

INQUIRY INTO THE RETIREMENT OF
THE FORMER COMMISSIONER OF POLICE

RESPONSIVE AFFIDAVIT OF IAN McGRAIL

I, IAN McGRAIL of **Personal Data** MAKE OATH AND SAY as follows:

1. This affidavit is provided at the request of the Commission of Inquiry and is in response to the affidavits filed by other core participants and witnesses as named below;-

The Honourable Fabian Picardo KC MP ("FP")

Nicholas Pyle OBE ("NP")

Michael Llamas CMG KC ("AG ")

Dr. Joseph Britto ("JB")

Maurice Morello ("MM")

Michael Walliker CBE ("MW")

Scott O'Malley ("SO")

Gary Smith ("GS")

I have read the affidavits of other witnesses, but I do not feel there is a requirement for me to respond to their accounts save to comment where necessary in general terms on some of their overarching evidence. Where I refer to any part of the evidence from any other witness, I will clearly stipulate this accordingly. The statements I am referring to are as follows;

Richard Uilger OTPM MSc

Cathal Yeats OTPM

John Field

Mark Wyan
Edward Yome QPM
Richard Mifsud QPM
Christian Rocca KC
Lloyd Devincenzi
Thomas Cornelio
John Perez MBE
Caine Sanchez
John Gonçalves MBE and 13 (past and current) members of the Gibraltar Police Authority
James Gaggero
Peter Canessa

2. This affidavit is supplemental to those I swore on (i) 20th June 2022, (ii) 26th September 2022, (iii) 4th October 2022 and (iv) 15th February 2023.
3. The contents of this affidavit are true to the best of my knowledge, information and belief.
4. I intend to structure my responses to the allegations and comments presented by the above-mentioned core-participants and witnesses by making reference to the “*Provisional List of Issues*” and cross referencing where possible to the other affidavits filed.

The Airport Incident – Issue 1

5. This issue was not one of the issues referred to me by the Gibraltar Police Authority (“GPA”) in their invitation to retire letters of 22nd May 2020 as being a reason why FP and NP claim to have lost confidence in my ability to continue leading the RGP. Neither did this issue feature in the letters NP and FP sent to the GPA on 3rd and 5th June 2020 respectively in response to my representations to the GPA dated the 29th May 2020. The issue was not mentioned to me at all in any of the conversations I had with NP, FP or JB in May and June 2020, or indeed in any conversations with those individuals following the incident itself in 2017. Therefore, this particular issue had no bearing whatsoever on the reasons I succumbed to the pressure asserted over me by NP, FP, the AG and the GPA to retire early from my post.
6. The first occasion I make reference to this issue, albeit very briefly, is in my Third Affidavit at para. 148 p.70-71 / para. 149F(i) p.74 / para. 150(c) p.77.
7. The pertinent dates for this matter are between 4th February 2017 and 8th March 2017.
8. At the time of this incident I was a superintendent in charge of the Crime and Protective Services Division. The Commissioner of Police (“CoP”) was Mr Eddie Yome. The members of the Senior Management Team were Chief Superintendent Mifsud, Superintendent Richard Ullger, Superintendent Cathal Yeats and myself.
9. The best possible background I can offer to this issue is the report that my predecessor CoP Eddie Yome requested from me (see affidavit of John Gonçalves – Appendix A , pages 28-41). It is key that the contents of this report are assimilated as indeed all the emails tendered and WhatsApp exchanges contained the Airfield Incident Disclosure List as they will go a long way to dispel the aspersions that are being levelled at me by FP, NP, MW and SO. The main points can be summed up as follows;-

