

<p>1 (Tuesday, 9 April 2024) 2 (10.00) 3 THE CHAIRMAN: Okay, Mr Cruz. 4 MR CRUZ: Good morning, Mr Chairman. 5 Mr Chairman, because I know the public are 6 interested I think it is important I introduce 7 myself. My name is Nick Cruz, and I am 8 assisted by my learned junior Arcelia 9 Hernandez Cordero; to my left is the 10 Commissioner of Police and the Assistant 11 Commissioner, who represent the RGP. I am 12 here in that capacity. Mr Chairman, one 13 obvious benefit (maybe the only one) of this 14 interestingly timely new Inquiry Act is, of 15 course, that we no longer have many 16 Commissioners. We used to have a 17 Commissioner of the Inquiry, a 18 Commissioner of Police, and of course the 19 former Commissioner; now, thankfully, we 20 have a Chairman and therefore it makes our 21 labelling and terminology somewhat better. 22 In relation to the previous Commissioner, of 23 course his ousting or departure is what we 24 are here to consider, but as an aside I would 25 say (as you will hear from the RGP</p> <p style="text-align: center;">Page 1</p>	<p>1 those three foundations for the RGP, very 2 importantly, is to recognise where mistakes 3 have been made, be accountable, reacting 4 accordingly and learning from those 5 mistakes. That would include, as an 6 organisation, understanding what it has done 7 and being accountable; after all, it is in 8 essence a public service organisation. It is 9 important for you Mr Chairman, and for the 10 public at large, to understand the capacity in 11 which the RGP are here as a core participant. 12 Of course, six or five of their officers will be 13 giving evidence, and they may have some 14 detailed input into eventual issues however 15 that evidence falls to be considered, and 16 whilst the RGP is a very interested party and 17 a guardian of the rule of law (I will come to 18 that in some detail in a moment) it does not 19 participate as a (?) witness; to some extent, 20 its role, or it perceives its role to be that of 21 amicus curiae (friend of the court, or friend 22 of this Inquiry). As an organisation, its 23 outlook is and must always be and be 24 perceived to be honest, impartial, transparent 25 and accountable. The RGP's objective here</p> <p style="text-align: center;">Page 3</p>
<p>1 witnesses) even now, having read all the 2 evidence that has been presented, they 3 remained as entirely baffled as they did on 9 4 June 2020. Mr Chairman, I intend to follow 5 to some extent my written submissions, 6 elaborating when required but not when I can 7 avoid it, because of the time constraint of an 8 hour (which I will do my best to keep to, and 9 no doubt you will remind me if I do not). By 10 way of headline or headnote, I believe it is 11 paramount to understand that the RGP 12 maintain that at all times, at all material times 13 (and that includes when Mr McGrail was 14 Commissioner of Police) it has acted 15 professionally and correctly, and in 16 accordance, firstly with their policing 17 obligations (which, I will go on to explain, 18 are contained in the Act), secondly with their 19 code of ethics, and thirdly with the Nolan 20 Principles. For those who are not 21 immediately familiar with those, nothing to 22 do with the Nolan sisters, different 23 numerically (seven, not six), but important 24 standards that apply to public office. I will 25 go on to explain those in a moment. Part of</p> <p style="text-align: center;">Page 2</p>	<p>1 is to assist you, Mr Chairman, in establishing 2 whether due process in accordance with the 3 Constitution, the Police Act and the Nolan 4 Principles. Neutral in outlook, but that 5 should not be confused with the RGP as a 6 core participant seeking to find the middle 7 ground between other competing core 8 participants; it is not. The RPG is, as a core 9 participant, seeking the truth (and the rest 10 goes without saying: the whole truth and 11 nothing but the truth) wherever that falls, to 12 whoever's benefit it is and with whatever 13 consequence it may bring, without fear or 14 favour. Mr Chairman, the first part of this is 15 the policing obligations, and I think it is 16 helpful for you Mr Chairman, and for those 17 watching this, to understand what that means 18 to the police. They live and preside in the 19 Gibraltar Constitution Order and the Police 20 Act. To give further context, and with as 21 much brevity as possible, the police 22 obligations are enshrined in that Act, and 23 responsibility falls to the Gibraltar Police 24 Authority in the first instance, and the 25 Governor only in default. They are "to</p> <p style="text-align: center;">Page 4</p>

<p>1 secure", among other things, "the 2 maintenance of an efficient and effective 3 police force for Gibraltar", and "to ensure 4 high standards of integrity, probity and 5 independence of policing in Gibraltar". 6 Those obligations are delegated under the 7 Act to the Commissioner of Police. The 8 Commissioner of Police must then ensure 9 that police officers, in general terms, as part 10 of the obligations, "preserve the peace and 11 prevent and detect crime and other 12 infractions", keep law and order, ensure 13 public peace and security. And, this also 14 includes apprehending and prosecuting 15 persons reasonably suspected or believed to 16 have committed a criminal offence, whoever 17 they are, without fear or favour, and (it seems 18 appropriate to add) without interference. Part 19 of that is the ethical policy and code of ethics 20 that the police are guided by. The RGP when 21 discharging their police obligations, and 22 arising from that code, recognise and do their 23 best to adhere at all times (at least, they did at 24 the material time, when Mr McGrail was in 25 charge) to follow the Nolan Principles. The</p> <p style="text-align: center;">Page 5</p>	<p>1 "Holders of public office must act and take 2 decisions impartially, fairly and on merit, 3 using the best evidence and without 4 discrimination or bias." "Openness": 5 "Holders of public office should act and take 6 decisions in an open and transparent manner. 7 Information should not be withheld from the 8 public unless there are clear and lawful 9 reasons for so doing." "Honesty": "Holders 10 of public office should be truthful." 11 "Leadership": "Holders of public office 12 should exhibit these principles in their own 13 behaviour and treat others with respect. They 14 should actively promote and robustly support 15 the principles and challenge poor behaviour 16 wherever it occurs." Mr Chairman, in 17 addition to that the RGP recognise that they 18 have to make difficult decisions, very often 19 in difficult, difficult circumstances, and to do 20 that they need the consent of the public. 21 Their mission is to help to keep the public 22 safe, and that requires public acceptance and 23 cooperation. They strive to deliver an 24 honourable and legitimate police service, and 25 that requires public support. To collect and</p> <p style="text-align: center;">Page 7</p>
<p>1 Nolan Principles are in essence principles 2 that apply to public office holders. That 3 would include all elected Members, all those 4 appointed to public office, all civil servants, 5 the police, the courts (I would suggest) and 6 this Inquiry; they apply to all public office 7 holders, who are servants of the public and 8 stewards of public resources. There are 9 seven Nolan Principles; the UK Government 10 guidance on these are helpful. Chairman, 11 you will have them at the back of my written 12 submissions, but for the benefit of the public. 13 One is "Selflessness": it is self-evident that 14 "Holders of public office should act solely in 15 terms of the public interest." "Integrity": 16 "Holders of public office must avoid placing 17 themselves under any obligation to people or 18 organisations that might try inappropriately 19 to influence them in their work. They should 20 not act or take decisions in order to gain 21 financial or other material benefits for 22 themselves, their family, or their friends. 23 They must declare and resolve any interests 24 and relationships."; in essence, they must 25 avoid conflicts of interest. "Objectivity":</p> <p style="text-align: center;">Page 6</p>	<p>1 maintain that public support the RGP is 2 committed to good communication and being 3 accountable for its decision making, more 4 importantly in difficult situations. Moreover, 5 owning those decisions, and being 6 transparent and explaining the rationale of 7 those decisions. It strives to do so and be 8 judged on the consequences, always learning 9 from the experience. The RGP invites 10 scrutiny and feedback, including or 11 particularly where it makes mistakes; 12 integrity and truthfulness are at the core of its 13 policies. Now, Mr Chairman, moving on to 14 the matter that relates to the appointment and 15 removal of Commissioners of Police, and 16 matters relating to their obligations under the 17 Act. In the context of analysis of, we would 18 say, all the issues (specifically eight to ten, 19 but all the issues) it is important that the 20 RGP's (we would suggest) view, and (?) 21 unequivocal views, of what is possible, 22 permitted and plainly just wrong, is 23 understood. Mr Chairman, the RGP believes 24 that at the heart of this Inquiry is a 25 recognition, incredibly important and</p> <p style="text-align: center;">Page 8</p>

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<p>1 undeniable, precious, and that is the rule of 2 law. Moreover, of equally indescribable 3 importance its preservation in Gibraltar, 4 beyond this Inquiry. Needless to say, we are 5 all familiar in some way with the rule of law. 6 The rule of law dates back to, well, the time 7 of Aristotle or before, through Magna Carta 8 and perhaps made prominent in the writings 9 of jurist William Blackstone in the 1700s. It 10 is of course in essence that all people should 11 be treated equally under the law, regardless 12 of their wealth or social position in society, 13 and their perceived or actual influence. All 14 of us, the citizenship, have a role in the 15 adherence and preservation, but clearly the 16 executive, the legislature, the judiciary, the 17 police and others are primary guardians, and 18 there cannot be any doubt about that; it 19 should not be contentious. Perhaps best 20 explained by the Chief Minister himself in 21 his message to Mr Pyle on Sunday 17 May 22 2020 at paragraph four, which is repeated at 23 paragraph 73 of his witness statement (I am 24 not going to go to it, but for point of 25 reference it is tab six, page 202), where he</p> <p style="text-align: center;">Page 9</p>	<p>1 (subject to this Constitution and any other 2 law) of the following matters (a) external 3 affairs; (b) defence; (c) internal security, 4 including (subject to section 48) the police". 5 I pause there, Mr Chairman. The Governor's 6 responsibility, but "subject to section 48". 7 Section 48 says (the Police Authority, see (?) 8 establishment of Police Authority), "There 9 shall be a Police Authority for Gibraltar, 10 composed in such manner and having such 11 functions as may be prescribed by a law 12 enacted by the Legislature consistent with 13 this Constitution", it has to be consistent, 14 "and subject to the provisions of any such 15 law such Authority shall be independent in 16 the exercise of its functions." I pause there, 17 again, "independent". One cannot 18 underestimate the importance of that word. 19 Mr Chairman, the Cambridge Dictionary 20 (which is my preference over the Oxford one, 21 good in describing terms as well as on the 22 water) says, "not influenced or controlled in 23 any way by other people, events, or things". 24 Subsection 4 (?) does contain reference to the 25 Commissioner of Police, because it says that</p> <p style="text-align: center;">Page 11</p>
<p>1 says, "The Commissioner of Police is at the 2 head of the organisation that is institutionally 3 one of the guardians of the rule of law." We 4 agree; indeed, few would disagree. We 5 would disagree even less with his 6 conclusions, "Without the rule of law we are 7 unrecognisable as a nation. The rule of law, 8 in this and other respects, is best or well 9 expressed in our Constitutional Order and the 10 Police Act, and that Order in particular." 11 Order and primacy are important here, 12 because nothing that strays from our 13 Constitution or the constitutional intent and 14 expression should be permissible. Therefore, 15 the Police Act, steered and underpinned by 16 our Constitution, rightly sets out the process 17 for the appointment and removal of a 18 Commissioner of Police in addition to other 19 ranks. I am afraid this requires a little bit of 20 analysis of the relevant sections, so I will 21 give a quick overview. Section 47 of the 22 Constitution, under the heading "Governor's 23 special responsibilities", says, "The 24 Governor, acting in his discretion, shall be 25 responsible in Gibraltar for the conduct</p> <p style="text-align: center;">Page 10</p>	<p>1 "The Commissioner of Police shall be 2 appointed by the Governor acting in 3 accordance with the advice of the Gibraltar 4 Police Authority," giving prominence to the 5 Police Authority again. There is a provision 6 that says "Governor may disregard the advice 7 of the Gibraltar Police Authority in relation 8 to any person where he judges that accepting 9 that advice would prejudice Her Majesty's", 10 (clearly: His Majesty's) "service." There is 11 no suggestion here that anybody's 12 appointment prejudiced Her Majesty's 13 service at the time. Mr Chairman, it is 14 essential we say to emphasise that section 47 15 of the Constitution means that "internal 16 security, including the police" is reserved 17 to the Crown, acting through the Governor, 18 but subject to the Gibraltar Police Authority. 19 And, importantly, the independence of that 20 Authority in exercising its function. It is 21 expressly stated, not just there but in other 22 places, that the Governor has responsibilities 23 for other important appointments, such as the 24 appointment of the Assistant Commissioner 25 of Police, also on the advice of the Gibraltar</p> <p style="text-align: center;">Page 12</p>

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<p>1 Police Authority. The power of appointment 2 of police officers is also invested, 3 interestingly enough, in the Commissioner of 4 Police, but with the approval of the Gibraltar 5 Police Authority. So, the primacy of the 6 Gibraltar Police Authority and its 7 independence resonate very loudly. That 8 balancing act has to be carefully guarded at 9 all times, if we are still to maintain a 10 recognition as a nation that subscribes to the 11 rule of law. For particular focus are your 12 terms of reference, or what I call the Inquiry 13 mandate, which is in your discretion to 14 investigate "the reasons and circumstances 15 leading to Mr Ian McGrail ceasing to be 16 Commissioner of Police in June 2020 by 17 taking early retirement". Mr Chairman, 18 whilst it is of importance for you to 19 determine, it is also of fundamental 20 importance to the RGP that the clarity that 21 the RGP say they recognise in the 22 Constitution and the Police Act is also 23 recognised. The independence of the RGP, 24 and its overseer the GPA, must be 25 recognised. It is the RGP's position that this</p> <p style="text-align: center;">Page 13</p>	<p>1 to the Government in a financial sense at "(h) 2 to submit to the Minister for public finance," 3 we know it is the Chief Minister, "in 4 accordance with the form, procedures and 5 timetables established by the Government 6 generally in relation to the preparation of its 7 budget, an annual budget bid for the Force", 8 and "to hold the Commissioner to account for 9 matters which are the responsibility of the 10 Authority." Mr Chairman, it is accepted that 11 sections 11 and 12 vest ultimate 12 responsibility in the Governor, but crucially 13 subject to the constitutional safeguards that I 14 have identified. Under the heading 15 "Governor's Responsibilities" at 11, "The 16 Governor shall have overall, ultimate 17 responsibility for - (a) the integrity, probity 18 and independence of policing in Gibraltar". 19 The Governor's power, at 12, "to - 20 (a) hold the Authority to account for any 21 matter to which section 11 relates; (b) hold 22 the Authority to account for the professional 23 standards of the Force; (c) call for and hold 24 meetings with the Chairman, the 25 Commissioner and other senior officers of</p> <p style="text-align: center;">Page 15</p>
<p>1 independence cannot ever be compromised in 2 any way or threatened by anybody, including 3 perhaps most importantly the state. That 4 includes the Governor and/or the 5 Government. Moreover, that clarity that any 6 executive (namely the Government) does not 7 and cannot have responsibility in any 8 operational role, or involvement in carrying 9 out those police obligations, or interference 10 in those obligations. Mr Chairman, we get 11 further guidance at section 5 of the 12 Authority's role and responsibilities; I will 13 not go through all of them, but perhaps 14 highlight some. At (a), "to secure the 15 maintenance of an efficient and effective 16 police force for Gibraltar within the financial 17 resources available to it and on a value for 18 money basis". "(b) to ensure high standards 19 of integrity, probity and independence of 20 policing in Gibraltar". At (d), "to establish, 21 operate and supervise the process for 22 investigating complaints against police 23 officers under this Act" ("police officers", not 24 qualified, that would of course include the 25 Commissioner of Police). There is reference</p> <p style="text-align: center;">Page 14</p>	<p>1 the Force to discuss matters under his 2 responsibility or in respect of which he has 3 powers under this Act." To "hold the 4 Authority to account". Again, the primacy of 5 the GPA cannot be understated. These 6 sections, 11 and 12, must be read in light of 7 section 48 of the Constitution, and reference 8 to "independent" cannot be understated. And 9 it is clearly borne out, not just there but in 10 section 13, which deals with default; in other 11 words, default by the Authority that triggers 12 the Governor's powers. Only in default do 13 the powers shift to the Governor under 14 section 13; until then he (or she, nowadays) 15 is an interested bystander: a very interested 16 bystander with overarching responsibility, 17 but a bystander nevertheless. "Governor's 18 powers in default", section 13, has some 19 important provisions. "The following powers 20 are exercisable by the Governor where the 21 Authority has failed to discharge or perform 22 a responsibility imposed on the Authority 23 under this Act". It then goes on to detail the 24 various provisions, and at (f) we have "to 25 suspend from duty, or call for the resignation</p> <p style="text-align: center;">Page 16</p>

