

INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

WRITTEN SUBMISSIONS BY COUNSEL TO THE INQUIRY

FOR THE MAIN INQUIRY HEARING COMMENCING 8 APRIL 2024

Bundle references are to the Witness Bundle [A--]; Exhibits Bundle [B--]; Chronological Bundle [C--]; and RGP Disclosure Bundle [D--]. The Inquiry is continuing to receive new evidence and disclosure as part of the ongoing evidence gathering process, which STI will add to Bundles A and C as soon as any requests for redactions are resolved. Bundle D has now been made available to CPs on TMX.

Abbreviations used below are as follows:

<i>The AG</i>	<i>Michael Llamas KC, Attorney General</i>
<i>The CM</i>	<i>Fabian Picardo KC, Chief Minister</i>
<i>DPP</i>	<i>Christian Rocca KC, Director of Public Prosecutions</i>
<i>GPA</i>	<i>Gibraltar Police Authority</i>
<i>GPF</i>	<i>Gibraltar Police Federation</i>
<i>HMICFRS</i>	<i>His Majesty's Inspectorate of Constabulary and Fire & Rescue Services</i>
<i>IM</i>	<i>Ian McGrail, Former Commissioner of Police</i>
<i>JB</i>	<i>Dr Joey Britto, Chair of the Gibraltar Police Authority</i>
<i>JL</i>	<i>James Levy KC</i>
<i>LB</i>	<i>Lewis Baglietto KC</i>
<i>MW</i>	<i>Superintendent Mark Wyan (formerly Inspector/Chief Inspector)</i>
<i>NP</i>	<i>Nick Pyle, Interim Governor</i>
<i>PR</i>	<i>Superintendent Paul Richardson (now retired)</i>
<i>RGP</i>	<i>Royal Gibraltar Police</i>
<i>RU</i>	<i>Richard Ullger, Commissioner of Police (formerly Assistant Commissioner of Police and before that Superintendent)</i>

INTRODUCTION

1. These are CTI's written submissions for the five-week Main Inquiry Hearing commencing on 8 April 2024. They are intended to:

- a. identify the key factual disputes which require resolution through questioning and submissions, and the key issues which the Chairman¹ may wish to consider while hearing the evidence; and
 - b. ultimately, assist the Chairman in considering the Inquiry's Terms of Reference, which are to inquire into "*the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement*" (Legal Notice 2022/034).
2. CTI have also prepared a Facts Schedule containing detailed analysis of written and documentary evidence on issues 1-4, 5.1, 5.2 and 8-10. The facts pertaining to Issue 5.3 are included in the body of these submissions given they relate to disclosure that the Inquiry has received very recently. Whilst there is some overlap between this Facts Schedule and the Undisputed Facts document (prepared by CTI in conjunction with CPs in an effort to narrow the facts in dispute), the Schedule contains more detail, incorporates references to the evidence bundles, and includes matters that were disputed or not agreed between CPs.
3. Apart from pointing out matters which can fairly safely be gleaned from the evidence and contemporaneous documents, CTI do not seek in these submissions to advance a "case" or position, but rather to assist the Chairman to: (a) organise and analyse the large volume of material gathered by the Inquiry; and (b) define the parameters of the Main Inquiry Hearing. These submissions reflect only the tentative views of CTI (and obviously not the Chairman's), pending the important processes of questioning and submissions at the Main Inquiry Hearing.

Terms of Reference and reasons/circumstances

4. An important matter to address before analysing the facts is interpretation of the Terms of Reference, and in particular, the meaning of the phrase "*reasons and circumstances leading to*".

"Reasons"

¹ The reference to "Chairman" instead of "Commissioner" is without prejudice to the consideration of any submissions received given that it is a term coined in the IA 2024.

5. The meaning of the word reason is simple and uncontroversial. It is defined in the Oxford Languages online English dictionary as: “*a cause, explanation, or justification for an action or event*”. The inclusion of the word “*reasons*” within the Terms of Reference therefore imposes upon the Inquiry an obligation to determine the cause(s), explanation(s) or justification(s) for IM’s early retirement.

6. When seeking to determining the reasons for any event, the following general points can be made:
 - a. There can be more than one reason for an event or action. If there is more than one reason, some may be of greater importance or significance than others as causes for an event.
 - b. If a person states that ‘X’ is a reason that they acted in or felt a particular way, that may be true – even if it may not be a good or justified reason, objectively judged. This brings an element of subjectivity into the equation: whether ‘X’ was a reason is a different question to whether it was a good or justified reason. However, if ‘X’ is an objectively “bad” or unjustifiable reason, that could be relevant to determining whether a person is speaking truthfully when stating that ‘X’ is the real reason.
 - c. On the other hand, even if a person states that ‘X’ is a reason that they acted or felt a particular way, ‘X’ may not actually be the true operative reason or justification (or the *only* operative reason or justification). There may be other reasons which are unstated or unidentified, either because they are not disclosed or because they are unknown by the relevant person but which are nevertheless true reasons for acting, whether in conjunction with any reasons that are given, or in place of them.

“*Circumstances*”

7. Again, the definition of circumstances cannot be in dispute. The Oxford Languages definition of “*circumstance*” is “*a fact or condition connected with or relevant to an event or action*”. The inclusion of the word circumstances within the Terms of Reference means that the Inquiry’s remit is broader than merely looking for direct causes of IM’s early retirement, and extends to looking at facts connected with or relevant to that event.

“Leading to”

8. The words “*leading to*” reinforce the need for a link between the reasons and circumstances and IM ceasing to be Commissioner of Police (“**CoP**”), but it is submitted maintain the slightly broader nature of the exercise than a pure assessment of the direct causes of IM ceasing to be CoP.

The Inquiries Act 2024

9. The Inquiries Act 2024 (“**the IA 2024**”) came into operation on 28 March 2024. The Inquiry Team produced a Fact Sheet² to aid public understanding of the Act, and the changes brought about by its enactment and the repeal of the Commissions of Inquiry Act 1888 (“**the CoIA 1888**”).
10. On Thursday 28 March 2024 the Inquiry wrote to CPs noting the passing of the IA 2024 and the Government’s position that the IA 2024 applied to this Inquiry due to the express wording of s35(4) and 35(6) of the IA 2024, and inviting submissions from any CPs who disagreed with that interpretation by Tuesday 2 April. No CPs disagreed with this position.

Undertakings by the AG

11. As explained in the Fact Sheet, s22 of the IA 2024 introduces a privilege against self-incrimination, as that the Inquiry can no longer require a person to give evidence or disclosure which could not be required by a civil court. Previously, ss8 and 10 of the CoIA 1888: (i) granted persons giving evidence or disclosure to an Inquiry an immunity from civil or criminal proceedings in respect of any statement or disclosure given, (ii) made any statements made in response to questions inadmissible in civil or criminal proceedings, and (iii) forbade any person from refusing to answer on the basis of potential incrimination.
12. In light of this change, on 26 March 2024 STI wrote to Caruana & Co (who represent the Government Parties), and proposed that the AG give an undertaking in terms materially equivalent to the effect of ss8 and 10 of the CoIA 1888 (although limited to criminal proceedings, given the AG’s role under s59 of the Gibraltar Constitution Order 2006). This proposal is consistent with common practice in UK inquiries, and was designed to permit

² <https://coircomp.gi/wp-content/uploads/2024/03/Fact-sheet-on-the-Inquiries-Act-2024-v2.pdf>

the Inquiry to continue to conduct meaningful investigations and undertake its function. It would ensure that witnesses can continue to give evidence freely at the Main Inquiry Hearing, knowing that they are not at risk of subsequent prosecution for answers given (or reliance on those answers in future criminal proceedings), and that the Inquiry is not obstructed or delayed by witnesses seeking to invoke the privilege against self-incrimination.

13. The Attorney General provided this undertaking on 5 April 2024, a copy of which will be published on the Inquiry website on Monday, after CTI have had the opportunity to explain the impact of the undertaking to the public in their oral submissions.

Brief overview of the Inquiry's procedure to date

14. The Inquiry began by requesting evidence from the four persons who, according to the PA 2006, would (or at least could) have played a statutory role in Mr McGrail's retirement: (1) IM; (2) NP; (3) the CM; and (4) JB. Evidence was also requested evidence from the AG. Each of these statements were received prior to PH1 (which took place on 14 June 2022). Using these statements as a starting point, the Inquiry was able to identify and approach additional witnesses and follow leads, and where necessary request that witnesses provide further documentation or clarificatory statements. The Inquiry's evidence-gathering has been a continuous process since 2022, amounting to 94 Affidavits or Witness Statements being submitted to the Inquiry. STI has reviewed this material for relevance and personal data and disclosed relevant evidence to CPs.
15. Due to the Inquiry's very wide Terms of Reference, the Inquiry Team has sought to structure its work in two key ways, to ensure the Inquiry's processes remain focussed and efficient. First, by seeking to better define the issues under inquiry through preparing a Provisional List of Issues. Second, by only requesting evidence which is "*relevant*" to the Provisional List of Issues. As defined in the Inquiry's Documents Protocol, a "*relevant document*" is one which "*having regard to the Inquiry's Terms of Reference, it is likely that the Inquiry panel would (if aware of their existence) wish to be provided with*".
16. The Provisional List of Issues was first drafted based on the evidence and documents received through the Inquiry's evidence-gathering process, and identifies from that evidence ten matters that could potentially be reasons or circumstances leading to IM

ceasing to be CoP. This document was prepared and circulated by the Inquiry Team prior to PH2. By PH2 (20 September 2022), a large measure of agreement had been reached, and the document was finalised and published on 22 September 2022. On 29 November 2023, the Provisional List of Issues were amended following the Chairman's Ruling dated 8 November 2023: this change is addressed in relation to Issue 6 below.

17. As envisaged in the Provisional List of Issues, the Inquiry's intended procedure is to:
 - a. identify the relevant facts relating to each identified issue, and then
 - b. determine to what extent, if at all, the issue constituted a reason or circumstance leading to IM's early retirement.

18. In the first stage of that process, the Chairman has always signalled his intention only to ascertain the relevant facts to the extent that he considers necessary and appropriate to address the matter under inquiry. For each potential reason identified in the Provisional List of Issues, CTI have therefore endeavoured to identify the relevant facts in the Facts Schedule. These submissions then consider whether the issue constituted a reason or circumstance leading to IM's retirement. The issues are taken in chronological order save for two exceptions:
 - a. Issues 8-10 are taken first because they include the correspondence in which reasons were put forward by the GPA for inviting IM to seek early retirement and by NP, the CM and the AG for their loss of confidence in IM, which contributed to the formulation of the remaining issues.
 - b. Issues 2 and 7 are taken last due to their likely minimal role at the forthcoming hearing.

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

8. *The letter dated 29 May 2020 sent by Mr McGrail’s lawyers Charles Gomez and Co to the Gibraltar Police Authority (“the 29 May Letter”).*

9. *Mr Pyle’s stated intention as to his powers under section 13 of the Police Act. This will include consideration of the relevance (if any) of Sir David Steel’s imminent commencement as Governor, and particularly the date on which NP learned of the date on which that was expected to occur (“the Section 13 Issue”).*

10. *The Gibraltar Police Authority’s process and decision in purported compliance with Section 34 of the Police Act, and subsequent withdrawal of that decision (“the GPA Process”).*

19. It is logical to address issues 8, 9 and 10 together as their timelines are inextricably linked during a short period of less than one month: 14 May 2020 (the date that the CM first raised his concerns about IM with NP) (Picardo 1 para 67 [A198]) to 9 June 2020 (the date that IM relinquished control over the RGP (McGrail 1 para 109 [A45])).

20. The events during this period also overlap significantly with events considered under other issues (and in particular issues 3, 4 and 5), which were playing out simultaneously. Notably:

- a. The RGP attended JL’s office to execute the search warrant against him on 12 May 2020 (although it was ultimately not executed), and later that day the CM, the AG and IM met in the CM’s office. In the following days and weeks correspondence passed between Hassans, the AG, the RGP and the Magistrates’ Court about the legality of the warrant.
- b. On 14 May 2020, the CM was in contact with LB by telephone and WhatsApp, and during this exchange quoted from the Police (Discipline) Regulations 1991 [B1422].
- c. Also on 14 May 2020, the CM learned of the complaint being brought by the family of a deceased crewmember from the Spanish media, triggering his WhatsApp message to NP recording his “*huge concerns about the senior management of the RGP*” (Picardo 1 para 67 [A198]).
- d. On 20 May 2020, following Supt Yeats query to the AG about the civil claims arising from the Incident at Sea, there was heated correspondence between the AG, IM and the CM, which also mentioned the “*unflattering report from the HMICFRS*” [B1230].

e. On 28 May 2020, IM emailed the Section 15 Report to the CM [C4429].

21. The facts relating to these issues are set out in paragraphs 1 – 64 of the Facts Schedule.

The legal background

Relevant constitutional provisions

22. The office of the Governor is established by s19 of the Constitution of Gibraltar (“**the Constitution**”). Under s20 of the Constitution, the Governor shall exercise his functions in accordance with the Constitution and any other law.
23. Under s22(1), a person may be designated as assuming and discharging the functions of Governor during any period when the office of the Governor is vacant or the Governor is absent from Gibraltar or is for any reason unable to discharge the functions of his office.
24. At the time of the events in question, in the intermittent period between the departure of Lieutenant General Edward Davis CB, CBE (“**Lt Gen Davis**”) on 18 February 2020 and the arrival of Vice Admiral Sir David Steel KBE, KStJ DL (“**Sir David Steel**”) on 11 June 2020, NP was the designated person, under s22(1), as assuming and discharging the functions of Governor. For this reason, he is referred to in this Inquiry as the “Interim Governor” (that is not a term which is used in the Constitution, but rather a convenient shorthand for someone designated under s22(1)).
25. Under s22(3), any person designated under s22(1) “*shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform the functions of that office has notified him that he is about to assume or resume those functions*”.
26. Under s45 of the Constitution, the Government of Gibraltar consists of the King (represented by the Governor) and the Council of Ministers including the Chief Minister and up to nine other Ministers. Under s45(3) the Governor, acting in his discretion, shall appoint as Chief Minister “*the Elected Member of Parliament who in his judgment is most likely to command the greatest measure of confidence among the Elected Members of the Parliament*”.

27. Under s47 of the Constitution, the Governor is responsible for the conduct of (a) external affairs (acting as far as practicable in consultation with the Chief Minister), (b) defence, (c) internal security, including (subject to s48) the police, and (d) such other functions relating to appointments to public offices and related matters as are conferred on him by the Constitution provided that the Governor shall in respect of external affairs as far as practicable act in consultation with the Chief Minister.
28. As noted above, the Governor's responsibility for the police is expressly qualified as being subject to s48, which establishes the GPA. S48(1) expressly provides that the GPA "*shall be independent in the exercise of its functions*". Under s48(3), the Commissioner of Police is appointed by the Governor acting in accordance with the advice of the GPA (subject to one proviso, which is not relevant here).
29. Under s49, the Governor is required to keep the Chief Minister fully informed concerning the general conduct of those matters for which he is responsible. Similarly, s52 requires the Governor and the Chief Minister to confer on a regular basis and for the Chief Minister to brief and keep the Governor informed about the policies of the Government and the public affairs of Gibraltar.
30. The public office of the AG for Gibraltar is established by s59(1) of the Constitution. Under s59(2) the AG has power in any case in which he considers it desirable so to do, to (a) institute and undertake criminal proceedings before any court of law (except disciplinary law), (b) take over and continue any such criminal proceedings that may have been instituted by any other person or authority, and (c) discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority. The power of discontinuing proceedings are vested in the AG to the exclusion of any other person or authority, and the exercise of that power shall not be subject to the direction or control of any other person or authority.

The Police Act 2006

31. The Police Act 2006 ("**PA 2006**") provides for the establishment and functions of the GPA and the organisation, discipline, powers and duties of the RGP.
32. The GPA is established under s3(1), and under s4 shall consist of ten members comprising a Chairman (appointed by the Governor on the advice of the Specified

Appointments Commission, from among persons proposed by the Governor or the Chief Minister), one member each appointed by each of the Governor and the Chief Minister, and seven members appointed by the Governor acting on the advice of the Public Service Commission from a list of persons approved by the Governor and the Chief Minister.

33. The GPA's responsibilities and powers are set out in s5 PA 2006, and include: securing the maintenance of an efficient and effective police force within the financial resources available and on a value for money basis (s5(a)), ensuring high standards of integrity, probity and independence of policing (s5(b)), and holding the Commissioner to account for matters which are the responsibility of the GPA (s5(i)). Under s6(1) PA 2006 the quorum at meetings of the Authority is six members. Meetings shall be held at least one in any period of 3 months (s6(2)) and minutes of every meeting must be kept (s6(4)).
34. Under s11(a) PA 2006 the Governor has overall, ultimate responsibility for (a) the integrity, probity and independence of policing in Gibraltar, and (b) the policing aspects of national security including internal security. Under s12 PA 2006 the Governor has power to (a) hold the Authority to account for any matter to which s11 relates (b) hold the Authority to account for the professional standards of the Force, and (c) to call for and hold meetings with the Chairman, the Commissioner and other senior officers of the Force to discuss matters under his responsibility or in respect of which he has powers under this Act.
35. Under s13 PA 2006, where the Authority "*has failed to discharge or perform a responsibility imposed on it*" under the PA 2006, the Governor is able to exercise certain powers, including "*to suspend from duty, or call for the resignation of the Commissioner*" (s13(f)). The Governor is required to keep the Chief Minister informed of any exercise by him of such a power (s13(2)).
36. Under s15 PA 2006 the Chief Minister may exercise certain powers on behalf of the Government, including requiring factual or assessment reports from the Force or the Authority on any policing matter (s15(1)(a)). The Chief Minister is required to keep the Governor informed of any exercise by him of that power (s15(2)).
37. Under s32(1) PA 2006, the Governor, acting on the advice of the GPA, and subject to any provision of the Constitution, shall appoint the Commissioner.

