistant Commissioner Yeats who was a 24 superintendent at the time stated that the 25 command team at the RGP all opposed this</p> <p style="text-align: center;">Page 223</p>
<p>1 In conclusion, it is plain that this matter was 2 at the forefront of the Chief Minister and the 3 Attorney General's and Mr McGrail's minds 4 at the time of Mr McGrail's retirement. Mr 5 Pyle sits apart giving entirely different 6 reasons for his position but the Chief 7 Minister in particular obviously felt very 8 strongly about it in one way and Mr McGrail 9 obviously felt very strongly about it in 10 another way, feeling that he was being 11 muscled out of an investigation. So that is a 12 matter which will - certainly the meetings of 13 12 May and the subsequent meetings in May 14 will have to be considered in questioning. 15 So that concludes issue five, the conspiracy 16 investigation. 17 (15.41) 18 Issue 4, which we dealt with --- which I have 19 pushed back, is the HMIC report. This issue 20 concerns two inspections and reports 21 conducted by Her Majesty's Inspectorate of 22 Constabulary and Fire Rescue Services on 23 the RGP, one in October 2015 with a report 24 in July 2016 and the other in October 2019 25 with a report in April 2020 which was made</p> <p style="text-align: center;">Page 222</p>	<p>1 decision because they knew that while 2 progress had been made, not enough had 3 been done to meet those recommendations. 4 They felt it would expose the RGP to 5 renewed criticism and Dr Britto also 6 expressed concern about submitting the 7 workforce to two inspections at the same 8 time because another private inspection was 9 being carried out by AAP Associates. The 10 inspection was conducted on 14 to 18 11 October 2019. Both Mr McGrail and Mr 12 Ullger got the impression from the final 13 briefing that actually the inspection was 14 positive but the draft report came in February 15 2020 and Mr McGrail and Mr Ullger say that 16 that was not consistent with the briefing that 17 they received. It was shared with Dr Britto 18 who commented to the HMIC team that he 19 found the language used to be "quite 20 unfortunate" and believed the same message 21 could have been made in a more constructive 22 tone but committed to addressing the points 23 raised in the report. 24 The final report was sent to the GPA and Mr 25 McGrail on 9 April 2020. Depending on the</p> <p style="text-align: center;">Page 224</p>

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<p>1 reading of the report, either two or one of the 2 areas of the report had been areas for 3 improvement had been met but the remaining 4 ones all remained areas for improvement and 5 nine additional areas of improvement were 6 identified, together with ten new 7 recommendations. We have provided a 8 detailed account of those findings in our fact 9 schedule. I do not think I am going to have 10 time to go to the reports, given how little 11 time we have today, but Mr McGrail 12 recognised that the report is critical in places 13 and made a number of points in response. 14 He says that there is no express criticism of 15 him and the overview states that the force 16 offers a good level of service with a 17 professional, committed and enthusiastic 18 work force. The report identifies failings on 19 the part of the government such as providing 20 limited resources, a lack of legislation on 21 domestic abuse and a failure by the Chief 22 Minister as Minister of Finance to set out a 23 funding plan. He says that the 24 recommendation on corruption was new and 25 not outstanding and refers to examples of the</p> <p style="text-align: center;">Page 225</p>	<p>1 that he did not think it should be published in 2 full and he communicated this to Dr Britto on 3 29 April. The Chief Minister states that he 4 was alerted to the quite damning nature of 5 the report by Mr Pyle on 30 April 2020. 6 If we can go to C3344 Mr Pyle sends an 7 email to the Chief Minister on 30 April 8 saying the following from the second 9 paragraph, "Having studied the report I find 10 it to be quite damning and it will need careful 11 handling. In essence, HMIC found the RGP 12 to have only met two out of the eight areas 13 for improvement identified in 2016. My own 14 sense is that HMIC were very disappointed 15 indeed to find so little progress had been 16 made since their last inspection. This is a 17 shame and their willingness to help the RGP 18 in the future may have diminished as a result. 19 This is something we must help correct but I 20 don't think the issue is as bad as the headline 21 suggests and believe it is an issue of culture 22 and leadership more than anything else. 23 Most of the issues should be relatively easy 24 to fix though it will take a collective effort 25 driven bottom up from within the RGP as</p> <p style="text-align: center;">Page 227</p>
