

# INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

---

## CTI'S FACTS SCHEDULE

### FOR THE MAIN INQUIRY HEARING COMMENCING 8 APRIL 2024

---

#### ISSUES 8 – 10: THE 29 MAY LETTER, THE SECTION 13 ISSUE AND THE GPA PROCESS

##### IM's appointment as Commissioner of Police

1. The procedure for appointing the new Commissioner of Police in October to December 2017 was agreed by members of the GPA and was similar to that adopted at the time of the appointment of IM's predecessor. It consisted of written applications, an oral presentation and interview before a selected panel of members of GPA (John Gonçalves, Ernest Gomez, Reverend Fidel Patron and NP) whilst in the presence of all other members of the GPA. IM applied for the position on 1 November 2017 [C621], and the only other applicant was RU (on 3 November 2017 [C680]). On 6 November 2017, the GPA sought from the departing Commissioner, Edward Yome, a confidential written assessment on each of the candidates [C714], and these were provided by Mr Yome on 15 November 2017 [C715, 730].
2. On 27 November 2017 the two candidates, namely IM and RU gave PowerPoint presentations to the GPA setting out their respective visions for the RGP in the next 5 years [C600]. This was followed by interviews on 30 November 2017.
3. The GPA met on 5 December 2017 and deliberated at length on the different strengths of the candidates. A majority of 7-2 considered that IM was "*the stronger of the two highly suitable candidates*" (NP and Mr Albert Danino voted for RU). John Gonçalves, the then Chairman of the GPA, asserts that NP told him that he "*would not support McGrail's application*" (Gonçalves 1 para 25 [A341]). Edgar Lavarello's evidence is that NP stated that he would not support *either* candidate (Lavarello 1 para 34 [A342]). NP denies expressing himself in either of those ways (or that he even thought either of those things), despite the concern he had in March 2017 about IM's conduct in relation to the Airport Incident arrests. He attests that whilst he made clear that he was surprised that there were only two candidates and expressed the view that a wider field would have been

better for policing in Gibraltar, he marked both IM and RU as “*suitable and credible candidates for the post*” and “*within a point of each other*”, and ultimately voted for RU. He further affirms that having looked a little deeper he was swayed by Edward Yome’s reports on the candidates, and agreed that RU had a more modern leadership and management approach (Pyle 2 paras 25 to 27 [A266]). Mr Gonçalves also gives evidence that NP expressed the view that applications for the position of Commissioner of Police should not be limited to RGP officers but opened to officers in the UK, but that this received no support from any of the other members of the GPA (Goncalves 1 para 26 [A347]; see also Danino 1 para 27 [A370], Falero 1 para 37 [A386], Gomez 1 para 34 [A399], Hassan-Weisfogel 1 para 47 [A417], Lavarello 1 para 34 [A432], Nagrani 1 para 36 [A450], Patron 1 para 33 [A462] ).

4. The GPA wrote to Lt Gen Davis advising that IM should be appointed as the new Commissioner of Police [C746]. On 13 December 2017, Lt Gen Davis wrote to the GPA informing the Authority that having consulted FP, IM was to be appointed as Commissioner of Police from 1 May 2018 for a four-year term of warrant [C747]. The letter requested that the GPA “*formally review progress against the objectives set out in Superintendent McGrail’s vision statement and associated action plan at the mid-point of his tenure as Commissioner*” (i.e. April 2020). This request was communicated by Lt Gen Davis to IM in his letter of the same day informing IM of his “*well-deserved appointment*” [C749].
5. An email from NP to the CM dated 15 May 2020 states: “*As we thought at the time, wrong appointment. Remind me to tell you about the recruitment process which was abject.*” [A199] Mr Gonçalves disagrees with this description and expresses surprise at it, averring that all members of the GPA, including NP, approved the process, and that NP had not raised with the GPA any criticism of the process (Gonçalves 2 para 6 [A347]).

### **The events of May 2020**

6. On 14 May 2020, in the context of discussions about the civil claims arising from the Incident at Sea, the CM messaged NP at 09:49 stating [A198]):

*“I am starting to have huge concerns about the senior management of the RGP. I will alert you to a particular matter when we meet, but in terms of the last few*

*months alone: (i) this case of deaths occasioned outside of BGTW (the statute gives them to status as police officer); (ii) the HMIC inspection issues; (iii) the Federation bullying allegations; (iv) the runway incident, where we had to go into bat for them despite all aspects having clearly been mishandled by the RGP (and parts of the MOD also); and (v) the continuing saga of the Alcaidesa claims. I think I will be asking Ian McGrail to provide more detail and in writing as to what happened here and what they are going to do to engage with these claims before there is any requirement that they do so. I am starting to lose confidence here..."*

7. NP responded at 09:58: "Agree. As we thought at the time, wrong appointment. Remind me to tell you about the recruitment process which was abject..." [A199]. They arranged to meet the following day (15 May 2020).
8. At this juncture, it is worth noting that despite referencing "*the last few months alone*":
  - a. The "*runway incident*" took place more than 3 years earlier in February 2017, before IM's appointment as Commissioner.
  - b. The facts giving rise to the "*Alcaidesa claims*" had taken place nearly 10 years earlier.
9. NP emailed FCDO colleagues at 10:59 on 15 May 2020 stating: "*I am meeting the CM later today to discuss this and other issues relating to the behaviour of the RGP and in particular its leadership.*" [C3799]. As to the content of that meeting:
  - a. The CM does not recall the meeting in detail, but states: "*I do specifically recall, however, that I explained to the Governor, Nick Pyle, the issues of the execution of the search warrant in respect of Mr Levy and my views in respect thereof, which was central in my loss of confidence in Mr McGrail...*" (Picardo 1 para 68 [A199]).
  - b. NP's account (Pyle1 para 26 [A255-6]) is that the CM asked him "*to go first*", and that he ran through his concerns as outlined in his evidence, and that the CM then "*outlined his belief that IM had made a serious error of judgement with regard to the execution of a search warrant against James Levy, gone against the advice of the DPP and AG, and misled the Chief Minister about that*". He states that following a long discussion about the leadership of the RGP, they concluded that they had both "*lost confidence in Mr McGrail who, as head of the organisation, we both believed should be held accountable for the RGP's failings*".

10. Following that meeting, NP and the CM exchanged WhatsApp messages. NP stated that *“I don’t see any option re COP given the evidence”*, and the CM replied *“I think you have probably seen this coming before I have. To extent I allowed too much of the benefit of the doubt here and strained the most important relationship Gibraltar has (with the UK) in doing so. ... Again, we shall have to set out our thinking clearly and then I doubt anyone would see this cumulative record of behaviour as defensible. But loss of life really puts us now in different territory. I never would have thought I would be of this view ... but it feels like the RGP has gone backwards not forwards.”* [A200]. The CM and JB then agreed to meet with JB on the morning of Monday 18 May, NP having stated: *“Need to discretely bring Joey Britto into our thinking”* [A200]. The CM also asked NP for an update on the Metropolitan Police Report into the Incident at Sea, but NP had no update to give [A201].
11. On 16 May 2020 at 14:07, NP emailed JB asking if he could attend a meeting with the CM on Monday at 09:30. JB responded that he could [C3937].
12. At 15:47, NP emailed an FCDO colleague in Miami stating: *“Basically and on a cumulative basis. Both the Chief Minister and I have lost faith in the Commissioner of Police. All highly sensitive and only the AG knows.”* [C3911]. Later that evening at 23:29, NP informed the colleague that he would send him the HMIC report on the following day [C3933].
13. On the evening of 17 May 2020, in advance of their scheduled meeting on 18 May 2022, NP and the CM exchanged emails.
  - a. At 18:47, NP emailed the CM setting out his *“thoughts ahead of our meeting tomorrow”*. NP referred to ss13 and 34 of the Police Act, and stated *“so as I see it and to my untrained eye, it is for the GPA to take this forward in the first instance... I suggest we therefore say to [JB] tomorrow that we have lost confidence in the Commissioner, set out why, and task him to consider options as to the way forward.”* NP referred to the Metropolitan Police report into the incident at sea, and noted that it had not been finalised, and then provided thoughts on recruiting a replacement [C3947].
  - b. At 23:53, the CM replied with his views, encouraging NP that they should act *“very closely together”* [C3953]. The CM set out his understanding of the Police Act provisions and agreed that at this stage the CM and NP should limit themselves to setting out their concerns to the GPA and seeking to understand the concerns

of the GPA, and “*it will then be a matter for the GPA to decide how to act*”, before consulting both the CM and NP and seeking the agreement of one of them. The CM referred three times to the GPA’s obligation to seek representations from the Commissioner, stating that the GPA’s decision would be “*subject of course to substance of the representations the GPA may receive from the Commissioner which they – and if appropriate we – will have to fully consider and give due regard to*”. The CM gave his “*preliminary view*” on the five matters in s34(1) of the Police Act (efficiency, effectiveness, probity, integrity and independence of policing in Gibraltar), and in doing so referred to:

- i. The HMIC Report, and in particular its references to efficiency, effectiveness and “*a failure to understand the potential for, let alone the actual instances of corruption*”.
- ii. The “*reporting to us of the events at sea involving the death of two Spanish nationals*” as “*an area of huge concern*”.
- iii. The “*James Levy KC warrants*”, which he identified as “*the reasons ... why I have lost confidence in the probity and integrity of the Commissioner himself*”, adding that “*I believe that view is also shared by the Attorney General*”. The CM wrote “*this is possibly the issue of deepest concern to me as it goes to the integrity and probity of a key individual in the maintenance and respect for the Rule of Law*”. He concluded on this issue: “*I can imagine no greater concern than this in the context of my ability to discharge my oath to the Crown and to the People as Chief Minister*”.

14. The CM’s evidence is that it is “*clear*” from that email that his “*concerns were caused principally from the issues arising in relation to the matter of the warrants obtained and executed in respect of Mr Levy, and that I had lost confidence in the probity and integrity of Mr McGrail*” (Picardo 1 para 73 [A202]).

15. The next morning (18 May 2020), NP replied at 08:40 stating that he agreed “*fully*” with the CM’s email, including his preliminary views on the five criteria “*and in particular on the issue of integrity*”. They both agreed that they should also seek the AG’s advice on the issue.

16. On 18 May 2020 at 09:30, JB, NP and the CM met at the Convent.
- a. The CM’s evidence is that JB was “*very concerned, but not surprised, when the Governor and I shared our concerns with him*” (Picardo 1 para 88 [A207]). He is unable to recall the details of the meeting, but states that he had agreed with JB that he would provide a note of the concerns that NP and the CM had shared with him so that he could accurately reflect them to the members of the GPA in a way that did not mischaracterise their position.
  - b. NP’s evidence (Pyle 1 para 14 [A240-1]) is that “*At my request, the Chief Minister set out the issues of concern to both of us, namely the damning HMIC report ... the incident at sea involving a fatal collision ... the Police Federation allegations of bullying ... and the mishandling of a high-profile ongoing investigation*”. NP states that he “*endorsed the CM’s position*” that they had both lost confidence in IM, that “*there had to be accountability for the failings*”, and that “*the common thread through all the issues appeared to be a lack of adequate management and leadership*” and therefore IM had to be held accountable. He told JB that if the GPA determined that a call to retire was not appropriate he would consider using the powers available to him under section 13(1)(f), and that as things stood he would need “*strong and persuasive arguments not to do so*”. He further states that JB said that he took note and “*could see where we were coming from*”, and commented that IM “*would most likely fight this*”.
  - c. JB’s evidence is that NP and the CM “*stated the reasons for their loss of confidence*”, and claims that the CM’s informal note of the meeting accurately records what was said (Britto 1 para 12 [A322]).
17. From 11:37, JB exchanged WhatsApp messages with the CM, in which the CM offered to prepare a note of their meeting for the GPA [A207]. The CM produced this note on 20 May, which was headed as an “*Informal Record of Meeting with HE the Governor and the Chief Minister, Monday 18<sup>th</sup> May 2020*” [C3988], and which JB states is an accurate record of the meeting [A322]. NP also states that the CM cleared this note with him before sending it to JB [A242]. The file note records:
- a. “*The purpose of the meeting was to express grave concerns about certain aspects of policing in Gibraltar which had come to a head in the week before.*”
  - b. “*The first is the publication of the HMICFRS Report into the RGP. The second is the publication of the news of the filing of legal claims in Spain by the relatives of*

*Spanish citizens killed in an incident at sea (which undoubtedly happened outside of BGTW).”*

- c. *“The GPA are therefore being invited by the Governor and the Chief Minister together to consider whether they believe that all OR any (note it is a disjunctive, not a conjunctive list) of the following 5 have been impacted.”*
  - d. The CM referred to the HMIC Report, the Incident at Sea, and also *“another event occurring last week which had left him also in a situation where the Commissioner had expressly misled him and which left him unable to believe the Commissioner.”* It is safe to assume that this was a reference to the search warrants.
  - e. NP referred to the Incident at Sea (*“he had felt misled”*).
  - f. *“It is now a matter for the GPA to decide how to act ... If the GPA decide to go down this road the first step is to allow the Commissioner to make representations, if he wishes, under s34(2). It will of course be necessary for the GPA to consider any representation that the Commissioner might make. Thereafter, if the GPA are of the view that the Commissioner should be invited to retire, then that is when they would need to consult BOTH of the Governor and Chief Minister and seek the agreement of ONE of them. ...”*
18. At 10:55, JB emailed the members of the GPA seeking to arrange a meeting at 09:30 on Thursday (21 May 2020) [C4024]. At 13:44, JB emailed NP stating that he was *“trying to arrange urgent meeting of the GPA for this Thursday – can’t do so immediately because of notice etc”* [C4025].
19. The AG’s evidence is that he has no recollection of being part of discussions on IM’s removal with the CM and NP between 15 and 18 May 2020, and believes that he was not (Llamas 1 para 43 [A310]).
20. The GPA meeting took place on 21 May 2020 at 9:30. There were two procedural deficiencies with that meeting:
- a. The meeting was inquorate. As specified by s6(1) of the Police Act, the quorum is six members comprising the Chairman and five other members. However, only JB and four other members were in attendance (Mr Darren Grech, Mr Ernest Gomez, Mr Frank Carreras and Ms Nadine Collado). Ms Claire Pizzarello, another a member of the GPA, asked if she could attend by phone and JB declined, stating

*“it may be best if you don’t participate”* [C4023]. JB states that non-attending members were consulted by telephone afterwards, and they agreed with the decision taken and reasons for it (Britto 1 para 16 [A323]).

- b. First, there is no contemporaneous minute of the meeting, as required by s6(4) of the Police Act. JB explains that *“members of the GPA felt that their secretary might be compromised as she was a personal friend of Mr McGrail’s secretary”* (Britto 1 para 16 [A323]). There is no explanation as to why another member of the GPA did not make a contemporaneous note. A retrospective note was subsequently prepared on legal advice [C4141].

21. The non-contemporaneous note of the meeting [C4141] records that:

- a. JB explained *“what had transpired at the meeting with the Governor”*, explaining that NP and the CM, *“in no uncertain terms, had expressed that they had lost all confidence in the Commissioner”*. He read the *“file note”* to all present. CTI understand this to be a reference to the note prepared by the CM (above).
- b. JB *“explained what had been discussed, including the fact that the Commissioner had claimed at a previous meeting, that ‘they’ were trying to interfere in an investigation in which, allegedly, a senior partner in a law firm was, allegedly, involved”*.
- c. The Incident at Sea was the *“major factor”* in the GPA’s decision, and the GPA noted that this *“seemed to be far more serious in its repercussions, overall, than we had previously been alive to”*.
- d. They agreed that *“it would be more dignified for the Chair to seek a meeting with the Commissioner rather than summons him to GPA offices”*.
- e. It was further agreed that *“the Chair would also consult the members not present and if they were in agreement, GPA would proceed with Section 34”*.
- f. After discussion, it was felt that *“the best course of action would be to activate Section 34 of the Act and invite the Commissioner to retire but always affording him the opportunity to make representations to the GPA so we could arrive at a firm and final decision and able to make recommendations to Governor”*.

22. As set out below, the GPA adopted this course of action in the following days. The sequence followed by the GPA in arriving at that position ran contrary to that laid out by s34, as outlined above.



23. Although the file note prepared by the CM (above) which JB read to the GPA meeting did not refer expressly to the issue of the search warrants, JB's evidence is that to the best of his recollection he "*did refer to Mr Levy QC by name*" (Britto 1 para 19 [A323]). However, JB adds (Britto 1 para 25 [A324]):

*"The decision by the GPA to exercise its powers under Section 34 of the Act was not based or influenced by Mr McGrail's conduct of the criminal inquiry in Operation Delhi, as alleged by Charles Gomez & Co in the 29th May 2020 Letter. The reasons for the GPA's decision were those set out at paragraph 18, in the minutes of the Emergency Meeting and in the Second Letter."*

24. At 17:57, NP emailed FCDO colleagues with an update [C4234]. The email states:
- a. Referring to his meeting with the CM and the subsequent meeting between JB, the CM and NP: "*the CM set out the issues of concern, namely the damning HMIC report, the fatal collision, Police Federation allegations of bullying, and the mishandling of a high-profile ongoing investigation in which the Commissioner apparently went against advice of the Attorney General and Director of Public Prosecutions*". The file note prepared by the CM of this meeting [B1357-B1361] does not refer to the Federation allegations of bullying, nor does it expressly refer to the Commissioner going against the advice of the AG and DPP but it does refer to the CM's belief from discussions with the AG that he felt that IM was lacking in probity and integrity, and also to the CM "*sharing*" about an event where "*the Commissioner had expressly misled him and which left him unable to believe the Commissioner.*" [C4145-6]
  - b. "*The CM concluded by stating that as a result, we had both lost confidence in the Commissioner and were therefore requesting the GPA to consider using the powers available to them under Section 34 of the Police Act (2006) to call upon the Commissioner to retire. The CM reminded the Chair that should this not happen, the Act gave the Governor powers to call for the resignation of the Commissioner.*"
  - c. "*I endorsed the CM's position ... I said the collision incident alone raised grave concerns and has wide-reaching political, financial, reputational and sovereignty implications which may not go well for Gibraltar ... I said should the GPA determine that a call to retire was not appropriate, I would consider using the powers available to me under Section 13.(1)(f) which allowed me to call for the*

*resignation of the Commissioner and that as things stood, I would need strong and persuasive arguments not to do so. I said whilst I was not looking to pre-judge the deliberations of the GPA and was mindful that the Commissioner is allowed to make representations as Section 34 allows, the GPA should be in no doubt as to the strength of my feelings.”*

- d. *“I concluded by saying the powers I have under Section 13.(1)(f) only come into play “in default by the Authority” and as such, the GPA was under some scrutiny.”*
  - e. *“The CM was visibly angry during our meeting on Friday and is clearly worried at the political, financial and sovereignty damage the fatal collision incident could do to Gibraltar.”*
  - f. *“Without doubt, the CM has the bit between his teeth and wants the Commissioner removed from his position as soon as possible.”*
25. Having asked to meet with the CM again at 16:00 (although it is unclear whether they did in fact meet, and the Inquiry has not received any record or account of that meeting), JB later (at 18:26) asked via WhatsApp for clarification as to the sequencing of events (whether IM should first be invited to retire, or be asked to give representations) [A208-209]. JB sent a draft letter to the CM for comments, and the WhatsApp messages record that the CM responded by email [A209], although the email itself has not been disclosed to the Inquiry.
26. JB and IM agreed to meet in person the next day. There is disagreement as to who extended the invitation for this meeting. JB states that it was him (Britto 1 para 20 [A324]), whereas IM states that it was him (McGrail 1 78 [A28]). It appears from the WhatsApp exchange that IM raised it first but JB also intended to propose a meeting [C6571].
27. On 22 May 2020, IM met with JB at 09:00. IM secretly recorded that meeting, the transcript of which is at [C4316] (it is available with translations at [B353]). Attention is drawn to the following:
- a. JB stated that the CM and NP *“lost complete confidence in your leadership and management of the RGP”*.
  - b. JB referred to the Incident at Sea: *“the Incident at Sea is apparently very, very, very grave and what they explained is, nothing that you won’t know, that its put Gibraltar in a very bad position with Spain and with Britain...”*

- c. JB referred to the recommendations in the HMIC Report, including *“the issue of not being alive to corruption”*.
- d. JB stated that he was *“surprised”* and *“so [were] the Authority members”*.
- e. JB handed IM a letter [C4315]. The letter invited IM to retire *“in the interests of policing in Gibraltar”* and invited representations within 7 working days. It appears that this letter was not seen by some (or all) of the GPA members in advance of being given to IM: see the email from GPA member Nadine Collado dated 22 May at 17:01 [C4370].
- f. IM asked JB: *“But what is the position of the authority? Is the authority accepting that? Have you had any concerns about me?”*. JB replied: *“No, no wait, we would have told you.”*
- g. JB later stated *“from the Authority’s perspective, we haven’t taken a firm view”*.
- h. JB also acknowledged (referring to the s34 process): *“The thing is it has been done the wrong way round”*.
- i. IM asked about the effect of the letter. JB stated *“you’re not suspended or anything... it’s an invitation”*. JB later added *“it’s an invitation, you’re not being forced. It’s an invitation. I am presuming that they would then trigger the section 13, the Governor removes you, I am assuming, I haven’t been told that.”*
- j. JB stated that the GPA felt it had *“no option left”*, because the other option would be for the Governor to *“dis-appoint you ... and I think they want to avoid that, they want it to be your choice”*.
- k. IM raised the issue of the search warrants, stating: *“This has all been triggered off from the impromptu meeting that I was called to in the Chief Minister’s chamber with the AG. That is where it all stems from. There’s no doubt at all, at all, at all that CoP that is where this is stemming from. The fact that he has not been in agreement with the way we have been handling the case of the involving Jaime Levy. I was threatened there and then...”*. IM later added that: *“I am informed that he [the CM] was aware of all that is alleged... [against] Cornelio, John Perez”*.
- l. Towards the end of the meeting, addressing the search warrant issue, JB stated that the allegation was that *“you had lied, you lied basically to the chief minister ... or omitted the truth ... or that you kept the truth from them”*.
- m. IM requested that NP and the CM’s reasons be put in writing, so that he could prepare a response.

28. IM's evidence is that following this meeting with JB:
- a. IM called in the RGP Command Team (RP, Yeats, Tunbridge and RU) for a briefing on the situation, during which Richardson contacted Sir Peter Caruana for legal advice, and that Richardson "*informed me and the others present that Sir Peter was conflicted and could not see me. That he had imparted to Supt Richardson that 'the other side' (which I took to be HMGoG) were getting increasingly nervous with how the investigation parameters were extending*" (McGrail 1 para 82 [A36]).
  - b. IM received a call from the AG, who "*mentioned he was aware I had been served with a letter to retire, adding that it was to do with the HMICFRS report and the collision at sea*". IM states that he retorted it was all to do with the "*Op Delhi intervention and the posture adopted by the CM, he [the AG] did not deny this*" (McGrail 1 para 85 [A37]). The Inquiry does not have evidence from the AG on this call and this issue will need to be explored with the AG in questioning.
29. At 14:00 on 22 May 2020, JB met with the CM [A210]. After that meeting, JB sent the CM a draft version of a second letter to IM [C4310]. The CM made several amendments, which are highlighted in yellow [C4282]. The CM's evidence is that the amendments were "*designed to ensure that Mr McGrail had greater information as to the reasons why the Governor and I had lost confidence in him*", and added allusions to the views of the AG (Picardo 1 para 92 [A211]. The version signed by JB is at [C4287], and appears to be identical to the CM's draft. The second letter analysed the five criteria in s34(1) of the Police Act in greater detail. The letter referred to the following matters:
- a. Efficiency – The HMIC Report, which it described as "*damning in respect of the efficiency of the RGP*". The letter highlighted that under s33 of the Act it was IM who was responsible for the efficient administration of the RGP. The letter also highlighted that in his application for the role of the Commissioner IM stated that he would immediately set up a working group to meet the 2015/6 HMIC Report recommendations by 1 March 2019, and yet the action points of that report had not been complied with, and new and more serious recommendations were made in the new report. The incident at sea was cited as a further evidence of inefficiency by the RGP acting beyond its remit and jurisdiction. The letter stated that the incident "*has resulted not just in a diplomatic complaint filed against the UK and Gibraltar, but also a vessel being out of action, and questions as to standard operating procedures...*". The letter added that "*the Chief Minister has*

*no confidence in his having been provided with the information expeditiously about this very serious incident” and “the Governor expressed the view that he feels he has been misled by you”.*

- b. Effectiveness – This section referred to the RGP not having use of a vessel as a result of the incident at sea, meaning *“the RGP’s effectiveness as (sic.) sea was therefore severely impacted for some time”*. Effectiveness would also be seriously compromised given the increased legal workload created by the claims.
  - c. Probity & Integrity – *“Both the Governor and Chief Minister felt that their dealings with you have left them with the sense that you are lacking in both probity and integrity. ... Additionally, the Authority is informed that the Attorney General has also expressed the same feelings”*. This reference to the AG was added by the CM, and was not in JB’s draft. This section concluded: *“The Governor and the Chief Minister expressed to the Authority that they consider that the Rule of Law in Gibraltar is compromised by the fact that they lack confidence in your probity and integrity”*.
  - d. Independence - References was made to *“the parts of the report that deal with the potential for corruption, and, consequently, influence, which ... seems not to be completely understood in the RGP.”*
30. At 14:21, NP updated his FCDO colleagues by email [C4360], stating (among other things) that the CM had instructed Sir Peter Caruana KC, and noting that the high-profile person referred to in the ongoing investigation was James Levy KC. He concluded that *“There is no constitutional crisis as the CM and I are in full agreement, but news is likely to break and this will be a big story. A quick para to the Minister as discussed may therefore be appropriate.”* In a subsequent email to a single FCDO individual at 15:53, NP stated *“It’s the James Levy angle as well that is interesting. I’m also a touch nervous given that the CM has firmly taken the lead on a competence that is more towards us than them. But we’ve agreed this approach which on balance is right. It also raises issues about the GPA who should have been monitoring the CoP. But I can’t see it ending well for anyone”* [C4359].
31. At 16:06, JB sent an email to the members of the GPA updating them on his meeting with IM [C4364]. At 19:58, JB sent the second letter to IM [C4376]. He subsequently sent it to the GPA members at 20:06 [C4377].

32. On 29 May 2020, Charles Gomez, on behalf of IM, wrote to the GPA with representations relating to the flaws in the GPA process [C4477] (“the 29 May Letter”). The 29 May Letter complained of a defective process and affirmed that the GPA should not exercise its s.34 power to remove IM from office. In doing so, the letter:
- a. Argued that JB’s actions to date had been unlawful and that the process had been “*grossly procedurally unfair*”, for example because JB had told IM that if he refused to comply with the invitation to retire then the Governor would use his powers under s.13(f) of the 2006 Act, and representations had not been sought under s34(2) before the s34(1) process was followed.
  - b. Invited the GPA to obtain independent legal advice.
  - c. Sought an assurance that JB would ensure that NP was not involved in the GPA’s decision-making under section 34. At this juncture, it is noted that NP had emailed JB on 19 February 2020 (a day after assuming the role of interim Governor) stating: “*Why don’t you send an email to all GPA members save me, stating that for as long as I am Governor, you intend to omit me from general GPA correspondence etc but that I have offered to continue to attend GPA meetings, recusing myself as necessary or at anyone’s request*” [C3066]. NP was not present at the GPA meeting on 21 May 2020.
  - d. Referred to the “*vanishing reason*” (the search warrant), which the letter asserted was relevant and raised in the meeting between JB and IM, but not cited in the second letter of 22 May 2023. The letter stated that at the meeting of 12 May 2020, the CM and the AG had “*very severely criticised*” IM in an emotional manner for the search warrant, that the CM told IM that in his view he had handled the investigation “*very very wrongly*”, and that the AG stated that he had to that point approved of IM’s work but from that day he could not “*entertain*” IM again. The letter further alleged that at two subsequent meetings with the AG and the DPP, the AG had put pressure on IM to change the RGP’s investigative approach to the operation, and the AG appeared primarily concerned with protecting the CM and “*Gibraltar PLC*”. The letter referred to this as a “*grossly inappropriate*” interference with a live criminal investigation, trampling over the separation of powers, and added that the CM had a personal connection to the outcome of the investigation, which made his intervention even more inappropriate.
  - e. The letter suggested that the Incident at Sea and HMIC Report were “*fig leaves for the real reason Mr McGrail is being pressured to retire*”, had been known to the

CM, the Governor and the AG for months, and IM had received no criticism about his approach to them.

- f. As to the Incident at Sea, the letter responded to concerns raised as follows:
- i. *“There is no explanation as to why it is suggested that the actions of individual officers reflect on Mr McGrail or are indicative of a systemic pattern of acting beyond the remit and jurisdiction of the RGP.”*
  - ii. *“The RGP's Marine Section has resilience. It has other vessels and the fact that one of them has been out of service because of the collision has not hampered capabilities.”*
  - iii. In any event, *“it would be highly unfair and contrary to the principles of natural justice for the GPA to pre-emptively blame Mr McGrail for this incident, prior to a detailed consideration of the independent report from the Metropolitan Police.”*
  - iv. *“...the Section 15 reply (sent shortly before these submissions) comprehensively debunks the suggestion that there was inadequate communication.”*
  - v. *“In relation to the suggestion that Mr. McGrail has misled the Governor, this is not particularised; it is a vague slur, without explanation. We do not know what it refers to. If it relates to the incident taking place in Spanish waters, it is not possible to follow the rationale. In any event, the Governor was promptly and fully briefed by Mr McGrail on that issue...”.*
- g. As to the HMIC Report, the letter stated:
- i. *“Mr. McGrail had by that time [the October 2019 inspection] only been in post for a little over a year, and it is simply not credible to suggest that these flaws can and should be laid at his door.”*
  - ii. *“None of the conversations he has had around the report have reflected the 22<sup>nd</sup> May letter which again raises the strong inference that this issue is being used as a pretence”*
  - iii. *“Insofar as it is suggested that Mr. McGrail did not set up a working group, his response is that as a result of the unprecedented demand placed on the RGP during 2019, the RGP has been addressing the issues raised in the Report by merging them in daily work practices.”*

- iv. *“...in order to reach such a conclusion it would be necessary for the GPA to carry out a full and fair review into Mr. McGrail 's record during his time in post.”*
33. IM has provided a further detailed rebuttal to the points raised in the GPA’s second of 22 May 2020 in his Third WS (para 146 [A108]).
34. At 21:19 NP wrote to foreign office colleagues to inform them of this development, and stated: *“Whilst I will of course consider his representations, it looks as if I will have to exercise my powers under the Police Act. ... Not unexpected but disappointing, not least as the letter calls into question my conduct and impartiality of which I am certain, as is the AG, that I have nothing to worry about.”* The email also stated that the CM and NP had agreed to meet early next week with the AG *“as our honorary legal advisor”* and the Chair of the GPA [C4652].