38. Under s33(1) PA 2006 the Commissioner shall, subject to the provisions of the PA 2006, have command, superintendence, direction and control of the Force, and is responsible for the efficient administration and government of the Force and for the proper expenditure of all public moneys appropriated for the service thereof. In discharging his functions, the Commissioner shall have regard to the Annual Policing Plan (s33(2)).
39. The procedure for removal of a Commissioner of Police is laid out in s34 PA 2006. S34(1) provides that the GPA *acting after consultation with the Governor and the Chief Minister and with the agreement of either of them, may call upon the Commissioner to retire, in the interests of efficiency, effectiveness, probity, integrity or independence of policing in Gibraltar*. The GPA is required by s34(2) to give the Commissioner an opportunity to make representations and shall consider them before seeking the approval of the Governor and the Chief Minister under s34(1). A Commissioner called upon to retire under s34(1) must retire on a date specified by the GPA or on such earlier date as may be agreed upon between him and the GPA (s34(3)).
40. The process required by s34 is therefore in the following order:
- a. **Stage one** – GPA determines that it is considering calling upon the Commissioner to retire, in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar.
 - b. **Stage two** –GPA gives the Commissioner an opportunity to make representations, and considers those representations.
 - c. **Stage three** – Having considered those representations, GPA seeks the approval of the Governor and the Chief Minister to call upon the Commissioner to retire.
 - d. **Stage four** – Having obtained the approval of either of the Governor and the Chief Minister, the GPA calls on the Commissioner to retire.
 - e. **Stage five** – The Commissioner retires on the date specified by the Authority or an earlier date if agreed between him and the GPA.
41. Reading s34(1) and s34(2) together, it is unclear whether the authority can or should consult with the Governor and the CM before giving the Commissioner the opportunity to make representations, but approval certainly cannot be sought before then.

Submissions

42. As to whether each of Issues 8 to 10 constituted a reason or circumstance leading to IM's early retirement, CTI submit as follows.
43. *The 29 May 2020 Letter (Issue 8):*
- a. Each of the Three Letters (from the Governor, the CM and the AG) refers to the 29 May Letter as exacerbating their loss of confidence in IM. Both NP and the CM referred to the 29 May Letter as serving to "*cement*" their loss of confidence in IM [C4682, 4785], and the AG referred to it as "*deepening*" his loss of confidence [C4733]. To that extent the 29 May Letter is undeniably a relevant circumstance leading to IM's early retirement.
 - b. If the Chairman accepts any of these statements in the Three Letters and/or the Government parties' evidence on the impact of the 29 May Letter, then it is certainly open to the Inquiry to conclude that the 29 May Letter was a "*reason*" leading to IM's early retirement. However, it will be for the Inquiry to determine, through questioning (a) whether it accepts NP's, the CM's and the AG's position as to the 29 May Letter, and if so, (b) whether the 29 May Letter played a causative role in IM's early retirement. The answers to (a) and (b) need not be the same.
 - c. The Inquiry could conceivably determine that the 29 May Letter did, in fact, lead to a greater loss of confidence in IM by NP, the CM and the AG, but nevertheless conclude that it was not a reason for his early retirement, for example because minds were already made up or because IM himself would have offered to retire regardless, given he also considered the situation to be "*untenable*" by that stage (McGrail 1 paras 100-1 [A42]).
44. *NP's stated intention as to his powers under section 13 of the PA 2006 (Issue 9):*
- a. Again, there is no dispute that NP expressed his intention to exercise his powers under section 13. To that extent, and without attributing any causative impact to it, it was a *circumstance* leading to IM's early retirement.
 - b. As to whether it was a *reason*, IM's case is that it played a significant role in his ultimate decision to offer to retire. It also appears from the evidence available as to (i) the meeting between NP, the CM and JB on 18 May 2020, (ii) the GPA meeting on 21 May 2020, and (iii) and the meeting between JB and IM on 22 May 2020, that

it played a significant role in the GPA's decision to invite IM to retire. However, quite how much of a causative impact it had can be explored in questioning.

- c. There also appears to be no dispute that NP in particular was determined to resolve the matter before the Governor's arrival, and this is especially evident from his communications with the FCDO in the final days before Sir David Steel's arrival (by which point it is clear that he was aware of the impending arrival). Sir David Steel's appointment had been announced by the FCDO on 19 May 2020, and NP may well have known about his appointment earlier. NP knew at the latest by 5 June 2020 that Sir David Steel was expected to arrive by 10 June [C4782].
- d. What remains unclear is when (if ever) the conditions for s22(3) to apply came into existence. This raises a number of sub-questions, such as: (i) what precisely amounts to a sufficient notice that a person is "*about to assume*" the functions of the office of Governor, (ii) does learning of the date of commencement of a person's upcoming appointment suffice for s22(3) to be triggered, (iii) if particular notice is required, was such notice given to NP by Sir David Steel, and (iv) if so when did that take place. To the extent that the Inquiry considers it necessary to determine them, these questions can be addressed in submissions and questioning at the Main Hearing, although it is submitted that they are not of central importance to the Inquiry.
- e. Ultimately, although it appears that Sir David Steel's impending arrival played a role in the manner and speed in which the decision-making took place, it only entered the picture fairly late in the day. It does not appear to be a reason leading to IM's early retirement, although it does appear to have expedited the process.

45. *The GPA's process and subsequent withdrawal (Issue 10):*

- a. Again, it appears beyond dispute that this was a *circumstance* leading to IM ceasing to be CoP.
- b. As to whether it had a sufficient causative impact to properly be described as a *reason*, this can be explored in questioning. NP considered that the failure by the GPA's to complete the process required by s34 in a procedurally fair manner constituted a failure on the GPA's part to perform its statutory responsibility, which in turn permitted him to exercise the power to suspend IM or call for his resignation under s13(1)(f) PA 2006. To that extent, it probably did play a role in the final decision-making, but no CP appears to assert that this was a substantive reason for IM's early retirement.

ISSUE 1 – THE AIRPORT INCIDENT

1. The actions of the Royal Gibraltar Police (“RGP”) on:

1.1 8 February 2017 in obstructing an aircraft at Gibraltar airport to remove an employee of the UK Ministry of Defence who had previously been arrested by the UK Service Police;

1.2 1 March 2017 in arresting three senior Ministry of Defence members of staff and seizing and removing service personnel equipment from HM Naval Base and an officer’s home.

Where was the Airport Incident relied upon?

46. This issue was raised by NP in his first Affidavit (Pyle 1 para 21 [A245]). NP states that his concerns over the leadership and management of the RGP, “*and over the behaviour and judgment of Mr McGrail as its Commissioner of Police*”, started with the Airport Incident, five months into his arrival in Gibraltar. NP’s particular complaints relating to this issue are as follows:

- a. The “*unpleasant*” manner of the arrests of the three most senior MoD members of staff by the RGP on 1 March 2017 (Pyle 1 para 21.5 [A246]):
 - i. Squadron Leader Provost Marshal Chris Collins was “*with quite unnecessary drama, removed from a civilian, commercial flight from the UK as soon as it landed in Gibraltar*”.
 - ii. Chief of Staff, British Forces Gibraltar, Colonel Frank Green was arrested “*in front of his superior, the Commander of British Forces Gibraltar, Mike Walliker*”.
 - iii. Station Commander Wing Commander Liz Hutchison was “*arrested in front of her team at RAF Gibraltar Station Headquarters*”.
- b. Also on 1 March 2017, the RGP entered HM Naval Base and seized personal equipment, and took one officer to her home to take possession of her personal home, “*notwithstanding that the incident had been resolved*” (Pyle 1 para 21.6 [A246]). This was the subject of a complaint to the Police Complaints Board (Pyle 1 para 21.9 [A247]).
- c. Some of the actions and behaviours were described to NP by senior MoD people as “*a cross between the Sweeney and Life on Mars, and extremely and unnecessarily discourteous*” (Pyle 1 para 21.7 [A247]). NP raised his concerns over the RGP’s and particularly IM’s behaviours formally on numerous occasions with the GPA, the Governor, the CM and the FCDO. NP pushed for a review, which

the CM agreed to, and the GPA exonerated the RGP, but 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]).

- d. Issues over the forensic capabilities of the RGP also came to light, with the forensic examination of a laptop being delayed and ultimately finding no incriminating evidence, whereas the MoD forensic examination took two months and identified over 1000 images including “*the most serious of imagery*” on the computer, resulting in the accused being found guilty and given a custodial sentence (Pyle 1 para 21.10 [A347]). PM Collins gives the much higher figure of “*40,000+ indecent images of children*” (Collins 1 para 5 [A1396]).
 - e. It was “*difficult to over-estimate the strain under which the relationship between MOD and Gibraltar was placed, and the damage done to it, by this incident and the RGP conduct in relation to it*”. The incident “*required ministerial intervention in both UK and Gibraltar, military intervention at the highest level in the UK to draw a line under it*” (Pyle 1 para 21.11 [A248]).
47. The CM describes the incident as “*dramatic*” (Picardo 1 para 20 [A185]), and states as follows (Picardo 1 paras 21-22 [A186]):

“It became apparent to me that the manner in which Mr McGrail had led that investigation was unnecessarily institutionally confrontational in respect of the MOD. While I believed that the policing objectives were meritorious ... and I gave the RGP my fulsome public support in that respect, that objective could and should have been more quickly, effectively and easily achieved via a more collaborative and conventional route.

I was clear in my view that, while the MOD had not handled the matter well either, Mr McGrail had led the RGP into a dangerous, difficult and damaging situation for Gibraltar in terms of its relationship with the MOD, which would, and subsequently did, require a lot of my time and effort to mitigate.”

48. The CM repeats this point in Picardo 2 para 21 [A230]. He further states that he worked with the AG and the now Chief of Defence Staff Tony Radakin to establish new procedures to ensure there was never a re-occurrence “*of events such as those which Mr McGrail’s approach had resulted in*” (Picardo 1 para 23 [A186]). IM’s evidence is that he too worked with the AG to formalise processes between the RGP and the MOD following on from the Airport Incident (McGrail 3 para 150(c) [A127]).

49. Finally, the CM highlights the importance of the relationship with the UK MOD, which he describes as “*critical for Gibraltar*” and one which successive governments of Gibraltar have nurtured. He says that “*very considerable damage was done*” to that relationship by “*IM’s handling of and conduct during this incident*”, and yet the CM felt IM “*was not displeased with the manner of his actions or remorseful of the consequences for Gibraltar that his leadership of the operation had resulted in*” (Picardo 1 paras 24-25 [A186-7]).
50. IM highlights the praise that he and his RGP colleagues received from the CM for the manner in which he handled the case, and that the CM also publicly congratulated the RGP on GBC TV (McGrail 3 para 148(f)(i) [A124]).
51. IM alleges (McGrail 3 para 148(a) [A120]) that NP’s “*inert activity*” in relation to the Airport Incident was “*a contributory factor to the unfortunate escalation of events*”. NP disagrees and maintains that “*the efforts of the Office of Governor were focused on reducing tension*”, pointing out that although he was away from Gibraltar in early February 2017, Lt Gen Davis “*actively led on the issue from abroad, including by means of direct engagement with the Chief Minister, the MoD and London (and of course regular conversations with me)*”. He also states that he called a meeting between CoP Yome and the MoD Chief of Staff with a view to deescalating the situation, but the Chief of Staff did not attend (Pyle 2 paras 20-22 [A265]). In the SMT WhatsApp group, CoP Yome records NP as describing the RGP’s plans to execute search warrants to retrieve the devices as “*nuclear*” [C777].
52. IM gives further evidence relating to this incident in McGrail 5 paras 5 to 53 as follows [A143-156]:
- a. He asserts that the allegations by the CM that he had led the investigation in a manner that was “*unnecessarily institutionally confrontational in respect of the MOD*”, and that he had “*led the RGP into a dangerous, difficult and damaging situation for Gibraltar*”, which required a lot of the CM’s time and effort to mitigate (Picardo 1 paras 21 and 22 [A186]), and the text from the CM to NP of the 14 May 2020 as demonstrably “*false*”, “*self-serving*” and “*disingenuous*”, given his statements at the time where he encouraged the RGP to assert itself over the MOD, whose officers he referred to as “*fools*”, “*clowns*” and “*idiots*”.

- b. He adds that the CM has never expressed any concern about the RGP's actions, and there is no correspondence to that effect, and refers to several examples of correspondence at the time where the CM praised the task undertaken, including:
- i. A message from CoP Yome to the WhatsApp RGP SMT chat group with instructions on 7 February 2017 (the eve of the Airport Incident), 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].
 - ii. The CM's email to CoP Yome and the RGP's SMT, copied to the Minister for Justice Neil Costa MP and the AG at 20:57 on 8 February 2017 (the day of the Airport Incident) [C142], which is addressed more fully in Facts Schedule.
 - iii. A meeting 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).
 - iv. An email to CoP Yome and the AG dated 3 March 2017 referring to the relevant MoD staff as "*fools*", "*clowns*" and "*idiots*", expressing pride for the RGP and the AG, and stating that he would support the RGP if the situation required "*another turn of the screw*", which is addressed more fully in the Facts Schedule.
 - v. 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.
 - vi. The email which he says was drafted by the CM for CoP Yome to send to the CBF and which CoP sent on 5 March 2017 (McGrail 3/para 19 [A148-A151]).

- vii. A subsequent media interview where the CM congratulated the RGP's actions (<https://www.youtube.com/watch?v=RQ1lpQVcCxY>) (although McGrail 5 para 20 [A151] states that he likened the MoD officials' defences to the Nuremberg trial defence, in the interview the CM described the situation as "*more complex*" than such a defence).
- c. IM maintains that was merely carrying out his duties, diligently and professionally, and made efforts to de-escalate the situation (for which the CM praised him).
- d. IM also refers to the GPA's report to the CM, which made "*very favourable comments and commending the actions carried out by the RGP*", and "*condemned the attitudes*" of the MoD officials.
- e. He states that the AG was involved in advising the CoP and the CM, and possibly NP too, and obtained specialist London Counsel advice, which vindicated the RGP's actions and suggested that the MOD/UK Services Police had acted in an *ultra vires* manner.
- f. He refers to the apologies from Rear Admiral Tony Radakin and the other three senior ranking military officials as vindicating the RGP's actions.
- g. He explains that after the incident he became involved, along with the AG, in the formulation of a Memorandum of Understanding to permit UK Services Police to exercise jurisdiction in Gibraltar, and at no point during those dealings with the AG did he intimate in the slightest that the RGP or IM had been the cause of any breakdown of relations between the MoD and the Government of Gibraltar; rather he "*only had praise for the way the RGP had performed*".
- h. In response to NP's evidence, he refers to the following:
 - i. He asserts that NP knew, from very early on, that the UK Services Police had no legal authority or competency to act as they did, and that his recollection is "*reticent and biased*" it diminishes the fact that they had no such jurisdiction (McGrail 5 paras 27-28 [A152]).
 - ii. He states that PM Collins was not removed from a flight, but rather arrested at the baggage collection area, and that there was no "*unnecessary drama*" – the officers were "*very discreet and accommodating*", allowing PM Collins to greet his family in arrivals (for which PM Collins thanked the officers) (McGrail 5 para 29 [A152]).
 - iii. He alleges that NP never raised any concerns about the RGP's handling of the incident – not even in the s13 and s34 PA 2006 process with the GPA (McGrail 5 para 31 [A153]).

- iv. He maintains that an independent review would not have portrayed the MoD in a good light (McGrail 5 para 35 [A153]).
 - v. He confirms that he responded to the complaints to the PCB and ultimately those complaints were found to be unsubstantiated (McGrail 5 para 36 [A153]).
 - vi. He acknowledges that the RGP's failure to find indecent images on the devices was embarrassing, but that could not detract from the MoD's unlawful actions, and in any case cannot be laid at IM's door (McGrail 5 para 37 [A153]).
53. The incident took place in early 2017, long before IM was appointed Commissioner. It was not mentioned in JB's meeting with IM on 22 May 2020 [C4316], and neither of the GPA's letters to IM dated 22 May 2020 mentions the letter as a reason for NP or FP (or the GPA's) loss of confidence in IM [C4315, C4378]. None of the Three Letters mentions the Airport Incident either (apart, perhaps, from NP's letter of 3 June 2020, which refers to his "*already-existing concerns*" relating to IM [C4676]). However, it was mentioned by the CM in his text to NP on 14 May 2020 [A198] (emphasis added): "*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: ... (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); ... I am starting to lose confidence here...*"

Submissions

54. As to whether Issue 1 constituted a reason or circumstance leading to IM's early retirement:
- a. It appears from the evidence that this incident left both sides of the dispute (MOD and RGP) feeling extremely aggrieved. It is also evident that despite the apology letters, a number of individuals on the MoD side continued to feel aggrieved about the incident and the subsequent arrests.
 - b. NP specifically cites this issue as contributing to his progressive loss of confidence in IM's probity and integrity and his leadership of the RGP (Pyle 1 para 20 [A245]). Similarly, in his WhatsApp message on 14 May 2020, the CM specifically referred to "*the runway incident, where we had to go in to bat for them despite all aspects having clearly been mishandled by the RGP (And parts of the*

MoD also)”, as one of the matters which was causing him to lose confidence in the senior management of the RGP [A198].