<p>1 of the Commissioner." Again, one has to 2 read it in the context of what it says; even the 3 heading tells us "Governor's powers in 4 default by Authority", and only where they 5 have "failed to discharge or perform a 6 responsibility". The operational 7 responsibility of the RGP is vested only in 8 the Commissioner of Police, and that is 9 provided in sections 18 and 33 of the Act. 10 33, "The Commissioner shall, subject to the 11 provisions of this Act, have command, 12 superintendence, direction and control of the 13 Force, and shall be responsible for the 14 efficient administration and government of 15 the Force and for the proper expenditure of 16 all public moneys appropriated for the 17 service thereof." The Government's role, 18 exercised by the Chief Minister under the 19 Police Act and Constitution, is prescribed by 20 Act: under section 4 there is a contribution to 21 the composition of the GPA, and then we 22 have sections 14, 15 and 34 among them. 23 Primarily, financial oversight in some way, 24 shape or form. Section 14, we say, should 25 help you to interpret the other sections:</p> <p style="text-align: center;">Page 17</p>	<p>1 understand that section 15 has to be read in 2 the context (we say) of section 14, and of 3 sections 48 and 47 of the Constitution. And, 4 the fact that there there is an ability on the 5 Commissioner of Police not to disclose, 6 despite the request for report, because he 7 believes that it could prejudice an operation 8 or is a matter of confidentiality, should speak 9 volumes. No input whatsoever in anything to 10 do with matters beyond, we say, the financial 11 aspects and some levels of consultation. 12 What we say this leads you to conclude, or 13 should do (at least, that is what the RGP 14 concludes) is that while the Government has 15 a role, as does the Chief Minister, it was 16 always intended to be limited and prescribed, 17 and cannot offend the primacy and 18 independence of the GPA. It should not be 19 ignored that these provisions also rightly 20 limit the powers of the Governor, and reserve 21 to him only in the event of a default. None 22 of which, we will say, arose in this particular 23 circumstance. In simple terms, our 24 constitution envisaged the primacy of the 25 Commissioner of Police in operational terms</p> <p style="text-align: center;">Page 19</p>
<p>1 "Government's Responsibilities", "The 2 Minister with responsibility for public 3 finance", the Chief Minister, "shall decide, 4 and seek the appropriation of the Parliament 5 for the grant of both recurrent and capital 6 expenditure to be made for the Force and 7 policing in Gibraltar in respect of any 8 financial year." He is the money man; that is 9 his job. Under section 15 the Chief Minister 10 has certain powers, again we say read in the 11 context of sections 14 and 48, at (a), "to 12 require factual or assessment reports from the 13 Force or the Authority on any policing 14 matter: Provided that there may be withheld 15 from any such report any fact disclosure of 16 which is likely to prejudice the effective 17 operation of the Force or the confidentiality 18 of any information which the Force is bound 19 to maintain;" even then, that power is 20 caveated. And at the end of that section, 21 "The Chief Minister will keep the Governor 22 informed of any exercise by him of a power 23 under this section and shall provide to the 24 Governor a copy of any report". Again, Mr 25 Chairman, we repeat: it is important to</p> <p style="text-align: center;">Page 18</p>	<p>1 and the primacy of the Gibraltar Police 2 Authority in every oversight respect not a 3 Governor colonial or otherwise), or an 4 elected minister or government. The power 5 to remove the Commissioner of Police is 6 rightly a power of last resort, and enshrined 7 in section 34. Section 34, "The Authority 8 acting after consultation with the Governor 9 and the Chief Minister and with the 10 agreement of either of them, may call upon 11 the Commissioner to retire, in the interests of 12 efficiency, effectiveness, probity, integrity, or 13 independence of policing in Gibraltar." 14 Importantly though, at paragraph (2), "Before 15 seeking the approval of the Governor and the 16 Chief Minister under subsection (1), the 17 Authority shall give the Commissioner an 18 opportunity to make representations and shall 19 consider any representations that he makes." 20 The power to remove the Commissioner of 21 Police is only vested in the Gibraltar Police 22 Authority, save in default, after a careful 23 process as there prescribed, and only in 24 defined circumstances, "in the interests of 25 efficiency, effectiveness, probity, integrity, or</p> <p style="text-align: center;">Page 20</p>

<p>1 independence of policing in Gibraltar." 2 There is no provision in the Police Act or the 3 Constitution which allows for the removal of 4 the Commissioner of Police because the 5 Governor or the Chief Minister has lost 6 confidence in the Commissioner of Police; it 7 does not exist. It is the GPA that can lose 8 confidence, and if the words lose confidence 9 are code for a belief that "the interests of 10 efficiency, effectiveness, probity, integrity, or 11 independence of policing in Gibraltar" are 12 such that the GPA should call upon the 13 Commissioner to retire it can do so, but only 14 after a process. The Governor's powers, 15 reserve to that of default, even though he has 16 ultimate authority, do not include the 17 immediate power to remove or indicate the 18 removal of a Commissioner of Police. Now, 19 the decision of whether or not to exercise 20 powers under section 34, whether for 21 procedural reasons or otherwise, cannot 22 constitute a default. By analogy, if one is 23 tried and acquitted, be it for procedural 24 reasons, it is not a default of the exercise of 25 the powers by a court. In this case, the GPA</p> <p style="text-align: center;">Page 21</p>	<p>1 of that information through their own 2 sources, and they did nothing about it. That 3 would be a default. That would be a failure 4 to discharge the formal (?) responsibility that 5 would trigger the powers. Yes, Mr 6 Chairman, without meaning any disrespect, 7 the proper label to put on Mr Picardo and Mr 8 Pyle is complainant. Interested parties, 9 clearly; conflicted, a matter for you to 10 decide; but complainants. That is all they 11 were. It is the RGP's position that it is 12 evident from the first witness statement of 13 Mr Picardo (that is at tab six, specifically his 14 conclusions at paragraphs 112 to 114 at pagr 15 217) and from the then Governor Mr Pyle in 16 his first witness statement (that is tab nine, 17 paragraphs 12 to 16, pages 239 to 243) that 18 they have somewhat confused and muddled 19 their roles and responsibilities with those of 20 the GPA, it appears even advised by the AG. 21 Whether, Mr Chairman, they have done the 22 contention or inadvertently, with pure 23 motives or not (as suggested by Mr 24 McGrail), that is a matter for you. Both 25 gentlemen, absent default, simply could not</p> <p style="text-align: center;">Page 23</p>
<p>1 did not refuse to exercise its powers; they 2 just did so wrongly, and then withdrew the 3 complaints against Mr McGrail made by the 4 complainants. If they believed in the 5 complainants' complaints they may well have 6 decided to restart the process correctly: 7 perhaps they needed to appoint a neutral 8 panel if someone had prejudged it, but they 9 did not. It was simply not constitutionally 10 open to them to disengage and look the other 11 way. Sections 13 and 34, and their interplay, 12 are fundamental, because they cater (we 13 would say) for a different example, and I will 14 give you by way of an analogy or example: 15 let us just say a Commissioner of Police on 16 his own volition, for self-interest or 17 incompetence or encouraged by others, 18 ignored crime in Gibraltar. Let us say, 19 something that springs to mind: illicit 20 activity, smuggling. And, this was brought to 21 the attention of the Gibraltar Police Authority 22 by a complainant: any third party, but let us 23 assume it is a very interested third party; one 24 with public interest such as as the Governor 25 or Government. Or, simply, they got to know</p> <p style="text-align: center;">Page 22</p>	<p>1 exercise those powers or roles they exercised, 2 or threatened, or set about exercising. Indeed 3 it is quite astonishing, we say, Mr Pyle in his 4 first witness statement, with the assistance of 5 the Chief Minister, wrongly assumed that he 6 could proxify (I am not sure that is a word, 7 but it is descriptive) the GPA by suggesting 8 (as he did at paragraph 14.3) that he had not 9 prejudged the GPA's deliberations, but if they 10 did not deliver he would consider using his 11 default powers. We say an inelegant, hasty 12 and inappropriate approach which reeks of 13 colonialism, but more importantly we say an 14 unconstitutional approach, whatever he might 15 have believed or not believed. That 16 combination between Mr Pyle and the Chief 17 Minister, well... two wrongs do not make a 18 right, my mum always taught me: a sound 19 principle, and we think it is applicable here. 20 It is very regrettable, however, to find the 21 unwillingness (?) of the GPA (who are also 22 guardians of the rule of law) to be proxified. 23 But they were, willingly, and they engaged in 24 a process, albeit wrongly, indeed arguably 25 (without meaning any rudeness) arse about</p> <p style="text-align: center;">Page 24</p>

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<p>1 face, but defaulted they did not. Very 2 worrying for the rule of law, the RGP would 3 say, is when an adjudicator or arbitrator 4 (here, the GPA) who has a constitutional role 5 on judgment in section 34 against a serving 6 Commissioner of Police (a pivotal guardian 7 of the rule of law according to Mr Picardo) 8 says to him words to the effect of: I am 9 terribly sorry old chap, but others say you are 10 guilty so you are guilty although we have no 11 complaints and have no view, so do the right 12 thing and fall on your sword, and we will 13 have to invite you to do so, but of course 14 please go ahead and explain why you are not 15 guilty of what we have no idea you were 16 guilty about; oh, and by the way, if you do 17 not do it you will lose your head. Mr 18 Chairman, if not such a serious threat to this 19 small nation it would be comical; it is a sort 20 of cross-breeding between Monty Python, 21 Blackadder and Yes Minister. And not 22 unexpectedly, it produced a sort of Baldrick- 23 like result, but perhaps without the cunning 24 plan, and perhaps that is one of the reasons 25 we are here today. Mr Chairman, of course</p> <p style="text-align: center;">Page 25</p>	<p>1 with ours. 2 So, Mr Chairman, moving on to the terms of 3 reference with the Inquiry mandate and the 4 issues, against that statutory backdrop. 5 The issues have been well defined by my 6 learned friend Mr Santos. He explained them 7 in some great detail, so I will not list them all 8 one to ten. Mr Chairman, you will recall that 9 the RGP at the fourth preliminary hearing 10 made an application to restrict the issues to 11 issue three, the incident at sea; issue four, 12 HMIC's report; and issue five, the conspiracy 13 investigation, the Operation Delhi, not 14 recognising the relevance whatsoever of the 15 other issues that predated Mr McGrail's 16 tenure as Commissioner of Police. 17 Mr Chairman, you have retained them in 18 your July ruling suggesting that the 19 submissions went to the weight to be given. 20 Of course, we respect that. But you kindly 21 acknowledged that we may, with your 22 forbearance, be allowed to participate. We 23 welcome that and we will participate when 24 required with your permission to protect the 25 RGP's reputation and the conduct of past</p> <p style="text-align: center;">Page 27</p>
<p>1 understanding the constitution and that 2 statutory background with total clarity is 3 important. 4 (10.28) 5 We, the RGP, say and emphasise there 6 cannot be softening of those safeguards, there 7 cannot be blurring of those roles and 8 responsibilities. Moreover, consultation, 9 historic or otherwise, with the executive 10 including the Chief Minister, even if it has 11 gone further than it was envisaged in our 12 Police Act and constitution, cannot change 13 that constitution or the Police Act. That 14 remains paramount. The GPA must 15 empower itself, must recognise its 16 importance, not just in law but in practice. 17 The rule of law must prevail, and so clarity 18 from you, we say, in your judgment would be 19 welcomed. I do not think that is a matter that 20 could be described as one of national security 21 that would attract another restriction notice in 22 this wonderful new Act, so we think Mr 23 Chairman is perfectly capable and possible 24 for you in your recommendations to give 25 clarity to this analysis and, we hope, agree</p> <p style="text-align: center;">Page 26</p>	<p>1 investigations including some that date back 2 ten or 15 years. 3 We do make a few brief observations now. 4 Germane to all of these we say is that RGP at 5 all material times - I repeat, including when 6 Mr McGrail was in charge - has understood 7 its policing obligations and subscribed to 8 ethical policy and has never deviated from 9 those obligations and principles to ensure the 10 highest standards of integrity, probity and 11 independence of police in Gibraltar, namely, 12 in summary, to preserve peace, prevent and 13 detect crime and other infractions of law 14 without fear or favour, whilst retaining public 15 confidence at all times. Whilst not infallible 16 and immediately recognising the possibilities 17 of improvement, the RGP in all its 18 investigations and matters identified in the 19 issues has attempted to act with the utmost 20 professionalism, even when errors or 21 omissions have been made by any individual 22 officer or officers or the organisation itself. 23 The RGP does not wish, for the reasons 24 given above and not least time, to comment 25 in great detail on every issue, so at this stage</p> <p style="text-align: center;">Page 28</p>

<p>1 it perhaps will focus on a few by way of 2 commentary based on the undisputed facts 3 primarily. 4 In relation to issue one, the airport incident, 5 the RGP has made it clear that it considers 6 this matter irrelevant, but nevertheless in this 7 matter that predates Mr McGrail's tenure as 8 Commissioner of Police, the RGP's conduct 9 was entirely vindicated at the highest levels 10 in the UK and in Gibraltar, including 11 recognition by Rear Admiral Radakin on 12 behalf of Joint Force of Command in a letter 13 of 8 March 2017 to the then Commissioner 14 of Police, Mr Yome, apologising to the RGP 15 and confirming that the RGP had acted 16 correctly, a position strongly echoed by the 17 Chief Minister, we heard yesterday, in 18 wonderfully descriptive language. 19 On the assault investigation, in this matter 20 again that predates Mr McGrail, again the 21 RGP considered relevant, the RGP's conduct 22 of the investigation was entirely vindicated. 23 On the basis of the agreed facts it is clear that 24 in the circumstances and given the evidence 25 there was a thorough and professional</p> <p style="text-align: center;">Page 29</p>	<p>1 might need to spend a little more time on 2 given my learned friend's observations, we 3 say that the RGP conducted, to use the sort of 4 main thrust of language that has been used 5 here in the past, a thoroughly professional 6 investigation in accordance with police 7 obligations. The thoroughness, 8 professionalism and forensic astuteness with 9 which the RGP conducted the investigation 10 has not been subject to any criticism, I have 11 heard said. We agree. 12 To the extent now, with hindsight and 13 without a full contemporaneous command of 14 the information, some here will question 15 aspects of this investigation including a 16 suggestion that there could be defects in the 17 search warrant applications. We say that is 18 wrong. Of course, we are making some 19 reference to my learned friend's submissions 20 at paragraph 81 that he repeated yesterday. 21 With all due respect to my very good learned 22 friend, counsel for the Inquiry, whose 23 proficienc(e) and defamati(o)n I can 24 attest to, and others, more prominent ones, 25 the man formerly or still known as Prince</p> <p style="text-align: center;">Page 31</p>
<p>1 investigation into this incident. 2 On the incident at sea, so back to the 3 Operation Cram incident, the RGP reacted to 4 a difficult and tragic situation in a thoroughly 5 professional manner in accordance with its 6 policing obligations and RGP policing 7 policy. It is an ongoing matter before the 8 Court of Appeal and therefore we will not 9 comment, but we say that at all times the 10 RGP acted correctly, including giving timely 11 reports. 12 On issue four, HMIC's report, a backwards- 13 looking report, the original report, that was 14 critical. Well, of course, inevitably any order 15 involves looking at the past and saying what 16 you have done and what you could have 17 done, but it is important to note the dates and 18 the manner in which an order takes place. 19 Clearly, improvements needed to be made. 20 A subsequent report in 2022, also a 21 backward-looking report, recognised that 22 those improvements have been made. No 23 doubt improvements can always be made and 24 will be made. 25 On this conspiracy investigation, which I</p> <p style="text-align: center;">Page 30</p>	<p>1 Harry. Of course. But with all due respect, a 2 little knowledge can be a dangerous thing. A 3 little information can also be a dangerous 4 thing. Firstly, for those who have limited 5 experience in criminal law and specifically 6 the operation of the Criminal Procedure and 7 Evidence Act in 2011, it is important to 8 understand that our Supreme Court only a 9 few months ago made it clear that the 10 contemporaneous mindset and belief of 11 investigating officers at the material time is 12 what counts. There is no way that lawyers 13 here can properly understand what was in the 14 minds of SIO, Richardson and OIC Wyan, or 15 what they could prove and believed, without 16 having - I am going to use the word despite 17 the risk - granular knowledge of the 18 investigation. That is what counts. 19 Secondly, any attempt to suggest otherwise 20 we say is dangerous to process, threatens 21 investigations, would be wrong in law and 22 unfair to the RGP. Moreover, importantly, it 23 is entirely irrelevant to this Inquiry and 24 outside the authority or remit. Whilst there 25 was at the material time concerns expressed</p> <p style="text-align: center;">Page 32</p>

