

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

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**THIRD AFFIDAVIT OF IAN MCGRAIL**

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I, IAN MCGRAIL    Personal Data    MAKE OATH AND SAY as follows:

- 1        This affidavit is supplemental to the ones which I swore on the 20<sup>th</sup> June 2022 and the 22<sup>nd</sup> September 2022.
- 2        The purpose of this affidavit is to provide more background and details to the matters which I deposed to previously.
- 3        Although I have read the affidavits of the other core participants and Mr Llamas KC, this affidavit is not intended to be a response to them. This affidavit was substantively drafted long before the disclosure to the Inquiry of evidence and affidavits by the other core participants.
- 4        I intend to file a further affidavit in response in due course when the Inquiry requests the same.
- 5        In order to avoid repetition of exhibits, below I will refer to certain exhibits in the affidavits of the other core participants and Mr. Llamas as and when appropriate.
- 6        The contents hereof are true to the best of my knowledge, information and belief and, where such information derives from a source other than my own personal knowledge, I will say so.

*My application for the post of Commissioner of the Royal Gibraltar Police*

- 7 In paragraph 5 of my first affidavit, I refer briefly to my appointment as Commissioner of the Royal Gibraltar Police (RGP). What follows provides hopefully helpful background to that. In or about October 2017 the opportunity arose to apply for the position of Commissioner of Police (CoP) which was to become vacant on the retirement of Mr Edward Yome QPM OTM. (My application pack for promotion is **EXHIBIT IM/9**). I was successful in my application and on 13th December 2017 I was announced as designate CoP to succeed Mr Yome on 1<sup>st</sup> May 2018. In accordance with section 32 of the Police Act 2006, acting on the advice of the Gibraltar Police Authority (GPA) who made the selection, His Excellency the Governor (HE) at the time, Lt. General Edward Davis appointed me as Commissioner for a term of 4 years with effect from 1<sup>st</sup> May 2018. I came to know that the Chief Minister (CM) had been consulted by HE before approving my appointment. (My letter of appointment can be found in **EXHIBIT IM/10**). Among of the terms of my appointment were that my performance was to be reviewed by the GPA after 24 months in post – this review was therefore to have taken place in April 2020.

*Immediate challenges on taking up post*

- 8 On taking up Office on 1<sup>st</sup> May 2018, together with my Command Team colleagues, I embarked on a number of initiatives to build on the foundations already laid by my predecessors. My leadership approach was always one of inclusivity, empowerment and teamwork.
- 9 One of the main projects I wanted to immediately embark on was to progress the impending Human Resources Business Case which had been submitted to Government in 2015/16 but had still not been actioned. Many of the challenges and issues the RGP were facing hinged on inadequate resourcing to meet demand. It was my intention to improve effectiveness and efficiency in a number of ways. There was a particular initiative of civilianizing posts held by police officers and for these to be discharged by unsworn personnel. The purpose of this was to release police officers to perform core front-line policing duties. However, to give this effect, the RGP needed Government's support and whilst this was agreed to in principle, the initiative never saw the light of day because of lack of movement on Government's side. There is a series of email exchanges on this particular subject involving the then Minister of Justice, Mr Neil Costa, the then Assistant Commissioner of Police

Richard Ullger, Government officials and myself. Up until my retirement only part of the Human Resource uplift had been implemented.

- 10 Another challenge I faced from the outset and which drained considerable time and energy was the rise of the Gibraltar Police Federation (GPF), a newly formed creature of statute representing constables, sergeants and inspecting ranks. The GPF was replacing the old staff association. The relationship with the GPF was regrettably a very difficult one, not because of my wishing it to be. It became evident that certain factions within the GPF executive board disliked my management style and this caused a strain to our relationship.
- 11 I had reason to challenge certain processes the GPF were applying and this was interpreted by them as an interference with their independence. Within my first six months in post, I had to address the GPF Board on information I had received that some of them wanted to oust me from office. In 2018 the GPF organized a membership survey, the first ever of its kind, the results of which led to a further exchange of differing standpoints.
- 12 I kept the GPA and HE apprised of the challenges and concerns I was experiencing with the GPF. I also briefed up the CM and Minister of Justice (MoJ) and shared with them my concerns on the trajectory the GPF were taking. On one of the face-to-face occasions I briefed the CM, I was accompanied by the then Assistant Commissioner, Richard Ullger, and we discussed the need to have in place the terms and conditions for the full-time convenors of the GPF which were non-existent and probably part of the cause, in my view, for the existing tension. The CM took keen interest in our proposals but asked us to defer this till after the General Elections which were due to take place in late 2019. He also asked us to liaise with the Chief Secretary and engage with him to devise the GPF's terms and conditions, in full consultation with the GPF Executive.
- 13 I also know that Richard Ullger contacted several UK police forces to seek out a better understanding of how the relationship between UK Police Federation representatives and Force management operated, the terms and conditions of the federation representatives and particularly whether our own (RGP Management) understanding of matters fell in line with good practices.
- 14 As a result of the GPF survey, I felt the need to explore ways and means to bridge the gap in the relationship with the GPF. It was my intention to display transparency and accountability to them, the members of the RGP and indeed the general public. I commissioned an independent firm of consultants (AAP Associates) to help us

contextualize the survey results as these were very raw in substance and required analysis. The consultants were also tasked with providing assistance in addressing any issues of concern arising from the survey results. This exercise proved very useful because AAP Associates interviewed over 130 police officers and staff which in my view is a very good sample of the RGP's population. When the report produced by AAP Associates was received I promptly shared it with the GPF. A series of actions to work on the recommendations proposed in the report were put in motion. Practically all the RGP's Senior Management Team were involved in one or another to work on these recommendations together with members of the GPF Executive Board. I also shared with the GPA, HE the Governor and I believe the CM and MoJ.

#### *The request for the HMICFRS Inspection*

- 15 Further to the preceding paragraphs, around August / September 2018, I also requested from the GPA an inspection of the RGP by Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS). It is not mandatory for the RGP to submit itself to inspections by HMICFRS as is the case with UK Home Office police forces. It has been common though, to voluntarily request to be inspected every 4 years or so. The RGP was therefore not due up for an inspection by HMICFRS at the time and I was fully cognizant that there were pending recommendations from the previous inspection report of 2016 which needed actioning.
- 16 Prior to the publication of the GPF survey the RGP had been on the receiving end of criticism in the "Panorama" newspaper together with an apparent discontent amongst the rank and file with complaints of bullying in the Force. The GPF survey had raised similar concerns and I therefore felt it was imperative to request an inspection to demonstrate openness, transparency and a willingness to progress. I know progress had been made with the pending recommendations some of which had been merged with daily business activity, but further work was required to catch up with progress that should have been made before my appointment. I communicated my intentions to the GPA and possibly the MoJ at the time, Mr Neil Costa. I also briefed HE, at the time, Lt. General Ed Davis, on the matter during our monthly briefings. These monthly briefings with HE were calendar scheduled and they involved updates on crime trends in the jurisdiction as well as any other policing / security matter. As far as I know these meetings between HE and my predecessors have been held from time immemorial.

- 17 Regrettably, my relationship with certain members of the GPF did not improve and there were occasions when senior management had to intervene on matters which were not considered ethical or conducive to good discipline. These related to unauthorized participation in live police operations, insubordinate behaviour and instances where they contributed to causing disaffection within the Force. There was also reason for management intervention on the Chairman and Secretary of the GPF following a disclosure by the Chairman himself to Assistant Commissioner Richard Ullger, that they had encouraged Panorama to report adversely on RGP management. The Panorama daily newspaper had for many years, even before my appointment as Commissioner, been reporting adversely and in my view, unfairly on the RGP. I prepared a witness statement at the request of the Professional Standards Department to explain the issues I was experiencing with certain executive members of the GPF. I again flagged my concerns to the GPA and also to Minister Costa and the CM. The relevance of referring to my poor relationship with the GPF will become evident further on in this statement.
- 18 I had occasion to raise these concerns in writing in early 2020 to the GPA copying in HE, the CM and MoJ. For his part, the CM called me and the Assistant Commissioner to a meeting – he wanted to discuss the letter face to face. We met the CM in the Cabinet Room I think a couple of days after I had sent the letter. In a calm but very firm tone the CM asked me the following, using words to the effect; (i) “who is it that elects the government?” I replied, “the people”; (ii) “who creates the laws to govern?” I replied, “the government”; (iii) “who is in government at present?” I replied, “you are.” The CM said that the subject I had written to the GPA about should have instead been raised with him and not the GPA or HE. The CM was of the view that the contents of the letter were somewhat designed to curtail the Government’s ability to pass the legislation that it deemed appropriate – this had certainly not been my intention in the slightest. He added, that if any legislation was being considered, which had any bearing on the RGP, that we would be consulted. I explained that the whole set-up governing the GPF was not clear and this was creating a very uncomfortable situation on both sides. The CM imparted that he was sympathetic to those who represented the RGP workforce, that they should not fall under the same discipline rules that applied to the other members of the force – this was the issue I was expressing concerns about in my letter to the GPA. The CM asked me to write a second letter to the GPA to explain that the 1<sup>st</sup> letter was not intended in any way to interfere with the Government’s ability to pass new laws / regulations.
- 19 I duly obliged in writing to the GPA that same day as the CM requested. I had seen how the CM had interpreted my first letter and even though my intentions were not as the CM

saw them, I did not want any conflict over this matter. After circulating the 2<sup>nd</sup> letter, I received a WhatsApp text message from the CM where he said *“Thank you for the second letter to the GPA. Much appreciated.”* Lt. General Ed Davis also replied saying *“Thanks, Ian. All copied and supported. Ed.”*

20 I also met with the whole of the GPA in early 2020 where I briefed them on all of the issues I considered were of concern. I received advice from the GPA on how best to deal with the GPF. Amongst this advice was their offer to act as intermediaries / mediators for the RGP and GPF. The main advice though was to seek a path that deconflicted tensions, improved relationships and provided clarity in terms of roles / responsibilities and the parameters governing these. I took this advice on board and after meeting with the GPF Executive Board and the Command Team, it was agreed that we would jointly seek an assessment by a team from the UK police service with representation from the UK police federation and police senior management. We jointly devised and agreed to terms of reference for this assessment. Unfortunately, we were hit by the COVID-19 pandemic and progress on this assessment stalled. I do not know whether this assessment was ever carried out post my retirement.

21 In essence, the issues arising from the poor relationship between RGP management and GPF were one of the main precursors to me requesting the GPA to submit the RGP to an inspection by HMICRFS which I refer to later in this statement. This type of challenge together with other demands as briefly highlighted below caused us to re-adjust on the delivery of some of the actions I had planned to execute at the time of my application to promotion.

22 The policing year 2018 / 2019 turned out to be a remarkably busy year in terms of the operational commitments the RGP faced. Serious criminal investigations together with major public, military, sporting and musical events tested the RGP's ability to deliver on its responsibilities of keeping the public safe, detecting / reducing crime and apprehending offenders. The level of demand faced by the Force during this year was not the norm. A summary of these commitments is as follows:

- i. 85 major events which included 13 assemblies / demonstrations, 14 public military events, 10 international football matches with travelling fans (a relatively new area of policing for the RGP), General Elections, European Elections, the Small Island Games that run a for a full week, National Week, Gibraltar Music festival, New Year's Eve and Festival of Lights.

- ii. 2 murder investigations (plus the cold case of the Royal Navy sailor Simon Parkes who had gone missing in Gibraltar in 1986).
- iii. Cross-border policing operations. With regards to these, I was encouraged and supported to develop cross border law enforcement co-operation by the CM and AG as this type of activity bode well for the Brexit negotiations. I received messages of praise from CM, AG and HE in this regard. These operations were also particularly important for the impending Council of Europe MoneyVal evaluation of Gibraltar and were therefore assigned a high priority. Preparations for the said evaluation also used up considerable energy and diverted resources for this matter.
- iv. A serious allegation of computer hacking and conspiracy to defraud of Gibraltar's national security platform where I had to request specialist technical assistance from the UK's National Crime Agency (this is operation Dehli which I refer to in my first affidavit).
- v. The intervention and subsequent investigation in June to August 2019 of the 330m super tanker "Grace 1" in British Gibraltar Territorial Waters, the first ever apprehension of its kind for EU sanctions busting. The complexities and challenges of seeking and gathering evidence under extremely constrained time-lines was something the Force had to contend with and deliver upon. This type of operation, which was conducted in conjunction with helicopter and seaborne Royal Marines is not one that a small police service such as the RGP would normally be expected to undertake – this is more akin to a large county or metropolitan UK Force the likes of London's Metropolitan Police Service, Greater Manchester Police, West Midlands Police or even the National Crime Agency, simply because of their levels of capacity and capability.
- vi. Actioning of recommendations arising from the AAP Associates report commissioned as a result of the GPF internal staff survey.

23 The policing year 2019/ 2020 was also a busy year but I will only highlight five matters which I regard as pertinent to this statement. These are;

- i. the continuing investigation into the hacking of the NSCIS platform (Op Delhi).
- ii. the HMICFRS inspection report of the RGP.

- iii. the collision at sea incident of the 8<sup>th</sup> March 2020 (Op Kram).
- iv. policing during the Covid-19 pandemic lockdown and restrictions.
- v. “Operacion Poca Verguenza” (translated into English – “Operation Shameless”) named like this by a Mr Diaz Jordan and which related to very serious allegations of possible corruption in HMGoG also involving a senior local barrister reported to the RGP by Mr Diaz Jordan, a Spanish businessman / European Lawyer registered with the Supreme Court of Gibraltar. It related to a collapsed business investment. From my recollection it was alleged that Mr Guy Palmer (Jnr), a local businessman, was approached by HMGoG to develop part of the North Mole, the area where the old power station is located. Mr Palmer being inexperienced in this line of business approached Mr Diaz Jordan who in turn secured Mexican investors to prepare the proposals and plans. According to Mr Diaz Jordan, he met with the CM on a number of occasions who seemed to be backing the proposal. Mr Diaz Jordan claimed he was advised by the CM to see Hassans to progress the matter further. Mr Diaz Jordan alleged that he went to Hassans, of which the CM is a partner, and discussed the project with Mr James Levy. He handed over a pen drive to Mr Levy. Mr Diaz Jordan never heard from them and alleges his proposals have been used for some other development instead. He prepared a very long complaint (in the Spanish language) laying out his allegations on this matter and on the illicit tobacco scene in which he claims HMGoG was involved.

#### **The HMICFRS inspection (covering the period September 2018 to May 2020)**

- 24 The reasons for my calling of the inspection by HMICFRS have already been briefly touched upon in the preceding paragraphs. A series of meetings and discussions took place in the build up to the inspection. I recall a communication with the GPA Chair Dr. Britto, where he expressed the view that submitting the workforce to two inspections, i.e. private consultancy and HMICFRS, could be perceived as overbearing on the workforce. I explain my rationale for the request for the HMICFRS inspection in the following paragraphs.
- 25 In September 2018, (five months after I took up office) whilst in London on a work trip, I paid a courtesy call on Her Majesty’s Inspector (HMI) Matt Parr at his offices in London where I explained my concerns viz a viz the GPF and the adversity which the survey results



were uncovering. I was reassured by HMI Parr that HMICFRS held no concerns about how the RGP was functioning and in fact applauded the desire to be inspected, something which he said not every Overseas Territories police force opened themselves up to. It is my understanding that in a separate meeting with the GPA Chair which was also attended by Mr Darren Grech, Chief Secretary, in his capacity as member of the GPA, HMI Matt Parr reiterated these comments. Both the GPA Chair and I found these comments encouraging.

26 Discussions ensued with Mr Paul Holewell, a HMICFRS staff member, who had been appointed by HMI Matt Parr to lead on the RGP inspection and the GPA Chair to agree to the terms of reference and date for the inspection. It was my desire that the Terms of Reference captured a base line inspection to assess the overall levels of service the RGP provided to the community.

27 My thought process was that we had already been assessed by AAP Associates on internal service delivery and HMICFRS could do likewise for external service delivery. Both assessments would therefore complement each other and represent a better picture of where the RGP was both internally and externally in terms of service provision. Mr Holewell, advised that such an inspection would be beyond the budget the GPA had for the inspection. Consequently, following advice from Mr Holewell, the agreed terms of reference were designed to supplement areas akin to the concerns expressed in the GPF survey results and internal service delivery. The argument offered was that by assessing internal systems and processes, this would inform on the levels of external delivery of service which was my original desire for the inspection. I did not entirely agree with this thought process but equally did not want to come across as disagreeing with HMICFRS who I respected as subject matter experts. In hindsight I should have stuck to my original plan and tried to convince the GPA to seek a full baseline inspection which I was very confident would have revealed very positive outcomes in terms of public satisfaction, crime reduction, crime detections and reduced victimization compared to previous years. In my view, the measure of how effective and efficient the RGP is has to be considered in a hybrid fashion taking into account both internal and external outcomes in terms of successes and areas for improvement. Substantial e-mail correspondence exists between HMICFRS, RGP and GPA, pre and post inspection process. This documentation includes the RGP's commentary on the draft report amongst other issues.

28 The inspection was agreed for October 2019 but not before we went through a self-assessment process and provided copious amounts of documentation requested by

HMICFRS ahead of the team travelling to Gibraltar. October 2019 was the earliest opportunity they had to carry out the work. As will be seen from parts of the HMICFRS report referred to below, a great deal of what they quote comes from our own self-assessment paper.

- 29 The HMICFRS team performed its “on the ground” inspection on 14<sup>th</sup> and 18<sup>th</sup> October 2019. During their time in Gibraltar, they carried out interviews with individual officers (34 police officers I believe), focus groups with officers and support staff, community representatives, the GPF and GPA. Every couple of days they (Paul Holewell and a team member) would de-brief the then Assistant Commissioner of Police, Richard Ullger, on their findings in general. HMI Matt Parr also paid a visit to Police Headquarters just before the inspection concluded and practically imparted the same views that he had expressed to me when I visited him in London. He made us feel comfortable that with his knowledge of Gibraltar, its community and how things function in the territory, which he gained during his tenure in the military as Commander of British Forces Gibraltar, he would not be measuring the RGP up with a UK Home Office Police Force and would ensure the report, which he would sign off, reflected this. Also present at this meeting was AC Richard Ullger. It is my understanding that AC Richard Ullger also received briefings and comments from the HMICFRS team. Just before returning to the UK, Mr Paul Holewell provided AC Richard Ullger and myself with the final briefing of their findings. I was made aware of some of the areas they were going to provide recommendations on but at no point did Mr Holewell intimate in the slightest any area which in their view raised serious concerns.
- 30 Towards the end of February 2020, Mr Paul Holewell emailed the draft inspection report to both AC Richard Ullger and myself for it to be checked for factual accuracy before sign off by HMI Matt Parr. Together with my Command Team colleagues we worked providing feedback and reverted to HMICFRS by email on 6<sup>th</sup> March 2020. The GPA Chair, Dr Britto, was consulted throughout this process practically from the outset and we engaged in email and WhatsApp text exchanges. I must say at this point that I felt somewhat disheartened with the report in terms of its harshness and tone. I know the GPA Chair felt the same and expressed this to Paul Holewell in an email highlighting the unfortunate language and unconstructive tone used in the report, particularly more so where it suggested that the GPA did not have appetite for modernization etc.
- 31 In early to mid-April 2020, HMI Matt Parr sent off the inspection report to the GPA and I was copied in. The final report reflected some of the feedback I had sent Mr Holewell and

indeed the feedback I understand the GPA Chair had submitted. The differences between the draft report and final version can be best appreciated by contrasting each of these documents respectively. I shared the report with my Command Team colleagues and a series of discussions, meetings and email exchanges took place on how we were going to set out to address the recommendations. Notwithstanding, we began to prepare a road map to achieve the recommendations and also provided a rationale for the uncompleted areas for improvement from the previous inspection report of 2016. The road map was emailed to the GPA Chair with an accompanying letter. I also discussed with the GPA Chair the media strategy for making the report public. I was made aware by the GPA Chair that he had shared the report with NP, the CM, Minister of Justice, Samantha Sacramento and members of the GPA.

32 I exchanged a series of communications via WhatsApp and email with the GPA Chair regarding the HMICFRS report and its publication (at **EXHIBIT IM/11** is the WhatsApp chat log with GPA Chair). We discussed comments the GPA had made about the report and I was made privy to a communication sent by the GPA Chair to Paul Holewell. We also discussed the press release I intended pushing out and the GPA Chair advised me that he had given the CM a “heads up” of my proposed text. The GPA Chair was quite insistent in getting clearance from the CM and MoJ before committing to publishing the report. He advised me that NP was on board for the publication of the report.

33 In early May 2020 I wrote an email to NP, the CM, the MoJ also copying in the GPA Chair suggesting the report should be made public and that I had prepared a brief for the media which I wanted to share with them in case they themselves received any question from the media. NP replied to the above e-mail on 6<sup>th</sup> May agreeing with my proposed course of action.