- c. On the other hand, there was no explicit reference to the Airport Incident by either NP, the CM or the AG in the discussions with JB including the detailed note of the meeting on 18th May 2020, the email correspondence between NP and FP on the evening of 17th May 2020 or in the Three Letters (although NP does refer to already existing concerns, which may be a reference to this. This will need to be explored when NP is examined). It is also important to bear in mind that:
 - i. IM was appointed as CoP after this incident;
 - ii. The CM expressed support and encouragement for the actions of the RGP on several occasions around the time of the Incident and subsequent arrests, as set out in paras 92 and 111 of the Facts Schedule; and
 - iii. NP had an active role in the application process and considered him suitable for the role despite the incident (albeit he voted for RU). It appears from NP’s evidence that the Airport Incident and reports he received about it may have coloured his mind as to his impression of IM, even though there appears to be no evidence of NP having raised the Airport Incident at GPA level during the application process for the position of CoP.

55. The following topics fall to be explored at the Main Inquiry Hearing:

- a. NP’s reliance on this issue notwithstanding his failure to refer to it explicitly at the time of the s32 appointment process and the s34 removal process, and whether he raised concerns over the RGP’s, and in particular IM’s, behaviour formally on numerous occasions with the GPA, the Governor, the CM and the FCDO (as he asserts in Pyle 1 para 21.7 [A247]).
- b. NP’s allegation to the effect that the GPA process which exonerated the RGP followed a methodology which was flawed.
- c. Whether there is any evidence that the CM had criticised the RGP’s conduct prior to 12 May 2020.
- d. Whether the CM’s reference to the Airport Incident in his WhatsApp message to NP of 14 May 2020 and his general position in his evidence in relation to the Airport Incident (and specifically IM’s conduct) was “*self serving*” and designed to influence NP to remove IM, as IM alleges.
- e. The conflicting accounts as to IM’s and his team’s behaviour throughout the incident and particular at the time of the arrests on 1 March 2017.

ISSUE 3: THE INCIDENT AT SEA

The collision at sea on 8 March 2020 outside British Gibraltar Territorial Waters involving an RGP vessel and resulting in two deaths (“the Incident at Sea”), and the RGP’s subsequent handling of it. In particular:

3.1. Did faults or failings in the operational instructions or procedures of the RGP cause or contribute to the collision at sea, and, if so, was Mr McGrail as Commissioner of Police responsible or accountable for those faults or failings?

*3.2. Was information as to the location of the Incident at Sea communicated by Mr McGrail and/or the RGP to Chief Minister Fabian Picardo QC (“**CM**”), the Attorney General Michael Llamas QC (“**AG**”) and the then-Interim Governor Nicholas Pyle OBE (“**NP**”) in a timely and transparent fashion?*

3.3. Was information about the legal claims arising from the Incident at Sea communicated by Mr McGrail and/or the RGP to NP, the CM and the AG in a timely and transparent fashion?

56. By way of overarching summary of the Incident at Sea:

- a. On 8 March 2020, a collision took place between an RGP vessel and a rigid hull inflatable boat (“**RHIB**”) following an 8-minute highspeed chase. The RGP crew stated that they suspected the RHIB of illicit activities (variously: drug, tobacco and people smuggling).
- b. The best information from later reconstructions is that the collision occurred at about 03:38, in position 36° 09.96' N, 005° 12.51' W [**C4444**]. This was at least 1.5 nautical miles inside Spanish territorial waters.
- c. One of the persons aboard the RHIB was killed immediately on impact, and a second individual was seriously injured, later dying of those injuries.
- d. During the chase and collision, the RGP vessel’s GPS and chart plotter were turned off, meaning that the vessel’s Automatic Identification System (“**AIS**”) was not operative.
- e. The RGP arranged for two independent investigations into the events: (1) by a team from the Directorate of Professional Standards of the Metropolitan Police Service (led by DCI Gary Smith) and (2) by Captain Richard Meikle, an independent investigatory with Solis Marine Consultants.
- f. Both the Metropolitan Police Team and Mr Meikle arrived in Gibraltar on 13 May 2020.

57. There are five key reports (“**the Reports**”) into the Incident which contain detailed information and findings on what occurred:
- a. The draft report prepared by Captain Meikle of Solis Marine Consultants (“**the Draft Solis Report**”) dated 30 April 2020 [**B1683**].
 - b. The report filed by IM pursuant to s15 of the PA 2006 (“**the Section 15 Report**”) dated 21 May 2020. The Section 15 Report was requested by the CM on 21 May 2020, pursuant to the CM’s powers in section 15(1)(a) of the PA 2006, to “*require factual or assessment reports from the Force ... on any policing matter*” [**C4431**]. IM annexed the Draft Solis Report [**B1271**].
 - c. The Metropolitan Police “**Summary of Evidence**” dated 22 September 2020 [**B2888**].
 - d. The final version of the Solis Report dated 4 January 2021 (“**the Final Solis Report**”) [**B2791**].
 - e. The Metropolitan Police “**Misconduct Report**” dated 4 June 2021 [**C6200**].
58. The legal processes surrounding the Incident are in some respects still ongoing. By way of summary:
- a. As to criminal liability, on 6 June 2020, the Metropolitan Police notified IM that there was evidence to suggest that the crew of the RGP vessel may have committed criminal acts (the third officer was not considered for criminal proceedings as he was not a trained mariner) [**B2890, C6204**]. In September 2020, the Summary of Evidence concluded that there was sufficient evidence to charge two of the officers with gross negligence manslaughter under Section 53 of the Crimes Act 2011, or alternatively endangering life contrary to Section 27 of the Gibraltar Merchant Shipping (Health and Safety etc) Act 1993. However, no criminal charges were brought as it was determined that the criminal jurisdiction of the matter lay with the Spanish authorities as the chase and collision took place in Spanish territorial waters [**C6203**].
 - b. As to professional liability, the Misconduct Report recommended that charges be brought against the two trained mariners aboard the RGP vessel at the time of the collision under the Police (Discipline) Regulations 1991 [**C6200**].
 - c. As to civil liability, Verralls was instructed to pursue a claim for damages of an injured crewmember [**C3762**], and the Spanish media reported that the family member of a deceased crewmember had commenced a private prosecution

against the RGP in Spain [C6468]. CTI are not aware of any judgments on these claims.

- d. A Coroner's Inquest into the incident was held in 2021. The inquest jury found that the cause of death of the two men was unlawful killing. Two of the RGP officers (known in the proceedings only as "Officer 1" and "Officer 2") challenged the Coroner's directions to the jury in a judicial review, but were unsuccessful: see [2023/GSC/018](#). That judgment has now been appealed to the Court of Appeal.³

Where was the Incident at Sea relied on?

59. The Incident at Sea was identified in contemporaneous documents as both (a) a reason for the CM and NP losing confidence in IM and (b) the GPA's decision to invite retirement under s34. It was referred to in the following documents and/or conversations, each of which are set out in detail in the section on Issues 8-10:
 - a. The CM's WhatsApp message to NP on 14 May 2020 [A198], which CTI understand to be the first occasion that the CM raised concerns about the RGP's handling of the Incident to NP.
 - b. The email exchanges between the CM and NP on 17 May 2020 [C3947, C3953].
 - c. The meeting between JB, the CM and NP on 18 May 2020 [C3988].
 - d. The GPA meeting on 21 May 2020 [C4141].
 - e. The meeting between JB and IM on 22 May 2020 [C4316].
 - f. The Second Letter sent by the GPA to IM [B1364].
 - g. Two of the "Three Letters" sent by the CM, NP to the GPA [B56, B48].
60. In his evidence to the Inquiry NP relies very heavily on the Incident at Sea as "*the most serious incident that was the tipping point from my "growing concerns" changing to recognising that things could not go on as they were and that change was needed*". He affirms that the incident "*set in motion a chain of events that led me to lose confidence in the abilities of the Commissioner to effectively lead his police force, and indeed caused me to lose confidence in his probity*" (Pyle 1 para 25.1 [A251]).
61. In particular, NP raises the following concerns:

³ <https://www.chronicle.gi/court-of-appeal-hears-bid-to-quash-fatal-collision-inquest-verdict/>.

- a. In a meeting on 9 March 2020 between NP, IM and the AG, NP queried why the GPS/AIS systems could not provide the location of the incident, and IM replied that the instruments had been switched off. When NP asked why the officers would do that, IM replied *“you know what it is like in the heat of the moment”*, to which NP said he did not, adding that surely Standard Operating Procedures dictated that such equipment should always be on. NP states that he was *“astounded”* by IM’s apparent explanation/justification (Pyle 2 para 16.5 [A263]).
 - b. His *“strong sense and suspicion”* at the time that IM answered his questions (prior to 11 March) about the location of the incident was that IM was *“deliberately withholding from him important information about the nature of his understanding of the location of this incident”*, which were matters *“of prime importance to myself as Governor and to HMG in terms of our responsibility for Gibraltar’s external affairs”* (Pyle 1 para 25.8 [A253]).
 - c. The Section 15 Report prepared by IM for the CM, which according to NP showed that IM *“had information, very early on 8th March, just a few hours after the incident, which suggested, and that had caused him to believe with reasonable clarity, that the incident had occurred well inside Spanish Waters”*.
 - d. On the basis of several contemporaneous documents, he concludes that IM *“caused me to report to London on the basis of incomplete, indeed erroneous information and less information than was then available”*.
 - e. The draft Solis Report dated 30 April 2020 found, among other things, that:
 - i. *“Pursuit methods are therefore developed and understood by the coxswains, but without RGP Marine Section management standards or proper established oversight in place.”*
 - ii. Marine Section Managers did not apply effective oversight into how their patrols were being carried out.
 - iii. There was no proper training in pursuits of suspects vessels for the coxswain who would be required to take evasive action.
62. The CM’s concerns stem from a separate matter, namely claims being filed by the survivors and relatives/dependants of the deceased as a result of the Incident at Sea, and IM’s alleged failure to keep the CM informed in a timely fashion. In summary:
- a. On 14 May 2020 (two days after the meeting in the CM’s office relating to the Operation Delhi search warrant, which the CM says had resulted in his loss of confidence in Mr McGrail), an article appeared in a regional newspaper in Ceuta

setting out that the claims were being filed, and homicide charges brought against the relevant RGP officers. IM had not made the CM aware of that, despite his responsibilities for public finance (Picardo 1 para 65 [A198]).

- b. On 20 May 2020 the CM received an email from the AG forwarding to him a communication from then Superintendent Cathal Yeats, seeking funding for legal representation for the RGP in respect of the claims arising from the Incident at Sea. The CM responded to that email (via the AG) expressing surprise and disappointment, and that he thought it was “*entirely inappropriate for this matter not to have been raised with me in the first instance by the Commissioner*”. He highlighted that it raised issues of fundamental human rights, potential payment of huge amounts of damages, potential liability and extradition of serving police officers, the issue of Standard Operating Procedures and management thereof, as well as “*huge potential political exposure*” for Gibraltar and issues of sovereignty and the United Nations Convention on the Law of the Sea (Picardo 1 para 75 [A202-3]).
- c. IM responded to that email stating seeking to reassure the CM that “*it has never been my intention to withhold anything from you concerning this very serious matter*”, and stating that the letter suggesting a future claim for damages was “*only received a few days ago*”. The CM’s evidence is that he was “*even more disappointed*” to learn that he had not been told earlier.
- d. This led the CM to seek a factual report from the RGP on the Incident at Sea under s15(1)(a) PA 2006. In the letter seeking that report, the CM stated:

“I have no confidence that you have expeditiously provided me with all the information and documentation that I should have been provided with in the context of the seriousness of the events in question. In particular, I have no confidence that either the Government or the office of Governor (with whom I have discussed this matter at length) have had the timely candor and transparency we would have expected from you in the circumstances arising in respect of the Incident.”

63. The CM adds (Picardo 1 paras 83 and 86 [A205-6]):

- a. “*We also could see that whilst I had been told almost immediately after the incident that it had occurred several nautical miles outside of the BGTW, the same information had been withheld from the Governor, despite the nature of the incident and his responsibility in respect of external relations.*”

- b. *“It is clear from the timeline of communications that I was 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.”*
 - c. He concludes that this *“further sustained our loss of confidence in Mr McGrail as Commissioner of Police”* (Picardo 1 para 87 [A206]).
64. IM denies the allegations, stating (e.g. in McGrail 3 para 68 [A74] that *“it was very clear to me that from very early on NP knew that the collision had most likely occurred in Spanish waters because I had practically provided NP and the AG with the same briefing and the fact that both had been together the previous night indicated that they had been working together on this”*.
65. NP’s response is that this is *“simply not true”*, and that what he *“needed and repeatedly sought was confirmation as to where it had occurred”*, and would expect to be given *“the best available information”*, even if technically confirmed information was unavailable (Pyle 2 para 15 [A262]).
66. IM also makes the point that he *“was in very regular contact with the AG who I knew was feeding information up, though I now realise that I do not know the extent of the detail he passed on”* (McGrail 3 para 170A [A134]). Further, he relies on the fact that the Metropolitan Police investigation team was not critical of how he handled the matter, nor did it uncover *“any failings on the part of RGP management”* (McGrail 3 para 170F [A135]).
67. NP’s response is that he asked IM directly on numerous occasions about the location, and on 11 March 2020, three days later, IM was still saying that he was *“getting there”*, and that IM’s first response gave NP the impression that it was on the line, when in fact it was not even close to BGTW. He adds that the AG is not the Governor’s lawyer in the sense of conveying all information to a client but rather provides legal advice to the Governor when requested. IM knew that NP was asking him directly and could not reasonably assume that information would reach NP indirectly through the NP (nor was such an assumption consistent with IM eventually telling NP directly on 11 March (Pyle 2 para 19 [A264])).

Submissions

68. As to whether Issue 3 constituted a reason or circumstance leading to IM's early retirement:
- a. The Incident at Sea was cited repeatedly by the CM and NP in the contemporaneous communications in the lead up to IM retiring, including in two of the "*Three Letters*" (by NP and the CM). It also appears from contemporaneous documents that the GPA considered it to be a serious matter. It therefore does not appear to be in dispute that it was a *circumstance* leading to the retirement, nor that it was stated by both NP and the CM to be a *reason*. IM does however point out that neither FP nor NP raised any concerns in relation to IM's communications or any matter relating to the Incident at Sea until after 14 May 2020, over two months later.
 - b. NP places greater importance on the Incident at Sea than the other decision-makers: he refers to it as the "*most serious incident that was the tipping point... which set in motion a chain of events that led me to lose confidence*" (Pyle 1 para 25.1 [A251]). It does appear that he felt aggrieved by how events unfolded.
 - c. Although the CM's reaction to being forwarded Supt Yeats's email was clearly a strong one, and included requesting the Section 15 Report, he acknowledges that by that point he had already lost confidence in IM as a result of the Operation Delhi meeting on 12 May 2020. Nevertheless, he maintains that IM's communication in relation to the Incident "*further sustained our loss of confidence in Mr McGrail as Commissioner of Police*" (Picardo 1 para 87 [A206]).
 - d. If NP and the CM's evidence is accepted, then it is plain that the Incident at Sea constituted not just a circumstance but also a reason leading to IM's early retirement. However, due to the factual complexity and various points of dispute between key players, the extent of the Incident's role in the decision-making process will have to be fully explored through questioning and submissions.
69. The following topics fall to be explored at the Main Inquiry Hearing:
- a. The RGP's policy regarding boats leaving BGTW, and whether this reflected conduct in practice.
 - b. The RGP's policy regarding use of AIS/GPS equipment, and whether this reflected conduct in practice.
 - c. When the location of the collision was sufficiently known to IM/the RGP, on either an unconfirmed or confirmed basis.
 - d. Whether IM withheld information from or misled NP in relation to this Incident.

- e. When NP became aware of the location of the collision and from whom.
- f. Whether it was reasonable for IM to operate on the basis that the AG would communicate information to NP.
- g. When IM first became aware of the legal claims, and whether he should have communicated these to the CM directly and/or sooner.
- h. Whether it was fair to reach conclusions as to IM's responsibility or otherwise for the Incident at Sea prior to the Metropolitan Police's report following its investigation being provided to NP and the CM.

ISSUE 4: THE HMIC REPORT

4. The findings of the Report by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services into the RGP dated 9 April 2020 ("the HMIC Report"), and/or Mr McGrail's response in addressing the findings of the previous report by HMIC published in 2016.

70. This issue concerns two inspections and subsequent reports conducted by His Majesty's Inspectorate of Constabulary & Fire Rescue Services (**HMICFRS**) on the RGP:
- a. An inspection in June and October 2015, and the subsequent July 2016 report 'Royal Gibraltar Police: an inspection of leadership, crime management, demand and resources' ("**the 2016 HMIC Report**") [**B1512**].
 - b. An inspection in October 2019, and the subsequent April 2020 report 'The Royal Gibraltar Police Inspection 2020' ("**the 2020 HMIC Report**") [**B1548**]. The 2020 HMIC Report was first provided in draft to IM on 25 February 2020, who conducted a fact-checking process in consultation with JB (McGrail 1 para 75 [**A28**]). On 9 April 2020, the 2020 HMIC Report was sent to JB, who shared it with IM, the CM and NP. It was made public on 7 May 2020.

Where was the HMIC Report relied upon?