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1 by the Chief Minister and the Attorney
 2 General without any evidential knowledge of
 3 why a production order was not preferred to
 4 a search warrant, they never challenged the
 5 right of the RGP to obtain a search warrant or
 6 sensibly question it or challenge the decision
 7 of an experienced Stipendiary Magistrate in
 8 some way, shape or form, who thought,
 9 having heard DS Clarke, that the conditions
 10 that were required were satisfied. Yes, we
 11 accept that the Director of Public
 12 Prosecutions, who did have evidential
 13 knowledge - we heard yesterday that he
 14 considered the charging advice, he
 15 considered the detail - did ask the same
 16 question and did express the same
 17 preference, but he did also say that it was an
 18 operational decision from the officers.
 19 Moreover, he has made it clear that he would
 20 happily have defended it, he believes
 21 successfully, in the threatened judicial review
 22 by Mr Baglietto KC for his client Mr Levy
 23 KC, which incidentally never materialised.
 24 Mr Chairman, I have had the benefit recently
 25 or otherwise of dealing with very similar

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1 challenges in our Supreme Court in the
 2 context of another lawyer who faced some
 3 challenges and similar matters, and, Mr
 4 Chairman, it is just simply not possible to do
 5 that issue justice. If one were to look at the
 6 Faisaltext case as a good case that we all can
 7 rely on, it is very in that case. That involved
 8 the Patel family who were accused of certain
 9 charges and it involved search warrants on
 10 Heald Dickinson lawyers and on accountants.
 11 In that case the court said: Well, so far as the
 12 search warrants on the lawyers, well, no, they
 13 could have gone for a production order. But
 14 the key difference is that the lawyers were
 15 just lawyers for the Patels. They were not
 16 suspects. And in the other case, even though
 17 the accountants were just accountants,
 18 because they had some interest - they were
 19 signatories and so on - the warrants were
 20 upheld. In both cases there was almost no
 21 explanation at all by the judge who granted
 22 the warrants, but the court held that he was
 23 taken to understand and agree with the extent
 24 and information that was put to him in a two-
 25 hour hearing, a similar hearing as we heard

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1 today.
 2 There are other authorities - Bergen and
 3 many others - but the point here - and this is
 4 the point that I make - is that we cannot
 5 consider this detail. Once my learned friend
 6 kindly said he is not necessarily inviting you
 7 to make an adjudication, we have already
 8 seen just yesterday the risk of these things on
 9 GDC(?). You have a heading in essence
 10 saying that there was an unlawful warrant,
 11 there were deficiencies in the decision to
 12 execute a warrant. It is not, we say, relevant
 13 or appropriate for this Inquiry to get
 14 underneath the skin of the lawfulness or
 15 otherwise of those warrants. We would
 16 require a substantial hearing.
 17 The last hearing I was involved with
 18 involved five days, considerable disclosure, a
 19 lot of time spent. Important, this was not
 20 challenged by Mr Levy and Mr Baglietto
 21 within the three months allowed for judicial
 22 review.
 23 Now, Mr Baglietto, as we have all seen and
 24 you will see, has written extensive letters
 25 from what I understand, and I think it is

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1 recorded in the body-worn camera, they
 2 sought advice in the UK from counsel on
 3 these matters, certainly in relation to the day
 4 itself. Despite all that, they did not challenge
 5 it. They were certainly interested. So it is
 6 not appropriate for us to now explore this
 7 matter any more.
 8 Additionally, and I do this most gently, Mr
 9 Chairman, I do remind you of your ruling on
 10 26 July and paragraph 4 where you gave
 11 wonderful comfort to the RGP that you
 12 would not be looking or reviewing the
 13 operations and, in fact, you questioned
 14 whether you even had the authority to. Well,
 15 we rely on your previous rulings and indeed
 16 invite you to limit any suggestion by counsel
 17 to the Inquiry or others to explore this matter
 18 beyond what is strictly necessary, and we say
 19 it does not require conclusions of nature that
 20 he has made.
 21 In relation to the Federation complaint, RGP,
 22 like the GPA, were not aware of any
 23 complaints. In relation to the Alcaidesa
 24 claim which I think was 2010, irrelevant
 25 again we say, goes back such a long time Mr

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1 McGrail was hardly out of his cot. Really we
 2 say entirely irrelevant. We do not have
 3 evidential views on eight, nine and ten.
 4 Mr Chairman, one point that is worth
 5 mentioning is the interaction with the Inquiry
 6 by the RGP. The RGP, because inevitably
 7 all of this has involved backwards-looking as
 8 much far back as 15 years, took huge
 9 resources, huge resources for this Inquiry,
 10 and I think the core participants have
 11 produced most disclosure. But unlike other
 12 core participants, Mr Chairman, it has to
 13 maintain police obligations, and that is it
 14 needs to continue to investigate, and the
 15 public should know that the RGP inevitably
 16 cannot ventilate all its views or its comments,
 17 even exculpatory ones, in this Inquiry and
 18 there will be times that it will not. It has
 19 ongoing investigations; it may have others.
 20 I think we would all accept in that light that it
 21 is obvious that the RGP - and I do not think
 22 it is controversial - will need to consider this
 23 matter in light of those obligations and its
 24 wider ongoing responsibilities to safeguard
 25 the rule of law.

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1 In conclusion, Mr Chairman, we say that the
 2 RGP have always acted properly,
 3 consistently and constructively, entirely
 4 honestly and impartially, and its obligations
 5 will continue. They may be more. In doing
 6 so, the RGP will always maintain to seek
 7 public confidence and maintain public trust
 8 and recognise that it can only properly carry
 9 out its role in Gibraltar if it has the
 10 confidence and faith that at all times,
 11 including the material time, it has stood firm
 12 as a guardian of the rule of law, without fear
 13 or favour, and will continue to do so,
 14 recognising, as Mr Picardo suggested, that in
 15 our small nation the rule of law is paramount
 16 and it would be unrecognisable without it.
 17 Finally, we urge you, Mr Chairman, within
 18 the context of all the issues but also
 19 specifically eight to ten or otherwise to send
 20 this clear and, we would say, uncontroversial
 21 message irrespective of the facts of this case,
 22 that the removal of Commissioners of Police
 23 can only be done for very good reason after a
 24 non-rushed due process and only in
 25 accordance with the Police Act and

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1 constitution and not at the whims or agendas
 2 of Governors, Governments or Ministers.
 3 Mr Chairman, it simply remains for me to
 4 thank you on behalf of the RGP for allowing
 5 us this opportunity to express our views and
 6 to thank my learned friends and others and
 7 the public at large for being so patient in
 8 hearing me. Thank you, Mr Chairman.
 9 THE CHAIRMAN: Thank you very much,
 10 Mr Cruz. It is a bit early to have our mid-
 11 morning break.
 12 MR GIBBS: No, I am fine, if you are.
 13 THE CHAIRMAN: Absolutely. Off you go.
 14 MR GIBBS: Mr Richardson will be your
 15 first witness on Thursday, and, like Mr
 16 Santos yesterday, he has no case to make, he
 17 has nothing that he sets out to prove for
 18 himself. He is a retired police officer. He
 19 served for 36 years in the RGP, he served the
 20 people of Gibraltar, and he retired in
 21 November 2021. He had been hoping to
 22 spend the last two-and-a-half years sleeping
 23 peacefully through the night and travelling
 24 with his wife along the quiet country roads of
 25 Spain and Portugal, but when the Inquiry in

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1 July 2022 asked for his help he answered the
 2 call and, as you know, he has provided three
 3 witness statements to your team, responding
 4 to all the queries that they had of him, and
 5 your team's task has been, amongst other
 6 things, to put back in date order in as much
 7 detail as possible events from several years
 8 ago. That is what he has tried to help them
 9 with, in particular with Operation Delhi for
 10 which he was the senior investigating officer.
 11 That task for him would have been
 12 completely impossible by 2022 without sight
 13 of the police case papers, because he has not
 14 seen them for some time. So you ordered
 15 that he be allowed to see those papers again,
 16 and fortunately the RGP had kept them, and
 17 he has dutifully and consistent with his
 18 obligations as a core participant in this
 19 Inquiry, spent, without exaggeration,
 20 hundreds and hundreds and hundreds of
 21 hours reacquainting himself with the
 22 mechanics of that criminal investigation and
 23 its evidence and, unlike other witnesses who
 24 have probably been able to do their reading
 25 and their researching and their statement-

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<p>1 making while at work or on company time, 2 he has had to give up his personal life to 3 perform that task. So forgive me if I say this: 4 he and his family will be glad in a month or 5 so's time when this is over for him. He 6 means no disrespect by that. 7 Unlike some of the witnesses, he will be 8 speaking only to you. He has no wider 9 audience here to address from the witness 10 box. His task is simple in a way; it is just to 11 tell you what happened. You may find, once 12 you have heard him and everyone else, that 13 what happened, just as you would expect, is 14 that, like any straightforward police officer 15 investigating a criminal complaint and a 16 complex criminal complaint, he and his team 17 did their best to gather the evidence and to 18 follow the evidence, and, this being a fraud 19 involving sabotage of a lucrative 20 Government contract for financial advantage, 21 to follow where its financial advantage 22 would have led. The evidence trail and the 23 benefit trail led the investigating team to 24 some influential people. Four of them were 25 arrested and searched and interviewed in</p> <p style="text-align: center;">Page 41</p>	<p>1 Gibraltar should be above the law, that a 2 suspicion of corruption, especially corruption 3 at the highest level of public and commercial 4 influence, could not be overlooked. That Mr 5 Levy was a lawyer was, of course, a 6 consideration. That he was the senior partner 7 of Hassans, whose other partners included 8 the Chief Minister and the Financial 9 Secretary, to name but two, would, perhaps 10 for some people, have been enough to look 11 the other way. But he did not, and that is 12 why he is here. So he will just have to do his 13 best to tell you what happened. 14 Most significantly perhaps for the scope of 15 your Inquiry, he should be able to tell you 16 about three periods which flow into each 17 other: the period immediately before 12 May, 18 what happened on 12 May, and the period 19 immediately after 12 May. It may be that 20 that is where he will be able to help you 21 most. In a nutshell, the first of those periods, 22 in the immediate lead up to 12 May, he can 23 help you with the evidence gathered about 24 Mr Levy's involvement with the four men 25 who had already been arrested and</p> <p style="text-align: center;">Page 43</p>
<p>1 2019, and that produced further evidence and 2 further information, and when the team 3 followed that further evidence and further 4 information it led them onwards to the most 5 powerful lawyer in the most powerful law 6 firm in a territory run by lawyers. And, 7 worse than that, to a suspicion which could 8 not simply be ignored, that that eminent 9 person had become complicit in a serious 10 criminal offence, which is a tricky situation 11 to find yourself in as a police officer. 12 Mr Richardson as the senior investigating 13 officer must have felt, you may think, some 14 trepidation about what to do next. He was 15 aware of the sensitivities. He could have 16 treated this person differently from everyone 17 else. He could have bowed to the dangers 18 and turned a blind eye. But he was supported 19 in his conclusions about the evidence by the 20 Director of Public Prosecutions once a full 21 charging report had been placed before the 22 Director, even if the Director himself may 23 have been nervous about the political 24 implications, and you may conclude that they 25 stuck to their principles that no one in</p> <p style="text-align: center;">Page 42</p>	<p>1 interviewed, three of whom it was later 2 possible to charge. The evidence that 3 pointed the RGP towards Mr Levy's dealings 4 with those men being criminal as opposed to 5 simply sharp business practice, the decision 6 to apply for warrants against Mr Levy rather 7 than production orders, and the reasoning 8 behind that. And just to encapsulate the 9 ownership structure for those watching the 10 screens, it might just be helpful I thought to 11 screen at this point a page of his working 12 notes. We have it there. 13 THE CHAIRMAN: And the reference? 14 MR GIBB: Is C1776. It is from the Delhi 15 daybook, page 125. It shows his notes about 16 the shareholding. Who owned, in effect, 36 17 North Limited. Following down the left 18 hand side, a third of the shares, as you know, 19 were owned by Astelon, which was owned 20 by Lyon Holdings Limited, which was 21 owned by the partners of Hassans in various 22 percentages. FB I think should probably be 23 FP. Thank you for that. 24 As for the wording on the information and 25 the warrants, Mr Richardson does not pretend</p> <p style="text-align: center;">Page 44</p>

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<p>1 to be a lawyer, nor does, I think, Mr 2 Goldwyn, who Mr Richardson enlisted to 3 help with the drafting. 4 THE CHAIRMAN: DI Goldwyn. 5 MR GIBB: Yes, that is right. DI Goldwyn 6 was a qualified financial investigator and the 7 RGP inspector in its Financial Intelligence 8 Unit and had, therefore, as much experience 9 as any one perhaps in this sort of warrant 10 application. 11 Certainly Mr Richardson does not pretend to 12 be a lawyer, and applications like this were 13 not, certainly at that time, perhaps even now, 14 I do not know, settled by lawyers in the 15 Office of Criminal Prosecution and 16 Litigation. They were settled by police 17 officers. So I have no doubt that if these 18 were judicial review proceedings in the 19 Supreme Court of Gibraltar or in the Admin 20 Court in the UK, every lawyer in the room 21 would be all over this application, picking 22 holes in its lack of specificity, its failure to 23 cite in specific detail the evidence behind the 24 reasoning and much more besides. Some of 25 those holes may have been filled in by</p> <p style="text-align: center;">Page 45</p>	<p>1 MR GIBB: Yes. As I said, as lawyers it is 2 impossible not to be tempted into analysis of 3 the defects plain and subtle. 4 THE CHAIRMAN: Yes. 5 MR GIBB: But there were, you may think, 6 and you will explore this I have no doubt 7 with the witness's answers which could have 8 been given to questions which could have 9 been raised, but we do not have a record of 10 that hearing and the extent to which any 11 holes were identified or filled in orally, but 12 even so, may I concede that experience 13 shows that there will always be something 14 for a JR applicant to bite upon in seeking to 15 challenge a police-drafted warrant like this, 16 and if these were judicial review proceedings 17 a lot of time would be spent pulling apart the 18 warrants and the application. I am not 19 suggesting that you will not devote time and 20 thought to that yourself. And there would be 21 an examination if we were in the Supreme 22 Court or the Admin Court. There would be 23 an examination of what remedies were 24 available and whether a better drafted 25 application would have been sound and</p> <p style="text-align: center;">Page 47</p>
<p>1 questioning from the Stipendiary Magistrate 2 across the one-and-three-quarter hours of 3 hearing that he conducted before he decided 4 to grant the warrants. This certainly was not 5 one of those rubber-stamping episodes from 6 years past. This was not the resident Judge at 7 Southwark in the old way being asked to 8 consider three or four such applications at 9 9.45 with a jury waiting in a part-heard trial 10 at 10.15, which we all remember. 11 THE CHAIRMAN: But of the two-hour 12 hearing Mr Clarke read the whole of the 13 application. 14 MR GIBB: Yes. 15 THE CHAIRMAN: That must have taken an 16 hour and a half. 17 MR GIBB: It must have taken some time. 18 Of course, I was not there and the witness 19 will tell you what he remembers of it. It 20 must have taken some time and to what 21 extent, in the way that you just had with me, 22 there was interjection to pick up on parts of it 23 -- 24 THE CHAIRMAN: And the judgment to 25 which you refer, 176 words.</p> <p style="text-align: center;">Page 46</p>	<p>1 whether the material should be retained, and 2 so on, all the usual considerations. 3 One striking feature of what happened here 4 is, I suppose, that there was no JR, 5 notwithstanding expert external advice, and, 6 as my learned friend Mr Cruz has just said, 7 the Gibraltar GPP(sic) thought that the 8 decision to apply for warrants rather than 9 production orders, although it would not have 10 been his choice if he had been a police 11 officer rather than a lawyer, would 12 nonetheless be defensible if Mr Levy had 13 applied for a review. In any event, Mr Levy 14 did not choose to do so, although you will 15 have noticed that in an affirmation which he 16 filed a few days ago he appears to threaten 17 that he may yet seek redress from the 18 Supreme Court for breach of his human 19 rights back in 2020. 20 The second period that Mr Richardson may 21 be able to give you particular help with, 22 events on the day, on 12 May, the details of 23 the day, the tone of the day. The body-worn 24 video is possibly the best evidence but you 25 may think that the courteous accommodating</p> <p style="text-align: center;">Page 48</p>