34 At no point during my face to face meetings or via any other means of communication did the GPA Chair express any concerns about my ability to lead the RGP through the implementation of the recommendations. Quite the contrary, he was always very supportive and encouraging of the way we conducted our affairs. Neither did he advise me, or any member of the Command Team, of any concerns any individual member of the GPA had expressed about the RGP’s leadership, before the commissioning of the report, during the inspection or after the report was received.

35 I had previously met in late April/early May 2020 with the MoJ Ms Samantha Sacramento together the GPA Chair to discuss the HMICFRS report. The MoJ had one of her PA’s, Mr

Leighton Ryan, taking notes of the meeting. Having previously read the report the MoJ sent me a message via WhatsApp on 29<sup>th</sup> April 2020 saying that on the face of it the report made shocking reading but that it was not as bad once it was analyzed deeper and that it had easy solutions. She also made a very welcoming and reassuring comment saying “*it can all be fixed don’t worry.*” (at EXHIBIT IM/12 is the WhatsApp chat log with MoJ).

36 At the meeting I forwarded to her my intended press release, the road-map for implementing the recommendations and rationale for not having addressed the recommendations of the previous report. These were provided at her request. At no point did the MoJ express concerns about the findings and about my ability to implement the recommendations – she was in fact very critical of the report format. Throughout her term as Minister with responsibility for the Police whilst I served as Commissioner there has not been one single occasion where she called any of my actions or decisions into question – she has always afforded support and I can say that I enjoyed a very good working relationship with her. The same could be said of her predecessor Mr Neil Costa who incidentally sent me a WhatsApp text message on 9<sup>th</sup> May 2020 when he read the media coverage of the report. He wrote;

*“My dear Ian. I cannot imagine that with all of your hard work and untiring dedication that the report made for pleasant reading for you. For what it may be worth, I will forever vouch for your integrity, honesty and professionalism. If ever I can be of any assistance to you, you know where I am. With kind regards, Neil.”*

It was very kind and reassuring for the former MoJ to write to me as he did. My response to him was;

*“That is ever so kind of you Neil. Indeed it hurts to read a report with negative content. HMIC se han pasado [they’ve gone too far] more so when Matt Parr told us we didn’t need to worry, that all was good. It makes me wonder what has changed from that conversation I had with him to the end product of the report. But hey, strong chin and broad back and I will turn this around. Thanks for your unstinting support. Best, Ian.”*  
(at EXHIBIT IM/13 are the WhatsApp chat logs with Neil Costa).

37 On the same day [9<sup>th</sup> May 2020] I also received a very welcome text message from the former Governor & Commander-in-Chief of Gibraltar, Lieutenant General Ed Davis, who had only ended his tenure as Governor in mid-February 2020. In his message he wrote;

*“ Dear Ian, just thought I’d touch base to first and foremost, check you, Diane and the family are well given the scourge of CV – well done in managing it so well – and second, just to let you know I ‘m thinking of you and the Force as you lean into taking forward HMIC’s report. Given the resource/capability pressures of assuring such a small national Force, I judge the headlines are fundamentally positive being in step with the Force’s unique challenges. But never an easy read for the leadership and officers as such reports, purposely, focus on shortfalls not successes. Corruption? Well, nothing wrong with tightening mitigation even if it’s not a problem today. So, as I know you and the RGP will, charge on by embracing – adapting - progressing. Rooting for you from afar, as always, as you walk that path with belief and pride. Warmest best to you and Diane. Ed*

*PS – really enjoying not having to read the Panorama anymore!”*

My response to the Lt. Gen. Ed Davis read as follows;

*“Sir, great to hear from you. All good here thanks. The force is responding very well to the rhythm and tone we set to deal with CV. The HMICFRS report, well ..... obviously disheartened, more so when Matt Parr stated there was nothing to worry about when he was over. But as you allude, I have embraced the recommendations with positivity and have commenced work to address them. Yes, the positives don’t feature and in that sense the report makes it all the harder to swallow. And I agree, pride and belief in abundance!*

*Many thanks for your unstinting support which I really appreciate. Diane and I send our best wishes to Lorraine and yourself. Ian”*

(at **EXHIBIT IM/14** are the WhatsApp chat logs with Ed Davis)

38 I think it is relevant at this point to mention the very good relationship I enjoyed with Lt. General Ed Davis. I found him to be supportive of my endeavours as head of the RGP and he offered advice/views without coming across as intrusive in any operational matter. My last contact with Lt. General Ed Davis was on the 31<sup>st</sup> January 2020 when he came to Police Headquarters to bid us farewell. On the 4<sup>th</sup> February 2020, I received a hand written letter from him (**EXHIBIT IM/15**) which encapsulates the type of relationship I enjoyed with him.

39 Neither I nor any of my Command Team colleagues received any feedback on the report from the CM or NP. I was aware that the CM was very tied up with the unfolding response

to the Covid-19 pandemic but I was informed by the GPA Chair that the CM had eventually given him direct confirmation that it was okay to make the report public and this was done on 7<sup>th</sup> May 2020. I would certainly have expected either NP or the CM to have raised any concerns they had, if any, directly with me or through the GPA but neither occurred. Certainly there was no indication whatsoever that NP had any concerns about the HMICFRS report or any other matter – quite the opposite; there was a Gibraltar Contingency Council (GCC) meeting scheduled for 21<sup>st</sup> May 2020 (having been organised on 16<sup>th</sup> May) and I was invited to attend as a key member of the said council which is co-chaired by HE and CM. This Council is the top tier in Gibraltar’s Security / Civil Contingency apparatus. Such a meeting would certainly not have been convened if at the time, or even previous to this date, either HE or CM held grave concerns about my professional ability to discharge my role. The said meeting was cancelled on 20<sup>th</sup> May by NP. The relevance of these dates will be apparent from my First Affidavit.

40 My point at this stage is that up until then, the 15<sup>th</sup> May 2020, neither NP or the CM had expressed any concerns about my ability to lead the RGP directly to me or to the GPA. If they had, I would have certainly been informed by either of them or by the GPA. To further reinforce my point, on 9<sup>th</sup> May 2020, NP wrote to me in a very friendly tone on a totally unrelated personal matter seeking my help, to which of course I obliged. In my view, this is hardly the demeanour of a Governor who claims to have lost all confidence in me because of any serious concerns he had about how I was leading the RGP.

41 Having had previous experiences and knowledge of how HMICFRS go about their inspections, I am convinced that if HMI Matt Parr had any concerns about my ability to implement the recommendations contained in the report, which by default would have questioned my ability to be head of the RGP, this would have been specified in the report proper. Nothing of this sort was suggested in the report.

42 On the 10<sup>th</sup> May 2020 I appeared at a press conference together with Minister Samantha Sacramento. These were daily public briefings on the COVID-19 pandemic which were broadcast live on GBC TV and different officials would take turns to appear before the television cameras and answer questions from the media. This was the fourth occasion I had appeared at these briefings. I had previously appeared on 9<sup>th</sup> April and 21<sup>st</sup> April with the Deputy Chief Minister, Dr Joseph Garcia and on the 3<sup>rd</sup> May with the MoJ. Despite the conference being COVID-19 specific there were questions from a reporter from the Panorama newspaper on the HMICFRS report, which I answered. The MoJ also interjected pledging her support to me in addressing the recommendations; I found it very encouraging

that she did so publicly. If the CM and his cabinet ministers had lost confidence in me, as the CM claims to have been the case, I do not reckon the MoJ would have come out publicly in my support (see 2<sup>nd</sup> paragraph in page 2 of CM's letter to GPA dated 5<sup>th</sup> June 2020). After the press conference I received a WhatsApp message from the GPA Chair congratulating me on the way I had handled the media question on the HMICFRS report and also praising how the MoJ had followed up my response. In his message he said "*Very good answer from you brilliantly followed up by MfJ (Minister for Justice)*" He also confirmed by WhatsApp message Minister Sacramento's affirmation to me saying "*Ian – by the way, she told me privately what she said in public about supporting.*" I responded to the GPA Chair saying that indeed it had been very kind for the MoJ to pledge her support in the way she did and that I had thanked her for this after the press briefing.

43 On 11<sup>th</sup> May 2020 I gave an interview on GBC TV on the inspection report.

44 Work to address the recommendations got under way as soon as the report arrived. In fact, I believe that some work was already started in anticipation of recommendations being received.

**Operation Kram – the collision at sea (Covering the period 8<sup>th</sup> March 2020 to June 2020)**

**Sunday, 8 March 2020**

45 At 0425Hrs on Sunday 8<sup>th</sup> March 2020, I was at home asleep in bed when I was called by the on-call Force Gold Commander (senior officer on-call), DCI John Field, who informed me of a serious incident that was occurring. He reported that a collision had occurred at sea involving one of the RGP interceptor crafts, resulting in a fatality. I was informed that the details surrounding the incident were being gathered and that information was still trickling in. I was fully cognizant of a previous similar incident involving a HM Customs patrol boat and a small smuggling vessel which also resulted in a fatality and the consequent fall out of that incident in terms of public disorder and threats to law enforcement officials. I therefore deemed this to be a serious and critical incident and requested DCI John Field to recall all available senior officers and convene a Gold Command meeting immediately. I got dressed and made my way down to New Mole House, Police Headquarters. A timeline of all the activity carried out is produced as **Exhibit IM/16**. I have also incorporated into the timeline chat logs from a WhatsApp group named "maritime incident" which were not originally included. (This timeline has been compiled from information contained in EXHIBIT FP1/ 234-288 in Fabian Picardo's affidavit).

- 46 The Command Team met in my office at 0500hrs and a command structure was set up. Several Officers were called to duty and assigned specific roles (notes of this meeting can be found in the Op Kram investigation file) including Coroner's Officer, Family Liaison Officer, welfare support for the officers involved, Post Incident Procedure Manager, media, and liaison with Spanish law enforcement agencies.
- 47 A verbal briefing of what was known at the time was provided by DCI John Field as a result of which several fast track actions were initiated including but not limited to :-
- i. Declaring the matter a critical incident – A critical incident is defined as: any incident where the effectiveness of the police response is likely to have a significant impact on the confidence of the victim, their family and/or the community.
  - ii. Consideration in calling a UK Force to investigate. Independent investigation is regarded as best practice incidents where death or serious injury occurs as a result of police contact.
  - iii. Post Incident Procedures to be initiated for (i) European Convention on Human Rights considerations and (ii) safeguarding of the identity of the officers concerned. This was borne out of concerns of retaliation from organized criminal groups.
  - iv. Welfare of the officers involved. Advice to all personnel on personal safety measures. I had concerns of potential retaliation from members of organized crime groups, similar to what had been experienced as a result of the collision of a HM Customs vessel and a small smuggling vessel a few months earlier.
  - v. Security measures at Police Headquarters, Marine Section Base and St Bernard's Hospital.
  - vi. Notifying the Governor, Chief Minister, Commander British Forces, Gibraltar Defence Police Chief Police Officer, GPF.
  - vii. Preliminary Evidence Strategy. what/where/when/why/how – I recall there being unconfirmed reports that the incident had occurred outside Gibraltar's territorial waters together with conflicting reports that it had actually happened in Gibraltar waters.



- viii. Reassurance message to the workforce. Commissioner to issue a message of reassurance to workforce.
- ix. Community impact
- x. Resilience of command structure/personnel as this was expected to be a drawn out affair.
- xi. Media releases.

*The above has been obtained from EXHIBITS FPI/ 207-208 & NPI/ 232-234*

- 48 It was during the Command meeting that we came to learn of further news from DCI John Field that the collision had resulted in another fatality when a second person was pronounced dead after being attended to by paramedics at the Marine Base in Gun Wharf.
- 49 Further personnel were called to report for duty. The "on call" Crime Scene Investigators and Crime Division Detectives subsequently reported for duty and their activities were managed by the SIO, DCI John Field.
- 50 I was therefore dealing with a situation whereby it was believed that as a result of a collision between an RGP vessel and a suspect smuggling vessel, two persons on board the latter had died. I had no confirmation of where the collision had taken place or the circumstances surrounding it. This in itself is not unusual as information of an unfolding serious incident can be received in dribs and drabs and it is not uncommon to receive inaccurate or conflicting reports. This was actually the case in this incident when initial reports suggested the collision to have occurred 3 miles off Europa Point (and to my understanding within BGTW) when this was subsequently found not to be the case. In my professional experience, there are many reasons why information may not be received accurately and without meaning to provide an exhaustive list of the reasons these could range between, (i) delirium on the part of the person reporting and/or the person receiving the communication causing a degree of misunderstanding and inaccurate recording and onward sharing of the information - this because of panic, fear, haste, lack of concentration or information being changed inadvertently as it is passed from person to person, to (ii) deliberate inaccurate disclosure of information designed to mislead or distract. I fully understand how misinformation can lead to confusion or uncertainty which is why it is best practice to focus on the evidence gathered or information which has been verified. In the case in hand I was

also conscious of how dangerous a working environment the sea is for officers to perform their role and police territorial waters. Moreover, I know how dynamic pursuits at sea can be, particularly around Gibraltar waters during the hours of darkness, when we are talking about co-operation with foreign law enforcement agencies and considering territorial waters and the proximity of international waters and Spanish waters.

51 Despite not having a clear picture of how the collision had occurred and given it was the early hours of the morning, I decided to inform NP and CM of the incident by WhatsApp message. This has been a common method of communicating with these officials involved in the past – my chat logs with them can confirm this. My initial message to them at 0605Hrs was as follows;- I sent them the same content but by separate message *“CM/HE We’re dealing with a critical incident - one of our boats has been involved in a collision with a smuggling RHIB with 4 on board. 2 on the smuggling RHIB are fatalities. Our crew are uninjured but clearly shaken & shocked. I am invoking Post Incident Procedures and planning for consequence management. Once I have further updates I will let you know. Rgds Ian”* (**Exhibit IM/17** is the WhatsApp chat log with CM) (**Exhibit IM/18** is the WhatsApp chat log with NP)

52 In assessing the potential risks of public disorder, violence against law enforcement officers both in Gibraltar and in the neighbouring region in Spain, damage to law enforcement real estate and assets, it was important that I also briefed the following officials;

- i. Comisario del Cuerpo Nacional de Policia in La Linea de la Concepcion (Spanish National Police Commissioner) - I was aware that on the previous date where a fatality occurred as a result of the collision between a HM Customs patrol vessel and a smuggling vessel, serious public disorder occurred in the neighbouring town of La Linea de la Concepcion and I wanted to alert my counterpart of this potentially reoccurring.
- ii. Collector of HM Customs – This partner law enforcement agency is also at the forefront of the fight against serious and organized crime with land and sea-based assets. It was important that I shared the risks I was considering so that they could react accordingly.
- iii. Chief of Police, Gibraltar Defence Police – Even though this law enforcement agency mainly operates within the Ministry of Defence estate, it was important that they were aware of the situation and potential risks given that that they also have land and sea-based assets which could be targeted. Furthermore, the RGP’s Marine Section is housed

within MOD property in HM Naval Base and therefore we needed to discuss the possible uplifting of security measures to mitigate any intention of retaliation by organized crime groups.

- iv. Commander British Forces Gibraltar – The Ministry of Defence is a key partner to law enforcement agencies and they also operate assets on land and at sea and in cooperation with law enforcement agencies. It was therefore important to brief the CBF on the incident for all the reasons mentioned above.
- v. Borders and Coastguard Agency duty officer – This agency controls entry in to Gibraltar and they were briefed on the incident and asked to closely monitor the frontier traffic for any potential OCG member(s) wanting to enter Gibraltar from Spain.
- vi. Guardia Civil Colonel, Comandancia de Algeciras – This Spanish law enforcement agency had been engaging that night with the RGP patrol vessel crew as both were monitoring the movements of the suspect vessel that was involved in the collision. It was key that I engaged with my counterpart in the Guardia Civil to relay my concerns viz a viz potential retaliation from organized crime groups and to develop an information sharing channel for the unfolding management of the incident.
- vii. I also notified the Minister of Justice, Samantha Sacramento and the GPA Chair, Dr Joey Britto of the incident with the same message I had earlier sent HE and CM.

*The above points taken from EXHIBIT NP1/233-234*

53 Later that morning I was informed that the RGP crew involved in the collision were now at New Mole House, Police Headquarters and I decided to go and see how they were. I went down to one of the suites on the ground floor together with Det/Supt Richardson and Insp Fernandez, the officer in charge of the Marine Section and also a member of the Executive Board of the Gibraltar Police Federation. The 3 officers of the RGP crew were there in the process of drying themselves up. I distinctly recall a very strong smell of petrol emitting from their bodies and attire. I asked them how they were feeling - it was evident that they were in shock. I expressed a gesture of comfort by gently patting them on the back and/or shoulder and asked them to remain strong. I told them that their welfare would feature prominently in our considerations but that they had to understand that a process of investigation would take place to establish what had happened. All three officers

acknowledged this and I again asked them to be strong through all of this process. The officers thanked me for having gone down to speak to them.

54 At 0724hrs, I received a WhatsApp message from the CM thanking me for having notified him of the incident. He also asked me (i) what were the nationalities of the deceased, (ii) whether it was drugs or tobacco related and (iii) whether there was a Guardia Civil or Servicio de Vigilancia Aduanera (Spanish customs) involvement.

55 At 0733hrs I replied to the CM explaining that we had identified 3 of the persons on board the suspect vessel. That two were Spanish from Ceuta of Moroccan descent and a third was Portuguese. I explained there was no Spanish law enforcement agency involved and that the suspect vessel was suspected to be involved in drugs trafficking. I informed the CM that I had also informed The Convent (NP). That I had held a Gold Command meeting to address welfare of the crew, the investigation that would naturally now follow, security/safety of our law enforcement officers and community impact et al. Furthermore, I mentioned that I had linked up with Guardia Civil and Cuerpo Nacional de Policia in light of the disturbances in the neighbouring town of La Linea after the other fatality involving one of our HM Customs patrol vessels. I also shared my assessment that given that those on board the suspect vessel appeared not to be from the area, the incident may not attract the same level of community impact as occurred with the previous collision involving HM Customs. I informed the CM that I was still waiting for the 4<sup>th</sup> person (also deceased) to be identified.

56 An exchange of further texts between CM and I took place as follows At 0740hrs the CM messaged me saying ... *"Thank you. Are our officers safely ashore and seen by med staff if necessary? Are their families informed they are ok, in case social media lets on there has been a fatal collision, so they don't worry? Also, what time did it occur and was it firmly within BGTW or questionable? I think we should announce if possible to avoid social media speculation. Have you prepared media release or do you want Stuart's[\*] help?"* (\*Stuart Green is one of HMGoG's press officers).

i. At 0742hrs I replied to the CM saying.... *" Our crew are ok. Their welfare is being totally safeguarded. I am also circulating a notice to all staff to prevent speculation and social media reporting from within. I will issue a very brief press notice shortly."*

ii. At 0743hrs the CM messaged me asking *"Ok. Re the two who survived, captured? Hospital or cells?"*

- iii. At 0743hrs I responded to the CM with ... *“Collision occurred at approx 0340hrs. At Location still to be confirmed. The two who survived are in hospital with non critical injuries as far as I am informed.”*
- iv. At 0813hrs the CM messaged me asking ... *“Arrested, correct?”*
- v. At 0814hrs I replied to the CM *“They will be if they haven’t been already.”* In fact, unbeknown to me, two of the men on board the RHIB who survived the collision had been arrested a short while earlier.

Between this messaging with the CM I was continuing to meet with command team members to receive updates as these trickled and to assess/review the progress of the actions assigned earlier.

57 At this meeting command resilience was agreed and ratified. We were updated on the Post Incident Procedures that had been invoked - that the police motor boat crew had provided very short statements which were not particularly helpful because of the scant content in terms providing details of what had occurred, where it had occurred and how it had occurred. In this regard we were none the clearer of where the incident had occurred. Considerations surrounding the crew’s welfare were discussed by the PIP Manager, Chief Inspector Romero. The meeting also received an update from the Senior Investigating Officer DCI Field who explained that all four on board the suspect RHIB had now been identified. That a request had been put through the Guardia Civil and Policia Nacional to inform the next of kin of those who had sadly died. The SIO also provided specifications of the suspect RHIB explaining the capacity of its engines, the sophisticated radar system it had installed and that it appeared to be carrying petrol onboard. That the police vessel involved in the collision had suffered damage to its collar. That neither Wind Mill Hill Signal Station nor Gibraltar Port Authority had any coordinates plotted for the police vessel, this potentially meaning the vessel’s Automatic Identification System (AIS) was either switched off or faulty.