71. The 2020 HMIC Report has been identified by each of the CM, NP and the GPA as a "reason" for losing confidence in IM. It was mentioned in each of the following documents and/or conversations, which are set out in detail above:
- a. The CM's initial WhatsApp message to NP dated 14 May 2020, which referred to him "*starting to have huge concerns about the senior management of the RGP*" and "*starting to lose confidence here*". The message listed five matters including "*the HMIC inspection issues*" and also alerted NP to "*a particular matter*" which he intended to raise when they met. [**A198**].
 - b. The CM's email to NP dated 17 May 2020 setting out his "*preliminary views*" on the five matters in s34(1) of the PA 2006. The CM noted that the HMIC Report made specific reference to "efficiency" and "effectiveness", and also that the Report references "*a failure to even understand the potential for, let alone the actual instances of, corruption*" [**C3954**].
 - c. The meeting between the CM, NP and JB on 18 May 2020, where NP's evidence is that the CM set out the issues of concern including the "*damning HMIC Report*"

(Pyle 1 para 14 [A240-1]). The note that the CM later prepared of this meeting, which JB read aloud to the GPA, also refers to the HMIC Report [C3989].

- d. The CM's email dated 20 May 2020 regarding the civil claims arising from the Incident at Sea, which referred to the "*backdrop of the very unflattering report of the HMICFRS*" [C4090].
- e. The meeting between JB and IM on 22 May 2020, where JB made reference to the HMIC Report including the issue of not being alive to corruption [C4289].
- f. The second letter sent by the GPA to IM dated 22 May 2020 [C4286-7], which described the 2020 HMIC Report as "*damning*" and noted that IM's application for the role of CoP included setting up a working group to meet the 2015/6 HMIC Report recommendations by 1 March 2019.
- g. Two of the "Three Letters", namely the letters sent by NP [C4676] and the CM [C4750].
- h. The meeting between IM and NP on 8 June 2020 (Pyle 1 para 43 [A43]).

72. NP refers to the HMIC Report in his evidence as follows:

- a. His "*concerns grew*" with the Report (Pyle 1 para 24.1 [A249]).
- b. It was so damning that he sent an email on 29 April 2020 to JB saying that it should not be published in full, and sent a further email to the CM on the following day saying that it was quite damning and would need careful handling, saying that he thought it was "*an issue of culture and leadership*", which need to be more strategic and directive (Pyle 1 para 24.3 [A249]).
- c. It was noteworthy that there was a sharp contrast with the preceding 2016 HMIC Report in so far as concerned leadership and management style and culture issues (Pyle 1 para 24.4 [A250-1]).
- d. The Report "*represented deterioration rather than the expected progress and went some way to validating the Gibraltar Police Federation's grievances.... I believe that these differences between the 2016 and 2020 reports reflected Mr McGrail's management style*" (Pyle 1 para 24.6 [A252]).

73. IM responds to NP's evidence as follows:

- a. He points out that he had very little personal contact with NP, who he avers is expressing a "*skewed, negative opinion of me based on what others may have told him*" (McGrail 5 para 104 [A164]).

- b. He also suspects NP of having a “*deep-rooted*” negative mindset towards him, although NP never brought those concerns to IM’s attention, and refers to the fact that the issues with the GPF continued long after his retirement (McGrail 5 para 105 [A164]). NP’s response to this in Pyle 2 para 10 [A260] is that he decided to leave the issue of reacting to the HMIC Report in the first instance to the GPA, but he did raise comment on the matter to the CM, as can be seen in his email of 30 April 2020. He also affirms that he shared his thoughts and raised concerns as to IM’s ability to lead the RGP with the Governor on several occasions (Pyle 2 para 13 [A261]).

74. The CM refers to the HMIC Report in his evidence as follows:

- a. He states that was unable to focus on the findings and recommendations of the 2020 HMIC Report due to the “*many very difficult matters that required my attention at the time*”, namely lockdown and the initial COVID restriction period (Picardo 1 paras 103, 105 [A215-6]).
- b. He was alerted to the “*quite damning*” nature of the report by NP on 30 April 2020. NP suggested discussing the matter with JB and the Chief Secretary, and his initial thought was to suggest that IM make the report public at the same time as publishing his roadmap on the way forward (Picardo 1 para 104 [A215]).
- c. When he was able to review the HMIC report, he found it was “*very damning*”, but it “*did not make me lose confidence in the integrity or probity of Mr McGrail as Commissioner Police*”. He was, however, persuaded that “*they did reflect on Mr McGrail’s ability to maintain the efficiency and effectiveness of the RGP*” (Picardo 1 para 107 [A216]).
- d. He was also not confident that IM could be the person to address the HMIC recommendations, given that he had “*demonstrably failed to act since 2018 and matter shad obviously deteriorated and not improved on his watch*”, and had not established the working group he had described as “*imperative*” in his job application (Picardo 1 para 107 [A216]).
- e. He considered the issue “*important, and a key issue in particular for the Governor*”, but it was not the key issue affecting his confidence in IM (Picardo 1 para 108 [A216]).

Submissions

75. As to whether Issue 4 constituted a reason or circumstance leading to IM's early retirement:
- a. The HMIC Report was referred to repeatedly by the Government parties and GPA in contemporaneous correspondence and discussions surrounding IM's retirement. It is therefore plainly both a *circumstance* and a *stated reason*.
 - b. As to whether it was an *operative reason*, the CM's evidence is expressly that the HMIC report did not make him lose confidence in the integrity or probity of IM as Commissioner, but that "*once I reviewed the conclusions, I was persuaded that they did reflect on Mr McGrail's ability to maintain efficiency and effectiveness of the RGP*" (Picardo 1 para 107 [A216]). CTI understand this to mean that the Report was a contributing reason for the CM in relation to some, but not all, of the criteria identified in s34(1) of the PA 2006. This can be clarified in questioning.
 - c. By contrast, NP does list the HMIC Report as one of the matters which led to his progressive loss of confidence in IM over a period of time "*by reason of a number of incidents and matters*" (Pyle 1 para 20 [A245]). The role and weight of the HMIC Report in this "*progressive*" loss of confidence can be explored in questioning.
 - d. The GPA position appears to be that of the two reasons invoked by the Governor and the Chief Minister for their loss of confidence at the meeting on Monday 18 May 2020 between NP, the CM and JB (Chairman of the GPA) this was a secondary matter to the Incident at Sea – see point 4 of the Minute of the Emergency Meeting of 21 May 2020 [B1973].
76. The following topics fall to be explored at the Main Inquiry Hearing:
- a. IM's explanations for the findings of the HMIC Report, and whether the problems identified were properly attributable to IM.
 - b. The date that each of NP, the CM and the AG read the HMIC Report.
 - c. Whether the views of NP, the CM and JB on the HMIC Report changed over time.
 - d. The GPA's views as to the significance the HMIC Report as part of the s34 process.

ISSUE 5: THE SEARCH WARRANTS

The investigation into the alleged hacking and/or sabotage of the National Security Centralised Intelligence System and alleged conspiracy to defraud (“the Conspiracy Investigation”), and the RGP’s handling of the same, including but not limited to the RGP’s stated intention to execute search warrants as part of that investigation on 12 May 2020 (“the Search Warrants”).

In particular:

5.1. Did Mr McGrail seek or receive advice from the Director of Public Prosecutions (“DPP”) or the AG regarding the Search Warrants, and did Mr McGrail accurately communicate any advice from the DPP or the AG on the Search Warrants (or lack thereof) to the CM and/or AG?

5.2. Was the RGP’s intention to execute the search warrants on 12 May 2020 contrary to an agreement or understanding with the AG and/or the DPP?

5.3. Did the AG and/or CM place any or any inappropriate pressure on Mr McGrail regarding the investigation or otherwise interfere with the investigation, and in particular the RGP’s intention to execute the Search Warrants?

77. This issue requires the Inquiry to consider Operation Delhi, an RGP investigation into the alleged hacking of the National Security Centralised Intelligence System (“NSCIS”), and the search warrants obtained by the RGP in relation to the office and home of JL in the context of that investigation. By way of broad overview of the investigation, which is explored in more detail in the Facts Schedule:

- a. On 15 October 2018, the RGP commenced a criminal investigation (“**Operation Delhi**”) into the alleged hacking and/or sabotage of the NSCIS. The allegation at the centre of that investigation was that Thomas Cornelio had sabotaged the NSCIS, a platform designed to monitor and control Gibraltar’s border with Spain (for example through facial and number plate recognition). This was alleged to be part of a wider conspiracy with John Perez, Caine Sanchez and JL (and possibly others) to transfer the contract for the maintenance of the NSCIS from Bland Ltd to 36 North Ltd. 36 North Ltd was a company established by the Op Delhi suspects, in which Hassans (via Astelon Ltd) had a 33% interest, and JL therefore held a 10% beneficial interest with the remaining partners of Hassans (including the CM and AM) having smaller beneficial interests.
- b. The CM refers to JL as “a mentor in my previous legal practice, a supporter in my current political career and a close personal friend” (Picardo 1 para 38 [A190]).
- c. In the context of the investigation, a dispute arose as to whether the intellectual property in the NSCIS was owned by HMGoG or Bland Ltd.

- d. From late December 2018, PR was the Senior Investigating Officer (“**SIO**”) in Charge of the Investigation. From May 2019, MW was Officer in Charge of the Investigation (“**OIC**”), reporting to PR.
- e. The complainant in Operation Delhi was Mr James Gaggero, the Chairman of Bland Ltd.
- f. In May 2019, Messrs Perez, Sanchez, Cornelio and another individual were arrested (Messrs Perez and Cornelio on 10 May, and Mr Sanchez on 14 May). Mr Gaggero’s evidence is that PR informed Mr Gaggero of the arrests of Messrs Perez and Cornelio on 10 May, and in turn Mr Gaggero informed the CM of the arrests in a chance encounter that day. Further, Mr Gaggero states that PR expressed upset to Mr Gaggero that he passed this information to the CM (Gaggero para 78-80 [A1374-5]). By contrast, PR noted in his Day Book that he did not speak to Mr Gaggero until 11 May 2019, that Mr Gaggero had “*heard of arrests from employee*”, and that PR provided various updates for example about the interviews and bail [C1733]. PR has explained that he was in contact with Mr Gaggero because Mr Gaggero intended to commence civil proceedings against the Op Delhi suspects, but PR had asked him to delay this until after the suspects had been arrested, interviewed and bailed (Richardson 2 para 18(g), [A1291]; Richardson 3 para 51 [A1433]).
- g. On 7 May 2020, the RGP applied for and obtained from the Stipendiary Magistrate warrants to search the home and office of JL, on the basis that he was suspected of having committed conspiracy to defraud contrary to the common law.
- h. On 12 May 2020, a team of RGP officers led by PR attended Hassans with the intention of executing the warrants. At 12:20, PR messaged IM stating that he was about to execute the warrants (McGrail 1 para 29 [A9]). PR states that IM had asked him to advise when the warrant was about to be executed, so he could brief the CM (Richardson 1 para 18(f) [A1291]). This message is not in the WhatsApp disclosure provided by PR to the Inquiry.
- i. PR and MW met with JL in a Hassans boardroom. The meeting was recorded on body worn camera footage [B3463]. The meeting was cordial, and JL repeatedly thanked PR for his “*sensitivity*” [B3491, B3495]. During the meeting, PR handed a letter inviting him to a voluntary police interview under caution [B5391], as had been canvassed in the NDM. The letter stated: “*whilst the evidence so far indicates that you may have been involved in conspiring to dishonestly obtain the NSCIS maintenance contract, the RGP are keeping an open mind and have a duty*

to follow all reasonable lines of inquiry” [B5392]. The letter invited JL to an interview at 10:00 on 18 May 2020, and provided a list of topics that the RGP would seek to explore in the interview. Nine hours later, JL finally agreed to hand over his devices voluntarily [B113], such that the warrants were not executed.

- j. In the days that followed, extensive correspondence passed between the RGP, Hassans and the Magistrates’ Court, in which Hassans sought the return of the devices and threatened to bring a judicial review of the search warrants.
- k. Although JL had been invited to attend a voluntary interview under caution, the RGP later agreed to accept a written statement in lieu of proceeding with a proposed interview, which he submitted on 9 June 2020 [B5229].
- l. JL was not ultimately charged and he did not proceed with the threatened judicial review.
- m. JL’s personal devices were later returned without being opened.
- n. In September 2020 Messrs Cornelio, Perez and Sanchez (“**the Op Delhi Defendants**”) were charged with conspiracy to defraud, Mr Cornelio was further charged with 14 computer misuse offences, and Mr Sanchez was charged with misconduct in public office and aiding and abetting unauthorised access to computer material.
- o. 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 [C6751].

Legal background

- 78. At the outset, it is worth introducing the legislation in Gibraltar applicable to obtaining search orders against persons of interest. The standard power to issue a warrant authorising entry and search of premises is granted under s12 of the Criminal Procedure and Evidence Act 2011 (the “**CPEA**”).
- 79. However, that power is excluded where the material sought for the purposes of the investigation “*consists of or includes items subject to legal privilege, excluded material or special procedure material*” (s12(1)(d) CPEA). Special procedure material is defined in s18(2) as material created in the course of business held subject to an express or implied undertaking to hold it in confidence. To obtain access to “*special procedure material*”, a police officer must obtain either a:

- a. Production order, which requires the person in possession of the material to produce it to a police officer, or give a police officer access to it within 7 days (Sch 1, para 4); or
 - b. A search warrant, which authorises a police officer to enter and search the premises (Sch 1, para 12(e)).

80. By contrast, there is no power to authorise a search warrant authorising entry on premises for the purposes of seizure of legally privileged material.

81. The application for the search warrants in Operation Delhi, and reasons given by the Stipendiary Magistrate for granting them, are set out in the Facts Schedule. CTI have conducted a detailed analysis of the deficiencies in these documents, which will be developed at the Main Inquiry Hearing to the extent necessary. At this juncture, it suffices to make two points:
 - a. First, the reason provided by the RGP for seeking a warrant (that because JL was a suspect, he was highly likely to destroy evidence) is unsatisfactory and generic. Indeed, this reason would apply to all suspects, and would mean that production orders would never be obtained against suspects. The fact that the legislation does not limit the use of production orders to non-suspects implies that the legislation foresees scenarios where a suspect would be made the subject of a production order, and therefore anticipates additional justification being put forward for the more draconian executive action of a search warrant. The Information did not deal with the pertinent point made by DI Wyan in the Options Report, namely that JL had been aware of the other arrests and the investigation for some time and therefore the risk of deletion or destruction in the defiance of a production order was lessened. As the DPP put it in the meeting of 15 May 2020 [B281-2]: *“It’s been going on for a year, for me you are not going to find anything on his phone, that would have gone, if there was anything that would have gone. Now if it’s been deleted you will find that out anyway..... So, the rush to go ex-parte is I think unfounded. That you felt it was right? Fine. We can defend that in Court. I think it was wrong but look. That is a matter for me...”*
 - b. Second, even if the RGP was correct that the communications of interest to the investigation were not privileged (see Wyan 3 para 16 [A1040]), this does not grapple with the fact that JL’s devices would almost certainly have contained privileged material pertaining to his other clients. The warrant should therefore

have defined the specific material they were interested in seizing and made exclusions for seizure of privileged material. The Magistrate should also have made inquiries about LPP and special procedure material to satisfy himself, and recorded any answers (which should have been confirmed in a witness statement) in his reasons.

The common law offence of conspiracy to defraud

82. It is submitted that the Chairman should resist reaching a conclusion as to the criminal liability of either the Op Delhi Defendants or JL. Section 4 of the Inquiries Act 2024 provides that an inquiry panel may not rule on, and has no power to determine, a person's civil or criminal liability. However, the evidential basis for obtaining the search warrants is a relevant line of inquiry, as it may help to contextualise or explain how others (for example, Hassans, who in turn wrote to the AG) reacted to the RGP obtaining the warrants.
83. It suffices to note that the Op Delhi Defendants and JL strongly deny the allegations. Several questions arise which fall beyond the remit of this Inquiry, including for example:
- a. Whether there was sufficient evidence that JL was aware of the alleged sabotage or of other dishonest intention on the part of the other defendants.
 - b. Whether JL's conduct could properly be said to be dishonest by the standards of ordinary people, as opposed to, say, sharp business practice.
 - c. Whether securing the transfer of the contract amounted to depriving Bland of a proprietary right or interest.
84. Separately, it does not appear that at any point during discussions about the formulation of the charges, the applications for the warrants, or complaints about the warrants, that anyone (the AG, DPP, Stipendiary Magistrate, Hassans or any RGP officer) acknowledged the argument that the offence of conspiracy to defraud at common law was abolished in Gibraltar by section 35 of the Crimes Act 2011, which provides:
- “35.(1) Subject to the following provisions, the offence of conspiracy at common law is abolished.*
- (2) Subsection (1) does not affect the offence of conspiracy at common law if and in so far as it may be committed by entering into an agreement to engage in conduct which–*
- (a) tends to corrupt public morals or outrages public decency; but*

(b) would not amount to or involve the commission of an offence if carried out by a single person otherwise than in pursuance of an agreement.”

85. There is no equivalent in Gibraltar to section 5(2) of the English Criminal Law Act 1977, which preserves the offence of conspiracy at common law:

“5.—(1) Subject to the following provisions of this section, the offence of conspiracy at common law is hereby abolished.

(2) Subsection (1) above shall not affect the offence of conspiracy at common law so far as relates to conspiracy to defraud. [...].”