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<p>1 way in which Mr Richardson behaved 2 towards Mr Levy is capable of casting some 3 light back on the spirit in which these 4 warrants were sought and granted, 5 recognising that it must have been 6 disappointing at least that someone so well 7 known, so influential both in public and in 8 the private corridors of power should be 9 implicated in this way in the evidence that 10 the police had uncovered. You do not get to 11 be the senior partner of the most powerful 12 law firm in Gibraltar without being very 13 good at something. 14 No doubt there was a part of Mr Richardson 15 that hoped that his suspicions and the 16 suspicions of the investigators were 17 misplaced, perhaps the DPP hoped exactly 18 the same thing, but their duty was to follow 19 the evidence without fear or favour - it is 20 trite but it is true - because if those 21 suspicions were well-founded and only 22 inspection of Mr Levy's mobile telephone 23 could confirm that one way or the other, then 24 something very serious was afoot, something 25 very serious for the people of Gibraltar.</p> <p style="text-align: center;">Page 49</p>	<p>1 examine the evidence against him, and 2 something peculiar seemed to be going on, 3 and now that we have seen the evidence and 4 Mr Richardson has seen it too, the evidence 5 which your team flushed out, at least some of 6 what was going on behind the scenes 7 between the Chief Minister and the Attorney 8 General and Mr Levy and Mr Baglietto has 9 been laid bare. You will decide whether his 10 disquiet was well-founded. It is certainly 11 frustrating that Mr Picardo and Mr Levy as 12 lawyers made no notes of any of the 13 conversations which they had about this 14 highly contentious legal issue. Frustrating 15 that Mr Picardo has been able to recover his 16 WhatsApp to and from everyone else but not, 17 it seems, to and from Mr Levy. Mr 18 Baglietto, who was formerly instructed on 19 behalf of Mr Levy seems to have written 20 down nothing - little - and can remember 21 little about the meetings or the conversations 22 which he took part in. Anyway, you will 23 decide what to make of all of that, but what 24 was on Mr Levy's mobile telephone, which 25 time and again in those transcripts seems to</p> <p style="text-align: center;">Page 51</p>
<p>1 The third period that he can perhaps help you 2 with is the period immediately after 12 May, 3 and when you come to study in more detail 4 the correspondence between Hassans and the 5 police and the transcripts in particular of 6 those meetings on 13 and 15 and 20 May, 7 you may be driven to the conclusion that the 8 RGP were cajoled and pressurised out of 9 obtaining the evidence that they were after. 10 What they were after was an interview under 11 caution without the chance to prepare 12 responses. And an inspection of the 13 messages on the mobile devices. 14 Formally acting for Mr Levy in that process 15 was Mr Baglietto, a fellow partner of his in 16 Hassans and, we are told, a great friend of Mr 17 Picardo. Informally advising Mr Levy in that 18 process was Mr Picardo, a fellow partner at 19 Hassans and a fellow shareholder therefore 20 also in 36 North and the protégé of Mr Levy. 21 Also advising, you may think - you will 22 decide - either directly or indirectly was Mr 23 Llamas. Mr Richardson thought at the time 24 that it was very odd that Mr Llamas was so 25 keen to placate Mr Levy rather than to</p> <p style="text-align: center;">Page 50</p>	<p>1 have been Mr Llamas's greatest concern, you 2 and none of us will ever know, because when 3 the shouting and the politicking and the 4 horse-trading was over, Mr Levy had not 5 been interviewed, his mobile telephone had 6 not been examined - in fact, it had been 7 returned - that the warrant had expired 8 without being executed, and he and his 9 telephone retreated into the shadows. And 10 as for the messages which had been a 11 significant part of what had tended to 12 implicate Mr Levy in the conspiracy in the 13 first place, days before those messages were 14 to be ventilated in open court at the Cornelio 15 dismissal proceedings, we all know that the 16 Attorney General played his wild card and 17 discontinued those proceedings unheard. 18 You will hear what, if anything, he has to say 19 about why he did that. 20 And so the public had to wait for your public 21 inquiry to see what the police suspicions 22 were based upon, but on the afternoon before 23 the public inquiry was about to begin in 24 which those messages which had seemed to 25 the police to implicate Mr Levy were to be</p> <p style="text-align: center;">Page 52</p>

<p>1 ventilated in public, a restriction notice 2 signed by the Justice Minister, who may I 3 think also be a partner in Hassans - I do not 4 know if that is right - was delivered to you, a 5 decree handed down under a new power fast 6 tracked through Parliament as though for this 7 very purpose, requiring your team to work 8 through the weekend blanking out, amongst 9 other things, parts of those messages so that 10 the public may not see them. I know what 11 they say, you know what they say, but our 12 lips are sealed. To state the obvious, you do 13 not need to be a lawyer to know that there is 14 all the difference in the world between 15 personal or political embarrassment on the 16 one hand, and the national interest on the 17 other, particularly in an Inquiry which has 18 personal and political embarrassment at its 19 heart. 20 One of the things that those who are 21 following these proceedings will certainly 22 ask themselves, for instance in evaluating the 23 operational decisions made by the 24 investigating officers, is just how serious was 25 this conspiracy to sabotage and defraud. We</p> <p style="text-align: center;">Page 53</p>	<p>1 Levy of conspiracy to defraud, relevant to the 2 charging report, relevant to the information 3 laid in support of the warrants, and that you 4 and I suppose the public would need to see 5 all of that if they were properly to understand 6 why the police believed that Mr Levy might, 7 just as Mr Sanchez had, delete potentially 8 incriminating material if given notice that 9 they intended to seize and interrogate his 10 devices. 11 Three very short final topics, may I? One, 12 the matter of law about conspiracy to defraud 13 and its status at the time in Gibraltar. I do 14 not know to what extent - I do not enquire 15 now - you will wish to examine that. Of 16 course Mr Richardson can give you his 17 evidence about it, as indeed anything else 18 that he knows about, whether the common 19 law offence survived, whether -- 20 THE CHAIRMAN: The law is confused, 21 and I do not think it is either necessary or 22 indeed possible to resolve that in this inquiry. 23 MR GIBBS: Thank you very much. May I 24 submit this, that whatever the state of 25 confusion and whoever was responsible for</p> <p style="text-align: center;">Page 55</p>
<p>1 know that it was the national security 2 centralised intelligence system that was being 3 sabotaged, but did that sabotage put us at 4 risk, did it compromise our safety, was the 5 sabotage trivial or existential? You will be 6 able to consider all the material that goes to 7 an assessment of what measures were 8 proportionate to detect and to stop and to 9 prosecute the suspected offending. My 10 submissions are that the results which the 11 Delhi defendants intended and the harm 12 which actually resulted were and are relevant 13 to that assessment; that the content and the 14 tone of the exchanges which they and Mr 15 Levy had about the seriousness of the 16 outages are also relevant to that assessment; 17 that the worse the failures of the system and 18 the worse their impact on Government 19 agencies, the greater the leverage the Delhi 20 defendants would have had to persuade the 21 Government that Blands could not effectively 22 continue to operate the system. 23 (11.09) 24 That all of that was central to whether the 25 police had reasonable grounds to suspect Mr</p> <p style="text-align: center;">Page 54</p>	<p>1 it, all seem to have suffered under it, in the 2 sense that it is not just the police who thought 3 conspiracy to defraud - appear to have 4 thought that is fine, it is the DPP, it is all the 5 other -- 6 THE CHAIRMAN: It is not a problem of 7 which anyone was aware at the time. 8 MR GIBBS: Exactly right, yes, with respect, 9 yes. So the oversight and the fact that that is 10 what was being investigated and put on the 11 information, and that that is what the 12 defendants were charged with ... 13 THE CHAIRMAN: It might affect the 14 overall legality of the warrant but nobody 15 knew that at the time. 16 MR GIBBS: Thank you. It cannot in effect 17 affect the sincerity of the spirit behind the 18 application for the warrants. 19 THE CHAIRMAN: No. 20 MR GIBBS: Thank you. Secondly of my 21 three, may I declare for transparency a 22 connection between Mr Richardson and Sir 23 Peter Caruana, so that there is no secret about 24 it. Blands and Mr Gaggero were in a civil 25 dispute with 36 North and were planning to</p> <p style="text-align: center;">Page 56</p>

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<p>1 make a civil claim against 36 North and its 2 directors, and Sir Peter Caruana was, at least 3 until the moment when Mr McGrail retired, 4 representing Blands, Mr Gaggero's company. 5 Blands and Mr Gaggero were at the same 6 time complainants in the criminal 7 investigation of 36 North and its directors, 8 and Mr Richardson was the SIO of that 9 criminal investigation. So he and Sir Peter, 10 as is testified to in Mr Richardson's 11 notebooks, had contact of necessity to ensure 12 that bringing the civil claim did not interfere 13 with the criminal investigation. Just to spell 14 it out - it is all in the notebooks - 15 April '19 15 Mr Richardson and Sir Peter met to discuss 16 this, 26 April '19 Mr Richardson had a 17 conference call with Sir Peter Caruana's son, 18 on 8 May '19 Mr Richardson and Sir Peter 19 spoke by telephone for the same reason. 20 Then separately, a year later on 22 May 2020 21 it was to Sir Peter that, on behalf of Mr 22 McGrail, advice was sought when he came 23 under pressure from the Chief Minister and 24 the Attorney about - whether it was about the 25 Levy warrants or whatever else it was about</p> <p style="text-align: center;">Page 57</p>	<p>1 with Mr Santos and indeed with Sir Peter 2 Caruana how you are going to develop Mr 3 Richardson's evidence in the public hearing, 4 because plainly from what you have said, and 5 indeed it follows inevitably from the 6 restriction notice, that quite an important part 7 of his evidence can only be given in private. 8 MR GIBBS: Yes. 9 THE CHAIRMAN: Can we just try and sort 10 out, maybe this afternoon, the mechanics of - 11 - 12 MR GIBBS: Of course, yes. 13 THE CHAIRMAN: I think it is extremely 14 important to avoid any misunderstanding as 15 to precisely what evidence can be given in 16 public, so we need to be sure that we have 17 correctly identified the documents and the 18 part of the documents to which the restriction 19 order applies. 20 MR GIBBS: Absolutely. I am sure that we 21 can sit down and do that. I do not imagine 22 that we will need you but we might. 23 THE CHAIRMAN: No, you probably will 24 not, but it does need to be sorted out because 25 otherwise we are going to get into the</p> <p style="text-align: center;">Page 59</p>
<p>1 is one of the things that you will decide, and 2 Mr Richardson, as he records, rang Sir Peter 3 and Sir Peter told him that he had become 4 aware of a potential legal situation but was 5 not aware of any link between that and the 6 Bland's case. So he could not advise Mr 7 McGrail but he recommended Charles 8 Gomez. All those contacts are recorded in 9 Mr Richardson's notebooks, so for 10 transparency that is what that is about. 11 Then finally may I place on record Mr 12 Richardson's gratitude to the Police 13 Superintendents' Association for its support 14 in whatever contribution he has so far been 15 able to make to your process and to the 16 contribution that he hopes to be able to 17 continue to make now. 18 THE CHAIRMAN: Yes, thank you very 19 much, Mr Gibbs. It looks to me as if we are 20 going to finish a bit early today. 21 MR GIBBS: I am sorry not to have been 22 longer. 23 THE CHAIRMAN: No, no (laughter). I was 24 going to suggest a way of using the time 25 profitably, because you will need to discuss</p> <p style="text-align: center;">Page 58</p>	<p>1 position that the public are going to be in and 2 out ... 3 MR GIBBS: Yes. 4 THE CHAIRMAN: ... which obviously I 5 am very anxious to avoid. 6 MR GIBBS: Yes, quite. 7 THE CHAIRMAN: Okay. Thank you very 8 much indeed. That is a convenient moment 9 to have our break. Thank you. 10 (Adjourned for a short time) 11 THE CHAIRMAN: Now, Mr Neish, you 12 prefer to speak sitting down. 13 MR NEISH: Yes, I would, please, but -- 14 THE CHAIRMAN: No problem at all. Over 15 to you. 16 MR NEISH: May it please you, Mr 17 Chairman, I appear with my learned friend 18 Miss Kelly Power on behalf of the Gibraltar 19 Police Authority. Mr Chairman, pursuant to 20 Legal Notice 2022/034 you are required to 21 inquire into the reasons and circumstances 22 leading to Mr McGrail ceasing to be 23 Commissioner of Police in June 2020 by 24 taking early retirement. You have identified 25 ten issues, the facts of which you shall</p> <p style="text-align: center;">Page 60</p>

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<p>1 investigate to the extent that you consider 2 appropriate to address the matter under 3 inquiry and to the extent, if any, that they 4 constituted a reason or circumstance leading 5 to Mr McGrail ceasing to be Commissioner 6 of Police. 7 Mr Chairman, we heard from the Counsel to 8 the Inquiry that 90 witness statements had 9 been submitted by different individuals and 10 that thousands of pages of evidence have 11 been produced to the inquiry. If I may 12 suggest, the exercise that the inquiry has to 13 embark upon might be a little bit easier if the 14 word "real" were to be implied into the words 15 "reasons and circumstances", because we all 16 know what the issues are in this case and to 17 some extent the task is made a little easier 18 because there are two different sets of 19 reasons and circumstances being advanced 20 by two different parties as for the 21 Commissioner ceasing to be in post. 22 On the one hand you have the position of Mr 23 McGrail who claims that all these events 24 were engineered to stop the Operation Delhi 25 inquiry and on the other hand you have the</p> <p style="text-align: center;">Page 61</p>	<p>1 the various members of the GPA. The 2 Counsel to the Inquiry has also provided an 3 extensive list of facts which is very helpful 4 and in certain ways much of the evidence 5 before this Inquiry is not in dispute. 6 If I may address the first issue, the airport 7 incident, the GPA only became involved in 8 this matter after the event when the then 9 Chairman Mr John Goncalves was asked by 10 the Chief Minister on 9 May 2017 to inquire 11 into an incident which had occurred at the 12 airfield on 8 February 2017. The GPA 13 conducted an investigation under section 19 14 of the Police Act as it considered that it did 15 not have authority to involve the Ministry of 16 Defence in its investigation. Section 19 of 17 the Police Act imposes a duty on the Royal 18 Gibraltar Police to provide evidence and 19 documentation to the Police Authority to 20 enable it to investigate any particular matter. 21 The GPA's involvement is set out in detail at 22 paragraphs 11 to 23 of the first sworn witness 23 statement of Mr Goncalves dated 31 August 24 2022 and does not bear repeating now. 25 However, it must be highlighted that the</p> <p style="text-align: center;">Page 63</p>
<p>1 evidence of the position of the Government 2 parties which put forward a totally different 3 perspective. So in some ways in my 4 submission the role or the task is made easier 5 because the evidence has to be assessed from 6 the perspective of which version it supports 7 or undermines either by direct evidence or 8 circumstantial evidence or by inferences to 9 be drawn from that evidence. 10 In that scenario the Gibraltar Police 11 Authority can only provide evidence as to its 12 own knowledge and participation in the 13 events which led to the Commissioner's 14 retirement, and it has done so in the form of 15 witness statements from past and present 16 members addressing those issues in respect 17 of which it has been asked to provide 18 evidence. In the context of the terms of 19 reference of the Inquiry, the Authority can 20 make a substantive evidential contribution 21 only in respect of issues 1, 6, 8, 9 and 10. 22 Much of the relevant evidence on those 23 issues in so far as the GPA is concerned is set 24 out in the undisputed facts and is otherwise a 25 matter of record in the sworn statements of</p> <p style="text-align: center;">Page 62</p>	<p>1 GPA's findings were made after 2 consideration of a report submitted by 3 Superintendent McGrail - a very detailed 4 report at that - a joint opinion by Lord 5 Pannick KC and Emily Neill of Blackstone 6 Chambers dated 28 February 2017, and 7 briefly what that opinion said was that the 8 MOD had no jurisdiction in relation to the 9 matters in hand but it had acted ultra vires, 10 i.e. unlawfully, and that the RGP had been 11 correct to act in the way that it had done. It 12 also relied on a letter from Rear Admiral 13 Radakin, Chief of Staff Joint Forces 14 Command dated 8 March 2017 apologising 15 for the actions of the MOD personnel in 16 Gibraltar and acknowledging that they had 17 acted on the premise of a misunderstanding 18 of the applicable law. Then there was an 19 account given to the Authority on 31 August 20 2017 by the then Commissioner of Police Mr 21 E Yome, Superintendents McGrail and 22 Ullger and Inspector Tunbridge. This was a 23 personal hearing that they had before the 24 Authority and they gave their evidence or 25 their versions to the Authority.</p> <p style="text-align: center;">Page 64</p>