- (i) A UK serviceman based in Gibraltar was suspected of possessing indecent images of children in his computer. The Joint Provost & Security Unit / UK Services Police, believing to have jurisdiction in Gibraltar, unlawfully arrested the serviceman here.
- (ii) The UK Services Police refused to collaborate with the RGP. The UK Services Police had no legitimate authority or powers under the Armed Forces Act 2006 to operate in Gibraltar.
- (iii) Negotiations to resolve and de-escalate the situation proved futile despite persistent attempts by the RGP.
- (iv) The MOD ignored the RGP's claim of jurisdiction over the case of the serviceman. They attempted to remove him and the evidence from the jurisdiction. Senior military officials appear to have lied to then CoP Yome and other RGP senior officers in their attempts to do so.
- (v) The RGP asserted its jurisdiction on the matter and were obstructed by senior military officials. The Chief Justice of Gibraltar, The Honourable Mr Justice Dudley, granted a warrant to the RGP to seize the exhibits being held by the UK Services Police. The application for the warrant was made by Senior Counsel at the time Ricky Rhoda CBE KC (previously the Attorney General for Gibraltar) on behalf of the RGP who were present to lay the information under oath.
- (vi) After heightened tensions and non-stop attempts by the RGP to resolve the matter, the MOD relented and did not fly out the serviceman or the exhibits.
- (vii) Three senior military officials were subsequently arrested for obstructing police and attempting to pervert the course of justice.
- (viii) CoP Yome consulted the AG throughout. The AG sought an opinion from Lord Pannick KC on the matter and his advice was that the RGP was correct in its application/assertion of jurisdiction and that the UK Services Police / MOD were acting unlawfully.
- (ix) The Chief Minister, who supported the RGP's actions throughout, thanked CoP Yome and all the officers involved both privately and publicly.
- (x) The Governor at the time, Lt. Gen. Ed Davis also wrote to express his thanks and gratitude to CoP Yome and all his police officers for the efficacy and manner in which the RGP had conducted the investigation.
- (xi) Secretary of State, Sir Alan Duncan of the Foreign Commonwealth and Development Office also conveyed his thanks to the RGP and Chief Minister.
- (xii) The MOD and the senior military officials apologised for their *ultra vires* actions.

10. The incident attracted wide media coverage.

Response to FP's affidavit

11. FP states that "*it became apparent to me [FP] that the manner in which Mr McGrail had led that investigation was unnecessarily institutionally confrontational in respect of the*

MOD... Mr McGrail had led the RGP into a dangerous, difficult and damaging situation for Gibraltar in terms of its relationship with the MOD, which would, and subsequently did, require a lot of my time and effort to mitigate” (see paras. 21 and 22 of FP’s affidavit dated 26 May 2022). He also texted NP on 14th May 2020 about a number of issues which were supposedly causing him to lose confidence in me, and which included “the runway incident, where we had to go in to bat for them despite all aspects having been mis-handled by the RGP (and parts of MOD also)”.

12. The evidence that follows shows these statements to be false. It demonstrates that FP was totally supportive of the actions carried out and was in fact actively encouraging the RGP to assert itself over the MOD whose officers he referred to as “fools”, “clowns” and “idiots” (see below), and has never (except for the obviously self-serving comment in a text message to NP in May 2020) expressed any concern about my or the RGP’s role in the incident.
13. I have not been privy to, or been shown a single piece of correspondence where FP has criticised the actions of the RGP, or mine in particular, other than the WhatsApp message FP sent to NP on 14th May 2020 (over three years after the incident). Quite the opposite is actually the case; all of the correspondence at the time, quoting FP or written by FP, was only full of praise for the task undertaken:
 - a. CoP Eddie Yome had been briefing FP and the AG throughout the stages of the said incident and the feedback I and the other members of the RGP’s Senior Management Team (“SMT”) at the time received indicated that FP was telling CoP Yome that the three senior military officials had to face due process. Screen shots of the chats held by CoP Yome and RGP SMT members can be found in **Exhibit IM/36** in my **Fourth Affidavit**. They provide a chronological and contemporaneous record of how the event unfolded.
 - b. After negotiations with the UK Services Police failed, I received instructions on the 7th February 2017 from CoP Yome via the WhatsApp RGP SMT chat group. His instructions were;

“Ian, I’ve tried calling CBF goes into answering machine. Told HE [Governor] and CM [Chief Minister]. HE wanted a pragmatic approach and to spk to CBF. I have texted CBF waiting for him to call me. CM wants us to go for the jugular. Prepare all necessary warrants etc. This person [Watterson] will not be allowed to leave the jurisdiction and retrieve computers etc. We will wait for a reasonable time. I will let you know. Team to be on standby.” (Underlining for emphasis)

I replied to CoP Yome with “*noted Sir.*”

The above underlined sentence sums up FP’s attitude from the outset. I have no reason to doubt the veracity of what CoP Yome wrote because FP reiterated these same views personally to me as described in points (c) and (d) below.

