

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

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### AFFIDAVIT OF LEWIS BAGLIETTO

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I, **LEWIS BAGLIETTO**, of 11<sup>th</sup> Floor, Madison Building, Gibraltar, Barrister-at-Law, **MAKE OATH AND STATE AS FOLLOWS:**

1. I am a partner of Hassans International Law Firm Limited, of the above address ("**the firm**") and have been Head of Litigation at the firm since 2003.
2. In my capacity as Head of Litigation, I assume responsibility for the conduct of claims affecting the firm and its members, engaging the assistance of colleagues at the firm and external lawyers where appropriate.
3. For these reasons, when the matter of the search warrants in question came to my attention on 12 May 2020, I took on the conduct of the matter as legal representative of my firm's Senior Partner, James Levy KC, assisted by a lawyer within my department with experience in criminal law and procedure as well as with leading counsel in London experienced in these areas and in public law.
4. In answer to the questions put to me by the Inquiry in its solicitors' letters of 26 February and 15 March 2024, (respectively "**the First Triay letter**" and "**the Second Triay letter**") I say as follows.

#### The First Triay letter

#### Question 1(a)

*“Did you discuss (whether via meeting, telephone call or other means) the RGP’s actions in obtaining a search warrant against Mr James Levy KC with any of the following persons?”*

- i. Mr Fabian Picardo, KC, the Chief Minister*
- ii. Michael Llamas KC, Attorney General*
- iii. Christian Rocca KC, Director of Public Prosecutions*
- iv. Dr Joseph Britto, Chairman of the Gibraltar Police Federation*
- v. Any other member of HMGOG*

*(i) Fabian Picardo KC, Chief Minister*

4.1 I have recently been provided with Mr Picardo’s Fourth Affidavit where he states that he and I discussed the matter on a number of occasions. While I note this, and from the WhatsApps disclosed by the Chief Minister it is clear that I spoke to him around those dates, the fact is that nearly 4 years later, I simply have no recollection of the contents of any discussions with him on the subject of the warrants. It is easier for me to recollect my interactions with other persons listed above in relation to the warrants because they were recorded in contemporaneous letters and emails with them. With the Chief Minister, however, I had no such correspondence and I no longer have WhatsApp exchanges with him on my telephone going back that far.

*(ii) Michael Llamas KC, Attorney General*

4.2 I recall having several conversations with the Attorney General (“**the AG**”) in relation to Mr Levy’s objection to the legality of the warrants and the question whether the RGP would accept a voluntary statement from him. Save as set out below, I do not have any recollection or record of the various dates when I may have discussed these matters. It is likely that I would have called him on 12 May 2020 to initially protest about the obtaining of the warrants, to express my concerns for the protection of the material taken by the RGP and also to let him know that we would be writing to him. I may also have mentioned to him that I would be seeking an urgent meeting with him and the RGP (as requested in my e-mail to him of that evening). It also appears from page 24 of the transcript of the

meeting in the AG's office exhibited as Exhibit 5A to Mr Mc Grail's Second Affidavit ("McGrail 2") that I called the AG on 13 May 2020 in relation to the meeting I was seeking with him and the RGP. I also have a note in my diary for 14 May 2020 with the initials "MLL", which may have been a reminder to either speak or meet with him, but I do not recall if that ever happened on that day.

4.3 I do recall that the AG and I spoke on 15 May 2020 when he confirmed to me (see his email to me of 17 May 2020 at page 58 of exhibit "HJML3" to Mr Levy's First Witness Statement to the Inquiry and page 30 of Exhibit 6A to McGrail 2) that the Commissioner of Police would be prepared to accept a voluntary statement from Mr Levy in lieu of the interview under caution scheduled for 18 May 2020.

4.4 I do not recollect the contents of any other oral communication with the AG regarding the warrants, although I see from the transcript of his meeting with Mr McGrail and others of 20 May 2020 (McGrail 2, Exhibit 7A, page 12) that he said he would be calling me after that meeting, but I do not recall if he did.

4.5 I have no written communications with the AG on the subject of the warrants other than those contained in Exhibit "HJML3". I cannot recall if I ever communicated with him by WhatsApp on the subject, as the WhatsApp exchanges with him which remain on my telephone do not go back that far.