<p>1 The GPA came to the firm conclusion that 2 the action of and restraint shown by the RGP 3 officers during the airport incident were 4 considered, deliberated, entirely proportional 5 and highly commendable. As such, the GPA 6 did not doubt the effectiveness and probity of 7 the policing demonstrated by the RGP in 8 respect of the airport incident. The GPA also 9 considered the action of certain MOD 10 personnel deserved censure and that the 11 Chief Minister should consider whether a full 12 inquiry ought to be undertaken by a body 13 independent of the RGP and MOD so that 14 lessons might be learned from the incident. 15 The GPA recommended that an independent 16 inquiry be held. This was in line with what 17 Mr Nicholas Pyle had indicated was 18 envisaged by the Governor. This is referred 19 to at paragraph 14 of Mr Goncalves's first 20 sworn witness statement. In the event, the 21 recommended inquiry was not held. We 22 heard yesterday from Counsel to the Inquiry 23 that that was because the Governor had 24 decided it was not in the best interests in the 25 light of developments.</p> <p style="text-align: center;">Page 65</p>	<p>1 inquiry given that it did not have jurisdiction 2 over the MOD. None of the GPA members 3 at the time recall Mr Pyle raising any 4 objection and we do consider that you need 5 to make a finding on this issue. It is 6 submitted that Mr Goncalves's version is the 7 more credible of the two. None of the other 8 relevant members recall/mention Mr Pyle 9 having raised any such concerns. 10 Notwithstanding the criticism by Mr Pyle, it 11 is submitted that on the material before it, 12 particularly the legal opinion of Lord 13 Pannick and Miss Neill which has not been 14 challenged and the apology by Rear Admiral 15 Radakin, the conclusion of the GPA was 16 fully justified. 17 A secondary issue which arises out of the 18 airport incident was the arrest of the MOD 19 personnel and removal of service personnel 20 equipment. The GPA's involvement in this 21 matter was limited. On or about 19 August 22 2019 a complaint was made by two MOD 23 employees to the Police Complaints Board 24 alleging that Mr McGrail had acted outside 25 the remit of a search warrant served on the</p> <p style="text-align: center;">Page 67</p>
<p>1 THE CHAIRMAN: (Inaudible). 2 MR NEISH: Mr Nick Pyle has stated in 3 paragraph - and this is the only slight point of 4 potential issue, and this is that Mr Nick Pyle 5 has stated at paragraph 21.7 of his first 6 affidavit dated 12 May 2022 that he raised 7 his concerns at the RGP behaviour on 8 numerous occasions with the GPA, the 9 Governor, the Chief Minister and the Foreign 10 Office. He criticised the behaviour of the 11 RGP and complained that the GPA review, 12 which exonerated the RGP, followed a 13 mythology which was severely flawed. Part 14 of his reasoning was that the MOD had not 15 given evidence. 16 Now, Mr Pyle's statement has naturally 17 raised a few eyebrows amongst the former 18 members of the GPA who dealt with this 19 matter, and Mr Goncalves has robustly 20 responded to this at paragraph 9 of his 21 second sworn witness statement. Basically 22 one of the points Mr Goncalves raises is that 23 when Mr Pyle was present at the meeting of 24 the GPA when it was decided to have a 25 section 19 inquiry as opposed to a full</p> <p style="text-align: center;">Page 66</p>	<p>1 Joint Provost and Security Unit in relation to 2 the airport incident. The Police Complaints 3 Board investigation revealed that Mr 4 McGrail had not been involved in the 5 execution of the warrants, nor had he been 6 involved in the search of the premises. His 7 involvement had been limited to applying for 8 a warrant. 9 The PCB found that Mr McGrail had not 10 abused his authority, see the witness 11 statements of Mr Frances Carreras which are 12 referred to in my written, and this was 13 communicated to the GPA, whose members 14 included the Chief Secretary of Her Majesty's 15 Government of Gibraltar, Mr Darren Grech, 16 and the then Deputy Governor, Mr Nick 17 Pyle. On 7 to 8 July the MOD personnel 18 asked that the GPA review the decision of 19 the PCB. The GPA concluded that the 20 request to the GPA to review the decision did 21 not qualify for an appeal, given that no new 22 evidence had been produced and the decision 23 of the PCB could not be construed as 24 perverse. This was communicated to Miss 25 Claire Bell by the Secretary of the GPA by</p> <p style="text-align: center;">Page 68</p>

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<p>1 email dated 2 September 2020. 2 The next issue, Mr Chairman, is issue 2, the 3 assault on the helicopter pilot. On this matter 4 the GPA had no knowledge whatsoever 5 about this incident, which played no part in 6 any of its deliberations. You have already 7 made a preliminary ruling on this and we 8 have nothing further to say on that matter. 9 The third incident is the incident at sea. 10 Again, the GPA's involvement was a limited 11 one, and it was limited in two ways: one was 12 in Dr Britto being informed by telephone by 13 Mr McGrail on a date which he cannot recall 14 that there had been an incident at sea which 15 may have happened outside British Gibraltar 16 Territorial Waters. It would appear that this 17 was done on 8 March 2020 from paragraph 18 52 of Mr McGrail's third affidavit. It appears 19 from paragraph 3 of the third affidavit of Mr 20 McGrail dated 4 October 2022 that Dr Britto 21 told him on Whatsapp: 22 "Not asking any questions of you in view that 23 it is under investigation and for the Coroner 24 to determine. Just like to say that it is 25 unfortunate to say the least."</p> <p style="text-align: center;">Page 69</p>	<p>1 Britto on 18 May 2020, as one of the two 2 reasons for their loss of confidence in Mr 3 McGrail as Commissioner of Police. 4 The GPA has not enquired into the incident 5 at sea independently and took at face value 6 what the Governor and the Chief Minister 7 had told Dr Britto. 8 The next issue is issue 4, findings of the 9 HMIC report. The GPA was obviously 10 aware of the HMIC report and that it was 11 critical on a number of issues. However, 12 until the report was raised with Dr Britto on 13 18 May 2020 by the Governor and the Chief 14 Minister, Dr Britto was not aware that the 15 findings were viewed with such seriousness 16 by the Governor and the Chief Minister as to 17 warrant Mr McGrail ceasing to be 18 Commissioner of Police. Indeed, it is 19 apparent from the sworn statements of 20 members of the GPA that in considering 21 whether to exercise their powers under 22 section 34 of the Police Act the basis of their 23 decision was the loss of confidence by the 24 Governor and the Chief Minister. 25 Of the two reasons invoked by the Governor</p> <p style="text-align: center;">Page 71</p>
<p>1 Dr Britto did not have a recollection of this at 2 the time he made his sworn witness 3 statement. 4 On 9 March 2020 there was an exchange of 5 Whatsapp messages between Mr McGrail 6 and Dr Britto in which Dr Britto expressed 7 the view that the investigation into the 8 incident at sea was best outsourced as neither 9 the GPA nor the PCB had the necessary 10 expertise to deal with an incident of this 11 nature. Dr Britto together with Mr Frances 12 Carreras was briefed personally on 11 March 13 2020 by Mr McGrail. Dr Britto was also 14 member of a Whatsapp group named 15 Maritime Incident comprising of Chief 16 Minister, Dr Britto, Commissioner of Police, 17 Mr Francis Carreras and the Chief Secretary. 18 The contacts within that Whatsapp group 19 were, as can be seen from the record, very, 20 very limited. 21 The GPA played no investigative or 22 executive role in this matter. 23 The next involvement came when the 24 incident at sea was invoked by the Governor 25 and the Chief Minister at the meeting with Dr</p> <p style="text-align: center;">Page 70</p>	<p>1 and the Chief Minister for the loss of 2 confidence, the GPA considered that the 3 HMIC report was the less serious of the two. 4 The incident at sea, which involved loss of 5 life, had occurred outside British Territorial 6 Waters, could potentially affect Gibraltar's 7 relations with Spain and had led to a claim 8 for damages by families of the deceased crew 9 members, as considered the more serious of 10 the two. 11 The next issue is the alleged sabotage. This 12 was not a factor that was taken into account 13 by the GPA in its decision to invite Mr 14 McGrail to retire as Commissioner of Police. 15 In fact, the GPA as a whole does not appear 16 to have had any knowledge of Operation 17 Delhi until it was mentioned by Dr Britto at 18 the GPA meeting on 21 May 2020. There is 19 in fact difference of recollections of different 20 GPA members as to the extent it was 21 mentioned and whether it was mentioned at 22 all. See, for example, the witness statement 23 of (Glabi Carello?) at paragraph 18 who has 24 no recollection of Operation Delhi being 25 mentioned, and paragraph 14 of the first</p> <p style="text-align: center;">Page 72</p>

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<p>1 sworn witness statement of Mr Carreras who 2 recalls it being mentioned. 3 Dr Britto deposed at paragraph 10 of his first 4 sworn witness statement dated 13 May 2022 5 that when he met Mr McGrail on 15 May 6 2020 he told him of an investigation called 7 Operation Delhi, that Mr Levy was a suspect 8 and that his mobile phone was in his safe. Dr 9 Britto further deposed that Mr McGrail had 10 told him that the Chief Minister was not 11 happy with him and that he was due to have a 12 further meeting with the Attorney General. 13 Dr Britto found this unusual but thought 14 nothing further about it. In the circumstances 15 the GPA cannot make any material evidential 16 contribution on this point. 17 The informal record of the meeting between 18 the Governor, the Chief Minister and Dr 19 Britto states at paragraph 4C that the Chief 20 Minister also shared another event occurring 21 last week which had left him also in a 22 situation where the Commissioner had 23 expressly lied to him and which left him 24 unable to believe the Commissioner. This 25 would presumably have been a reference to</p> <p style="text-align: center;">Page 73</p>	<p>1 paragraphs 147 and 148 of his witness 2 statement dated 4 November that no formal 3 complaint was made to the GPA because 4 there was no process which would allow him 5 to do so. Mr Morello stated at paragraph 6 147: 7 "The room was silent and I can recall Mr 8 Britto saying words to the effect: 'No, please, 9 no, that's all we need now.' Again I repeated 10 the same: 'How do I file a complaint against 11 the Commissioner of Police?' I paused for a 12 few seconds and said: 'No, you can't, there is 13 no recourse.' I informed persons present that 14 the point I was trying to make was that there 15 were no processes to make complaints 16 against a Commissioner or Assistant 17 Commissioner such as were in place in the 18 UK. Both these individuals expressly fall 19 outside the remit of the Police Discipline 20 Regulations 1991. Consequently, conduct 21 which falls short of criminal offences but 22 which could constitute disciplinary offences 23 for any member of the Force would not be so 24 for the Commissioner and Assistant 25 Commissioner."</p> <p style="text-align: center;">Page 75</p>
<p>1 Operation Delhi. 2 In the circumstances it is clear that the GPA 3 had very little information about Operation 4 Delhi and that it played no part in its decision 5 in inviting Mr McGrail to retire. 6 Mr Chairman, I turn to issue 6, the 7 complaints made by the GPF to the GPA, the 8 Federation complaints. The evidence of past 9 and present members of the GPA is that they 10 did not receive any complaints against Mr 11 McGrail. See, for example, the first sworn 12 statement of Mr Goncalves and the first 13 sworn statement of Mr Francis Carreras. Dr 14 Britto has deposed that no formal meetings 15 were held between the GPA and the GPF 16 whilst Mr McGrail was Commissioner. He 17 acknowledges that the relationship between 18 Mr McGrail and the leadership of the GPF 19 was fractious, and deposes on the reasons for 20 this at paragraph 2 of his second sworn 21 witness statement and paragraph 8 of his 22 fourth sworn witness statement. This fact 23 seems to be generally accepted, Mr 24 Chairman. 25 Mr Morello appears to acknowledge at</p> <p style="text-align: center;">Page 74</p>	<p>1 At paragraph 148: 2 "I followed this up by saying that if there had 3 been a process for doing so, this would have 4 been done." 5 So in my submission, Mr Chairman, you 6 cannot get a more conclusive item of 7 evidence indicating that there was in fact no 8 formal complaint made to the GPA and no 9 formal meetings. 10 In response to surveys conducted by the 11 GPF, some respondents complained about 12 bullying within the RGP. This was discussed 13 between Dr Britto and Mr Morello, but Dr 14 Britto does not recall when or where. Dr 15 Britto suggested to Mr Morello that he 16 should produce a draft bullying policy based 17 on Dignity at Work model. To Dr Britto's 18 knowledge, this was not done. 19 In the circumstances the issues between Mr 20 McGrail and the GBF appeared to Dr Britto 21 to be a conflict and contest as to authority 22 and perspectives as to how the Force should 23 be run. This was against the background of 24 an unfriendly relationship between Mr 25 McGrail and Mr Morello. However, no</p> <p style="text-align: center;">Page 76</p>