<p>1 government intervening with the RGP's 2 attempts to set up an example with officers 3 who behaved corruptly and improperly. So 4 he rejects the assessment that the force was 5 not alive to corruption. He says he 6 completed 16 out of 37 items on his action 7 plan and work had commenced on another 8 ten. The plan noted that exigencies may 9 warrant a review of the actions and the GPA 10 never reviewed his performance against the 11 plan. Upon receipt of the report, he 12 immediately prepared a road map and 13 submitted it to the GPA and the Minister of 14 Justice to address all the recommendations. 15 The GPA and the Minister of Justice were 16 content with his approach and he says that 17 initially Mr Pyle did not express any lack of 18 confidence in him and his ability to see the 19 recommendations through. 20 On 29 April 2020 the Minister for Justice, 21 Samantha Sacramento, messaged Mr 22 McGrail stating, "The report is shocking 23 reading on the face of it but if you analyse 24 deeper it's not that bad and it has easy 25 solutions." Mr Pyle's initial response was</p> <p style="text-align: center;">Page 226</p>	<p>1 much as from its leadership which needs to 2 be both more strategic and directive. Quite 3 simply, as I see it, the RGP needs to 4 modernise in all senses of the word." He was 5 very concerned about the publication of the 6 report and, therefore, had proposed ideas as 7 to how to deal with when it is published. He 8 says, "This means being upfront and honest 9 about the issues and challenges as well as 10 displaying a commitment to put things right. 11 If we do not, I think the credibility of the 12 RGP is at risk." He also suggests that the 13 Commissioner make this report public at the 14 same time as publishing his road map on the 15 way forward. 16 The report was published on 7 May and Mr 17 McGrail refers to messages of support he 18 received on its publication from Dr Britto, 19 the previous Minister of Justice, Neil Costa, 20 Lieutenant General Davis and current 21 Minister of Justice Samantha Sacramento. 22 HMIC returned to Gibraltar in April 2022 for 23 a further inspection and according to 24 Commissioner Ullger he gave the RGP a 25 favourable outcome. Of the ten</p> <p style="text-align: center;">Page 228</p>

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<p>1 recommendations, six had been fully 2 achieved and four partially achieved. Of the 3 15 areas for improvement, 14 had been met 4 and one partially met. The Chief Minister, 5 Mr Pyle and the GPA have all identified the 6 HMIC report as a reason for losing 7 confidence in Mr McGrail. It was mentioned 8 consistently throughout the process. Mr Pyle 9 refers to the report in his evidence at 24.1 10 which is at A249. He says, "My concerns 11 grew with the 2020 HMIC report --- review 12 of the RGP which had been called for by Mr 13 McGrail to demonstrate progress made the 14 2016 report which had made a number of 15 important recommendations that required to 16 be implemented." Then the final paragraph, 17 "It was, in my opinion, so damning that I sent 18 an email on 29 April to the chair of the GPA 19 saying that it should not be published in full. 20 I sent a further email to the Chief Minister on 21 30 April saying the report was quite damning 22 and will need careful handling. I said I 23 thought it is an issue of culture and 24 leadership. I thought the RGP leadership 25 needed to be more strategic and directive and</p> <p style="text-align: center;">Page 229</p>	<p>1 senior officers were sometimes too ready to 2 apportion blame when something goes 3 wrong. This represented a deterioration 4 rather than the expected progress and went 5 some way to validating the Gibraltar Police 6 Federation's grievances stated above. I 7 believe that these differences between the 8 2016 and 2020 reports reflected Mr 9 McGrail's management style. Mr McGrail in 10 response states that Mr Pyle is expressing a 11 skewed negative opinion of him based on 12 what others may have told him and has a 13 deep rooted negative mindset towards him 14 without having ever brought those concerns 15 to Mr McGrail's attention. The Chief 16 Minister stated he found the report to be very 17 damning but it did not make him lose 18 confidence in the integrity or probity of Mr 19 McGrail. It did, however, reflect on Mr 20 McGrail's ability to maintain the efficiency 21 and effectiveness of the RGP and he was not 22 confident that Mr McGrail could be the 23 person to address the recommendations. 24 Given that he had demonstrably failed to act 25 since 2018 and matters had deteriorated on</p> <p style="text-align: center;">Page 231</p>