#### **The events of June 2020**

35. On 1 June 2020, the GPA held a further meeting (this time quorate). The minute of the meeting [C4654] records that *“the meeting was called by the Chair to discuss the letter received by Charles Gomez...”*. The Committee unanimously decided to seek independent legal advice. The note stated that: *“It was also agreed that, not only does the Authority categorically ... refute that the Chair introduced the issue of the investigation into his conversation with IM, but also that he should have subsequently opted to omit in in his letter for the surreptitious reason alleged by IM’s lawyer. This is considered by the Authority to be a very serious allegation by the lawyer and a potential misrepresentation of what actually transpired.”* It is not clear what the minutes mean by *“introduced”*.
  - a. If all that is meant to address is that it was IM who first raised the matter, then that would be accurate (see [C4325]).
  - b. However, the 29 May Letter does not suggest that JB *“introduced”* the issue, but instead states that: *“The GPA Chair confirmed to Mr. McGrail at their meeting on 22nd May that his handling of the criminal investigation referred to above was spoken about at the Chair's meeting with the Chief Minister and Governor and was one of the reasons they had ‘lost confidence’ in Mr. McGrail.”* The contemporaneous documents clearly demonstrate that the criminal investigation



was discussed by JB and IM at the meeting (see, for example, the transcript of the meeting at, where, in reply to IM raising the search warrant, JB accepted that there was reference to the AG also losing faith in IM and that: “*what was mentioned is the way you handled cases, que you had lied, you lied basically to the chief minister ... Or omitted the truth*” [C4330].

- c. In the same exchange IM asked JB, when sending him the notes of the meeting, to “*please tell me; and if there’s reference to that case in question I think it needs, because that is key, that is key...*” [C4330].
36. On 3 June 2020, the GPA instructed James Neish KC of TSN to provide legal advice [C4674]. TSN provided advice that the GPA process was fundamentally flawed, because the GPA’s invitation to retire could only be made after affording IM reasonable opportunity to make representations and giving due consideration to those representations (Britto 1 para 30 [A325]). JB and two GPA members (Mr Frank Carreras and Mr Ernest Gomez) attended a meeting with TSN to discuss its advice. JB’s evidence is that it was agreed TSN would write to Gomez & Co withdrawing the invitation to retire and that the process was being abandoned, and that the GPA would inform the CM and NP (Britto 1 para 32 [A325]).
37. Each of NP [C4675], the CM [C4734] and the AG [C4730] responded to the GPA about the 29 May Letter – these are referred to as “*the three letters*”. NP was the first to send his letter on 3 June 2020. The CM and the AG’s letters to the GPA followed two days later on 5 June 2020 (see below). NP’s letter stated that:
- a. As to the issue of NP’s recusal from the GPA, “*all my communications with you since 19 February 2020 have been as Governor and NOT as a member of the GPA*”.
  - b. His “*deep concerns with the COP’s leadership qualities have absolutely nothing to do with [the ongoing criminal investigation]*”. NP stated that he was first informed of the investigation by the CM on 15 May 2020 and further was clear that his “*lack of confidence in the CoP’s probity and integrity and my conviction that the rule of law is compromised by the fact I have lost confidence in him*” clearly arose before he was aware of the criminal investigation.
  - c. His “*already existing concerns*” about IM were confirmed by the Incident at Sea (March 2020) and HMIC Report (published in May 2020). As to the former, IM was “*evasive in particular in relation to the critical issue of whether or not the incident had occurred within BGTW*. As to the latter, he had written to the CM on 30 April

2020 after seeing a draft of the Report saying that he found it to be “*quite damning*” and had written to the GPA saying that he did not think it should be published.

- d. The suggestion that the two issues were “*fig leaves*” for the real reason for pressuring IM to retire was “*an outrageous accusation which I bitterly resent and strongly object to*”, which was “*clearly not borne out by the facts and chronology*”. It was also “*wholly inaccurate*” to say that he had been aware of the incident at sea and the HMIC Report “*for months*”.
  - e. These two incidents “*occurred on the back of a growing unease that I had been feeling over the months, in particular with the numerous allegations of bullying and mismanagement that I had picked up on.*” He had also been “*gravely concerned*” by the potential for corruption identified in the HMIC Report, which remained unaddressed.
  - f. The “*content, tone and style of the [29 May Letter] have done nothing but cement my lack of confidence in the CoP...*”.
38. On 4 June 2020, the CM forwarded to NP and the AG a report to the CM by (then) RU in relation to an accessory attached to the front of the RGP vessel involved in the collision at sea. In a response timed 11:38, NP stated: “*Tempted to suggest we go straight for 13.(1)(f)*”. The CM responded stating: “*I think we may have no alternative in the interest of the Rule of Law and the peace, order and good government of Gibraltar. I have growing and ever more serious concerns about this issue.*” NP responded proposing a meeting between him, the CM and the AG [C4715]. It is clear from an email from NP to the AG on 5 June 2020 at 09:25 that a discussion took place (at least between NP and the AG) on the afternoon of 5 June 2020 [C4727]. In that email NP stated to the AG that his preferred course of action was to take no action until he had seen the letters that JB, the CM and the AG were writing to the GPA in response to 29 May Letter, as well as any representations by IM before he spoke to IM. The AG agreed with this course of action noting in particular that “*it is important to see what position the GPA take on this.*” [C4727].
39. At 09:54, NP wrote to an FCDO colleague (forwarding the email shortly afterwards to the incoming Governor Sir David Steel) stating as follows [C4728]:
- a. “*Things had taken a turn for the worse*” as he had learned that the GPA meeting of 21 May 2020 was not quorate, and its deliberations were null and void.

- b. The AG had advised that *“there is no point in looking to appoint new GPA members”* as they would be likely perceived as bias due to the CM/NP’s roles in the appointment process.
  - c. *“This leaves Section 13(1)(f) of the Police Act as the only way forward to secure the resignation of the Commissioner should it be determined that this is the best way forward.”*
  - d. NP’s proposed course of action was to see the responses to the 29 May Letter from the GPA, the CM and the AG, before summoning IM to see him.
  - e. *“...with a media storm brewing, I would like to resolve this as soon as possible and certainly before Sir David Steel arrives on Wednesday.”*
40. At some time between 09:54 and 15:09, NP received copies of the letters written by the CM and the AG to the GPA.
- a. The CM’s letter [C4734] stated that:
    - i. IM’s allegations were *“very serious and vile”*, and *“completely untrue”*. The nature and tone of the 29 May Letter *“increased and cemented”* his loss of confidence.
    - ii. He confirmed that NP *“was not at the material time even aware of the criminal investigation interference which is alleged to justify the COP’s allegations against him”*, and that he had made NP aware of the investigation *“at the same time as I referred the matter to you”*.
    - iii. *“I have at no time or in any manner sought to interfere with the RGP’s conduct of the criminal investigation in question in any manner of (sic.) for any purpose...”*
    - iv. *“At no time have I sought to intervene in or interfere to prevent Mr Levy being investigated or to prevent a search warrant being obtained and executed against him at the offices of Hassans, facts I first learned about as they were already happening...”*
    - v. As IM had informed the CM that the warrants were *“in relation to the case against Perez, Cornelio and Sanchez”*, he *“had no reason to believe”* the investigation was of JL.
    - vi. The CM was entitled to express his views in this manner, on matters of policing policy, and that did not constitute interfering with the investigation.

- vii. When he discovered that a civil servant was under investigation, the CM had directed the Chief Secretary that HMGOG should be a complainant to the police in the investigation.
  - viii. The obtaining and execution of a search warrant was, in his opinion, “*of dubious legality, abusive, unprecedented in policing in Gibraltar, incompatible with public confidence in policing and the good name and reputation of Gibraltar as a business and finance centre*”. HMGOG would bear the financial consequences of the RGP being sued for unlawful actions.
  - ix. The CM had “*not lost confidence in [IM] because he obtained and executed a search warrant in circumstances in which it was appropriate to do so. ... The primary reason is that the COP clearly lied to me.*” the CM stated that “*the COP stated to me in explicit terms, in response to my concerns about the propriety of the warrant, that he had obtained and executed the search warrant against Mr Levy in reliance on legal advice from the Director of Public Prosecutions who had confirmed that it was appropriate to seek such a warrant and proceed in that way. I have since determined that this categorical statement from the COP ... was wholly untrue.*” He added “*it is now clearly established that at no time did the COP or the RGP obtain legal advice from the DPP to that effect...*”. This was unacceptable and went to IM’s probity and integrity in his dealings with the CM, and the CM’s ability to have confidence in him.
  - x. The CM again referred to the flow of information during the Incident at Sea, “*an incident with extremely serious external political consequences and very material potential financial consequences to the Government*”, alleging that IM had failed to keep him “*timeously and spontaneously informed*”.
  - xi. He also referred to his “*deep concerns*” about the HMIC report.
  - xii. “*It is in itself wholly improper that he should make such spurious and damaging allegations without evidence commensurate with their gravity (or indeed any evidence. This now goes to my further lack of confidence in the COP.*”
- b. ML’s letter [C4730] stated:

- i. IM's letter "*makes important and very serious allegations against me ... each of them is untrue and without merit or justification*".
- ii. "*I am not aware that the Chief Minister is a person in need of protection in the context of the criminal investigation in question.*"
- iii. IM was not immune to having his actions strongly disapproved of or severely criticised, and yet had equated both to improper interference with an investigation and a violation of police independence. This showed a worrying lack of understanding and judgment on his part.
- iv. The AG had "*never said that the COP lied to me*". What he told IM was that he had "*incurred in a serious breach of my trust ... as a result of which I have lost confidence in him*".
- v. The AG had first been made aware of the criminal investigation in May 2019, when he became aware that JL was potentially a person of interest in the investigation, and yet had no further involvement until early April 2020, when contacted by the DPP.
- vi. After a discussion with the DPP in early April 2020 when he was informed of a list of 76 charges and the possibility of issuing search warrants against JL, the AG was alarmed "*both by the number of charges (which would be quite inappropriate in any prosecution) and also by the proposal to obtain and issue a search warrant against a senior lawyer without first seeking voluntary cooperation or voluntary production of evidence...*". He noted that Mr Levy had been aware of the RGP's interest in him for many months, and thus the risk of destruction of evidence did not merit search warrants.
- vii. "*I have a legitimate public interest role and function (indeed, a responsibility) in respect of both these matters*".
- viii. The outcome of a discussion between IM and the AG on 7 April 2019, was that "*we reached a clear understanding that the RGP would not take any further action until they had considered my advice about the rationalisation of the charges, and then the COP would come back to see me again. It was clear beyond peradventure that nothing would happen until we met again.*" (original underlining)
- ix. "*I have never said anything to the COP which can be interpreted as anything other than advice and assistance, as has always been the practice. "The COP is of course free to take whatever action he considers*

*lawful and appropriate regardless of any advice that I may give him on the matter ... What the COP cannot do, and also expect to retain my personal confidence, is to act contrary to an understanding reached between us, as he has done. This, and not my disapproval of his actions ..., is the reason for my loss of confidence in him”.*

- x. *“I have made it explicitly clear to the COP throughout that the conduct of the investigation (including the seeking and execution of search warrants) are, whatever I may advise him, operational matters entirely for him.”*
- xi. *“It is outrageously wrong and unfair for the COP to allege that I have (let alone that I have done so repeatedly over an extended period of time) and I am shocked and deeply resent that he has done so. This necessarily deepens my loss of confidence in him going forward.”* In his evidence, the AG paraphrases this sentence of the letter as follows: *“In my letter of 5 June I stated that the contents of the 29 May Letter had deepened ‘my loss of confidence in [Mr McGrail] going forward!’”* (Llamas 1 para 6(b)(iii) [A271]).

- 41. Also on 5 June 2020, JB wrote to NP [C4770] and the CM [C4743] in identical terms stating it had received legal advice that:
  - a. The process under s34 was fundamentally flawed and should be withdrawn.
  - b. The complaints by the CM and NP *“remain live and should be determined”*.
  - c. The GPA as constituted was vulnerable to challenge on the grounds of bias, and was therefore unable to process the complaints without being vulnerable to legal challenge, and therefore was not prepared to do so.
  
- 42. At 15:54, NP forwarded the letter he had received from JB to the AG [C4796] and sought advice as to how to proceed. The AG replied at 16:46 [C4796]. He advised that the option of appointing a newly constituted GPA was *“not available”*, due to the risk of challenge on grounds of bias or apparent bias. He advised that due to the GPA’s inability to perform its responsibility under section 34 of the Police Act, *“the current situation is one which falls within section 13 of the Police Act”*, and that *“My advice is that, in the circumstances of this case, that power is available to you if you were to decide to avail yourself of it”*.

43. NP states that following receipt of JB's letter, he met with the CM and AG to "*discuss the situation, given that I did not expect to be in the position of having to consider actually using the Governor's powers under Section 13*" [A243]. The CM and AG both confirm that this meeting took place and related to the response to the GPA's letter (Picardo 1 para 99 [A213] and Llamas 1 para 6(b)(ii) [A270]). NP's evidence (Pyle 1 paras 16.3 and 16.4 [A243]) is that he met with the CM and AG on 5 June 2020 and:
- a. He told the CM and AG that he would speak to IM later in the day; he would tell IM that he would review papers over the weekend; and that he would "*leave Mr McGrail in no doubt that I would be prepared to use the powers invested in me as Governor*".
  - b. He and the CM "*were keen that [NP] should proceed quickly as we both wanted the matter resolved one way or the other, if possible, before the new Governor arrived on 10 June, so that his arrival and start of tenure would not be marred by such a controversial, ongoing issue.*"
  - c. However, NP states that he wanted to read the papers and consider any further representations by IM's re – "*I thought a pause to reflect was the right thing to do*".
44. NP again wrote to FCDO colleagues by email at 15:09 [C4782]. NP stated that:
- a. He had just spoken to the AG, and they had agreed to summon IM at 17:30 to inform him that he would consider the 29 May Letter, JB's letter and "*the three letters*" over the weekend before reaching a considered determination on Monday. He was due to meet the CM and AG at 5pm Gibraltar time, but told the AG that his "*strong preference was to create a gap for reasons we discussed*".
  - b. The CM was "*slightly worried*" that IM would use the weekend to seek an injunction, but NP did not think one could be obtained.
  - c. The AG "*accepted that there could be the perception of a conflict between his role as our [Honorary Legal Advisor] and his involvement in proceedings*".
  - d. NP's update was relayed to the Private Secretary to the Minister of State at the FCDO, Chris Heaton-Harris [A4804].
45. At 16:28, TSN (on behalf of the GPA) wrote to Gomez & Co acknowledging that "*certain procedural errors had been made*" and accordingly that the GPA was withdrawing the current process. However, the letter asserted that "*the complaints made against [IM] by the Governor and Chief Minister remain live and [the GPA] will consider how it will proceed*"

*in respect of them*". The letter maintained that IM raised the issue of the criminal investigation with JB, and that JB's only knowledge of this matter was "*confined to the allegation that [IM] had lied to the Chief Minister and Attorney General...*" [C4742].

46. Gomez & Co replied at 17:24, stating that "*We note that your client's Chair now admits to having been informed by the Chief Minister and Attorney General that Mr. McGrail "lied" to them about a police investigation. We also note that your client (we assume deliberately) omitted this allegation, which was plainly central to the Chief Minister's decision-making, from the second letter of 12 (sic.) May purportedly setting out the detail of the complaint against him. We suggest that the strong inference is that your client knew the matter was constitutionally improper and for that reason left it out.*". The email further noted: "*we remain entirely unclear what your clients, the Authority, propose to do now*", but then concluded as follows: "*In these circumstances, given how unfairly he has been treated and the improper pressure put upon him to alter the course of a live criminal investigation our client feels he must apply for early retirement from the Royal Gibraltar Police*" [C4801].
47. IM explains (McGrail 1 para 94 [A40]) that although he was "*somewhat relieved*" that the GPA had withdrawn the invitation for him to retire, the threat of NP exercising his powers under s13 still prevailed. He was "*extremely worried of the damage to my reputation if NP went down this route*", and "*did not have the full particulars*" as to why NP and the CM had lost confidence in him.
48. At some time after the Gomez & Co email dated 5 June 2020 to TSN, the lawyers acting for the GPA, NP and IM met in person. IM took with him a copy of the email that Gomez & Co had sent to TSN earlier that afternoon (McGrail 1 para 96 [A40]).
  - a. IM's evidence about is that: [A40]
    - i. NP said he would be taking all correspondence away for the weekend to study, and invited IM to return on Monday 8 May "*with a view of invoking his powers under section 13*".
    - ii. IM told NP that he was being put through "*the most grossly unfair and unjust process*", adding that even he was not privy to the allegations levelled at him.



- iii. IM informed NP that the 29 May Letter addressed the Incident at Sea and HMIC Report, but *“only skimmed the surface on the matter of the interference with the live criminal investigation...”*.
- iv. IM informed NP of the letter from the GPA withdrawing the GPA process, and gave NP a copy of Gomez & Co’s reply at 17:24.
- v. IM *“urged [NP] to consider deferring any decision until the arrival of the new Governor Sir David Steel... [NP] did not offer any comment to me on this.”*

b. NP’s evidence is that (Pyle 1 para 17 [A244]):

- i. NP said that he would review all the papers in his possession over the weekend, including a note given to him by IM (Gomez and Co’s email to TSN, the lawyers acting for the GPA), and would then like to see him on Monday, during which he would inform him of his decision as to the way forward.
- ii. NP said that whilst he had not made up his mind as to whether to use his powers, *“I would be prepared to do so”*.
- iii. When asked by NP, IM said that he did not know the reasons behind NP’s loss of confidence in him. NP stated that the reasons for his loss of confidence in IM were contained in the letter NP sent to the GPA on 3 June 2020 (which NP handed to him, together with the CM’s and the AG’s letters of 5 June 2020<sup>1</sup> explaining that they had each agreed to this when NP had said he would be handing over his own letter of response to the Charles Gomez & Co letter (Pyle 1 para 17.2 [A244])).
- iv. IM provided NP with a copy of the Gomez & Co email to the GPA at 17:24 [B2041].

49. On (Saturday) 6 June 2020 at 14:24, NP wrote to IM noting that the Gomez & Co email stated *“our client feels he must apply for early retirement from the Royal Gibraltar Police”*. NP asked IM to confirm by midday tomorrow *“whether that is indeed your decision, and, if so, whether you will be tendering your letter of resignation on Monday with immediate effect”* [C4815]. It should be noted that the letter referred to a letter of resignation, and

---

<sup>1</sup> Cf [C4860], where NP states in an email exchange on 7 June (two days later) that he would be handing IM copies of the Three Letters at the meeting on 8 June.

not retirement, as IM had offered to the GPA. He followed this up with an email to the AG and the CM stating “*Ball in CoP’s court*” [C4819].

50. IM comments on this letter in his evidence (McGrail 1 paras 100-1 [A42]), stating that the reference to resignation caused him “*indescribable stress*” and “*enormous*” pressure, because he was being given hours to either remain in post and potentially be suspended or called to resign “*and lose all my pension rights and years of service*”, or apply for early retirement and possibly “*safeguard some of my interests*”. He assessed that his position was “*untenable but not for the reasons they claimed*”, and that “*I suppose by that point the loss of confidence was a mutual issue between them and I*”.
51. Gomez & Co responded on 7 June 2020 at 11:56 [C4820], stating:
- a. They “*struggled to understand and are very concerned by the rush*”; “*there is no reason that we can see why the process which you appear to be preparing for, ie the exercise of your powers under Section 13 notice should be rushed, unless it is because you want to dispose of this very serious matter ... before the swearing in of Sir David Steel as Governor next Thursday*”.
  - b. It would be unlawful for NP to exercise his s13 power, as it was only available if the GPA is in default of its duties, which it was not.
  - c. NP should recuse himself from the matter, and wait for Sir David Steel to be sworn in three clear days later.
  - d. “*Because of the immense pressure which has been placed on our client and his family, and the grave realisation that he can no longer count on the impartiality of the most senior members of Gibraltar’s Government, he have (sic) been left with no choice but to apply for early retirement – he will certainly not be resigning.*” This offer was “*subject to satisfactory terms being agreed in advance*”, including financial terms and the withdrawal of the “*vague*” allegations of impropriety against him.
52. At 12:35, NP wrote to the FCDO [C4825] stating that “*the good news is confirmation that the COP intends to retire and the issue is how to achieve this. My instinct is to allow the COP time to work out a deal, but this then means Sir David will have arrived. What we don’t want is COP to withdraw his request and lobby Sir David to keep his position.*” NP advised that he had just spoken to the AG and the CM and would be meeting them that evening to discuss options. At 14:00, an FCDO legal adviser replied stating that they fully

supported the approach. They stated: *“It’s unfortunate that this matter coincides with the new Governor’s arrival, but allowing time for the negotiations still leaves the new Governor with the option to use his power under section 13(f) in the event of a stalemate.”* [C4832] NP and the legal advisor arranged to have a call at 17:30 [C4837]. The FCDO legal adviser then sent an email at 17:08 (although the timestamp states 18:08 which is thought to reflect Gibraltar time, summarising a list of options in advance of NP’s meeting with the AG and the CM [C4837]. The adviser stated that:

- a. Although NP had justifiable grounds on which to exercise the s13(f) power, it was at risk of challenge by IM.
- b. IM intended to apply for retirement on terms addressed to the incoming Governor. The email stated: *“Although it is unfortunate that this matter coincides with the new Governor’s arrival, a negotiation about the Commissioner’s early retirement has the advantage that in the event of a stalemate the incoming Governor still has recourse to suspend the Commissioner pursuant to section 13(f) with a limited risk of a challenge, given he has not been involved in this situation to date.”* The adviser stated that they shared NP’s view that early retirement was the preferred approach.

53. At 20:26, NP updated to the FCDO legal adviser on his meeting with the AG and the CM [C4845]. NP stated that:

- a. *“We agreed that, on balance, we needed to protect Sir David and felt that should CoP still be in office after his swearing in, he would more likely than not retract his request to retire and appeal to Sir David, thus taking us back to square one. The issue is also in the public domain with rumours and accusations beginning to circulate. We agreed we needed to stop this and the only way to do so to conclude proceedings before Sir David’s swearing in on Thursday.”*
- b. NP had asked IM to see him tomorrow, and *“I will carefully get the message across that he either confirms in writing his request for early retirement with immediate effect with details to be confirmed, or I will use the powers available to me under Section 13.(1)(f).”*
- c. As to how the s13 powers would be invoked, NP wrote that: *“We agreed that, should I have to invoke my powers, I will suspend the Commissioner with immediate effect. I will not call for his resignation and suspension will allow the Commissioner to lobby Sir David but not take us back to square one.”*

- d. *“The CM, clearly angry at the email from Gomez to me, is keen that we have a clear way forward that results in the removal of the Commissioner before he meets the Spanish on Tuesday in Malaga at 10.00. In light of the case in Spain in relation to the RGP collision, and news of a criminal case here, he wants to tell JPMM in the margins that we are taking decisive action.”*
54. At 20:29, NP wrote to IM reminding him of the request to meet at the Convent at 10:00 the next day [C4856]. IM’s evidence is that he interpreted this as meaning that he was going to be suspended or called to resign (McGrail 1 para 103 [A43]). IM responded suggesting that Charles Gomez attend. NP replied stating that the purpose of the meeting was to hand IM the ‘three letters’, and they could then meet at 16:00 to discuss. NP stated that *“I would like both meetings to be just us please.”* [C4856]
55. On 8 June 2020, NP and IM met at 10:00.
- a. NP’s evidence simply states that at this meeting, IM *“confirmed his intention to retire subject to terms being agreed”*, and that NP said the terms were a matter for the Chief Secretary but NP would pass the request to him (Pyle 1 para 18.1 [A244]).
- b. IM attests as follows (McGrail 1 para 105 [A43]):
- i. NP started by saying he had taken serious offence to the letter from Gomez & Co to the GPA.
  - ii. *“[NP] stated that he had concerns about the incident at sea and the HMICFRS report and that these overlapped with concerns of the CM, AG and GPA.”*
  - iii. NP provided IM with copies of *“the Three Letters”*. *“NP was taken aback that I had not had notice of the particulars of the allegations against me which is why he thought it fair that I was provided with a copy of the letters.”* IM asked why he was not given these letters earlier, and said that he had requested the allegations which had triggered the s34 process from the GPA back on 22 May 2020, and that *“to me it all seemed to be a retrospective construction of the allegations”*.
  - iv. *“NP went on to say that because of my lawyer’s communications, my opportunities had narrowed”*.

- v. NP asked IM to return at 16:00. IM stated that he was unable to submit his request for retirement until the terms were sorted out, which NP said could be arranged at a later date (IM disagreed).
  - vi. IM “asked [NP] flat whether he wanted me “out” to which he said that he did.”
56. IM’s evidence is that by then “*it dawned on me that my best option was to find the best way out before I was made to suffer even more. My mental health was very badly affected. I had completed 36 years of service and did not want to put in jeopardy my pension entitlements.*” (McGrail 1 para 108 [A44]).
57. At 16:00, IM returned to NP’s office and confirmed he would be seeking early retirement subject to certain personal terms, which were basically reimbursement of legal fees and for him to be “*as close to the situation I would have been in had I not been forced to retire*” (McGrail 1 para 108 [A44]. IM also handed NP a letter asking NP to explain what process IM was now facing, asking for IM to have seven days to consider and respond to the Three Letters, and asking to see all correspondence between NP and the GPA relating to him [C4882].
58. At 19:19, NP sent an update to the FCDO [C4879]. It recorded that:
- a. NP met with IM at 16:00, who agreed to retire so long as his financial terms were agreed.
  - b. NP then went to see the Chief Secretary, AG and CM, and noted that “*whilst the AG and CM thought we should look to accommodate the Commissioner to some degree, the CM rejected all terms.*” NP further states that “*with the AG’s support, I subsequently advised the CM to try to accommodate the CM in some way*”, and that the CM was now prepared to make the offer provided it could be cleared with the Auditor and had also determined a final offer amount.
  - c. NP told the CM he would keep out of that debate in relation to the final offer amount but that if IM did not provide a letter in writing asking for early retirement, he would call him in tomorrow and suspend him.
59. Over the course of the evening there was a series of messages between IM and NP in relation to financial terms which were being negotiated with the Chief Secretary. At the

- same time IM and Mr Grech exchanged emails and WhatsApp messages about IM's pension rights (see McGrail 3 paras 128 to 134 [A98-9]).
- a. IM initially sought payment of his salary until the end of his contract (April 2022) and his legal costs, but the Government deemed those terms unacceptable [C4874].
  - b. At 19:17, IM messaged NP stating "*with all the uncertainty [as to retirement terms] I am unable to sign my letter to you. ... I have to safeguard my terms 100% whatever they end up being but certainly agree them before signing the letter.*" [C4868]. That message was forwarded by NP by email to the CM, the AG and the Chief Secretary [C4880].
  - c. At 19:53, NP responded: "*Ian. Thanks for this. I'd be grateful therefore if you could see me at 09:00 tomorrow. Regards. Nick.*" [C4868]. IM's evidence is that he deduced from this that NP was going to invoke his s13 powers (McGrail 3 para 132 [A98]).
60. IM's retirement terms were ultimately agreed following an email from Mr Grech to IM at 21:16 [C4884]. These terms were: pension calculated at current salary with payments commencing on 1 July 2020, payment of untaken leave and time off in lieu, and a contribution capped at £2,500 towards IM's legal fees (McGrail 3 para 134 [A99]). IM replied to Mr Grech confirming that he would hand his letter to NP "*first thing in the morning. I will have it hand delivered to him by 0830hrs*". IM then confirmed to NP that terms had been agreed at 21:34 [C4868-9]. NP then wrote to IM referring to their meeting, setting out a draft press release, and anticipating IM's letter confirming he had agreed terms with the Chief Secretary [C4866].
61. On 9 June 2020 at 08:13, IM sent a letter applying for early retirement on the terms that had been agreed the previous evening [C4890]. He stated if NP agreed, IM would relinquish command by 18:00 on the same day [C4889]. NP responded at 12:07 confirming those terms [C4897].
62. At 09:41 IM sent an email to all police and civilian staff at the RGP announcing his departure "*for the sake of my health and well-being*" [C4895].
63. At 12:41, NP sent a "Diplomatic Telegram" to the FCDO summarising the events [C4913]. It referred to the Incident at Sea, and stated that: "*This incident compounded existing*

*concerns the Chief Minister and I had about the Commissioner. He has not acted on a 2016 HM Inspectorate of Constabulary report; there are Police Federation bullying allegations; and he went against the advice of the AG and DPP in an ongoing and high profile investigation.*” The reference to the criminal investigation here is slightly different to what had previously been alleged, in that it stated that IM “*went against*” DPP advice (as opposed to lying to the CM as to whether he had sought advice from the DPP). The email also noted that “*The GPA has however not covered itself in glory*”, referring to the lack of a quorum, and being “*in default*”. The letter also took “*positives*” from the difficult process, namely:

- a. It had “*demonstrated the strength of the HMG-GOG relationship*”, And the CM and NP “*being as one throughout has averted what could have potentially resulted in a constitutional crisis*”.
- b. “*The outcome also plays well into our ongoing negotiations with Spain*”.
- c. “*...it has been concluded before the arrival tomorrow of Governor-Designate, Sir David Steel, who will be able to immediately set about the task, with the CM and GPA, of rebuilding the RGP*”.