<p>1 formal complaints were made by the GPF to 2 the GPA, nor did the GPA attend any formal 3 meetings with the GPA(sic?) whilst Mr 4 McGrail was Commissioner. Dr Britto was 5 not judgmental about Mr McGrail or Mr 6 Morello. In other words, he did not decide 7 who was right and who was wrong in their 8 continuing disputes. 9 I move on to the Alcaldesa claim, and again 10 this is a matter on which the GPA had no 11 knowledge and this incident played no part 12 whatsoever in any of its deliberations. 13 Then I turn to issue 9, Mr Pyle's stated 14 intentions as to his powers of section 13 of 15 the Police Act, the section 13 issue. The only 16 member of the GPA who had any contact 17 with Mr Pyle at any material time was Dr 18 Britto, who met with Mr Pyle and the Chief 19 Minister on 18 May 2020. An informal 20 record of that meeting can be found at 21 document number 3 of appendix B to Dr 22 Britto's sworn witness statement. Dr Britto 23 does not recall Mr Pyle giving him any 24 indication that he was prepared to exercise 25 his powers under section 13 of the Police</p> <p style="text-align: center;">Page 77</p>	<p>1 the Governor would exercise his section 13 2 powers if the GPA did not invite the 3 Commissioner of Police to retire, and that Dr 4 Britto communicated this to members of the 5 GPA during the meeting on 21 May 2020 6 and in subsequent telephone conversations 7 with those members of the GPA who had not 8 attended the meeting. This is reflected at 9 paragraph 5 of the minutes of the GPA 10 meeting held on 21 May 2020 where the 11 following is recorded: 12 "The GPA felt that this recourse was better 13 and gentler than the Governor potentially 14 activating section 13, which allows him to 15 seek his resignation. The prospect of the 16 Governor exercising his powers under 17 section 13 left Dr Britto and the GPA in little 18 doubt that the outcome of this matter was 19 that one way or another Mr McGrail would 20 not remain in office, given the loss of 21 confidence in him by the Governor and the 22 Chief Minister, and that the better option was 23 that he should be invited to retire." 24 This does not detract from the fact that the 25 GPA itself had come to the independent</p> <p style="text-align: center;">Page 79</p>
<p>1 Act. 2 The Chief Minister mentioned those powers 3 but he did not expressly state that the 4 Governor had any intention to exercise them. 5 This is recorded as follows: 6 "Ahead of that, the Chief Minister noted that 7 section 13(1)(f) of the Police Act also gives a 8 governor the authority to call for the 9 resignation of the Commissioner where the 10 Authority has failed to discharge its 11 responsibility." 12 Mr Pyle, however, at paragraphs 14.3 and 13 14.4 of his first affidavit deposes that he had 14 stated at the 18 May 2020 meeting that, 15 should the GPA determine that a call to retire 16 was not appropriate, he would consider using 17 the powers available to him under section 18 13(1)(f) of the Police Act and that he would 19 need strong and persuasive arguments not to 20 do so. He states that Dr Britto took notes 21 "and I could see where they were coming 22 from". 23 Mr Chairman, the conclusion that may be 24 drawn from all the evidence is that Dr Britto 25 was in fact conscious of the real prospect that</p> <p style="text-align: center;">Page 78</p>	<p>1 conclusion that, given the loss of confidence 2 in him by the Governor and the Chief 3 Minister, Mr McGrail's position was 4 untenable. 5 The next that the GPA heard was in the form 6 of an email dated 5 June 2020, and I mention 7 this specifically in relation to the threat to use 8 section 13 powers, where Mr Gomez emailed 9 saying: 10 "Our client is gravely concerned by how he 11 has been treated through this process and I 12 welcome your frank acknowledgement that 13 there have been procedural flaws. He is an 14 officer of the highest standing with an 15 impeccable record over the past 36 years. In 16 those circumstances, given how unfairly he 17 has been treated and the improper pressure 18 put upon him to alter the course of a live 19 criminal investigation, our client feels that he 20 must apply for early retirement from the 21 Royal Gibraltar Police. All of Mr McGrail's 22 rights are reserved." 23 The GPA had no further involvement in this 24 matter and was under the impression that Mr 25 McGrail would retire without further ado. Dr</p> <p style="text-align: center;">Page 80</p>

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<p>1 Britto only gathered that Mr McGrail was 2 negotiating his retirement from an email 3 dated 8 June 2020 from the Chief Secretary 4 to the Chief Minister copied to a number of 5 persons including him. On 9 June 2020, after 6 Dr Britto had learned from the media that Mr 7 McGrail had retired, Dr Britto was informed 8 by the office of the Interim Governor that 9 they would be issuing a press release. 10 Issue 9 dealt with the GPA powers and the 11 decision under section 34 of the Police Act 12 and subsequent withdrawal of that decision. 13 Section 34 of the Police Act provides as 14 follows: 15 "34.(1) The Authority acting after 16 consultation with the Governor and the Chief 17 Minister and with the agreement of either of 18 them, may call upon the Commissioner to 19 retire, in the interests of efficiency, 20 effectiveness, probity, integrity, or 21 independence of policing in Gibraltar." 22 I would pause there, Mr Chairman, because 23 that subsection does not require any 24 misconduct on the part of the Commissioner 25 before the Authority can exercise its powers,</p> <p style="text-align: center;">Page 81</p>	<p>1 Police Act for policing in Gibraltar and the 2 Chief Minister has responsibility for the 3 financing and resourcing of the police force - 4 so therefore if the GPA comes to the 5 conclusion that both the Governor and the 6 Chief Minister have lost confidence in Mr 7 McGrail, it would certainly be rational for 8 them to conclude that that was a situation 9 which would impact upon the interests of 10 efficiency and effectiveness of the Force, and 11 even though loss of confidence is not one of 12 those reasons set out in section 34. 13 (12.00) 14 The effect of loss of confidence is that the 15 efficiency of the force could be severely 16 impacted. The GPA cannot ask the Governor 17 to retire or the Chief Minister to retire, it can 18 ask the Commissioner to retire. 19 The invitation for Mr McGrail to retire was 20 not made on the initiative of the GPA or an 21 independent third party; it was made 22 pursuant to the joint request made by the 23 Governor and the Chief Minister, who both 24 have decisive roles under the Police Act. In 25 fact, the Governor has powers to call the</p> <p style="text-align: center;">Page 83</p>
<p>1 not does it require any wrongdoing on the 2 part of the Commissioner. It leaves 3 everything at large. So if the Gibraltar Police 4 Authority is facing a situation where the 5 Police Act does not make any provisions as 6 to the process which should be followed by 7 the GPA in the exercise of its powers under 8 section 34, the Police Discipline Regulations 9 1991, which apply to other members of the 10 Force, do not apply to the Commissioner or 11 the Assistant Commissioner, the result being 12 that the Commissioner does not have the 13 statutory protection afforded to other 14 members of the Force and the GPA does not 15 have a legislative framework setting out how 16 it should proceed in the exercise of its very 17 important powers under section 34. 18 This is an area which the Inquiry might 19 consider warrants consideration (of a 20 commendation/or recommendation), but if 21 the Gibraltar Police Authority came to the 22 conclusion that both the Governor and the 23 Chief Minister had lost confidence in the 24 Commissioner - and let us not forget, the 25 Governor has overall responsibility under the</p> <p style="text-align: center;">Page 82</p>	<p>1 Gibraltar Police Authority to account and 2 bring to its notice any matter which he feels 3 ought to be addressed. So, any criticism of 4 Dr Britto for attending a meeting and 5 listening to what the Governor and the Chief 6 Minister had to say and acting on that, is 7 perhaps somewhat harsh. Dr Britto when he 8 attended the meeting of 18 May, did not have 9 any idea what the meeting was about and he 10 was confronted with this very, very serious 11 situation, which could be considered to be a 12 crisis situation and hence the speedy manner 13 in which it was despatched. 14 Now, at the meeting, the Chief Minister said 15 that the position was that both the Governor 16 and the Chief Minister had lost their 17 confidence in the Commissioner of Police 18 and both in fact stated that the Commissioner 19 should be invited to retire. Dr Britto was 20 then advised as to the process to be followed, 21 but in the context of what went on 22 beforehand, he had very much received an 23 indication that it was not possible for Mr 24 McGrail to remain in office. 25 An inquorate meeting of the GPA was held</p> <p style="text-align: center;">Page 84</p>

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<p>1 on 21 May 2020. Minutes of that meeting 2 were produced after the event and it is 3 apparent from those minutes that the basis of 4 the decision to invite Mr McGrail to retire 5 was the loss of confidence in him by both the 6 Governor and the Chief Minister, which 7 would make it very difficult for him to 8 continue working with them and bring them 9 within the ambit of section 34(1). This, in 10 fact, may be construed as the only reason for 11 the decision. The GPA could not, and in all 12 likelihood still does not, see how having lost, 13 for whatever reason, the confidence of both 14 the Governor and the Chief Minister, Mr 15 McGrail's position could be tenable. 16 The two stated underlying reasons, the 17 incident at sea, was a major factor in 18 colouring the GPA's decision given the loss 19 of life, its occurrence outside British 20 Gibraltar territorial waters, its potential 21 impact on Gibraltar/Spanish relations and 22 civil claims by the families of the deceased 23 crewman. The GPA however relied on what 24 it was told through Dr Britto by the Governor 25 and the Chief Minister and did not make its</p> <p style="text-align: center;">Page 85</p>	<p>1 Nadine Collado. 2 Paragraph 14 of the witness statement of Mr 3 JL Canterra reflects the unclear thoughts of 4 the GPA which on the one hand gave Mr 5 McGrail the opportunity to make 6 representations, but on the other could not 7 see how he could remain in office. The GPA 8 had in fact set a date for a meeting to hear Mr 9 McGrail's representations. However, the 10 decision conveyed to Mr McGrail was 11 unambiguously and erroneously in terms of a 12 final decision, subject to reconsideration in 13 the light of what representations he might 14 make. 15 By letter dated 22 May 2020, Mr McGrail 16 was informed that the Authority felt it had no 17 option but to exercise its powers under 18 section 34 of the Police Act. Somewhat 19 confusingly, the letter invited Mr McGrail to 20 retire "in the interests of policing", which 21 conveyed a final decision, but then invited 22 him to make representations if he so wished 23 within seven days and to indicate if he 24 needed more time. 25 The above letter was handed to Mr McGrail</p> <p style="text-align: center;">Page 87</p>
<p>1 own enquiries and reach its independent 2 conclusion. I would emphasise nonetheless 3 that the basis of their decision was the loss of 4 confidence by both the Governor and the 5 Chief Minister. 6 The GPA was very aware of the prospective 7 use of section 13 to bring about Mr McGrail's 8 termination of employment if it did not invite 9 Mr McGrail to retire and was concerned to 10 make Mr McGrail's termination of 11 employment as less unpalatable as possible. 12 The decision to invite Mr McGrail to retire 13 appears to have been understood in different 14 ways by different members of the GPA. It 15 was felt that the best course of action would 16 be to activate section 34 of the Act and invite 17 the Commissioner to retire, but always 18 affording him the opportunity to make 19 representations to the GPA. For example, Mr 20 Francis Carreras stated, "It was unanimously 21 agreed that the GPA should consider inviting 22 Mr McGrail to retire but that he should first 23 be allowed to make representations to the 24 GPA." This, for example, was also the 25 recollection of Mr Ernest Gomez and of Ms</p> <p style="text-align: center;">Page 86</p>	<p>1 personally by Dr Britto on 22 May 2020 at 2 Mr McGrail's office. Mr McGrail secretly 3 recorded that meeting. A transcript of that 4 recording and its translation into English are 5 exhibited to the second affidavit of Mr 6 McGrail. These documents speak for 7 themselves and do not bear elaboration. 8 However, I would have listed the following 9 points. Dr Britto felt extremely 10 uncomfortable and found what he was doing 11 was extremely unpalatable. Dr Britto 12 conveyed the view that the GPA had no 13 option but to invite Mr McGrail to retire 14 given the loss of confidence in him by the 15 Governor and the Chief Minister. This is in 16 fact a reflection of the true position. 17 Dr Britto believed that if Mr McGrail did not 18 retire, the Governor would exercise his 19 powers under section 13 of the Police Act 20 and retirement was a more dignified way out. 21 Dr Britto was asserting that the letter was an 22 invitation to retire and that Mr McGrail was 23 not being forced to do so. Any 24 representations made by Mr McGrail would 25 be taken into account and Operation Delhi</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 was not a factor in the GPA's decision. 2 The tone and contents of these transcripts 3 show the unprecedented nature of the 4 situation in which the GPA found themselves 5 in. The lack of clarity as to what the GPA 6 was communicating to Mr McGrail or the 7 effects of the decision, it reflects that the 8 GPA was ill-equipped to deal with a situation 9 of such gravity and complexity that it was 10 being faced with, and the lack of legislative 11 or other guidelines upon which the GPA 12 could look to to follow a proper process. 13 What emerges with clarity is that the GPA 14 considered that it had no option but to invite 15 Mr McGrail to retire given the loss of 16 confidence in him by the Governor and the 17 Chief Minister which rendered his position 18 untenable. That view is probably still held 19 by the GPA to this day. 20 At Mr McGrail's request, Dr Britto sent him 21 a second letter dated 22 May 2020 setting out 22 the reasons for the loss of confidence in him 23 by the Governor and the Chief Minister. 24 This letter had input from the Chief Minister 25 at the request of Dr Britto, who wanted to</p> <p style="text-align: center;">Page 89</p>	<p>1 unfairness also. However, the Inquiry may 2 consider that, given the GPA's withdrawal of 3 its invitation to Mr McGrail to retire, and 4 evidence of the circumstances and reasons 5 for his decision, looking into this will not 6 materially advance the Inquiry's objectives. 7 What the GPA strongly denies is that 8 Operation Delhi in any way influenced its 9 decision to invite Mr McGrail to retire. 10 The GPA's withdrawal of its invitation to Mr 11 McGrail to retire was communicated to the 12 Governor and the Chief Minister on 5 June 13 2020 and this is also appended to Dr Britto's 14 sworn witness statement. 15 The point I would make about the letter 16 which Dr Britto wrote to both the Governor 17 and to the Chief Minister, is that he not only 18 told them that the invitation to retire was 19 being withdrawn, he also said that the 20 Authority felt that it could be so tainted by 21 bias that it could not possibly reconsider the 22 McGrail matter and it was up to the 23 Governor then to decide what to do or 24 whether to reconstitute the Authority or 25 whether to take some other action, but that is</p> <p style="text-align: center;">Page 91</p>
<p>1 ensure the accuracy of its contents. 2 The letter was replied to by Charles Gomez 3 & Co dated 29 May 2020 setting out a very 4 detailed exposition of Mr McGrail's case. 5 This is document number 8 of Appendix B to 6 Dr Britto's sworn witness statements and 7 does not bear repeating. The salient points 8 alleged fundamental unfairness and 9 procedure flaws and abuse of process. It was 10 also alleged that the real reason why the 11 Governor and the Chief Minister wanted to 12 terminate Mr McGrail's appointment was his 13 conduct of Operation Delhi. 14 Following 29 May letter, the GPA obtained 15 independent legal advice following which it 16 withdrew its invitation to Mr McGrail to 17 retire. The withdrawal was expressed to be 18 on procedural grounds. The substantive 19 points were not addressed. This was 20 communicated to Charles Gomez & Co by 21 letter dated 5 June 2020 and is appended 22 document number 15, Appendix B to Dr 23 Britto's sworn witness statement. It may be 24 open to the Inquiry to find that the GPA's 25 process was tainted with substantive</p> <p style="text-align: center;">Page 90</p>	<p>1 outside the remit of the Authority. 2 That letter was followed from the email of 5 3 June 2020 from Mr Charles Gomez to me, 4 which I have already read, saying, "Our 5 client feels he must apply for early retirement 6 from the Royal Gibraltar Police." I will read 7 the whole passage, "In these circumstances, 8 given how unfairly he has been treated and 9 the improper pressure put upon him to alter 10 the course of a live criminal investigation, 11 our client feels he must apply for early 12 retirement from the Royal Gibraltar Police." 13 Now, that position is different to the position 14 stated in the final paragraph of 29 May letter 15 where Gomez & Co say, "In any event, the 16 defects in this process are already so flagrant 17 that it would not be possible to reach a just 18 result other than to allow Mr McGrail to 19 remain in office." So, it seems that between 20 the writing of the letter on 29 May and 5 21 June, there was a change of heart by Mr 22 McGrail. That change of heart appears to 23 have taken place before the subsequent 24 meetings with the Deputy Governor. 25 The GPA had no further active involvement</p> <p style="text-align: center;">Page 92</p>