- c. The following email was sent by FP to CoP Yome and the RGP’s SMT also copying in the MoJ at the time Neil Costa and the AG at 2057hrs on 8th February 2017. I tender this email as **Exhibit IM/38**.

“Gents

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

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

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

With best wishes

Fabian”

The above does not square off in the slightest with the retroactive allegations FP is now making against me.

- d. A few days after the 10th February 2017 and in the absence of CoP Yome, I attended a meeting with FP, at his request, at the “Wessex Lounge”, Gibraltar Airport. FP was leaving for the UK on a flight that afternoon. I was accompanied to this meeting by the then Superintendent Richard Ullger. FP had in his possession a copy of the report of the 10/02/2017 which I had submitted to CoP Yome - I assumed that CoP Yome provided him with a copy.

FP thanked and congratulated Mr Ullger and myself for the manner the RGP had dealt with the incident. I recall that FP commented that he had read my report with great interest describing it as a “*gripping John Grisham novel*” and adding that he expected the three senior military officials to now face due process for their actions. He was quite forceful in saying this, I would describe it as close to an order as it could be interpreted to be. I informed FP that I would be reporting these expectations up to CoP Yome.

At no point during that meeting did FP express anything approaching discontent or disapproval at how the RGP or any individual officer acted in this matter – quite the contrary, FP was over complimentary of what we had done and the manner we had done it – he said he was proud of what the RGP and both Mr Ullger and I had done. The language he used to describe the three senior military officials and their superiors was surprisingly uncouth – he described them as “*fucking idiots.*”

14. It is therefore disingenuous for FP to say that I never expressed remorse or displeasure for the actions carried out implying that I had been the cause of serious break down in relations between the MOD and Gibraltar Government / RGP. I was merely carrying out my duties, diligently and professionally. In fact, my efforts to de-escalate the situation (for which FP

praised me), as spelt out in my report, are an indication of how distasteful and uncomfortable the situation was for me. Furthermore, the WhatsApp exchanges I had with CoP Yome and the SMT will verify the measured approach that I and my other SMT colleagues took.

15. To further highlight how FP is now providing a grossly misleading account I would like to refer to an email which FP sent at 2236hrs on 3/3/2017 to CoP Yome and the AG, which CoP Yome shared with the RGP's SMT at 2259hrs on 3/3/2017. The email refers to the wake of the incident where MOD officials seemed to previously not have grasped the grave errors they had committed with their handling of a criminal investigation (**Exhibit IM/39**).

"Eddie / Michael

I have now read this and Michael's [the Attorney General Michael Llamas KC's] response.

My impression and clear understanding is that MoD have now fully understood the position and the nonsense and bravado being displayed by fools such as those you refer to below in fact illustrates why and how we have found ourselves in this unnecessarily unpleasant situation.

If it requires another turn of the screw, which I will not hesitate to support you in, it will once again have been brought about by those who fail to recognise the need to show proper and genuine contrition and respect for the RGP and for our Constitution.

Failing to respect our Constitution is not to fail to respect just Gibraltar, it is to fail to respect the UK Parliament and the same Monarch that these clowns in uniform have sworn an oath to.

Let's face to face on Monday (unless you want to do so earlier, Eddie) and agree a way forward.

I can tell you that Minister for Europe and Governor would not be impressed at all if I shared this with them (which I will not do).

I can also tell you that Gibraltar will not be home for the people in question for long and we won't be blocking the tarmac for a moment to delay the plane when the time soon comes for them to wave goodbye to the best place these idiots have ever had the good fortune to live in their petty lives. Good riddance. And goodbye won't come soon enough.

I can tell you one thing Eddie: Gibraltar, its Chief Minister, its Government and its people are proud of their police and the SMT, Commissioner and their Attorney General. The UK as a whole, conversely, has been embarrassed by its senior ranks on the Rock, as can be seen by the reports in the newspapers of the actions taken here.

I would rather be in your shoes than theirs.