<p>1 the RGP needed to modernise. One 2 noteworthy feature of the 2020 report was the 3 sharp contrast to the 2016 report insofar as 4 concerns the leadership, management style 5 and culture issues within the RGP." 6 He highlights in 24.5 that the 2020 report 7 spoke of "told by less senior staff that the 8 phrase 'firm leadership' is occasionally used 9 to describe management behaviours that in a 10 small number of cases may have amounted to 11 bullying. A perception exists among an 12 apparently large number of officers that some 13 senior officers sometimes behave in an 14 unacceptable manner when dealing with their 15 staff. Shortly before our inspection, an 16 external review concluded that there wasn't 17 systematic bullying in their force but it did 18 find some evidence of bullying and 19 harassment by a minority of managers, 20 supervisors and peers that was not being 21 reported and consequently not addressed. It 22 made recommendations for the commissioner 23 to acknowledge that the force takes the 24 Federation's concerns about bullying 25 seriously. Many junior officers perceive that</p> <p style="text-align: center;">Page 230</p>	<p>1 his watch, he considered that it was 2 important and a key issue for Mr Pyle but not 3 the key issue for him." 4 There is no question that HMIC is a 5 circumstance leading to Mr McGrail's early 6 retirement and a stated reason on the part of 7 the Chief Minister or Mr Pyle, although it 8 certainly remains to be explored through 9 questioning whether in fact it was a real 10 reason. 11 Issue 6 is the Federation complaints and this 12 deals with the complaints which were said to 13 have been made by the Gibraltar Police 14 Federation to the Gibraltar Police Authority 15 about Mr McGrail including --- as to the 16 difficult relationship between Mr McGrail 17 and the Federation and any allegations of 18 bullying and/or intimidation by Mr McGrail 19 discussed by the GPA. The GPF is a 20 representative body for members of the RGP 21 below the level of superintendent established 22 under the Police Act. It is important at the 23 outset on this issue that we do not take it too 24 widely because you, Mr Chairman, have 25 already ruled last that the wording should be</p> <p style="text-align: center;">Page 232</p>

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<p>1 narrowed to refer to the complaints made by 2 the GPF to the GPA about Mr McGrail or 3 any allegations of bullying by Mr McGrail 4 discussed by the GPA, so it is not a carte 5 blanche to explore the relationship between 6 the GPF and Mr McGrail generally but the 7 relationship between Mr McGrail and the 8 GPF is mentioned by Mr Pyle and the Chief 9 Minister and it is relevant background to this 10 point which is raised by Mr Pyle, so I should 11 cover it so that the inquiry can then consider 12 whether these issues were the subject of 13 complaint to the GPA. 14 According to Mr Pyle's evidence, the 15 ongoing tension in the relationship between 16 Mr McGrail and the GPF, together with the 17 allegations of bullying and intimidation 18 against him, was a concern, albeit of a lesser 19 order of gravity which fitted into the pattern 20 of behaviours which were causing him to 21 begin to lose confidence in Mr McGrail. The 22 rumours and anecdotes of bad practice and 23 behaviours in contrast were not things on 24 which Mr Pyle felt it was possible to act, 25 although they contributed to his growing</p> <p style="text-align: center;">Page 233</p>	<p>1 that they were rumours and anecdotal, as I 2 say, they were not things on which he felt it 3 was possible to act but, nevertheless, 4 contributed to his growing unease. 5 The Chief Minister also refers to the 6 relationship between Mr McGrail and the 7 GPF and in particular an occasion when he 8 wrote --- when Mr McGrail wrote to the 9 governor to propose legislation limiting the 10 powers of the GPF. The Chief Minister 11 recognises that this issue did not cause him to 12 lose confidence in Mr McGrail but that this 13 was a demonstration of his very fractious and 14 difficult approach to relationships. The 14 15 May 2020 that the Chief Minister sent to Mr 16 Pyle also refers to the Federation bullying 17 allegations. Neither Mr McGrail nor 18 members of the GPF who have given 19 evidence to this Inquiry, Mr Morello, Mr 20 Simpson and Mr Bautista, dispute that they 21 had a difficult and contentious working 22 relationship. Dr Britto confirmed that he was 23 aware of the bad relations between Mr 24 McGrail and Mr Morello and that they had 25 disputes. This is echoed by RGP witnesses,</p> <p style="text-align: center;">Page 235</p>