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<p>1 in the events which led to Mr McGrail's 2 retirement. 3 Now, there was an additional issue, Mr 4 Chairman. The appointment of Mr McGrail 5 as Commissioner, it was not in the formal list 6 of issues but it was something upon which 7 we had been asked to provide evidence. 8 Would you like to hear me on that? 9 The process followed is described at 10 paragraphs 25 to 38 inclusive of the first 11 witness statement of Mr Donald El Salvez(?) 12 dated 31 August 2022. The 13 recommendations of the GPA to appoint Mr 14 McGrail were accepted by the Governor and 15 the Chief Minister, and the Inquiry may find 16 that this process was beyond reproach. 17 Although we will not refer in detail to the 18 process which was followed, it involved 19 presentations by both applicants, Mr Alger(?) 20 and Mr McGrail. Formal interviews and 21 presentations before a sub-committee of the 22 Gibraltar Police Authority which all the other 23 members who did not form part of the sub- 24 committee also in attendance and the process, 25 as can be seen as a mater of record, was a</p> <p style="text-align: center;">Page 93</p>	<p>1 McGrail a fair crack at the whip, and Mr 2 Lavarello has deposed that Mr Pyle said that 3 he would not support either of the two 4 candidates. This is at paragraph 34 of Mr 5 Lavarello's sworn witness statement. This is 6 disputed by Mr Pyle. Mr Pyle has in fact 7 stated that he considered both candidates to 8 be appointable. 9 Notwithstanding any of the above issues, it is 10 submitted that the process leading to the 11 selection of Mr McGrail as Commissioner 12 was transparent, thorough and fair. That is as 13 much as I can say to try to be of assistance, 14 Mr Chairman, unless you want me to address 15 you on any other points? 16 THE CHAIRMAN: No, no, thank you. I am 17 very grateful to you. Yes, Mr Cooper? I do 18 not know how long you are going to be, 19 perhaps you do not either. Are you likely to 20 finish before lunchtime? 21 MR COOPER: Yes indeed. I certainly will. 22 THE CHAIRMAN: If you just overrun by a 23 few minutes, that does not matter. It is much 24 better that you finish. 25 MR COOPER: Thank you. I will make sure</p> <p style="text-align: center;">Page 95</p>
<p>1 meticulous process carried out in a very 2 professional manner. So, in my submission, 3 the process was beyond reproach. 4 The decision of the GPA was a majority one 5 of seven to two. Mr Albert Danino, one of 6 the dissenters, has stated at paragraph 27 of 7 his sworn witness statement the reasons why 8 he preferred Mr Alger's candidacy. The 9 reason that Mr Danino stated was that he felt 10 that Mr Alger had a more modern approach 11 to policing which he felt was more conducive 12 to the times that we are now living in. 13 The position of Mr Nick Pyle, the other 14 dissident, is set out at paragraph 26 of his 15 second affidavit dated 4 July 2023. An issue 16 has arisen between Mr Pyle and other 17 members of the GPA at the time. Those 18 members have deposed that Mr Pyle wanted 19 to open the vacancy to officers of other 20 jurisdictions: see for example the sworn 21 witness statement of Reverend Fidelio 22 Patron. Mr El Salvez has deposed that Mr 23 Pyle had said that he would not support Mr 24 McGrail and Mr El Salvez did not take that 25 kindly. They felt he was not giving Mr</p> <p style="text-align: center;">Page 94</p>	<p>1 I do. 2 Mr Chairman, I appear for the former Op 3 Delhi defendants, together with my learned 4 junior, Mr Ellis Sareen and we are ably 5 supported by Callum Smith and Naomi 6 Sheville from Phillips. 7 I recognise at the outset that my role in this 8 Inquiry is different to that of counsel for 9 some other core participants. My clients 10 were not the main actors in the events that 11 form the focus of this Inquiry. More often 12 than not, the relevant actions were done not 13 by them but to them. They did not make the 14 decisions, but things happened to them as a 15 result of those decisions. Their arrests, their 16 questioning, their prosecution, and the 17 eventual discontinuance of all charges 18 brought. 19 I recognise also that you will not be making 20 any adjudication on the merits of the Op 21 Delhi prosecution and we note the terms of 22 your ruling from 26 July following the fourth 23 preliminary hearing. But it is necessary at 24 the outset for me to say something about the 25 human cost of what has ensued from the</p> <p style="text-align: center;">Page 96</p>

24 (Pages 93 to 96)

<p>1 series of irregular decisions, 2 misapprehensions and mis-judgments that 3 have plagued this Inquiry. I trust that you 4 will bear in mind, Sir, when conducting this 5 Inquiry and writing your report, that the 6 disputes amongst powerful local interests, 7 businessmen, professional politicians and 8 State office holders and occupy most of the 9 evidence, have had serious effects beyond 10 this class of person. Other core participants 11 to this Inquiry may have felt some of the 12 distress that arises when one's actions are 13 subject to scrutiny and comment. Not all of 14 it is fair or balanced. They have felt this 15 since the Inquiry was announced in early 16 2022. But the former Op Delhi defendants, 17 for them this has been going on since their 18 arrests in May 2019. All three are men of 19 impeccable good character, with a history of 20 hard work and service to Gibraltar in the 21 Royal Gibraltar Regiment in the Civil 22 Service and through the skilful authorship of 23 a suite of software that has helped to keep 24 Gibraltar safe for many years, and they 25 deserve credit for all of that.</p> <p style="text-align: center;">Page 97</p>	<p>1 recover their costs when the Chief Justice 2 ruled in their favour after the DPP fully 3 contested that very jurisdiction. 4 This is only the briefest of summaries of 5 what the former Op Delhi defendants have 6 endured for the last five years. I can now 7 return to assist the Inquiry with what you, 8 Sir, foresaw as being the role of counsel for 9 them in your ruling on core participant status. 10 One part of that role was to point out 11 inaccurate or unfair criticisms of them where 12 they were made in the course of this Inquiry. 13 A fair amount of the evidence consists of 14 accusations of misconduct against them, or 15 presumed wrongdoing by virtue of the fact 16 that they were charged. But these 17 accusations went nowhere. Nothing was 18 established as alleged. It is no criticism of 19 counsel to the Inquiry that I say that there 20 were moments in his opening when it could 21 have been mistaken for setting out a 22 prosecution case. Part of the task of the 23 Inquiry is to scrutinise the reasoning of the 24 RGP and if the RGP's reasoning is to be 25 scrutinised, then it must be summarised and</p> <p style="text-align: center;">Page 99</p>
<p>1 They, and their young families, have had to 2 live with being the subject to public 3 discussion and unjustified rumour for what 4 will be five years next month. They want 5 nothing more than for this ordeal to be over, 6 for closure, and yet they find themselves 7 again, years later, in a position of having to 8 correct misapprehensions and false premises 9 being made publicly against them, and we 10 are grateful, Sir, for this Inquiry affording 11 them the role to provide corrections in that 12 regard. 13 They have had their lives to some extent put 14 in limbo, a state that due to the unusual 15 manner in which the criminal proceedings 16 were terminated and the commentary that 17 accompanied it, regrettable as it was, left a 18 sense of basic unfairness about their lack of 19 complete vindication and full exoneration. 20 Even now, their application to recover the 21 costs that they incurred in defending 22 themselves over many months before the 23 Supreme Court has been stayed until this 24 Inquiry has reported. It took a long time first 25 to establish there was a clear jurisdiction to</p> <p style="text-align: center;">Page 98</p>	<p>1 this will inevitably occupy more time than to 2 note, as the CTI very properly did yesterday, 3 that, firstly, the former Op Delhi defendants 4 fully denied the allegations against them and 5 that, secondly, despite a lengthy and 6 extensive investigation, these allegations 7 have never been proved against them in any 8 forum and nor is the role of this Inquiry to 9 revisit the merits of those allegations. 10 Sir, at this stage, I will only point out the 11 most important inaccuracies, the ones that 12 may affect how the Inquiry questions 13 witnesses and how you will come to assess 14 the evidence in due course. 15 Much of these derive from the written 16 opening of Mr Ian McGrail and his third 17 responsive statement. This is partly because 18 his opening is the longest, but I should not 19 shy away from the fact that there is a conflict 20 of sorts between the former Op Delhi 21 defendants and Ian McGrail. I say "of sorts" 22 because they agree on one thing. There was 23 something awry with the Op Delhi 24 investigation. Mr McGrail, looks towards 25 the end of the investigation in this regard and</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 says that it was interfered with and then 2 discontinued for improper reasons. We say 3 he is starting too late. The Op Delhi was in 4 fact tainted right from the very start because 5 it was premised on a clear commercial 6 grievance that was dressed up into a crime 7 against the State. We cannot say for certain 8 whether this was because Mr McGrail had 9 some private or political motivation for doing 10 as he did, whether it was from an actual 11 tendency to turn a drama into a crisis, or 12 whether he was simply too weak or too 13 credulous not to follow Mr James Gaggero's 14 lead. But in some respects, the former Op 15 Delhi defendants agree with Ian McGrail, but 16 say he does not go far enough. Yes, the 17 investigation was tainted but the taint did not 18 arise from political interference in May 2020, 19 but through a sequence of odd decisions in 20 commencing and progressing and 21 persevering with an investigation in the face 22 of developments that should have triggered a 23 comprehensive reassessment. 24 There was a consistent failure of the 25 investigation to proper pursue reasonable</p> <p style="text-align: center;">Page 101</p>	<p>1 entered into an implied contractual obligation 2 to pay him for the haircut. But nothing 3 obliges him the next time the need for a 4 haircut arises to go back to the same barber. 5 He is free, if he wishes, to select some other. 6 The original barber may well feel angry, 7 betrayed to lose a longstanding customer, but 8 he will have no legal recourse. That was the 9 position between the Government and Bland, 10 and it is important that the Inquiry bears this 11 in mind when it hears submissions about the 12 Chief Minister deciding whether to "take the 13 contract from Bland and give it to 36 North". 14 That is premised on a misapprehension. The 15 more accurate way of describing his decision 16 was whether to take the Government's 17 custom from Bland and give it to 36 North. 18 This may make little difference in terms of 19 the feelings such a decision might engender, 20 loyalty and contractual obligation are two 21 very different things, but it makes all the 22 difference or should make all the difference 23 when a police force is investigating an 24 alleged conspiracy to defraud, with all of the 25 consequences that follow to those subject to</p> <p style="text-align: center;">Page 103</p>
<p>1 lines of enquiry that pointed both ways, 2 including those in favour of the former Op 3 Delhi defendants. 4 I turn now to the specifics of the inaccuracies 5 and firstly I will address the issue of the 6 maintenance agreement. One must recall, 7 this was the alternative fall-back case against 8 the former defendants, having established 9 that the problems in making good the 10 proposition of the complainant of ownership 11 of the proprietary interest. From reading Mr 12 McGrail's opening, one might think that 13 somewhere in a filing cabinet is a document 14 entitled "Maintenance Contract" that had 15 existed, but this was categorically not the 16 case. There was not even an exchange of 17 emails that would constitute a contract. The 18 only contractual relationship for which there 19 is any evidence was the implied contract for 20 work being done, on the mutual 21 understanding that it would be paid for. In 22 my submission to the criminal proceedings, I 23 used the example of a barber, obviously 24 where a customer sits in a barber's chair and 25 the barber begins to cut. The customer has</p> <p style="text-align: center;">Page 102</p>	<p>1 that investigation. 2 The second point I wish to highlight is the 3 issue concerning whether, if Government or 4 civil servants encouraged 36 North, this 5 would amount to inappropriate conduct. Ian 6 McGrail and others asserted that it was 7 inappropriate for the Government, the Chief 8 Minister, or civil servants like Mr Sanchez, 9 to encourage 36 North. That would be a 10 good point if the NSCIS belonged to Blands. 11 But when assessing ownership, there is a big 12 clue in the name of the product, the National 13 Security Central Intelligence System. Once 14 it is recognised that it belongs to the 15 Government, the point Mr McGrail seeks to 16 make is not sustainable. If the Government 17 believed that Mr Cornelio and Mr Perez 18 would provide a better service than Blands, 19 there is nothing wrong in encouraging them 20 to move. They are entitled to choose who 21 they work for and to ensure that the 22 conditions of their work are suitable and 23 match the skills that they possess. Mr Caine 24 Sanchez was responsible for the Intelligence 25 System. If he thought Mr Cornelio and Mr</p> <p style="text-align: center;">Page 104</p>

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<p>1 Perez could go off to form a new company 2 and that it was better for Gibraltar, then it 3 was perfectly proper for him to encourage 4 them to do so. The same applies to the Chief 5 Minister. Obviously, it would be wrong for 6 him to encourage the Government of 7 Gibraltar to renege on a real contractual 8 obligation, but if he thought that Mr Cornelio 9 or Mr Perez could lawfully deliver a better 10 service for the Government when acting 11 independently, he was quite entitled to be 12 encouraging of their steps towards 13 independence. 14 If NSCIS had belonged to Blands, this point 15 may have had some merit, but that 16 proposition was not the case. It was soon 17 recognised by the investigation itself that Mr 18 Gaggero's claim lacked substance and, in any 19 event, the Government itself did not believe 20 that to be the case. 21 So in summary, if the Chief Minister or any 22 other member so the Government believed 23 Mr Cornelio and Perez provided a better 24 service free from the shackles of Blands, they 25 were quite entitled to encourage that. Indeed,</p> <p style="text-align: center;">Page 105</p>	<p>1 Clearly, there would have to have been prior 2 communication to set up that private 3 meeting. There may be an entirely innocent 4 explanation or there may not be, but it is 5 undoubtedly an unorthodox way for a police 6 investigation such as this to commence. 7 There is then the hiatus between 15 October 8 2018 and late December whilst the 9 investigation has apparently been 10 commenced. Nothing so far as we can tell is 11 being done. No SIO has been appointed. It 12 is not clear if any officer other than Mr 13 McGrail was involved. Why wait in this 14 way? What was Ian McGrail up to over this 15 period on an issue, we are told, was allegedly 16 affecting national security. Mr McGrail's 17 degree of involvement is another issue. 18 Some allowance can be made for the fact that 19 in a smaller jurisdiction with a relatively 20 smaller police force, a Commissioner of 21 Police may be more operationally involved 22 than he would be in the Metropolitan Police 23 by way of example, if he so chooses. But far 24 from stepping back from Op Delhi as he 25 suggests, we say the evidence shows that Mr</p> <p style="text-align: center;">Page 107</p>
<p>1 it was their duty to do so. 2 The third point, Sir, is the suggestion that this 3 was a regular and routine police 4 investigation. Some of the statements strive 5 to give the impression that Op Delhi was a 6 regular and routine investigation until the 7 furore surrounding the warrants against Mr 8 James Levy KC arose. 9 The evidence in fact shows that it was 10 anything but. It is not necessary to know 11 why the investigation was irregular to find 12 that it was, this is a fact I will address, which 13 I have gone into some detail in the written 14 opening which you have already considered, 15 but I should briefly identify some of these 16 points now. To take things chronologically, 17 it is helpful to record the manner in which the 18 complaint was first made to the police in this 19 matter. There was no 999 call or attendance 20 at a police station front desk, there was no 21 email setting out the alleged wrongs. 22 Instead, there was a private meeting, a 23 meeting between Mr James Gaggero and Mr 24 Ian McGrail in his office on 27 September 25 2018, reference A1374 at paragraph 72.</p> <p style="text-align: center;">Page 106</p>	<p>1 McGrail continued to play an important role 2 in it, driving it forward, particularly in terms 3 of trying to persuade a reluctant Government 4 to adopt his case theory, or should I say Mr 5 Gaggero's case theory. 6 Another part of Mr McGrail's involvement 7 seems to have been liaison with James 8 Gaggero and his then lawyer, Sir Peter 9 Caruana KC. This included involvement 10 with the drafting of witness statements. 11 There is no principle in Gibraltar or English 12 law that positively prohibits involvement of 13 lawyers instructed by the complainant in the 14 drafting of witness statements in criminal 15 proceedings, but the usual course is for 16 statements to be drafted by police officers 17 from notes taken whilst interviewing 18 witnesses. This approach ensures, or at least 19 should ensure, that the evidence that appears 20 in the statement is that of the witnesses and 21 has not been adapted, edited or improved. It 22 also avoids souring of the criminal disclosure 23 exercise with questions of legal professional 24 privilege. Here the crucial prosecution 25 statements in the Op Delhi prosecution</p> <p style="text-align: center;">Page 108</p>