64. Sir David Steel was sworn in as Governor on 11 June 2020.

## ISSUE 1 – THE AIRPORT INCIDENT

### Period preceding the Incident

65. There is little dispute in relation to many of the underlying facts which are reflected in the relevant section of the Undisputed Facts document.
66. At the time, IM’s position in the RGP was Superintendent (Crime and Protective Services), and Edward Yome was Commissioner of Police. IM led the RGP’s operational response to this matter (McGrail 3 para 148(a) [A120]).
67. In early 2017, Leicestershire Police had reasonable grounds to suspect that a serving member of the British Forces stationed in Gibraltar (“**the serviceman**”) was in possession of indecent images of children on his IT devices. They issued a “*wanted alert*” for him.
68. On 3 February 2017, the Joint Provost and Security Unit (“**JPSU**”) arrested the serviceman in Gibraltar and seized his IT devices. The Ministry of Defence (“**MoD**”) believed that it had the power to make the arrest under the (UK) Armed Forces Act 2006. The serviceman was subsequently released as there was no duty solicitor present in Gibraltar, and the JPSU did not have its own custody facilities. His devices were retained with the intention of conducting forensic analysis. The JPSU informed the RGP of these events on the following day.
69. CoP Yome’s evidence is IM informed him of these developments, and that he instructed IM to investigate the matter and report to him (Yome 1 para 12 [A1343]). Then-Assistant Commissioner Richard Mifsud’s evidence is that the matter was being operationally led by IM as Superintendent of the Crime Division, in close consultation with CoP Yome (Mifsud 1 para 6 [A1349]).
70. CoP Yome and/or IM sought legal advice from the AG and Senior Crown Counsel (Ricky Rhoda KC, formerly AG), who advised that the serviceman’s arrest and detention, and the seizure of his devices, had been unlawful (Yome 1 para 14 [A1343]). CoP Yome was also made aware that the AG had advised the MoD that, in his opinion, the MoD agencies had and were acting outside of their jurisdiction with regard to the arrest and the seizure of property (Yome 1 para 18 [A1344]).



71. On 7 February 2017 IM contacted Provost Marshal Chris Collins to raise concerns over the handling of the incident. At 11:00 RGP and JPSU officers met for a briefing, in which the JPSU declined to hand the seized devices over to the RGP (see IM's report of events dated 10 February 2017 [C147]). According to IM's account, PM Collins asserted that the RGP had no jurisdiction over the serviceman's actions [C147]. Detective Chief Inspector Tunbridge disagreed with that assessment, and pointed out if the serviceman's computer contained indecent images of children, they were now "*in the jurisdiction of Gibraltar and in breach of Gibraltar Law*". PM Collins informed the RGP that the devices would be examined in the UK, and if they contained incriminating evidence the serviceman would be flown back to the UK to answer any potential charges [C147].
72. Then-CBF Walliker's evidence is that his first reaction was to "*wonder why the RGP felt compelled to insert themselves – unnecessarily in my view – into a criminal investigation being conducted by Bedfordshire Police*", that decision to send the serviceman back was "*taken separately and based on a duty of care to a potentially vulnerable individual ... and certainly not as an attempt to prevent him from being arrested and charged by RGP*", and that there was "*no indication that a crime had been committed in Gibraltar*" by the serviceman (Walliker 1 para 5 [A1385]).
73. According to IM's report, he asked DCI Tunbridge to consult with the Office of Criminal Prosecutions and Litigation ("**OCPL**") as to which authority had jurisdiction. It was at this point that Mr Rhoda KC confirmed the position as to the RGP's jurisdiction and also expressed concern that if the RGP were claiming jurisdiction, a repatriation of the serviceman could be deemed to be unlawful, and the proper way to do this was via established judicial processes [C148].
74. At 12:54 there was a further briefing, at which PM Collins disclosed that his legal advisors had supported his position and that arrangements had been made to despatch the exhibits to the UK on the following day (8 February 2017) [C148].
75. At 15:08, the RGP proposed to PM Collins that the RGP would conduct a parallel investigation into any offences committed in Gibraltar. PM Collins declined and reiterated that forensic analysis would take place in the UK (at least in the first instance) [C149]. IM kept IM briefed of developments [C149].

76. At 16:30, IM met with Colonel Frank Green and PM Collins, who again rejected the proposal of a parallel RGP investigation. According to IM's report, he stated that he *"explained that the situation was seemingly escalating to the extent where the MOD's entrenched position did not fare well for relations with the RGP and by default the wider community in Gibraltar"*. IM's account is that PM Collins responded by stating that *"his mandate was very clear; that he had to look after the interests of the troops and the UK investigation"*, and that subsequently PM Collins *"told Col GREEN that the solution to the matter was to put [the serviceman] on a plane to the UK at the earliest opportunity"* [C150]. IM's report then states that he responded that the RGP could be driven to take executive action, but stressed that his intentions were not to go down that route and to resolve the issues by discussion and prevent further escalation [C150-1]. Finally, IM reported that PM Collins agreed to put the RGP's arguments to his superiors and revert to IM [C151].
77. At 19:33, CoP Yome sent a message to the WhatsApp RGP SMT chat group, noting that the Governor wanted *"a pragmatic approach"* and, in contrast: *"CM wants us to go for the jugular. Prepare all necessary warrants etc. This person will not be allowed to leave the jurisdiction and retrieve computers etc."* [C757]. The SMT's full run of messages can be found from [C757] to [C897].
78. According to IM's report: at 22:12 Collins informed IM that his position had not changed, and that the plans to fly out the exhibits the next day were on track, but he was not at liberty to discuss whether the serviceman would be flown out; IM informed PM Collins that CoP Yome was trying to contact the CBF and had left numerous messages for his calls to be returned, but he had not been successful in reaching him, and that *"it would only be proper that he stalled his plans until CoP and CBF spoke"*; ultimately PM Collins maintained that his intentions remained unchanged [C151-2]. Late that night, DI Enriles and DC Howard applied for a warrant from the Stipendiary Magistrate to search the JPSU premises (sanctioned by CoP Yome), but this was declined on the basis that there was insufficient suspicion to believe that the computer devices seized from the serviceman contained incriminating evidence of offences committed in Gibraltar [C152].
79. Prior to 8 February 2017, CoP Yome repeatedly tried to contact Commodore Walliker (Commander of the British Forces in Gibraltar ("**CBF**")), hoping to arrange that the RGP and the MoD could co-operate in the investigation and reach an agreement as to how to

proceed, but Commodore Walliker was not in Gibraltar at the time and CoP Yome was unable to speak to him. CoP Yome did, however, speak to one of his deputies, who maintained that the arrest of the serviceman was lawful and that the MoD were entitled to fly him back to the UK. CoP Yome protested that the arrest was unlawful, and said that he had a legal opinion to support him (Yome 1 para 16 [A1343]). CoP Yome also telephoned the then-Governor, Lieutenant General Edward Davis, and informed him of the events that had transpired (Yome 1 paras 17 and 19 [A1343-4]).

### **8 February 2017 - The day of the Airport Incident**

80. On 8 February 2017, IM reports that he sought further advice from Mr Rhoda, who contacted NP and Colonel Green, and that NP asked Mr Rhoda to request that the RGP defer any action as he was seeking legal advice from the FCO as to whether the RGP had primacy in the matter [C152].
81. CoP Yome instructed IM to apply for a fresh warrant in the Supreme Court of Gibraltar, and the hearing was listed for 15:00 [C152].
82. At around 14:00, IM learned that a military aircraft had landed at RAF Gibraltar, which he relayed to CoP Yome [C153, 772]. An MoD officer asserted that the flight in question was a purely operational visit. CoP Yome believed that this was untrue. PM Collins maintains that it was a pre-planned flight on official record since January 2017 (Collins 1 para 11 [A1398]).
83. CoP Yome then received information that the serviceman and exhibits would be removed from Gibraltar on the aircraft. CoP Yome thought that flying the serviceman out was *“clearly unacceptable to me and I felt that the RGP’s legal and operational authority was being challenged and undermined by the MoD”* (Yome 1 para 21 [A1344]).
84. At that point CoP Yome ordered that resources be deployed to the RAF station and investigate whether the MoD intended to remove the serviceman and exhibits. CoP Yome’s evidence is that he gave these instructions to RU (Yome 1 para 21 [A1344]), although it is not clear whether this is accepted by RU. RU reported to CoP Yome that the flight manifest did not record that the serviceman or exhibits were on board (Yome 1 para 22 [A1345]).

85. IM reports that at approximately 1520hrs the Chief Justice heard the application for the warrant to search for property seized from the serviceman's residence by the JPSU and granted the warrant, while expressing that *"it was not a good day for law enforcement when one agency had to take executive action against another law enforcement agency in this fashion"* [C153-4]. Then-CBF Walliker maintains that he *"cannot understand what additional evidence if any was available to the RGP to obtain a Warrant ... at the second time of asking"*, and that at the time there was concern in the UK that the RGP's actions *"had potentially hindered the investigation in the UK"* (Walliker 1 para 5 [A1385]).
86. CoP Yome then learned (including through Commander Jack Hawkins, Chief of Royal Navy Provost and PM Collins's line manager in the UK [C156]) that the serviceman and exhibits had already been taken on board the aircraft, and that the aircraft was proceeding to its take-off position. He instructed RGP officers to drive police vehicles onto the runway, to prevent the aircraft from taking off, which they then did. The officers blockading the runway were acting on CoP Yome's specific orders (Yome 1 paras 24 and 25 [A1345]). There was a confrontation by the north barrier of the airport between Inspector Perera and Station Commander Liz Hutchison, who then spoke to RU over the phone [C154] (and see Ullger 1 para 40 [A540]).
87. IM also affirms that there were repeated unsuccessful attempts to contact PM Collins throughout this period, and ultimately IM and other officers attended JPSU HQ at Gun Wharf to try and meet him in person [C153-4]. IM reports that he informed PM Collins that he *"practically knew that both [the serviceman] and the exhibits were on board the aircraft and that we would proceed to retrieve them"*, at which point PM Collins took one further phone call, after which his behaviour completely changed and mellowed [C156].
88. At this juncture, CoP Yome received two telephone calls from Commodore Walliker. According to CoP Yome, during the first phone call Mr Walliker was adamant that neither the individual nor the computer in question were on the aircraft, and CoP Yome informed him that he had credible information to the contrary, and that Mr Walliker needed to measure his words to the contrary as otherwise he could be held accountable for obstructing police in the execution of their duty. CoP Yome further attests that Mr Walliker then asked CoP Yome to give him a few moments and then called a second time, this time informing CoP Yome that the aircraft would be returning to its stand. Finally, CoP Yome states that shortly after the second telephone conversation he received confirmation that

the person and computer in question had been taken off the aircraft. CoP Yome saw this as vindicating the RGP's actions, and proving that the acting CBF, the Station Commander and Commodore Walliker had all been untruthful in their assertions (Yome 1 para 24 [A1345]).

89. The search warrant was not executed. According to IM's report, at 17:45 CoP Yome informed IM that he had received assurances from Commodore Walliker that the exhibits would be handed over to the RGP in due course [C157]. IM's report concludes that "*the escalation of tension was not down to lack of will or desire on our part to resolve the issues in a 'grown up' manner*", and that there "*has certainly been a serious breach of trust and confidence by, in my view, the three senior military officials referred to in this report*" (i.e. Col Green, PM Collins and Stn Cmdr Liz Hutchison) [C157].
90. At approx. 18:00 the CM telephoned Lt Gen Davis and updated him on events. He did not (and still does not) think that the RGP obstructing the runway to prevent a military aircraft from taking off was "*an appropriate way for the civil and military authorities to conduct themselves*", and matters "*should not have reached such a stage*". In order to end the stand-off and ensure that the subject would not leave Gibraltar until the issue had resolved, Lt Gen Davis telephoned CBF Walliker and instructed him to keep the serviceman in Gibraltar until the RGP completed preliminary inquiries, and to hand over the computer to the RGP (Davis 1 para 11 [A1410]). PM Collins asserts that he refused to hand over the computer because he considered the command not to be lawful, but subsequently handed over the evidence when he was ordered to do so by Provost Marshal (Navy) (Collins 1 para 12 [A1399]).
91. CBF Walliker's evidence as to 8 February 2017 is that "*the general behaviour of RGP officers on 8 February from the very top down was bizarre, potentially dangerous and unbecoming*" (Walliker 1 para 6 [A1386]). PM Collins opines that the encroachment onto the runway was "*a vastly disproportionate act*" in the circumstances (Collins 1 para 15 [A1399]). Sgt Sean O'Malley alleges that Ian McGrail entered JSPU and threatened him that he had arrested police officers and would not hesitate to arrest them again (O'Malley 1 p.5 [A1394]). IM responds to Sgt O'Malley's evidence (McGrail 5 paras 49-53 [A155-6]) pointing out that the PCB did not uphold any part of Sgt O'Malley's complaint relating to this incident, and denying that he threatened to arrest Sgt O'Malley, affirming instead that he treated him with "*respect and courtesy*".

92. On 8 February 2017 at 20:57, the CM emailed CoP Yome, IM, RU, Cathal Yeats, then Minister for Justice Neil Costa and the AG stating as follows [C142]:

*“I just want to say as a Gibraltarian, how proud I am of the work you have properly done today. Asserting our jurisdiction properly and reasonably, for all the right reasons and within the law, is what future generations would have expected us to do. It is a pity the MoD have not been more elegant in the way they approached this. We have taught them a number of lessons today. You have done Gibraltar proud.*

*There are a number of obvious questions arising as to how some people behaved today; whether people lied to you or were lied to themselves is going to be a relevant question in coming days. We must not exacerbate matters but we cannot allow people to get away with having misled the RGP or having obstructed you. The law is the law for all of us, and an armed force (sic.) uniform does not suspend application of the law to an individual, of whatever rank. That is what the UK taught us and we are not going to allow them to talk us out of it when it applies to some. But those are issues for tomorrow.*

*You have enjoyed my full support today at every stage of the way. Excellence (sic.) work. Please pass my sentiments, if not my email, to those who have been on the front line today.”*

#### **The aftermath of 8 February 2017**

93. CBF Walliker states that he made his feelings known to Lt Gen Davis and the Chief Minister, and upwards through his command chain to the Joint Force Commander and recommended that an inquiry be conducted as a matter of urgency *“as the narrative on the Rock appeared to eulogise the actions of the RGP whilst demonising the actions of MoD”*. He further states that he could not alter the CM’s view *“that ‘his’ police force had behaved exceptionally well, at the operational level, but that MoD personnel had not”*, and that *“the RGP had saved the MoD from ‘itself’”*, whereas CBF Walliker believed the RGP had behaved *“disgracefully”*, and his opinion has not changed since that day (Walliker 1 para 6 [A1386]).
94. Lt Gen Davis’s evidence is that he sensed that *“there was potential for significant and long-term damage to relations between Gibraltar and the UK”*, and that he and NP focused on getting both parties to work together, by having numerous conversations with the CM,

the AG, CoP Yome, CBF Walliker and NP, “*advocating an outcome to the investigation that accommodated both civilian and military legal and due process imperatives in a mutually-supporting manner*” (Davis 1 para 14-16, 18 [A1410-1]). He also had a telephone call with the then Minister for Europe to give his account and recommend an independent review (Davis 1 para 17 [A1411]).

95. In the following days, a meeting was held between Lt Gen Davis, CoP Yome and Commodore Walliker, where it was agreed that the RGP would investigate whether sexual offences had been committed in Gibraltar and would be given access to the computer.
96. Also following the incident, CoP Yome instructed IM to “*conduct a thorough investigation into the actions of the senior MoD officers*” (Yome 1 para 28 [A1346]). On 10 February 2017, IM provided a report to CoP Yome as to the chronological sequence of events [C145].
97. At some point in mid-February, IM states that he met with the CM (and RU) at the Wessex Lounge, Gibraltar Airport, with the CM in mid-February 2017, in which the CM thanked and congratulated IM and RU for the manner the RGP had dealt with the incident, commenting that he had read IM’s report with great interest describing it as a “*gripping John Grisham novel*” and adding forcefully that he expected the three senior military officials (who he described as “*fucking idiots*” to face due process for their actions (which IM said he would report up to CoP Yome) (McGrail 5 para 13(d) [A146]).
98. CoP Yome specifically sanctioned IM’s request to execute search warrants at the office of the CBF and his Deputy at the Naval Base, the Naval Provost offices and the RAF Station Commander’s Office. IM prepared an operational plan accordingly (Yome 1 para 29 [A1346]). The search warrants were granted by the Stipendiary Magistrate on 27 February 2017 and not subsequently challenged in the courts [C190]. IM conducted the searches, during which material was recovered, and IM advised CoP Yome that there was sufficient evidence to proceed against the acting CBF, the Naval Provost and the RAF Station Commander for obstructing police officers in the execution of their duty. At a meeting between CoP Yome and the AG it was agreed that those individuals should be arrested.
99. Separately, on 28 February 2017, the AG received a Joint Opinion from Lord Pannick KC and Emily Neill as to the JPSU’s jurisdiction in Gibraltar [C192]. They advised that the (UK)

Armed Forces Act 2006 did not extend to Gibraltar, and that the Provost Marshal's Department did not have the powers to arrest the serviceman in Gibraltar, nor to seize his IT devices, and that their actions in doing so were ultra vires and unlawful. On the other hand, they advised that the RGP did have the legal power, right and indeed duty to act. No-one has since questioned the correctness of that advice, which was shared by the AG with CoP Yome and IM [C205].

### **The arrests on 1 March 2017**

100. The arrests took place on 1 March 2017. The RGP arrested (1) the Chief of Staff, British Forces Gibraltar, Colonel Frank Green, (2) the Station Commander at the Airport Wing Commander Liz Hutchison, and (3) Squadron Leader Provost Marshal PM Collins, on suspicion of obstructing the police and attempting to pervert the course of justice. The officers were the three most senior MoD members of staff in Gibraltar.
101. PM Collins was arrested at Gibraltar Airport (Collins 1 para 17 [A1400]); Colonel Green was arrested in his office in the presence of the CBF [C2757]; and Station Commander Hutchison was arrested in front of her team at RAF Gibraltar Station Headquarters.
102. IM was involved in the execution of the warrant at the British Forces Gibraltar Headquarters, known as The Tower, and arrested Colonel Green.
103. The RGP also seized equipment from HM Naval Base, and executed search warrants at MoD offices. This involved the seizure of MoD property and of personal devices from accommodation and motor vehicles for four MoD officers.
104. At 14:02, CoP Yome emailed the AG to inform him that the three officers were being arrested, and that search warrants had been executed on various offices and computers. The AG responded: "*Thanks for letting me know Eddie*" [C209].
105. CBF Walliker's evidence is that, aiming to avoid a public arrest, he spoke personally to CoP Yome and IM in the days leading up to the arrests and confirmed that all three were happy to report to New Mole House Police Station, accompanied by a solicitor. He accuses the RGP of intending to humiliate the MoD in as public a place as possible, and says that he witnessed RGP officers giving each other 'high fives' outside the Tower as PM Collins was placed under arrest, and also asserts that "*The Provost Marshal was arrested*



*in the Arrivals section of Gibraltar Airport as he stepped off an aircraft”, which he deemed “wholly unnecessary” (Walliker 1 para 8 [A1387]).*

106. Addressing IM specifically, CBF Walliker describes his behaviour on the day of the arrests as “*utterly unprofessional*”, acting “*with only self-interest in mind and without a shred of integrity or emotional intelligence*” (Walliker 1 para 9 [A1387]).
107. In response to CBF Walliker’s evidence, IM states:
- a. CBF Walliker failed to take any calls from CoP Yome at the time of the incident, and “*very arguably*” obstructed the RGP’s investigation (McGrail 5 para 41 [A154]).
  - b. There was sufficient suspicion that the serviceman had committed a criminal offence in Gibraltar, due to his devices being in Gibraltar (McGrail 5 para 42 [A154]).
  - c. The serviceman informed RGP officers that the MoD wished to remove him to the UK to arrest him and his family, and not on welfare grounds as CBF Walliker claims (McGrail 5 para 43 [A154]).
  - d. CBF Walliker’s position in his evidence cannot be reconciled with his email to CoP Yome of 6 March 2017 [C237], in which he unequivocally recognised the RGP’s jurisdiction (McGrail 5 para 44 [A155]).
  - e. He denies that CBF Walliker ever spoke to him or offered that the MoD officials were willing to attend the police station, and maintains that the officers who arrested PM Collins at The Tower “*behaved professionally throughout and displayed all due respect and courtesy*” (McGrail 5 para 45 and 46 [A155]).
  - f. He affirms that the MoD officials were released by CoP Yome in exercise of his powers of discretion not to charge, and in the light of the letters of apology, rather than any lack of evidence (McGrail 5 para 47 [A155]).
  - g. He continued to work with CBF Walliker when appointed as CoP in 2018 right up to the end of CBF Walliker’s posting in Gibraltar, and they often met to discuss matters (McGrail 5 para 48 [A155]).
108. The officers were not ultimately charged, it being accepted that they had honestly, but erroneously, believed that the serviceman’s arrest had been lawful. All three of the arrested officers subsequently apologised [C2790-6], and were released from arrest and given formal warnings.

109. At some point around this time, the examination of the serviceman's devices in Gibraltar failed to find any indecent images on the device, and he was therefore effectively cleared and released. He returned to the UK. A later examination by forensic experts retained by the MoD in the UK found more than 40,000 indecent images of children, some of the most serious level. In due course, the serviceman was arrested by police in the UK, appeared before the Crown Court, and following pleas of guilty, was sentenced to imprisonment. (Yome 1 para 31 [A1346]).

### **The reaction of authorities in Gibraltar at the time**

110. On 3 March 2017 CoP Yome sent the AG and the CM an email expressing gratitude for the support received by the AG throughout the situation, asking that the legal position according to Joint Opinion be disseminated to all concerned including the MoD in Gibraltar. He also expressed concern at reports he had received as to a dismissive, "bravado" attitude by MoD personnel to the whole incident and the legal position [C204].

111. In reply (copied to the AG), the CM stated "*If it requires another turn of the screw, which I will not hesitate to support you in, it will once again have been brought about by those who fail to recognise the need to show proper and genuine contrition and respect for the RGP and for our Constitution ... I can also tell you that Gibraltar will not be home for the people in question for long and we won't be blocking the tarmac for a moment to delay the plane when the time soon comes for them to wave goodbye to the best place these idiots have ever had the good fortune to live in their petty lives. Good riddance. And goodbye won't come soon enough*". He concluded: "*Gibraltar, its Chief Minister and its people are proud of their police and the SMT, Commissioner and their Attorney General. The UK as a whole, conversely, has been embarrassed by its senior ranks on the rock...*" [C207]

112. On 4 March 2017 CBF Walliker emailed CoP Yome (copied to Lt Gen Davis and NP) asking that the charges be dropped and the investigation terminated "*by the middle of next week*" on the basis that there was no evidence to support the charges of perverting the course of justice, in exchange for expressions of contrition by the three arrested officers. He also asked for the return of the seized items [C211]. CoP Yome replied on the following day expressing disappointment at the CBF's approach and maintaining that "*the evidence would appear to be conclusive that your officers HAVE obstructed and HAVE attempted to pervert the course of justice*". He stated that the only way in which the RGP might

consider not charging would be if there was a “*GENUINE acceptance of guilt by the individuals in question, acceptance of the gravity of the situation and an unequivocal expression of remorse and apology*” [C225-7]. Later on the same day, Gomez and Co submitted to the RGP a statement by Stn Commander Liz Hutchison [C239], giving an account with which RU (upon reading it three days later) vehemently disagreed [C249].

113. On 5 March 2017 Rear Admiral Radakin proposed a meeting with the AG, the CBF and the CoP to discuss matters. The CM’s reaction, when informed by the AG was that a meeting with the CBF “*doesn’t work*”, stating that “*they just don’t understand the nature of the prosecution process*”. He further noted: “*I have just spoken to Ed and told him they have to allow RGP to have the space to make their own decisions on the criminal aspects of the case ... Let’s keep in touch to ensure that we continue to do Gibraltar proud on all aspects of this matter*” [C232].
114. A WhatsApp message dated 5 March 2017 [C817] to CoP Yome regarding the position adopted by the CBF, describing it as containing “*an error of legal understanding*” in every single operative sentence and presenting “*equivocation in respect of contrition*”, offering to assist in drafting a response. The CM’s WhatsApp message ended stating: “*If those statements come back telling us they ... were right to do what they did, then it is going to be difficult to caution them*”. The email drafted by CoP Yome with the CM’s assistance (CoP Yome states that in the SMT WhatsApp group that he prepared it “*with a little help from a friend*”) on 5 March 2017 [C820] stated that it appeared from his email that “*this failure to understand the law of applicable (sic.) in Gibraltar has not yet been corrected in your mind*”. The email also maintained that the evidence appeared to be conclusive that MoD officials had obstructed and had attempted to pervert the course of justice.
115. On 6 March 2017 CBF Walliker sent a further email stating that “*the events of 8<sup>th</sup> February and the manner in which they have continued to unfold are a source of deep regret for me, my team, and I know that is also reflected by my higher HQ and the MOD*”, and apologising for any alarm or offence caused by his previous email [C237].
116. On 7 March 2017, CoP Yome forwarded Stn Cmdr Hutchison’s account to the AG and the CM, reporting that it was “*certainly not a letter of contrition or apology on the contrary she is defiant and justifies her actions*”. The CM responded noting: “*This is just a bland “I didn’t do anything wrong” which we know does not accord to the facts*”, and proposed to meet Rear Admiral Radakin again [C256].

117. On 8 March 2017, Rear Admiral Radakin wrote to CoP Yome (copying the AG and Lt Gen Davis) apologising on behalf of the Joint Forces Command. He accepted that the MoD's view at the time that the case was subject to exclusive Service Police jurisdiction was not correct. He admitted that the Joint Forces Command "*did not immediately recognise the jurisdictional legal primacy in this case for [the RGP] to investigate, and if necessary, prosecute the individual*". He expressed the "*regret*" that there were "*altercations*" between British Forces personnel and RGP officers, stating that "*I cannot emphasise to you how much we regret, with the benefit of hindsight and the later legal advice we have received, that we were not better able to cooperate with those of your officers in question*", and regretted the accusations that British Forces Personnel had behaved "*disrespectfully*" towards RGP officers. [C260]. Apology letters were subsequently issued by each of Col Frank Green, PM Chis Collins and Wing Commander Liz Hutchison on 9 March 2017 [C2790-6].
118. On 9 March 2017, CoP Yome and the RGP SMT drafted a press release addressing the incident and arrests, which they sent to the CM and the AG for their review, and the AG responded with an amended version agreed to by the CM [C278-281].
119. Also on 9 March 2017, a member of FCO staff emailed the CM (copying the AG, NP and Lt Gen Davis) stating: "*I just went to update Sir Alan Duncan [Secretary of State of the FCO] in relation to the events of 8 February and beyond. The Minister was very happy that we appear to have reached a good outcome. He asked me to pass on his personal gratitude to you, and the Commissioner of Police, for helping us to get to this point.*" [C291]
120. On 10 March 2017, Lt Gen Davis sent an email to CoP Yome (copying the CM and the AG) offering "*my deep gratitude to you and your Police Officers for the efficacy and manner in which the RGP has conducted this investigation ... In short a very tough job, very well done. Thank you.*" [C293]
121. By contrast, as highlighted above, CBF Walliker and PM Collins have provided statements to the Inquiry which criticise the RGP, including IM's, actions.

### **GPA investigation**

122. On 9 May 2017, in a meeting with GPA Chair John Gonçalves, the CM requested that the GPA inquire into the Airport Incident. On 11 May 2017, a meeting of the GPA noted the

CM's request and those present agreed to ask CoP Yome for the investigation file [C308]. At the same meeting, NP said that he may excuse himself from any subsequent meeting given he was Acting Governor when the incident broke, but on the following day he emailed other members stating that on reflection he thought he should attend and provide any insights, without breaking confidences, that he would be able to bring (although he stated that he would leave the meeting should he deem there to be any conflict or at other members' request) [C314].

123. The matter was raised again at a GPA meeting on 15 May, but the Chairman John Gonçalves took the view that as the GPA had no authority or jurisdiction over the MoD, it should seek information from the CoP to assist in the preparation of a report under s19 of the Police Act 2006 [C316]. According to Mr Gonçalves, NP reported that Lt Gen Davis envisaged that the GPA would recommend that an independent inquiry be held (Gonçalves 1 para 14 [A339]). Later that day Ernest Gomez emailed other members of the GPA informing them that the CM had "*cleared for me that he has not agreed to any MOD involvement in or approval of in respect of members*" of an independent panel [C333]. GPA members (including NP) agreed to remove any reference in a letter to the CM to the MOD agreeing to members on any panel [C334, 338]. On 16 May 2017, Mr Gonçalves wrote to the CM informing him that the GPA would seek information from the CoP and then submit a report to the CM under s15 of the Police Act 2006 [C319].
124. On 15 July 2017, Mr Gonçalves informed the GPA that the CM had requested a report on the GPA's assessment of the RGP's actions before, during and after the Airport Incident, "*preferably by early September*" [C473]. On 17 August 2017, CoP Yome provided three documents to the GPA about the airport incident (IM's report of 10 February 2017, the Joint Legal Opinion of 28 February 2017, and Rear Admiral Radakin's letter of 8 March 2017) [C477]. The GPA met to discuss those documents in August 2017 (Gonçalves 1 para 19 [A340]).
125. On 31 August 2017, the GPA met with CoP Yome, IM, RU and Chief Inspector Tunbridge to discuss the matter. No minutes of that meeting are available (Gonçalves 1 paras 19-20 [A340]). On 5 September 2017, Mr Gonçalves wrote to the CM communicating the GPA's conclusions. These were captured in an email dated 6 December 2017, which states [B2157-2158]:

*“...The GPA has come to the firm conclusion that the actions of and the restraint shown by the relevant RGP officers during the ... Incident were considered, deliberated, entirely proportional and highly commendable. As such, we do not doubt the effectiveness and probity of the policing demonstrated by the RGP in respect of the ... Incident. We would take the liberty of adding, though it may not be our place to do so, that the actions of certain MOD personnel in respect of the ... Incident deserve censure and that you should consider whether a full inquiry ought to be undertaken by a body independent of the RGP and the MOD so that lessons may be learnt from this incident.”*

126. This position is affirmed in evidence by several members of the GPA (see, e.g. Falero 1 para 11 [A379], Gomez 1 para 21 [A396], Hassan-Weisfogel 1 para 22 [A413], Lavarello 1 para 21 [A428], Nagrani 1 para 22 [A446], Patron 1 para 20 [A459], Reyes 1 para 22 [A483]).
127. As stated above, NP’s evidence is that he raised concerns over the RGP’s and particularly IM’s behaviours formally on numerous occasions with the GPA, the Governor, the CM and the FCDO, and that the GPA methodology was *“in my opinion seriously flawed”*, as they did not seek any information from or interview the MoD officers (Pyle 1 para 21.7 [A247]). Mr Gonçalves responds to this in Gonçalves 2 para 9 [A347].