<p>1 sense of unease. 2 Mr Pyle's evidence referred to three related 3 matters which he said contributed to his loss 4 of confidence. First, that there was that 5 fractured relationship. He said that Mr 6 McGrail's management style resulted in a 7 fractured, almost hostile relationship with 8 him and the Gibraltar Police Federation, the 9 representative body of the rank and file in the 10 RGP. Second, he referred to formal 11 complaints to the RGP saying that the 12 resulting tensions between the RGP 13 leadership and the GPF culminated in formal 14 complaints from the Federation to the GPA 15 about Mr McGrail and the GPA regularly 16 spoke at its meetings about the allegations of 17 bullying and intimidation by Mr McGrail. 18 Thirdly, he referred those rumours of bad 19 practice which he said he had often heard in 20 anecdotes and stories of bad practice and 21 behaviours by the RGP that were hard to 22 ignore given their volume. He said these 23 included stories of the RGP turning a blind 24 eye with crimes committed by people they 25 know and given that they were --- but given</p> <p style="text-align: center;">Page 234</p>	<p>1 Commissioner Ullger, Assistant 2 Commissioner Yeats and DCI Field --- sorry, 3 Superintendent Field. 4 Documents disclosed to the Inquiry 5 demonstrate that Mr McGrail and Mr 6 Morello raised complaints about each other 7 to the Chief Minister, to the Chief Secretary 8 and to Dr Britto. For example, Mr McGrail 9 complained to Dr Britto about what he 10 described as the incessant path of destruction 11 that the Gibraltar Police Federation, Henry 12 Bautista, is set on. I do not intend to go into 13 detail about the particular flash points in the 14 difficult relationship between Mr McGrail 15 and the GPF but I will briefly mention that 16 these included surveys organised by the GPF 17 in 2018 and in August and September 2019, 18 both of which had unfavourable results and 19 raised concerns about bullying, disciplinary 20 proceedings that were opened by the RGP 21 command against Sergeant Morello and PC 22 Simpson on the basis that they had made 23 adverse comments about the RGP senior 24 management to Panorama and disputes about 25 the structure and remuneration of the GPF.</p> <p style="text-align: center;">Page 236</p>

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<p>1 Mr McGrail raised concerns about this with 2 the Chief Minister and with the governor. As 3 I mentioned, the key question in relation to 4 this issue is not the substantive allegations 5 between the parties but whether these issues 6 were reported by the GPF to the GPA or 7 discussed by the GPA. There is a clear 8 factual dispute here which will need to be 9 explored in the coming weeks. 10 The evidence from Sergeant Morello and Mr 11 Simpson on behalf of the GPF corroborates 12 Mr Pyle's account that there were ultimately 13 formal complaints to the GPA. According to 14 Mr Morello in late January or early February 15 2020 he spoke with Dr Britto by phone and 16 asked to address the GPA board not only in 17 relation to the ongoing international --- sorry, 18 the ongoing internal investigation but the 19 general relationship with the GPF command 20 and the authoritarian style of leadership and 21 Mr Morello says that a meeting was held at 22 the GPA offices with most of the GPA board 23 in attendance where he asked how to file a 24 complaint of bullying against the 25 Commissioner to which Dr Britto replied,</p> <p style="text-align: center;">Page 237</p>	<p>1 record of formal complaints against Mr 2 McGrail being made. The minutes of a GPA 3 meeting on 6 February 2020 do refer at item 4 5 to a meeting with GPF and the 5 Commissioner of Police but Dr Britto has 6 said that this was a mistake as no such 7 meeting was held with the GPF. However, 8 he says that Mr McGrail attended at the end 9 of that meeting and has given a detailed 10 account which can be explored further in 11 questioning. 12 Mr McGrail states that he was never 13 informed by anyone at the GPA or anyone 14 else that complaints of bullying had been 15 made against him and similarly other senior 16 RGP officers who have provided evidence 17 confirm that they were not aware of any such 18 allegations, namely, Mr Ullger, Mr Yeats, Mr 19 Field and Mr Wyan (?). Ultimately the 20 Inquiry has not received any document which 21 records formal complaints being made to the 22 GPA against Mr McGrail concerning 23 allegations of bullying or intimidation by the 24 GPF or even about the difficult relationship 25 between Mr McGrail and the GPF but this</p> <p style="text-align: center;">Page 239</p>
<p>1 "No, please, no, that's all we need now." 2 Sergeant morello then pointed out that unlike 3 in the UK there was in fact no recourse in 4 those circumstances. He then gave the board 5 a summary of events that had transpired since 6 being elected as convenor at which point a 7 board member stated, "That is clearly 8 bullying and the problem clearly here is Mr 9 McGrail." 