58 That the duty VTS Officer of the Port Authority had reported that he had been advised of an incident in Alcaidesa by Tarifa marine traffic control but was uncertain whether this was the same incident we were dealing with. (Alcaidesa is a large housing complex/area to the north of Gibraltar’s neighbouring border town La Linea de la Concepcion. Alcaidesa’s coastline links with La Linea’s eastern coastline. Tarifa maritime control centre is located

south/west of Algeciras opposite Tangiers). It was therefore key that we established with accuracy the location of where the collision had occurred as there were conflicting reports. We were further updated by the Professional Standards Inspector who advised that the first contact the police crew had made with the RGP's Command and Despatch centre (CAD) was to inform of a fatality. That the previous contact had been to advise CAD that the crew were reporting on duty. That the police coxswain had stated he would not compromise the safety of his crew and would not allow them to accompany the injured parties to join the HM Customs vessel that had turned out to assist. [Taken from EXHIBIT NP1/233/234]

59 At 0927hrs NP responded to my message of earlier saying *"Ian. Thanks for letting me know. Sorry to hear this. And of course if you need anything from us/HMG just ask. Hope your guys are ok."* To this message I replied *"Thanks Nick."*

60 At 0940hrs I received information from DCI John Field who in turn relayed information provided by the Guardia Civil suggesting the collision had occurred in Spanish territorial waters though this required confirmation by them. I was nonetheless working on a provisional hypothesis that the pursuit had taken place in BGTW. My reasoning for this was based on the premise that RGP marine crews had no authority to operate outside BGTW unless it was on a specific search and rescue mission which in this case did not apply. Added to this was the uncertainty of where the collision had taken place and the fact two of the men on board the RHIB had been arrested which indicated criminality had occurred in the jurisdiction of Gibraltar. This was very much an early impression which dissolved once the picture became clearer.

61 At 0949hrs and 0953hrs, I sent the CM two messages informing him that we had received information suggesting that the collision took place outside BGTW approximately 6 nautical miles east off the Gibraltar airport runway and Santa Barbara beach in La Linea de la Concepcion. As previously stated, this was only information which needed verification. In this message I did not inform the CM where this information had come from. I also informed the CM that in situations where a death arose from police contact it was best practice to engage an independent investigating team to assume conduct of the matter. I informed the CM that I was exploring how to achieve this. This was a priority action in the list of considerations I was contemplating. I was acutely aware that such an incident posed challenges to public confidence in the RGP and therefore it was essential that the facts surrounding the incident were fully independently investigated in order to preserve and even enhance public confidence. I therefore needed to expedite these arrangements.

62 At 0953hrs, the CM replied to me via text message saying “OK. We need to liaise with AG on this and ensure we are transparent on this.” He added “Yes agreed. Any necessary additional expenditure will be approved” – this in response to my intentions to seek out an independent investigating team. I replied to the CM saying “Many thanks.”

63 At 1010hrs, I briefed the AG, Mr Michael Llamas, in my office. Present were Supt Richardson and possibly DCI Field and other members of the command team. I explained to the AG what we knew at the time including the uncertainty of where the collision had occurred. During the briefing I also received a message from the GPA Chair after I had notified him of the incident. He acknowledged having heard of the incident on the news feed and he also said on WhatsApp “Not asking any questions of you in view that it is under investigation and for Coroner to determine. Just like to say that it is unfortunate, to say the least!”

64 During the course of this briefing, at 1140hrs, the AG sent a message to the CM which he then also sent to me and which read as follows:-

*“Been in New Mole for the last hour or so. Cooperation RGP/Spanish LEAs very good. New RGP Press Release today will say good cooperation with ES (Spain), drug related activity, 2 deaths are Spanish nationals of North African descent. Investigation continues. PR[\*] will not say where incident occurred but it is virtually certain it was outside BGTW eastern side opposite runway. It also seems that part of the chase was within BGTW.” (Exhibit IM/19 is the WhatsApp chatlog with AG)*

I also shared by email with the AG the two press releases the RGP had pushed out on the incident. (\* “PR” is the abbreviation for Press Release)

65 At 1215Hrs NP, the interim Governor, attended my office and joined the AG and my team in the briefing where all the actions that had been carried out and those that remained outstanding were discussed. I explained what my intentions were in respect of best practices to follow when faced with a death as a result of contact with the police. That I would be exploring means of securing an independent team to take over the investigation. Both the AG and NP were in agreement. NP did not raise any particular query.

66 After the briefing concluded and at 1330hrs, NP messaged me saying:-

*"Thanks for the briefing. I'll do a quick note for London for when it hits the press. Line will be. Investigation ongoing. Spanish nationals from Ceuta (did you say one person was Portuguese). Not sure in whose waters incident took place. RGP seeking assistance from UK police authorities. No assistance needed from FCO at this stage."*

I responded with *"Yes all correct. Indeed one was Portuguese. Trying to clarify exact position of the collision."* NP replied saying *"OK. Thanks."*

### **Monday, 9<sup>th</sup> March 2020**

- 67 Monday 9<sup>th</sup> March 2020 was Commonwealth Day, a public holiday in Gibraltar. Officers of the Crime and Protective Services Division under the command of DCI John Field continued running with the investigation pending the arrangements I was making to source an independent team. I was aware that the officers were engaged in crime scene management/examination, forensic examination of mobile devices, interviews of those arrested, and a host of other enquiries to progress the investigation. I had officers tasked to maintain liaison with Guardia Civil (GC) in order to exchange any information, intelligence or updates. During the course of the morning of 9<sup>th</sup> March 2020, I was informed that the GC were still of the view that the collision had occurred in Spanish waters but that they needed this interpretation to be confirmed by their technicians.
- 68 At 1015hrs on 9<sup>th</sup> March 2020 NP messaged me with following *"Morning. I was with the AG last night and we wondered whether it would be worth having an update at some stage later this morning. We are keen to reach out to Spain given talks this week in London (please protect)."* I was not privy to what the AG and NP discussed that night and neither did I consider it proper or relevant to ask at the time but it was 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. We arranged for NP and the AG to come to my office at 1205hrs.
- 69 NP, the AG and I met in my office at 1210hrs, we were possibly joined by Supt Richardson. The following update was provided That following engagement with GC in Algeciras we had been able to establish that the GC had opened an investigation due to the incident involving deaths of Spanish nationals. According to my information, this was regardless of whether the incident occurred in Spanish waters or 'disputed' waters as the GC called



them. That the GC sought to be kept informed irrespective. I did not find this stance by the GC to be unusual because it was the same stance they had adopted with the previous incident involving a HM Customs patrol vessel and a small smuggling boat which also resulted in a fatality.

- i. That the exact co-ordinates of the collision had still not been determined. I cannot recall whether the provisional coordinates provided by the GC were discussed in specific detail but given the note prepared by Supt. Richardson (which made reference to the “exact co-ordinates not being determined” suggesting the provisional co-ordinates were mentioned) it seems that location was discussed albeit with a caveat that this still needed verification. The notion that NP was kept out of the loop as he claims in his letter to the GPA dated 3<sup>rd</sup> June 2020 is absurd. Both the AG and Supt Richardson were present and if I was evasive (which I strenuously deny) then so would the AG and the Supt have been evasive.
- ii. That the GC had been monitoring the smuggling vessel beforehand and had seen how they changed crew.
  - a. That the pursuit was believed to have lasted 10 minutes in and around British Gibraltar Territorial Waters with no certainty of the direction the pursuit took.
  - b. That Mr Chris Finch, a lawyer in the firm of Verralls was representing the families of the deceased and those arrested.
  - c. That the two deceased men were residents of La Linea de La Concepcion and were members of the “Castanitas” an organised criminal group operating in the nearby Spanish region.
  - d. That the culture in the region was to bury their dead as soon as possible and until that happened tensions would in all likelihood prevail amongst relatives and friends of the deceased – this was referred to on the back of the need to conduct forensic post mortems and therefore we had to secure the services of a forensic pathologist as a matter of urgency. The impact the incident could have on the community was also discussed.
  - e. That after having been interviewed, the two arrested men had been granted police bail to surrender in June 2020.

- f. That a key issue which needed to be ascertained were the lines of communication in the lead up to the pursuit and collision. This issue was felt to be relevant by the AG in the context of understanding that the incident occurred as a result of a joint law enforcement cooperation to tackle drug trafficking. In this regard the AG commented that it was essential to establish that the GC and RGP were talking to each other - that who initiated the contact was not key. We discussed the importance of interrogating the police vessel's mobile phone, AIS and GPS equipment including pursuing enquires with Windmill Hill Signal Station.
- g. The progress of how I was trying to source out an independent investigation team was also briefly discussed. I explained my options which were, (i) enquiring from the small islands [policing] forum chief constables (Isle of Man, Guernsey, Jersey) who the RGP were members of, whether they could put together a team and fly to assume conduct of the investigation, (ii) for the RGP to conduct the investigation under the direction and management of a Chief Constable of these territories, (iii) for the Gibraltar Defence Police to be tasked with the investigation given that they had a UK based senior Ministry of Defence police officer in their ranks who was a qualified senior investigating officer and (iv) for a UK Home Office police force to be approached to take on the task. The preferred option was the latter and both NP and AG fully supported my intentions. I have had previous experience of dealing with deaths resulting from police contact and other matters requiring independent police force intervention and I knew how resource intensive this task would be - this coupled with the element of specialisation required to carry out an investigation into a matter such as the one we were facing.

70 At 1443hrs, I messaged the GPA Chair, Dr Britto,

*"Joey - been working through the weekend on this collision case.*

*I am going to email you, (or if you want Elka[\*] - the GPA secretary), to formally notify you of the incident and refer you the fact that an investigation is underway. For purposes of transparency, this investigation should be independent & therefore I am trying to source out a team willing to take on the task. In UK the IOPC (our PCB[\*]) would decide whether the investigation would be wholly independent or managed by them with an external 3<sup>rd</sup> party (senior officer) overseeing on their behalf. If we applied that locally, it would mean the PCB would manage the investigation and we'd require a senior UK Officer to oversee it on the PCB's behalf. The field work though would be*

*done by RGP Professional Standards. It may not be the best model as the independence element is not total. Then again for practicalities sake it may prove useful. I need to discuss the matter further with you & perhaps Frank too but I'm conscious that you're away. I have held meetings with the AG & HE (Nick Pyle) and they support my intent to secure the best model to use. Regards, Ian" (\*PCB is the abbreviation for the independent Police Complaints Board and Frank is Frank Carreras of the PCB).*

71 An exchange of text messages then ensued in which the GPA chair and I discussed the best procedure to follow.

72 At 2006hrs on 09<sup>th</sup> March 2020, the CM created a 'WhatsApp' group chat under the name "Maritime Incident". The group's logo/badge was a photograph of the RGP vessel, Sir John Chapple which had been involved in the collision. The CM included me, the GPA Chair, the Police Complaints Board Chair, Mr Frank Carreras and the Chief Secretary Mr Darren Grech as participants of this group. His first message in the group chat was "*Gents, have agreed with Joey to set up this channel to make progress on any live issues on this easier.*" All the participants in the group acknowledged. (See **Exhibit IM/4** to my First Affidavit for the WhatsApp chat for Maritime Incident group)

73 At 2008hrs the CM messaged the group with "*Today I spoke to the British Ambassador in Madrid. He was having Interior Minister Grande Marlaska in for lunch today. He will express our desire for a full and transparent investigation that will assure the families of the deceased that they have the truth relating to their passing. Anything I can report on progress through that channel will be helpful, although, from what I understand, we have Spanish law enforcement on side.*" It would be safe to assume that NP, as a Foreign Office Official was also in the same loop with the British Ambassador in Madrid or that at least the CM was in communications with NP – that was a safe assumption for me to make given NP's and the CM's messages to me regarding the talks/meetings in London and Madrid and moreover that the AG, as legal advisor to both of them, was in communication with them.

74 At 2013hrs I replied to the CM's message – "*On side so far CM. The AG is up to speed on this. I am politely resisting sharing any information with ES LEAs until such time as we are certain ourselves of key issues eg exact details of the pursuit etc. My own officers have only supplied a very preliminary account shortly after the incident & as per our post incident*

*procedures will be providing a more detailed account between tomorrow and Wednesday.  
Rgds.”*

- 75 At 2015hrs I received responses as follows;- GPA Chair replied *“Thank you Commissioner – noted as well.”* The CM replied with *“Of course. I played for time saying we were on holiday and we would likely see a ramping up of activity next 48 hrs.”*
- 76 At 2019hrs I messaged the group *“We are going through a host of operational actions which include engaging independent police investigators, sourcing a forensic pathologist, a maritime accident investigator, examination of digital devices amongst others.”*
- 77 Between 2024hrs and 2038hrs I received the following acknowledgements –
- GPA Chair – *“ Many thanks for the update”*
- The CM - *“Excellent. Thank you. That’s the right approach.”*
- PCB Chair – *“Many thanks for the update.”*

### **Tuesday 10<sup>th</sup> March 2020**

- 78 Having given very serious consideration to all the information I had at my disposal to secure an independent investigation team I engaged with Chief Superintendent Nigel Goddard, Head of Unit of the UK’s National Police Coordination Centre (NPoCC). I provided him with a brief on the incident explaining the immediate actions we had carried out. That I had reached out to the Small Islands [Policing] Forum to see whether they could provide an independent team to take over the investigation. I further explained that I had also explored using a senior officer of the UK’s Ministry of Defence Police (MDP) who was based in Gibraltar and was a qualified Senior Investigating Officer but that MDP management felt this officer lacked the skills required for the task. I asked Chief Supt Goddard whether he could provide assistance to source an independent team. Lastly, I asked Mr Goddard whether he could assist with identifying a forensic pathologist from either Scotland or even Northern Ireland to conduct the post mortem examinations given that we were encountering difficulties to find one from England who was available immediately. I have previously alluded to the urgency there was to conduct the post mortems in order to mitigate any threats that could emerge by having the bodies in the morgue at the hospital for longer than necessary. I shared this email with the GPA Chair

who incidentally had messaged me advising me that he'd had to change his travel plans and would not be arriving in Gibraltar at the time he told me.

- 79 I was copied into an email thread by Ch Supt Goddard who had written to the Metropolitan Police Service (MPS) enquiring whether they would be in a position to undertake the independent professional standards investigation. Introductions with the MPS Supt Steven Wagstaff were made in this email. I was also advised by Ch Supt Goddard that I should be advising HE the Governor to submit a request to the Foreign Office for UK police assistance under Section 26 of the [UK] Police Act 1996. I shared this email thread with NP who asked me to provide a letter requesting this aid which I duly provided.

### Wednesday, 11th March 2020

- 80 On 11<sup>th</sup> March 2020 I made arrangements with the GPA Chair and the Police Complaints Board Chair, Mr Frank Carreras in my office where I briefed them face to face.

- 81 Around these dates I received information regarding the sourcing of the forensic pathologist who would arrive in Gibraltar very shortly to perform the post mortem examinations. I was also advised on the inability to extract the required navigational data from either the police vessel or the suspect RHIB – this was despite seeking professional help from local subject matter experts. It was my understanding all along that the data stored in the navigational aids of the vessels in question would provide accurate information relating to what had happened and where it had happened.

- 82 At 1922hrs I received a message from Mr Phil Culligan, the acting Deputy Governor –

*“Hi Ian I’ve just spoken to D/Supt Steve Wagstaff of MPS who confirmed he can provide a team of max five led by a DI for 4-6 days. We are now staffing the section 26 request and will stay close in touch. Cheers Phil.”* To this I replied, *“That is great Phil. Many Thanks. Would you know when they could be here?”* to which Mr Culligan replied *“Should have a better idea in the morning when I’ve spoken to FCO and HO again. I stressed the urgency.”* I thanked Mr Culligan for this information. (See **Exhibit IM/20** for the WhatsApp chat log with Phil Culligan acting deputy governor).

- 83 Post mortem examinations were performed but not before having to overcome various setbacks with hospital staff not wanting to perform CT scans of the bodies as was being

required by COVID-19 rules. I was also aware the FLO had been maintaining contact with the families and their legal representatives who, in fact, had also spoken to the forensic pathologist themselves.

84 Also during the course of these days I worked with the MPS to devise the “Terms of Reference” for the team arriving and facilitated them with details they were requesting from the RGP.

85 At 1349hrs, I messaged the “Maritime Incident” group - *“Forensic pathologist has landed & will be performing PM with the GHA pathologist hopefully today if we can convince GHA to carry out a CT scan of the corpses today pre-autopsy. I reckon that as soon as the bodies can be released to the families for burial it’ll ease off tensions. An independent team from Scotland Yard’s Professional Standards Directorate have agreed to fly out. They will arrive either tomorrow or Friday & review what we have done so far & then take over the investigation. Rgds Ian.”* All the participants in the group chat acknowledged the message and thanked me with the CM adding *“Noted. Will advise BA[\*] Madrid.”* (\*BA = British Ambassador)

86 At 1802hrs I messaged the AG –

*“Michael - we have still not provided any official account to GC of the incident at sea and they have asked for a brief from us. I am now at a stage where I also require background details of those who were on-board the RHIB as this is being requested by the independent investigation team. I can hardly ask them for these details when we haven’t released anything official to them. Its only prudent to do so. I propose to send them the below details and on the back of this make our request to them. I would appreciate your views on what I propose to send.*

*STARTS*

*Ref: Initial Incident Report – Collision at Sea with fatalities*

*At about 0300hrs on Sunday 8th March 2020, officers from the Royal Gibraltar Police Marine Interceptor Sir John Chapple (Bravo 4) communicated with the Guardia Civil COS in relation to the presence of a suspect vessel activity in waters off the Playa de Santa Barbara, near to the eastern side between Gibraltar and La Linea. Bravo 4 deployed and remained ready to engage at a point approximately 3 miles East of the runway. Soon afterwards a chase ensued with the suspect vessel and Bravo 4*

*challenging the vessel, a 14mt semi-rigid hulled inflatable vessel (RHIB) crewed by 4 occupants, powered by 4 x 300hp engines and fitted with Garmin radar. The said vessel was suspected to be involved in illicit drugs trafficking activity.*

*During the course of a high-speed pursuit shortly afterwards, there was a collision between both vessels, and this resulted in the death of 2 of the 4 RHIB's occupants, namely:*

*Mustafa Dris Mohamed*

*1/10/1970 in Ceuta*

*Calle Tejar Ingenieros 18, Ceuta*

*DNI 45084689 C*

*Mohamed Abdeselam Ahmed*

*04/07/79 in Ceuta*

*Calle Garcia Morato 17, Ceuta*

*DNI: 45105883 P*

*The remaining 2 occupants sustained injuries of various types, and were conveyed to St Bernard's Hospital in Gibraltar where they received treatment for their injuries and later discharged.*

*Nordin Dris Lahsen*

*17/9/87 in Ceuta*

*Brda Principe Alfonso Fuerte 129, Ceuta*

*DNI 45091684 T*

*Bruno Miguel Gomes Sereno*

*22/2/97 in Almada, Setubal, Portugal*

*Portuguese Passport: P371421 issued in Seville, Spain.*

*Both DRIS LAHSEN and GOMES SERENO were arrested on suspicion of Importing a Prohibited Import (14mt RHIB), Dangerous Navigation and Obstructing Police. DRIS LAHSEN gave a "No comment" interview at New Mole House Police station and GOMES SERENO gave only a brief account of events stating that he had been 1 of the 4 RHIB's occupants and that they had been chased by Police between Gibraltar and Spanish waters prior to the collision between both vessels.*

*Both DRIS LAHSEN and GOMES SERENO were later bailed out in the sum of £2500.00 to return to New Mole House Police Headquarters at 1100hrs on the 4th June 2020 whilst enquiries continue.*

*A Coroner's investigation is already underway into the deaths of DRIS MOHAMED and ABDESELAM AHMED, and post-mortem examinations will be conducted by a Forensic Pathologist on Wednesday 11th March and Thursday 12th March 2020. The Commissioner of the Royal Gibraltar Police has sought assistance of specialist investigators from the United Kingdom.*

*ENDS"*

87 I also received an email from NP at 1858Hrs (*I have obtained this from NP's Affidavit EXHIBIT NP1/143*):

*"Ian, Good to hear about progress re Met help. Are we any clearer as to where the collision took place? London are keen to know whether it was inside or outside BGTW and if the latter, approximately by how far. Regards Nick." At 1907hrs I responded to NP's email saying "Nick – we are getting there on establishing exact co-ordinates of where collision took place. We are tying up some loose ends and probing further from WHSS and should be able to confirm soon. It is, highly probable it did occur out BGTW. We are getting plotted which will provide a better understanding in terms of distance from BGTW. Best regards Ian."*

We had been unsuccessful in extracting the key data from the police vessel and suspect RHIB and therefore my colleagues were trying hard to plot the chase and collision using non-technical means but rather observational triangulation methods with the aid of Port Authority officers. The Guardia Civil had not provided confirmation that their coordinates were accurate.