### **Subsequent complaint to the PCB**

128. On 19 August 2019, two junior MoD personnel made a complaint to the PCB making several accusations against RGP officers involved in the arrests following the Airport Incident, including IM. The complaints centred around DCI Tunbridge’s execution of the warrant, alleging that he had acted outside its remit (IM did not execute the warrant or conduct the searches), but also complained about comments made by IM in a recent conference about potentially reopening the investigation (an allegation which IM denied) [C2536-44].
129. It appears from a WhatsApp exchange between IM and JB on 21 October 2019 that IM initially wished to object to the complaint against him specifically being investigated at all, on the ground that as CoP he was not subject to the Police Discipline Regulations 1991 [C6543] although it is unclear how this issue was resolved.

130. A sub-committee of the PCB was constituted to investigate the complaints. IM filed a report to the PCB on 4 November 2019 [C2757]. The PCB dismissed the complaints on the ground of insufficient evidence, and in relation to IM found that his involvement was limited to applying to the Supreme Court for the warrant to enter and search the JPSU [C2552] (this is confirmed in Carreras 1 para 10 [A515] and Carreras 2 para 4 [A523]). This was communicated to the complainants on 29 May 2020, and also to the GPA (Carreras 2 para 5 [A523]).
131. On 7 and 8 July 2020 the complainants asked that the GPA review the decision of the PCB [C2553-4, C2560-1]. On 2 September 2020 the GPA concluded that the request to the GPA for review of the decision of the PCB did not qualify for an appeal given that no new evidence had been provided and the decision of the PCB could not be construed as perverse [C5143].

#### MoD review

132. NP affirms that there was agreement between Lt Gen Davis, the CM and the Chief of Staff, Joint Forces Command, MoD in the UK on the need for an independent review. However, this did not proceed after the MoD changed its position for “*bigger picture relationship reasons and a wish to conclude negotiations between HMGOG and MOD around the Armed Forces Act*” (Pyle 1 para 21.8 [A247]). Lt Gen Davis attests that he recommended an independent review, and was supported by the MoD’s Director of International Security Policy and the Commander and Chief of Staff UK JFC, but that by the time the parties felt they were in a position to take part in a review in the autumn of 2017, “*it was considered that a review would be to the detriment of the significant progress that had by then been made in strengthening the relationship and cooperation between the RGP and MOD/BFG*” (Davis 1 paras 13, 20-21 [A1410, 1412]).
133. CBF Walliker attests that his understanding was that the CM had argued for not having an Inquiry to save the MoD’s “*blushes*”, and that the FCO prevailed upon MoD at a senior level to let the matter rest. He maintains, however, that the three officers were released without charge “*because there was nothing to charge them with*”. He asserts that such an inquiry would have concluded that “*Supt McGrail was neither a competent nor credible candidate to succeed Commissioner Yome*” (Walliker 1 para 12 [A1388]).

### ISSUE 3: THE INCIDENT AT SEA

134. The Undisputed Facts contain a detailed overview of the Incident at Sea and its aftermath, which it is not necessary to repeat in full. The paragraphs below focus on the three matters expressly identified in the List of Issues, namely: (1) whether faults or failings in operational instructions or procedures of the RGP contributed to the collision; (2) communication between the RGP and the CM, the AG and NP about the location of the Incident; and (3) communication between the RGP and the CM, the AG and NP about legal claims arising from the Incident.

#### RGP policies and procedures

135. The (undated) Standard Operating Procedures at the time of the Incident provided that: *“marine crews will conduct systematic periodic patrols of Gibraltar's coastline and territorial waters throughout their tour of duty. They will pursue suspect vessels in a determined though safe manner within their territorial waters and liaise with their Spanish counterparts.”* They add: *“we will only operate outside BGTW when we are called upon to attend to a lifesaving situation”* [D10183].

136. On 8 June 2015, Inspector Albert Buhagiar sent an email to the RGP Marine Section providing *“revised instructions to be adhered to forthwith”* [C135]. He stated:

“Previous instructions allowing crews to leave BGTW at the invitation of the Guardia Civil, whilst in pursuit of a vessel and with the authority of the Duty Inspector or other senior officer are revoked. RGP vessels will not operate outside BGTW other than in support of a search and rescue operation led by the Gibraltar Port Authority. In summary:

- a. PMB will not operate outside BGTW in pursuit of criminal activity.
- b. PMB may operate outside BGTW in support of search and rescue operations coordinated by the Gibraltar Port Authority.”

137. Inspector Albert Buhagiar sent a further email on 17 February 2016 to the Marine Section [B1703], stating:

“I would like to remind **ALL** of the current and existing instructions that under no circumstances are you allowed to police/patrol outside the limits of BGTW. The



only exception would be in a GPA led SAR [search and rescue] operation or of a vessel or person(s) in distress. In any case, you should first seek authority from either myself, Sgt. Stone or the Duty Officer.

Furthermore, the AIS on the vessel being used will be **switched-on** at all times...”.

138. On 8 July 2016 a set of Marine Section Instructions were created and/or circulated (“**the Instructions**”) [C5251]. The Instructions state that: “*Officers are NOT authorised to operate outside BGTW and in Spanish Waters unless when responding to a situation as described in paragraph 4(a). (a) Participating in a Search and Rescue operation at the invitation of Spanish Authorities.*” It is clear from these instructions that officers were not to operate in Spanish waters except at the invitation of Spanish Authorities and only for search and rescue operations. On 16 September 2016, the Instructions were sent to the Marine Section by PS Stuart Stone [C5509, D1162].
139. On 19 April 2017, there is a record of a Daily Taskings Group Meeting which states: “*Marine section – only use vessels with AIS*” [B2911].<sup>2</sup>
140. The Misconduct Report also records that Marine Section Officers were reminded on the Instructions again on 16 September 2019 by PS Stone; and again by Ch Insp Finlayson on 21 January 2020 [B1295]. The Inquiry has not seen the underlying emails referred to.
141. It is clear from these documents that the formal instructions were for officers not to operate in Spanish waters except at the invitation of Spanish Authorities and only for search and rescue operations. Since 8 June 2015, pursuits of vessels outside BGTW have not been permitted, and even prior to that date, it appears that the permission of the Guardia Civil (“**GC**”) and a senior officer was required to do so.
142. Given the undisputed position of the collision and the evidence as to pursuit of the Suspect Vessel, it appears clear that the RGP Marine Officers’ conduct in navigating the RGP Vessel was contrary to the RGP’s formal policy position. However, an important question to consider in evidence and submissions is whether those officers’ actions nevertheless reflected a de facto practice of RGP vessels entering Spanish waters for pursuits. If so, it is necessary to ascertain: (a) whether IM knew or ought to have known

---

<sup>2</sup> The Inquiry does not have the original copy of this email and has relied on its description in the Summary of Evidence.

about this practice; and (b) if IM knew, whether he sanctioned the practice. A good starting point for this analysis is the conclusions in the Draft Solis Report and two reports by the Metropolitan Police.

143. The Draft Solis Report dated 30 April 2020 made the following findings (which were subsequently maintained in the Final Solis Report unless specified below):

- a. As to the RGP's policies on leaving BGTW:
  - i. The RGP crew did not comply with the instructions that were issued (3.13.3 [B1732]).
  - ii. It was not known why the RGP crew headed into Spanish waters (3.13.1 [B1732]).
  - iii. The crew placed themselves so close to the suspect RHIB as to place themselves and the suspects in considerable danger (3.13.3 [B1732]).
  - iv. Despite the RGP Marine Section instructions, "*anecdotal evidence from the RGP Marine Support Unit's Senior Marine Mechanic stated that 'hot pursuits' into Spanish waters could be permitted with the approval of the Guardia Civil*" (2.10.17 [B1705]). However in the Final Solis Report, this was amended to: "*...had historically been permitted with the approval of the Guardia Civil; however this was not the case at the time of the Incident*" (2.10.7 [C5600]).
  - v. Senior Marine Section Officers were aware and accepted that highspeed pursuits were being routinely carried out (for example, instructions had been issued on the use of PPE when faced with missiles). "*They must have also been aware that pursuits also strayed into Spanish waters and records should exist internally or with the Guardian Civil of any previous operations taking place...*" (3.17.5 [B1734]). This second sentence was deleted from the Final Solis Report, and added instead: "*The RGP maintained a database of police actions which included when chases of suspect vessels occurred and recorded whether these events were inside or outside of BGTW. An internal review by the RGP showed that between 1 April 2017 and 1 June 2020 that, of the 59 entries that involved a chase, two (including this case) had continued outside of BGTW*" (3.17.6 [C5633]).

- vi. From the evidence reviewed to date, it appears that Marine Section Managers did not apply effective oversight into how their patrols were being carried out (3.17.6 [B1734]).
- b. As to navigational equipment:
- i. The GPS plotter in the RGP vessel was left off, as Officer 1 stated that the equipment reduced his night vision. The chart plotter also activated the vehicle's AIS, which was therefore also not turned on (1.8.5, 2.3.1 [B1692, B1700]).
  - ii. There was no evidence produced to support Officer 1's statement that the brightness of the chartplotter interfered with night vision, or that the alleged issue had previously been reported to managers. There was a clear instruction that the vessel's AIS system should always be turned on (3.11.2 [B1731]). In the Final Solis Report, this was amended to read: "*The dimming facility of the chart plotter was tested and found to dim the display as would be expected for use in night-time navigation and would, if set correctly, not have interfered with the coxswain's night vision*" (3.10.2 [C5629]).
  - iii. It would have been clear to the officers that they were in Spanish waters and "*well to the North of BGTW*" (3.2.3 [B1713]).
  - iv. While the limits of BGTW were known to the RGP crew, the engagement, chase and collision were all carried out at least 1.5 nautical miles beyond the limits of BGTW (3.3.2 [B1716]).
  - v. While the limits of BGTW were not visible on the chartplotter, the northern limit of BGTW is generally indicated by reference to the lights from Gibraltar Airport. As the RGP vessel was significantly to the north of the airport, it would have been clear to the officers that they were in Spanish waters (3.3.3 [B1716]).
- c. As to officer training:
- i. The RGP Marine Support Unit, which provided training to Marine Division Officers, provided training in "*spacing*" (where two powerboats manoeuvre alongside each other at speed), but there was no specific training provided in highspeed pursuits or apprehension of suspect vessels (2.5.3 [B1702]). The Final Solis Report added that as there is no established safe method of stopping a suspect at sea, and this is prohibited by the

instructions, no training is provided on this manoeuvre (2.5.10 [C5597]). The Final Solis Report also added that the RGP Marine Section Trainers considered that aspects of other modules in training, such as pacing and safe manoeuvring, were applied to safely pursuing vessels (2.5.8[C5597]).

- ii. While numerous pursuits had been carried out, the coxswain's experience in pursuits was learned on the job, watching more experienced coxswains. There was no proper established oversight (3.15.1 [B1733]).
- iii. There were apparently no guidance/instructions/orders as to what navigation equipment was to be used when on patrol, either in daylight or at night. A poor standard of navigation was being practiced at the material time (3.12.1, 3.12.3 [B1732]).
- iv. *"Marines Section Managers did not have an effective oversight of how their patrols were being carried out"* (5.11 [B1738]). In the Final Solis Report, this was amended to: *"Marine Section Managers could have had a more effective oversight of how their patrols were being carried out"* (5.16 [C5640]).

d. The Draft Report therefore recommended that:

- i. The RGP Marine Section's management structure and operation requires further examination. The instructions and guidance provided to the Response Teams should be better understood (4.2.1 [B1735]). This recommendation was deleted in the Final Solis Report.
- ii. The operational arrangements between the RGP and Guardia Civil, both formal and informal, required further investigation (4.2.2 [B1735]). This recommendation was deleted in the Final Solis Report.
- iii. A study of AIS data over a period of several months would provide an insight into the operating patterns of RGP vessels and the frequency at which they operate outside BGTW (4.3.1 [B1735]). In the Final Solis Report, this was amended to *"has provided"* (5.19 [C5640]).

144. The Summary of Evidence records the following:

a. As to the RGP's policies on leaving BGTW:

- iv. 59 chases at sea involving RGP marine vessels had taken place between 1 April 2017 and 1 April 2020. Of these, 57 were terminated due to arriving at the limit of territorial waters, and one of the Officers had been involved

in 18 of the chases. The Summary of Evidence concluded that “*it is clear that [the Officer] was aware of his obligation to remain inside BGTW as many of the chases he was involved in were terminated prior to leaving territorial waters*” [B2910].

- v. “*While there are no formal arrangements between the Governments of Spain and Gibraltar, it is clear that the Law Enforcement Agencies (LEA’s) in the area have a degree of professional co-operation ... This is evidence ... that the Guardia Civil are able to communicate directly with the RGP Marine Section.*” [B2915]
- vi. “*RGP instructions regarding BGTW are very clear – RGP vessels must only enter Spanish territorial waters at the invitation of the Spanish authorities and only for the intention of search and rescue.*” [B2915]

b. As to navigational equipment:

- vii. Officer 1 gave evidence that the GPS chart plotter was “*left off due to the bright backlight, which is safer not to have on in order to be able to see more safely at night*” [B2891].
- viii. “*RGP instructions regarding the navigational equipment are clear – RGP must operate radar and AIS at all times when at sea.*” [B2915]
- ix. As to Officer 1 (the coxswain), “*there is evidence that he disobeyed orders to ensure the correct navigational equipment was in use when deployed and left BGTW for an unauthorised purpose and without authority*”. [B2915]
- x. Officer 2 “*had sufficient knowledge, training and experience to know that the Marine Section should always operate with their navigational equipment in use and they should not leave BGTW other than for search and rescue operations...*”. [B2916]
- xi. “*Had [Officer 1 and 2] followed standing orders by using their navigation equipment, they would not have left BGTW. This is supported by the fact that the coxswain has previously stopped at the limit of BGTW on numerous other occasions involving pursuits at sea*” [B2918].
- xii. “[E]vidence shows [Officer 1 and 2] knew or ought to have known that there were standing orders to use navigational equipment on board marine section vessels when deployed at sea.” [B2919]

xiii. There appeared to be the “*wilful failure to follow correct procedures by not using the navigation equipment on board the SJC*” [B2921].

c. As to officer training:

xiv. Both Officer 1 and Officer 2 held a “*Government of Gibraltar Competency Certificate*” stating they were competent in the capacity of Boatmaster, with limitations “*for Royal Gibraltar Police operated launches in Gibraltar Territorial Waters only*” [B2902].

xv. An RGP Marine Section Instructor confirmed that “*there is no module or content in the training course for ‘pursuit training’*”, and that “*he instructs trainees not to come alongside suspects RHIB’s. Instead, they should maintain a safe distance...*” [B2905]. Another Instructor added “*there is little or no training for pursuits at sea due to the hazardous conditions and narrow margin for error*” [B2905].

xvi. The manner in which the boat was navigated was “*far below the standard expected of trained mariners*”; no first aid was delivered; and no distress signal was sent [B2920].

145. The Summary of Evidence was accompanied by “*Organisational Learning*” recommendations, which included:

- a. The RGP ensuring their vessels’ AIS and GPS equipment is always activated;
- b. The RGP introducing additional or updated training, to include pursuits;
- c. The RGP issuing renewed instructions to not leave BGTW unless for search & rescue missions/life-saving [B2924].

146. On 23 October 2020, some six months after the incident, the RGP issued a ‘Police Vessel Patrol and Pursuit Policy’ [B4276] which replaced the Marine Section Instructions dated 8 July 2016. This Policy states:

- a. The RGP Police Marine Boats (“**PMB**”) will operate within BGTW only.
- b. Under no circumstances will RGP vessels leave BGTW whilst engaged on a patrol or pursuit, unless responding to a Search and Rescue Operation (led by the GPA) or responding to an incident where there is an imminent and serious threat to life.  
(Note: This guidance does not apply to entering Spanish waters.)

- c. *“Officers are **NOT** authorised to enter Spanish territorial waters unless when responding to and participating in a SAR operation at the invitation of Spanish authorities and only when incidents are being co-ordinated by the GPA.”*

147. The Metropolitan Police Misconduct Report dated 4 June 2021 records the following:

- a. The instructions regarding both BGTW and navigational equipment are very clear [C6236].
- b. Evidence from the RGP technical team showed that Officers 1 and 2 were part of the email group who received the instructions dated 17 February 2016 and 16 September 2016 [C6233].
- c. As to officer training:
  - i. Officer 1 had never received any training regarding pursuits, but since 2015 had been involved in many police pursuits at sea [C6204].
  - ii. The RGP do not have a tactic for stopping a vessel at sea other than presence and persuasion. As a result, there is no module or content in the training course for “pursuit training” [C6227].
- d. According to evidence given by PC Leif Simpson, a police boat should be crewed by three competent and qualified police officers; this was not the case during the Incident as Officer 3 had no training or operational experience at sea. This hindered the operational ability of the crew and the vessel [C6223].

148. At the Coroner’s Inquest, the Officers maintained that they believed at all times that they were within BGTW. The Coroner stated the following in his summing up to the jury<sup>3</sup> (regrettably, the transcript is low quality and marks many aspects of what was said as inaudible):

- a. Officer 1 *“said they'd not been trained in pursuits at speed, although the training does cover [inaudible] both travelling at speed [inaudible]. There's no training for pursuits, that you have to handle as best you can, but there is some training for [inaudible] safely handling the boat at speed.”*
- b. Officer 1 *“was also aware that the crews were not to leave British Gibraltar territorial waters other than for search and rescue and only with authorisation.”*

---

<sup>3</sup> To be added to Bundle C.

- c. Officer 1 “also stated the chartplotter would give him [inaudible] position, exact position, was switched off [inaudible] because the light from the screen affected his night vision and could not be dimmed, [inaudible] Meikle, but he said that it could be dimmed and Mr Phillips said [inaudible] colour palette for night vision, so that was either not done by Mr... by Officer One or not known. But curiously Mr Phillips also said that depending... that many officers have this complaint, that the lights affected the night vision and that depending on [height] that there was no problem for some [inaudible] But then he did say that some covered it with a cloth and that it seemed to be a mystery, but certainly means that, in Officer One's case, maybe covering the cloth wasn't... [inaudible]”

### **Location of the incident**

149. The facts of the collision itself are set out in the Undisputed Facts document. The collision occurred in the early morning of 8 March 2020, and was first reported to the RGP via the Duty Inspector at New Mole House at 03:48. IM's evidence is that the Command Team met at 05:00 in IM's office, and DCI Field provided a verbal briefing. IM states: “I recall there being unconfirmed reports that the incident had occurred outside Gibraltar's territorial waters together with conflicting reports that it had actually happened in Gibraltar waters” (McGrail 3 para 47vii [A66]). IM adds that “initial reports suggested the collision to have occurred 3 miles off Europa Point (and to my understanding within BGTW)...” (McGrail 3 para 50 [A67]).
150. At 06:05, IM sent WhatsApp messages to the CM [B86] and to NP [B85] informing them (identically): “...We're dealing with a critical incident - one of our boats has been involved in a collision with a smuggling RHIB with 4 on board. 2 on the smuggling RHIB are fatalities. Our crew are uninjured but clearly shaken & shocked. I am invoking Post Incident Procedures and planning for consequence management. Once I have further updates I will let you know. ...”
151. At 07.41, the CM asked IM via WhatsApp: “What time did it occur and was it firmly within BGTW or questionable?” At 07.43, IM replied to the CM: “Collision occurred approx 0340hrs. Location still to be confirmed”. IM states that during this messaging with the CM he was continuing to meet with the Command Team, and the meeting received an update “that neither Wind Mill Hill Signal Station nor Gibraltar Port Authority had any coordinates



*plotted for the police vessel, this potentially meaning the vessel, this potentially meaning the vessel's Automatic Identification System (AIS) was either switched off or faulty*" (McGrail 3 paras 56-57 [A71]).

152. At 07:50, PR's note of the Gold Command meeting records that "*Windy/Port have no coordinates – AIS either switched off or faulty*" [B1682].
153. At 09:27, NP replied to IM's initial WhatsApp message at 06:05 about the Incident, thanking him for letting him know, and "*And of course if ty (sic.) need anything from us/HMG just ask.*" [B85]
154. At 09:35, Comandante Pacheco Polo of the GC telephoned DI Chipolina and stated that according to COS radar tracing of the incident the approximate coordinates of the collision were 36'09 N 5'12 W, 6.54 miles east of Santa Barbara Beach. The GC apparently stated that this data was "*subject to confirmation by technical extraction*" [B1319]. DI Chipolina then contacted DCI Field.
155. An email sent at 10:11 by PR states that at 09:40, DCI Field informed the Gold Command meeting (IM, PR and JF) that the "*collision occurred 36'09 N, 5" 12" W, approx... 6.54 east of Play (sic.) de Santa Barbara*". [B1680] This is slightly different to DCI Field's evidence, which is that he received the verbal report from DI Chipolina at 09:40, and then plotted the coordinates on a map before going up to IM's office (Field 1 para 36 [A801], Field 2 para 6 [A808]). IM also states that at 09:40 he received information from DCI Field who in turn relayed information provided by the Guardia Civil "*suggesting the collision had occurred in Spanish territorial waters though this required confirmation by them*" (McGrail 3 para 60 [A72]). DCI Field states that he briefed IM, PR and the AG on the "*suspected exact coordinates*" at 11:05 (Field 1 para 38 [A801]) – but It is submitted that this must have taken place before 10:11, when PR sent the email above. It is possible that IM and PR were told the coordinates at 09:40, and then the AG was informed at 11:05. This will need to be explored in questioning.
156. Despite being provided the coordinates around this time, IM's evidence is that he was "*nonetheless working on a provisional hypothesis that the pursuit had taken place in BGTW. My reasoning for this was based on the premise that RGP marine crews had no*

*authority to operate outside BGTW unless it was on a specific search and rescue mission which in this case did not apply. ...” (McGrail 3 para 60 [A72]).*

157. At 09:49, IM sent a WhatsApp message to the CM stating: *“CM - the information suggests that the collision took place outside BGTW – approx 6NM east off (sic.) the runway/Santa Barbara Beach.” [C6699]* IM emphasises that he used the term *“information”* not evidence at this stage as *“said information had not been verified and therefore caution had to be exercised”* (McGrail 5 para 72 [A158]). The CM responded saying *“OK. We need to liaise with AG on this and ensure we are transparent on this.” [C6699]*
158. At 10:00, a meeting was held at Guardia Civil Headquarters, which DI Chipolina and DI Perera attended. IM’s timeline records that: *“DC were asked whether an incident report had been generated and if they could provide the confirmed coordinates for the collision. GC stated that an initial report had been prepared but needed to be referred/discussed with the designated duty court/judge. GC stated that the approximate coordinates supplied previously to DI Chipolina stood and that the SIVE technicians had yet to extract and validate such data. They confirmed the approximate collision location was 6 to 6.5 miles off Santa Barbara Beach. ...” [B1321].*
159. At 10:10, IM gave a briefing to the AG. The AG does not have a precise recollection of what IM told him about the location of the collision, and states *“to the best of my recollection, I believe he referred to the fact that there had been a chase that straddled BGTW and Spanish waters, that there had been some element of contact between the RGP and the Spanish Guardia Civil and that it seemed highly likely that the collision had occurred in Spanish waters but that he was waiting for formal, technical confirmation of this”* (Llamas 1 para 82 [A294]). IM’s timeline records that *“AG feeds up to the CM”,* and that *“HE [NP] joins the meeting @1215Hrs” [B1319].*
160. At 10:11, PR emailed IM, RU and DCI Field [B1680] with a “brief” on the Incident following the Gold Meeting. The email stated: *“Incident believed to have occurred at approx. 3NM within BGTW.”* Under “Actions”, PR stated: *“Need to determine location of incident ASAP”.*
161. At 11:40, during his meeting with IM, the AG informed the CM by WhatsApp (and also sent a copy to IM): *“Been in New Mole for the last hour or so. ... PR [Press Release] will not say*

where incident occurred but it is virtually certain it was outside BGTW eastern side opposite runway. It also seems that part of the chase was within BGTW.” The AG sent a copy of that message to IM. [B1345] The AG’s evidence is that he may not have actually sent the message to the CM and may only have sent it to IM by mistake (Llamas 1 para 83 [A294]).

162. At 12:15, NP attended a meeting in IM’s office along with the AG and other RGP officers (McGrail 3 para 65 [A73]). NP suggests that this meeting came about because he was walking his dog outside New Mole House, and decided to call in and ask to see IM (Pyle 1 para 25.3 [A251]). IM’s evidence is that NP did not “raise any particular query” (McGrail 3 para 65 [A73]). However, NP’s evidence is that NP asked IM about the location and whether it was inside or outside BGTW: “he [IM] replied with a slightly flippant waving of his hands, ‘could be in, and could be out, it’s difficult to tell at night” (Pyle 1 para 25.3 [A251]). The AG’s evidence is that IM told NP “he was still not certain where the collision occurred” (Llamas 1 para 84, [A295]).
163. After the meeting concluded, NP messaged IM at 13:33 to thank IM for the briefing, stating: “Line will be. Investigation ongoing. Spanish nationals from Cueta (sic.) (did you say one person was Portuguese). Not sure in whose waters incident took place. RGP seeking assistance from UK police authorities. No assistance needed from FCO at this stage.” [B1346] At 13:46, IM replied “Yes all correct.” At 13:47, IM added in a further WhatsApp to NP that he was “Trying to clarify exact position of the collision”. [B1346]
164. At 14:09 NP emailed the FCO reporting the incident, stating that: “I’ve just met with the Commissioner of Police who kindly gave me a briefing on the incident. The facts have yet to be determined and the investigation is ongoing, but initial headlines are as follows: The incident happened @ 04:00 hours though it is not yet known whether it took place in BGTW or just outside...” [B1746].
165. That evening, NP spoke to the AG, and both agreed that they needed to meet IM the following day, “not least given the Gibraltar EU exit negotiations with Spain” (Pyle 1 para 25.5 [A252]; Llamas 1 para 85 [A295]).

166. On 9 March 2020 at 07:57, NP emailed the FCO, informing them that “*There may be complications around yesterday’s incident in that it might have happened as much as six miles inside Spanish waters. If true, it’s hard to fathom quite what the RGP were doing chasing a vessel so deep into Spanish waters and one can only hope that it was at the invitation of the Spanish. But this may be why GoG have kept details very close and have asked for no social media speculation.*” NP added: “*Let’s hope ... that there is no negative impact on Thursday’s talks with the Spanish*” [B1748]. It appears from this message that NP may have received information from the AG about the location of the collision in their meeting on the previous evening, given his communication of this new information to the FCDO. This will have to be clarified in questioning, as the contents of this meeting are not addressed by NP in his evidence.
167. At 10:15, NP messaged IM saying that he had been with the AG the previous night and requesting an update later that morning. He said “[w]e are keen to reach ioutnto (sic.) Spain given talks this week in London...”. [B1346] IM states that it was “clear” to him that “from very early on” NP knew that the collision most likely occurred in Spanish waters, as NP and the AG had been together the previous night – “they had been working together on this” (McGrail 3 para 68 [A74]).
168. At 10:21, NP sent a follow up to the FCDO saying that he had no further details but had asked for a briefing with IM and also invited the AG [B1750].
169. IM states that “during the course of the morning”, he was informed that the GC were still of the view that the collision had occurred in Spanish waters but they needed this interpretation to be confirmed by their technicians (McGrail 3 para 67 [A74]).
170. At 12:10, a meeting took place between IM, the AG and NP (McGrail 3 para 69 [A74]).
- a. IM’s evidence is that he informed the AG and NP (i) that the exact coordinates of the collision had still not been determined. IM cannot recall whether the provisional coordinates were discussed, but considers that they were mentioned albeit with a caveat that this needed verification; and (ii) that the pursuit was believed to have lasted 10 minutes “in and around British Gibraltar Territorial Waters”.
  - b. NP’s evidence is that: (i) IM said he was still not sure about the location of the incident; and (ii) the GPS/AIS instruments had been switched off, which IM

attributed to the officers being “*in the heat of the moment*” (Pyle 1 para 25.6 [A252]). IM denies saying this (McGrail 5 para 80 [A159]).

- c. NP states that IM did not mention the fact that coordinates had been provided by the GC, let alone share or discuss them (Pyle 2 para 16.1 [A262]). NP states that had these coordinates been provided to him, he would have immediately passed them on to the FCDO in London and British Embassy in Madrid (Pyle 2 para 16.2 [A262]).
- d. The AG recalls that NP asked IM why the AIS system could not confirm the location of the collision and that IM replied that it was switched off (Llamas 1 para 86 [A295]).
- e. PR’s note of the meeting is at **A1292**. His note recorded “*exact coordinates of collision still not determined*” and “*element of chase w/l BGTW*”.

171. Following that meeting, NP emailed the FCDO at 13:16 stating that “*we are unlikely to have the facts until tomorrow at the earliest*” [B1752]. At 16:42, NP sent a further email to the FCO [B1757] stating that:

“The GC confirmed they had opened up an investigation which they would pursue regardless of where the collision took place. This infers even they are not sure where it happened. ...

A “notorious” (CoP’s word) Gibraltar legal company Verralls, have been engaged by those detailed...

The RGP helmsman did not report the start of the chase to Ops Centre as per SoPs. CoP brushed this off to an oversight due to the pressure of the moment. I was less forgiving. ...

CoP confirmed that the exact location has still to be determined as were details of the chase which lasted 10 minutes.

I said it was important that before Thursday’s meetings in London we had one single and agreed version of the facts. I welcomed the fact that there had been communications between the GC and RGP before and since the collision. The AG said it was clear, with the entry at some point of the vessel into BGTW, that the law had been broken and that therefore the chase was legitimate. He said it was important we are able to present this to the Spanish as “cooperation”. He stressed the need for details of the communication between the GC and RGP and especially who instigated it.”