10 Mr Simpson gives an almost identical 11 account although he specifies that the 12 meeting took place on 31 January 2020 and 13 that the board member who spoke was Frank 14 Perez (?). However, this version of events is 15 firmly rejected by both Mr McGrail and the 16 members of the GPA who have given 17 evidence to the Inquiry. Dr Britto accepts 18 that issues and disputes were raised with him 19 by both sides but says that they were not 20 formal complaints. He does remember --- 21 sorry, he does not recall Mr Morello 22 attending a GPA meeting in January or 23 February 2020 and nor do other members of 24 the GPA. The members of the GPA also all 25 confirm that they have no recollection or</p> <p style="text-align: center;">Page 238</p>	<p>1 means that witness evidence will be 2 particularly important on this point. Over the 3 next few weeks we will explore whether the 4 relationship between Mr McGrail and the 5 GPF and any reports about it to the GPA 6 were a reason or a circumstance contributing 7 to Mr McGrail's early retirement. If Mr 8 Pyle's evidence is accepted, this was a 9 circumstance and a reason of lesser 10 importance to Mr Pyle beginning to lose 11 confidence in Mr McGrail and it, therefore, 12 contributed to some degree to Mr McGrail 13 ceasing to be commissioner of police. 14 However, given the way that the Inquiry has 15 framed this issue in the list of issues, the 16 Inquiry does need to focus the investigation 17 on complaints, if any, to the GPA. 18 Turning, finally, to issues 8 to 10, I can take 19 these together. Unlike the issues that I have 20 addressed so far, which are more substantive 21 in their nature, these three issues are to do 22 with the procedure by which Mr McGrail 23 ultimately ceased to be commissioner of 24 police and the events in those final days. It is 25 important to look at the legislation with</p> <p style="text-align: center;">Page 240</p>

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<p>1 which we are dealing in this context. There 2 are two routes in the Police Act 2006 for the 3 Commissioner of Police to leave his position. 4 The first is laid out in section 34 of the Police 5 Act 2006 and that provides that the GPA, 6 acting after consultation with the governor 7 and the Chief Minister and with the 8 agreement of either of them, they may call 9 upon the Commissioner to retire in the 10 interests of efficiency, effectiveness, probity, 11 integrity or independence of policing in 12 Gibraltar. The GPA is required by 13 subsection 2 to give the commissioner an 14 opportunity to make representations and shall 15 consider them before seeking the approval of 16 the governor and the chief minister and/or the 17 chief minister under section 34(1). A 18 commissioner called upon to retire under 19 section 34(1) must retire on a date specified 20 by the GPA or on such earlier date as may be 21 agreed between them, so the process required 22 by section 34 is, therefore, in the following 23 order. Stage 1, the GPA determines that it is 24 considering calling upon the commissioner to 25 retire in the interests of efficiency,</p> <p style="text-align: center;">Page 241</p>	<p>1 call for the resignation of the commissioner. 2 The governor is required to keep the chief 3 minister informed of any exercise by him of 4 such a power under subsection 2. At the 5 beginning of my submissions today, I 6 referred to the text sent by the chief minister 7 to Mr Pyle on 14 May 2020 which referred to 8 his huge concerns about the senior 9 management of the RGP and listed several 10 actors which were contributing to this. This 11 was the first communication on the topic of 12 Mr McGrail's position and initiated the rapid 13 events which led to Mr McGrail applying for 14 early retirement on 9 June. I do not have 15 time to go through all of the events and 16 communications that went on through that 17 period but it is helpful to sketch out a broad 18 timeline in order to show how events 19 progressed. 20 After the WhatsApp message of 14 May the 21 chief minister and Mr Pyle met the next day 22 to share their concerns. That is a meeting 23 where Mr Pyle considered that it was a 24 remarkable coincidence that the chief 25 minister had raised this matter with him as</p> <p style="text-align: center;">Page 243</p>
<p>1 effectiveness, probity, integrity or 2 independence of policing in Gibraltar. Stage 3 2, the GPA gives the commissioner an 4 opportunity to make representations and 5 considers those representations. Stage 3, 6 having considered those representations, the 7 GPA seeks the approval of the governor and 8 the chief minister to call upon the 9 commissioner to retire. Stage 4, having 10 obtained the approval of either of the 11 governor and the chief minister, the GPA 12 calls on the commissioner to retire and stage 13 5, the commissioner retires on the date 14 specified or an earlier date if agreed. The 15 extent to which the GPA properly followed 16 this process is at the heart of one of these 17 issues. 