86. The construction that the offence was abolished in Gibraltar is further supported by the Crimes and Miscellaneous Provisions (Amendment) Act 2023, which was defined as “*An Act to provide for the revival of the common law offence of conspiracy to defraud*”. This Act presupposed that conspiracy to defraud at common law had been abolished by the 2011 Act. Sections 3(1) and (2) provide that:

“3.(1) The common law offence of conspiracy to defraud is to continue to have effect as if it had not been abolished by section 35(1) of the Crimes Act 2011 (conspiracy: abolitions etc.), subject to subsection (2).

A person may not be prosecuted for the common law offence of conspiracy to defraud in respect of conduct occurring after the abolition of the offence by section 35(1) of that Act and before the revival of the offence by subsection (1) above (except in so far as the person is liable to prosecution in accordance with section 35(2) to (5)).”

87. However, there is at least an argument that the offence did continue to exist after the 2011 Act. For example, section 34 refers to the offence of conspiracy to defraud as if it had not been abolished:

“34.(1) If

(a) a person agrees with any other person or persons that a course of conduct is to be pursued; and

(b) that course of conduct will necessarily amount to or involve the commission of any offence or offences by one or more of the parties to the agreement if the agreement is carried out in accordance with their intentions,

the fact that it will do so does not preclude a charge of conspiracy to defraud being brought against any of them in respect of the agreement.

(2) A person who commits conspiracy to defraud is liable on conviction on indictment to imprisonment for a term not exceeding 10 years or a fine or both.”

88. While it is relevant background, it is submitted that the Chairman need not resolve this issue of law. Although a finding that the common law offence had been abolished would certainly impugn the lawfulness of the Search Warrants, this was not a reason advanced at the time as to why the warrant against JL was allegedly inappropriate (although it was later advanced by the Op Delhi suspects before the criminal proceedings were discontinued). However, it does reinforce broader concerns about the procedure followed in for obtaining the warrant, set out below.

Where were the Search Warrants relied upon?

89. The Search Warrants were mentioned in each of the following documents and/or conversations, which are set out in detail above:
- a. The CM's initial WhatsApp message to NP dated 14 May 2020, which referred to him "*starting to lose confidence*" [A198]. The CM stated that "*I will alert you to a particular matter when we meet*", and has explained in evidence that by this he was referring to "*the issues of the execution of the search warrant in respect of Mr Levy and my views in respect thereof*" (Picardo 1 para 68 [A199]).
 - b. The meeting between NP and the CM on 15 May 2020, where NP states that the CM "*outlined his belief that IM had made a serious error of judgment with regard to the execution of a search warrant against Mr Levy, gone against the advice of the DPP and AG, and misled the Chief Minister about that*" (Pyle 1 para 26 [A255-6]).
 - c. The CM's email to NP dated 17 May 2020 setting out his "*preliminary views*" on the five matters in s34(1) of the PA 2006. The CM referred to the "*James Levy KC warrants*", which he stated were "*the reasons ... why I have lost confidence in the probity and integrity of the Commissioner*", and referred to this as "*possibly the issue of deepest concern*" [C3954].
 - d. The meeting between the CM, NP and JB on 18 May 2020, where the CM set out the issues of concern including the "*mishandling of a high-profile ongoing investigation*" (Pyle 1 para 14 [A240-1]). The note of that meeting later prepared by the CM refers to "*another event occurring last week which had left [the CM] also in a situation where the Commissioner had expressly misled him and which left him unable to believe the Commissioner*" [C3988].
 - e. The GPA meeting on 21 May 2020, where the non-contemporaneous note [C4141] records that JB stated: "*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". JB's evidence is that he referred to JL by name (Britto 1 para 19 [A323]).

- f. NP's update to the FCDO on 21 May 2020, which referred to: "*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*" [C4234].
- g. The meeting between IM and JB on 22 May 2020 [C4316], where IM raised the issue of the search warrants and suggested "*that is where it all stems from*". JB stated that the allegation was that IM "*had lied, you lied basically to the chief minister ... or omitted the truth ... or that you kept the truth from them*".
- h. Each of the Three Letters sent by NP, the CM and the AG. However, these letters do not present a uniform opinion on the Search Warrants, and each sets out an individual view:
 - i. NP stated that his "*deep concerns with the COP's leadership qualities have absolutely nothing to do with [the criminal investigation]*" [A4676], and he lost confidence in IM "*well before*" he became aware of the criminal investigation on 15 May 2020 [A4677].
 - ii. The CM stated that "*the obtaining and execution of a search warrant ... in such circumstances ... is of dubious legality, abusive, unprecedented in policing in Gibraltar, incompatible with public confidence in policing*". However, the CM clarified that: "*those are not the reasons why I have further lost confidence in him by virtue of this criminal investigation. I have not lost confidence in him 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 alleged lie was 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.*" [C4739]
 - iii. The AG stated that IM had "*incurred in a serious breach of my trust ... as a result of which I have lost confidence in him*" [C4730]. The AG argued that on 7 April 2019, IM and the AG had "*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".

90. In the Second Letter sent by the GPA to IM [C4287] (which the CM played a role in drafting [C4282]), there was a generic reference to IM's "dealings" with the AG and CM, with the letter stating that: "*their dealings with you have left them with the sense that you are lacking in both probity and integrity*". However, there is no express or other implied reference to the Search Warrants (or Operation Delhi). On that basis, IM describes the issue of the Search Warrants as the "*vanishing reason*" in the CM and GPA's reasoning [C4477].

What are the main allegations by the CM, the AG and IM in relation to the three sub-issues?

91. The CM's evidence as to why he lost confidence in IM in relation to this issue is as follows:
- a. Immediately after sending his response by WhatsApp to being informed by IM that a search warrant was being executed at Hassans, the CM was informed that IM was actually at No6 Convent Place at the time. He therefore asked that he should attend the office to see him, and met him with the AG (Picardo 1 41-2 [A191]).
 - b. The CM made clear to IM that he considered that the RGP had not acted properly and was "*highly critical (after the event) of [IM's] decision to have recourse to a search warrant instead of a production order*" (Picardo 1 para 43-53 [A191-4], Picardo 2 para 11.2 [A225]).
 - c. During the course of the conversation, the issue of advice was raised, and the CM records that exchange as follows (Picardo 1 para 49 [A193]):

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.

- d. I CM “lost all confidence in [IM’s] probity and integrity in his dealings with me and generally in him as a result” of discovering that, contrary to what the CM says IM told him and the AG, the DPP had not advised the RGP to seek a search warrant against JL. The CM states that: “Mr McGrail, the most senior law enforcement officer in Gibraltar, had lied to me, the most senior elected representative of the People of Gibraltar, in my office.” Picardo 1 para 55 [A194])
- e. The CM’s decision to express concerns to the GPA about IM was “undoubtedly principally for the reasons related to the deception Mr McGrail had been responsible for in respect of the search warrants...” (Picardo 1 para 113 [A217]).
- f. The CM denies interfering in the live criminal investigation, and suggests that the extent of his intervention in the matter was to ensure that the contract remained with Blands when the issues were brought to his attention. See Picardo 1 paras 31-36 [A188-9]:

I have never interfered in any police investigation, still less sought or tried to divert its course, and I certainly did not do so in this case. The suggestion that I may have done so is as offensive to me as it is belied by the events which have happened, despite my close links with James Levy CBE, QC, its senior partner and Hassans.

...

Despite Mr McGrail's stated reason for his decision to retire, the police's investigation into this case continued unabated and, as far as I am aware, on an undiverted course.

On 5th June 2021, that is over a year after Mr McGrail's retirement, at the GPA's request I provided a statement to them in support of their investigation. ...

Despite Mr McGrail's statement and suggestions of improper attempts by the Government to stop the investigation of Operation Delhi, the Government continued to provide information and statements to the police and the prosecution throughout, the RGP completed their investigation and brought serious criminal charges against the persons to whom the complaint had related. Indeed, my interventions in matters connected to the investigation have been contrary to what may be thought to have been my personal interests. The civil law aspects linked to the complaint being investigated by the police, involved a government contract which the persons being investigated by the Police were alleged by the holder of that contract, the complainant company, Bland Limited, to have diverted to 36 North Limited. When those matters were brought to my attention by Bland Limited, I intervened to ensure that the contract remained with Bland, despite Hassans' part ownership of 36 North Limited and therefore my own (albeit very small) interest in it as a partner of Hassans. The sole consideration in

my mind, as all Gibraltarians and residents of Gibraltar would expect, was the security of Gibraltar and the well-being of the People of Gibraltar.

- g. He states that his only intervention in relation to Operation Delhi was to express his views to IM about the decision to obtain and execute the Search Warrants against JL *“and that was after the event”* (Picardo 1 para 37 [A190]).
92. The AG’s evidence as to why he lost confidence in IM as a result of the warrants is that:
- a. He was called by the DPP in early April 2020 who wished to discuss the investigation with him, informed him about the striking background (Including the serious failures of the national security system and the involvement of Hassans and JL) and told him that the RGP had drawn up a list of 76 charges against Messrs Cornelio, Perez and Sanchez, which the DPP considered to be excessive and inappropriate. They were both also concerned that the issue of ownership of NSCIS was still ‘live’ and had to be resolved (Llamas 1 paras 22-3 [A276]).
 - b. He considered that the investigation raised matters of public importance and had the potential to cause serious reputational damage to Gibraltar, and he had a legitimate public interest role and responsibility to address *“the unwieldy number and viability of proposed charges particularly in relation to a case that exposed serious failures in the national security of Gibraltar by the public agencies responsible and possible malfeasance by police officers”*. He and the DPP therefore agreed that he should seek a meeting with IM about the quantity and rationalisation of the charges (Llamas 1 paras 26-7 [A277]).
 - c. At their meeting on 7 April 2020, the AG explained to IM his concerns about the number of charges and about the failure to resolve the ownership dispute. IM and the AG then came to a *“very clear understanding”* between them that the RGP would not take any further action until they had (i) clarified the question of the ownership of the NSCIS platform; and (ii) rationalised the charges, and (iii) whereupon IM would meet with him and the DPP before taking any further steps. The AG maintains that it was *“clear beyond peradventure that nothing, other than what we had agreed to, would happen until we met again”* (Llamas 1 paras 29-32 [A277-8]).
 - d. Proceeding with the Search Warrants before rationalising the charges and meeting the AG was *“a clear violation”* of what had been agreed on 7 April 2020, and a *“breach of trust”* had occurred (Llamas 1 paras 6(b), 38, 45 [A270, A280, A282]).

- e. At the meeting with the CM on 12 May 2020, when the CM criticised the decision to obtain and execute the Search Warrants, one way in which IM sought to defend his decision was by saying that he had been taking advice from the AG and intimating that the AG had approved the course of action the RGP had taken. The AG said that was completely untrue, and could not believe IM had said that (in fact they had only discussed the investigation once, at the 7 April meeting, and had not discussed the Search Warrants then). Then IM said 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”*, which both the CM and the AG found hard to believe. After the meeting, the CM asked the AG to check this with the DPP, and the DPP confirmed that he had never given such advice (Llamas 1 paras 43-4, 46 [A281-2]).
- f. The AG thought that the RGP’s decision to obtain a search warrant was the wrong decision, as such action should reflect the reality of the risk of destruction of evidence, which should not be presumed against a senior lawyer (Llamas 1 paras 53-55 [A284]). The AG accepts that he had not read the Charging Advice, and he was following the DPP’s views and assessments of the evidence (Llamas 1 para 57 [A284]).
- g. The AG denies improperly intervening in Operation Delhi, and says that IM considered that he was immune to having his actions disapproved of or criticised, and that he equated that to improper interference with the conduct of the criminal investigation (Llamas 1 para 59 [A285]). He states that even if he had improperly interfered (which he denies), it did not have the effect of causing IM to feel he had to retire, given IM wanted to remain in his post at the time of making his submissions on 29 May 2020 (*“well after the alleged improper interfering by me had occurred”*) (Llamas 1 para 8 [A271]).

93. IM responds to the AG and CM as follows:

- a. IM did not tell the CM that the search warrants were executed on the advice of the DPP. Rather, what IM was referring to *“was that the status of ‘suspect’ for JL had been the subject of consultation and agreement with the DPP who had advised the team generally on the investigation throughout.”* (McGrail 3 para 147(iii)(e) [A119]).
- b. IM did not enter into any agreement with the AG to suspend the carrying out of further inquiries until after they had discussed the charges that could be

proffered. IM had agreed to “revert” to the AG with the proposed charges “*but certainly not before all the key enquiries were completed – it would not make any sense to do so beforehand...*” (McGrail 1 para 43 [A14]) (original emphasis).

- c. Both the CM and AG placed inappropriate pressure on IM during a live criminal investigation and interfered with that investigation. IM claims that by berating IM on the use of the warrants, the CM interfered with the investigation “*not only before or after the warrant, but more worryingly during its execution*” (this is because the RGP team were still at Hassans when IM met the CM and AG on the afternoon on 12 May 2020) (McGrail 5 para 108 [A165]). IM claims that the AG interfered with the investigation by “*requiring him to explain a tactical decision*” (McGrail 1 para 43 [A14]). He explains that he did not complain to the AG about his interference because he was satisfied that the improper suggestions were not having a negative impact on the case, and in any event had to keep his cards close to his chest in order to uphold operational security (McGrail 5 para 180 [A179]).

94. The DPP’s evidence is that:

- a. He did not advise the RGP on the use of a search warrant in this case, and it is unlikely that the RGP would ever seek advice in the circumstances “*as these were operational matters for the RGP*” (Rocca 1 para 13 [A1297]).
- b. However, his view is that it would have been more suitable and appropriate to seek a production order against JL. Nevertheless, he considered the RGP’s position would be defensible on judicial review (Rocca 1 para 13 [A1297]).

95. By contrast, the Search Warrants did not play a central role in JB or NP’s thinking, according to their evidence:

- a. JB’s evidence (Britto 1 para 19 [A323]) is that 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. However, he goes on to add that 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.
- b. NP’s evidence (Pyle 1 para 27.1 [A257]) is that he had no prior knowledge of the criminal investigation until the CM raised it on 15 May 2020, and he expressed his “*deep concerns*” about RGP leadership before the CM raised the criminal investigation. The Government’s opening submissions state: “*The Operation Delhi investigation played no role in Mr Pyle’s loss of confidence in Mr McGrail or*

his decision to consider calling for Mr McGrail's resignation" (para 34). This appears to CTI to put the issue rather more forcefully, albeit not inconsistently, with NP's affidavit.

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

96. The facts relevant to these sub-issues are set out in the Facts Schedule.

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

97. The argument advanced by IM in relation to this sub-issue is that the CM and/or the AG's actions in the aftermath of being notified of the intended execution of the Search Warrants amounted to inappropriate pressure on IM or interference with the Operation Delhi investigation. He also advances the position that it was a desire to protect JL (and possibly even the CM himself) and/or to seek retribution for the Search Warrants that drove the CM and the AG to engage in this inappropriate pressure, and for the CM ultimately to seek IM's removal from his position.

98. Parts of the facts relating to this sub-issue – namely the meetings at which IM claims the AG sought to influence and interfere with the investigation and specifically the treatment of JL – are covered in the Facts Schedule and need not be revisited.

99. A key factual element of this issue, particularly in relation to the allegation levelled at the CM and the AG of placing inappropriate pressure on IM regarding, or otherwise interfering with, the investigation, is the communication that took place between the CM, the AG and JL, including through JL's lawyer, LB, in the immediate aftermath of the RGP's attendance at the offices of Hassans and JL's home, intending to execute the search warrants.

100. The CM's evidence on this matter has been given through a number of affidavits:

- a. Picardo 1: The CM records that IM first briefed him about Operation Delhi on 11 May 2019 (Picardo 1 para 30 [A188]). He further states that he became aware "*from Mr Levy himself*" that he was one of the persons who was "*of interest*" to investigators (Picardo 1 paras 38-9 [A190]), but does not record when or how JL

informed him (he says in Picardo 2 para 14.2 [A226] that he believes it was long after 11 May 2019). He provides no further detail about communications between him and JL.

- b. Picardo 2: In response to IM's evidence (McGrail 3 para 137 [A100]) that he knew the CM was in contact with JL while Hassans were threatening litigation, the CM states (Picardo 2 para 10 [A224]):
 - i. That appears to be an insinuation that he was "*in cahoots*" with JL and in relation to the threat by JL to litigate against IM in relation to the warrant issue.
 - ii. That he had communications with JL "*about these claims*", but none of them in any way amounted to "*encouraging, supporting or otherwise promoting*" JL's claims, although he did think it was right for JL to challenge the issue of the warrant.
- c. Picardo 3: In response to a specific request by the Inquiry, the CM provided the following additional detail about his contact with JL (Picardo 3 paras 5-17 [233-4]):
 - i. He discussed with JL the fact that the RGP had suggested that he might be a person of interest in the investigation "*on a very large number of occasions*", and consistently replied to him that "*I was sure that the investigation would exonerate him given that, from what I knew of him, I was sure that he would not have acted in a manner which was contrary to law*".
 - ii. There are no notes of those discussions, because the issue was raised with him more often than not "*during informal telephone conversations*".
 - iii. He also "*frequently discussed*" with JL the issue of the search warrants, and these conversations were "*mostly telephonic*", but there were "*no meetings in my office such as may have resulted in a note of it*".
 - iv. He spoke to JL on the telephone (possibly landline) on 12 May 2020, but does not recall at what time. He expressed his "*consternation*" at the RGP's actions. They also spoke about access to places of worship in the context of lock-down.
 - v. These conversations were "*entirely proper, natural and appropriate, not least given my very close friendship and relationship with him*", and his office "*does not disqualify me from doing so, still less does it require me to engage in an unnatural omission to do so to avoid the speculative and reckless suspicions of Mr McGrail or anyone else*".