Best wishes,

Fabian"

(underlined for emphasis)

16. FP very explicitly even tells CoP Yome that if it required another turn of the screw, meaning carry out further action against the MOD, that he would support it. This was in light of the MOD officials in Gibraltar not seemingly displaying an understanding of what had been agreed (i.e. that the RGP retained primacy on law enforcement in Gibraltar). The last paragraph of this particular email again praises the RGP's efforts and that of the SMT in particular, highlighting that the whole of Gibraltar and its Government were proud of what we carried out. Converse to what he now states in his affidavit, it was actually FP who was totally cavalier and emphatic in upholding the RGP's jurisdiction (and Gibraltar's by default), not me. Needless to say, the accusations now levelled at me after six years are in my view self-serving and disingenuous.
17. Further evidence that FP was fully supportive of the RGP's actions and approach to this matter can be found in the email below which FP drafted for CoP Yome. It can be read that the tenor of the email is one of further challenging the MOD on what FP and the RGP felt was an attempt by the MOD to water down the importance and seriousness of the matter at hand. In fact, FP was even aware, because he was told by CoP Yome, that the Commander British Forces ('CBF'), MW was also a person of interest in this case and might be arrested and FP supported this too.
18. In a WhatsApp message to CoP Yome (which was shared with SMT, see screen shots IMG_5396.PNG and IMG_5397.PNG found at **Exhibit IM/36** to my **Fourth Affidavit**), regarding the erroneous position adopted by the CBF, FP wrote

"Every single operative sentence in the email from CBF contain an error of legal understanding and presents equivocation in respect of contrition. The man is surely not so stupid that he does not understand the position? Those advising him need to be informed of his manifest errors as to the actual position he and his officers are facing and how they are further exacerbating matters with emails like this one.

I am happy to assist in drafting the response. If those statements come back telling us that they were right to do what they did then it is going to be very difficult to caution them. F"

(Underlined for emphasis)

19. The below email is the one drafted by FP for CoP Yome which he sent to CBF MW and which I tender as **Exhibit IM/40**.

"-----Original Message-----

***From:** (RGP) Yome, Edward L (CPM) [Edward.Yome@royalgib.police.gi]*

***Sent:** Sunday, March 05, 2017 07:33 PM GMT Standard Time*

***To:** GIB-HQBF CBF (Walliker, Michael Cdre)*

***Cc:** Nick Pyle; JFC-COS (Radakin, Tony R Adm); JFC-JCOS-DepHd (Chaudhry, Arfan B1); Ed Davis; GIB-CMDSEC CS (Johnson, Richard B1); Fabian (MIN) Picardo; Michael (EUID) Llamas QC; SMT*

***Subject:** Re: Investigations*

Dear Commander British Forces

I am very disappointed by your email of Saturday which, in my view, simply further exacerbates matters and betrays a deep misunderstanding of the gravity of the situation

facing those three of your officers who are presently under arrest and others who may become persons of interest as the investigation unfolds.

The offence of perverting the course of justice is a very serious one - the issues that have arisen in this case are not child's play or a matter for simple inter-agency negotiation. The very difficult situation that has manifested itself has arisen from a complete misunderstanding of the law by your officers and those who were purporting to instruct, command or advise them and you.

From reading your email, it would appear that this failure to understand the law applicable in Gibraltar has not yet been corrected in your mind. I will therefore set out the position as clearly for you as our AG has been required to do with the senior lawyers at the MOD who, I understand from Mr Llamas, fully appreciated the position and agreed with it. It is therefore surprising that the law still appears to be unclear for you.

ONLY the Royal Gibraltar Police has jurisdiction and primacy at present in Gibraltar in respect of crimes committed in Gibraltar. The Gibraltar Defence Police has a jurisdiction created by statute which is not relevant to this matter and HM Customs has concurrent jurisdiction with us in respect of matters related to their responsibilities. There is no military unit that enjoys any jurisdiction on criminal matters whatsoever within Gibraltar and this includes cases such as the one with which we are dealing. Perhaps it would be best that you liaised directly with those from the MOD who I understand are Andy Halliwell and/or Isabel Letwin in respect of this as their position seemed to be clear and entirely in keeping with the understanding of HM Attorney General for Gibraltar.