18 The second method for the commissioner of 19 police to cease being commissioner of police 20 is laid out in section 13 of the Police Act 21 2006 and that says that where the authority 22 has failed to discharge or perform a 23 responsibility imposed on it under the PA in 24 2006 the governor is able to exercise certain 25 powers including to suspend from duty or</p> <p style="text-align: center;">Page 242</p>	<p>1 they had both independently developed 2 concerns about Mr McGrail. On 16 May 3 2020, a Saturday, Mr Pyle invited Dr Britto 4 to attend a meeting with the chief minister on 5 the Monday. Before their scheduled 6 meeting, Mr Pyle and the chief minister 7 exchanged notes where they set out their 8 preliminary position on the criteria in section 9 34(1) of the Police Act, efficiency, 10 effectiveness, probity, integrity and 11 independence. The chief minister's lengthy 12 email referred to the HMIC report, Mr 13 McGrail's reporting about the collision at sea 14 and the James Levy case search warrants 15 which he said was possibly the issue of 16 deepest concern. On 18 May 2020 Dr Britto, 17 Mr Pyle, the interim governor and the chief 18 minister met to discuss the issue. There was 19 no contemporaneous note made of that 20 meeting but the chief minister subsequently 21 prepared and circulated a note. That is at 22 C3988 and that is an informal record of the 23 meeting with his Excellency, the Chief 24 Governor, and the Chief Minister on Monday 25 18 May 2020 which the chief minister</p> <p style="text-align: center;">Page 244</p>

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<p>1 prepared for Dr Britto. The notes referred to 2 the GPA's powers under section 34 and 3 stated that the GRP, therefore, being invited 4 by the governor and the chief minister 5 together to consider whether they believed 6 that all or any of the Police Act criteria had 7 been impacted. They then go through the 8 criteria and in the course of doing so, refers 9 to three substantive matters, two expressly, 10 the HMIC report and the filing of legal 11 claims in Spain by relatives of the citizens 12 killed in the collision at sea. The note also 13 refers to a third issue, namely another event 14 occurring last week which had left the chief 15 minister also in a situation where the 16 commissioner had expressly misled him and 17 which left him unable to believe the 18 commissioner. It seems undisputed that this 19 was a reference to the search warrant. 20 Dr Britto arranged the GPA meeting urgently 21 to consider the issue which was held on 21 22 May but there were two procedural 23 deficiencies with that meeting. First, only Dr 24 Britto and four other members were in 25 attendance and, secondly, there was no</p> <p style="text-align: center;">Page 245</p>	<p>1 incident at sea and the HMIC report. In 2 response, Mr McGrail raised the issue of the 3 search warrants and stated that it had 4 triggered the chief minister's reaction. Dr 5 Britto stated that he and the GPA members 6 had been surprised by the events. Dr Britto 7 handed Mr McGrail a letter inviting him to 8 retire and repeatedly stated that Mr McGrail 9 was not being suspended or forced to retire. 10 Mr McGrail requested that Dr Britto put the 11 reasons in writing in a more detailed letter so 12 that he could prepare a response. 13 In the hours that followed, Dr Britto prepared 14 a draft of the second letter to Mr McGrail 15 which he sent to the chief minister. The 16 chief minister edited this letter and if we look 17 at C4282 we can see --- sorry, C4282, we can 18 see highlighted in yellow the sections that 19 were added by the chief minister which he 20 said he did to provide further information as 21 to the reasons for the loss of confidence on 22 his part and on the interim governor's part. 23 Again this letter analysed the five criteria in 24 section 34 of the Police Act and referred to 25 the HMIC report and the incident at sea.</p> <p style="text-align: center;">Page 247</p>
<p>1 contemporaneous note made of the meeting 2 as required by the Police Act, although a 3 retrospective one was later prepared. That 4 note records that Dr Britto read out the file 5 note to the meeting which the Inquiry 6 understands to be the record prepared by the 7 chief minister that I have just referred to. 8 The note states that the collision at sea was a 9 major factor in the GPA's decision but Dr 10 Britto's evidence is that the search warrants 11 were discussed and that he did --- I 12 understand that he did refer to Mr Levy by 13 name at the meeting. The note records that 14 Dr Britto would consult with the members 15 who were not in attendance and if they were 16 in agreement the GPA would proceed with 17 section 34. 18 Dr Britto and Mr McGrail met in person the 19 next day. The meeting was secretly recorded 20 by Mr McGrail so the Inquiry has a complete 21 picture of what was said. At the meeting, Dr 22 Britto relayed that the chief minister and Mr 23 Pyle had lost confidence, complete 24 confidence in Mr McGrail's leadership and 25 management style. Dr Britto referred to the</p> <p style="text-align: center;">Page 246</p>	<p>1 There was no direct reference to the criminal 2 investigation but this is perhaps something to 3 clarify in questioning because it does appear 4 impliedly to -- that it may impliedly refer to 5 it in the sense that it refers to dealings with 6 the chief minister previously. 