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<p>1 appear to have been drafted by lawyers 2 instructed by James Gaggero. Now, there 3 may be nothing sinister about this, but it is 4 undoubtedly highly irregular. 5 There were two further irregularities that 6 relate to how the RGP rushed to charge 7 before obtaining vital evidence, evidence that 8 once obtained undermined their position. 9 One strand of this was the evidence from the 10 Chief Minister himself, looking through 11 Mark Wyan's log, it seems to have rather 12 exercised the then DI that no progress was 13 being made in obtaining a statement from the 14 Chief Minister prior to charge in September 15 2020. He was clearly alive to the importance 16 and necessity of this evidence in making 17 good the case theory of proprietary interest. 18 When this statement was obtained in June 19 2021, it showed that Mark Wyan's legitimate 20 concern was very well-founded, because the 21 statement fundamentally undermined the 22 prosecution case, not least because the Chief 23 Minister's contemporaneous notes put 24 beyond doubt the correctness of the former 25 Op Delhi defendants' case which was that Mr</p> <p style="text-align: center;">Page 109</p>	<p>1 computer expert evidence, this needs to be 2 someone who has not been paid by Mr 3 Gaggero or Blands and was prepared to take 4 on the onerous duties of an expert witness for 5 the court and this still had not been obtained 6 by September 2020 and yet the RGP 7 proceeded to charge all the same. Why was 8 that risk taken, a risk that did not pay off? I 9 should note that since when the expert 10 evidence was obtained in July 2021 it 11 singularly failed to support the much 12 repeated allegation of sabotage which 13 remains no more than an allegation. It was 14 ultimately served as unused material to the 15 defence. Was this just a failure to analyse 16 the case that would have to be put forward at 17 trial or was there some other cause to this 18 irregularity? Why was obviously 19 fundamental evidence not obtained before 20 charge or, to put it another way, why did the 21 RGP move to charge before obtaining such 22 important evidence? I note in this context 23 that the delay between Mr McGrail's 24 retirement and charge was only a matter of 25 months. For most of the long investigation</p> <p style="text-align: center;">Page 111</p>
<p>1 Gaggero himself had positively supported the 2 transition from Blands to 36 North, until he 3 realised that that would not be to his own 4 personal financial benefit. His positive 5 support is clearly documented. 6 Another strand was the expert evidence. It 7 should not be forgotten that the allegations of 8 computer misuse were of misuse by the 9 administrator of the system himself, not by 10 some external party. 11 (11.35) 12 It was an allegation akin to an allegation of 13 assault by a surgeon whilst performing an 14 operation. It is not legally possible but it was 15 practically impossible to pursue without 16 independent expert evidence in this instance. 17 Whilst there had been various investigations 18 by those possessed of computer expertise, no 19 report existed from an independent expert 20 witness. There was of course the report 21 from Price Waterhouse Cooper that the 22 police --- that Mr Gaggero himself obtained 23 at an earlier stage which clearly lacked any 24 possible independence and which he 25 obviously paid for but here, in relation to the</p> <p style="text-align: center;">Page 110</p>	<p>1 period he was at the helm. The RGP say that 2 they obtained advice from the DPP but in 3 Gibraltar, unlike in England and Wales, a 4 decision on charge, even in serious cases, 5 rests with the police not the DPP or his 6 delegates. If the explanation for advice is put 7 forward, I would ask you, sir, to scrutinise 8 carefully the basis on which this advice was 9 given. Was it given after a careful 10 consideration of the evidence, the statements 11 and exhibits of the kind that prosecuting 12 counsel would be expected to carry out when 13 drafting a charging advice? Or was it on 14 summaries prepared by the RGP, a 15 convenient shortcut but one that will 16 inevitably result in advice that is to some 17 extent shaped by the decisions made in 18 preparing the summaries? 19 I move on to the final irregularity now which 20 is one that I know was well understood by 21 you, sir, at the time of the fifth preliminary 22 hearing but it may be that a degree of 23 imprecision in some of the written materials 24 have muddled that understanding. It 25 concerns the question of ownership. To put</p> <p style="text-align: center;">Page 112</p>

<p>1 things in layman's terms, Mr Gaggero went 2 to Mr Ian McGrail and told him that Mr 3 Cornelio, Mr Perez were trying to take 4 something that belonged to him, or, rather, 5 Blands. Mr McGrail, it seems, applied no 6 effective scrutiny to this account but simply 7 accepted it. It later emerged that there was a 8 significant dispute about whether this thing 9 that Mr Gaggero had said belonged to Mr 10 Blands actually did belong to him or 11 belonged to the Government of Gibraltar in 12 fact. Any competent police investigation 13 acting independently without ulterior intent 14 would have recognised that this was a highly 15 material change in circumstances. It required 16 a basic re-assessment of the investigation, a 17 re-evaluation of whether what had been done 18 thus far had truly discharged the police duty 19 to pursue enquiries in more than one singular 20 direction. For the purposes of bringing 21 criminal proceedings, doubt about the 22 ownership of the intellectual property in 23 NCIS was equivalent to proof that it did not 24 belong to Blands. This development did not, 25 therefore, only deprive the RGP of its victim.</p> <p style="text-align: center;">Page 113</p>	<p>1 defendants were deserving of charge, they 2 would find a crime to suit. What emerged is 3 a fiction that regrettably was to keep the 4 former Op Delhi defendants embroiled in 5 criminal proceedings for many months after 6 it was conceived of. 7 I move on now to the treatment of Mr James 8 Levy KC after 12 May 2020. From reading 9 some of the openings, one could be forgiven 10 for forming the view that Mr Levy in some 11 way remained under suspicion after the 12 events of May 2020. This may have been the 13 private view of some of the officers but it 14 was certainly not the official stance of the 15 RGP because they made efforts to persuade 16 Mr Levy to be a prosecution witness. Police 17 forces do not issue certificates of innocence 18 but an invitation to appear as a prosecution 19 witness is probably the closest one can 20 expect to get. The invitation to appear as a 21 prosecution witness followed the submission 22 to the RGP of Mr Levy's statement of 9 June 23 2020 which appears at B5229. Mr Levy 24 declined the invitation on 6 November 2020 25 but, curiously, it was not until 14 September</p> <p style="text-align: center;">Page 115</p>
<p>1 The only other account is that the 2 Government of Gibraltar seemed --- the only 3 other account of the Government of Gibraltar 4 seemed at best lukewarm about making a 5 complaint and certainly was not pursuing the 6 matter with the vigour one would expect, if 7 this was as Mr Gaggero alleged, a genuine 8 attempt to undermine national security. It 9 also threw into disarray the investigations, 10 theories on authorisation since, if the 11 government owned NCIS, then the 12 government had the right to direct what 13 should be done with it and the person within 14 the government who had complete authority 15 over NCIS was Mr Caine Sanchez as indeed 16 recognised by the government witnesses and 17 yet, the evidence suggest that this was --- that 18 this highly material change in circumstances 19 was effectively glossed over because 20 nowhere do we see the evidence of the 21 comprehensive review that this change so 22 obviously demanded. Instead, the evidence 23 is of the RGP attempting to work around the 24 problem, having established in their minds 25 that these defendants --- these former</p> <p style="text-align: center;">Page 114</p>	<p>1 2021 that the statement of 9 June was served 2 on the former Op Delhi defendants as unused 3 material in the criminal proceedings, long 4 after the duty, the basic duty of initial 5 disclosure should have been complied with 6 and even longer --- even longer after the 7 initial disclosure had purportedly been 8 complied with. 9 Sir, I do need now to turn to something that 10 has assumed some significance as a result of 11 the restriction notice or, rather, as a result of 12 the clarification press release issued 13 yesterday by the Government. In his 14 opening, Counsel to the Inquiry spent some 15 time examining the national decision model 16 document, drafted by Mr Richardson, in 17 which he recorded the reasons behind the 18 decision to seek search warrants against Mr 19 Levy and he read out B3455 which stated as 20 follows, "It is reasonable to suggest that TC 21 informed him that he had been sabotaging the 22 system," "him" in this context being Mr 23 James Levy KC. In yesterday's press 24 release the Government drew the press and 25 the public attention to the fact that there were</p> <p style="text-align: center;">Page 116</p>

<p>1 messages between Mr Cornelio and Mr Levy 2 KC that fell within the scope of the 3 restriction notice. It may be that there will be 4 speculation within these messages, subject to 5 the restriction, an admission by Mr Cornelio 6 that he somehow intended to sabotage NCIS 7 and I would like to thank you, sir, for 8 including within the open ruling on the 9 application for the restriction orders, a record 10 of the fact that the former Op Delhi 11 defendants had argued for complete openness 12 and transparency with no restrictions 13 whatsoever. It is important to them that the 14 public is aware that they were not in any way 15 seeking to avoid scrutiny but, however much 16 they may wish all matters to be public, they 17 and I are still of course bound by the 18 restriction notice, so I obviously cannot in 19 this public session state what the content of 20 those messages were but what I can say is 21 that in the entirety of the evidence served in 22 the criminal proceedings, there was no 23 message from Mr Cornelio to Mr Levy or 24 anyone else that could sensibly be construed 25 as an admission of sabotage. The only</p> <p style="text-align: center;">Page 117</p>	<p>1 Gibraltar law. Though I state this as a fact 2 that the offence of conspiracy to defraud was 3 during the period that the Op Delhi 4 defendants are alleged to have committed 5 was not part of a court of law, I acknowledge 6 that the Supreme Court has not yet ruled on 7 the issue but the argument to the contrary, as 8 Counsel to the Inquiry set out yesterday, is 9 very weak indeed. I do not seek to berate the 10 RGP or the DPP for making a mistake. 11 Every lawyer, judges included, make errors 12 of law. If it were not the case ---- 13 THE CHAIRMAN: It was certainly not the 14 RGP's fault because of those sort of rights. 15 MR COOPER: Indeed, yes. I would add, 16 sir, that if it were not the case, there would be 17 no need --- well, Mr Wyan's unusual status 18 as both an English barrister and a Gibraltar 19 police officer in the circumstances do not 20 make him immune from falling into the same 21 legal error that many people appear to have 22 done so in relation to this particular charge 23 but I do wish to draw your attention to the 24 way in which the prosecuting authorities 25 persisted in this error long after it was drawn</p> <p style="text-align: center;">Page 119</p>
<p>1 messages in which Mr Cornelio mentioned 2 anything akin to sabotage at all have been 3 read out in opening by Counsel to the Inquiry 4 and were B328, firstly, to Mr Levy in which 5 he noted that Mr Gaggero was "going all 6 out," and had brought in a forensic team to 7 review his actions as administrator of NCIS 8 and, secondly, the message to Mr Perez in 9 which he said he was concerned that Mr 10 Gaggero had tried to prove falsely and, as the 11 contents make clear, that he had tried to 12 sabotage --- he had allegedly tried to 13 sabotage the system. 14 Sir, the next point I wish to draw your 15 attention to concerns the charge of 16 conspiracy to defraud, unknown to Gibraltar 17 law. Finally, I should briefly mention an 18 irregularity that was carefully opened by 19 Counsel to the Inquiry yesterday and, as I 20 know you will have fully grasped already but 21 which may not be fully appreciated outside 22 of these walls, that is the issue of the Op 23 Delhi --- the former Op Delhi defendants 24 being charged on count 1 of the indictment 25 with an offence which is unknown to</p> <p style="text-align: center;">Page 118</p>	<p>1 to their attention, even at the time of the 2 discontinuance in January 2022. They were 3 still arguing that the clear words of the Crime 4 Act 2011 should somehow be disappplied. 5 Whilst this refusal to re-assess their case 6 necessarily post-dates Mr McGrail's 7 retirement, it is indicative of the manner in 8 which the investigation was commenced and 9 conducted. 10 Just briefly with reference to the opening 11 submissions of Mr Richardson, I do 12 emphasise that the mistake, as it were, was 13 not one that was shared by the former Op 14 Delhi defendants. Mr Gibbs addressed the 15 fact of the police and the DPP suffering from 16 the confusion of the law and focused on the 17 impact --- on the legality of Mr Levy's 18 search warrant but the same confusion 19 applied to the former Op Delhi defendants' 20 charges. It is important to bear in mind that 21 where the law is confused, there is well 22 established authority on the fact that the 23 confusion should be resolved by a penal 24 statute and the basic principle of law that 25 uncertainty of the law should be resolved in</p> <p style="text-align: center;">Page 120</p>

<p>1 favour of defendants where it has been 2 applied against them, so I would invite you, 3 sir, to focus on the repercussions for them, as 4 it were, in that regard. 5 May I conclude, sir, in saying as follows; I 6 hope I have not trespassed into the merits or 7 demerits of the allegations underlying Op 8 Delhi which is not an issue that this Inquiry 9 will be making any findings on and instead 10 confine myself to the RGP's questionable 11 handling into these allegations which is 12 within the Inquiry's remit. Ultimately, we 13 say that Mr Ian McGrail was instrumental in 14 commencing and progressing an irregular 15 and unfair investigation through misguided 16 decisions that caused real suffering and 17 upended the lives of the former Op Delhi 18 defendants. As I have set out, we cannot say 19 whether this was because Mr McGrail had 20 some private motive for doing as he did, 21 whether he was too weak or too prejudiced to 22 resist Mr Gaggero's powers of persuasion or 23 whether it was an example among others 24 perhaps to be explored in this Inquiry of a 25 trigger happy disposition. Equally, we</p> <p style="text-align: center;">Page 121</p>	<p>1 MR CRUZ; It is --- 2 THE CHAIRMAN: Do you know what is 3 coming, Mr Santos? Can you try and sort it 4 out? 5 MR CRUZ: I could address it by speaking to 6 Counsel to the Inquiry. 7 THE CHAIRMAN: Well, I will tell you 8 what I will do; if you have not sorted it out 9 by two o'clock, I will hear you at two 10 o'clock. 11 MR CRUZ: Yes, thank you. 12 THE CHAIRMAN: Okay. 13 MR SANTOS: There is one other matter 14 that I wish to raise. 15 THE CHAIRMAN: Yes. 16 MR SANTOS: And that is the matter of 17 witness questioning, just an administrative 18 matter more than anything else but in terms 19 of unrestricted witnesses, the policy is quite 20 clear as to who goes first and who goes last. 21 I go first and the witness's lawyer goes last. 22 THE CHAIRMAN: Yes. 23 MR SANTOS: So that we are clear as to 24 what goes on in between, the policy says that 25 the most appropriate person will go next but</p> <p style="text-align: center;">Page 123</p>
<p>1 cannot point to any evidence that suggests 2 that Mr McGrail realised his errors or that 3 fear of scrutiny of his actions played some 4 part in his decision to resign but we can and 5 do submit that he did make errors in this 6 investigation, that he should have realised 7 that he had done so and that if he had realised 8 he had made such serious errors, the rational 9 and honourable choice would have been to 10 resign forthwith. Sir, that is all I want to say. 11 THE CHAIRMAN: Thank you very much 12 indeed. 13 MR CRUZ: I am sorry, may I raise a matter 14 if we are going to conclude for the day. 15 THE CHAIRMAN: You can say what you 16 want to say. 17 MR CRUZ: It relates to the -- I want to raise 18 it with the court but it relates to the issue of 19 the undertaking that was taken in January and 20 is a point of clarification that I think I have 21 been asked to flag and that is that the 22 undertaking ---- 23 THE CHAIRMAN: Do you need me to 24 address me in open session on this or can you 25 not sort it out between counsel?</p> <p style="text-align: center;">Page 122</p>	<p>1 there may be differing views as to who that 2 is. What we would suggest in fact is that all 3 participants engage over the next day or so to 4 try to agree an order between them. They 5 should be able to agree an order between 6 them as to who goes --- as to the order of 7 questioning of Mr Richardson and then --- 8 and try to do so by lunchtime tomorrow. If 9 they cannot arrive at an agreement (and I 10 really ask them to engage) then I suppose we 11 will have to determine it by the end of the 12 day tomorrow. That is as far as Richardson 13 is concerned. As far as the other witnesses 14 are concerned, I would ask that everybody 15 engage in the same process to try and reach a 16 position by Friday lunchtime and any issues 17 that there may be as far as witnesses are 18 concerned by Friday lunchtime, we can 19 consider it and perhaps rule on it by Friday 20 evening or --- well, at least in respect of Mr 21 McGrail who is first on Monday but perhaps 22 we can take some more time on that. I would 23 ask that by tomorrow lunchtime we have the 24 position as far as Mr Richardson is concerned 25 and by Friday lunchtime all other witnesses.</p> <p style="text-align: center;">Page 124</p>

1 THE CHAIRMAN: Yes, try and sort out Mr
2 Cruz's problem ----
3 MR SANTOS: I will speak to him ----
4 THE CHAIRMAN: Over lunchtime and sort
5 out the way in which we can best receive Mr
6 Richardson's evidence.
7 MR SANTOS: Yes.
8 THE CHAIRMAN: And I will come back at
9 two o'clock if the problem remains
10 unresolved, okay, thank you.
11 (The luncheon adjournment)
12 (Adjourned until 10 am, Wednesday, 10
13 April 2024)
14 (12.55)
15

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