172. On 10 March 2020 at 13:00, DS Garratt met with Tim Yates of Sheppards Marina, who after examination was unable to retrieve the navigational data from the RGP or suspect vessel [B1323].
173. At 13:36, IM forwarded to NP a chain of emails about IM's efforts to source an independent investigation team [C3294]. At 13:47, NP stated that he had "*heard back from London who have said they do need a more formal request from you...*" [C3298]. This was a reference to NP making the request from the FCDO for UK police assistance, pursuant to s26 of the Police Act 1996.
174. On 11 March 2020 at 2031, DI Chipolina emailed the GC requesting vessel radar positioning data [B1326]. IM states that on this day, he was advised on "*the inability to extract the required navigational data*". He states that it was his understanding that this data "*would provide accurate information relating to what had happened and where it had happened*" (McGrail 3 para 81 [A79]).
175. At 18:58, NP emailed IM, stating inter alia: "*Ian, Good to hear about progress re Met help. Are we any clearer as to where the collision took place? London are keen to know whether it was inside or outside BGTW and if the latter, approximately by how far.*" [B1351]
176. At 19:07, IM replied by email stating that "*we are getting there on establishing exact coordinates of where collision took place. We are tying up some loose ends and probing further from WHSS and should be able to confirm soon. It is, highly probable it did occur out BGTW. We are getting plotted which will provide a better understanding in terms of distance from BGTW.*" [B1351] NP states that this was the first time IM disclosed this information to him (Pyle 1 para 25.8(iv) [A253]).
177. IM has explained the content of this message as follows: "*We had been unsuccessful in extracting the key data from the police vessel and suspect RHIB and therefore my colleagues were trying hard to plot the chase and collision using non-technical means but rather observational triangulation methods with the aid of Port Authority officers. The Guardia Civil had not provided confirmation that their coordinates were accurate.*" (McGrail 3 para 87 [A82]).

178. At 19:09, IM messaged the AG stating that "*HE (Nick) is asking for confirmation of where collision took place as London are keen to know. I have informed him along the same lines that you advised CM ie that it is highly probable that it happened outside BGTW*". At 19:15, the AG replied to IM's WhatsApp stating "*Ian that seems fine to me. Factual whilst being amenable to further precision once you obtain further details.*" IM responded at 19:33 with a 'thumbs-up' sign. [B1351]
179. At 19:28, NP responded to IM's email: "*OK. Thanks. I'll inform London facts still not established but highly likely to have occurred outside BGTW. Nick*" [A83]
180. On 12 March 2020 at 08:49, NP emailed the FCO stating "*I asked the Commissioner of Police yesterday if he could, 3 days on, confirm the location of the collision, as per the meeting Michael and I had with him on Monday. He could not and restricted himself to saying more work needed to be done but "it is highly probable it was outside BGTW" ... I have to say I cant (sic.) quite understand why we still don't definitively know whether the incident took place inside or outside of BGTW, The exact coordinates don't matter that this savage (sic.) – it's a matter of inside or out. This leaves me worried that it was significantly outside.*" [B1761]
181. At 16:13, IM messaged the 'Maritime Incident' WhatsApp group, stating "*the evidence points at the pursuit & collision occurring outside BGTW. Not the best news we wanted to hear*" [B100]. IM's evidence does not make clear what new evidence he received on this date which prompted this message – this will need to be explored in questioning.
182. The CM responded: "*Thank you Ian. Location does not worry me so much. Helps us in a way. Will discuss directly with you.*" [B101] The Inquiry asked the CM to explain this remark. He did so in his second witness statement at para 20 [A230]:
- "The reason I said that the location could help us was twofold: (i) First in demonstrating to the general public of Gibraltar that, in some instances, police cooperation involves cross border activity and that our own police may stray into Spanish waters in the same way as Spanish police often stray into British Gibraltar Territorial waters. (ii) Secondly, I thought that – although it was to cause huge diplomatic issues in the negotiations on foot with Spain at the time – it would be helpful in showing our Spanish counterparts that our police officers were seeking out illicit activity."*

183. IM's evidence is that he then spoke with NP *"to update him in the same vein as I had done with other officials in the 'Maritime Incident' group chat"*. IM states he has no notes of this call, but that he told NP that the evidence pointed to the dispute and collision occurring outside BGTW. IM states that *"this was the first occasion I had verified information / evidence that the collision had taken place outside BGTW"* (McGrail 3 para 92 [A83]). As stated above, it is not clear from IM's evidence what new evidence or verified information he was referring to here. NP's evidence of this meeting is that IM *"confirmed that not only did the collision take place in Spanish waters, so did the whole of the pursuit that preceded it. No part of the incident had taken place in British Gibraltar territorial waters"* (Pyle 1 para 25.8(v), [A254]).
184. At 16:50, NP updated the FCO by email, stating: *"I've just had an update from the Commissioner of Police who confirmed our suspicions that not only did the collision take place in Spanish waters, so did the pursuit. The Commissioner also confirmed that SOPs/Protocols we're (sic.) not followed."* [B1762]
185. At some time on 12 March 2020, DCI Field states that *"we"* managed to obtain thermal imagery which captured the collision, and that this was *"later"* brought to the attention of PR and IM (Field 1 para 46 [A802]). This raises a number of questions, including: (a) who DCI Field means by *"we"*, (b) when PR/IM were provided with the footage; and (c) whether it provided insight into the location of the collision.
186. On 14 March 2020 at 15:47, DI Perera emailed the GC requesting authority for the Metropolitan Police team to attend the collision site in an RGP vessel: *"as the location was in Spanish waters his authority was being sought before proceeding"* [B1329]. The GC responded requesting more details of the vessel that would enter Spanish waters, and stated that the request should also be addressed to the UK Magistrate Liaison in Madrid or the Spanish embassy in London.
187. IM messaged the AG requesting to meet him on 16 March 2020, and again on 17 March 2020 [B1352]. It appears that they met at 13:00.
188. On 18 March 2020, a remote conference took place between Commander Pacheco Polo (of the GC), Metropolitan Police team, DI Chipolina and IM. IM's timeline records that *"GC advise that they still require their technicians to extract the coordinates of where the*



*collision took place. That they have an idea where this occurred but required formal confirmation from technicians” [B1331]. IM subsequently updated the AG on this meeting by WhatsApp, although did not refer to the issue of the coordinates (McGrail 3 para 101 [A86]).*

189. On 20 March 2020 at 10:28, JB sent IM a WhatsApp message stating: “*Good morning, Ian – just a thought, are you keeping Governor abreast of developments...? Also, maybe send an update to CM via the WhatsApp? Note that this is just my thinking and nobody has actually asked me but I think it would be prudent...?? See what you think*”. At 10:54 JB clarified that he was referring to the “*maritime accident*”. [B1354]
190. At 10:58, IM replied stating: “*Yes The Convent is up to speed and AG too. Michael fed up to CM. By next week the UK Team will have more clarity on what route they will be suggesting this should take locally. That is a good point to provide a more formal update.*” [B1354]
191. At 10:58, JB replied “*OK understood! Thank you, Ian.*” He added at 10:59: “*As long as both are kept updated, that was my concern...*” [B1354]
192. A non-contemporaneous note dated 21 May 2020 [C4230] records that on 20 March 2020, Supt Smith gave a “*rushed initial debrief*” to NP and Phil Culligan (NP’s deputy). However, NP’s evidence is that this meeting occurred on 18 or 19 March, but the note was made on 20 March (Pyle 1 para 25.8(vi) [A254]). The bullet point record of the meeting states that: “*all indications were that the incident had happened in Spanish waters possibly up to 3 miles out of BGTW*”. By contrast, Supt Smith’s evidence is that he had no contact with NP and his contact with the FCDO was Mr Culligan (Smith 1 para 32 [A1054]).
193. On 25 March 2020 at 15:10, IM’s timeline records the following entry: “*Email link Rapid Reply Construction using the data of the suspect vessels navigational equipment. Screenshot of the situation around the time of the collision showing suspect RHIB proximity to BGTW. 36’ 09 95N Latitude, 005’12 51W Longitude*” [B1331]. This entry is somewhat cryptic and will need to be explored in questioning, but suggests that Captain Meikle either received or conveyed (possibly to IM) this intelligence on this date.
194. On 28 May 2020, NP emailed the CM copies of the “*Op Bomere – Situation Report*” dated 23 March 2020 and 19 May 2020 [C4467]. It appears that this was a document prepared

by the Metropolitan Police team and sent to members of the RGP and NP - see [C4405].

The Report stated:

“The early indications are that the collision happened three miles outside BGTW and inside Spanish waters. We therefore need to determine if the RGP officers knew or suspected they had left BGTW during the pursuit.

We have confirmed that there is a standing instruction that RGP marine vessels should only leave BGTW for search and rescue matters. Where incursions have taken place into Spanish waters in the past, the Spanish have taken over the pursuits. However, on this occasion there were no Spanish vessels in the area. ...”

195. On 29 May 2020, NP emailed the CM and AG stating: “*According to the Spanish [Note Verbale], the collision took place at 36.09N – 5.12W. ... Not quite where I was expecting the collision to have taken place*” [B1934]. CTI notes that reference had been made to the Note Verbale as early as 15 May 2020 [B3900]: NP’s knowledge of its contents will need to be explored in questioning.

196. On 12 June 2020, someone at the FCDO emailed Ltd Cdr Jon Taylor, who CTI understands to be the Queen’s Harbour Master, asking him to confirm whether the collision took place within Spanish waters or “*the funnel of international waters*”. Taylor confirmed it was within Spanish waters. This information was forwarded to NP, who in turn sent it to the CM, AG and Sir David Steel, stating: “*As we suspected of not knew (sic) but a good question to ask*” [C4981].

## Legal claims

197. On 9 March 2020, in the context of discussing the independent review of the Incident, IM messaged JB: “*technically there isn’t a complaint yet as no family member has filed one but it could happen...*” [B1347]. At the meeting between IM, the AG and NP at 12:10 (see above), IM informed the AG and NP that Mr Christopher Finch from Verralls was representing the families of the deceased and those arrested. However, at this stage there was no reference to claims being brought by those persons.

198. On 10 March 2020, Mr Finch from Verralls informed the RGP that he would like to have his own pathologist present during the post mortem examinations [B1324].

199. On 12 March 2020 at 16:13, IM messaged the “Maritime Incident” WhatsApp Group: “*Chris Finch is representing the families.*” This was in the context of an update about the autopsy and HM Coroner releasing the bodies [C3266].
200. On 17 March 2020, IM and the AG met. IM states that he explained the “*various strands*” including the “*Coroner, possible civil action, professional standards inquiry, Spanish judicial action, law enforcement co-operation angle ... and political dimension...*” (McGrail 3 para 98 [A85]). IM states that the AG informed him there was no need for IM to see the CM, and that the AG would speak to the CM about whether he was content for the Metropolitan Police to liaise with the GC. The AG subsequently messaged IM “*proceed as we discussed*”. The AG does not recall this meeting but suggests that IM’s recollection is “*almost certainly correct*” (Llamas 2 para 57 [A314]).
201. On 18 March 2020, IM held a video conference with the GC. He subsequently reported to the AG that: “*GC also expects the family of the deceased to file a complaint in their courts to seek compensation. This will no doubt complicate matters for us as the judge may be swayed to look at the matter from a different perspective in terms of where the collision took place.*” [B98]<sup>4</sup> No reply to that message has been disclosed. On 19 March 2020, IM forwarded his message to the AG to JB, who replied thanking IM and stated “*let’s see what happens*”. [C3207]
202. IM states that in the “*days that followed*”, he was provided with periodic updates and made aware that Mr Finch was making several requests from the RGP which were being shared with HM Coroner and the Metropolitan Police team (McGrail 3 para 105 [A88]).
203. On 26 March 2020, Mr Finch from Verralls contacted CI Perez informing him that he was acting for the families of the deceased in Gibraltar, and is liaising with Spanish lawyers who are working on the matter in Spain [B1331]. CI Perez then liaised with Verralls in the days following.

---

<sup>4</sup> The pages of IM’s exhibit appear to be out of sequence here: B98 should follow after B96, and B97 should appear after B92. This error has been reflected in the Chronological Bundle at C3252, which appears out of sequence.

204. On 1 April 2020, DCI Smith emailed IM, PR and DCI Field that he was aware the family of the deceased/survivors were considering legal action against the RGP, and the Spanish were considering a homicide investigation [B1333].
205. On 6 April 2020 at 12:22, IM messaged the AG requesting to discuss the Incident, stating *“I am conscious that this won’t go away and would like to act at least to have the strategy in place for when the time comes to act”* [B1354]. On **7 April 2020**, IM met with the AG to discuss strategy for defending the RGP officers in Spanish proceedings [B1334]. IM’s evidence is that the AG said *“yes, perhaps the RGP went too far by going out of BGTW but in essence they were discharging a law enforcement role and he would be happy to defend that position. Discussed the correlations with the Alcaidesa Incident where RGP officers also went beyond their remit in Spain and how that particular case went on for 10 years... AG fully agreed with me and undertook to discuss with the CM whom he had quick access to.”* [B1355] IM adds in this statement that he *“aired concerns about what the RGP officers involved could be facing”* (McGrail 3 para 106 [188]).
206. **On 22 April 2020**, IM met with the AG and DPP [B1336]. IM states that they met to discuss a letter from Robert Fischel KC *“suggesting they would be making a civil claim for damages”*, but does not recall on what date he received this letter (McGrail 3 para 107, [A89]). IM states that *“the DPP advised that no civil claim had yet been filed and therefore there was no immediate need to appoint Crown Counsel”* (McGrail 3 para 107 [A89]) and that the AG did not want to consider further strategy until receipt of the Metropolitan Police report [B1280]. IM’s states that: *“AG undertook to keep the matter alive with CM pending any developments on the political front...”* [B1355].
207. On **14 May 2020**, an article was published in *El Faro de Ceuta* (a Spanish local news website) entitled *“Denuncian por delito de homicidio imprudente a la Policía de Gibraltar tras la muerte de dos ceutíes”* (*“They denounce the Gibraltar Police for the crime of reckless homicide after the death of two people from Ceuta”*).<sup>5</sup> The article reported that the family of one of the deceased RHIB crewmembers (Mustafa Dris) had instigated a private prosecution in La Linea, and reported *“the complaint, filed in Spain, was also filed in Gibraltar”*. Following this:
- a. At 09:36, the CM sent the link to the AG, stating *“This has appeared TODAY”*. The AG replied *“Couldn’t make it up”* [B1417].

---

<sup>5</sup> <https://elfarodeceuta.es/denuncian-policia-gibraltar-muerte-dos-ceuties/>.

- b. At 09:49, the CM sent the link to NP, stating [1439]: *“Hi. This article has just appeared. A civil claim has been filed in Spain (in Ceuta) by the families of the deceased in the incident with the RGP off the Eastside. This is obviously going to cause us huge issues. Damages claims, political problems etc. I am totally there to support the officers on the front line. I am starting to have huge concerns about the senior management of the RGP. ....”* The CM also referred to his *“huge concerns”* about the RGP’s leadership, as detailed above, which triggered the process of IM’s retirement.
208. On the same day, Robert Fischel QC of Verralls sent a letter to IM on behalf of Don Nordin Dris Lahsen, one of the injured RHIB crew members (**“the Fischel Letter”**) [C3762]. The Fischel Letter stated: *“We are instructed ... to pursue on his behalf a claim for damages consequent on injuries”* and stated *“it is important that we establish at the outset whether or not the penetration of an RGP vessel into Spanish waters was authorised or requested by any of your Spanish counterparts”*. On the face of the Fischel Letter, it is not clear whether these claims would be pursued in Spain or Gibraltar. IM describes this as a *“letter before action”* (McGrail 3 para 108 [A89]), but considerable is submitted that is not an accurate description of the letter, which was very brief and did not set out a case in detail.
209. IM replied with a holding response on the following day (15 May 2020), stating that he had allocated the matter to Supt Cathal Yeats so that counsel could be instructed to represent the RGP [C3814]. Ms Michelle Hook (IM’s personal assistant) forwarded the Fischel Letter to Supt Yeats at 10:23 [B2592].
210. At 09:59, NP emailed the FCDO [C3904] stating *“the CM has now informed by WhatsApp the senior wider group of the filing of a case as per the attached”*. NP attached a copy of the *El Faro de Ceuta* article. In a follow up email at 14:04, an FCDO colleague stated that *“For the wider chain, the CM’s WhatsApp message is as follows: ‘I am very concerned about the effect that this can have. ... We must be entirely transparent on this to the interior ministry, the Ceuta autonomy and the families, to ensure we grow the relationship from this and not hamper it. I am minded to seek a report from the RGP (I have the power to do this under the Police Act). There is also a pending inquest, although it may be ultra vires, given the incident happened well outside BGTW.”* The Inquiry does not have disclosure of the *“senior wider group”* WhatsApp messages, and has requested further disclosure of this.

211. NP added to the FCDO [C3904]: *“I am meeting the CM later today to discuss this and other issues relating to the behaviour of the RGP and in particular its leadership. I’ll report thereafter. Needless to say, he is extremely worried about many aspects of the case which we agreed is not good news and will require extremely careful handling. As you may remember, the Met Police carried out an independent investigation into the RGP operation. We’ve asked for sight of their report.”*
212. At 11:39, Supt Yeats emailed the DPP informing him of the Fischel Letter [C3801], seeking a meeting in the following week to discuss how to progress the defence of the claim. It does not appear that the Fischel Letter was sent as an attachment to this email. A meeting was arranged for 19 May 2020.
213. On 18 May 2020 at 13:25, the DPP sent a WhatsApp message to the AG stating: *“I have a meeting with the RGP tomorrow regarding the claim filed in respect of the death at sea – I will update you immediately after that so that we can discuss.”*<sup>6</sup>
214. On 19 May 2020 at 09:06, Supt Yeats sent the “letter of claim” (which CTI understand to mean the Fischel Letter) and the RGP’s acknowledgment of receipt to the DPP [C4027]. The DPP responded at 09:35 asking *“Is this all we have at the moment?”*, and Supt Yeats responded at 09:37 stating *“with respect to the claim, yes”* [C4027].
215. At 12:00, Supt Yeats met the DPP to discuss the claim referred to by Mr Fischel. Supt Yeats’s evidence is that: *“[the DPP’s] view was that his office was not in a position to act for the RGP to defend the claim as a conflict of interest would arise ... the DPP would discuss the matter with the Attorney General and revert”* (Yeats 1 para 15 [A635]). After the meeting, the DPP messaged the AG asking if they could discuss.<sup>7</sup> IM’s understanding of this situation was that the DPP consulted with the AG on who should represent the RGP, and then the DPP asked Supt Yeats to write to the AG seeking the AG’s views on representation (McGrail 3 para 108 [A89]).
216. At 14:12, Mr Fischel sent another letter to Mr Yeats [C4031, C4029], stating:
- a. The “seminal request” for the RGP is *“whether or not there had been a request from the Guardia Civil to pursue the RHIB the subject of the collision or whether*

---

<sup>6</sup> To be added to Bundle C.

<sup>7</sup> To be added to Bundle C.

*there had been any permission granted for the Sir John Chapple or any other official vessel belonging to authorities in Gibraltar, to enter Spanish waters.”*

- b. *“... we should be obliged if you would let us have the full names of the crew of the Sir John Chapple on the night of collision ... The reason for this is we are required to issue a letter before action before we issue proceedings claiming damages for personal injury and loss sustained by our client Don Nordin Dris Lahsen...”*
- c. *“... we anticipate being instructed by the families of the deceased as well as the fourth person aboard the RHIB.”*

217. On **20 May 2020** at 09:30, Supt Yeats telephoned the DPP. Supt Yeats states that the DPP told him the AG agreed with his view about the conflict of interest, and that Supt Yeats should write to the AG directly (Yeats 1 para 18 [**A635**]).

218. At 12:13, Supt Yeats emailed the AG (copying IM), stating:

- a. IM had received correspondence with regard to a claim for damages.
- b. The DPP and Supt Yeats had met to discuss the RGP’s representation, and concluded that it was not appropriate for the Office of Criminal Prosecution and Litigation to do so.
- c. Supt Yeats *“would be grateful for your authority to appoint counsel”*.
- d. Claims against the RGP have generally been handled by Government. Supt Yeats asked *“do you wish this to be the case in this instance or should we manage it ourselves together with appointed counsel?”* [**C4088**]

219. IM’s evidence about this email is that it was not a “direct request for funding”, but one seeking advice from the AG about how to proceed (McGrail 5 para 89, [**A161**]). The AG forwarded that email to the CM at 13:49 [**C4088**]. IM states that this was not his intention: the purpose of the email had been to seek advice from the AG before the potential need to engage the CM and HMGOG (McGrail 3 para 111, [**A91**]).

220. At 14:15, the CM responded to the AG stating [**C4090**]:

“I think it is entirely inappropriate for this matter not to have been raised with me in the first instance by the Commissioner.

This matter raises issues of fundamental human rights, the right to life, potential payment of huge amounts of damages, the potential extradition and liberty of serving police officers being at stake, the issue of Standard Operating Procedures which may be in place and the management thereof. All of that is in addition to the huge potential political exposure that arises for Gibraltar as a result thereof and the concomitant (and dangerous) issues of sovereignty and the United Nations Convention on the Law of the Sea.

Indeed, it is difficult to think of an issue as fundamental as this affecting the RGP, certainly in the time I have been in office. There is no consideration in the email below of claims or offences going beyond “the officers crewing the vessel”, which is also, in my view an issue that may also need further consideration.

... I am therefore surprised and greatly disappointed that these issues have not been the subject of a detailed submission to me by the Commissioner in respect of the events in question and the issues which now arise.

I shall therefore be writing directly to the Commissioner on this and all other aspects of this matter. In the interim, I do not authorise the incurring of any expenditure in briefing out of this matter at this stage. ...”

221. At 14:16, the CM forwarded his email to NP, stating “*Given our ongoing discussions, you need to be aware of the below.*” [C4096]

222. At 15:27, the AG forwarded the CM’s email to Supt Yeats and the DPP [C4101]. At 16:06, Supt Yeats then forwarded the email to IM [C4101]. IM then responded directly to the CM at 17:53 stating:

“You are evidently very disappointed but I want to reassure you that it has never been my intention to withhold anything from you concerning this very serious matter. I provided you with an overview on the day of the incident, then engaged with the AG as per your suggestion and have been doing so ever since. I will hopefully be in a better position to brief you on the full details of the incident once I receive the report of the findings of the independent investigation team we called in. This team had to return early to the UK because of the COVID-19 crisis and



because of the lockdown in the UK, they have been unable to progress the matter as expeditiously as we all would have wanted.

The letter from local counsel representing the families and suggesting a future claim for damages was only received a few days ago which is what triggered our enquiry with the DPP only yesterday concerning legal representation. I am of course available to discuss all the points you allude to at your earliest convenience.”

223. The CM’s evidence is that he considered IM was “*making excuses for not having provided [the CM] with timely information about the claims*” and was “*even more disappointed to learn that the RGP had received the damages claims ‘some days earlier’*” (Picardo 1 para 78 [A204]).

224. At 18:34, IM messaged the AG asking “*I honestly do not know why [the CM] has reacted like this. Have you briefed him of our meetings we’ve had on the matter?*” The AG replied: “*He is aware you and I have spoken about this. ...*” (McGrail 3 para 113, [A92]).

225. The CM forwarded IM’s response to the AG [C4112] and NP [C4117]. To NP, the CM stated: “*Given the seriousness of the matter, I would appreciate the opportunity to discuss with you my intended response. I consider this is a trigger the only appropriate response to which will be the exercise of my powers under s.15(1)(a). Happy to speak later or tomorrow...*”

### **The Section 15 Report**

226. Pursuant to s15 of the Police Act, the Chief Minister may “*require factual or assessment reports from the Force or the Authority on any policing matter*” within 7 days.

227. On 19 May 2020 at 11:44, the CM sent NP a message via WhatsApp asking: “*...what’s your instinct on the 15(1)(a) report? Shall I seek it given Met report isn’t imminent? I am in two minds.*” At 12:15 NP replied: “*I’m sure (or hope) CoP has done his own internal investigation and therefore has an internal report. You could a) ask on the basis of the claim being filed as the peg or b) wait until say Friday to see what Joey comes up with.*”

*Slight preference to leave this to the GPA but worried they will not be timely enough. Using 15.(1)(a) would speed things up and on balance, I'd go for that.* [B1441]

228. On 21 May 2020, the CM wrote a letter to IM exercising his s15 powers [B1250, B1257]. This letter was copied to JB, NP, the Minister for Justice, the AG and the DPP [B1257]. The CM referred (amongst other matters) to the email communications regarding the legal claims on 20 May 2020, and concluded: *"I have no confidence that you have expeditiously provided me with all the information and documentation that I should have been provided with ... I have no confidence that either the Government or the office of the Governor (with whom I have discussed this matter at length) have had the timely candor and transparency that we would have expected from you..."* [B1251]. The letter referred to the following "concerns":

- a. The fact that the incident took place outside BGTW. The CM requested information about whether the RGP was operating inside Spanish waters at the invitation of or with express/tacit consent of the Spanish [B1253].
- b. The welfare of the RGP officers and the potential for multi-jurisdictional legal action against them [B1253].
- c. The "very large potential claims in damages against HMGoG" [B1254].
- d. "Serious issues as to the operational welfare of officers of the RGP at sea" [B1254].
- e. "The events in question can provide grounds for a serious setback in Gibraltar in the context of the relationship with our Spanish counterparts at a political level" [B1254].
- f. "The sovereignty implications for Gibraltar and the United Kingdom" [B1254].

229. IM has commented that this letter was "completely at variance" with the WhatsApp discussions in the Maritime Incident WhatsApp Group (McGrail 1 para 70 [A27]).

230. The Section 15 Report is dated 27 May 2020 [B1271], but IM sent it to the CM on 28 May at 16:21 [C4429]. This was within the 7 days requested by the CM. The CM's evidence is that he received the Section 15 Report on 29 May 2020 (*"it was provided to me in my office on the 29<sup>th</sup>"*) (Picardo 2 para 8.1, [A222]), but the timestamp of the email is 28 May. That is an issue which can be resolved in questioning. IM states that to date he has received

no acknowledgement of receipt or any comments or feedback on the report (McGrail 1 para 71 [A27]).

231. The Section 15 Report set out a detailed timeline of the Incident, which has been incorporated into the timeline above regarding the location of the collision. However, the following additional matters in the Report are worth noting:

- a. IM stated that “*I have briefed the Hon Attorney General on several occasions (as suggested by you from the outset), appraised the Chairman of the Gibraltar Police Authority and consulted with the Director of Public prosecutions...*” [B1271]
- b. “*At the relevant time this information [the coordinates of the collision] was not available to the Command Team as the police interceptor’s AIS had not been activated. This was contrary to standing orders. It was assumed that the collision was likely to have taken place outside of BGTW as the radar screen of the suspect vessel displayed coordinates indicating this, but this required technical confirmation.*” [B1272]
- c. “*The intelligence picture at that stage was unclear and confusing with the limited facts recounted by the PMB crew being out of sync with other facts. Such confusion is common in the initial stages of serious investigation...*” [B1273]
- d. After a critical incident was declared, the “*fast track actions*” that were commenced included: “*Need to determine location of incident ASAP*” [B1276]
- e. WHSS had recorded the chase through infrared thermal cameras, and were able to place the chase outside BGTW by referencing vessels anchored out at sea and captured in the footage [B1285].
- f. There was no evidence to suggest that there was any actual invitation to enter Spanish Waters, and to accept such an invitation would contravene RGP instructions [B1294].
- g. The RGP’s Marine Section Training included a module on “*International Rules for Prevention of Collisions at Sea*” [B1297].
- h. There have been many instances where the RGP has undertaken chases at sea, but the moment the vessel departed Gibraltar waters the RGP “*disengaged*” [B1301].

232. The CM’s view is that “*it is clear from the timeline of communications that [he] was being told one thing about the location of the incident, hours after it had occurred, and that the*

*Governor was not given the same information until three days later” (Picardo 1 para 86 [A206].*

## ISSUE 4: THE HMIC REPORT

### Relevant facts

233. The 2016 HMIC Report reported as follows:

- a. On 'Leadership, vision, values and culture':
  - i. The RGP was "*generally well led. Senior officers were visible and had a good oversight of policing activity*" [B1517].
  - ii. The Commissioner (at that time Mr Yome) "*adopted an open, transparent and constructive approach*" [B1517].
  - iii. There was "*professional and formal, yet supporting and open, engagement between senior officers and other staff*" and "*when mistakes were made, the emphasis was on putting the matter right and learning from the experience rather than finding blame*" [B1518].
  - iv. There was "*strong evidence that senior officers were committed to improving how the force operates concerning values and standards*" [B1519].
  - v. Members of the public "*reported a high level of confidence in the force in general*" [B1520].
  - vi. The inspection team "*did not encounter any suggestion of bullying or harassment*" [B1522].
- b. On 'Crime prevention, investigation and victim care':
  - i. "*Generally, the prevention and investigation of crime and care for victims was effective*", but there were five areas with scope for improvement (auditing of crime records, recording practice for detected crime, supervision of investigations, identification of vulnerable and repeat victims, and extent of partnership working [B1523].
  - ii. The case file review revealed "*various examples of good police work and appropriate decision-making*", but "*there were examples of inadequate investigations*", for example a complaint of harassment which was not fully investigated [B1527].
  - iii. Overall, the evidence revealed "*a force that is working with the public in an effective way to prevent crime*". However, this was offset by findings about limited evidence of crime auditing, the recording practice for detected crime (which could lead to a false impression of detection rates), the

insufficient level of supervision of crime investigations, the RGP's approach to identifying vulnerable and repeat victims, and the extent of partnership working [B1540].

iv. There was "*scope for the force to improve its effectiveness*" [B1540].

c. On 'Demand and resources':

i. The RGP was "*committed to meeting all demands, which led to high levels of public confidence and satisfaction but placed major pressures on the workforce*" [B1531].