I do also understand that at the recent meeting in London what has been agreed between the Chief Minister and the AG and the MOD in the UK is to continue the work that was being done to create an MOU and legislation which will in some ways carve out jurisdiction in future cases based on the Armed Forces Act 2006, but with caveats appropriate to the circumstances of Gibraltar. I am informed that this will be achieved before the summer.

I feel the need to set this out because it is no concession by you or indeed the MOD that we will "retain" jurisdiction over the RAF SP as you allude to in your email. We are the only agency in Gibraltar that has ANY [criminal] jurisdiction over him. Obviously, the RAF SP in question will have to consider his options with his legal advisers after he has been dealt with by us in terms of any pending matter with the UK authorities. Equally, he may also have scope for potential legal action against the MOD for the ultra vires activity he was subjected to here in Gibraltar by the MOD and JPSU in particular.

In the circumstances, your three officers who have been arrested are subject of a very serious investigation which may or may not end up with charges being-proffered against them - obviously this will be determined once the investigation is concluded as is the norm in all criminal investigation my organisation undertakes. A long bail is required for now as we assess the information at our disposal and the investigating team trawls through the copious amounts of documentation and other material seized. I can tell you that so far all of it points clearly towards the RGP - which is the only law enforcement agency with jurisdiction for the reasons I have outlined above - having been lied to and having been obstructed in the course of our lawful discharge of our duties. The clear evidence also seems to suggest that, in a conspiracy amongst themselves and, potentially, others, the three military officers in question have attempted to pervert the course of justice. As a result of the seriousness

of this offence and the evidence which suggests that it is likely that all the relevant ingredients are made out, a long bail has been necessary.

Should the three in question provide statements that satisfy my officers that the offences are not made out or, alternatively, should they accept the facts and express genuine contrition in respect of the facts, a decision may be reached which does not require any prosecution or further action. The timing of that is not something that we can be asked to commit to in any way which might compromise our investigation and I am surprised that a senior officer like you should have written seeking to pressure us to reach a decision in a defined time. That is not helpful at all. You should also be clear that I am not likely, in the circumstances, to reach a conclusion that there is no evidence to support the charges of obstruction or attempting to pervert the course of justice. Indeed, quite the opposite is true and the fact is that others might actually fall to be included in further charges as further evidence as to the conspiracy that ensued is uncovered.

I am quite fazed and quite frankly do not understand how you could have already reached the contrary conclusion from anything that I have said when the investigation has not been completed. Let me be clear enough so that any misunderstanding will be impossible; the evidence would appear to be conclusive that your officers HAVE obstructed and HAVE attempted to pervert the course of justice.

The only way in which we may consider not charging (and this is subject to further consideration of the evidence and of the relevant law) is if we are satisfied that there is a GENUINE acceptance of guilt by the individuals in question, recognition of the gravity of the situation and an unequivocal expression of remorse and apology. That can affect my police powers [of discretion] in making the decision of whether or not to charge an offender.

In addition you should note that any expression of contrition which is couched in language which is equivocal, that is to say, which relies on an insistence that the law reflects anything other than absolute jurisdiction to the RGP, would not be satisfactory as it would not amount to genuine regret or remorse.

You should by now appreciate that the chronology set out in your email is entirely wrong and untenable as it is based on the unacceptable notion of a decision being made by us not to prosecute actually happening BEFORE an acceptance of guilt and an expression of genuine and unequivocal remorse is made by the MOD officers in question. That is not going to happen.

For now, I am able to confirm that we will not be carrying out any forensic interrogation of the computers taken in the execution of the search warrants. We have no alternative but to reserve our rights in respect of this material which has been lawfully seized but which we will be able to return without having had to carry out any further investigations into them if matters can be resolved without the need to charge. Your email, however, does not fill me with hope in that respect.

As far as the Provost Marshall's note book is concerned, this will be perused for any evidence pertinent to our investigation and once it is determined that the contents hold no bearing it will be returned so that the MOD's enquiry can also progress. Alternatively, I can arrange for photocopies to be made of the pages of the PM's book pertinent to the MOD enquiry so that he can continue with this enquiry.

In sum, you will see that my understanding of the legal and factual position is regrettably very different to yours. I am comforted by the fact the understanding I have

set out above accords to that of the AG, who attended the relevant meetings with MOD legal advisers and, more importantly, with the Chief Minister and the UK's Minister for Europe, Rt Hon Sir Alan Duncan MP.