*(iii) Christian Rocca KC, Director of Public Prosecutions*

4.6 The nature and extent of my communications with the DPP in relation to the warrants can be gleaned from correspondence with him at Exhibit "HJML3". As is apparent from his email at p.101 of HJML3, he and I spoke shortly before 1 June 2020 with a view to his showing me unredacted portions of the application for the warrants. I also spoke to the DPP on the telephone that day, when, in relation to the warrant application document, he mentioned that most of the redactions were being retained because the RGP thought that it could otherwise prejudice any future interview. He also indicated to me that the

redacted parts all seemed to concern e-mails and texts or WhatsApps and that he had not seen anything there of particular concern. On or around 2 June 2020, I attended the DPP's office, when I was shown the application for the warrants, which, if I rightly recall, still contained a number of redactions. As can be seen from page 104 of Exhibit "HJML 3" on 12 June 2020, I also spoke to the DPP regarding the items taken from Mr Levy and held by the RGP. For the sake of completeness, I now produce marked "LB 1", two short emails dated 1 June and 12 June 2020 relating to, respectively, my meeting with the DPP on 2 June 2020 and my telephone conversation with him on 12 June 2020.

*(iv) Dr Joseph Britto, Chairman of the Gibraltar Police Federation*

4.7 I do not believe I ever had any communications with Mr Britto regarding the warrants.

*(v) Any other member of HMGoG*

4.8 If this is intended to refer to any other officer of the Crown, then, the only other persons falling within that description who I communicated with would have been the Clerk of the Magistrates' Court, members of the RGP and then only, as far as I can recall, in writing and as recorded in my communications with them exhibited at "HJML 3".

**Question 1(b)**

*"Between 12 May and 9 June 2020, did you discuss whether via meeting, telephone call or other means) Mr McGrail's position as Commissioner of Police and/or the decision to invite him to retire with any of the following persons?"*

- vi. Mr Fabian Picardo, KC, the Chief Minister*
- vii. Michael Llamas KC, Attorney General*
- viii. Christian Rocca KC, Director of Public Prosecutions*

*ix. Dr Joseph Britto, Chairman of the Gibraltar Police Federation*

*x. Any other member of HMGOG”*

4.9 I have no recollection of having discussed Mr McGrail’s position as Commissioner of Police and/or the decision to invite him to retire with any of the persons listed in the First Triay Letter. It was not a matter that I was advising Mr Levy or anyone else on.

4.10 As to whether I discussed that matter with the Chief Minister in particular, I should make clear that neither the transcript of the WhatsApp messages between me and the Chief Minister in May 2020 (“**the May 2020 WhatsApps**”) nor his Fourth Affidavit provided by Triay Lawyers have served to refresh my memory in that respect. Whilst the May 2020 WhatsApps include a message of 14 May 2020 which refers to a provision dealing with dismissal with loss or reduction of pension rights in cases of treason, other serious offences or conduct liable to lead to loss of confidence in the Police Force, I do not recall why or for what purpose this was sent to me at the time, and this WhatsApp does not therefore alter my above answer to Question 1(b) in the First Triay Letter. I also note that at Paragraph 14 of his Fourth Affidavit, the Chief Minister states his belief that he would have shared with me the fact that he was very open with the Gibraltar Police Authority and the then Governor that Mr McGrail no longer enjoyed his confidence and his views as to the mechanisms to see Mr McGrail removed and the consequences thereof. Nonetheless, nearly four years later, I have no recollection of my own in that regard.

**Questions 1(c) and 2 of the First Triay Letter**

4.11 There is nothing I can add by way of response beyond what I say above nor by reference to the documents to which I refer above.

**The Second Triay Letter**

5. As regards the questions put to me by the Inquiry in this letter, I now set out those questions and my answers to them, referring to the transcript of the May 2020 WhatsApps where appropriate.

### **Question 1**

- “(a) What meeting(s) and conversations you had with the Chief Minister (or any of the other named individuals in our letter) during the period 12 May 2020 to 29 May 2020?*
- (b) What was the content of those meetings and who else (if anyone) was present at these meetings and/or party to the communications concerned?*

### **Response to Question 1 in Second Triay Letter**

6. As regards meetings and conversations with the Chief Minister in general during the period 12 May 2020 to 29 May 2020, the only ones which I can recall are derived from having my memory refreshed by the May 2020 WhatsApps and are as follows:

#### **WhatsApps of 13 May 2020**

7. Having seen the transcript of the WhatsApp exchanges recently provided to me by the Inquiry, it is obvious that I was asking to speak to Mr Picardo and, it appears, I spoke to him on 13 May 2020, the day after the warrants were sought to be enforced against Mr Levy. I have no recollection of speaking to Mr Picardo or of what we spoke about but, given the date, it is likely that it concerned Mr Levy and the warrant or the matters to which it related.