234. The 2016 HMIC Report identified eight areas for improvement by the RGP. All bar one are addressed to actions required by the Commissioner (the eight being addressed to the Minister for Finance):

- (1) By July 2016, the Commissioner should augment the existing arrangements for crime recording by establishing and beginning operation of a comprehensive system for auditing crime records. Audits should be conducted regularly and led by a senior officer.
- (2) By July 2016, the Commissioner should align the counting rules policy more closely with Home Office standards, in particular those concerning the recording of detected crimes where multiple offences have taken place in single incidents.
- (3) By October 2016, the Commissioner should ensure that robust arrangements for the supervisory oversight of investigations are introduced. These arrangements should include the creation of investigation plans, regular supervisory checks and constructive challenge to decisions by officers concerning investigations.
- (4) By July 2016, the Commissioner should define in policy and procedures how vulnerable and repeat victims will be identified, how risks to them will be assessed and how appropriate support will be provided. Operation of the policy and procedures should begin as soon as possible thereafter.
- (5) By October 2016, the Commissioner should agree with the Authority a policy and procedure to prioritise - and in so doing match - resources to demand, particularly for response teams.
- (6) By October 2016, the Commissioner should establish an effective way to assess how busy the force is likely to be, by using a range of tools to understand daily calls for service and patterns in their demand.

- (7) By October 2016, the Commissioner should compile a comprehensive prediction of future demand. This should be used to define the capacity and capability the force will need, which will enable the creation of plans for funding, skills, structure, estates, information and communication technology and other equipment.
- (8) By July 2016, the Minister for Finance should set out the funding formula, including the associated criteria, thresholds and conditions that need to be met for resources required to police Gibraltar.

235. IM's application for the role of CoP dated 2 November 2017 noted that some of these recommendations had already been addressed, but that some still required action. He stated "*it is imperative that a working group is created*" to address the recommendations in the 2016 HMIC Report. He identified as the "*most pressing area*" the "*creation of manual guidance which should represent Force policy in crime investigation standards*" [C593]. In the "*Action Plan*" appended to his application, IM identified addressing the 2016 HMIC Report recommendations as one of his "*Key Actions*".

236. IM's application also included an "*Action Plan*" to address 5 areas of focus that IM identified for the RGP: effective service delivery, improving community safety, working with others, people development, and workplace development [C588]. The Action Plan [from C597] included addressing the 2016 HMIC Report recommendations as one of 12 areas requiring action. Under that heading, it identified two "*Key Actions*". The first of these was: "*A working group to complete addressing of all areas for improvement highlighted in 2015 inspection*", which he said should commence "*ASAP*", with a completion date of 1 March 2019 [C599]. In the 29 May 2020 letter, IM appears to accept that a working group was not established. However, the letter states: "*as a result of the unprecedented demand placed on the RGP during 2019, the RGP has been addressing the issues raised in the Report by merging them with daily work practices*", and highlights the fact that IM had provided the Authority and the Minister of Justice with a comprehensive road map for implementing the 2020 report [C4594].

237. IM assumed the role of CoP in May 2018. In August/September 2018, IM decided to ask the GPA to request HMICFRS to conduct an inspection. IM has given the following evidence on his decision to request an inspection:

- a. It is not mandatory for the RGP to submit itself to inspections by HMICFRS, as is the case with UK Home Office police forces, but that it is common for the RGP to voluntarily request inspection every “4 years or so” (McGrail 3 para 15 [A54]). This does not appear to be in dispute.
  - b. When IM decided to ask the GPA to request the inspection, he “*was fully cognisant that there were pending recommendations from the previous inspection report of 2016 which needed actioning*”. However, IM felt it was “*imperative to demonstrate openness, transparency and progress*” following criticism in *Panorama* about the RGP, the GPF survey results (see Issue 6 below), and the “*apparent discontent amongst the rank and file with complaints of bullying*” (McGrail 3 para 16 [A54]).
  - c. In September 2018, IM visited HM Inspector Matt Parr in London, who assured him HMICFRS had no concerns about how the RGP was functioning and “*applauded the desire to be inspected*” (McGrail 3 para 25 [A58-9]).
  - d. The terms of reference for the inspection were designed to supplement areas akin to the concerns expressed in the GPF survey results and internal service delivery, rather than a “*full baseline inspection*” which IM had been told was beyond the GPA’s budget for the inspection (McGrail 3 para 27 [A59]).
238. RU (who at the time was Assistant Commissioner) gives evidence that when IM told the Command Team of this decision, “*we all opposed it; simply because we knew that, whilst progress had been made in such areas we had not done enough to achieve the recommendations or areas of improvement of the previous 2016 inspection*” (Ullger 1 para 42 [A541]). IM went ahead “*Notwithstanding our concerns*” (Ullger 1 para 44 [A541]). RU adds that in collecting the evidence “*it became apparent to me that my concerns were indeed confirmed, and that we hadn’t done what was expected of us. This was further highlighted to me by HMIC Paul Holewell before his visit to Gibraltar*”. Supt Yeats confirms RU’s evidence, stating: “*The entire command team at the time, which comprised of AC Ullger, Supt Richardson, Supt Lopez, Supt Tunbridge and I were uncomfortable with the suggestion ... whilst we felt that it would help to address the bullying issue, the consensus was that not enough progress had been made to address the recommendations of the 2016 HMICFRS Report. We felt that this would expose the organisation to renewed criticism.*” (Yeats 1 para 31 [A638]). IM also acknowledges that JB expressed concern about submitting the workforce to two inspections: a private consultancy inspection by AAP Associates and a HMICFRS inspection (McGrail 3 para 24 [A58]).



239. The on the ground inspection was conducted on 14 to 18 October 2019. IM states that he and RU were briefed by the HMICFRS team at the end of the inspection visit, and that the RGP was “*made aware of some of the areas they were going to provide recommendations on but at no point did Mr Holewell intimate in the slightest any area which in their view raised serious concerns*” (McGrail 1 para 29 [A60]). RU adds that the debrief gave a “*relatively positive outlook for the organisation, but also acknowledging that some of the recommendations had not been addressed from the 2016 inspection, stating that there would be further recommendations arising out of this*”. He states that he was “*relatively surprised at those positive comments*”, and expressed the view to IM that his decision to ask for an inspection had been “*the right decision after all*” (Ullger 1 para 45 [A541]).
240. A draft of the Report was shared with IM and RU in February 2020 for fact checking (McGrail 3 para 30 [A60], [D1152]), which IM shared with JB. They exchanged WhatsApp messages about their response to the draft, with JB asking IM to inform HMICFRS that “*the GPA will question the comment about the point they make about not having an appetite for modernisation... if GPA has no appetite then why request an inspection*” [C6552]. JB also sent an email to HMI Holewell on 24 March 2020 (which he forwarded to IM on WhatsApp [C6556]), stating: “*I can only say that I found the language used to be quite unfortunate and I’m quite sure the same message can be conveyed in a more constructive tone, especially when referring to issues such as ‘corruption’*”. JB sent a follow up email stating “*the GPA will work with the RGP to ensure that every effort is made to address the points and areas for development raised in the report, in any case*” [C6557].
241. On 9 April 2020, the final version of the 2020 HMIC Report was sent to the GPA and IM. HMICFRS reported that all of the 2016 recommendations bar one remained areas for improvement, and additionally improvements were required into ethical behaviour, culture and values and increasing the Force’s understanding of the risk of corruption. The letter noted that “*as with all non-statutory inspections, the decision to publish is yours.*”
242. The conclusions of the 2020 HMIC Report were that:
- a. The RGP met “*two out of eight areas for improvement*” identified in the 2016 Report. However, a closer review of the Report suggests that only one area for improvement was met (namely area 2, counting rules).
  - b. The other seven areas identified in the 2016 Report still required improvement.

- c. There were nine new areas for improvement (Annex A), accompanied by ten new recommendations (Annex B).

243. The 2020 HMIC Report concluded that the RGP “offers a good level of service. But there are areas where it could improve...”, and “we expected to see that rather more had been achieved when we revisited in 2019” [B1556]. The Report found “the force isn’t as effective or efficient as it could be”, “poor and outdated practice often curtails officers’ effectiveness” and there was “little incentive for the force to become more efficient and effective”, and “limited appetite to challenge [the force] culture or modernise” [B1556]. As to each of the areas of improvement identified by the 2016 HMIC Report (the same numbering is adopted as in relation to the 2016 HMIC Report above):

- (1) As to crime recording, the RGP’s 2019 audit conducted by RU had “highlighted similar problems to those ... found in 2016” [B1557], for example incorrect classification of crimes, absence of necessary information in crime reports, supervisors not checking crime reports well enough, and not employing “dip sampling”.
- (2) The RGP’s counting rules now aligned more closely with Home Office rules – this had addressed the area for improvement.
- (3) As to supervisory oversight:
  - i. There was greater supervisory involvement than evident in the 2016 inspection, but this had caused delay in case files being submitted to Crown Counsel. These problems more acutely affected officers from response teams than specialist units.
  - ii. The RGP had not provided all officers who investigate or supervise criminal investigations with enough training or CPD.
  - iii. The RGP did not have a crime allocation policy, meaning inexperienced officers had been investigating serious crimes.
  - iv. Specialist units were stretched to capacity (safeguarding and economic crime). The Economic Crime Unit did not have the resources to conduct investigations commensurate to Gibraltar’s risk profile.
  - v. Officers were using their personal devices to examine offenders’ phones, which was not good practice.
  - vi. The relationship between RGP and Crown Counsel was effective and professional, but not always efficient.

- vii. The RGP “*should do more to make sure that victims of crime get the service they need*”. There is no Code of Practice for Victims of Crime, as introduced in the UK in 2016.
- (4) As to victim identification and assessment, there were still areas for improvement.
- i. The RGP did not have a definition of vulnerability.
  - ii. The RGP had introduced the “THRIVE” risk assessment and officers appeared to be using this appropriately, but the RGP lacked comprehensive processes to routinely risk assess all potentially vulnerable victims.
  - iii. The dispatch system did not flag if a caller was a vulnerable or repeat victim, and did not allow searches against names and addresses to establish if a repeat or vulnerable victim is involved.
  - iv. The RGP’s response to reports of children absent from care homes was not “*as good*”, and the RGP should supervise this more closely to guard against vulnerable children becoming involved in criminality or being sexually exploited.
  - v. Not all of the RGP force understood the policy on body-worn video.
  - vi. The RGP worked well with partner organisations, but there were two notable absences: namely no youth offending team or victim support team.
- (5) As to resourcing and demand:
- i. The RGP had taken steps to better match resources to demand and had “*made progress*”, but “*should do more to systematically apply these principles and make best use of its resources*”.
  - ii. The RGP was appropriately grading and responding to most emergency calls, but the procedures for recording these assessments were not consistent.
  - iii. A sizeable portion of police officer resources were being used to support work that could be done by others, such as directing traffic at the border, marine call outs, guarding remand prisoners at court, and escorting vehicles.
- (6) As to developing tools to predict how busy the force is likely to be:

- i. Shortcomings in the RGP's IT systems limited its ability to understand demand. The RGP had made "*limited efforts*" to monitor and review demand, but did not have a comprehensive understanding of all demands.
- ii. The RGP had made progress in matching resources to demands it was aware of, including adjusting shift patterns, but that had been at a cost to neighbourhood policing.
- iii. Officers were stretched and carrying heavy workloads, and used a high level of overtime.

(7) As to mapping future demand:

- i. The increase in police officer numbers gave the RGP a "*significant opportunity to change the way it polices*", and it was "*vital that the force manages and leads this change effectively*".
- ii. The RGP had not analysed likely future demand, and did not have a comprehensive understanding of current workforce skills.
- iii. The RGP should design processes to structure and measure training needs.
- iv. The RGP should "*develop overarching plans to give leadership and direction at this critical period of change so that senior leaders and the GPA can oversee and manage the change effectively*".
- v. The RGP had no IT strategy to guide future planning and investment.

(8) As to the RGP's funding arrangements (directed at the Minister for Finance):

- i. The Commissioner had "*little ability to influence how resources are allocated yet is accountable for managing the budget. The Commissioner doesn't have a senior financial manager on his leadership team.*"
- ii. The RGP could only conduct short-term financial planning. As a result, it was very difficult for the GPA to develop longer term change plans.
- iii. There was no incentive for the RGP to reduce spending as overspends were covered by Government.
- iv. The Minister for Finance (at the time, the CM) had not set out a funding formula, which limited the RGP's ability to conduct financial planning.

244. The 2020 HMIC Report also addressed the new topics of "*Ethics, values and culture*" and "*behaving ethically and lawfully*". The Report found:

- a. The RGP had introduced a new code of ethics (a verbatim copy of the College of Policing Code of Ethics) but had not adopted large sections in its procedures and policies, and some RGP policies contradicted it. The Code of Ethics was not fully integrated across the force and many officers did not understand how to apply it. The new code was not yet fully integrated across the force, with many officers not understanding how it applied to their work.
- b. The RGP had not recognised the potential for employees to abuse their position for a sexual purpose, and unlike UK forces had not briefed or trained its workforce on this issue.
- c. Management behaviours may have amounted to bullying “*in a small number of instances*”. The Report referred to surveys conducted by the GPF, stating: “*A perception exists among an apparently large number of officers that some senior officers sometimes behave in an unacceptable manner when dealing with their staff. Whether true or not, this perception is a cause for concern.*” The Report recommends that: “*HM Governor and the GPA should support the commissioner and the force in resolving this problem to ensure that any unacceptable behaviour is dealt with.*” The area for improvement states that: “*With immediate effect, the Royal Gibraltar Police’s senior leadership team should produce an anti-bullying statement and improve the force’s processes to prevent bullying.*”
- d. Many junior officers perceived that some senior officers were “*sometimes too ready to apportion blame when something goes wrong*”, although the inspectors were unable to determine whether there was a “*blame culture*” within the force. That said, on the whole, the RGP was “*professional, committed and enthusiastic about their work*”.
- e. The RGP’s register for monitoring gifts and hospitality for RGP officers was not being used routinely.
- f. The RGP did not have a consistent approach to vetting recruits or those seeking promotion or moving post.
- g. The RGP did not have confidential reporting mechanisms for issues like poor behaviour, bullying and abuse of power for sexual gain.

245. On the issue of corruption (which was specifically noted by the CM and NP as a reason for losing confidence), the 2020 HMIC Report found:

- a. The RGP was not doing enough to counter the risk of corruption, and should do more to protect the public, its organisation and staff from corruption and allegations of corruption.
- b. *“The issue of corruption, even at a low or subconscious level, didn’t appear to be a concern for the force.”*
- c. *“The force doesn’t fully understand its exposure to the risk of corruption.”*
- d. The force was also unable to proactively identify individuals who were corrupt or susceptible to corruption, representing a risk to the force.
- e. The force was also unable to proactively identify individuals who were corrupt or susceptible to corruption.
- f. The RGP workforce lacked a thorough understanding of the risks and signs of corruption.
- g. It is not routine practice in Gibraltar to record, monitor and review business interests in police forces.
- h. There was no clear and well applied policy on reporting notifiable associations.
- i. The RGP’s policy that individuals should recognise any risk and manage it themselves *“isn’t appropriate and increases officers’ personal exposure to allegations of corruption”*.
- j. The Professional Standards Unit lacked resources and expertise to understand, monitor and mitigate the threat.
- k. Better vetting, business interests and notifiable associations policing, plus effective use of ICT auditing could be used to mitigate the risks.

246. IM commented on the Report as follows in his evidence:

- a. *“Although in places the report is critical, there is no express criticism of myself”* (McGrail 1 para 74 [A27]).
- b. The Report’s “Overview” stated that *“the Royal Gibraltar Police offers a good level of service to the public”* [B1556], and the Report describes the workforce as *“professional, committed and enthusiastic”* (McGrail 3 para 146(i)(a) [A109]). IM refers in particular to p.7 of the Report, which states: *“limited resources and poor quality technology and infrastructure have delayed progress as have competing demands”*, and also points to a lack of legislation on domestic abuse until July 2023 and other failings on the part of Government, including a failure by the CM to set out a funding formula (McGrail 5 paras 93-8 [A162-3]).

- c. Support from HMGoG which was required to have support staff take over non-core policing roles and to make cost savings arising from the appointment of GFP conveners was “*not forthcoming*” (McGrail 3 para 146(i)(b) [A109]).
- d. The recommendation as to the RGP not fully understanding its exposure to the risk of corruption was a new recommendation in the Report, and not outstanding (McGrail 3 para 146(iv)(b) [A112]). The recommendation was being addressed by a number of measures, including investing in the training up of officers specifically on counter corruption and devising appropriate policies (McGrail 3 para 146(iv)(d) [A113]). He experienced certain situations where HMGoG’s intervention seriously conflicted with the RGP’s efforts of setting example with those officers who had behaved in a corrupt or improper manner (McGrail 3 para 146(iv)(e) [A112]). Ultimately, IM states: “*I do not associate myself with the parts in the report that suggest that the RGP was not alive to corruption. It is regrettable that the inspecting team has seen it that way without delving into the detail or enquiring how the RGP have dealt with corruption in at last the 36 years I have served*” (McGrail 3 para 170N [A136]).
- e. The “*Action Plan*” appended to his application contained a total of 37 actions which he had committed to complete by May 2022, and by May 2020 he had completed 16 of those actions, and work had commenced in respect of another 10. There remained a further 11 actions to be completed, including the setting up of a working group. The GPA never carried out a review of IM’s performance against the “*Action Plan*”. Further, his application had also recognised that “*unexpected exigencies may warrant a review of these actions*” (McGrail 3 para 146(i)(c) [A109-10]).
- f. As soon as the Report was received IM submitted to the GPA and Minister of Justice a road map to address all the recommendations in the report and a rationale explaining why the recommendations had not been addressed. The GPA and Minister were content with IM’s approach to the matter and neither raised concerns (McGrail 3 para 146(i)(d) [A110]).
- g. IM also points out that in early communications in response to the Report, NP did not express any lack of confidence in him and his ability to see the recommendations through, and instead was considering IM to be part of the team to address the recommendations (email from NP to CM on 30 April 2020 [C3344]).

247. IM states that he shared the Report with his Command Team, and that they began to prepare a roadmap to achieve the recommendations (McGrail 1 para 31 [A61]). RU states that *“the upbeat comments in the debrief were not immediately reflected in the report and it disappointing when we read the report in its entirety”*, and that the SMT’s concerns about seeking an inspection were borne out by the report (Ullger 1 para 46 [A542]).
248. On 14 April 2020, JB requested to meeting IM and RU to discuss the Report [D2913]. On 20 April 2020, JB sent a WhatsApp message to IM stating that he had not yet shared the Report with anyone, but planned to send it to the GPA members that day, and the CM, NP and the then Minister for Justice (Samantha Sacramento) the following day [C6560]. JB shared with IM a draft email to the CM and the then Minister for Justice, which stated that the report made for *“uncomfortable reading”* in places, but that IM was keen to publish the Report: *“he is confident that he will be able to expound further on the report and answer any press questions with minimal negative coverage...”* [C6560-1].
249. On 22 April 2020, JB sent a WhatsApp message to IM stating that he would be sending an email asking for the RGP’s plan of action in response to the report and recommendations for the benefit of GPA colleagues [C6561]. JB sent this email on 23 April 2020 [D2310], and on 28 April followed up with a request that *“specific references are ... made to the reasons for the recommendations in the previous HMIC Report not being met”* [D2319]. IM sent the roadmap to JB on 29 April 2020 [C2388, C6749] and the MoJ Ms Sacramento on 30 April 2020 [C2458]. The Roadmap, dated 24 April 2020 [C6729] set out responses to each of the new areas for improvement identified by HMIC, and assigned a ‘Strategic Task Holder’ (in each case ‘AC’ which CTI understand to mean Assistant Commissioner) and a ‘Task Owner’ (a range of officers at various seniority levels).
250. It appears that a meeting was scheduled between the Minister for Justice, IM and JB on 29 April, which was rescheduled to 30 April [C6563]. The Inquiry has not received evidence as to whether that meeting ultimately took place, or its contents, which can be explored in questioning. However, on 29 April 2020 the MoJ messaged IM stating *“The report is shocking reading on the face of it, but if you analyse deeper it’s not that bad, and it has easy solutions”* [C6503].
251. Also on 29 April 2020 at 19:39, NP emailed JB stating: *“I’ve read the report twice. I don’t think it should be published in full. Let’s chat tomorrow”* [C3343].



252. Despite being sent the Report on 21 April 2020, the CM states that he was alerted to the “quite damning” nature of the report by NP on 30 April 2020 at 17:11. NP stated [C3344]: *“Having studied the report, I find it to be quite damning and it will need careful handling... My own sense is that HMIC were very disappointed indeed to find so little progress had been made since their last inspection. ... But I don’t think the issue is as bad as the headline suggests and believe it is an issue of culture and leadership more than anything else. Most of the issues should be relatively easy to fix though it will take collective effort, driven bottom up from within the RGP as much as from its leadership which needs to be both more strategic and directive”*. He added: *“the inspection report will undoubtedly become public at some stage. It is important therefore that we (Commissioner, GPA, CM, Governor) are all ready to respond collectively ... This means being upfront and honest about the challenges as well as displaying a commitment to put things right...”*. NP proposed that given the CM’s “pre-occupation”, NP could take this forward with JB and the Chief Secretary. The CM states that he replied at 17:28 agreeing with this proposal (Picardo 1 para 105 [A215]), but the Inquiry has not seen a copy of this reply.
253. On 5 and 6 May 2020, JB and IM exchanged messages in which they discussed getting confirmation from Government that the Report could be made public. On 5 May 2020, IM emailed the CM, NP and MoJ about the HMIC Report, stating he had *“no major issues with the report being made public”* and attaching a press-release in anticipation [C3420]. NP responded on 6 May stating that *“It is right that we look to get ahead of this and be proactive rather than reactive. Can I suggest therefore that publication of both the report and your statement be arranged as soon as possible...”* [C3420].
254. The CM did not respond to that email, which he attributes to the pressures of the lock-down and COVID restriction period (Picardo 1 para 107 [A216]). However, IM states that he *“was informed by the GPA Chair that the CM had eventually given him direct confirmation that it was ok to make the report public”* (McGrail 1 para 39 [A63-4]). This may relate to a WhatsApp message from JB to IM stating *“I got direct confirmation that it’s OK”* [C6567], but it will need to be confirmed in questioning who provided this direct confirmation.
255. IM received a number of private messages of support about the 2020 HMIC Report after it was published on 7 May (McGrail 1 para 76 [A28]). That is supported by the following:

- a. On the day of publication, IM and JB liaised about responses to press questions [C6567-9]. On 8 May 2020, JB described the *Chronicle's* headline as “a bit sensationalist” but that “I suppose it could have been worse! We just have to carry on and ensure that as many of the recs are addressed as possible in the time frame” [C6569-70]. JB added “and where these can’t be met, we have to ensure we have recorded the reasons”.
- b. On 9 May 2020, IM received a WhatsApp message from Mr Neil Costa (the former MoJ), who stated: “My dear Ian. I cannot imagine that with all of your hard work and untiring dedication that the report made for pleasant reading for you. For what it may be worth, I will forever vouch for your integrity, honesty and professionalism. If ever I can be of any assistance to you, you know where I am. With kind regards, Neil.” [A62]
- c. On 9 May 2020, IM also received a WhatsApp from Lt Comm Davis, who stated: “just to let you know I'm thinking of you and the Force as you lean into taking forward HMIC's report. Given the resource/capability pressures of assuring such a small national Force, I judge the headlines are fundamentally positive being in step with the Force's unique challenges. But never an easy read for the leadership and officers as such reports, purposely, focus on shortfalls not successes. Corruption? Well, nothing wrong with tightening mitigation even if it's not a problem today. So, as I know you and the RGP will, charge on by embracing - adapting - progressing. Rooting for you from afar, as always, as you walk that path with belief and pride.” [A63]
- d. On 10 May 2020, IM and the then Minister of Justice (“**MoJ**”), Samantha Sacramento, appeared together at a daily public briefing on the Covid-19 Pandemic. After a question was asked by a journalist in relation to the Report, the MoJ pledged her support to IM in implementing the recommendations (McGrail 1 para 42 [A64]).
- e. JB messaged IM after the press conference stating “very good answer from you and brilliantly followed up by MoJ” [C6570]. JB added: “by the way, she [MoJ] told me privately what she said in public about supporting.” IM replied “it’s very kind of her indeed and I thanked her after the briefing ... Neil sent a great message of support yesterday which I really appreciated. So did Ed Davis and other prominent people in Gib. ...” JB asked if the CM had said anything, to which IM replied no [C6570].

256. On 14 May 2020, IM appeared on *Viewpoint* to be interviewed by Jonathan Scott about the HMIC Report [C3764].
- a. On the issue of corruption, IM stated: *“And never, ever has corruption been swept under the carpet here or any indication of any corrupt activity swept, on the [contrary]. If I can reassure the public is that when there is a whiff in the New Mole House of any potential corrupt officer, we ourselves go to town more on that than what we would on a normal criminal because we know the impact this would have, the adverse impact this would have on public respect towards the police and public opinion towards police.”*
  - b. When asked about when the RGP planned to take action, IM stated: *“Well, we’ve got a timeline which has now set a roadmap for the recommendations to kick into place. The seed has sort of been planted. We are living with this every day. So we are under a sort of commitment to the Police Authority to Gibraltar. ...”*
  - c. IM concluded that: *“we value that we submit ourselves to this external audit for the benefits of progression and development. It would be very easy not to call them in and to remain in a plateau but why do that if we are aspiring to develop and improve? Why? Why hide away from submitting yourself to that type of audit.”*
257. On 17 May 2020, it appears that the CM met with Mr Lewis Baglietto KC of Hassans. This meeting is addressed in detail in relation to Issue 5 below, but at the time the CM sent Mr Baglietto an image by WhatsApp, stating *“That is page 13 of the HMIC Report published last week. Look at the bit I have highlighted in red. Boom.”* [B1423] Although the CM was unable to provide a copy of this image due to technological restraints, it has since been disclosed by the AG, and reveals that the underlined passage states: *“We found officers using their personal devices to examine offenders’ phones. This isn’t good practice and doesn’t meet best evidence standards.”* (This corresponds to [B1562]).
258. On 18 May 2020, the CM sent a transcript of the *Viewpoint* interview to NP, when he provided his comments on the criteria in s34 of the Police Act [C3958]. NP thanked the CM for the transcript. NP added that he would *“dig out the 2015 HMIC inspection report not least for comparative reasons but also in view of the position the Commissioner held at the time”* [C3958].

259. IM states that there was no criticism made of him relating to the report, either privately or publicly, until the GPA's second letter of 22 May 2020 (McGrail 1 para 77 [A28]). IM would not have been aware of the email sent by NP to the CM on 30 April about the "*damning report*" – see above [C3344]. However, the CM's email dated 20 May 2020 to the AG (ultimately forwarded to IM on the same day) regarding the civil claims arising from the Incident at Sea did refer to the "*backdrop of the very unflattering report of the HMICFRS*" [C4090]. IM acknowledges this in McGrail 3 para 111, although he puts this down to the CM's "*anger about the conduct of Operation Delhi*" [A91].
260. HMICFRS returned to Gibraltar in April 2022, and the latest report gave the RGP a "*favourable outcome*" (Ullger 1 para 47 [A542]). Of the 10 recommendations, 6 had been fully achieved and 4 partially achieved. Of the 15 areas for improvement, 14 had been achieved and 1 had been partially achieved (Yeats 1 para 36 [A639]).

## ISSUE 5: THE SEARCH WARRANTS

### Key documents in relation to Issue 5

261. PR prepared a National Decision Model (“**NDM**”) Assessment regarding “*the involvement of [James] Levy in 36 North*” [B3452]. This document is not dated, but PR sent it to IM on 25 February 2020 (Richardson 3 para 13 [A1427]).

- a. The NDM summarised the evidence as follows:
  - i. An examination of the messages between Cornelio, Perez and Sanchez has shown that each had been communicating with JL about the NSCIS platform.
  - ii. Evidence of communication from Sanchez to JL has shown that a civil servant was passing on confidential information to him about NSCIS and offering him ‘good proposals for investment’.
  - iii. Evidence of communication from Cornelio/Perez to JL suggests that JL is in a position of influence with the CM and he is often requested to arrange meetings, or disclose or find out what is being decided with regard to 36 North’s bid to take over the NSCIS platform.
  - iv. *“There is a significant amount of evidence that suggests that JL was acting unethically in his dealings regarding the NSCIS platform. The question is whether this unethical behaviour is dishonest and crosses the line into the realms of criminality.”*
- b. The basis put forward by the NDM for suspecting JL of the offence was that he and others dishonestly sought to secure the transfer of the NSCIS maintenance contract to 36 North and thereby benefit financially. The grounds for dishonesty were:
  - i. He was receiving business proposals and information directly from a civil servant.
  - ii. He was aware that business initiated by Bland was being taken by 36 North.
  - iii. He was aware that Cornelio continued to access the NSCIS after he had terminated his consultancy.
  - iv. He was aware that Cornelio had accessed the NSCIS and performed a full review despite not being contracted to maintain it.
  - v. He contacted and facilitated access to the CM with a view to discussing 36 North and the NSCIS platform.