- d. Picardo 4: In response to a further request by the Inquiry with reference to WhatsApp messages between him and LB, the CM provided the following evidence (Picardo 4 paras 8-18 [A1447-1448]):
- i. He met with LB on a number of occasions during that period, but cannot recall the detail of what was discussed.
 - ii. He shared with LB (“*one of his closest personal friends*”) his outrage at the RGP’s obtaining of a search warrant, which he considered had been obtained improperly instead of a production order and further expressed the view that the use of the search warrant was a breach of JL’s and his clients’ human rights.
 - iii. He spoke to LB repeatedly about how let down he felt by IM and that he would never be able to trust him again as he had lied to him about the advice relating to the search warrant.
 - iv. LB and the CM discussed “*at length*” how best he should raise these issues in his representation of JL, including whether JL should be advised to judicially review the RGP’s actions.
 - v. He believes that he would have shared with LB also “*the fact that I was very open with the Gibraltar Police Authority and the then Governor that Mr McGrail no longer enjoyed my confidence and my views as to the mechanisms to see Mr McGrail removed and the consequences thereof*”.
 - vi. He recalls seeing JL at the time on one occasion, accompanied by LB, at the CM’s home. JL was “*both incensed but also deeply embarrassed by the events*”. They discussed “*how legally improper*” the RGP’s actions had been, “*how outraged I was by the fact that I believed that Mr McGrail had lied to me*” and “*my subsequent complete loss of confidence in him*”.
 - vii. The key issue in the meeting was that JL wanted to offer his resignation as Chairperson of Gibraltar Community Care Trust, which the CM did not consider to be necessary.

101. In his evidence in Picardo 4 the CM confirmed, for the first time, that his discussions with LB and JL went beyond the search warrants and criminal investigation, and also addressed the CM’s loss of confidence in IM, and even (at least with LB) the mechanisms to see IM removed. This is consistent with the WhatsApp exchanges between the CM and LB, which are addressed below.

102. JL's evidence is that at the time he voiced "*on a single occasion*" his objection to the AG at having been, in his view, very improperly and unfairly treated (Levy 1 para 11 [A1354]). He denies ever discussing IM's position as CoP and the decision to invite him to retire with the CM or the AG, and says that he did not communicate with the CM at the time that the RGP officers were at his office (Levy 2 para 9.6 [A1515]), and did not attend a meeting with the CM and LB on 12 May 2020 (Levy 2 paras 3-4 [A1510]). He says that LB communicated with the AG as his legal representative, which was "*unquestionably perfectly legitimate and proper*" (Levy 2 para 9.1 [A1512]). He denies seeking to remove IM from his post and was not involved in the process (Levy 2 para 9.8 [A1516]).

103. LB's evidence is as follows:

- a. While he notes the CM's evidence and the WhatsApps disclosed by the CM which show that they had conversations around the relevant time, he has no recollection of the contents of any discussions with the CM on the subject of the warrants (Baglietto 1 para 4.2 [A1520]).
- b. He does recall having several conversations with the AG in relation to JL's objection to the legal validity of the warrants and the question of whether the RGP would accept a voluntary statement from JL (Baglietto 1 para 4.2 [A1520]).
- c. It is likely that he would have called on 12 May 2020 to initially protest and express concerns, as well as to say that Hassans would be writing to him, and possibly seeking a meeting with the AG and IM (Baglietto 1 para 4.2 [A1520]).
- d. He acknowledges that the records show that he called the AG on 13 May 2020 in relation to the meeting he was seeking (Baglietto 1 para 4.2 [A1520]). He also notes that the WhatsApp messages suggest that he spoke to the CM on this date, but has no recollection of that conversation (Baglietto 1 para 7 [A1524]).
- e. He also has a note in his diary for 14 May 2020 which may have been a reminder to speak or meet with him, but he does not recall if that happened (Baglietto 1 para 4.2 [A1521]). He also notes the WhatsApp messages with the CM on this day, which he believes related to the letter sent to the AG on the following day (Baglietto 1 para 7 [A1524]).
- f. He recalls that he spoke to the AG on 15 May 2020 when the AG confirmed that the RGP were prepared to accept a voluntary statement from JL in lieu of the interview under caution scheduled for 18 May 2020 (Baglietto 1 para 4.3 [A1521]).
- g. He acknowledges that the WhatsApp messages of 16 and 17 May 2020 suggest that they arranged to meet on Sunday afternoon, sometime after 14:03, but he

has no recollection or record of that meeting He also notes that the WhatsApp messages suggest that he spoke to the CM on this date, but has no recollection of that conversation (Baglietto 1 para 10 [A1525]). He notes that shortly after that meeting at 14:51 he emailed the AG, with copy to IM, seeking confirmation that JL would be giving a written statement and would not be attending for interview on the following day He also notes that the WhatsApp messages suggest that he spoke to the CM on this date, but has no recollection of that conversation (Baglietto 1 para 11 [A1525]).

- h. He does not recall the contents of any other oral communications with the AG regarding the warrants, although he notes that the AG said he would be calling him after a meeting on 20 May 2020 He also notes that the WhatsApp messages suggest that he spoke to the CM on this date, but has no recollection of that conversation (Baglietto 1 para 4.4 [A1521]).
- i. He says he does not recall ever discussing IM's position as CoP or the decision to invite him to retire with the CM, the AG, the DPP, JB or any other member of HMGoG, and acknowledges that he was not advising JL or anyone else on that matter (Baglietto para 4.9 [A1523]).
- j. Specifically in relation to the CM, he cannot recall discussing the matter and neither the WhatsApp messages between the CM and him in May 2020 nor the CM's own evidence on the matter have served to refresh his memory (Baglietto 1 para 4.10 [A1523]).

104. The AG's evidence is that it is possible that he may have spoken to LB on 12 May 2020, but that would have been to take a call from LB saying how aggrieved JL was, and that a letter/email was coming, and no more than that (Llamas 2 para 28 [A305]).

105. The documentary evidence obtained by the Inquiry provides further evidence as to these communications:

- a. The original message from IM to the CM notifying him of the intended execution of the search warrants was sent on 12 May 2020 at 12:25 [C6702].
- b. At 12:57 and 13:07 the AG received two missed calls from JL. The AG's evidence is that he did speak to JL, either later that day or the following day, and that, whilst being respectful, JL complained to the AG about the way he had been treated. The AG's evidence is that he told JL that the DPP was handling the matter and that he should speak to him, which the AG believes JL did (Llamas 1 para 48 [A282]).

- c. On 12 May at 15:41, the AG confirmed to the CM that he had spoken to the DPP who was “*categorical that whilst he told RGP that an interview with JL would likely be necessary, he strongly advised against a search warrant*”, to which the CM replied at 15:41 “*Pues entonces nos mintio a los dos*” (“*Well then he lied to both of us*”) [B1417], and the AG responded at 15:43: “*Exactly he certainly gave us the impression that sw decision was sanctioned by DPP*”.
- d. At 23:03 LB sent an email to AG (in his capacity as guardian of the public interest) raising concerns about “*a serious abuse of law and power*” and seeking the AG’s intervention, as well as a meeting [C3520]. The AG replied at 23:16 confirming that he had suggested a meeting with IM [C3525].
- e. On the afternoon of 13 May 2020 LB sent the CM two WhatsApp messages asking to speak (at 12:36 and 15:50), and it appears that they spoke at around 4pm [B1422].
- f. At 15:32, LB also asked to call the AG, and there were further missed calls at 18:39 and 18:48 [C6883].
- g. At the meeting between the AG, IM, the DPP and PR on 13 May 2020, the AG referred to LB having called in relation to a letter that had just been sent (presumably [C3655], where LB sought copies of the search warrant and other documents, referred to officers having said that they had obtained advice “*from the highest level*”, which LB understood to be a reference to the DPP, and sought the return of all materials handed over).
- h. At 20:57, JL sent the AG a WhatsApp message saying “*On the other matter I feel I’ve been hung out to dry. Certainly not by you.*” The AG responded a minute later saying “*Don’t worry*” (Llamas 1 para 68 [A289]).
- i. On 14 May 2020 at 16:55 the CM sent a WhatsApp message quoting Schedule 2 Para 8 to the Police (Discipline) Regulations 1991, which refers to a disciplinary penalty of dismissal with loss or reduction of Pension Benefits, which is to be used only “*where the Police Officer is convicted of treason or some other offence which is gravely injurious to the State or is liable to lead to serious loss of confidence in the Police Force*” [B1422]. This is the most serious of disciplinary penalties provided for by Schedule 2, although the Police (Discipline Regulations) 1991 do not apply to the Commissioner of Police (r2)⁴. It is not clear how these messages

⁴ [https://www.gibraltarlaws.gov.gi/uploads/legislations/police/1991s090/1991s090\(22-04-21\).pdf](https://www.gibraltarlaws.gov.gi/uploads/legislations/police/1991s090/1991s090(22-04-21).pdf)

could relate to the search warrant, and they appear to relate more to potential action against IM (which the CM acknowledges having discussed with LB).

- j. At 18:42 the CM sent LB a WhatsApp message containing the wording of s76 PA 2006, which provides for a power for the Magistrates' Court to make an order returning property which has come into possession of police under any statutory provision to its owner. LB replied at 18:45 "*Thanks, we are drafting letter. Let me think about this provision but we prefer not to have to go to court but for CPO to return due to clear unlawfulness.*" The CM replied at 18:54 saying he understood. In that exchange the CM appears to have been making a suggestion as to a mechanism for JL and LB to seek the return of his devices, although this is a matter which will have to be explored in questioning.
- k. At 21:54 LB informed AG that Hassans were "*delayed with letter to you till morning*", to which the AG replied three minutes later, "*No problem*".
- l. On 15 May 2020, LB sent a further letter to the AG setting out the reasons why Hassans submitted "*there are very good grounds for believing that the warrants were improperly procured and wrongfully granted*", asserting that the warrants were likely to be declared unlawful through judicial review, and therefore JL's possessions should be returned to him [C3802]. The same letter asserted that the RGP had acted contrary to the advice of the DPP, referring to "*the clear misrepresentation that the warrants had been applied for on the advice of the DPP*" [C3808].
- m. In a meeting on the same day between the AG, the DPP, Lloyd DeVincenzi, IM, PR and MY, PR referred to Hassans' letter and asked how they knew that. The DPP responded "*it kind of possibly suggests that I've spoken to Lewis Baglietto, which I haven't*" [C3855]. The AG then said "*It must come from the conversation with Ian and the chief minister*", and later said he would call LB on the same day [C3877].
- n. On 16 May 2020 at 23:20, LB messaged CM: "*Bro. Sorry to disturb but Can we speak some time tomorrow morning?*" [B1422]. On the following morning, 17 May 2020, it appears that the CM and LB spoke over the phone [B1422]. It appears that plans were made for a meeting between the CM, LB and JL at the CM's residence at noon, with the CM messaging LB to say "*Let me know when you are on your way up*" at 11:42 and then checking on their progress ("*Como vais?*" In English: "*How are you going?*") at 12:09 [B1423].
- o. Later on 17 May 2020, at 14:51, LB wrote to AG (copied to IM): "*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 tomorrow, I confirm that Mr Levy will give a written statement". The AG responded stating that LB's email was "consistent with what I communicated to you on Friday afternoon" [C3938].

- p. At 22:48 the CM sent messages to both LB and the AG with an image containing page 13 of the HMIC report accompanied by the message: "That is page 13 of the HMIC report published last week. Look at the bit I have highlighted in red. Boom."
- q. The CM's conversation with LB continued over the next half hour:
- i. LB: "Shocking but sadly doesn't come as a surprise! Thanks for your time today bro. I think it reassured him a lot!"
 - ii. CM: "I think the above is of major to (sic.) the issues raised this week. It will be important/ Remember the HMIC report is public."
 - iii. LB: "Yes, excellent. We can put it to good use for sure!"
 - iv. CM: "I have sent to JL. Let me know if he sees it."
 - v. LB: "[Thumbs up emoji]"
- r. LB does not recall what part of the 2020 HMIC Report was highlighted in the CM's WhatsApp to him, and does not know what his comments referred to. He also cannot recall what his reference to JL being reassured by the meeting meant (Baglietto 1 para 12 [A1526]).
- s. There also followed several messages between the CM and the AG referring to an unknown provision ("(2)(b)") and querying whether it applied to search warrants [B1418].
- t. There appears to have been another call between LB and the AG on 20 May 2020 [C6883].
- u. On 29 May 2020 at 12:21 LB messaged the AG to inform him that he had emailed him "the article", and the AG later confirmed receipt [C6884], although no corresponding email appears to have been disclosed.
- v. The Inquiry has not been provided with WhatsApp or other messages between the CM and JL.
- w. At a meeting on 20 May 2020 between the AG, the DPP, IM, PR and MY, the AG stated: "I've spoken to Lewis Baglietto as you know and err, my impression was, my impression is, that they welcome this written statement, but that there are, they consider there are issues that need to be dealt with, at the same time, like this in this letter. And my advice, if I can use the word advice, even though it is not advice, is, is what I have told him, is look, it's taken Christian and me quite a bit of

persuasion of the RGP to go down this path, let's leave it, let's go down this process of the written statement.” [C4071]

106. It is clear from the evidence, particularly that of the CM and the contemporaneous documents, that there was very regular communication between the CM and the AG on the one hand and LB (on behalf of JL) on the other. Much of those communications were unrecorded phone calls, and the witnesses' evidence as to the contents of the calls is (to varying degrees) incomplete. The WhatsApp messages around those calls provide some indication as to the likely contents of those calls. However, it is beyond dispute that:
- a. JL felt extremely aggrieved by the RGP's actions and immediately instructed LB to raise complaints with both the AG and the CM. He also did so directly himself.
 - b. Conversations continued over the next few days, including an in-person meeting between the CM, LB and JL at the CM's home on 17 May 2020.
 - c. Those conversations plainly referred to the search warrants, but also (at least between the CM and LB) extended to (i) potential claims by JL against the RGP, and (ii) potential disciplinary action against, or removal of, IM.

Submissions

107. As to whether Issue 5 constituted a reason of circumstance leading to IM's early retirement:
- a. Issues surrounding the search warrants are cited by both the CM and the AG as the central reason for losing confidence in IM. Whilst both the CM and AG disagree with the decision to seek search warrants, they stress that this itself was not the central factor. Rather, it was: (i) in the CM's case the alleged "*lie*" (IM's comment that he had sought advice from the AG and DPP on the warrants) and (ii) in the AG's case the alleged "*serious breach of trust*" (IM proceeding contrary to an agreement to rationalise the charges).
 - b. Even if the Chairman forms the view that a production order was more appropriate than a search warrant, it does not necessarily follow that the CM was justified in all of his actions on 12 May 2020. It is plainly open to the Chairman to conclude that the CM raised valid points as to the appropriateness of proceeding by way of search warrant as opposed to production order, and yet that his raising of those points, or the manner in which he raised them, or his other actions on 12 May

2020, amounted to inappropriate interference in the investigation. These are matters which will need to be considered carefully at the Main Inquiry Hearing.

- c. Reciprocally, IM also relies heavily on the search warrants: which he advances as (i) his theory as to why the CM and AG acted in the way they did, and also (ii) the reason why IM himself felt that he had no choice but to apply for early retirement to the GPA (in that they gave rise to interference by the CM and the AG with the criminal investigation).
- d. By contrast, the search warrants do not appear to have been decisive in NP's loss of confidence, and whilst the GPA did refer to the search warrants in the meeting on 21 May 2020 (and arguably impliedly in the letter of 22 May 2020), the content of the letter dated 22 May 2020 focuses on the Incident at Sea and HMIC Report.

108. The following topics fall to be explored at the Main Inquiry Hearing:

- a. Whether the DPP was asked to advise on the Search Warrants, and if so whether he gave advice; or alternatively whether prior to 12 May 2020 he communicated a view that he would have preferred a production order.
- b. What the DPP told the AG that he had advised about the Search Warrants, when asked following the 12 May 2020 meeting.
- c. Whether IM told the CM/AG that the DPP had advised on the Search Warrants, and that he was in favour of obtaining a search warrant as opposed to a production order.
- d. Whether IM and the AG reached an "*agreement*" that the charges would be rationalised and that IM would meet the AG; if so when, and whether it was agreed that this would be done prior to proceeding or at a later stage.
- e. Whether the actions of the CM and/or the AG (including at the behest of or in order to protect JL) amounted to inappropriate pressure on IM or interference with the criminal investigation.