7 (16.11) 8 On 29 May 2020, Charles Gomez, the lawyer 9 acting on behalf of Mr McGrail, wrote to the 10 GPA with representations about the flaws in 11 the GPA's process, describing it as "grossly 12 procedurally unfair", for example because Dr 13 Britto had told Mr McGrail that if he refused 14 to comply with invitation to retire, then the 15 Governor would use his powers under 16 section 13 of the 2006 Act, and 17 representations had not been sought before 18 the process was followed. 19 As to substantive matters, the letter queried 20 why there had been no reference to the 21 search warrants in a second letter, and 22 accused the Attorney General and the Chief 23 Minister of grossly inappropriate interference 24 with a live criminal investigation. It argued 25 that the incident at sea and the HMIC report</p> <p style="text-align: center;">Page 248</p>

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<p>1 were fig leaves for this real reason, that Mr 2 McGrail was being requested to retire. Each 3 of Mr Pyle, the Chief Minister and the 4 Attorney General responded to the GPA 5 about 29 May letter. We refer to those three 6 letters as "the three letters" and when I come 7 to examine each of those witnesses, we will 8 need to go through those letters in detail, as 9 they set out each of Mr Pyle's, the Chief 10 Minister's and the Attorney General's 11 position on why they lost confidence in Mr 12 McGrail.</p> <p>13 Issue 8 requires you to consider that letter 14 because each of Mr Pyle, the Chief Minister 15 and the Attorney General refer to it as either 16 cementing or deepening their loss of 17 confidence in Mr McGrail. If that evidence 18 is accepted, then it is certainly only to the 19 Inquiry to conclude that 29 May letter was a 20 reason leading to Mr McGrail's early 21 retirement, but it is clear that the letter was 22 sent once events were already in motion and 23 Mr Pyle and the Chief Minister had already 24 determined that they had lost confidence in 25 Mr McGrail, so the Inquiry will therefore</p> <p style="text-align: center;">Page 249</p>	<p>1 of the invitation for Mr McGrail to retire. It 2 seems beyond dispute that this was a 3 circumstance leading to Mr McGrail's 4 retirement, but was it also a reason. On Mr 5 Pyle's case, the GPA's failure to complete the 6 process in a procedurally fair manner amount 7 to a failure to perform its statutory 8 responsibility which allowed Mr Pyle to 9 exercise his power under section 13. We will 10 hear submissions from CPs on this point. 11 On 5 June the GPA also informed Charles 12 Gomez & Co of their decision to withdraw 13 the section 34 process. That is at C4801. 14 Sorry, I am corrected, the response from 15 Charles Gomez & Co is at C4801, but it is 16 worth looking at. In response to being 17 informed that the process was being 18 withdrawn, Mr Gomez addressed some of the 19 matters that were raised in the letter. In the 20 final paragraph or the final substantive 21 paragraph, that email reads as follows: 22 "Our client is gravely concerned by how he 23 has been treated during this process and I 24 welcome your frank acknowledgement that 25 there have been procedural flaws. He is an</p> <p style="text-align: center;">Page 251</p>
<p>1 need to consider whether it truly did play a 2 causative role.</p> <p>3 Turning back to the events of May and June, 4 on 3 June 2020 the GPA instructed Mr Neish 5 KC of TSN to provide legal advice. Mr 6 Neish KC advised that the GPA process was 7 flawed because the GPA's invitation to retire 8 could only be made after affording Mr 9 McGrail reasonable opportunity to make 10 representations and giving due consideration 11 to those representations. On 5 June, Dr 12 Britto advised Mr Pyle that the section 34 13 process had been fundamentally flawed and 14 should be withdrawn. Mr Pyle took advice 15 from the Attorney General on how to respond 16 and the Attorney General advised that due to 17 the GPA's inability to perform its 18 responsibility under section 34 of the Act, the 19 current situation is one which falls within the 20 section 13 of the Police Act and my advice is 21 that in the circumstances of the case, that 22 power is available to you if you were to 23 decide to avail yourself of it.</p> <p>24 Issue 10 requires the Inquiry to consider the 25 GPA's processes, including their withdrawal</p> <p style="text-align: center;">Page 250</p>	<p>1 officer of the highest standing with an 2 impeccable record over the past 36 years. In 3 these circumstances, given how unfairly he 4 has been treated and the improper pressure 5 put upon him to alter the course of a live 6 criminal investigation, our client feels he 7 must apply for early retirement from the 8 Royal Gibraltar Police."