- vi. In October 2018 he spoke to Cornelio about Bland engaging a forensic team to investigate whether Cornelio had tampered with the system (and it was therefore reasonable to suspect that Cornelio had informed him that he had been sabotaging the system), and yet he continued to support Cornelio and 36 North and did not distance himself.
- c. The NDM concluded that the RGP “*have reasonable grounds to suspect that an offence of conspiracy to defraud has been committed*”. It stated: “*we have reasonable grounds to suspect that JL has dishonestly used his influence with the CM, CS and possibly AM (the FS) to induce the relevant persons to transfer the maintenance contract of the NSCIS platform from Blands to 36N, a company in which he holds a 10.56% personal stake.*”
- d. By contrast, the NDM concluded that there was no evidence that the CM (or the Financial Secretary, Albert Mena) were aware that Cornelio had compromised the operation of the NSCIS by sabotage.
- e. As to evidence gathering, the NDM stated that:
  - i. It was necessary to obtain further evidence by interviewing JL under caution. It would not be necessary to arrest JL if he consented to a voluntary attendance police interview, but in the absence of such consent “*an arrest would have to be made to secure his attendance...*”.
  - ii. It was also necessary to obtain further evidence by seizing JL’s digital devices. This would be by search warrant in advance of approaching JL for interview. “*The examination of any content seized from JL may be complicated by claims of legal privilege. In that event the material will be reviewed by a lawyer first using keyword searches provided. We do not however believe that JL maintained a lawyer client relationship with any other person linked to this investigation and his dealings with them appear to be restricted to a business relationship*”. The warrant should be restricted to mobile devices only, as that was the predominant means of communication. Further, “*given the political sensitivities and potential reluctance for a JP issue (sic.) a warrant for Hassan Law practice the warrant should be requested from the Chief Justice.*”
  - iii. Officers should wear body worn cameras during the investigation, as it was “*expected that any allegation of impropriety or illegality will be*

*vigorously attacked by Hassans”, and also “to avoid any misconstruing on the actual words said during the police intervention” at Hassans.*

262. On 19 March 2020, MW sent an “*extended summary of evidence in respect of Operation Delhi*” to PR and DC Clarke (“**the Charging Report**”), stating “*it is intended that this document should be sent to the DPP in order to obtain legal advice on charging*”. PR states that MW prepared this at his request (Richardson 3 para 18 [A1428]). PR requested that MW make certain amendments, which he did and recirculated on 24 March 2020 [B3274]. The Charging Report [B3614] was addressed to IM and ‘FAO’ PR, IM was not included in the email chain between MW and PR.
263. The Charging Report identified 76 possible charges. In relation to JL and Perez, there was a single joint charge of Conspiracy to Defraud (whereas in relation to Cornelio and Sanchez, computer misuse offences were also identified). The Report contained the following statements about JL:
- a. JL was involved in the planning by Cornelio and Perez to dishonestly appropriate the NSCIS maintenance contract from Bland Ltd [B3629].
  - b. JL assisted Cornelio and Perez to apply pressure to HMGoG with the intention that the NSCIS maintenance contract would be transferred to 36 North (in which JL held a 10% beneficial interest) [B3629].
  - c. Under the heading ‘Knowledge of Computer Misuse Offences – Levy’, the Report stated that “*the evidence indicates that Levy discussed the forensic team with Cornelio and that he had given him advice about the situation*” [B3630]. The Report referred to two pieces of evidence, which were the extent of the evidence pointing to JL’s knowledge of the alleged sabotage:
    - i. “*On the 19th October 2018 Cornelio wrote to Levy saying, “Morning James. Very confidential. Note Gaggero has brought in a forensic team of six to look at anything John and I may have done to tamper with the system etc. Gaggero is going all out it seems.”*”
    - ii. “*In a text to Perez the same day Cornelio stated that he had spoken to Levy and was told not to worry.*”
  - d. By 2019, Levy was in no doubt that Cornelio and 36 North had not been contracted to maintain the NSCIS platform. Despite this fact, he did not question Cornelio accessing the system in April 2019. The Report referred to two pieces of evidence:

- i. *“On the 11th April 2019 Cornelio wrote to Levy, ‘I am preparing a report for Caine/Albert Mena with regards to the failures of the National Security platform of [REDACTED] [REDACTED] [REDACTED]. Lesley is preparing a legal letter for your review in an attempt to speed up the process. This is ok?’ ... He went on to say, ‘We are going to have a field day on the national security report..just wait until you see it. For now I am reviewing every single module 1 by 1. [REDACTED] [REDACTED]” [B3630]*
- ii. *“On the 23rd April 2019 [Cornelio] wrote to Levy, ‘Note I provided Albert Mena with a report on the National Security system. Has he made any comment to you about this? The report would have been delivered to him via Caine.’” [B3630]*

264. The Charging Report requested that advice be sought (presumably by IM and/or PR) from the DPP *“as to what charges should be preferred” [B3612]*. The Report concluded by requesting advice *“as to whether, based on the above evidence, there are reasonable grounds to suspect that Levy has committed: (a) the offence of conspiracy to defraud; and/or (b) any other criminal offences”*. It added that: *“In the event that there are reasonable grounds to suspect Levy has committed any offence, the police will consider whether it is necessary to conduct further investigations in the form of search warrants / interview under caution.” [B3666]*.

265. On 1 April 2020, PR sent the charging report to the DPP seeking his advice on whether the proposed charges were warranted by the evidence, whether there was a reasonable prospect of conviction, and whether it was in the public interest to proceed. PR also sought legal advice as to whether there were reasonable grounds to suspect that JL had committed the offences alleged against him [B3610].

266. On 22 April 2020, MW sent a report to IM and PR regarding options for the interview of JL (**“the Options Report”**) [B3278], which concluded that the RGP should approach JL at his work after COVID-19 restrictions were relaxed or lifted. The Inquiry is not aware of evidence that this document was sent to the DPP. As regarding whether to ask Mr Levy to attend voluntarily and provide his devices or to obtain a search warrant, the report stated:



- a. *"Mr Levy could be requested to attend the police station. In doing so, he could be asked to bring any devices for analysis and to submit to an interview. However, this would notify Mr Levy of our intentions and would thereby risk the loss of evidence. This would be contrary to the way we have dealt with the other suspects, although we could argue that given the amount of time, he will be well aware of the arrests and of the police investigation."*
- b. *"Given that we suspect that an offence may have been committed, and in order to prevent loss / destruction of evidence, we would ideally secure the evidence in situ, and without giving Mr Levy prior notice of our intent."*
- c. *"On arrival at the premises, we would therefore seek, in the first instance, to be granted access to the relevant devices without the use of the warrant. A warrant would only require execution where co-operation was not offered."*

267. On 6 May 2020, DC Paul Clarke applied for the warrants from the Stipendiary Magistrate (not the Chief Justice, as PR had canvassed in the NDM). PR and DI Goldwin also attended the hearing (Clarke 1 para 4 [A1057]). DC Paul Clarke attended Court again on 7 May 2020 to amend the material sought in the warrants (Clarke 1 para 5 [A1057]). The Information supplied in support of the application ("**the Information**") was "*predominantly taken directly from the charging advice report provided to the DPP on the 1<sup>st</sup> April 2020*" (Wyan 3 para 11 [A1040]). DC Clarke states that he read the Information in its entirety to the Magistrate (it ran to 38 pages), and that the application took about two hours (Clarke 1 para 8, 10 [A1040]). The Information concluded:

"The above paragraphs demonstrate Levy was involved in the plan to remove the NSCIS contract from Bland at an early stage;

- a. Messages between Levy and Sanchez show communication discussing moving the contract away from Bland in early 2018. (Paras 45 to 47)
- b. Levy was instrumental in the creation of 36 North. Firstly, by being owning 32% of shares of Astelon Ltd, who in turn own 33% of shares of 36 North. (Paras 31 to 32) On behalf of Hassans, he injected a large sum of money into 36 North.
- c. He was using his influence with the Chief Minister to the advantage of 36 North.

d. He was regularly contacting both Cornelio and Perez in relation to 36 North whilst they were still employed by Blands and following their resignations. (Paras 61 to 89).

e. Communications show he was aware of the Computer Misuse Offences committed by Cornelio. (Paras 99 to 100).”

268. The Stipendiary Magistrate granted the warrants [B3602]. A written record of his reasons was made later on 13 May 2020 [C6728]. The reasons are very brief, but make the following points:

a. *“I was satisfied that the evidence presented disclosed sufficient grounds on which the warrants could be issued. The evidence pointed to the existence of a conspiracy involving Mr Levy as a participant.”*

b. *“... Issuing the warrants was justified in order to obtain and preserve existence necessary for the police investigation. The evidence showed incomplete exchanges between Mr Levy and his alleged co-conspirators currently under investigation.”*

269. Neither the Information nor reasons for granting the Warrant articulated specific reasons for why the RGP applied for a search warrant instead of a production order in this case. The justification given by DC Clarke in the Information for the assertion that a Production order may seriously prejudice the investigation was as follows [B3245]:

*“In the circumstances it is highly likely that they would destroy, alter, deface or conceal the material sought because it is evidence sought by the [Officer in Charge] which may prove their involvement in the offence.”*

### **Relevant facts**

270. The Undisputed Facts contain a detailed overview of the events surrounding Issue 5, which it would be disproportionate to repeat. Accordingly, the paragraphs below focus on the facts relating to three sub-issues identified in the List of Issues: (5.1) any advice from the DPP regarding the search warrants against JL; (5.2) any agreement between IM, the DPP and the AG regarding the rationalisation of the charges against JL and the Op Delhi suspects; and (5.3) any inappropriate pressure by the AG or CM on IM or interference with the investigation.

271. Sub-issues (5.1) and (5.2) align with the specific events within Operation Delhi that the CM and AG say caused them to lose confidence in IM: IM's alleged lies about taking the AG's and/or the DPP's advice on the search warrants; and the RGP's actions contrary to an alleged understanding about the rationalisation of charges. The crux of each of those issues is the interaction between IM, on the one hand, and the AG, DPP and CM on the other.
272. Sub-issue (5.3) is in a different category: it is not a reason why the CM, AG or NP claims to have lost confidence in IM, but rather a reason why IM claims he felt he must retire (see, eg, Gomez & Co's email to the GPA on 5 June 2020 referred to above: "*given how unfairly he has been treated and the improper pressure put on him to alter the course of a live criminal investigation, our client feels he must apply for early retirement*": [B2041]). It is also put forward by IM as evidence of the true motives of the CM (in bringing about his retirement) namely to protect JL and in retribution for the Search Warrants. An important aspect of issue 5.3 is the allegation that the CM and AG improperly communicated with JL and JL's lawyer, Lewis Baglietto KC ("**LB**") about Operation Delhi, the Search Warrants, and indeed IM's position as Commissioner.
273. The relevant facts below are structured under two headings:
- a. The interaction between the RGP and the DPP/AG/CM (which is relevant to sub-issues 5.1 and 5.2); and
  - b. The interaction between the AG/DPP/CM and JL/LB (which is relevant to sub-issue 5.3).

**Sub-issues 5.1 (the alleged lie by IM to the CM/AG) and 5.2 (the alleged breach of an understanding) and interactions between the RGP and the DPP/AG/CM**

274. The allegation made by the CM and the AG reflected in sub-issue 5.1 is that IM lied to them in their meeting of 12 May 2020 by:
- a. stating that he had taken the advice of the AG as to whether to obtain a search warrant in relation to JL; and
  - b. stating that he had sought the advice of the DPP on whether to obtain a search warrant or a production order in relation to JL, and that the advice of the DPP was that they should proceed by way of search warrant.

275. There appears to be no dispute as to whether the AG or the DPP in fact advised on whether to obtain a search warrant. All relevant CPs accept that neither the AG nor the DPP advised on that issue, and that the DPP subsequently made clear that he would have preferred the RGP to have proceeded by way of production order, although he believed the search warrants were defensible against a judicial review.
276. The dispute is therefore as to whether IM in fact stated, at the 12 May 2020 meeting, that the AG and/or the DPP had advised on the issue and that the advice of the DPP was that they should proceed by way of search warrant.

*The lead up to 12 May 2020*

277. On 13 May 2019, a meeting took place between IM, PR, the CM, the AG, the DPP and Messrs Costa, Mena and Grech. This was at the request of IM, who asked to provide a briefing on an *“important and sensitive matter”* [A188]. There are no minutes of this meeting, but accounts are given by the various attendees:
- a. PR notes in his Day Book (**“the Delhi Day Book”**) that IM outlined the evidence against Sanchez, who was to be recalled from the UK, where he was on business. The notes add *“CM – Govt should be complainant – will need to speak to Snr Partner at Hassans”* [C1735]. This is presumably a reference to JL. PR has confirmed in his evidence that the CM said that the RGP would need to speak to the Senior Partner at Hassans, not that the CM would (Richardson 3 para 60 [A1435]). The CM agrees with this (Picardo 3 para 3 [A232]).
  - b. The Chief Minister does not give a detailed account of the meeting, but states that he *“made clear”* that the Government would be the complainant if there was evidence of corruption in respect of a government officer or office (Picardo 1 para 32 [A188]).
  - c. The AG’s account of that meeting (Llamas 1 paras 17-19 [A274]) is that IM explained *“very serious failures had occurred with regard to the operation and management of the NSCIS platform which directly impacted the national security of Gibraltar”*. The AG states that IM referred to Hassans’ shares in ‘36 North Limited’, the company involved, and that JL was mentioned in communications with the three suspects and was potentially a person of interest to the investigation.

278. The AG's evidence is that after this meeting, he did not have further "*substantial meaningful*" contact with IM about Operation Delhi until 12 May 2020. He denies the "*impression*" that he says is created by IM's evidence (specifically McGrail 1 paras 12 to 27 [A4-8]) that they were in regular contact about Operation Delhi (Llamas 2 para 4 [A299]). By contrast, IM's evidence is that he provided "*briefings*" to the AG, albeit only "*on a few occasions when [the AG] brought it up and ... off the back of other subject matters that [IM] had met the AG on*", and "*held conversations with the AG on some concerns*" (McGrail 1 para 12 [A4], para 19 [A6]). IM also states that the AG "*certainly expressed an interest*" in the case, and "*he was keen to be told of the evidence the RGP was uncovering*" (McGrail 5 para 122 [A167-8]).
279. On 4 September 2019, MW, DC Clarke and Mr Finlayson met with the DPP for legal advice. MW and DC Clarke made notes [C2616, C2617-8]. According to MW's notes, which are more comprehensive, they discussed whether the investigation revealed evidence of a conspiracy to defraud and debated whether "*the agreement to take the NSCIS contract from Bland amounted to a conspiracy to defraud*" or whether it was "*simply a commercial dispute and a civil action is appropriate*". There is no reference to a case or evidence against JL.
280. On 13 January 2020, MW conducted a review of the 51 identified offences (Wyan 1 para 51 [A1036]). His note recorded that "*51 offences identified. To be selected based on advice of the DPP*" [B3716].
281. On 17 January 2020, the DPP, MW and DC Clarke met to discuss the "*formulation of charges*" [B3196]. DC Clarke adds that "*during the meeting the summary of evidence was discussed*" (Clarke 1 para 29 [A614]). The DPP does not provide detailed evidence on his meetings with the RGP during this period, but states that he "*was subsequently involved in various meetings, both in person and on the telephone, with the Royal Gibraltar Police for the purpose of providing charging advice*" (Rocca 1 para 5 [A1295-6]).
282. On 21 January 2020, there was an internal RGP meeting on Operation Delhi, attended by PR, MW, CI Field and DC Clarke. MW's notes record: "*Charges – over 50 possible charges identified (predominantly computer misuse). To be refined down*" [B3717].
283. On 1 March 2020, IM emailed PR stating that on the basis of the information in NDM Assessment, he supported in principle the suggested course of action. However, he

added that “*the tactical detail ... will be subject of further consideration*”. IM requested that “[g]iven the complex nature of this investigation and the reputational risks at stake I would ask that you consult with the DPP to ensure our intended activity is legally supported” [B3272]. PR replied “will raise with DPP this week” [B3272]. IM’s phrase “*intended activity*” appears to be a reference to operational activity rather than the merits of the charge, but this is something which can be explored in questioning.

284. On 3 March 2020 there was a meeting between the DPP, PR and MW.

- a. MW’s notes of the meeting [B3197] record that: “*Advice requested on whether his involvement amounts to a criminal offence. Full report drafted by Supt Richardson*”. MW suggests that the reference to “*the full report*” is the NDM assessment (Wyan 3 para 43 [A1046]). However, it is unclear whether this note means the DPP was provided with the NDM assessment in the meeting; or that MW/PR promised to circulate it to him afterwards (which they did on 1 April 2020 – see below). The latter appears to be the more likely scenario:
  - i. PR states that at this meeting the DPP “*had not seen the considerable amount of evidence that implicated JL. Even though the investigation was not yet completed, I offered to provide him with a summary of the evidence that had been collected thus far...*” (Richardson 3 para 15 [A1427]).
  - ii. MW adds that: “*it was agreed that we would go away and prepare a full report setting out the evidence in support of our assertions*” (Wyan 1 para 44 [A1046]).
- b. MW’s note does not record whether advice was given (as opposed to requested) on JL. However, MW’s evidence is that he recalls the DPP disagreed with the RGP’s position that JL was suspected of having committed a criminal offence. The DPP regarded his actions as “*sharp business practice*” (Wyan 1 para 44 [A1046]).
- c. PR states that the meeting was long (over 2 hours) and that “*the DPP inclined to the view that JL’s involvement in Operation Delhi arose from sharp business practice*” (Richardson 3 para 14 [A1427]).
- d. The DPP’s evidence did not address this meeting.

285. As outlined above, the Charging Report was prepared by MW in March 2020. On 1 April 2020, PR sent the Charging Report and NDM Assessment to the DPP [B3610]. PR explained in his letter that at the meeting on 3 March 2020, “*differing views*” had been

expressed as to the “*criminality identified*”, particularly with regard to the conspiracy to defraud offences; therefore a full Charging Report had been prepared. PR wrote that he was seeking CR’s “*advice on whether the charges that we propose are warranted by the evidence, whether there is a reasonable prospect of conviction, and (given the inherent political nature of this investigation) that it is in the public interest to proceed. In addition, and in respect of James Levy, we are seeking legal advice as to whether there are reasonable grounds to suspect that he has committed the offence as alleged.*” [B3610]. It is worth recalling that the NDM added: “*In the event that there are reasonable grounds to suspect Levy has committed any offence, the police will consider whether it is necessary to conduct further investigations in the form of search warrants / interview under caution*” [B3666]. However, PR neither the NDM nor PR’s email did not specifically seek advice on this point.

286. On 6 April 2020 at 13:06, the DPP wrote to the AG (referring to an email received from the lawyer for the Op Delhi Defendants): “*This is something we are going to have to discuss soon because it does have very serious implications in terms of people that might get dragged in*” [C3312]. The AG replied “*Sure, Christian. Whenever you want.*” [C3312] The AG refers to a discussion with the DPP in “*early April*”, which is reasonable to assume followed from that email (Llamas 1 para 21 [A275]). The AG states that this gave him “*cause for great concern*” because “*the DPP very rarely seeks to discuss criminal cases with me and typically acts completely independently from me*” (Llamas 1 para 21 [A275]). The AG states that:

- a. “*The DPP told me that the excessive number of charges [76] seemed wholly inappropriate and that he was of the view that the charges needed to be rationalised, ideally after dealing with the issue of ownership of the NSCIS platform which was still 'live' and needed to be dealt with. It seemed clear to both of us that the ownership of the platform was key to the viability of a number of the proposed charges, and that on one possible ownership outcome a number of the proposed charges would necessarily fall away.*” (Llamas 1 para 23 [A275]).
- b. The investigation raised matters which were of considerable public importance and also had the potential to cause serious reputational damage to Gibraltar (at a time of negotiations with the EU and Spain on vital matters), including the fact that there had been serious failures of the national security system and JL being a person of interest (Llamas 1 paras 22 and 24 [A275-6]).

- c. The AG and DPP agreed to seek a meeting with IM about the quantity and rationalisation of charges (Llamas 1 para 27 [A277]).

287. On either 7 April 2020 or 4 May 2020 (or possibly on both dates), there was a meeting between the AG, IM, PR and Mr DeVincenzi (and possibly also MW) to discuss the rationalisation of charges. Despite their agreement above, it does not appear that the DPP was in attendance. There is conflicting evidence as to the date of this meeting:

- a. The AG and Mr DeVincenzi both believe this meeting took place on 7 April 2020: see Llamas 1 para 28 [A277] and DeVincenzi 1 para 11 [A1300].
- b. IM also refers to a meeting on 7 April 2020: McGrail 5 125-126 [A168].
- c. Mr DeVincenzi recalls that MW was also present at the meeting; but MW does not refer to this meeting or make notes of it, as he did for the various other meetings he attended.
- d. By contrast, PR's evidence is that MW was not present (Richardson 3 para 67 [A1436]). PR believes this meeting took place on 4 May 2020. PR has produced evidence supporting a meeting on this date:
  - iii. In the timeline document that PR made "*shortly before Mr McGrail retired*" (Richardson 3, para 65 [A1435]), PR gives a relatively detailed note of what was said, including "*AG asks that we rationalise the charges down from 70+ to whittle out those that depend on ownership and then see what remains...*". This is not a contemporaneous note of the meeting, it was prepared closer to the events in 2020, and Richardson suggests that "*it is possible that the PR 33 record was made from notes I had made in the Microsoft One Note Application*", which he deleted when he left the RGP (Richardson 3 para 65 [A1435-6]).
  - iv. In the Delhi Day Book, an entry records a meeting on 4 May 2020 "*w Attorney General Michael Llamas + Lloyd DeVincenzi – COP + Supt Richardson*" [C1788]. The Inquiry has recently been provided with a copy of this page, which contains only a heading and no notes of what was said.

288. CTI's view is that there is a logic to the key meeting taking place on 7 April 2020 (even if there was a subsequent meeting on 4 May 2020):



- a. First, it seems unlikely that discussions about rationalisation of charges would be taking place only days before the warrant application. It makes far more sense that this meeting took place the month before.
- b. Second, PR's reason for doubting that the meeting took place on 7 April 2020 is that "*I am not sure why the AG was providing an opinion on a matter that the DPP, not he, had been asked to advise on*" (Richardson 3 para 61 [A1435]). However, as explained above, the DPP had alerted the AG to the issue of the rationalisation of the charges and they agreed to arrange a meeting with IM to discuss this.

289. There are conflicting accounts of that meeting, in particular regarding the critical question as to whether an agreement was reached to rationalise the charges before proceeding.

- a. The AG's evidence is that:
  - i. JL was mentioned in passing by IM, who said that he hoped JL would assist the investigation, but there was no discussion about him (Llamas 2 para 16 [A302]).
  - ii. He and IM agreed that the investigation raised issues of serious concern, and he therefore advised IM that he considered it vital that the investigation should proceed and be conducted prudently and with tremendous care. He explained to IM that he was "*deeply concerned that the RGP were proceeding without first resolving the ownership dispute since it seemed ... that issue would likely have an impact on the proposed charges.*" Further, the AG told IM he was "*concerned about the proposed number of charges, 76, which seemed wholly excessive*" (Llamas 1 para 29 [A277]).
  - iii. "*After a long, and from my recollection amicable discussion, we reached what, for me, was a very clear understanding between us, namely that the RGP would not take further action until they had (i) clarified the question of the ownership of the NSCIS platform (ii) rationalised the charges (which the DPP had told me was extremely possible to do), and (iii) whereupon Mr McGrail would meet with me and the DPP before taking any further steps. It was clear beyond peradventure that nothing, other than what we agreed to, would happen until we met again.*" (Llamas 1 para 32 [A278]) (underlining added).

- iv. *“There was nothing in what I said, or in the manner in which I said it, that Mr McGrail, DS Richardson or anyone else in the RGP could reasonably or properly have interpreted as interference or pressure to stop the investigation or change its course or approach, other than entirely appropriate advice and assistance in the context of those specific issues. Nor did Mr McGrail suggest otherwise to me.”* (Llamas 1 para 33 [A278]).
  - v. The AG was *“only concerned about the ownership/rationalisation issues and it should have been abundantly clear to IM from that meeting how sensitive this investigation was... and that he would not take such draconian and disproportionate action as executing search warrants on James Levy without first having bottomed out the issue of ownership of the platform/rationalisation of the charges”* (Llamas 2 para 26 [A304-5]).
- b. IM disputes an agreement on those terms.
- i. IM does not refer to the 7 April 2020 meeting by date, but states that *“as the investigation was approaching its conclusion the AG advised that he would want to be consulted on the charges that we were considering to proffer”* (McGrail 1 para 21 [A6]).
  - ii. IM states that he agreed with the AG to consider sample charges, and that he asked the AG to explain his reasons for streamlining 80 charges to 25 or 17 (McGrail 1 para 21 [A6]).
  - iii. IM states that he considered this discussion to be premature, as *“the investigating team still had to interview JL. His interview could lead to more counts being added or clarify matters and therefore generate less counts. It was clear to me and the investigating team that charges could not be proffered until all enquires with suspects had been closed.”* (McGrail 1 para 22 [A7]).
  - iv. IM’s evidence is: *“that particular meeting ended with the AG asking us to revert to see him once we had listed all the charges that had been uncovered”* (McGrail 1 para 22 [A7]).
  - v. IM’s recollection of this meeting is also recorded in the email that he sent to himself on 12 May 2020 at 22:05 [B75]. He refers to this meeting (although not by date), and states: *“it was agreed that the team would produce a list of proposed charges so that the DPP/AG would consider. He*

*(sic) asking whether from 80 charges these could be brought down to 17... I proposed his reasoning behind this but he did not elaborate...*

- vi. IM further notes that the alleged “*directions*” from the AG were not provided in writing after the meeting (McGrail 5 para 126 [A168]).
- c. Mr DeVincenzi states that the AG suggested IM rationalise the charges, but does not refer to a clear “*agreement*” to do so:
  - i. In his first affidavit, Mr DeVincenzi stated that: “*the Attorney General inquired about the significant number of charges and expressed concern that these should probably be rationalised, noting that this was a matter for the police to consider and decide (or words to that effect). It was also mentioned during the meeting that Mr James Levy was being investigated. The Attorney General asked Mr McGrail to keep him informed until they could next meet*” (DeVincenzi 1 para 11 [A1300]).
  - ii. The Inquiry Team asked Mr DeVincenzi to provide further particulars of this conversation, which he did by way of a second affidavit, where he stated: “*the Attorney General initially raised a concern that the list of charges might be excessive because it was premised on the Bland Group’s ownership of the NSCIS platform, which the Attorney General considered, at minimum, an unresolved question. I believe the Attorney General also told Mr McGrail that the number of charges seemed him on an administrative or common sense or practical level, or words to that effect. These were two reasons which, from recollection, led the Attorney General’s suggestion that the RGP should consider rationalising the number of charges. ... My impression is that Mr McGrail and Mr Richardson were open to undertaking this exercise, if not wholly convinced it was necessary, and said they would report back to the Attorney General and DPP.*” (DeVincenzi 2 para 4 [A1304]).
- d. PR’s note of this meeting (dated 4 May 2020) states: “*AG asks that we rationalise the charges down from 70+ to whittle out those that depend on ownership and then we see what remains.*” [A1436]. PR does not recall any agreement being reached that the RGP would not take any further action until the charges were rationalised: if such an agreement had been reached he would have made a record, discussed with IM and MW, discussed with DPP and not proceeded to

obtain a warrant, which would have been “*unthinkable*” (Richardson 3 para 72 [A1437]).

290. In support of his account of the meeting and understanding of the agreement, the AG refers to a letter sent by IM to the Financial Secretary on 8 April 2020 which requested a witness statement from HMGoG on the issue of the ownership of the intellectual property of the NSCIS. The covering email states: “*please find attached a scanned copy of a letter regarding a key issue that remains pending in the investigation of the hacking of the NSCIS platform...*” [B1899]. The letter referred to the issue of the ownership of the NSCIS, and stated: “*the Director of Public Prosecutions has advised that the issue of ownership of the platform is integral to the prosecution of the case...*” [B1901].

291. On 8 April 2020, the DPP met with PR and MW by video. At this meeting, CR agreed that JL should be treated as a suspect.

a. PR’s note of this meeting in the Delhi Day Book states [C1783-4]:

- i. “*No grounds at this stage to pull the prosecution*”.
- ii. “*AG wntd speak to COP RE public interest*”.
- iii. “*Conspiracy to defraud charges – there is sufficient evidence to lead a jury to a realistic prospect of conviction.*” (This was presumably a reference to the Op Delhi Defendants.)
- iv. “*Re JL – Reasonable grounds to question. Would be a lingering doubt otherwise. Obligation to interview under caution*”. The Inquiry asked by PR and MW to elaborate on what was meant by this note. PR stated that this is what the DPP had said, and the lingering doubt related to JL, as “*If he were not interviewed it might undermine the prosecution of the other suspects*” (Richardson 3 para 55 [A1434]). MW added that, if JL was not interviewed “*there would remain a doubt as to his involvement in the suspected conspiracy*” (Wyan 3 para 47 [A1047]).
- v. “*Need to drill down in the detail Re: ownership of the platform to determine what charges should go ahead. - ? need to revise to lower number (of charges)*”
- vi. “*Public Interest? not pulling – AG in full agreement... if we need to pull in Levy then so be it*”. This seems to be referring to a view by the DPP that it was in the public interest to proceed.

- b. PR's note is consistent with MW's notes [B3199], which state that "*Mr Levy was considered. DPP stated that there were still questions that he needed to answer. Interview under caution was appropriate*"; and that the DPP "*agreed that Mr Levy should be treated as a suspect as there were questions which needed to be answered. He should be interviewed.*" [B1398]
- c. In his witness statement, PR adds additional evidence that at the end of this video call: "*the DPP confirmed that he understood our rationale for preferring a warrant to a production order. This was an operational decision for the police. Although he would have opted for a production order rather than a warrant, whatever we chose he would back us.*" This is not recorded in the Delhi Daybook or MW's notes. However, PR explains that this was because: "*At that point the choice between a warrant and a production order was secondary to the DPP agreeing that JL should be treated as a suspect, and I did not note this exchange.*" (Richardson 1 para 41 [A1432]).
292. IM did not attend this meeting. However, he has stated his understanding that PR communicated with the DPP who confirmed that JL was to be treated as a suspect. IM states that: "*furthermore, that [the DPP] would not advise on the team's intended course of action as this was purely an operational matter for the RGP to decide upon but that he would defend the actions if and when it was needed to*" (McGrail 1 para 23 [A7]).
293. On 20 April 2020 there was a WhatsApp call between PR and the DPP to discuss the impact of COVID Regulations on the Magistrates' Court. This was probably on the back of MW's Options Report referred to above. PR made notes in the Delhi Day Book [C1784], which state "*interview of JL needed*" and refers to "*US evidence delayed*". As these notes are difficult to decipher, the content of this conversation will need to be explored in evidence, but it appears to be a discussion as to whether to charge the Op Delhi Defendants then or delay given the COVID restrictions which were in place at the time.
294. On 30 April 2020, MW emailed PR stating that "*we are*" in the process of drafting warrants, a plan for the execution of the warrants and interview questions. He stated: "*we have no lawyer to review the privileged material – I would suggest that we contact the DPP to see*

*whether instructing / contacting a local lawyer is a viable option*” [B3285]. On 4 May 2020, MW followed up with PR stating: *“with your permission I would like to write to the DPP and ask whether he would have an issue instructing a lawyer for privileged material”* [B3284]. It does not appear that such a communication was ever sent to the DPP, but this will need to be confirmed in questioning.