ISSUE 6 – THE FEDERATION COMPLAINTS

6. *The complaint(s), if any, made by the Gibraltar Police Federation (“the Federation”) and/or its members to the Gibraltar Police Authority about Mr McGrail (including as to the difficult relationship between Mr McGrail and the Federation), and any allegations of bullying or intimidation by Mr McGrail discussed by the Gibraltar Police Authority (“the Federation Complaints”).*

109. This issue was introduced by NP as one of the matters which contributed to his loss of confidence in IM’s probity and integrity over a period of time (Pyle 1 para 13.2 [A240]). While recognising that the issue was “*a concern of a lesser order of gravity*”, NP affirms that “*it nevertheless fitted into the pattern of behaviours*” which were causing him concern and causing him “*to begin to lose confidence in*” IM (Pyle 1 para 23.3 [A249]).
110. The GPF is established under s49 PA 2006, and membership is open to all police officers below the rank of superintendent (s50 PA 2006). The provisions establishing the GPF were passed by the Gibraltar Parliament on 15 June 2018, and commenced on 21 June 2018. The effect of the provisions was to establish the GPF as a replacement for its predecessor, the Gibraltar Police Association.
111. Under s 51 PA 2006, the objects of the GPF are to represent members of the RGP “*in all matters affecting their welfare and efficiency*” except for promotion and discipline (although the GPF may represent a member of the RGP at any stage of disciplinary proceedings brought under s79 PA 2006).
112. The GPF is required under s52 PA 2006 to be “*entirely independent of and unassociated with any body or person outside the Force*” (subject to the Government’s discretion to authorise associations with bodies on the recommendation of the GPA). Except membership of the GPF, members of the RGP are prohibited from becoming members of any trade union or of any association having for its objects or one of its objects the controlling or influencing of the pay, pensions, or conditions of service of the Force as more particularly stipulated in s55 PA 2006.
113. Although the statutory provisions (and associated Regulations) took effect in 2018, the GPF had been working under the spirit of those provisions since 2016.

Where were the GPF complaints relied upon?

114. In a section of his evidence titled “*Fractured relationship with the Gibraltar Police Federation*” (Pyle 1 para 23 [A248-9]) NP refers to three related matters:

- a. Fractured relationship - IM’s management style “*resulted in a fractured, almost hostile relationship between him and the Gibraltar Police Federation, the representative body of rank and file and more junior officers in the RGP and in poor morale within the RGP*”.
- b. Formal complaints to the GPA - The resulting tensions between the RGP leadership and the GPF “*culminated in formal complaints from the Federation to the GPA about Mr McGrail*”, and the GPA regularly spoke at its meetings about the allegations of “*bullying and intimidation*” by IM.
- c. Rumours of bad practice - He often heard numerous anecdotal stories of bad practice and behaviours by the RGP that were “*hard to ignore*” given their volume, including stories of the RGP turning a blind eye with crimes committed by people they know. Given that they were rumours and anecdotal, they were not things on which he felt it was possible to act, but they “*nevertheless contributed to my growing sense of unease*”.

115. In Picardo 1 paras 109-111 [A216-7] the CM refers to this issue and states the following:

- a. One of the policies which he implemented when appointed was “*the implementation of a Police Federation, on the lines of those established in the United Kingdom, for the representation of officers*”. He further affirms that the implementation “*worked well and was embraced by Commissioner Yome*”, but the relationship between the GPF and IM was “*very difficult*”, adding that IM “*seemed incapable of accepting even the most basic criticism*” from the GPF, and that he was “*not able to engage with them positively at all*”.
- b. The CM also refers to an occasion he recalls IM writing to the Governor to ask him to propose legislation limiting the powers of the GPF in the representation of its members. The CM told IM that he did not agree with that proposal. He later expands on this (Picardo 2 para 21 [A230-1]), stating: “*I found this unacceptable given that the Government had obtained a popular mandate to pass the legislation, which had worked well with Mr Yome as Commissioner*”.
- c. Although this did not cause him to lose confidence in IM, he avers it was “*a demonstration of his very fractious and difficult approach to relationships*”.

116. In his WhatsApp message of 14 May 2020, listing the matters causing him “*huge concerns about the senior management of the RGP*”, the CM referred to “*the Federation bullying allegations*” [A198]. NP also affirms that the CM referred to those allegations in the meeting between NP, the CM and JB on 18 May 2020 (Pyle 1 para 14 [A240-1], and see his email of 21 May 2020 [C4234]), although they did not feature in the “*Informal Record*” of the meeting prepared by the CM [C3988]. They were also mentioned in NP’s Diplomatic Telegram to the FCDO on 9 June 2020 [C4913]. They were not mentioned in the two letters from the GPA to IM on 22 May 2020 or in the Three Letters.

117. At PH5, the language of Issue 6 in the Provisional List of Issues was restricted to its current wording, narrowing the focus to complaints made by the GPF to the GPA about these issues. This was to avoid inviting very large quantities of evidence with allegations and counter-allegations as to the fractured relationship between IM and the Federation, particularly in the light of the limited reliance placed on this issue by NP and FP.⁵ Nevertheless, it is submitted that the Inquiry is required to first consider the background relating to the three matters referred to by NP in his evidence, before then considering (in relation to the first two) whether they were raised at GPA level.

Relevant factual background

(a) Fractured relationship

118. There is no dispute that the relationship between IM and the GPF was difficult and contentious, including as to issues surrounding GPF elections, allowances for convenors and the independence of the GPF, and that both sides raised issues in relation to these matters from time to time with JB and the CM.

119. Indeed, all relevant CPs and witnesses positively aver that the relationship between IM and the GPF was fractious and/or difficult:

- a. IM himself acknowledges that “*The relationship with the GPF association was regrettably a very difficult one, not because of my wishing it to be. It became evidence that certain factions within the GPF executive board disliked my management style and this caused strain to my relationship*” (McGrail 3 para 10 [A53]).

⁵ Ruling dated 8 November 2023 (<https://coircomp.gi/wp-content/uploads/2023/11/2023-11-Ruling-on-other-issues-outstanding-from-PH5-2.pdf>)

- b. Sgt Maurice Morello, Chairman of the GPF from May 2019 to 2023, describes the relationship as “*a very difficult one from the start*” (Morello 1 para 6 [A1194]). Mr Morello’s evidence is supported in almost identical terms by Leif Simpson (Secretary of the Police Federation at the relevant time, and now Chairman) (Simpson 1 para 4 [A1467]) and Henry Bautista (Mr Morello’s predecessor as Chairman of the GPF (Bautista 1 para 16 [A1500])).
 - c. The references by NP and the CM to the “*fractious, almost hostile*” and “*difficult*” relationship are set out above. The CM adds (Picardo 2 para 5.3 [A220]): “*I found IM to be virulently against the work of the GPF, even going as far as trying to persuade me to undo the establishment of the Federation because he considered that he could not work with them*”.
 - d. JB confirms (Britto 2 para 2 [A329]): “*Certainly, I was aware that relations between Mr McGrail / Command on the one hand and Mr Morello/the GPF on the other were bad and that they had disputes.*” He then highlights the two main issues as he saw them (whether the convenors remained subject to the governance of the Commissioner of Police, and whether they should receive the salary and benefits of a Chief Inspector).
 - e. RU refers to the relationship between IM and the Chairman of the GPF, Maurice Morello, as “*extremely fraught*”, adding that they “*never met eye to eye*”, making day-to-day command business “*difficult*” (Ullger 1 para 14 [A530]).
 - f. Assistant Commissioner Yeats describes the relationship as “*difficult*” (Yeats 1 para 5 [A632]).
 - g. Detective Superintendent Field refers to “*unhealthy tension*” between IM and the GPF (Field 1 para 11 [A796]).
120. There are many contemporaneous documents which demonstrate tension and disagreement between IM and the GPF. See, for example:
- a. An email from IM to JB dated 21 December 2018 complaining of the “*incessant path of destruction that the Gibraltar Police Federation [Henry Bautista et al] is set on*” [C1627].
 - b. A WhatsApp exchange between IM and the CM on 11 July 2019 at 09:29 [C6686]:
 IM: “*Good morning CM – I would be extremely grateful for 5-10mins of your time to discuss what I foresee will become a very undesirable situation with regards to the relationship between the RGP and the Gib Police Federation Board. ... There is a clear pattern developing which is not heading in a good direction & which is why I*

feel it important that I explain how I am going to deal with the matter before it reaches you via the Fed Convenors themselves.”

- c. A WhatsApp exchange between IM and the Chief Secretary, Darren Grech, on 11 November 2019 at 17:14 [6621-2]:

IM: “I have been told that the Police Federation are meeting with Crome... No doubt they are going to discuss the personal remuneration. I can’t let them get their way – it’s not good for the RGP and by default Gibraltar PLC...”

And subsequently: “The Fed need stopping on their tracks ASAP.”

- d. A WhatsApp exchange between IM and the CM from 28-30 January 2020 at 19:20 relating to an investigation into comments made by the GPF to the *Panorama* and proposed exclusion of GPF convenors from the disciplinary purview of the RGP [C6697-8].

- e. An email from Maurice Morello to JB on 22 June 2020 at 10:14 seeking to dissuade the GPA from appointing a Commissioner from the UK [C5002]:

“It is no secret that we have had numerous issues with Mr McGrail due to his management style and the lack of respect which he demonstrated towards the Gibraltar Police Federation, and especially towards the Secretary, Leif Simpson and myself as Chairman. As a result, the relationship between Command and the Federation was strained at best, over these last two years.”

121. In their affidavits provided to the Inquiry Maurice Morello, Leif Simpson and Henry Bautista gave detailed accounts of the many ongoing disputes between IM and the GPF.

122. IM’s response on these matters is provided in his most recent 6th Affidavit [A1458-1461], received by the Inquiry on Monday 25 March 2024 (an earlier version was received on Friday 22 March 2024 but then withdrawn due to it containing errors). It is not necessary to go into the details of any of these disputes, as addressing them would go beyond the Inquiry’s remit. It is not the role of this Inquiry to go into the detail of that evidence and those disputes, and in a Closed Ruling dated 1 March 2024 the Chairman held that most of the detail was irrelevant to the Inquiry’s work. It is clear, however, that there was confrontation on many fronts, with both sides blaming each other for the dispute.

123. One particular flashpoint was surveys organised by the GPF in 2018 and in August/September 2019, both of which had unfavourable results (see, e.g. McGrail 3 para 11 [A53] and Morello 1 paras 87-90, 93-94 and 99 [A1213-5]). The survey raised concerns

about “*discontent amongst the rank and file with complaints of bullying*”, similar to criticism which had previously been made of the RGP in the *Panorama* newspaper (McGrail 3 para 16 [A54]). Sgt Morello alleges that IM “*failed to accept that bullying was happening under his watch*” and “*as a result it was never really addressed or appropriately tackled*”, and adds: “*What he failed to see, or did not want to accept, was that bullying in the RGP stemmed from his authoritarian style of management, which filtered down to senior management and to other managers*”. Sgt Morello goes as far as saying that IM “*was himself the biggest problem and bully the RGP had*” (Morello 1 paras 93-4 [A1214]).

124. In response to this, IM commissioned an independent consultancy firm (AAP Associates) to “*help us contextualise the survey results as they were very raw in substance and required analysis*” and provide assistance in addressing issues of concern arising from the survey, and affirms that a series of actions to work on the recommendations were put in action, and that he shared the results with the GPF, the Governor and (he believes) the CM and Minister of Justice (McGrail 3 para 14 [A53-4]).
125. At one point, disciplinary proceedings were opened against Sgt Morello and PC Simpson (McGrail 3 para 17 [A55], Morello 1 paras 121-140 [A1220-4]), on the basis that they had made adverse comments about the RGP’s senior management to *Panorama* (something which the CM commented “*smacks of Zimbabwe*” [C6697]). Sgt Morello describes this process as vexatious and intimidatory. On another occasion IM issued Sgt Morello with a written warning (Morello 1 paras 114-119 [A1219-20]).
126. Another major point of dispute was with the structure and remuneration of the GPF, and whether it should act as a trade union, matters which IM expressed his views on very firmly, which the GPF in turn saw as interference in their business (McGrail 5 paras 133-8 [A169-70]). The CM states that IM “*even went as far as trying to persuade me to undo the establishment of the Federation because he considered that he could not work with them*” (Picardo 2 para 5.3 [A220]). In early 2020 IM wrote to the Governor raising concerns about the GPF’s structure, resulting in a “*firm*” exchange between the CM (who took exception to the letter) and IM, and a further letter from IM clarifying the position (McGrail 3 paras 18-20 [A55-6], Picardo 1 para 110 [A217]). IM accuses the CM of impairing relations by leading both sides to believe he was on their side on this issue, and ultimately ratifying the GPF’s pay conditions (McGrail 5 paras 148-9 [A173]).

127. The issues arising from the poor relationship between RPG management and the GPF were “*one of the main precursors*” to IM seeking the HMISC report (McGrail 3 para 21 [A56]).

(b) Formal complaints to the GPA

128. There is a clear factual dispute as to whether any formal complaints were made by the GPF to the GPA about IM.

129. NP’s evidence is that tensions between the RGP leadership and the GPF “*culminated in formal complaints from the Federation to the GPA about Mr McGrail*”, and that the GPA regularly spoke at its meetings about “*the allegations of bullying and intimidation by Mr McGrail*”. NP also refers (Pyle 1 para 23.2 [A248]) to an email from the GPF Chairman to the GPA dated 22 June 2020 which states “*It is no secret we have had numerous issues with Mr McGrail due to his management style and lack of respect*”.

130. As for the GPF:

a. Sgt Morello attests that in late January or February 2020, Sgt Morello spoke to JB by phone and asked to address the GPA Board, “*not only in relation to the ongoing internal investigation but the general relationship with the GPF/ Command and the authoritarian style of leadership*”. A meeting was held at the GPA offices with most of the GPA Board in attendance, and he says that he asked how to file a complaint of bullying against the Commissioner, to which JB replied “*no please, no, that’s all we need now*”, and Sgt Morello then pointed out that, unlike in the UK, there was in fact no recourse. He then gave the Board a summary of events that had transpired since being elected as Convenor, at which point a Board member stated “*that is clearly bullying, and the problem clearly here is Mr McGrail*” (Morello 1 paras 145-8 [652-3]).

b. Mr Simpson gives an almost identical account, although he specifies that the meeting took place on 31 January 2020 and that the Board Member who spoke was Frank Carreras (Simpson 1 paras 155-8⁶).

131. There are two communications which are arguably supportive of NP/GPF’s position, including:

⁶ To be added to Bundle A.

- a. FP's WhatsApp message of 14 May 2020 referring to "*the Federation bullying allegations*" [A198] (although there is no reference to formal complaints having been made by the GPF to the GPA).
- b. NP's email of 21 May 2020 [C4234] (although there is no reference to formal complaints having been made by the GPF to the GPA).

132. In contrast, IM's evidence is:

- a. He was never informed by anyone at the GPA or anyone else that complaints of bullying had been made against him, they are not reflected in any GPA minutes, and all GPA members specifically disavow being aware of any complaints of bullying (McGrail 5 paras 141, 158 [A171, 174]).
- b. On the other hand, IM acknowledges that there was "*apparent discontent amongst the rank and file with complaints of bullying in the Force*" and that the GPF survey "*had raised similar concerns*", which led him to request the HMIC Report (McGrail 3 para 16 [A64]).

133. Similarly, the GPA evidence can be summarised as follows:

- a. JB confirms that:
 - i. The "*issues and disputes between Mr McGrail / Command on the one hand and Mr Morello / GPF on the other were occasionally raised with me by both sides*", but "*no formal complaint, oral or written, was ever made*", clarifying that "*I regarded things said to me as matters in dispute rather than complaints*" (Britto 2 para 3 [A329-30]).
 - ii. He does not recall any meeting of the GPA attended by Mr Morello in January or February 2020 (and nor do other members of the GPA) and there is no record of such meeting. That does not mean that Sgt Morello did not say what he refers to in his evidence at some point, but he has no recollection of it. He has been reminded by Frank Carreras that he and Mr Carreras met Sgt Morello and PC Simpson informally twice, but cannot remember those meetings, and he confirms that if there was no formal meeting there would be no minutes (Britto 2 para 4 [A330], Britto 3 para 7 [A333], Britto 4 para 5 [A1442]).
 - iii. There was a meeting of the GPA on 6 February 2020. Britto 4 para 8 [A1443] JB explains that item 5 of the minutes [B5881] is "*misleadingly recorded as Meeting with GPF and COP*", given that no such meeting was held with

the GPF. Mr Britto says that what occurred arose from two separate contacts he had had with Mr Morello and that he was aware that “*the feedback from*” GPF surveys “*suggested that respondents felt that there was bullying within the force.*” As a result of his contact with Mr Morello, JB says he suggested that the GPF work on a bullying policy based on the Dignity at Work model. The COP joined the GPA meeting on 6 February 2020 after it ended, and JB advised him to step back from taking disciplinary proceedings and to seek guidance as to how police federations operated in the UK. He goes on to say that the CoP did not initiate disciplinary proceedings and nor did the GPF produce a draft policy on Dignity at Work (Britto 4 para 8[A1443]. The GPA minute states that “*The meeting ended with the CoP agreeing to go down the route of mediation and review.*” [B5881].

iv. He also recalls a meeting attended by Sgt Morello on 6 July 2020 (recorded in minutes wrongly dated 6 June 2020 [C4813-4]), following Sgt Morello’s email to him of 22 June 2020 [C5002] (Britto 2 para 5 [A330]).

b. Other members of the GPA all confirm that they have no recollection or record of formal complaints against IM being made. See Gonçalves 1 para 39 [A343], Alcantara 1 para 13 [A355], Danino 1 para 29 [A371], Falero 1 para 24 [A382], Gomez 1 para [A400], Hassan-Weisfogel 1 para 39 [A418], Lavarello 1 para 50 [A437], Nagrani 1 para 39 [A451], Patron 1 para 36 [A463], Pizzarello 1 para 27 [A475], Reyes 1 para 27 [A485], Collado 1 para 30 [A498], Figueras 1 para 13 [A505], Carreras 1 para 21 [A519], Carreras 2 para 5(ii) [A524].