#### **WhatsApps of 14 March 2020**

8. I do not recall why Mr Picardo would have sent me the WhatsApp he sent me at 16:55, nor, for that matter, the WhatsApps sent at 18:41 and 18:42, although, of course, the latter was very relevant to the issue I was dealing with at the time, that is, seeking the return of the items taken by the RGP from Mr Levy.
9. Likewise, my reference in the WhatsApp of 18:45 to writing a letter must have been to the next letter I was intending to send seeking the return of the material taken by the RGP, as

is apparent from the second sentence of that message. I see from page 20 of Exhibit "HJML3" that I did, in fact, write to DS Richardson that same day seeking the return of the material taken, but, given the time of day, it is more likely that in my WhatsApp I was referring to my next intended letter to the AG of 15 May, where, among other things, we demanded the return of the material.

#### **WhatsApps of 16 & 17 May 2020 / meeting with Chief Minister on 17 May 2020**

10. From the WhatsApp exchanges of 16 and 17 May 2020 (respectively a Saturday and Sunday) it is apparent that I called Mr Picardo at 23:20 on Saturday 16 May asking to speak to him the following morning. Mr Picardo replied to me the following morning. It appears we spoke shortly after 09:44. I do not recall why I wished to speak to him or what we spoke about, but from the exchanges that followed, it appears that I then met with Mr Levy and Mr Picardo in the early afternoon, sometime after 14:03. I should say that I had no recollection or record of this meeting until I was recently provided with the May 2020 WhatsApps and continue to have no recollection of what was discussed at that meeting, but I can only presume it was connected to the events of 12 May 2020.

11. I note from Mr Picardo's Fourth Affidavit that he states that the key issue in the meeting was Mr Levy's concern whether he should resign as Chair of Community Care Trust. Whilst I no longer recall the matters discussed at that meeting, I note that Mr Picardo states that the matter of the warrant was also raised. I also note that at 14:51 that day, which must have been shortly after that meeting, I emailed the AG, with copy to the Commissioner of Police seeking confirmation that, further to his confirmation that the Commissioner would be content with a written statement from Mr Levy in lieu of proceeding with the RGP's proposed interview the next day, Mr Levy would be giving a written statement and therefore not be attending for interview the following day. At 14:56, the AG emailed me back, noting the contents of my email and stating that they were consistent with what he had communicated to me on the Friday afternoon, but I cannot recall if the subject of that email was connected to the meeting with Mr Picardo on that day.

12. As regards the WhatsApp exchange I had with Mr Picardo in the evening of 17 May 2020, I do not recall what part of the 2020 HMIC report he had highlighted in his WhatsApp. I have extracted that report from the internet but it is not obvious to me what part Mr Picardo had highlighted. I do not remember what my comments in reply referred to, being nearly four years after the event.

I see that I also thanked Mr Picardo for his time in my messages of 22:52, saying that “it [presumably, a matter discussed during the meeting] *reassured him a lot*”, but I cannot remember what that referred to.

13. As regards meetings and communications with persons other than the Chief Minister during the period requested in the Second Triay Letter, my recollection is as set out in my above responses to the First Triay Letter.

#### **Question 2**

*“Please disclose copies of any documents (Hardcopy or electronic) containing communications relating to the above and which are not considered to be legally professionally privileged. This is inclusive of WhatsApp messages (or via the use of any other electronic instant messaging platform) to/from the Chief Minister, Dr Britto, the Attorney General, the DPP Christian Rocca KC or any other officer of HMGoG. For the avoidance of doubt, we must make it clear that the WhatsApp exchange enclosed is not considered by the Inquiry to be privileged.”*

14. As regards Question 2 of the Second Triay Letter, as stated above, I have no documents containing communications with the Chief Minister relating to Question 1 in that letter and all documents containing communications with other persons listed in the letter during the period and which relate to the matters being considered by the Inquiry are contained in Exhibits “HJML3” and in the two emails exhibited at “LB 1”.

15. In relation to the requests contained in the First and Second Triay letters regarding my communications with the Chief Minister, I wish to make clear that in my conversations and exchanges with him regarding Mr Levy at the time, I would have been communicating as



Mr Levy's legal representative. Although as Mr Picardo rightly says, he and I are very good friends, and, as such, would have communicated in friendly terms, my interaction with him at the time would, as I say, have been on behalf of Mr Levy, whose legal rights I was seeking to assert and protect.

Personal Data

SWORN by the above-named deponent.

at 13/15 GIBO'S PASSAGE, GIBRALTAR

This 2<sup>TH</sup> day of MARCH 2024

Before me,

Personal Data

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COMMISSIONER FOR OATHS

Jenssen Paul Ellul  
Commissioner for Oaths  
13/15 GIBO'S PASSAGE, GIBRALTAR