88 At 1909hrs I messaged the AG – *"HE (Nick) is asking for confirmation of where collision took place as London are keen to know. I have informed him along the same lines that you*



*advised CM ie that it is highly probable that it happened outside BGTW.” The reason I enquired with the AG was because I wanted to ensure the same information was being imparted. At 1915hrs the AG replied to my message saying “Ian that seems fine to me. Factual whilst being amenable to further precision once you obtain further details.”*

89 At 1928hrs NP responded to my email – *“OK. Thanks. I’ll inform London facts still not established but highly likely to have occurred outside BGTW. Nick”*

90 During the morning of the 12<sup>th</sup> March 2020, I was made aware that the forensic pathologist had completed his examinations and had prepared an initial report of his findings. Also, that HM Coroner had instructed that the bodies be released to the families. I was further informed that we had secured the services of Captain Meikle, a maritime accident investigator, who was based in the UK and who we knew from a previous occasion when he provided assistance in the investigation of the collision involving a HM Customs vessel a few months earlier.

91 At 1613hrs on 12<sup>th</sup> March, I messaged the “Maritime Incident” group chat as follows:-

*“All - An update for your info:*

*The post mortems have been carried out & HM Coroner has now released bodies to the families. Chris Finch is representing the families.*

*The independent team from London will be arriving tomorrow morning. They are 5 in number, headed by a superintendent.*

*The 3 officers are in a bad way psychologically and have not yet provided a full account of the incident though our procedures allow for up to 7 days for them to do so in certain circumstances. The Fed are bringing out a specialist lawyer from UK to advise the officers and they are being advised not to produce their respective accounts until then. An awkward situation indeed.*

*In terms of the investigation proper the evidence points at the pursuit & collision occurring outside BGTW. Not the best news we wanted to hear. Rgds Ian”*

92 At 1614hrs I texted NP asking him whether he could take a call. I have no written record of this call but it was to update him in the same vein as I had done with the other officials in the “Maritime Incident” group chat. I spoke to him later on the phone and updated him

accordingly I including informing him that the evidence pointed to both the pursuit and collision occurring outside BGTW . This was the first occasion I had verified information / evidence that the collision had taken place outside BGTW.

- 93 The participants of the “Maritime Incident” chat group replied to my earlier message as follows;-

PCB Chairman – *“Ian, thanks for the update.”*

GPA Chair – *“Many thanks for the update Ian.”*

CM – *“Thank you Ian. Location does not worry me so much. Helps us in a way. Will discuss directly with you.”* (I believe the CM was in the UK when this exchange took place possibly with NP in Brexit talks).

Chief Sec – *“Thanks”*

The CM never got round to explaining what he meant but I did raise a query with the AG who told me that there was no need to seek further clarification from the CM.

- 94 During the course of the morning of 13<sup>th</sup> March 2020, the team from the Directorate of Professional Standards of the Metropolitan Police Service) arrived in Gibraltar as did Capt Meikle, accident investigator. The Police Officers were duly sworn in as officers of the RGP in order to afford them constabulary powers in Gibraltar during the investigation. The swearing process was completed in the presence of a Justice of the Peace and myself as the then head of the RGP.

- 95 Later that same evening I provided the MPS team with a briefing of what we knew so far. I know Supt Richardson had previously provided the MPS with a written brief but I still wanted to go over the detail we knew and offer the MPS team an opportunity to ask any questions they deemed fit. From thereon Detective Superintendent (Ag) Gary Smith of the MPS took over the investigation though RGP officers remained at his disposal for anything he may have required from them.

- 96 During the days that followed I was provided with snippet briefings of how the investigation was progressing and of the lines of enquires and actions being carried out. One of these related to the MPS investigators meeting up with the acting Deputy Governor, Mr Phil Culligan. I saw no issue whatsoever with this contact and did not ask about it though it was evident to me that they needed The Convent’s take on the matter. I was fully

cognisant that the MPS had to conduct whatever enquiries they felt necessary and to allow them that independence I had to remain uninquisitive. I did, however, subsequently learn that there had been liaison with the FCO officials in Gibraltar regarding the political dimensions surrounding the incident though I am not privy to what was said in that meeting. In fact, two briefing papers were received from the MPS and both referred to their enquiries with the FCO in Gibraltar and I understand The Convent had sight of these reports.

- 97 Another line of enquiry that I was informed the MPS were asking the RGP to facilitate was a face-to-face meeting with the Guardia Civil in Algeciras. Because of the potential sensitivities I reached out to the AG to seek his views. I messaged the AG at 1326hrs on 15<sup>th</sup> March 2020 as follows;

*“Michael - Can I come round to see you tomorrow for a quick discussion regarding issues with potential political connotations ref the collision at sea incident?”*

The AG replied a minute later saying *“Sure. Anytime.”*

And I replied to the AG *“Thanks. I know the CM wanted a face to face with me but given all that is happening it’ll be difficult for me to reach him.”* I was referring to the emergency crisis with the COVID-19 pandemic and the text message the CM had sent in the “maritime incident” WhatsApp group

- 98 I was able to meet with the AG at 1300hrs on 17<sup>th</sup> March where I explained the various strands arising from the incident such as the Coroner’s Inquest, possible civil action, professional standards inquiry, Spanish judicial action, law enforcement co-operation angle related to the Brexit working groups and the obvious political dimension. I conveyed my desire to work out a strategy with him to deal with all of this. I recall asking the AG whether he knew what it was that the CM wanted to discuss directly with me *viz a viz* his comments that he was not so worried about where the collision had occurred and that this helped in some way (*see above*). The AG told me that the CM was interpreting the incident in the context of cross border law enforcement cooperation, something which was very relevant at the time with the talks on the Brexit withdrawal agreement. He informed me that he [the AG] was considering the option of raising the collision at sea incident with his Spanish Brexit negotiator counterpart, a gentleman by the name of “Antonio”, who has since unfortunately passed away. I asked the AG whether he reckoned there was still a need for me to see the CM after what he [the AG] had imparted to me and he advised that there was

no need. I did not find this unusual - I knew that because of all that was happening in terms of the pandemic and discussions over Brexit, the AG was in close contact with the CM as he informed me of this himself and therefore I took it that he was relaying the information the CM wanted to tell me. I also explained the intentions of the MPS wanting to engage with the Guardia Civil. I wanted to meet up with the Guardia Civil myself to gain a better understanding of what processes, if any, they were contemplating. I explained the Guardia Civil were amenable to meeting up with the MPS but I felt it was important that the CM and AG were kept apprised. The AG informed me that he would be advising the CM of this request and revert to me.

99 After the meeting and at 1343hrs I received a message from the AG stating *"All good Ian. Proceed as we discussed."* This message clearly meant that he had spoken to the CM and that the CM was politically content with the MPS engaging with the Guardia Civil.

100 The intended face to face meeting with the GC had to be changed to a video conference due to the emerging concerns with the pandemic. At 1100hrs on Wednesday 18<sup>th</sup> March a video tele-conference (VTC) was held in my office. Present with me in the office were members of the MPS investigation team (Supt Gary Smith and two other officers), DI Paul Chipolina who was the RGP liaison with Spanish law enforcement agencies also acted as interpreter and my secretary Mrs Desoiza took notes. The GC were represented by one of their senior officers Commander Jeronimo Pacheco Polo and the Captain in charge of their marine unit. I facilitated the introductions and explained the presence of the MPS officers who had been asked to conduct an independent investigation. Apart from questions that the MPS had of the Guardia Civil which can be read from the notes recorded by Mrs Desoiza, it is relevant to highlight that at this meeting the GC explained that they still did not have confirmation of the informal plotting they had initially provided us of where the incident had occurred. That they were waiting for their experts/technicians to revert to them on this.

101 On conclusion of the said VTC conference I messaged the AG via WhatsApp to inform him of how it had gone. I wrote;-

*"Michael - Held video conference with GC as they wouldn't meet face to face because of the pandemic.*

*They were obviously cagey with our UK colleagues but it served well to demonstrate that we were totally transparent. The UK team were happy with the meeting. What I was able to elicit from GC is that a judge is still to be assigned the matter & it is likely*

*that it'll be a judge from La Linea. Again because of their lock down there are delays in their courts.*

*GC anticipate that when appointed, the judge will request information and accounts from us. What form this will take is not clear - the judge could potentially summons our officers to provide their statements in person or simply request their accounts via police to police channels. What mechanisms we should rely on to facilitate this, were we to oblige, is something we'll need to discuss. GC also expects the family of the deceased to file a complaint in their courts to seek compensation. This will no doubt complicate matters for us as the judge may be swayed to look at the matter from a different perspective in terms of where the collision took place.*

*GC are requesting from us for photos of the vessels, post mortem reports & statements from those involved in the collision. We have to carefully study this request and weigh the pros and cons of withholding the data or provide it at some point.*

*Speak soon."*

102 I believe that on the 19<sup>th</sup> March 2020, the MPS team had to prematurely return to the UK because of the unfolding lockdown measures being implemented as a result of the pandemic. These restrictive measures included flights and the team naturally did not want to find themselves stranded in Gibraltar.

103 At 1330hrs on the 19<sup>th</sup> March 2020, I shared with the GPA Chair the WhatsApp text I had sent to the AG regarding the VTC conference with the Guardia Civil and MPS. The GPA Chair replied by message with "OK – thanks for this Ian. Lets see what happens." I sent the GPA a "fingers crossed" emoji symbol to which he replied saying "Indeed."

104 At 1028hrs on 20<sup>th</sup> March 2020, the GPA Chair messaged me with "Good morning, Ian - just a thought, are you keeping Governor abreast of developments...? Also, maybe send an update to CM via the WhatsApp? Note that this is just my thinking and nobody has actually asked me but I think it would be prudent...?? See what you think." To this I replied, "Yes, The Convent is up to speed and AG too. Michael fed up to CM. By next week the UK Team will have more clarity on what route they will be suggesting this should take locally. That is a good point to provide a more formal update." The GPA Chair replied "OK understood! Thank you, Ian. As long as both are kept updated, that was my concern." I responded to the GPA Chair in this way because I knew of the existing information flows that were linked to the Governor and CM. I knew that the AG, as their legal advisor was in contact

with NP and CM and the MPS Team had been in touch with NP's office. Although I had no direct confirmation, however, given that the British and Spanish Governments were holding Brexit talks in London around this time, I deduced that the CM and NP were in communication given the contacts with the British Ambassador referred to me by the CM.

105 For the days that followed I was provided with periodic updates regarding the investigation. I was made aware that Mr Chris Finch was making several requests from the RGP and that these were being shared with HM Coroner and the MPS team. All these communications can be found with the case file.

106 On 7<sup>th</sup> April 2020 I again met with the AG at his offices at my request in order to discuss the collision at sea. Though the pandemic had evidently slowed down the normal day to day activities of many institutions in Gibraltar and the nearby region in Spain, I was still keen to have an overarching strategy prepared to deal with the matters such as possible civil claims, Coroner's Inquest, judicial processes in Spain, possible disciplinary measures and the matter of law enforcement cooperation viz a viz the political / Brexit context which could be activated when the time came. At this meeting I also aired concerns at what the RGP officers involved could be facing. We discussed previous instances before my time as Commissioner of Police of cross border law enforcement incursions and how these had been resolved. I particularly recall referring to an occasion when a Guardia Civil patrol vessel chased a local smuggling vessel right into the Port of Gibraltar landing metres away from the Harbour Views housing estate with the Spanish officers coming ashore and engaging in a foot pursuit of those who had been on board the smuggling vessel. There were even reports of shots being fired in this incident. It resulted in the arrest of 3 or 4 Guardia Civil officers but the matter was subsequently resolved after Spanish diplomatic channels provided an apology to the Gibraltar Government. Reference was also made of another incident where RGP detectives who were investigating an armed robbery in Gibraltar and it was alleged that the RGP officers had carried out executive action in an apartment in a housing complex in La Linea which was owned by a Gibraltar resident with the consent of the said owner. The reasons these cases were discussed was precisely to better understand how the politics had played out in each of those instances and whether there were any correlations to be drawn with the collision at sea we were discussing.

The AG explained that we would be in a better position to devise strategy once we found out what the independent team of the MPS had to say in terms of their findings and recommendations.

107 I am uncertain on what date I received a letter from Robert Fischel QC who worked in the same chambers as Mr Chris Finch suggesting that they would be making a civil claim for damages but I recall discussing this correspondence with the AG and DPP on possibly 22<sup>nd</sup> April 2020. At these discussions I was asking whether it would be prudent to allocate crown counsel representation to look after the RGP's interests and front the correspondence received from the legal representatives for the families. The DPP advised that no civil claim had yet been filed and therefore there was no immediate need to appoint crown counsel. Unlike the UK police service, the RGP do not have provisions for in-house Force Counsel and therefore civil litigation matters are dealt by the Office of Criminal Prosecution and Litigation (OCPL) which is headed by the DPP.

108 I recall receiving another letter from Mr Robert Fischel QC in early May 2020. I believe this correspondence was actually a "letter before action". I assigned the task to Supt Yeats who was serving in the Headquarters Division for him to take up again with the DPP and seek crown counsel representation. I was at that point not contemplating having to seek independent counsel to represent the RGP because as far as I was concerned previous claims made against the RGP have been defended by counsel from the OCPL. There were, however, certain concerns which the DPP and Supt Yeats had regarding the viability of crown counsel being appointed to act for the RGP. From what I understood (and this Supt Yeats can verify), the DPP consulted with the AG on who should represent the RGP to defend the claim. After this consultation, the DPP asked Supt Yeats to write to the AG setting out the 'ask' we were making and seeking the AG's views as to who was best placed to represent the RGP. We needed his views on the matter before considering the next steps which potentially could have meant having to approach HMGoG for assistance in appointing independent counsel.

109 During the early afternoon of 11<sup>th</sup> May 2020 I received an email from either my colleagues in Special Branch or from Supt Yeats informing me of questions being asked by the ultra-right VOX Party in the Spanish Parliament concerning the collision at sea. Shortly after receiving this communication I emailed the CM, MoJ and AG advising them of this.

I received acknowledgements with thanks from the AG and MoJ. I received no response from the CM but I understood he was very tied up with issues relating to the pandemic.

110 At 1213hrs on 20<sup>th</sup> May 2020, Supt Yeats wrote to the AG regarding the "letter before claim" from counsel representing the families as per the request from the DPP. I was copied into this email by Supt Yeats. I subsequently was forwarded an email thread at 1605hrs on

the same day which contained an email from the CM to the AG where it was evident that the CM was very annoyed to hear of the situation viz a viz the “letter before action” from the AG when he expected this to have come from me.

The CM’s email reads;

*“Dear Michael*

*Thank you for copying me into the below.*

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

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

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

*As you know, it comes against the backdrop of the very unflattering report from the HMICFRS.*

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

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

*Please refer both the DPP and Superintendent Yeats to my response.*

*Best wishes*

*Fabian”*



*The above email taken from EXHIBIT FP1/195-199*

111 I was obviously concerned with the tone and content of the CM's email for a number of reasons. Firstly, I was not aware that the AG had shared Supt Yeats' email with the CM. It was certainly not my intention for this email to act as direct request to the CM. It was meant to seek out advice from the AG before the potential need to engage with the CM and HMGoG. Secondly, the CM was evidently inferring that Supt Yeat's email was not considering wider implications such as whether management could be subject to any liability too. Obviously, this was not the case as the Terms of Reference agreed with the MPS were clearly sufficiently wide to capture this aspect. Thirdly, I was struck by the reference by the CM to the AG telling him "*As you know, it comes against the backdrop of the very unflattering report from the HMICFRS.*" This was the first occasion I had received feed back from the CM on the inspection report, albeit not communicated directly to me, but rather pointing to the CM having discussed the HMICFRS report with the AG on a previous occasion. I suspected at the time that the CM's stridency arose from his anger about the conduct of Operation Delhi.

112 At 1753hrs I replied to the CM's email as follows;

*"Dear CM – I refer to the below thread which includes your response to the AG and which has been forwarded to me.*

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

*The letter from local counsel representing the families and suggesting a future claim for damages was only received a few days ago which is what triggered our enquiry with the DPP only yesterday concerning legal representation.*

*I am of course available to discuss all the points you allude to at your earliest convenience.*

*Best wishes*

*Ian”*

*[Underlining added.]*

*Taken from EXHIBIT FP1/196*

I did not receive a response from the CM to this email.

- 113 I was at the time totally committed dealing with the wake arising from our intervention on JL in Op Delhi and was in very frequent communication with the AG. However, on the back of a string of messages related to Op Delhi, I messaged the AG via WhatsApp at 1834hrs with;-

*“Michael - aside from Delhi.... The CM’s response to our ‘ask’ for legal representation....I honestly do not know why he has reacted like this. Have you briefed him of our meetings we’ve had on the matter?”*

- 114 At 1838hrs the AG replied to my message saying *“He is aware you and I have spoken about this. I forwarded to him Cathal’s (Yeats) email to me today since it was necessary in view of the wider issues.”*

- 115 At 1839hrs I replied to the AG saying *“Good. But the wobbler he’s thrown is what I do not understand. Anyway, something for me to take up with him. Thanks.”* Though the AG confirmed to me that he had been speaking to the CM about the talks the he and I had had on the matter I was not privy to the detail of these briefings he provided.

- 116 At 2058hrs on the 21<sup>st</sup> May 2020, I received an email from the CM which said *“Please see attached”* and which enclosed a letter from him addressed to me (*see CM’s affidavit EXHIBIT FP1/200*). The CM was making a request for me to produce a factual report on the incident pursuant to section 15(1)(a) of the Police Act 2006. I was provided 7 days to respond to the letter and I was being requested to acknowledge receipt of the letter. At 1021hrs on 22<sup>nd</sup> May I emailed the CM saying *“Dear CM – I duly acknowledge receipt of your letter dated 21<sup>st</sup> May 2020 the contents of which are duly noted. I will revert with the factual report as requested.”*

- 117 At 1621hrs on 28<sup>th</sup> May 2020 (from CM's affidavit EXHIBIT FP1/201), and within the allocated time frame I was given, I submitted the approximately 30 page report digitally and in hard copy together with copious appending data in several lever arch files. To this date I have not received either an acknowledgement of receipt or any feedback on its content. This report was copied to NP, MoJ, the AG, GPA Chair and DPP. Neither did I get any feedback or comment from any of these officials.
- 118 On the 1<sup>st</sup> June 2020 in a statement to Parliament recorded in Hansard, the CM stated that he had requested from me a report on the incident and that he had only received it on Friday 29<sup>th</sup> May 2020. This was incorrect as I had submitted the report on Thursday 28<sup>th</sup> May 2020. I felt it necessary to write to the CM to alert him of this trusting that it would assist and that the official parliamentary record was amended to reflect this. I did not receive any response to this email either.
- 119 At 1015hrs on 21<sup>st</sup> May I messaged the AG via WhatsApp saying *"I know you're busy all day today but there is something sensitive we need to discuss about Delhi. Could we come round tomorrow morning? Christian (the DPP) should be there too."* The AG responded at 1019hrs *"Sure. Tomorrow morning is fine with me."* I replied, *"Shall we say 10am? Will you let Christian know?"* The AG replied, *"Yes and yes."* I closed saying *"Thanks"*. The reason behind me calling this meeting was that given the sentiments expressed by the AG in terms of protecting the reputation of the jurisdiction, which he said inherently passed through the office of the Chief Minister, I had been reminded by the investigating team of the CM's involvement and I had revisited the communications that one of the defendants (Mr. Perez) had had with the CM prior to his arrest. I distinctly recall reading an 'extraction report of the forensic examination of Mr Perez's mobile device where he communicated with the CM. In this exchange, Mr. Perez was keeping the CM abreast of the meetings he was having with Bland Ltd Chairman, Mr. James Gaggero and of his termination of employment with Bland Ltd. Mr. Perez communicated about how the NSCIS was working under strain; that law enforcement heads were aware of the need to maintain the relationship with him and his colleague, Mr. Cornelio, so that the platform was kept running properly; Mr. Perez also stated that he expected Mr. Gaggero to seek compensation from him to which the CM stated that he would be happy to help with. This exchange of messages somewhat indicated that the CM was fully aware that it was 36 North's intention to assume the contract from HMGoG to run the NSCIS platform - and to a degree, that the CM was in agreement with it at that stage. This exchange had been uncovered by the investigating team from mobile phone extractions of those arrested. I was uncertain whether the DPP or indeed the AG were aware of these communications. With all that had happened since the

investigating officers intervened on JL, I wanted to discuss these findings with them – that the CM was also a person who had questions to answer in the investigation and that this line of enquiry had not yet been actioned. . This meeting was scheduled for 1000hrs on 22<sup>nd</sup> May 2020.

- 120 As it happened, I did not attend that meeting because other events took over. These are explained in the following paragraphs. Therefore, I did not get the opportunity to discuss this particular matter with the AG or DPP.