Regards

Eddie

Commissioner"

20. To further reinforce FP's support of the RGP's actions he stated in a media interview, that ignorance of the law is not an excuse and (he said) the arguments presented by the Gibraltar MoD officials resembled that of the 'Nuremberg' defences where they stated they were just following orders from their superiors¹.
21. The Gibraltar Police Authority ('GPA') was also tasked by FP to look into the matter and report back to him. I believe this came about after it was agreed between the then Governor, FP and MOD to review the whole incident. I was requested to attend a "Question and Answer" session by the GPA with Mr Ullger and Mr Yome where the Authority members asked for explanations to better understand the reasoning for the actions taken. I duly provided my account and explained the decisions taken and why they were taken. It is my understanding that on conclusion, the GPA reported back to FP with very favourable comments and commending the actions carried out by the RGP. They also condemned the attitudes of the three senior military officials during the whole affair (see John Gonçalves affidavit Document 12 of Appendix A).
22. In light of the above, for FP to now claim that I was responsible for the breakdown of relations between the MOD and Gibraltar Government, seems to be a complete lie. He is certainly out to destroy my reputation and dignity.
23. Even though the AG does not make reference in his affidavit to this particular issue (which I interpret to mean that he had no concerns in relation to it), it is evident that he had considerable involvement in terms of advising CoP Yome and FP and possibly NP too. I say this because I know that Senior Counsel Ricky Rhoda KC who worked in the AG's Chambers did engage with NP and offered his advice. The AG appears copied in and sending out emails on the matter and is referred to in the email drafted by FP which CoP Yome sent out to the CBF. Of crucial importance is that the AG engaged specialist counsel from London to advise on the position the RGP were adopting. The legal opinion received vindicated all the actions the RGP had taken and suggested that the MOD / UK Services Police had acted in an *ultra vires* manner (see opinion by Lord Pannick in Document 8 of Appendix A of John Gonçalves' Affidavit). I have read the apologies from Admiral Tony Radakin (now Chief of Defence Staff and Lord High Constable of England) and the other three senior ranking military officials which also vindicate the RGP's actions.
24. After the incident, and once I assumed commissionership of the RGP, I became heavily involved, along with the AG, with the formulation of a Memorandum of Understanding which was to pave the way for future relations between the RGP and UK Services Police once the Armed Forces Act 2006 was amended to permit UK Services Police to exercise jurisdiction in Gibraltar. At no point during all my dealings with the AG did he intimate in the slightest that the RGP or I had been the cause of any breakdown of relations between the MoD and Government of Gibraltar. Like with FP, the AG only had praise for the way the RGP had performed. He was similarly assertive in not conceding on any point which could undermine Gibraltar's or the RGP's position in terms of control/authority in the jurisdiction. I have not seen a single item of correspondence from the AG that would counter what I have just stated.

¹ <https://www.youtube.com/watch?v=RQ1lpQVcCxY>

25. I am therefore led to conclude that the introduction by FP of this issue into the realms of the Inquiry is purely an embellishment to what is already an obvious and spiteful attempt to tarnish my reputation before or at the Inquiry hearing proper. His allegations do not stack up and the evidence is there to prove it.