#### *The events of 12 May 2020*

295. As explained above, RGP officers attended Hassans on 12 May 2020 after applying for and being granted the Search Warrants on 6 and 7 May 2020.
296. At 12:25, IM messaged the CM stating: *“before you hear it from anyone else I want to inform you that detectives are executing a search warrant at Hassans for (JL) in relation to the case against Perez, Cornelio and Sanchez. Its been done in the most discreet of ways and we’re hoping there is cooperation”* [A190]. IM sent an identical message to the AG at 12:26 [A279].
297. The CM replied at 12:34 stating: *“Ian, Thank you for the courtesy of this information. I think that is a bad decision. A search warrant should only have been sought ff you believed that the person in question was not going to cooperate and will try destroy evidence. If, as you say, you are hoping for cooperation, especially in a case involving a senior Silk and head of Gibraltar’s largest legal firm, you should, in my view, first have sought to contact that person and obtain cooperation. Given my close personal relationship with JL, I won’t comment further.”* [A191]
298. The AG says that this message *“took [him] by surprise as it was a clear violation of what Mr McGrail and I had agreed in our meeting of 7 April 2020”* (Llamas 2 para 38 [A280]). The AG replied: *“Ian, we had agreed that you would come to me with a rationalisation of the charges before doing anything?”*. IM replied *“We agreed we’d do that when all the loose ends were tied up and this included the inquiries with JL.”* The AG replied: *“No. That was not what we agreed.”* [A280]
299. By chance, IM was already at No 6 Convent Place attending another meeting, and the CM asked to see him (Picardo 1 para 41 [A191]). The content of this meeting is the subject-matter of one of the most important factual disputes of the Inquiry.
300. The CM’s evidence is that:

- a. The CM “*made clear, in firm and forthright language ... that I considered the RGP had not acted properly in the execution of a search warrant in respect of a senior lawyer like Mr Levy*”, and said that he was not making the point because he was close to JL, as he would make the same point about other senior lawyers (Picardo 1 para 44 [A191]).
- b. The CM told IM “*that the communications devices of senior lawyers were likely to include legally privileged material...*” (Picardo 1 para 45 [A192]).
- c. The CM “*was both angry and seriously concerned about the effect of the RGP’s actions*”, including financial consequences from claims for damages for breaches of privacy and confidentiality (Picardo 1 para 47 [A192]).
- d. The CM told IM that he knew from his experience as a young barrister that “*Justices of the Peace routinely granted warrants based on the information laid before them, relying on the RGP’s submissions, without careful legal analysis*” (Picardo 1 para 48 [A193]).
- e. “*Mr McGrail then retorted that he had taken the advice of the Attorney General on this matter. Mr Llamas, who was in the room with us throughout, stated that this was not true. Mr McGrail then insisted that he had sought the advice of the Director of Public Prosecutions on whether to obtain a search warrant or a production order for Mr Levy. Mr McGrail then specifically told me that the advice of the DPP was that they should proceed by way of search warrant. The Attorney General said he did not believe that the DPP had given such advice. I responded by saying that I too did not believe that would have been the advice of the DPP (with whom I have never discussed the matter), but that if that was the advice of the DPP, then I would have to disagree with the DPP also.*” (Picardo 1 para 49 [A193]) (underlining added).
- f. The AG made the point that IM had indeed sought his advice, and that IM had agreed there would be no further action without speaking further (Picardo 1 para 50 [A193]).
- g. After the meeting, the CM asked the AG to confirm whether or not the DPP had agreed that a search warrant was the correct manner for the RGP to obtain relevant evidence. The AG confirmed to the CM that the DPP had not advised the RGP to proceed in this way (Picardo 1 para 54 [A194]).

301. The AG’s evidence is largely consistent with the CM’s. He states:

- a. The CM informed IM that “*the RGP’s decision to execute the search warrants on Mr Levy was wholly inappropriate and ill-advised*”, and the CM could not understand why the RGP had not approached JL in a less invasive way on the basis of a Production Order. The CM said that he was not reacting in this manner because of his “*strong ties*” to JL, but that he would have reacted in the same manner to search warrants executed against any senior lawyer (Llamas 1 para 40 [A280]).
  - b. The CM informed IM that the search warrants were likely to contain legally privileged material, and that the Government may face damages claims for breach of privacy (Llamas 1 para 41 [A281]).
  - c. IM defended his decision on two grounds: (1) that the warrants had been granted by a judge, and (2) “*that he had been taking advice from [the AG] and intimated that I had approved the course of action the RGP had taken*”. The AG states: “*This was totally untrue and I said so. I could not believe he said that...*” (Llamas 1 para 43 [A281]).
  - d. IM then stated that “*he had been taking advice from the DPP and that the DPP had advised him that the RGP should proceed by way of a search warrant.*” (Llamas 1 para 44 [A281]).
  - e. The AG “*referred to the understanding that Mr McGrail and I had reached in our meeting of 7 April 2020 that he would take no further action until the charges were rationalised. I told Mr McGrail that there had been a breach of trust between us since he had acted in complete disregard to what we agreed*” (Llamas 1 para 45 [A281-2]).
  - f. After the meeting, the AG confirmed the position with the DPP and passed this information on to the CM.
  - g. The AG denies that he “*berated*” IM, and states that IM used this as an excuse to secretly record subsequent meetings (Llamas 2 para 45 [A310]).
302. IM’s recollection of the meeting is recorded in an email that he sent to himself that night at 22:05 [B74], which is largely replicated at paras 32 – 35 of McGrail 1 [A11]. The email recorded the following:
- a. The CM stated: “*What are you doing Ian, this is a complete blunder. Why go with a warrant? Do you suspect Jaime has committed a crime? Look Jaime can be many things and he has been in messes before but he is not a criminal. He is a senior*



*Silk, head of the Jewish community, helps out the RGP if needed, he is the head of the biggest law firm and he has a very good reputation as a lawyer. Are you suggesting that Jaime would destroy or dispose of evidence? You know Gibraltar, this will get out and you are managing this investigating very very wrongly. Why didn't you ask him to give you what you needed?"*

- b. IM replied that the team wanted devices *"which we knew JL would not hand over unless compelled to do so with a warrant"*. IM states: *"I felt the CM was questioning an operational decision on a live matter and this was not appropriate."*
- c. The CM stated that he hoped IM was right *"as there would be consequences if [the CM] was found out to be right, in that we had not conducted ourselves properly on this matter"*. IM states in evidence that he *"took this as a sort of threat from the CM"* (McGrail 1 para 34 [A11]). (The CM denies this and states that by referring to "consequences" he meant there would be consequences for the RGP in the sense of being exposed to a claim for damages (Picardo 2 para 13 [A226]).)
- d. The CM stated that he would be calling in the *"Senior Command Team"* to address the RGP *"on how inept we were at investigating white collar crime"*.
- e. IM advised: *"that the warrant had been signed by a judge who was satisfied that this was the likely method we had to resort to in order to recover the material which could hold evidence and that all the grounds (sic) to deal with JL had been consulted with DPP."* (Emphasis added)
- f. The CM *"dismissed this"* and said it was easy to get a warrant.
- g. There was a *"heated debate on whether the actions of the team were proper or not ... I stated that it would be left to a court to decide who was right or wrong."*
- h. He had discussed this matter with his senior command team officers *"who are also concerned about the level of interference by the CM and the demeanour of the AG."*
- i. IM concluded in his email that: *"... the AG has no operational remit and his address to me in this regard is wholly improper... I felt totally cornered having to explain a tactical decision on a live criminal investigation. ... My hypothesis is that the AG himself is under some form of pressure to ensure that the investigation is terminated and the intervention of JL has shown him up for not having achieved the stopping of the investigation. ..."*

303. IM adds the following detail in his witness statements about the meeting:
- a. IM was “*struggling to understand how the CM was seemingly aware of parts of the evidence gathered in Op Delhi*”, which had only been shared with the investigating team and the DPP (McGrail 1 para 34 [A11]).
  - b. The CM made a “*passing but seemingly unconnected comment that he had earlier that morning been speaking to JL about the reopening of the places of worship*” (McGrail 1 para 34 [A11]). This issue is developed further below.
  - c. IM “*could not understand how the officer of the court status that the CM was relying on could actually override and take precedence over the status of ‘suspect’*” (McGrail 1 para 36 [A11]).
  - d. The CM was critical that Mr Gaggero was “*using the RGP, and that the RGP was knowingly allowing itself to be used to pursue what in essence was a commercial dispute*” (McGrail 1 para 38 [A11]).
  - e. The CM stated that “*the actions carried out by the team bore serious consequences – he referred to the Financial Secretary, another minister, a member of the opposition and himself as all being partners in Hassans*”. The CM stated that Mr Rosety (a Spanish Parliamentarian) would “*capitalise on information about this investigation*” in connection with the Incident at Sea (McGrail 1 para 41 [A11]).
  - f. The AG stated that IM “*had betrayed him because the action carried out by the team was not what had been agreed with him*” (McGrail 1 para 43 [A11]).
  - g. IM does not recall whether he said he obtained advice from the AG, but it is “*quite possible*” that he mentioned the AG, and explains that this is because “*historically in the RGP, the prosecutor’s office has been known as the AG’s Chambers*” (McGrail 5 paras 114-5 [A165]).
  - h. IM did not say that the DPP had advised on the warrant – “*what I said was that the DPP had been advising the investigating team throughout the course of the investigation ... and that he was privy to the evidence involving Mr Levy and that he agreed with this classification as a suspect*” He adds that: “*It was my understanding via Superintendent Richardson that even though the DPP did not advise on the warrant, he told the investigating officers that he would defend any potential challenge if any arose from the RGP’s actions*” (McGrail 5 para 117 [A166]).

- i. IM states that he “took [the CM and AG’s] rebuke to be an inappropriate interference with the operational independence of the Police, designed to cause me to halt the actions of Superintendent Richardson and his team” (McGrail 5 para 119 [A167]).
  
304. At 14:30, IM requested to meet JB, because he “needed to inform someone independent and in authority of the concerns [he] held about the inappropriate interference with a live criminal investigation” (McGrail 1 para 48 [A15]). IM does not recall what date this took place, but as this meeting is referenced in IM’s email to himself of 12 May 2020 [B76], it appears it took place in IM’s office that afternoon. JB denies this: his evidence is that he only heard about Operation Delhi at his meeting with IM on 15 May 2020 (Britto 1 para 10 [A321]). However, that recollection appears inconsistent with IM’s email to himself on 12 May 2020.
  
305. At 15:43, the AG reported back to the CM after speaking with the DPP [B1417]:
  - a. The AG wrote: “Spoken to the DPP. He is categorical that whilst he told RGP that an interview with JL would likely be necessary, he strongly advised against a search warrant.”
  - b. The CM replied (in Spanish): “Well then he has lied to us both.”
  - c. The AG replied: “Exactly he certainly gave us the impression that sw decision was sanctioned by DPP.” “CoP has since called DPP. Trying to cover his back with him.” “I’ve told DPP not to say or do anything without speaking to me first.”
  - d. The CM replied: “Incredible. There is some game afoot here...”
  
306. From 18:33, IM and the AG exchanged WhatsApp messages [A282].
  - a. IM asked for a meeting, stating “Michael – we are both disappointed but I just can’t leave the matter as it is. I’d like to meet face to face. We have to work together & your wrong impressions about me need clearing up”.
  - b. The AG replied that it would not be constructive to meet, adding: “For me it was abundantly clear what we had agreed and there is therefore very little to discuss about that. All I have tried to do is to help you in all of this and to protect Gibraltar plc which is what I have spent all my life doing. I feel very, very let down. A serious breach of trust has occurred.”

- c. IM replied: *“I respect your view not to meet but totally refute any breach of trust. We’ll agree to disagree.”*

307. At 23:03, the AG received an email from Mr Lewis Baglietto KC (on behalf of JL). The email was addressed to the AG in his *“capacity as guardian of the public interest”* and sought his *“urgent intervention with a view to ensuring that all the seized material is returned forthwith”* [B1902]. The email stated:

- a. *“I am extremely concerned by the apparent gross abuse of power...”*
- b. *“It directly impugned Mr Levy’s reputation and dignity as an officer of the court, the senior partner in Gibraltar’s largest law firm and a highly respected member of the local community.”*
- c. *“It is not even clear that a production order under section 13 could have been properly obtained...”*
- d. *“Mr Levy and my firm are, in addition, highly aggrieved at the fact that the RGP have taken Mr Levy’s tablet and mobile telephone, which, as you will appreciate, contain a vast amount of privileged and irrelevant information ... legal professional privilege is sacrosanct.”*

*Interactions between the RGP and DPP/AG: after 12 May 2020*

308. The AG forwarded the email to IM seeking a meeting between IM, LB and the AG. A meeting was initially arranged for 10:00 on 13 May 2020 [C3667], but IM later withdrew from this meeting [C3663], stating in an email on 13 May 2020 at 11:27: *“it would not be appropriate for the Commissioner of Police and the Attorney General to meet with counsel representing a person under investigation to discuss matters concerning a live investigation and which may be subject to a legal challenge as a later date ... I am working to provide a substantive response and would ask for your patience whilst I prepare this: I aim to revert to you by close of play today if not earlier.”* [C3664]

309. At 14:14, IM sent his promised substantive response to the AG [B1907], which defended the RGP’s actions in executing the warrants. In this email:

- a. IM stated that the reasons for obtaining a search warrant rather than a production order were that: (1) search warrants were used for other suspects in the case; (2) there was a need to seize JL’s devices at the time, not ask for them to be handed

over on request; (3) production orders are obtained by inter-partes applications which would involve disclosing details of the investigation to an interested party.

- b. The warrant followed the correct process where a substantial affidavit was produced and examined by the Magistrate over a period of 90 minutes having been provided a copy in advance.

310. In the intervening period, correspondence passed between the RGP, Magistrates' Court and Hassans, in which Hassans threatened to bring a JR against the decision to grant the warrant, and made various arguments about its unlawfulness. The AG and DPP advised the RGP on its approach to those letters in the meetings described below. As set out below, those issues touched upon the of whether the DPP had provided advice about the warrant:

- a. On 14 May 2020 [C3722], IM wrote to Hassans that: *"Although the DPP has been consulted on various non-operational issues concerning this investigation including the status of various parties he has not provided advice on the application of a search warrant which remains an operational matter"*.
- b. On 15 May 2020 [C3802], Hassans wrote to the AG that: *"There can be little surprise that, as we believe is the case, the DPP advised the Commissioner against the making of these application"*. Hassans also referred to *"the threat of the warrants and the clear misrepresentation that the warrants had been applied for on the advice of the DPP"*.
- c. On 20 May 2020, in a letter from Hassans to IM, Hassans stated that *"I also note from your letter that the DPP's advice was not sought on the application for search warrants. This was contrary to what Mr Levy was led to believe by Detective Superintendent Richardson, and contrary to what we understand was the position."* [B5444]

311. There are two factual disputes in relation to the above correspondence which will have to be explored in questioning, namely:

- a. As to whether PR said anything on 12 May 2020 to the effect that the warrants had been applied for on the advice of the DPP or *"from the highest level"* (Levy 2 para 9.4<sup>8</sup>).

---

<sup>8</sup> To be added to Bundle A.

- b. As to how Hassans learned that the DPP had not advised on the Search Warrants or had advised against them (IM asserts that the AG suggested it must have come from the CM (McGrail 1 para 59.6 [A22-3], McGrail 3 para 147(iii)(f), 170R [A119, A137]), which JL denies would have been inappropriate in any event (Levy 2 para 9.4<sup>9</sup>).

312. On 13 May 2020, a meeting took place between the AG, DPP, Mr DeVincenzi, IM and PR. PR took notes of this meeting [C1795], and the AG (Llamas 1 para 52 [A283]) and IM (McGrail 1 para 58 [A17]) has given evidence about what was said. However, the better source of what occurred is the audio file, which IM secretly recorded (the transcript is at [B108]). At that meeting:

- a. The AG asked IM why he applied for a search warrant; IM replied that they did not expect JL to hand over the data willingly [B109]. The AG stated that he would not have supported a search warrant, and stated: *“Christian has not advised that you, should, should do that, and therefore you have taken that decision on your own as is your right to do”* [B110].
- b. The AG stated that: *“I repeat my position, from which I would never budge because I am 200% certain of what we discussed here, in this room, that day. You, both left this room with an agreement that you were going to rationalise the grounds and that you would come. Nothing else would happen, and that once you had rationalised the grounds reduce the 76 charges to whatever you reduced it. ...”* [B109]
- c. The AG stated that: *“nobody in this room has em... questions your, your ethics...”* [B111]
- d. The DPP stated that he had *“no doubt of the integrity of the investigation... it’s been done properly and what [PR] and I agreed at a very early stage was a result of how the investigation was conducted, Jaime was a legitimate source of enquiry”*. IM interjected: *“As a suspect.”*. The DPP replied: *“I and Michael knows that. As a suspect, I mean he needed to be asked questions to clarify certain issues of the conspiracy... I’ve always made it clear to you and [PR], I don’t get involved in operational matters. My view was that the warrant should come, if at all, post to interview.”* [B112]

---

<sup>9</sup> To be added to Bundle A.

- e. The DPP stated: *“It’s your call, that Michael may have handled it differently, it’s your call”* [B115].
- f. The DPP stated that he had not seen the warrant or the Information [B118].
- g. Referring to the letter inviting JL to a voluntary interview [B5391], the AG asked *“do you realise how damaging if this came out? The reference to the Chief Minister...”*, and added *“that is the reason why I asked you to rationalise the ground ... so that, if you did proceed you were doing in a completely secure basis”* [B127].
- h. PR stated that the application in the Magistrates’ Court had lasted *“one and a three quarter hours”*, and that *“the Magistrate ... agreed with that assessment as well as the clerk”* [B136].
- i. The AG stated that he would rather not enter a nolle prosequi, but that *“if ... I feel that a prosecution exposes the Chief minister ... on grounds which are flimsy, I’ll stop it”* [B158].
- j. The AG stated that the CM was adamant that IM *“said yesterday, to both of us, you were acting on ad... on the search warrant, on advice of the DPP”*. IM replied: *“on advance for the investigation all along.”* The AG stated: *“well, he says, and you’ve confirmed now that such advice does not exist”* [B161]. IM added: *“he has been advising the team...”* [B161].
- k. When pushed, IM said: *“I can’t remember my words Michael, what I remember saying is that ... this matter had been dealt with in consultation in the DPP. That is what I’ve said, and I’m referring to an investigation...”* [B161].
- l. At one point IM asked: *“...from Jaime Levy’s point of view, what is the best outcome if doing the interview on the Monday ... and what’s the best result then? That the ... police officer who interviews you comes back and says ... that he can convince you on Monday that he’s got nothing to do here?”* [B198-9] (IM describes this in evidence as the AG asking him *“what JL should say to achieve the best outcome for himself”* (McGrail 1 58.22 [A19]), but that does not appear to be reflected in the transcript.
- m. In response to IM stating that the AG was in an awkward position, the AG stated (in Spanish) *“Fabian I will defend to the death ... The office of the Chief Minister, be it Fabian Picardo, be it Keith Azzopardi, be it Caruana or Hassans... I will protect them ... I’ve spent my whole life, defending this jurisdiction and promoting this jurisdiction ... But that protection of the jurisdiction, there can be no office, more symbolic of the jurisdiction than that of the Chief Minister, I will defend it”* [B229].

- n. The AG stated (in Spanish): “*I will try to calm things down which in all honesty will be difficult, and I cannot control Hassans...*” [B229].
- o. The AG stated (in Spanish) to IM that: “*I will eventually accept that there was a misunderstanding between us*”.

313. The AG has provided the following comments on this meeting:

- a. It became clear to the AG as a result of this meeting that IM “*considered that he was immune to having his actions disapproved of or criticised and that he equated both to improper interference with the conduct of a criminal investigation and a violation of police independence*” (Llamas 1 para 59 [A285]).
- b. The AG accepts that he expressed concerns about protecting the CM, but states “*it is untrue that I could possibly have given Mr McGrail the impression that it was, or even may be, my primary concern*”. The AG notes that the CM was not under investigation and there was no evidence of wrongdoing on his part (Llamas 1 para 64 [A286]).
- c. In his second statement, the AG clarifies that he was referring to the importance of the Office of the Chief Minister to the reputation of Gibraltar, not the person. He states “*it was the Office that I would protect, and then only from allegations on ‘flimsy’ grounds*” (Llamas 2 para 33 [A306]).
- d. The AG states that his references to protecting the jurisdiction referred to “*the way Spain plays out its claim to the Sovereignty of Gibraltar*” and his experience that Spain “*has historically and persistently exploited any opportunity that she can to criticise and bring international opprobrium to bear on Gibraltar*” (Llamas 1 para 64.4 [A287]).
- e. The AG accepts that he used “*over-expressive and emotional language*”, which he states he regrets in hindsight (Llamas 1 para 64.8 [A288]).
- f. The AG states that whilst he expressed his disagreement and criticism of the decision at this meeting, he “*still proceeded on the basis that the interview under caution of Mr Levy would go ahead as the RGP wanted*” (Llamas 1 para 80.5 [A293]).
- g. The AG states that after the meeting, he and IM spoke alone as the AG considered it was “*necessary to clear the air*” (Llamas 1 para 67 [A289]).

314. As to the reference in the meeting to there being a “*misunderstanding*”:



- a. IM's evidence is that: *"the AG said that he would put the issue to have been a misunderstanding. I was happy that a line was being drawn under the matter so far as the AG and I were concerned"* (McGrail 3 para 147(ii)(b) [A116]).
- b. The AG states that this is a mischaracterisation and that he and IM *"effectively agreed to disagree"* about the issue of their understanding, *"in order to work with him in view of the crisis that the search warrants had unleashed."* The AG added that: *"that does not mean that it was not abundantly clear to me what we had agreed between us, and that he had done something completely contrary to our agreement"* (Llamas 2 para 51.2 [A312-3]).
- c. The CM suggests that there was no room for a misunderstanding: *"He most certainly told us both that the DPP had advised him that a search warrant could and should be used against Mr Levy. In fact, this was central to my loss of confidence in Mr McGrail. I consider that Mr McGrail is now seeking to wriggle off the hook of his lie by suggesting it was a 'misunderstanding'. There is no room for misunderstanding as Mr McGrail clearly told me in the presence of Mr Llamas that the search warrant for Mr Levy had been issued on the advice of the DPP. He is changing his version only now that he has seen that the OPP does not make out the lie he told me."* (Picardo 2 para 15 [A227])

315. On 15 May 2020, a meeting took place between the AG, DPP, Mr DeVincenzi, IM, PR and MW to discuss the letter from Hassans referred to above. PR [C1798] and MW [B3190] took notes of this meeting. The AG also provides details of this meeting, although he does not recall whether it took place on 15 or 22 May (Llamas 1 para 69 [A290]). IM also gives evidence on this meeting (McGrail 1 para 59 [A22]). However, the best source of what occurred is again the audio file, which IM secretly recorded (the transcript is at [B236]).

- a. The AG stated that *"we're heading towards a major collision here"* and stated *"we just wanted to discuss ... whether there are things we can do, where you can achieve what you want to achieve whilst avoiding a collision"* [B236].
- b. IM confirmed that the RGP needed to carry on with the interview of JL. The AG stated *"what we think would be helpful for the management of the whole thing is, if that interview would still go ahead ... not have it under caution"* [B237]. PR objected on the basis this would not comply with codes of practice, PR had already cautioned JL at Hassans, and the RGP had filed documents with court saying they had reasonable cause to suspect [B237].

- c. The DPP proposed that the RGP sought a voluntary statement not under caution from JL, as a witness. The DPP stated “*we’re led to believe that if we go under caution he’s not gonna say a word*” [B238].
- d. Referring to Hassans letter of 15 May 2020 (see below): “*there’s even a suggestion here that you advised us not to obtain a warrant*”. The DPP replied “*I read that*”. PR replied: “*We didn’t say that. We didn’t agree with that. Now where has that come from? Who has told...*” [B242]. The AG interjected “*that’s an assumption that they’re making*” [B243]. The DPP said: “*it kind of possibly suggests that I’ve spoken to Louis (sic.) Baglietto, which I haven’t*”. The AG then stated “*it must come from the conversation with Ian and the Chief Minister*” [B243]. IM argues that this proves that the CM communicated with JL to inform him that the DPP had not advised the RGP on the warrants (McGrail 5 para 118 [A166]).
- e. The DPP stated that “*if there is a sniff of unlawful evidence, of Richardson being a bit naughty and misleading the misrepresenting the position, whether its true or not, that the DPP approved the search warrant or whatever, I don’t want that to stick... I don’t want it to taint our prosecution*” [B244].
- f. MW raised concerns that the Op Delhi suspects would complain that JL had been treated differently and shown preference [B244].
- g. The AG stated that the DPP did not think that the warrant was justified [B246]. PR stated “*I understand that’s what [the DPP] thought and I respect that position*”. The DPP interjected that he thought the warrant would probably stand legal challenge: “*I would have done it a different way, but I think lawfully you can justify that*” [B247].
- h. The DPP and IM discussed interviewing JL under caution at Hassans, rather than at the police station [B252]. The AG interjected that this would not work, as “*the issue here is the caution*” [B253].
- i. PR agreed that if JL provided a voluntary statement “*of his own free will*” by Sunday 17 or Monday 18 May 2020, the RGP could delay carrying out the interview until they considered the content [B259].
- j. The DPP stated: “*We’re all on the same side here. We’re all trying to protect injustice, balance getting Cornelio, keeping the police force healthy and not coming into disputes.*” [B261]
- k. The DPP further stated: “*I understand the problem. We’re trying to come up with a solution. Jaime attends without us... without you having to arrest him.*” [B285]

316. About this meeting, PR comments that: *“The solution arrived at was for Mr Levy to provide a statement that covered a list of issues. ... As far as I am aware, this was the first time we had allowed a suspect to provide a statement before interview”* (Richardson 1 para 15(b) [A1288]).
317. On 17 May 2020 at 14:51, LB emailed the AG (copied to IM) stating that: *“further to your confirmation that the Commissioner would be content with a written statement from Mr Levy in lieu of proceeding with the RGP’s proposed interview, I confirm that Mr Levy will give a written statement ... In the circumstances, Mr Levy will therefore not be attending the interview tomorrow”* [C3938]. IM forwarded this email to PR and MW [C3941]. MW raised concerns that *“we have to be careful that this agreement is not manipulated... whether he will be accepted as a witness will have to be determined on its merits once we have had time to consider the statement... We do not want it to suggest that he is a witness already”* [B3345]. PR raised these concerns with the DPP [C3944], who responded (having consulted with the AG) that *“there is nothing in the emails to suggest that the RGP will not, if it sees fit at a subsequent date, interview Mr Levy and that that option remains on the table...”* [C3943].
318. On 18 May 2020 at 12:03, IM emailed LB stating: *“Once we receive the statement, we would then reconsider whether we would require further particulars or the need to interview Mr Levy. As we have repeatedly said we are keeping an open mind...”* [C3998].
319. On 20 May 2020, the AG, the DPP, IM, PR and MW met to discuss the latest letter from Hassans. Again, IM secretly recorded this meeting, which is at [B308].
- a. The AG stated that *“all I’ve told [Hassans] ... Ian has agreed, the RGP has agreed, to try a written statement”*. PR stated that Hassans had *“turned that on its head”* and were now saying that *“the Attorney General has informed me that you have agreed to treat him as a witness”* [B308-9].
  - b. IM stated, in relation to the procedure that had been agreed for JL, *“we’ve bent over, which we would not have normally done...”* [B309]
  - c. PR reiterated that *“the DPP didn’t advise”* (on the warrant). The DPP added: *“these are not matters for the DPP, these are matters for the RGP and their operational functions...”* [B311].

- d. The AG stated that he had spoken to LB, who “welcome[d] this written statement”. The AG added that: “I have told him ... its taken Christian and me quite a bit of persuasion to get the RGP to go down this path...” [B311-2].
  - e. The AG stated that “I’ve told Lewis que Christian and I are talking to [the RGP], of course they know” [B316].
  - f. It was agreed to allow JL 7 days to provide a written voluntary statement [B317].
320. On 2 June 2020, Charles Bonfante (then junior counsel for JL) emailed PR noting his “helpful indication that there is no evidence to suggest that Mr Levy was involved in any planning of the alleged sabotage to the NSCIS platform” [C4686].
321. On 28 October 2020 MW emailed LB confirming that JL was no longer a suspect in the matter [C5177].
322. On 8 March 2021 [C5871], the DPP sent an email to the AG explaining “matters that have been highlighted expressly or implicitly” by defence counsel in Operation Delhi. The email referred to:
- a. The fact that the RGP was awaiting a witness statement from the CM: “his evidence is very important in relation to the conspiracy charge...”; and “the clear indication from the defence is they will be asking the CM to give live evidence at trial”, and the Crown would have to call the CM if the defendants did not.
  - b. The defence had “made it clear they will be seeking orders for disclosure of government/CM’s communications etc...”
  - c. However, the DPP noted that “there is nothing in the communications that I have seen in relation to the CM or FS [Financial Secretary] that concern me.”
323. On 21 January 2022, the AG discontinued the proceedings against Messrs Cornelio, Perez and Sanchez under section 59(2)(c) of the Gibraltar Constitution Order 2006, citing the public interest. He stated that although he had been advised by the DPP that there was enough evidence for there to be a realistic prospect of conviction at trial, there were matters in the wider interest that required him to discontinue the proceedings.

324. IM asserts that it was the concerns raised by the DPP in his email of 8 March 2021, and a desire to protect the CM, rather than any other genuine public interest concerns, which gave rise to the AG's discontinuance of the prosecution.

325. In a Ruling dated 9 November 2024, the Chairman held that:

- a. The discontinuance was effected by the AG pursuant to s59(2) of the Constitution.
- b. The reasons for the discontinuance could not at that stage be discarded as irrelevant to the Inquiry, and therefore it may within the Inquiry's Terms of Reference for the AG to be asked what his reasons were.
- c. The AG could be asked what his reasons were, but could not be compelled to give an answer.
- d. The Chairman could, if appropriate, draw inferences (adverse or otherwise) from a refusal to answer.

**Sub-issue 5.3 (alleged inappropriate interference with the investigation by the CM/AG and communications between the AG/CM/DPP and JL/LB)**

326. These facts are addressed in CTI's Written Submissions.

## **ISSUE 6 – THE FEDERATION COMPLAINTS**

327. These facts are addressed in CTI's Written Submissions.

## **ISSUES 2 AND 7: THE ASSAULT INVESTIGATION AND THE ALCAIDESA CLAIMS**

328. These facts are addressed in CTI's Written Submissions.

**JULIAN SANTOS**

**HOPE WILLIAMS**

5RB

2 April 2024

Updated 7 April 2024