**Additional evidence relating to my decision to accept early retirement**

- 121 Following from paragraph 105 of my First Affidavit, at 1031hrs on the 8<sup>th</sup> June 2020 I received an email from NP in response to an email my lawyers had written to him at 0941hrs – he wrote;

*“Ian, you appear to be not aware of this when we spoke. As I said, I have kept London, including the Minister, fully informed and have taken advice from FCO legal. Nick”*

- 122 At 1110hrs I replied:

*“YE – Many thanks. Just to add that you also told me that you had been taking advice from Mr Llamas. Regards Ian”*

At 1134hrs NP responded with;

*“Ian, to be clear, the AG is my Hon Legal Advisor so yes it is he who a Governor would take advice from. Nick”*

- 123 Having discussed my proposed terms for early retirement I recall asking NP how he viewed these to which he said that he would certainly not have asked for anything less if he was in my situation and that they were reasonable. NP told me he would be sharing these terms with the Chief Secretary as he had no authority over these administrative matters. I explained that once these terms had been agreed I would write to him seeking my early retirement with effect from 9<sup>th</sup> June 2020. He was in agreement with this way forward.

124 We also discussed the shambles of the section 34 procedure and how it had been applied, to which he mentioned that the Police Act 2006 was wrongly drafted, apportioning to this the reason as to why the process had collapsed. He said that it was a priority for him to ensure the legislation was amended in order to prevent anything of the sort re-occurring. The meeting concluded with NP asking me whether I wanted him to address anything else and I mentioned that I hoped that once I retired I would not be the subject of any further chastisement from officials in the media or grapevine channels. He assured me that he would ensure I was treated respectfully and fairly.

125 At 1650hrs I sent a message via WhatsApp to NP as follows;-

*“Nick, I look forward to receiving confirmation of the agreement to the financial terms we discussed and the other terms you suggested in your letter. Thanks, rgds, Ian”*

126 At 1733hrs on 8<sup>th</sup> June 2020, I received an email from the Chief Secretary, Darren Grech. He wrote;

*“Dear Commissioner ,*

*The Governor has informed me of your offer to retire as from 1800hrs, 9 June 2020 subject to the following terms. Payment up until end of contract (April 2022)*

*Payment of legal fees.*

*These terms are not acceptable to the Government.*

*Yours sincerely,*

*Darren”*

127 At 1742hrs NP intervened with an email to the Chief Secretary saying;-

*“Dear Chief Secretary*

*With apologies for not making myself clear, the Commissioner did make reference to pension rights aswell.*

*Regards*

*Nick”*

128 At 1747hrs the Chief Secretary emailed me with;

*"Dear Commissioner,*

*Further to the additional information from the Governor, pension rights is one thing we would consider. Please inform what you have in mind.*

*Best wishes*

*Darren"*

129 This email from the Chief Secretary worried me a great deal. He stated that the Government were merely "*considering*" the question of my pension entitlements and therefore putting in doubt my financial security. I concluded that I was being punished for having dared to permit the Operation Delhi team to investigate a highly influential person who was intimately connected with the Chief Minister.

At 1755hrs, NP emailed me with;

*"Dear Ian*

*In view of the correspondence, could you please confirm whether it is still your intention to retire with effect from 18:00 tomorrow (9 June)*

*Regards*

*Nick"*

1830hrs I messaged NP –

*"Nick – I have just read the exchange of emails between Darren Grech and ourselves. I don't think what I am being offered is what I deserve. There isn't even a mention of my untaken leave & days owed being paid to me. Could you revert to Darren and enquire whether at least one year's salary is honoured. Rgds."*

At 1833hrs NP replied –

*Ian. I've forwarded this to Darren. As I said I can't get involved but would hope days leave/toil\*not a problem." I thanked NP for this. (\*toil = time off in lieu)*

At 1901hrs, I emailed the Chief Secretary –

*“Dear Darren – I note your email below where the terms I discussed with HE are not acceptable to government, in particular the 22 months salary and legal costs.*

*I note you make no reference to my untaken leave and days owed in lieu which I would ask should be paid.*

*In terms of my pension/gratuity, I explained to HE that I would for this to be worked out on my current salary. I understand my pension would be taxable until I attain the age of 55yrs.*

*In terms of legal costs I would like to make the following submission for your consideration:- The Section 34 Police Act (2006) procedure was withdrawn because it was flawed. In order to establish this I had to retain lawyers. In fact it was recommended to me by the GPA Chair that I should get legal advice.*

*Moreover, the matter was sufficiently complex for the GPA to engage a QC who correctly advised that the process was flawed.*

*As a result of the expense I have had to incur the GPA now has the benefit of legal advice which will ensure that the mistake is not repeated.*

*The custom in situations such as this is for the public body to pay the cost of the citizen against who a flawed process was initiated.*

*Finally, I feel entitled to retire in the same position I would have had I not been practically compelled to retire which is why I included the remaining months of my salary as a consideration. If this is not possible, would you consider 12 months salary instead?*

*I look forward to hearing from you. If you feel we can discuss the matter over the phone please do let me know.*

*Regards*

*Ian”*

(Underlining added for emphasis.)

130 At 1911hrs, the Chief Secretary replied – *“Dear Ian, I shall revert on this soonest I can. Best Wishes, Darren.”*

At 1917hrs I messaged NP – *“With all the uncertainty I am unable to sign my letter to you. Government are merely considering my pension and untaken leave etc. They haven’t committed to agreeing to it. Its [sic] an awkward situation which I trust you understand. I have to safeguard my terms 100% whatever they end up being but certainly agree them before signing the letter. Ian”*

131 At 1953hrs NP responded – *“Ian. Thanks for this. I’d be grateful therefore if you could see me at 09.00 tomorrow. Regards. Nick.”* From this message I deduced that NP was going to invoke his powers under section 13 Police Act (2006). I was by then in a very bad way emotionally. In fact, my suspicions were confirmed when the CM stated these were NP’s intentions in Parliament when answering questions put to him by the opposition on 27<sup>th</sup> July 2020 (Page 42 of Hansard 27<sup>th</sup> July 2020)

132 At 2001hrs I messaged NP – *“It isn’t right Nick. For them to say that they are merely ‘considering’ my pension rights? What is the point of me retiring then. Darren is saying that he will revert as soon as he can – it is not me causing any delay to my intentions. Surely Darren can sort this out. I am not trying to be awkward at all.”*

133 At 2004hrs NP messaged me – *“I gather Darren will be in touch shortly”* to which I replied *“I hope so.”*

At 2009hrs I messaged the Chief Secretary – *“Darren – I want to end all this saga but I need the terms agreed before I sign my letter to the Governor. Could you please expedite whatever you can so I can firm up my exit? Thanks”*

At 2011hrs the Chief Secretary replied – *“Quite understandable. Let me work on it tonight and tomorrow morning Ian. I need to clear with Principle Auditor etc without giving these people details of what I am working on.”*

134 At 2012hrs I messaged the Chief Secretary – *“I am worried when you say that my pension rights are being ‘considered’ when really I am entitled to it.”*

At 2016hrs the Chief Secretary replied – *“Don’t worry, trust me please”*

At 2017hrs I messaged the Chief Secretary – *“It wouldn’t be fair. I wouldn’t be able to retire.”*

At 2018hrs the Chief Secretary replied – *“You will and trust me please. Give me this evening and tomorrow evening.”*

**(EXHIBIT IM/21 for the WhatsApp Chat log with Darren Grech Chief Secretary)**



At 2019hrs I messaged NP – “Darren has informed me that he’ll be working on it tonight and tomorrow morning. Shall we give it till midday before we meet again to allow him time to firm everything up?”

At 2025hrs NP replied – “I’ll ask him to speed it up and conclude their reply to your terms tonight”

At 2121hrs, the Chief Secretary informed me that Government had agreed to the following terms;

- Pension rights as I requested
- Un-taken leave to be paid
- Time off in Lieu to be paid
- A contribution capped at £2,500 to be paid towards my legal fees.

The Government did not agree to pay me any period of my contract of which I had not worked.

At 2128hrs I messaged NP – “Nick – you will have my letter with the agreed terms at 0830hrs tomorrow morning. Could you now send me the letter you had intended for me. I will relinquish command at 1800hrs tomorrow.”

135 At 2134hrs NP messaged me – “Ian. Thanks. I believe that is the correct way forward. I’ll go into the office and send the letter once I’ve finished dinner. Nick”

At 2258hrs I received an email from NP which enclosed a letter dated 8<sup>th</sup> June 2020 (**Exhibit IM/1 refers**) which confirmed my intentions to retire early and suggesting that we coordinated a public announcement to this effect. It also contained reference to the financial terms agreed with the Chief Secretary. The letter’s last sentence read “*I would like to reaffirm my commitment, notwithstanding the above, to ensure that you are treated fairly and with respect at all times.*” This sentence becomes very relevant in my view, 2 years and 5 months on post to my retirement. I will allude to it further along in my statement.

0830Hrs on 9<sup>th</sup> June 2020, I emailed NP a scanned letter of my application to retire early (**Exhibit IM/1 refers**).

136 At 0941hrs I circulated a farewell message to all police and support staff thanking them for the service they provide Gibraltar (**Exhibit IM/22**).

At 1207hrs NP sent me an email with an attached letter accepting my request for early retirement (**Exhibit IM/23**).

At 1215hrs NP sent me another email saying *“Ian Despite all that has happened, please do take care and I do hope you get any help and support, whether from family, friends and others, that you may need. My commitments outlined in my letter to you remain. Regards, Nick.”* (**Exhibit IM/24**) I also agreed that my press notice advising on my early retirement would be released at 1300hrs, at the same time as NP’s.

137 My departure from the RGP was therefore sudden and disconcerting so that it took me several weeks to come to terms with what had happened. I was driven home by a police driver and deposited at my door. My belongings followed the same day or the day after. I had no further official contact and was left in a state of turmoil exacerbated by the fact that I was still the target of a threat of litigation mounted by the CM’s own legal firm, with whom I knew he was in contact. I feared that that claim for misfeasance, unmeritorious as it was, would be pursued against me. Such was the haste of my departure that I was not even able to carry out an orderly handover to my successor. I then set about trying to regain my health which had taken a terrible blow in the previous few short weeks and to try to comfort my family who had also suffered tremendously.

138 My early retirement attracted considerable media interest which was amplified on social media channels. It also led to politicians in the opposition raising concerns as to why I had retired prematurely and that they would be asking questions about this in Parliament. I know that during an interview on GBC the CM was asked about my retirement and he stated that he did not comment on the particulars of public servants who had retired adding there was nothing untoward in my case. He also stated that he knew the opposition had intimated that they would ask questions in Parliament about my case and that if this was the case, he would answer those questions accordingly.

139 I became aware that the opposition had in fact prepared a series of questions to ask of the CM at the next sitting of Parliament. I came to know of this from the new Commissioner of Police, Richard Ullger. He told me that he had been asked by the Governor Sir David Steel whether I had been speaking to the opposition about my situation. Mr Ullger told me he had told HE that knowing me as he did, he was sure I had not done such a thing. He told me the Governor was glad this was not the case because the CM would be robust with his

responses to the questions put by the opposition. Of course, Mr Ullger was absolutely right, I have not had the slightest of wishes to make my situation political. For the sake of completeness, I should add that my lawyers at all times advised me that it would not be wise to allow my situation to become political because there was nothing to be gained by doing so and a great deal to be lost given the extraordinary aggression that the CM had shown and that he had effective control not just of Parliament because of a majority of members but also a great deal of influence over the media. I was advised that I should be careful to avoid the CM and his political followers and his business associates from engaging in a defamatory campaign against me which would be almost impossible to defend against because the CM was likely to hide behind parliamentary immunity. I have been advised to reserve legal privilege to all legal advice that I have received.

140 I was also advised by Mr Ullger that the CM intended to read a statement in Parliament relating to my sudden retirement – this in response to the questions laid by the opposition. Mr Ullger told me that the AG had asked him to share the said statement with me which he did via email. My lawyer responded to the said statement on my behalf via email to the AG disagreeing with its contents. (**Exhibit IM/25**).

141 On 27<sup>th</sup> July 2020 and in answer to parliamentary questions the CM made certain statements which unfairly implied that I had committed an act of serious misconduct and that NP would have suspended me if I had not retired. I read about this in the Gibraltar Chronicle the following day. I was so hurt that the wounds which I had suffered between 12<sup>th</sup> May to 9<sup>th</sup> June 2020 and which were beginning to show signs of healing, were ripped wide open again. I was quite astounded to also learn that the CM, in answer to a direct question whether he or the AG had raised any issue with me in respect of the handling of any particular investigation in the previous 3 months, stated “*Mr Speaker, I am answerable for myself, not for any other individual in the House. I have not raised with the Commissioner any operational matter.*” (Hansard refers p.35). This was a blatant lie because he did raise Op Delhi with me as previously referred to in detail in this statement and in the CM’s own letter to the GPA dated 5<sup>th</sup> June 2020.

142 There was also a very important omission by the CM in his address, this being that the GPA had withdrawn their invitation for me to retire and that HMGOG had paid part of my legal costs. I took advice on what recourse I had in order to protect my good name and reputation and how I could redress what I considered to be a serious misleading of Parliament. I was receiving reports that a vicious rumour mill had been set in motion in which I was accused of the most extraordinary things including involvement in money laundering and financial

dishonesty. My lawyer advised me that any public statements that I made would merely be responded to by the Government and that the only way in which the CM could be disarmed and the rumours to stop was for me to call a public inquiry. After careful consideration I opted to do so. The immediate effect of my call did seem to bring to a sudden end the worst of the scurrilous rumours. On 28<sup>th</sup> July 2020, a statement was issued on my behalf by my lawyers making this request (**Exhibit IM/26**) In response to this statement the CM stated that he would make a statement to Parliament regarding my call for the Inquiry at a forthcoming sitting of Parliament. Before this sitting, I was contacted by Commissioner Richard Ullger on two occasions ; he had been asked by the AG whether he could enquire from me whether I would be amenable to issuing a joint statement with the CM which served the interests of both sides. I waited for communication from the AG on this matter but it did not come. I had advised Mr Ullger to tell the AG to channel any communication through my lawyers. I was keen to learn what the AG and by default the CM, had in mind.

143 At 1411Hrs on 30<sup>th</sup> July 2020, my lawyer emailed NP copying in the CM's office and the AG in anticipation of a statement the CM was going to be making in Parliament on 31<sup>st</sup> July (**Exhibit IM/27**)

*"Dear Mr. Pyle,*

*We continue to be instructed by Mr. Ian McGrail.*

*In view of the public confusion relating to the circumstances of Mr. McGrail's retirement as Commissioner of the Royal Gibraltar Police, he has called for a high level judicial inquiry at which we are sure you will be called to give evidence.*

*Meanwhile, the matter is the subject of continuing Parliamentary scrutiny and the Chief Minister has given notice that he will be giving a statement in Parliament tomorrow.*

*Although we cannot know what the Chief Minister is going to say, the indications from his replies to questions from the leader of the opposition on Monday indicate that he will be placing principal responsibility for the retirement upon your good self.*

*I trust that you will agree that it is the obligation of us all to ensure that the Chief Minister is fully acquainted with all issues so that he provides absolutely accurate information to Parliament.*

*For this reason we will proceed to set out what we consider to be the incontrovertible background of your involvement in order to give you the opportunity to comment so as to ensure that the Chief Minister does not inadvertently mislead Parliament.*

### **Background**

- 1. At no time prior to your communications with the Gibraltar Police Authority did you ever express to Mr. McGrail any reservations regarding his performance as the head of the Royal Gibraltar Police in either of your capacities as a member of the Authority or, later, as interim Governor.*
- 2. In your letter of the 3<sup>rd</sup> June 2020 to the Chairman of the Gibraltar Police Authority you refer to “already existing concerns that I have had with the CoP” (see second paragraph on the second page).*
- 3. To Mr. McGrail’s knowledge, you have never articulated what those “existing concerns” were to either Mr. McGrail or anybody else.*
- 4. The high-water mark of your “complaint” to the Gibraltar Police Authority is to be found in the fourth paragraph on the second page of that letter:*

*“Furthermore, I suspected at the time of the immediate aftermath of the incident that the CoP’s disclosure of information to me was evasive in particular in relation to the critical issue of whether or not the incident had occurred within BGTW. I know that when the CoP was telling me that it was not clear where the incident had occurred, he was informing the Chief Minister that the incident had indeed occurred outside BGTW. Indeed, it occurred some 7.5 nautical miles beyond Gibraltar’s baseline and therefore well outside BGTW. I find this evasiveness on a key issue to demonstrate a total lack of respect to the office of Governor particularly since the CoP knew that this was the crucial issue for me and both the UK and Gibraltar Governments as far as diplomatic relations with Spain were concerned.”*

5. *You provide no particulars of the alleged “evasiveness” but the record shows that in fact you were kept informed in great detail from the very first moment in person at meetings with Mr. McGrail which you attended together with the Attorney General and later via the information which Mr. McGrail was passing to the Attorney General in real time throughout.*
6. *As the Attorney General confirmed in his own letter to the Gibraltar Police Authority of the 5<sup>th</sup> June 2020 he is “...the Crown’s (in all of its facets, including the RGP) principal legal advisor in Gibraltar...”*
7. *The self-description of the Attorney General’s multifaceted responsibilities to provide legal advice is well known.*
8. *You yourself confirmed in your email to Mr. McGrail of the 8th June 2020 that even when the dispute arose you would continue to rely on the advice of the Attorney General. (“To be clear, the AG in my Hon Legal Advisor so yes it is he who a Governor would take legal advice from”)*
9. *Certainly at all material times Mr. McGrail understood the position to be that all information which he was passing on to the Attorney General was being communicated to you.*
10. *Mr. McGrail fully briefed you on the information and evidence then available on the very day of the accident, i.e. 8<sup>th</sup> March 2020.*
11. *There is a wealth of communications in the form of e-mails, WhatsApp messages and text messages to show the extent and detail of the information which Mr. McGrail was passing on to you directly and via the Attorney General. You should have all of this traffic to hand as does the Attorney General and we invite you to provide it all to the Chief Minister so that he is better able to inform Parliament tomorrow.*
12. *A instructive WhatsApp message which shows that you were at all times working closely with the Attorney General is that which you sent to Mr. McGrail at 10:15 on the 9<sup>th</sup> March 2020:*

*“Morning. I was with the AG last night and we wondered whether it would be worth having an update at some stage later this morning. We are keen to reach (out) to Spain given talks this week in London (please protect).”*

13. *A meeting duly took place that same day.*
14. *You will not be able to point out to any substantive and confirmed information which Mr. McGrail gave to the Chief Minister which he did not provide at the same time to either you or your lawyer, the Attorney General. This is because no such evidence exists and because far from being evasive Mr. McGrail was careful to keep you informed directly and via the Attorney General at all times.*
15. *Moreover it is also on the record that the Chief Minister who was working with the Attorney General was keeping the British Ambassador to Spain fully informed of all of the information that the Chief Minister and Attorney General were aware of. All of this in anticipation of a luncheon set to take place between the Ambassador and the Spanish Foreign Minister of the 9<sup>th</sup> March 2020. It is therefore demonstrably false to suggest that the Chief Minister had any information which your own legal representative did not have.*
16. *For the sake of completeness we must add that the formula which you use of suspicion of evasiveness is a loose one which ill befits the actions which you then proceeded to take by calling on the Gibraltar Police Authority to issue their ill-fated section 34 Notice. Basic principles of natural justice and due process require at the very least an explicit articulation of what your concerns were and how and what evidence you had to support them. Yet as late as the 3<sup>rd</sup> June 2020 after the section 34 Notice had been given you were still unable to provide anything more than a subjective “suspicion” and no evidence to support it.*
17. *We were, moreover deeply troubled to hear the Chief Minister tell Parliament that you had told him that you would be exercising your power under section 31(1)f “To suspend or call for the resignation of the Commissioner”. You appear to have come to the view that Mr. McGrail should be suspended or asked to resign before any of your concerns were put to Mr. McGrail so he had the opportunity to answer to them and before Mr. McGrail replied within the time limits given to the Chief Minister’s request for factual information under section 15 of the Act. In any event the matter of the accident at sea was still being investigated by the Independent*

*Team of the Metropolitan Police. By any measure your decision to call for Mr. McGrail's resignation or suspension was grossly premature, and therefore fundamentally flawed and illegal.*

*18. Since the Metropolitan Police investigation report is important to the issues which you say caused you concern, I would remind you that in a Situation Report by the Metropolitan Police dated 23<sup>rd</sup> May 2020 which was received by the RGP on 27<sup>th</sup> March 2020 the Senior Investigating Officer reports having been "in liaison with FCO regarding the political situation" during their enquiries in Gibraltar.*