</p> <p>9 That afternoon, on 5 June Mr Pyle met with 10 Mr McGrail and Mr McGrail handed Mr Pyle 11 a copy of that email. There is conflicting 12 evidence of what was said at that meeting, 13 which the Inquiry will explore in 14 questioning, but what is undisputed is that 15 Mr Pyle said he would be reading all the 16 correspondence over the weekend and they 17 would meet again on the Monday. One 18 matter of disagreement is whether at that 19 stage Mr Pyle told Mr McGrail that he would 20 be exercising his section 13 powers on the 21 Monday.</p> <p>22 On the Saturday, 6 June, Mr Pyle wrote to 23 Mr McGrail asking him to confirm by 24 midday on Sunday whether it was in fact his 25 decision to take early retirement given what</p> <p style="text-align: center;">Page 252</p>

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<p>1 had been said in the email of 5 June which 2 McGrail had passed him during the meeting 3 of the previous day. He asked Mr McGrail 4 "whether you will be tendering your letter of 5 resignation on Monday". On Monday, 8 6 June, Mr McGrail and Mr Pyle met twice 7 during the course of the day where Mr 8 McGrail confirmed he would be seeking 9 early retirement, subject to certain personal 10 terms. Mr McGrail's evidence is that, "By 11 then it dawned on me that my best option 12 was to find the best way out before I was 13 made to suffer even more. My mental health 14 was very badly affected. I had completed 36 15 years of service and did not want to put in 16 jeopardy my pension entitlements." 17 After correspondence between the parties 18 over the course of the day which involved 19 discussion of Mr McGrail's terms of 20 retirement, an agreement was eventually 21 reached on Monday evening and Mr McGrail 22 handed in his formal letter requesting early 23 retirement on the Tuesday morning. 24 Issue 9 requires the Chairman to consider Mr 25 Pyle's actions in those final days. There is no</p> <p style="text-align: center;">Page 253</p>	<p>1 subsection was triggered, both as a matter of 2 law and fact during May 2020. 3 That concludes 8 to 10, so in conclusion, Sir, 4 we have plenty of to address over the coming 5 weeks. I think I have said more than enough 6 now and you will hear opening statements 7 from the counsel representing core 8 participants over the next two days. 9 Tomorrow you will hear from the RGP's 10 counsel, Mr Cruz(?), former Superintendent 11 Richardson's counsel, Patrick Gibbs KC, the 12 GPA's counsel, James Neish KC, and the 13 Operation Delhi defendants' counsel, Ben 14 Cooper, KC. I do not believe the Gibraltar 15 Police Federation will be giving opening 16 statements. Then on Wednesday, you will 17 hear from Mr McGrail's counsel, Caoilfhionn 18 Gallagher KC, and then the Government 19 parties' counsel, Sir Peter Caruana KC in the 20 afternoon. 21 That concludes my opening statement. 22 THE CHAIRMAN: Yes, thank you very 23 much indeed. Mr Cruz, perhaps I could ask 24 you, are you happy with the order of 25 addresses as has just been set out by Mr</p> <p style="text-align: center;">Page 255</p>
<p>1 dispute that Mr Pyle stated he was willing to 2 use his powers under section 13 if Mr 3 McGrail did not offer to retire, nor is there a 4 dispute that Mr Pyle was keen to resolve the 5 matter before the new Governor, Sir David 6 Steel, arrived in Gibraltar. That much is 7 clear from Mr Pyle's communications with 8 the FCDO. 9 While the new Governor's arrival may not 10 have been a reason in its own right for Mr 11 McGrail's retirement, the Inquiry will need to 12 explore whether it expedited the timing of Mr 13 Pyle's actions. An important consideration 14 here is section 22(3) of the constitution 15 which applies when a person is performing 16 the role of Governor while the office is 17 absent, as Mr Pyle was as interim Governor 18 in May 2020. Section 22(3) states that "Any 19 such person shall not continue to perform the 20 functions of the office of Governor after the 21 Governor or some other person having a 22 prior right to perform the functions of that 23 office has notified him that he is about to 24 assume or resume those functions." The 25 Inquiry will need to consider whether this</p> <p style="text-align: center;">Page 254</p>	<p>1 Santos? 2 MR CRUZ: Yes, thank you. Thank you, Mr 3 Chairman. 4 THE CHAIRMAN: Does anybody else have 5 any problem with that? 6 MR GIBBS: No problem at all. 7 THE CHAIRMAN: If I allow you about an 8 hour each, is that going to suffice? 9 MR CRUZ: I would hope so, Mr Chairman. 10 I am on notice. 11 THE CHAIRMAN: I am sure we will finish 12 tomorrow, one way or another. I will see you 13 tomorrow. Many thanks. 14 (Adjourned until 10 am, Tuesday, 9 April 15 2024) 16 (16.21) 17</p> <p style="text-align: center;">Page 256</p>

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