134. Other senior RGP officers provide evidence which is supportive of IM and the GPA’s position:

a. RU confirms that he is not aware of any formal allegations or complaints made by the GPF in respect of bullying or intimidation by IM (Ullger 1 para 12 [A530]). He does refer to the GPF’s survey in late 2018 which referred to “*bullying allegations*”, and supports IM’s evidence that independent consultants were instructed, with their recommendations leading to work by a working group created between members of the RGP Command Team and the GPF (Ullger 1 para 17 [A531]). He concludes that “*Certainly, Mr Morello constantly qualified Mr McGrail as a bully, but as explained he never made a formal complaint to me about it, nor did he report it to me officially*” (Ullger 1 para 24 [A533]).

- b. AC Yeats confirms that he was not aware of any allegations or complaints made by the GPF against IM in respect of bullying or intimidation (Yeats 1 para 4 [A632]).
 - c. DS Field confirms that he “cannot recall being made aware or put on notice of any formal allegations or complaints made by the GPF in respect of bullying and/intimidation by Mr McGrail” (Field 1 para 10 [A796]).
 - d. Superintendent Wyan confirms that he is not aware of any allegations of bullying and/or intimidation made against IM by the GPF (Wyan 1 para 4 [A1021]).
135. Ultimately, the Inquiry has received no document which records formal complaints being made to the GPA against IM by the GPF concerning allegations of bullying or intimidation, or even about the difficult relationship between IM and the GPF. There is a clear factual dispute which will have to be explored further in questioning.

(c) Rumours of bad practice

136. It is impossible and impracticable (as well as outside its Terms of Reference) for the Inquiry to look into the “*numerous anecdotal stories of bad practice and behaviours by the RGP*” which NP refers to, and in any event NP confirms that these were not things on which he felt it was possible to act, although they contributed to his “*growing sense of unease*” (Pyle 1 para 23.4 [A249]).

Submissions

137. Regardless of who was to blame for the difficult relationship between IM and the GPF, according to NP’s evidence, that ongoing tension, together with the allegations of bullying and intimidation against IM was a concern, albeit “*of a lesser order of gravity*”, which “*fitted into the pattern of behaviours*” which were causing him “*to begin to lose confidence in*” IM (Pyle 1 para 23.3 [A249]). The rumours and anecdotes of bad practice and behaviours, in contrast, were not things on which NP felt it was possible to act, although they contributed to his “*growing sense of unease*” (Pyle 1 para 23.4 [A249]). In the circumstances, if NP’s evidence is accepted, this matter was a circumstance and a reason (of lesser importance) for NP beginning to lose confidence in IM and it therefore contributed (to some degree) to IM ceasing to be Commissioner of Police. However, there is a dispute of fact as to whether the fractured relationship and bullying allegations were raised at GPA level (formally or otherwise), as alleged by NP, and that will have to be addressed in questioning.

The “job offers” allegations

138. In March 2023, the Inquiry received 19 witness statements which were filed by current or former members of the GPF raising a very large number of allegations, either against IM or against the Senior Management of the RGP more generally. These were the subject of a Closed Ruling by the Chairman dated 1 March 2024, which determined that three of the statements contained evidence which was relevant to the Inquiry’s Terms of Reference and List of Issues (although they also contained irrelevant material).
139. Some of those statements have also been the subject of allegations (initially by IM in McGrail 3 paras 155 and 159 [A130-2]) that incentives were offered in exchange for the giving of evidence to the Inquiry. The CM responded to these allegations in Picardo 2 para 17 [A228-9], denying any impropriety in the redeployment of officers, and confirms that he has “acted on advice to ensure that the individual officers in question ... were able to provide their evidence to this Inquiry”. The Government had earlier confirmed in a Press Release dated 23 March 2023⁷ that the CM’s actions were in keeping with the protected disclosure provisions of the Employment Act 1932 (ss45A to 45O).
140. The relevance of these allegations and whether they should be investigated through evidence and disclosure was originally to be considered at PH4 on 19 July 2023. However, on the eve of PH4, the Inquiry was informed by SIO John McVea that the RGP was investigating these allegations, and that it might prejudice that investigation for a ruling to be given on the matter. The Inquiry therefore agreed to adjourn its determination of those issues pending that investigation. In January 2024, SIO McVea indicated to the Inquiry that the RGP did not object to the Main Inquiry Hearing proceeding alongside the criminal investigation. The Chairman then proceeded to consider and rule upon those issues. A summary of the Closed ruling was published on the Inquiry website on 1 March 2024.⁸
141. Having considered the allegations, and given that they related to some extent to evidence which has been deemed relevant to the Inquiry, the Chairman concluded that, in order to maintain the integrity of the Inquiry and retain public confidence, the Inquiry should seek

⁷ <https://www.gibraltar.gov.gi/press-releases/governments-actions-are-not-strange-but-lawful-and-proper-1702023-8723>.

⁸ <https://coircomp.gi/wp-content/uploads/2024/03/2024-03-01-Summary-of-Rulings-PH4-Agenda-items-8-and-9.pdf>.

evidence and disclosure of the circumstances in which the statements came to be made.⁹

142. STI therefore wrote in February 2024 to (a) the providers of the relevant statements, (b) the CM and (c) Michael Crome (the latter two having been named by IM as taking part in the redeployment of providers of witness statements to the Inquiry). STI sought evidence and disclosure of relevant documents as to which individuals were granted whistle blower status, and what redeployment, payment or other benefit had been offered to them in exchange for their evidence to the Inquiry (among other more detailed questions).

143. In responses in late February/early March 2024:

- a. The providers of the witness statements declined to give voluntary evidence and disclosure, citing the live investigation.
- b. The CM and Mr Crome disputed the relevance of these requests to the Inquiry's Terms of Reference and raised queries about the criminal investigation.

144. Although the Inquiry Team maintains the view that these matters do fall within the Inquiry's Terms of Reference, given the proximity of the Main Inquiry Hearing and the intervening passing of the Inquiries Act 2024, CTI consider that the most pragmatic way forward is to address this issue in questioning of IM and the CM based on the information currently available. This includes information that entered the public domain at IM's sexual assault trial in 2023. At the conclusion of the Main Inquiry Hearing, the Chairman can consider whether the matter should be the subject of further evidence, disclosure and/or submissions.

⁹ Ruling dated 1 March 2024 (<https://coircomp.gi/wp-content/uploads/2024/03/2024-03-01-Summary-of-Rulings-PH4-Agenda-items-8-and-9.pdf>).

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

2. The RGP's investigation into an assault on a helicopter pilot and crew member in Gibraltar in March 2017 ("**the Assault Investigation**").

7. The RGP's involvement in and/or handling of the Alcaidesa claims ("**the Alcaidesa Claims**").

145. It is convenient to turn next to Issues 2 and 7, which can be taken together and briefly. Both issues are mentioned fleetingly in the evidence, and were therefore identified at the early stage of the Inquiry process as candidates for being "*reasons*" and "*circumstances*". However, both matters pre-dated IM's appointment as Commissioner, and neither was mentioned in (a) JB's meeting with IM on 22 May 2020 [C4316], (b) the GPA's letters to IM dated 22 May 2020 [C4315, C4378], or (c) any of the Three Letters (apart perhaps from NP's reference to his "*already-existing concerns*" relating to IM [C4676]).

146. By way of broad overview of these two issues, which are elaborated upon in the Undisputed Facts:

- a. On 11 March 2017, two members of the British Royal Navy serving as helicopter crew were assaulted and suffered injuries during a stopover in Gibraltar. Two men identified on CCTV were arrested, but following investigation the RGP concluded that the likelihood of a conviction was "*non-existent*" and they were released from arrest.
- b. On two occasions in early August 2010, officers from the RGP entered a flat in Alcaidesa (Spain) without a warrant and removed property belonging to the tenant. IM was not one of the RGP officers involved.

Issue 2: The Assault Investigation

147. The Assault Investigation is cited as a "*reason*" in Pyle 1. NP states that his loss and confidence in Mr McGrail's probity and integrity was "*progressive over a period of time*" which "*began early on after [his] arrival in Gibraltar*" (Pyle 1 para 20 [A245]). Amongst the items that he then lists is "*the helicopter Pilot incident*", which NP explains as follows (Pyle 1 para 22 [A248]):

"In March 2017, during a stop-over in Gibraltar, a helicopter and another member of the crew were assaulted in a bar in Gibraltar, the pilot so severely that his cheek

or jawbone was fractured to prevent him from flying. Despite witnesses and I believe CCTV, charges were never pressed. It took the RGP several weeks to state that the forensic evidence they had collected was not conclusive. The widely held belief in MOD circles is that the RGP did not investigate the crime correctly to protect those involved in the attack.”

148. The Inquiry also received evidence on the Assault Investigation from Commodore Michael Walliker, then CBF Gibraltar, who stated (Walliker para 13 [A81388]):

“... there is no evidence of any investigation being conducted whatsoever. At the time, there were rumours that an assailant had been arrested, but allowed to go home to change his clothes, and that he was released without charge only a few hours later. When I spoke to Supt McGrail about the incident, I was told that whilst the RGP was investigating the incident, there was evidence that the helicopter pilot was drunk and abusive and therefore deserved what he got. I reported this conversation back up my command chain.”

149. The Inquiry sought disclosure from the RGP in relation to the Assault Investigation, and established the following:

- a. At the time Mr Yome was CoP and IM was Superintendent in Charge of the Crime and Protective Services Division.
- b. The investigation of the assault was named “Operation Bolero” and handled by officers of the CID. According to IM, the investigation was led by Detective Inspector Roy Perez (McGrail 5 para 58 [A157]).
- c. The officer in charge of the case, PC Stefan Figueras, obtained witness statements from 18 witnesses [C399], and compiled a forensic report [C347] and a report to Chief Inspector Wayne Tunbridge (IM’s Deputy at the time) [C352], which concluded as follows:
 - i. The CCTV showed two suspects following the two naval officers (“F” and “J”) out of the bar, but no more than that.
 - ii. There was no CCTV of the attack upon J, and no eyewitness (not even the victims themselves) was able to describe, still less identify, anyone who had been involved in the attack.
 - iii. The suspects were arrested and interviewed, but gave “no comment”.
 - iv. The likelihood of any conviction was “non-existent”, and thus the evidence was insufficient to justify charging the suspects [C368].

150. Based on the evidence available, it appears that there was a thorough and professional investigation into the incident. IM's evidence is that his involvement in the investigation was limited to seeking updates on its progress (McGrail 5 para 61 [A157]), and that the Commanding Officer of HMS Monmouth wrote to CoP Yome expressing appreciation for how the RGP had dealt with the matter (McGrail 5 para 63 [A157]). He describes NP's allegation that the RGP did not investigate the crime properly as "*absurd and insulting*" (McGrail 5 paras 64 [A157]). IM also has no recollection of any conversation as alleged by CBF Walliker, and denies that he would ever have said that a victim of an assault deserved a beating (McGrail 5 paras 68-70 [A158]).
151. Given the very limited references to this matter in the evidence, and the Inquiry Team's preliminary conclusion above, STI wrote to CPs on 5 February 2024, inviting the Government parties to review whether they wished to maintain these matters as issues at the Main Inquiry Hearing. On 3 March 2024, the Government parties responded highlighting NP's evidence that his loss of confidence in IM had been "*progressive over a period of time*" (Pyle 1 para 20 [A245]), and by reason of a number of incidents and matters, including the Assault Investigation. The Government parties appeared to take procedural issue with the Inquiry Team reviewing the evidence and concluding that a thorough investigation was conducted, and clarified that NP "*stands by his sworn evidence as to the matters that contributed to him, subjectively, to progressively lose confidence in Mr McGrail*". In the light of that clarification, the Commissioner determined that Issue 2 should not be withdrawn from consideration and falls to be considered at the Main Inquiry Hearing.

Issue 7: The Alcaidesa Claims

152. The Alcaidesa Claims are mentioned in the WhatsApp sent by the CM to NP on 14 May 2023. The CM stated that he was "*starting to have concerns about the senior management of the RGP*" and was "*starting to lose confidence*". The CM then listed five matters, including "*the continuing saga of the Alcaidesa claims*" (Picardo 1 para 67 [A198]). The CM does not elaborate on this matter in his evidence, and to date has not explained what the reference to "*claims*" is intended to refer to. The evidence also contains some passing references to the Alcaidesa claims in the context of discussions

about the Incident at Sea (as both involved RGP officers operating outside of Gibraltar), but is not presented to be a “*reason*” in that context.

153. Ex-Chairman of the GPF Maurice Morello refers to the Alcaidesa incident in his evidence (Morello 1 paras 59 to 65 [A635-6]). He refers to *Panorama* newspaper articles on 25 and 27 June 2019 which put questions referring to the incident and two RGP officers being sentenced in a Spanish Criminal Court, and to the RGP’s reply that “*it is our understanding that there are no adverse records in respect of any RGP officers in Spain*”, a response which he describes as “*lying and intentionally misleading the public*”. He refers to similar responses being given to questions by GBC and *Gibraltar Chronicle*.
154. IM’s evidence is that the “*Alcaidesa Claims*” issue is “*clearly irrelevant (or so tangential as to be effectively irrelevant) to FP and NP’s “loss of confidence” in me*” (McGrail 5 para 165 [A176]).
155. The Inquiry team conducted a review of the evidence disclosed on this issue, in particular the RGP’s disclosure on the investigations into the incident (see in particular [C61]), and the subsequent RGP disciplinary process.
156. Based on the documents available to the Inquiry, it appears clear and undisputed that:
 - a. On two occasions in early August 2010, officers from the RGP entered a flat in Alcaidesa (Spain) without a warrant and removed property belonging to the tenant.
 - b. Those actions were unlawful in Spain and resulted in public and political criticism.
 - c. IM was not one of the RGP officers involved, and the incident predated his appointment as Commissioner.
 - d. The incident was investigated by the RGP (including IM interviewing one of the officers involved), and culminated in a report being provided by then Superintendent Jay Gomez to then CoP Wink [C61], who recommended that seven officers be the subject of disciplinary proceedings for discreditable conduct.
 - e. On 26 November 2018, five individuals, including two serving RGP officers, were sentenced in a Spanish Court [C1591].

157. The Inquiry Team is not aware of any “*claims*” (in the civil sense) brought against RGP officers, although there were criminal proceedings in Spain which appear to have ended in 2018. There was a WhatsApp exchange between IM and the AG between 5 and 25 October 2018 referring to the impending trial of the two RGP officers in Spain [**C6587-6589**].
158. On 26 June 2019 (the day between the two Panorama articles referred to by Mr Morello in his evidence), IM exchanged WhatsApp messages with the CM as follows [**C6682**]:
- IM: “*Been chatting to Stuart Green [of the Government’s media office] ref Panorama questions you have received regarding the Alcaidesa incident & your understanding of it having been dealt a (sic.) civil matter? Could we have a quick chat about this. ...*”
- CM: “*Hi Ian. Happy to talk. Give me 5 mins. I didn’t say it was a civil matter, I said it progressed as a private prosecution cos the victims insisted. But let’s bottom that out.*”
159. However, this is long before the CM’s text of 14 May 2020. IM was not personally involved in the incident and was not one of the officers under investigation. His only role in the incident was as part of the Investigating Team appointed by the (then) Supt Gomez to investigate possible disciplinary action to be taken against RGP officers involved in the incident.
160. Again, given the very limited reference to this issue in the evidence, and the Inquiry Team’s preliminary conclusions above, in his letter of 5 February 2024 STI invited the Government parties to review whether they wished to maintain it as an issue at the Main Inquiry Hearing. In their letter of 3 March 2024, the Government parties confirmed that they would not withdraw the issue. They again took issue with CTI and STI reviewing the evidence and “*impugning the Chief Minister’s sworn evidence*”, and highlighted that the CM’s remarks in his WhatsApp message dated 14 May 2020 was that he was “*starting to have huge concerns about the senior management of the RGP*”, referring to a list of issues including “*the continuing saga of the Alcaidesa claims*”. It remains unclear to CTI (a) what the CM was referring to by the word “*claims*”, and what the CM’s overall position on this matter is. CTI infers from the Government parties’ letter of 3 March 2024 that the CM’s position may be that he raised the Alcaidesa matter in relation to the senior management

of the RGP as a whole, and not IM personally, but that will have to be clarified at the Main Inquiry Hearing.

Conclusions on Issues 2 and 7

161. To ensure that time and resources at the Inquiry hearing are allocated appropriately to the matters in dispute, CTI do not propose to make further submissions on Issues 2 and 7 at this stage. This should not be interpreted as a submission that neither issue was a “*reason*” or “*circumstance*”: those conclusions could still be open to the Inquiry depending on the Government parties’ position and how this is developed. For example:
- a. NP may maintain that, notwithstanding the evidence which is now available as to the investigation which took place, the Assault Investigation was nevertheless a reason for his loss of confidence, based on the information which he had received at the time.
 - b. The Government parties may clarify their position, and in particular what the CM contends he meant by the “*claims*”, and why they were an “*ongoing saga*”.
162. These issues will have to be considered further in the context of any further evidence or clarification given by either NP or the CM (or both) and balanced as against the contemporaneous correspondence in the period after 12 May 2020 between NP and FP and also in the context of what was stated in the letter from the GPA to Mr McGrail dated 22 May 2020. It must be borne in mind that both issues predate IM’s tenure as CoP and given all the circumstances, and so it appears very unlikely that either issue could have constituted a significant reason for IM ceasing to be CoP.

JULIAN SANTOS

HOPE WILLIAMS

5RB

2 April 2024

Updated 7 April 2024