*The Metropolitan Police was of course aware of all known circumstances regarding the accident including, by then, its location.*

*19. Our main concern at the moment is to ensure that the Chief Minister is fully briefed for tomorrow's Parliamentary session. However, since this correspondence will inevitably come before the inquiry we think it proper to give you the opportunity of clarifying the following matters:*

- a. What were the "existing deep concerns" which you referred to in your letter to the Gibraltar Police Authority?*
- b. Why were these "deep concerns" not raised with Mr. McGrail?*
- c. Who did you raise your alleged "deep concerns" with?*
- d. Did you raise the "deep concerns" with any of the Gibraltar Police Authority, the Attorney General or the Chief Minister?*
- e. If you did raise the alleged "deep concerns" with any of those parties or anyone else at all, what did you tell them?*
- f. Has the Metropolitan Police Investigating Team expressed any concerns about Mr. McGrail's handling of the incident? As you know Mr. McGrail asked for UK assistance immediately that the accident occurred and within 48 hours of the accident, confirmation had been obtained that the Metropolitan Police was willing to assist. Your suggestion therefore that Mr. McGrail seemed to you to have been "evasive" is misconceived and*



*we invite you to review your email exchanges with Mr. McGrail of the 10th March 2020 in which you facilitated the engagement of the police in London.*

- g. Having heard the Chief Minister's intervention in Parliament on Monday, it is wholly unclear who triggered the Gibraltar Police Authority section 34 procedure?*
- h. The Chief Minister appears to say that the Gibraltar Police Authority initiated the process of its own volition, this is of course not correct. The Gibraltar Police Authority's curt letter of the 22<sup>nd</sup> May 2020 refers to "grave concerns expressed by both the Governor and the Chief Minister". The Chief Minister will no doubt answer to Parliament but we call on you to articulate what you told the Gibraltar Police Authority as to your "grave concerns". The inquiry will no doubt require you to provide full details as to what you said and to whom.*
- i. For the sake of good order Mr. McGrail will give evidence which we are sure will not be contradicted by the Chairman of the Gibraltar Police Authority that Mr. Britto told Mr. McGrail that he and all of the members of the Authority had been shocked by the manner in which you demanded the invoking of section 34.*
- j. We are forced to speculate that in fact the triggering of the section 34 process was not your idea but one which the Chief Minister and/or the Attorney General insinuated to you. We approach this particular point gingerly because the Chief Minister appears to have said in Parliament that it was you who was principally behind the ill-fated section 34 procedure and do not want to cast any doubt on the Chief Minister's word uttered as it was in Parliament. However, it does appear from the confused narrative which you and the Chief Minister have provided separately, that in fact you might have been moved to act as you did by complaints by the Chief Minister and/or the Attorney General. This being the case we urge you to ask the Chief Minister and the Attorney General for their entire files of communications with Mr. McGrail which will show you that far from being critical of Mr. McGrail's performance they were supportive and*

*grateful to him. In particular you should ask for copies of the “group chat” opened by the Chief Minister himself under the title “Maritime Incident”.*

*In due course there will inevitably be very many more questions which you will be called upon to answer in the proper forum and what appears above should not be treated as a comprehensive and full description of the matters which greatly concern us and will concern the independent inquiry as to your behaviour in this matter.*

*We note that in your letter to Mr. McGrail of the 8<sup>th</sup> June 2020 you undertook “to ensure (that Mr McGrail is) treated fairly and with respect at all times”. You reiterated that in your email to Mr. McGrail on 9<sup>th</sup> June 2020. We count on that commitment which you gave as Governor of Gibraltar to remain the same.*

*We are copying this email to the Chief Minister’s office and the Attorney General.*

*Yours sincerely,*

*Charles Gomez”*

My lawyers received no reply from NP.

- 144 On the 31<sup>st</sup> July 2020, in Parliament, the CM reluctantly acceded to holding an inquiry to look into the reasons why I had retired early from the RGP. He stated that HMGoG would be setting up the Inquiry within a matter of weeks.

**My comments on the GPA letters to me dated 22<sup>nd</sup> May 2020**

- 145 At this juncture I would like to provide explanations to the issues brought to my notice by the GPA Chair in his 2<sup>nd</sup> letter to me dated 22<sup>nd</sup> May 2020. I know my lawyer made certain representations on my behalf in response to this letter, but I feel I am able to provide some more key detail which I do hope is helpful.
- 146 I will keep to the same sub-headings that the GPA Chair used for the sake of easier comprehension:-

i. *Efficiency* –

- a) In this paragraph the GPA Chair refers to the “Overview” of the HMICFRS Report stating that the Force is not “*as effective or efficient as it could be*”. Whilst I accept that the RGP needed to improve in many areas, I would like to draw attention to the same “Overview” page in the report which states that “*the Royal Gibraltar Police offers a good level of service to the public*”. The report further describes the workforce as professional, committed and enthusiastic. Additionally, in HMICFRS’ publication the “State of Policing 2020” which captures all aspects of policing in the UK, Crown Dependencies and Overseas Territories, the head line in page 129 states “*The RGP offers a good level of service, but there are areas where it could improve*”.
- b) I also alluded earlier on in my statement that I tried hard to improve on efficiencies by releasing sworn police officers to core policing duties with police support staff taking over roles which did not require to be performed by warranted officers. For this to materialize I required the support from HMGoG which unfortunately was not forthcoming. I also presented a case to make cost savings arising from the appointment of GPF convenors but again did not receive the support required
- c) Also under this sub-heading of “Efficiency”, the GPA Chair made reference to the action plan which was appended to my application for the post where I had stated that I would be setting up a working group to attend to the recommendations of the 2016 report which were still outstanding. This is correct and whilst I was unable to fulfil this particular action in my proposed plan, I have offered explanations of the unprecedented operational demands we faced which caused me to re-prioritise my actions. It is key to note that the “action plan” referred to contains a total of 37 actions which I had committed to complete by May 2022 at the end of the term of my Warrant of Office. By May 2020, I had already completed 16 of those actions. Work had also commenced in respect of another 10 actions, partially completing some, but not being able to progress others because it required other stakeholder participation and commitment which regrettably was not forthcoming or indeed because I was unable to address because of resourcing issues. There also remained a further 11 actions to be completed which included the one referred to in the GPA Chair’s letter i.e. the putting together of a working group to address the pending

recommendations of the previous HMICFRS report. My performance against this “action plan” was meant to have been reviewed by the GPA in April 2020 but this review never took place. In my opinion this would have been an invaluable opportunity for the GPA to assess my performance and equally for me to brief the GPA on everything I had been doing and why I had been doing it. Furthermore, the concluding paragraph in the paper I presented for my promotion and which is being referred to by NP, the CM and GPA, there is a very important comment that I make and which I happily transpose to this statement. Page 9 of the paper in the conclusions paragraph, reads *“In policing, things change very quickly and therefore whilst the intention is to deliver on the stipulated actions, unexpected exigencies may warrant a review of these actions.”*

- d) As soon as I received the HMICFRS report, together with my colleagues, we prepared a road map to address all the recommendations contained therein. I also prepared a rationale explaining why the recommendations of the 2016 report had not been addressed. I submitted these to the GPA and MoJ. Neither raised any serious concerns, on the contrary, they were content with the way I was approaching the matter.
- e) Still under the ‘Efficiency’ subheading, the GPA Chair stated that neither NP or the CM seemed to have the full picture regarding the collision at sea. I have provided details in the preceding pages of my actions and communications in this matter and therefore there is no point in me rehearsing it here again suffice to say, that as far I know, both officials were briefed appropriately of the incident. I say this because aside from the face to face meetings and text messages exchanged, I was led to believe that the AG who I was dealing with very closely on this matter was feeding up to them – not that there was that much to feed up until such time as I received notion that (i) there were questions being asked in the Spanish parliament by Vox and (ii) the lawyer representing the families was indicating that they would be filing a civil claim. Both of these matters were raised in a timely manner with the pertinent officials. (In fact, the AG confirmed to me by WhatsApp message on 20<sup>th</sup> May 2020 at 1838hrs that the CM knew of my discussions with the him).
- f) In terms of the investigation proper, having been made aware that the MPS team had met with the staff at The Convent who in addition to receiving briefs from the Governor’s legal advisor, the AG, gave me a sense of certainty that the reason NP

had not sought an update from me was because he was up to date on all relevant facts. My thoughts of this are based on the fact that NP never raised the issue of communication with me directly, or asked for clarification on any matter. I did not sense in the slightest that there had been a breakdown in communications with NP and the CM and it is again regrettable that they say that they perceive this to be the case. All this against the backdrop of an emergency crisis and Gibraltar's response to COVID-19 which was very challenging in terms of policing as has been practically all over the world.

- g) In Gibraltar's constitutional arrangement, the AG is the principal law officer of the Crown who advises both the political Government and the Governor.

ii. *Effectiveness* –

- a) In this paragraph the GPA Chair refers to the RGP finding itself without one of its sea assets which had been damaged in the collision and which in their view severely hampered the RGP's effectiveness at sea. He added that the consequential increase in legal workload arising from the collision at sea would also compromise the RGP's effectiveness because of the claims that would be levied at the Force.
- b) The opening statement in this paragraph is completely misleading. Whilst evidently it is desirable that any asset whether human or otherwise is infallible, in reality this is an impossibility. In this case whilst one asset was temporarily out of action pending repairs, the RGP Marine Section's resilience did not hamper their operations. The RGP had other assets to deploy and a perfect testimony of this is that not long after this incident, at the request of HMGoG after I offered our services, we undertook the task of evacuating some British Nationals from Morocco due to the pandemic and this operation was carried out with one of the other RGP vessels. The RGP's maritime assets at the time comprised of (i) the Sir Adrian Johns, a 26m long patrol vessel, (ii) the Sir Joshua Hassan, a 12m patrol vessel, (iii) the Sir Francis Richards, a 14m interceptor and (iv) the Sir John Chapple, another 14m interceptor, which was the one involved in the collision. I believe there was also a [non-operational] RHIB that was used for training. I have since come to learn in April 2022 that the largest of the patrol boats in the RGP Fleet, the Sir Adrian Johns, has been decommissioned.

iii. *Probity and Integrity* –

a) Under this sub-heading the GPA Chair explains that NP and CM felt that in their dealings with me I left them with a sense that I lacked probity and integrity. They refer to the maritime incident as only “one case in point”. There are no particulars of any other dealings I had with them which could make them feel that way. There is also reference to the AG expressing the same feelings. I have not had any dealings with the AG regarding the HMICFRS report simply because it is not a matter that concerns the AG. My dealings with the AG regarding the maritime incident have all been positive as the evidence suggests. However, the only occasion where there has been an element of conflict between the AG and me was the encounter of the 12<sup>th</sup> May 2020 relating to Op Delhi. Even with this conflict, the AG and I spoke about our differences afterwards and it was he who said that he would put the issue to a misunderstanding between us. Evidently his position in this regard has changed.

iv. *Independence –*

a) The GPA Chair said that NP and CM linked part of the report where it stated that the RGP did not fully understand its exposure to the risk of corruption, to the inability of the RGP to claim that it acts independently in any investigation unless this recommendation, which had remained outstanding for the period of my service, was properly addressed.

b) I learnt of this recommendation when the report was received on 9th April 2020 as a new recommendation so it is incorrect to state that the recommendation was actually outstanding prior to this. The road map devised to address the recommendations contained a section dealing with this matter.

c) Whilst the HMICFRS inspection did not suggest that there was corrupt practice in the RGP, I do recognise that the Force is susceptible to a small but pernicious element whose improper or corrupt behaviour may bring about a negative effect on public confidence. In my 36 years of service, I have not known an RGP Senior Command Team that has not decisively dealt with officers involved in improper or corrupt practices. From uncovering, in the mid 1990s, that the Deputy Commissioner of Police and members of the Drug Squad were involved in improper practices resulting in the conviction and imprisonment of the Deputy Commissioner and dismissal of a few officers, to the termination of service in the last 10 years of 16 officers for varying

degrees of misconduct. Under my leadership this zero tolerance approach prevailed. Indeed, I am of the view that Gibraltar's culture, at least as it applies to uncovering corruption in the police, is one where the identification of and weeding out officers who behave in an improper or corrupt manner is probably a lot easier than how it manifests in the UK police service. Being a very small police force in a jurisdiction where everyone practically knows each other has its many disadvantages, but equally, it has its advantages and in my view the identifying of officers who are derailing is not as complicated a task as perhaps it is for the UK Police.

- d) Of course, the promotion of a work environment that dissuades the breeding of improper and corrupt practices is absolutely desirable if not essential, which is why I was happy to receive this recommendation in the report and work towards better understanding the risks and mitigating such practices. The recommendation was being addressed by a number of measures which included investing in the training up of officers specifically on counter corruption and also devise the necessary policies designed to support our efforts and to complement others already in existence such as the 'Compromised Persons Policy', the 'Alcohol and Substance Abuse Policy', the 'Gifts and Hospitality Policy', the 'Bullying Policy' and 'Grievance Policy and Procedure' which I had introduced during my tenure as Commissioner. It was my intention to follow approved professional practice on counter corruption researched by the UK's College of Policing.
- e) During my service I have been involved in numerous investigations, some very serious, where law enforcement officers, not only from the RGP but of HM Customs too, have been suspected of corruption or improper practice. In fact, at the time of my forced early retirement the RGP, under my command, were investigating two cases of suspected corruption which potentially reached the highest levels of the community. I have never been one to shy away from these tasks, on the contrary, I have carried out my duties fairly but firmly, always remembering what the Office of Constable stands for. I reiterate that the RGP that I have known has done all it has been able to do to counter corruption or improper practice in its ranks. The record definitely speaks for itself and there are 4 other former Commissioners of Police who are still alive who can vouch for this. I equally experienced certain situations where HMGoG's intervention seriously conflicted with the RGP's efforts of setting example with those officers who had behaved in a corrupt or improper manner. This conflict was detrimental in my view for the RGP as it went by setting and enforcing standards.

I will provide examples of these in the forthcoming section in this statement where I write about my relationship with the CM

**The letters from NP, the CM and the AG to the Gibraltar Police Authority dated 3<sup>rd</sup> and 5<sup>th</sup> June 2020.**

147 Having read and digested the letters of these officials in response to the letter from my lawyer to the GPA on 28<sup>th</sup> May 2020, I would like to make the following remarks:-

(i) The letter from NP

- a) The letter from NP to the GPA dated 3<sup>rd</sup> June makes very limited reference to the detail surrounding the “concerns” he vaguely suggested to the GPA at the meeting of the 18<sup>th</sup> May. It rather responds to points raised in my lawyer’s letter dated 29<sup>th</sup> May 2020 taking up issue with most if not all points raised in it. As previously highlighted earlier on in this statement, I had requested the GPA Chair whether he had the concerns of NP and CM in writing and I was told he would be sending them to me which he did not.
- b) In the second paragraph of the 2<sup>nd</sup> page, NP makes a comment alluding to “*already-existing*” concerns he had about me. I have never had any of these pre-existing concerns communicated to me, either by NP, the previous Governor, any member of the GPA, the CM, the MoJ, the AG or the DPP for that matter.
- c) In the third paragraph of page 2 of NP’s letter, he makes reference to the collision at sea raising serious concerns about the leadership at the RGP but fails to particularise what these concerns were.

In the fourth paragraph of the 1<sup>st</sup> page, and in relation to the collision at sea, he mentions that at the time of the immediate aftermath, he suspected that I was being evasive with him in terms of not disclosing information. He alludes to me informing the CM that the incident had occurred outside BGTW whilst I was telling him that it was still not clear where the incident had occurred. I have previously covered in great detail my involvement in the said incident and offered explanations of how information was disseminated. I was not aware in the slightest that NP felt suspicious about my demeanour which incidentally was in the presence of the AG and Supt Richardson. He certainly did not raise his suspicions with me or any of the others present. I want to categorically state that there was absolutely no



motive whatsoever for me to be evasive with NP at any point. If anything, all I wanted was to impart as accurate and validated information possible. It does not make any sense, given all the actions I carried out to deal with this incident, not least the seeking out of an independent team to take over the case, to even contemplate being evasive towards him in the presence of the AG and Supt Richardson, both of whom knew the detail of what we were dealing with at the time. In my view it infers that the AG and Supt Richardson were by default part of the plan (in NP's mind) to be evasive and with the utmost respect, this is absurd.

- d) In the 3<sup>rd</sup> paragraph on the 3<sup>rd</sup> page of NP's letter he refers to a growing unease which he had over the months in relation to the numerous allegations of bullying and mismanagement that he had picked up on. To my knowledge, since NP took up the role of [interim] Governor in mid-February 2020, there had not been any allegations of bullying or mismanagement. I am unclear what specifics he is referring to and to what date(s) these relate – were they during the very limited time period he was interim Governor or before when he was deputy Governor and a member of the GPA? He certainly did not bring his concerns to my notice; neither have the GPA raised these serious concerns with me. I am also uncertain whether NP had digested the AAP Associates report which in its Executive Summary specifies that they found no evidence of systematic bullying in the RGP. The said report had been disseminated to the GPA (during the time NP was a member of the GPA) and I believe to the Governor and CM. NP had only been interim Governor since 16<sup>th</sup> February to 10<sup>th</sup> June 2020, just over 3 months, during which time he is supposed to have developed these serious concerns about me.
- e) Still on the 3<sup>rd</sup> paragraph of the 3<sup>rd</sup> page, NP expressed further grave concerns about the part in the HMICFRS report which makes reference to the RGP not being alive to the *potential* for corruption. He states that I did not address this recommendation in the report. NP is not correct in this regard as straight after receiving the report and this new recommendation I prepared a road map of how we were going to deal with each of the recommendations which included plans to better understand the exposure to the risk of corruption and determine the best model for better providing counter-corruption capabilities, to identify and pursue corrupt employees, or employees who are susceptible to corruption. The GPA Chair knew of this road map and my intentions when he was called by NP to the meeting on 18<sup>th</sup> May 2020.

f) I find it surprising that NP held those deep and grave concerns about me prior, during and post to the collision at sea incident and that at no time did he feel it appropriate or necessary to call me in and put these concerns to me, or even raise them with the GPA for that matter. I really would have hoped to have been given the opportunity to discuss with him or the GPA all the concerns he had about me and the RGP with a view, if necessary, of taking whatever remedial action necessary to address the issues. Incidentally, none of the pre-existing deep concerns that NP had about me are mentioned at all in the letters from the GPA inviting me to retire.

(ii) The letter from the AG –

- a) I have previously covered in this statement the evidence concerning the AG's involvement and posture with Op Delhi as far as I know it - in particular his views that he would pull the plug on the case if there was any indication that it exposed the CM on flimsy grounds and that he would defend the CM "to the death" after I told him that I felt him to be in an awkward/compromised position with Op Delhi. This is in stark contrast to comments he makes in the letter of the 5<sup>th</sup> June 2020 in the 2<sup>nd</sup> paragraph of page 2 where he states that he is "is not aware that the Chief Minister is a person in need of protection in the context of the criminal investigation in question." He did in fact discontinue the prosecution in early 2022 when he filed a *nolle prosequi*.
- b) The main thrust of the letter deals with his loss of confidence in me arising from what he describes as a serious breach of trust which as I have already explained I refute in its entirety. There were other witnesses at the meeting where the AG claims to have said that he told me that I should revert to him with a rationalization of charges before doing anything else. In any case, on the 13<sup>th</sup> May, when we had the opportunity to speak face to face about this matter, the AG said he would put the issue to have been a misunderstanding. I was happy that a line was being drawn under the matter as far as the AG and I were concerned.
- c) In the 4<sup>th</sup> paragraph of the 3<sup>rd</sup> page the AG mentions that he discussed Op Delhi with the DPP who advised him that the RGP had drawn up a list of 76 charges. As far as I know, charges were not drawn up at that stage. What I knew was that the team had uncovered in the region of 76 "offences/counts" of suspected criminality. This is a significant difference to what the AG is saying.

- d) I am also somewhat perplexed at how the AG confidently asserts in the 4<sup>th</sup> paragraph of the 3<sup>rd</sup> page that JL was aware for many months of the RGP's interests in him. This sensitive information was only known to a very close circle, so from this I deduce that JL was actually tipped off by someone.
- e) The AG's decision to file a nolle prosequi against the defendants on the 26<sup>th</sup> January 2022 in the Operation Delhi case has been the subject of public disquiet not only because the DPP himself has publicly said that he considered that there was sufficient evidence against the defendants to convict, but also because the allegations against the defendants were that they had undermined public security by interfering with the NSCIS - this in the context of guarding Gibraltar, including the UK military base here (which of course is a potential target) against terrorism and the ongoing fight against serious and organized crime which is also recognized to be a risk to National Security. Gibraltar has previously been the target of terrorists who have come in through the frontier e.g. the Argentine commando incident in 1982, the IRA plot in 1988, and an Al Qaeda cell moving through the border in August 2012. A further example of how the integrity of Gibraltar's security was being constantly reviewed is a communication I received from Lt. General Ed Davis on the 3<sup>rd</sup> January 2020 where he expressed concerns of an emerging situation in Iraq which he was considering in the wake of the interdiction in Gibraltar of the very large crude carrier, Grace 1, laden with Iranian oil and which was destined to Syria. His message to me reads as follows:-

*"Commissioner, first, happy New Year.*

*You will have seen the Iranian attack on the US Embassy in Baghdad as a result of the US targeting Iranian militia. You may already have, but if you haven't, would you please reach into your network back in the UK to check if there is any specific threat intelligence relating to Gibraltar – especially given our involvement in Grace 1. CBF is doing the very same. And I have asked him to speak to you to sync any insights/resultant changes to policing posture. Should you wish to discuss we can call a core GCC gathering to discuss. I will inform CM so he is in the loop.*

*Thank you.*

*Ed"*

Further and more recent context on the importance of ensuring Gibraltar's security is upheld is reinforced by the incumbent Governor, His Excellency Sir David Steel, who is

quoted in the Gibraltar Chronicle's edition of 11<sup>th</sup> May 2022, speaking at a local businesses counter-terrorism advice in security conference that "...the only thing that keeps me awake at night is our personal and physical security" - he said this as he reflected on Gibraltar's role during the arrest of the tanker Grace 1 for breaching EU sanctions amongst other issues.

Gibraltar's geographical position is very exposed to serious and organized criminality, more so because of the neighbouring region in Spain which has been hailed by Spain herself as one of the most hostile criminal regions in the nation. The importance of protecting Gibraltar's borders is crucial to uphold our security and it is therefore in my view not a subject to be compromised or tampered with.

- f) It is not for me to speculate further than to say that the extent to which the AG has gone to protect certain interests goes a long way if not all the way explaining why I was pushed out of office.

(iii) The letter from the CM –

- a) The CM stresses that the allegations levelled at him are completely untrue. He did not explain the original reasons why he lost confidence in me which are meant to be the ones he verbally imparted to the GPA Chair but which were never confirmed in writing as per my request to the GPA Chair.
- b) He alludes to there having been a breakdown in the relationship I had with NP, the AG, the DPP and himself suggesting that my position was untenable because of this. In this regard, all I can say is that any breakdown in relationship only occurred between the AG, the CM and me – and this was as a result of the encounter at the Cabinet Room on the 12<sup>th</sup> May which related to Op Delhi. As far as I know, I have never had a conflict with the DPP which could lead me to understand that our relationship had been fractured. Neither was it the case with NP who despite him having very grave perceptions about my ability to lead the RGP (which I have only come to know of now), had never aired these with me to give rise to any form of conflict leading to a breakdown. I was therefore totally oblivious that NP may have thought that our relationship had broken down. The opposite was evident when he engaged with me in friendly terms to help him out on a personal matter on 9<sup>th</sup> May 2020 and arranged a

meeting of the Gibraltar Contingency Council on 16<sup>th</sup> May 2020 of whom I was a key participant.

- c) The CM only skims the surface when he explains the moment he called me up to the Cabinet Room on the 12<sup>th</sup> May 2020 and omits the full content of his reprimand to me and the threat he levelled. The extent of that particular encounter is accurately reflected in the notes I made shortly after I left the Cabinet Room and which I have already referred to previously.
- d) He also claims in the 3<sup>rd</sup> paragraph of page 5 that he had no reason to believe that the investigation (Op Delhi) was of JL, yet this featured in my briefing to him and others way back on 11<sup>th</sup> May 2019 as is confirmed by the AG himself in his letter to the GPA (See 2<sup>nd</sup> paragraph in Page 3).
- e) The CM insists in his letter that I told him that the Op Delhi investigation team had executed the search warrant on the advice of the DPP. This was not the case – what I 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. Notwithstanding, it is abundantly clear from my account and the letter in question that the CM raised a number of operational issues with me concerning Op Delhi but yet in Parliament claimed he had not.
- f) The CM makes reference to correspondence I sent to Hassans who were asking questions on whether the DPP had advised on the execution of the search warrant on JL and that I had confirmed that was not the case. This is a key issue because as stated previously, a letter from Hassans dated 15<sup>th</sup> May 2020 made reference to (i) the DPP advising against the application for the search warrant and (ii) some misrepresentations that the DPP had actually advised on the warrant. It had been ascertained at the meeting with the AG and others on the 15<sup>th</sup> May 2020 that neither the DPP or Supt Richardson had communicated this to Hassans at which point the AG then stated that it must have come from the meeting I had with the CM on the 12<sup>th</sup> May 2020. In essence what the AG was saying was that the CM had communicated to Hassans that I had said the DPP had advised on the warrant which in turn caused Hassans to refer to this point in their letter. It was at this point that I told the AG and others present that I felt “totally sold out”.
- g) In the 1<sup>st</sup> paragraph of page 7 the CM states that he afforded support to the Op Delhi investigation from the beginning and caused HMGoG to be a complainant in the case.

It is my understanding that such complaint was subsequently withdrawn post to the date of the letter (5<sup>th</sup> June 2020). As alluded to previously the prosecution was also discontinued following an unexplained decision by the AG and notwithstanding that the AG himself said publicly that the DPP considered there was sufficient evidence to put to a jury.

- h) In his letter he denies his actions constitute interference with a live criminal investigation, a matter which is demonstrably false. I have never before in 36 years of policing faced such an interference by a Minister or heard of any police officer in Gibraltar ever having been treated in this way.

I will now proceed to explain the relationship I enjoyed with NP, the CM and the AG and the GPA.

### **Relationship with the core participants**

#### **Mr Nick Pyle OBE**

148 I have not had much contact with NP during my service before or after being appointed Commissioner of Police.

- a) A significant event which we were both heavily involved in was the airport incident in February 2017 which caused a serious rift between the Ministry of Defence and HMGoG. NP was acting Governor at the time. This related to a criminal investigation which was being unlawfully handled by the MOD Services Police and which the RGP took a firm stance on. I led the RGP's operational response to this case. The matter escalated very quickly with the relationship between HMGoG/RGP and MOD suffering considerably. I did not deal with NP on the matter but I know my predecessor did and was unsuccessful in defusing the tension because of some very entrenched positions. I distinctly recall senior counsel for the Crown in Gibraltar (Ricky Rhoda QC who was possibly acting AG at the time and who incidentally supported the RGP's position) advising NP on the matter, and NP still opting for UK FCO legal advice which was not necessarily in concert with the AG's. It is my strong view that NP's inert activity during this dilemma was a contributory factor to the unfortunate escalation of events which attracted a lot of adverse interest from the local/international media and caused a serious fracture in the relationships between HMGoG and the MoD which

was only resolved after the intervention of the current Chief of Defence Staff, Admiral Sir Antony David Radakin, and in which coincidentally Mr. Gomez acted for the principal military officers in Gibraltar at the time.

- b) There was another subject where I had a differing view to NP and this was on the security alert state for Gibraltar which for obvious reasons I will not elaborate in this statement. HE at the time, Lt. Gen. Ed Davis, and I were in agreement with the rationale that determined the security alert state for the jurisdiction and this was not shared by NP. However, to my knowledge, these differing views did not lead to any acrimony in our relationship – at least not for my part.
  
- b) I know NP was in close contact with the RGP on a particular project regarding the building of new kennels for the dog section and a new firearms training wing. He was the facilitator for the provision of part of the funds for the said builds which we were receiving from the FCO. This project was managed by the then Assistant Commissioner Richard Mifsud and therefore NP dealt with him most of the time.
  
- c) Subject to confirming with my diary whilst in service as commissioner of police, I believe to have met with NP on a one to one basis on only five occasions, three of which were on 5<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> June 2020 with these three latter encounters being very brief and relating to my early retirement. My first one to one meeting with him was at his request on 21<sup>st</sup> March 2019. He wanted to seek my views on serious and organized crime in the region as I understood this subject featured in the Brexit negotiations. This meeting was held in his office (not the Governor's office) and I am not certain whether he was acting Governor at the time or performing his permanent role. NP was also present in his capacity as Deputy Governor in a meeting I attended with HE and the GPA Chair to discuss the findings of the GPF staff survey, though I cannot recall the date of this meeting which clearly must have been after the publication of the GPF's staff survey and way before Lt. General Ed Davis' departure from Gibraltar in mid-February 2020.
  
- d) I then met him again at his request very shortly after he assumed the role of Interim Governor to discuss Gibraltar's security alert state. In this conversation he reminded me how he had a different view to Lt. General Ed Davis and wanted to review this matter urgently. He wanted to seek my views on this. I informed him that together with Commander British Forces Gibraltar (CBF) , Commodore Tim Henry, we were working to have a study carried out of the whole jurisdiction using military defence

intelligence assets which could inform or influence the decision making process that sets the local alert state. He undertook to discuss this matter further with CBF. At this same meeting I also asked him whether he wanted to meet me on a monthly basis in the same way I met with Lt. General Ed Davis (as indeed my predecessors did with previous Governors) and he said he would revert to me as he was at the time without a Personal Assistant and needed some space to manage his responsibilities, something which I totally respected. As it happened, I never held monthly briefings with NP during his brief period as interim governor – he did not revert wanting to meet me as I had done with Lt. Gen Ed Davis on a monthly basis since I was appointed.

- e) My next contact with NP was as a result of the collision at sea involving the RGP's Marine Unit and which resulted in fatalities where I have evidenced all the communication I had with him.
- f) My dealings with NP have always been cordial and professional. Not on any occasion have I been evasive or untruthful on ANY matter with him. I have had absolutely no reason other than to be open and frank with him. Similarly, I have not sensed in the slightest that NP has held any concerns whatsoever about my ability to lead the RGP. If indeed he has had any concerns, he had certainly NOT brought them to my attention formally or informally prior to the events of late May/early June 2020, and indeed he still did not directly raise any matters of concern to me during this period, or ask for my response to any apparent concern. Neither has he to my knowledge shared his concerns with the GPA when he acts as a member of the GPA (which is practically all the time other than when he performs the role of acting Governor)

The last contact I had with NP before the 22<sup>nd</sup> May 2020 was via email on 9<sup>th</sup> May 2020. I received an email in a friendly tone from him asking for permission to park his wife's car outside Police Headquarters as she was partaking in a charity event. Permission was obviously granted. He thanked me for affording him this assistance .

In case it is useful, I have appended the full extent of text exchanges I have had with NP since I was in service.

**149 Mr Fabian Picardo KC MP**

- a) I have had only one instance where I have had contact with the CM as a practicing lawyer; this was on an occasion when I was a Chief Inspector in the Professional



Standards Department and he was representing a police officer during an interview under caution.

- b) I never had engagement with him as a lawyer practicing criminal law – I believe his career path took him more to practices akin to international wealth management.
- c) I also had occasion to engage with him when he was a member of the opposition when he negotiated the positioning of a PA sound system for an event organized by the Gibraltar Socialist and Labour Party at a local beach in order to ensure compliance with the rules and regulations applicable to the area.
- d) I was aware that in 2013, the then Commissioner of Police at the time, Eddie Yome, communicated with the CM concerning an investigation I was leading into deep rooted corruption within HM Customs (Gibraltar), where it was suspected that HMGoG were being defrauded of hundreds of thousands of pounds. The said department comes directly under the remit of the CM's portfolio. I came to learn from Mr Yome that he came to an agreement with the CM and the then Collector of Customs, Mr John Rodriguez, of how to conclude the investigation because pursuing it could potentially cause reputational harm to the jurisdiction. Whilst I was not entirely in agreement with how this investigation was being wrapped up, I accepted that the decision did not rest with me. My colleagues and I had worked hard with some assistance from the Anti-Corruption Unit of the UK's National Crime Agency and I felt it was premature to conclude the investigation. The key part of the agreement to bring this investigation to a close was that HM Customs (Gibraltar) would be subjected to an inspection by a team from the National Crime Agency with a view of identifying opportunities to mitigate malpractices which were highlighted during the course of the investigation. To my knowledge the said inspection to eradicate potential corruption in HM Customs (Gibraltar) has never been carried out.
- e) On the 6<sup>th</sup> August 2018, I had communication with the CM concerning corrupt/improper practices in Borders and Coastguard Agency. This communication was generated by the CM and it related to officers in this agency suspected of being involved with Class A drugs. The CM is the Chairman of the Borders and Coastguards Agency. In the WhatsApp exchange the CM told me he had come by some very damning information on social media and that he did not know how to handle it. I advised the CM that I would undertake an investigation into the matter but that I was hardly surprised of the information being circulated and I believed that the problem of this type of improper practices extended to HM Customs and the Gibraltar Fire and Rescue Service, something which the CM agreed with me. The CM mentioned to me

that the Borders and Coastguard Agency should be the next place where mandatory drug testing should be carried out. To my knowledge no such policy has been devised in Borders and Coastguard Agency, HM Customs or indeed the Fire Service.

f) As a member of RGP's Command Team I would describe my relationship with the CM to have been a mutually positive one. There were occasions where he praised/supported the efforts of the RGP and mine in particular and other occasions where he would assert himself over issues the RGP were dealing with and which he disapproved or was not in agreement with. I can single out a few examples of both these type of occasions. I will firstly describe the occasions where he praised and/or supported me and then refer to the other more adverse instances:-

- i. The "airport incident" referred to above in the paragraphs describing my relationship with Mr Pyle. My RGP colleagues and I were praised by the CM for the manner in which I handled this case. He also publicly congratulated the RGP on GBC TV.
- ii. The CM also privately and publicly congratulated me for conducting cross border police operations to tackle serious and organized crime in the region.
- iii. The CM pledged his full support for a decision and actions I was contemplating to take in August 2018 during a large public music event where I feared for public safety.
- iv. In September and December 2018 the CM thanked me for several interventions we had carried out on police officers allegedly involved in corrupt/improper practices. He wrote to me saying *"This is critical work. It shows the force doesn't sweep things under the carpet. Well done for taking this head on. You have, as ever, my full support in dealing with this."* And *"...Well done for dealing with this as you have."*
- v. I was still not Commissioner when as a result of an intervention on a police constable, the whole of the RGP's Command Team sought a meeting with the CM. This related to a particular officer who held a key position of responsibility and breached the code of conduct by allowing (and even participating in) a criminal offence within No 6 Convent Place. This officer was carrying out the duties of protecting the CM. It was the CM's office that brought the improper practice to the RGP's notice. The officer was interdicted

from duty pending investigation. I believe a security guard at No 6 Convent Place was also arrested. Before the officer was able to be subjected to the discipline process we found out that that he was resigning from the RGP but remaining in employment within HMGoG. The RGP's Command Team met with the CM to air what in our view was a situation that did not fare well for the RGP's intentions to uphold standards and discourage malpractice within the Force. At the meeting, the CM in no uncertain terms told us that we could do whatever we wanted with the officer in question in terms of subjecting him to the disciplinary process, but that as soon as we had finished with him, the next day he would start in a new role with the Borders and Coastguard Agency (the CM is the BCA's Chairman). It was clear that the Command Team's pledge to safeguard the RGP's internal and external reputation had not worked. Consequently, the said officer resigned from the RGP and is now head of security at No 6 Convent Place enjoying, as I understand it, the same pay and conditions as he did when he served in the RGP.

- vi. A similar situation arose when the RGP arrested a female police constable for theft, an act committed whilst on duty. Before the matter was run through the disciplinary process and/or the courts, the officer resigned from the service and was offered a job in the Borders and Coastguard Agency.
- vii. Whilst serving as Commissioner I dealt with three further, separate situations where 3 officers had been interdicted from duty for allegations of (i) domestic abuse and drug consumption and (ii) for having accumulated numerous traffic summons, failing to appear in court and eventually having warrants of arrest issued by the court in their name. In these three instances the officers had clearly breached the discipline code on a number of fronts. I distinctly remember the matter of the officer who had all these warrants of arrest issued to his name and a date being set to hear his case under disciplinary procedures. I received a message from one of the CM's personal assistants with responsibility for industrial affairs asking me to defer the hearing on behalf of the CM. I enquired why this was the case and was told that HMGoG were looking to offer the officer an alternative post within government service. I strongly rejected this request and proceeded with plans to hear the case against the officer. Either the day before or on the actual day of the hearing, the officer, submitted his resignation. He subsequently took up a post within government. The other officer who was arrested for domestic violence also resigned, went

into rehabilitation for his drug addiction and was then offered a law enforcement post within the Environmental Protection Agency. The third officer who I believe received a caution for domestic violence also resigned and was offered a clerical post at the Motor Vehicle Licensing and Test Centre.

- viii. As Commissioner designate and before 1<sup>st</sup> May 2018, I was called with the then GPA Chair, John Gonçalves, to attend a meeting with the CM regarding the RGP's Annual Report for the year 2016/17. The said report had been laid in Parliament by the CM as required by the Police Act (2006). The CM was annoyed that in the section of the report covering cases of interest, he had been informed by a journalist that a local lawyer had been able to identify the persons involved in the case and that this was a breach of GDPR. The CM was disappointed that this section was even included in the report, telling me that the RGP did not need to market its work in this way. I explained that the report format was the same one that had been used for years before but he insisted that this section be removed. My understanding is that the original report was salvaged from Parliament as it had not yet been distributed and substituted with one which omitted the section covering the cases of interest.
- ix. Regarding the strained relationship with the Gibraltar Police Federation, together with the then Assistant Commissioner Richard Uilger, I met with the CM in June 2019 to discuss the issues I was facing and what I attributed them to. I also included in the discussion a proposal to make cost savings. The CM said he was amenable to my ideas but asked that I defer any movement on these till after the General Elections in 2019, something which I respected. He also asked that I engage with the Chief Secretary to progress my proposals when the time came.
- x. I had another meeting with the CM in the presence of AC Uilger concerning the GPF which I have previously covered in para. 12 of this statement.

I have exhibited all the text messages I exchanged with the CM which will serve to corroborate the type of relationship I had with him. Like with NP, I have never been evasive or misleading to the CM in any matter. Whenever I have been uncertain of any particular issue he has enquired from me I have told him so and then later reverted to him with the information requested. I cannot stress enough that I have always behaved with honesty and integrity in all my dealings with the CM.

- a) I have known the AG from middle and comprehensive schools as I believe he is only a year older than I am. Whilst we partook in the same sports at that young age we did not really enter into a friendship.
- b) I know he spent many years away from Gibraltar studying law in France and was then retained by HMGoG to be their representative in the Gibraltar office in Brussels. I know he built a good reputation defending Gibraltar's cause abroad during these years.
- c) On his appointment as AG I eventually began to engage with him on criminal and other legal matters. One of first projects I worked with the AG was to formalize processes between the RGP and the MOD Services Police under the Armed Forces Act following on from the "Wattersson Incident".
- d) I also worked with him as part of the Gibraltar's technical team discussing Gibraltar's withdrawal from the European Union. On this subject I travelled with him to London, Madrid and Algeciras on a few occasions to hold talks with our Spanish and UK counterparts.
- e) There was one occasion where he asked for my help in relation to a family problem abroad which I gladly helped to resolve. Wherever I could help with issues such as these I did and I must say he reciprocated when I asked of him.
- f) With time and because of the relatively positive engagements we had, trust and confidence between us grew.
- g) The biggest of cases I dealt with him was the arrest in 2019 of the bulk carrier Grace 1 for breaching of EU sanctions. This was an Iranian super tanker laden with crude oil which was heading to Syria to off load its cargo in contravention of EU and I believe US sanctions. This intervention tested Gibraltar's capacity and capabilities in many quarters including the AG's and mine.
- h) I can categorically say that I enjoyed a very good relationship with the AG and I had no reason whatsoever to jeopardise that relationship wantonly.

I append all the text exchanges I have had with the AG which I hope will assist to corroborate the type of relationship I have described.

- a) I have known Dr Britto for many years principally because of his career as an educationalist. As Director of Education I found him to be very supportive of the RGP when it came to the provision of funding courses for the professional development of police officers – this when the RGP’s training budget did not stretch that far.
- b) His appointment as Chairperson of the GPA came a few months after I took up Office as Commissioner of Police. I found him to be a very pleasant person – one who offered views and advice without coming across as imposing. I would very often take heed of his advice as an experienced retired civil servant. He would equally take on board the advice from my then command team colleagues when we were dealing with perhaps technical matters which he was not well acquainted with.
- c) I would describe our relationship to be very good. I had a very transparent approach with the GPA which Dr Britto will no doubt be able to vouch for. I can also say that Dr Britto was very supportive of me and the RGP and expressed this support with praises when he felt this was warranted. He would equally ask probing questions on matters that he or the GPA had come to learn about and I welcomed his inquisitiveness because it allowed me to offer explanations which in turn broadened Dr Britto’s understanding of the RGP.
- e) When Dr Britto attended my offices on 22<sup>nd</sup> May 2020 to inform me of the GPA’s decision to invoke the section 34 process I could see that he was extremely uncomfortable. He confirmed that both he and the other members of the GPA had been shocked/surprised at the turn of events. He had a very mellow and even apologetic tone to his voice which was in stark contrast to the more aggressive tone and language expressed in the 2<sup>nd</sup> letter of the 22<sup>nd</sup> May 2020 which he signed and sent me late evening that same day. At the time I was disconcerted by the apparent change in his approach from the way he behaved with me at the meeting to the second letter he signed off.
- f) Because of my last contact with Dr Britto I am of the view that he does not fully grasp the notion of the GPA’s independence from the executive arm of government. Perhaps it is because he has been subordinate to a politician during his days as Director of Education and has assumed that the RGP should function as any other government department in terms of reporting lines. This he demonstrated to me during the meeting of the 22<sup>nd</sup> May 2020 when on a few occasions he told me that it would not be the GPA

who had the final say on what would happen to me after I had been invited to retire by the GPA themselves.

- g) I was very relieved that the GPA saw it sensible to seek independent legal advice on the ill-fated section 34 process which had been triggered but was equally displeased that having withdrawn their invitation to retire they opted to ignore my lawyer's communication where I was asking what process (if any) was the GPA considering after the withdrawal of the invitation to retire. I found this to be disrespectful to me and to my lawyers.

#### Other appendices

I have also appended the chat logs I held with officials mentioned in this affidavit for the sake of completeness;-

**Exhibit IM/28** are the chat logs with Christian Rocca QC, the DPP.

#### **Relevant Issues arising after I called for the Inquiry**

152 To provide context to the paragraphs that follow I would like to refer to deep concerns that I expressed my lawyers on 21<sup>st</sup> July 2020, days before I was to call for the Public Inquiry. It is a matter which was originally flagged by my UK counsel when we assessed and discussed potential personal risks and threats I could face in the wake of my retirement and disclosures I had made. These concerns related to my worry that because of the personalities involved in the circumstances surrounding my forced early retirement and the information I had disclosed, I would somehow directly or indirectly become the victim of a range of immoral and unjust treatments via a host illegal and unfair retaliatory measures.

153 Against the backdrop of these concerns I received information of an article that had appeared in the prestigious Spanish national newspaper "El Pais" on 3<sup>rd</sup> August 2020, which stated that a source close to Fabian Picardo's Government had revealed to the said newspaper that my early retirement was due to contradictory versions that I had imparted regarding the collision at sea. This caused me a great deal of alarm, more so when I had already called for the public inquiry which had been announced a week or so earlier. I took this "leak" to El Pais to be a deliberate attempt to seriously taint me and by default justify the reasons why I pre-maturely retired. A hyper link to this article is below-

<https://elpais.com/espana/2020-08-03/gibraltar-inicia-una-investigacion-tras-el-choque-mortal-de-una-patrullera-policial-con-una-lancha-espanola.html>

154 My lawyers wrote to the AG reporting the leak (bearing in mind that the content of the information leaked was actually the position of NP and the CM which had not officially been aired publicly) asking for the improper disclosure of this information to be investigated. My lawyer further requested that it was essential that there should be no further “briefing” against me, adding that the whole rationale of the calling of the inquiry was to ensure that relevant matters were dealt with thoroughly and in a judicial context, and not by way of trial by the press or social media which was the situation prevailing before I was forced to call the Public Inquiry. It is my understanding that the AG did not support my lawyer’s complaint to have this leak investigated. This was communicated to my lawyers by the AG’s counsel, Sir Peter Caruana. (**Exhibit IM/29**).

155 On the 19<sup>th</sup> February 2021 I received information from the Commissioner of Police, Richard Ullger, concerning a suspected conspiracy against me. This related to two police officers who were subject to investigation for corrupt/improper practices who were off work on sick leave. Because of their extended period of sickness the RGP were placing them on half pay in accordance with General Orders. Mr Ullger informed me that these two officers had been assured they would not go in to half pay and that their futures would be safeguarded by way of being provided alternative jobs in the Environmental Protection Agency. However, in exchange to being helped out, it was expected from these officers that they had to come forward with information (whether true or not) about me to maliciously try and tarnish my reputation before or during the Inquiry. Mr Ullger explained that the person offering the two officers these assurances was JL, though it was also strongly believed that there was involvement from No 6 Convent Place given that the RGP had been requested NOT to put these officers on half pay by an official at No 6 Convent Place who deals with industrial relations, namely Mr Michael Crome. I truly felt that I was a proper victim of crime and actually felt impotent despite enquiring what was going to be done by the RGP on the matter. I straight away reported the matter to my lawyer who, in turn, reported it to HE the Governor Sir David Steel. It is my understanding that HE had already been briefed about this by the RGP. Though I am at ease that whatever (if anything) is brought out against me is either fabricated or distorted in their attempt to achieve their aim, I am very concerned at the levels that some will go to cause me harm. As it happens, the case against one of the officers who was arrested for money laundering offences did not proceed after the DPP reviewed the case and deduced that there was insufficient evidence to secure a conviction – this, I understand, after a crown counsel had initially advised the



investigating team that the evidence was strong. Both officers have since resigned from the RGP and as the information that Mr Richard Ullger suggested 10 months earlier, have been offered a job in the Environmental Protection Agency which they started in January 2022.

156 On 20<sup>th</sup> April 2021, I was spending the day in Spain with my partner when I received a communication from Commissioner of Police, Richard Ullger. He told me that some obscene, antisemitic graffiti directed at me, had been found in the Upper Rock. He sent me photographs of this which I attach. I subsequently provided a statement of complaint to Sergeant Mark Garrett on the 21<sup>st</sup> April 2022 . (**Exhibit IM/30**)

157 On 25<sup>th</sup> June 2021, Commissioner Richard Ullger again contacted me to inform me that more similar offensive/threatening and antisemitic graffiti had appeared in the area of Landport Bridge by the entrance to the city centre. He sent me a photograph of this graffiti which I log as (**Exhibit IM/31**). My understanding is that a member of the public saw the graffiti and notified the RGP.

158 On 1<sup>st</sup> October 2021, I was contacted by Chief Inspector Sean Perera who informed me that more similar offensive/threatening graffiti had again been written in the same location at Landport Bridge by the entrance to the city centre. CI Perera sent me a photograph of the graffiti which was very similar to the two previous ones (**Exhibit IM/32**). In my view the culprit appeared to be the same person(s). I recall making a further statement of complaint in support of the original one I made on 21<sup>st</sup> April 2021 though I cannot find a copy of it – the RGP must surely have the said statement in their records.

159 On the 22<sup>nd</sup> October 2021, I received disturbing information concerning an ex-police inspector of the RGP. This information was not dissimilar in nature to the one provided by CoP Richard Ullger relating to the two officers who were being asked to conspire against me. The ex-inspector is in fact a close acquaintance of these two other officers previously referred to. They had previously worked in a same small unit in the RGP and now, after leaving the RGP, worked together in the Environmental Protection Agency. The said ex-inspector had to leave the RGP on quite bad terms following his arrest for domestic violence and his subsequent interment to rehabilitate for Cocaine addiction. As mentioned earlier, he was offered a post in the Environmental Protection Agency. The information suggested that the ex-inspector had been offered a cash reward by JL in exchange for information that could be used against me. When this reward had not been forthcoming and having committed to making a statement or provide information against me, he had complained but had been assured a promotion to Executive Officer or Higher Executive Officer within

the Environmental Protection Agency in lieu of the cash reward as this was easier to mask under the circumstances.

160 On 29<sup>th</sup> October 2021, I received a call from PC Jason Russell who informed me that yet again more graffiti had been reported at Landport Bridge. The content was again very similar to the previous ones. PC Jason Russell provided me with a copy of the latest graffiti. (Exhibit IM/33)

161 This type of cowardly and malicious act has caused me alarm and distress. The RGP has not been able to detect who is behind this.

*Terms of retirement not being honoured*

162 I have previously, in the paragraphs relating to my retirement, referred to the discussions I held with NP and the Chief Secretary to agree to the terms of my forced retirement. It is important to note that of all the terms I proposed, the Chief Secretary only disapproved of one and partially another i.e. I was not paid for any part of the term of my contract which I had not worked for and I was only paid a small fraction of my legal fees which I had incurred as a result of the challenge of the ill-fated section 34 process. The remaining terms were agreed by the Chief Secretary, these being (i) that my pension was worked out at the salary point I was at, which I would begin to draw in 1<sup>st</sup> July 2020 and would be taxable until I reached 55yrs, (ii) my untaken annual leave was to be paid and (iii) my time off in lieu which I had not been able to take was also to be paid.

163 It was based on these agreed terms that I worked out the commutation of my pension and gratuity for my future income when I commenced retirement. NP, at the time, reinforced in two written communications, that he would ensure I was treated fairly and with respect after I retired. This he assured me following concerns I expressed to him that I could still be the subject of potential contempt from those who had wanted me ousted from post.

164 As it happened when I reached the age of 55 in May 2021, I went through the process of applying to change my income tax and social insurance status as agreed with the Chief Secretary in June 2020. However, to my surprise I was informed by the Income Tax department that I did not qualify for the Emergency Services credits I was applying for and therefore my pension was to remain taxable until I was 60 and I would have to continue paying social insurance contributions too. The net financial effect of this is that I would be short of £1,130.00 per month for the next five years in addition to having to pay

approximately £200 per month social insurance contributions. Despite explaining to the officials that I had agreed my terms with the Chief Secretary as previously stated, I was unable to resolve the situation.

165 I consequently contacted Darren Grech, the Chief Secretary, by email and explained the situation I found myself in. He was initially very responsive and eager to sort the matter out. In fact, as can be read from the email exchange I had with him, he even stated that the matter had been practically resolved in my favour in July 2021. However, as time went by, his assurances and pledges asking me to trust him dwindled to the extent where his responses were extremely short, he would not answer the questions I asked of him to eventually not responding to my emails. The Chief Secretary's helpful stance changed for the worse as from September 2021 when he informed me that he had spoken to the CM about my situation and the CM had said that I should be raising the matter with him. From thereon the Chief Secretary has not progressed my matter to resolve it even though I told him that the agreement reached was between him and I and that the political government should, in my view, not meddle with such a personal administrative matter. Now produced by me marked **Exhibit IM/34** is the correspondence between Mr Grech and myself.

166 The correspondence I have had with the Chief Secretary on this matter demonstrates how unfairly I have been treated and continue to be treated. I am being financially castigated over a matter which was agreed way before I even had the slightest of notions that I would subsequently find myself in a position of calling for a public inquiry.

#### **Further information on hostilities directed at me**

167 During December 2021 and mid-February 2022 I came by information from three reliable sources that my lawyer and I were being "bugged". In other words, my privacy was being infringed and communications with my lawyer were being monitored. After giving very careful thought to the matter, I decided that I had to make an official complaint to the RGP. On 18<sup>th</sup> February I delivered a letter addressed to the Commissioner of Police which I handed over to his personal secretary. In this letter, I laid out my grave concerns and sought a meeting with him.

168 In mid-afternoon of the same date 18<sup>th</sup> March 2022, I received a hand delivered letter at my residence from Commissioner Ullger. He was assigning a senior officer to deal with my complaint. He stated that he would rather not meet me as he felt the needed to distance

himself from such a matter until such time and only if, he was required to get involved. I have received updates from Detective Superintendent John Field who has been unable to progress the investigation due to lack of leads even though I have suggested certain tactical options which would aid confirming whether or not others and I are being bugged. (**Exhibit IM/35**)

- 169 The reasons why I have included these issues in my statement is to highlight that the serious concerns which I raised way back on 21<sup>st</sup> July 2020 and which I had sincerely hoped would not see the light of day, have unfortunately and very worryingly manifested themselves in some form or another. I am deeply and genuinely concerned for my safety and wellbeing, moreover with the impact my statements may have once they are shared with the other side; but on the other hand, it is the only way I am able to relate my full account which is the truth.

#### **Concluding points**

- 170 In concluding my statement I would like to very briefly recap on what I consider to be the main points.

#### *Collision at sea – Op Kram*

- A. The reasons for NP and CM claiming that I did not provide timely and accurate updates to them on the collision at sea do not stack up. I provided information when this became available and 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. Attorneys General have always given the incumbent governor legal advice. I understand that this has been the case since the office of the AG was first established when Gibraltar became a colony in 1830. If the current AG considers that his loyalty is to the CM so that he may have withheld information from NP, then it is the AG and not me who should have been brought to task.
- B. There was absolutely no question whatsoever of me trying to be evasive with NP in the provision of information. It is an allegation which I totally reject. There was no reason for me to act as such. Quite the contrary, what I wanted was to provide accurate and verified information to him given the sensitivities of the matter. Again, the AG who knew the level of information that I had, was present during the times I met with NP to discuss the case. It is therefore incomprehensible that I would act evasively towards

NP with the AG (and others) present. In any event, I was totally oblivious of NP believing that I was disrespecting his post and this is simply because he gave me no indication that he was unhappy with the way I was dealing with the incident. I just wish he would have challenged me on any of the issues or concerns he now articulates at the time they occurred. I am convinced I would not be in the position I am now had he done so.

- C. When I informed the CM that the evidence pointed to the collision and pursuit occurring outside our territorial waters he responded saying that this did not concern him that much – that it actually helped that it had happened where it did.
- D. The RGP's Marine Section had resilience in terms of assets and therefore their operational activity was not hampered by having the vessel involved in the collision on the hard for repairs.
- E. The views of NP and CM that I have left them with a sense that I was lacking probity and integrity is apparently linked to the way I handled the collision at sea. They also refer to this as just one case in point. This infers that there are other points they have considered but which are not specified. This other point(s) can only refer to Op Delhi as the GPA Chair also alludes to the AG's loss of confidence specifically on my integrity and probity in the same paragraph of the 2<sup>nd</sup> letter to me dated 22 May 2020.
- F. To my knowledge the independent report submitted by Metropolitan Police investigating team on the collision at sea has not been critical in any way of how I handled the matter and neither have they uncovered any failings on the part of RGP management. I have not been privy to this report but this is my understanding of it.
- G. I received no feedback whatsoever from the CM, NP, AG, GPA, MoJ or DPP on the report I submitted upon the request of the CM under section 15 of Police Act 2006.

*The HMICFRS Inspection*

- H. The HMICFRS inspection was requested by myself because I wanted to progress and be transparent in doing so – this was not a process that was imposed on the RGP.
- I. Many of the issues highlighted in the report were actually identified by the RGP in its self-assessment but yet they are portrayed as findings by the inspecting team.

- J. The GPA did not express any serious concern with the way I set out to deal with the recommendations arising from the inspection – neither did Minister Samantha Sacramento, the Minister of Justice.
- K. I did not receive any feedback on the HMICFRS report from NP or CM.
- L. NP and the CM are being very selective with regards to the comments by HMICFRS in their “Overview” which apart from saying that the RGP is not “*as effective and efficient as it could be*” also very clearly states that “*the RGP offers a good level of service, but there are areas where it could improve*”.
- M. NP and the CM are being very selective when referring to the action plan I presented at the time of my promotion in November 2017 where they state that I did not oblige to one of the actions of convening a working group to address the pending recommendations of the previous HMICFRS report of 2015/16. They overlook or deliberately ignore that in this same promotion paper I make reference to a very important point which is that “*in policing things change very quickly and therefore whilst the intention is to deliver on the stipulated actions, unexpected exigencies may warrant a review of these actions*”.
- N. I do not associate myself with the parts in the report that suggest that the RGP was not alive to corruption. It is regrettable that the inspecting team has seen it that way without delving into the detail or enquiring how the RGP have dealt with corruption in at least the 36 years I have served. I have only very briefly alluded to some recent case examples of how we have dealt with corrupt / improper practices not only within the RGP but also in HM Customs (Gibraltar) and Borders and Coastguards Agency.

*Op Delhi – the hacking of the NSCIS platform*

- O. There was reticence on the part of the AG to see through the Op Delhi investigation and he expressed this to me in different ways. In fact some two years after the defendants were charged the AG used his powers under section 59(2)(c) of the

Constitution to discontinue the criminal proceedings, notwithstanding that the DPP had advised that there was evidence to convict.

- P. There was an improper interference by the CM and AG on and around the 12<sup>th</sup> May 2020 during the live operation when the Op Delhi investigating team were executing a search warrant on JL. I was severely reprimanded for the actions the RGP were carrying out.
- Q. I was threatened by the CM that there would be consequences if it was deemed that the actions of the investigating team were wrong/unlawful.
- R. The AG confirmed that there had been an improper communication by the CM with Hassans regarding an issue which the CM had taken up with me as to why the RGP had gone to JL with a search warrant. Hassans would not have had the information they put on their letter to me dated the 15<sup>th</sup> May 2020 had it not come from the CM himself. It was at that point that I mentioned to the AG and DPP and others that I had been totally sold out on this matter. It had become clear to me that having been reprimanded by the CM for allowing the intervention on JL, that I had crossed potentially the most powerful people in Gibraltar with the attendant realisation that they would want to remove me from post. The pretext that I had lied to the CM when, in fact, there appears to have been a misunderstanding highlights just how grave had become. I perceived these apprehensions and serious concerns straight away after chastisement by the CM and AG which is well before I decided to audio record the conversations submitted in my 2<sup>nd</sup> affidavit although the severity of the situation became more and more obvious as I realised that my position was at serious risk.
- S. I had perhaps naively perceived that my support for the investigating team in Op Delhi and their duty to act without fear or favour would be respected, but as soon as the CM reprimanded me in the way he did it caused me to realise that I had crossed the line having acted against a very powerful and well connected man in Gibraltar who could end up being prosecuted against the desire of the CM who himself had questions to answer in the investigation.
- T. The CM claims to have been supportive of the Op Delhi investigation but yet HMGoG withdrew their complaint post to my retirement.

*The invitation to retire*

- U. The process initiated by the GPA under section 34 of the Police Act 2006 was flawed, a matter which was accepted by the GPA. They consequently withdrew the said invitation.
- V. It remained unclear to me, despite my lawyer enquiring, what process the GPA would be following from thereon. The GPA did not offer any response. This caused me indescribable stress and anxiety. I had to seek medical assistance and was diagnosed with clinical depression arising from the way I was being treated.
- W. I was under threat of suspension or being forced to resign by NP who was ready to invoke section 13 of the Police Act 2006. In my view this was a totally unfair position to be put in given that NP could only invoke his powers under section 13 if the GPA had defaulted in their responsibilities, something which they had not.
- X. NP clearly wanted to get rid of me before the new Governor was installed. I understand that my lawyers will be making submissions in this regard.
- Y. I was practically forced to apply for early retirement. I was assured by NP that I would be treated with fairly and with respect post to my retirement.
- Z. In Parliament on 27<sup>th</sup> July 2020, the CM, in answers to questions put to him by the opposition, made innuendos to the effect that I had committed an act of gross misconduct and that NP was ready to invoke section 13 of the Police Act 2006.
- AA. The CM also lied in Parliament on 27<sup>th</sup> July 2020 when he said he had *“never put any pressure on any police officer to do his job in a particular way. I already expressed the view that it would be inappropriate for the Government to put pressure on a Commissioner of Police”* and that *“I have not raised with the Commissioner any operational issue”*.
- BB. It was because of the innuendos cast by the CM in Parliament and the intense public speculation in the street and social media (some of which suggesting I was involved in criminality) that I called for the public inquiry. I had practically began to accept and heal from the very unjust treatment I had been subjected to since the 12<sup>th</sup> May 2020 to 9<sup>th</sup> June 2020 but I was not going to allow myself to be abused any further by the behaviour of the CM in Parliament



without there being a proper and independent assessment of the reasons why I was forced into retirement.

CC. To this date I continue to be treated unfairly by HMGoG. The agreement I reached with the Chief Secretary concerning my personal tax and social insurance status has not been respected causing me significant monthly financial shortfalls in my occupational pension and future negative impact on my Old Age Pension when I reach that age. This agreement was reached on the 8<sup>th</sup> June 2020, nearly two months before I had to call for the Inquiry.

DD. I have put my life on hold in order to ensure that there is a proper resolution and redress of what I consider to be an assault on the principles of fairness and good government which we in Gibraltar expect to be adhered to.

SWORN by the abovenamed Ian McGrail

This 4<sup>th</sup> day of October 2022

at

# Personal Data

Personal Data

A Commissioner for Oaths

Keith L. Chichon BA(Hons)TEP  
Commissioner For Oaths  
Suite 5, 3 Turnbull's Lane  
PO Box 391, Gibraltar  
(+350 540 17 842)

Presented by Charles Gomez & Co, of 5 Secretary's Lane, Gibraltar, solicitors for Ian McGrail