Response to NP's affidavit

26. In his affidavit of 12th May 2022 at para. 21.1, NP states that his “*concerns over the leadership and management of the RGP, and over the behaviour and judgement of Mr McGrail as its Commissioner of Police, started with what I call the Airfield Incident which happened on 8 February 2017, five months after my arrival in Gibraltar. I was Acting Governor at the time of the incident.*” My response to the above statement is that NP appears to think that I was Commissioner of Police at the time of the incident. This is false and under-scores the lack of focus in NP’s entire approach. I was not Commissioner of Police at the time, Mr Eddie Yome was, and Chief Superintendent Richard Mifsud was his deputy, and I was Superintendent (Crime).
27. NP, in para. 21.2 p10 provides his version of how the UK Services Police received a report from Leicestershire Police concerning a serviceman based in Gibraltar. As a result, the UK Services Police unit in Gibraltar arrested the serviceman and made arrangements to return him to the UK together with electronic device exhibits seized from his quarters in Gibraltar. The serviceman and his devices were subsequently placed in a military aircraft to fly him to the UK. What NP omits from his description of the events is the key fact that the Gibraltar based UK Services Police had no legal authority or competency to act as they did. It is my understanding that NP knew of this from very early on as CoP Yome had been in contact with him as had Senior Counsel Ricky Rhoda KC of the AG’s Chambers.
28. NP seems to diminish the importance of the rule of law being respected by waiving the matter as a simple “*dispute over jurisdiction*”. In para. 21.4 he describes “*that after a period of standoff, the MOD relented...*” In my view, this was not just a dispute over jurisdiction: The MOD were acting outside their jurisdiction and were being intentionally obstructive towards Gibraltar’s principal law enforcement agency. The fact that the MOD apologised for its behaviour and actions serves to highlight NP’s reticent and biased recollection of the incident.
29. In para. 21.5 NP claims that that “*the Provost Marshall, was with quite unnecessary drama, removed from a civilian, commercial flight from the UK as soon as it landed in Gibraltar.*” This statement is also incorrect. No RGP officer stepped on to the airfield tarmac or boarded any civilian aircraft. The individual in question, Mr Collins, disembarked of his own accord with the rest of the passengers. He was met by RGP officers at the baggage collection area and arrested there. There was no unnecessary drama caused as is being claimed – quite the opposite, my understanding is that the officers were very discreet and accommodating in their approach. In fact, Mr Collins was permitted to greet his family who were waiting for him at the arrivals hall. Mr Collins was treated with due courtesy and respect, and I understand he thanked the RGP officers for allowing him to see his family.
30. The use of the expression “*unnecessary drama*” is surprising coming from an individual of NP’s standing given that he was not present when Mr Collins was arrested. He does not say who told him that there was “*unnecessary drama*”. NP’s affidavit contains a number of similar instances of careless commentary and inappropriate value judgments, as will be seen below, of which this is but an example.

31. In para. 21.7 NP states that he expressed his concerns about the RGP's handling of this incident, in particular about my behaviour, despite my not being the CoP at the time and not having dealt with NP at all on this matter. To my knowledge, none of these concerns have ever been put to the RGP. They have certainly not been put to me by anyone, including the previous Governor Lt. General Ed Davis, Mr Eddie Yome, the GPA, FP, AG or even NP himself. As previously stated, all the RGP and I received was praise from the then Governor Lt General Ed Davis, FP, AG and GPA.
32. I would like think that in the interests of fairness I should have had these supposed serious concerns raised with me at some point after the incident had occurred. Similarly, I would have expected NP to have raised these when he indicated that he had lost confidence in me in May / June 2020. They were not raised with me because this issue, as indeed others, did not form part of their decision-making process at the time in May/June 2020 to justify any alleged loss of confidence in me. The evidence presented by NP, FP and GPA Chair confirms that this matter was not discussed and neither did it form part of the decisions they made.
33. NP had ample opportunity to particularise each and every concern he had about me when he met with FP and the GPA Chair, JB, to discuss the sections 13 and 34 Police Act 2006 processes and when he wrote to the GPA on 3rd June 2020 responding to my representations which I filed with the GPA. On none of these occasions did NP raise his supposed concerns when this would have been the most appropriate moment to do so. None of the notes recorded at the meeting suggest that he aired the concerns he is now raising.
34. NP's description of the RGP officers dealing with this matter as *The Sweeney* and *Life on Mars* is totally unjustified and unbecoming. The officers involved behaved in a courteous way and with respect throughout. In any event, NP was not a witness to any of the interactions the RGP had with the military officials concerned so I presume he is saying what he was told, but not knowing it to be true. In doing so he is clearly displaying bias.
35. In para. 21.8 NP states that the then Governor, Chief Minister and MOD agreed to conduct an independent review into the incident but that this was not carried out after the MOD changed its position, preferring that there was no need for a review because of what was described as bigger picture relationship reasons. Whilst I have not been privy to any evidence that shows the reasons why the MOD allegedly changed its mind, I can only rely on the evidence which I know and which suggested that the MOD had acted unlawfully in Gibraltar. Therefore, to expose this in an independent review would certainly not portray the MOD in good light. It seems (based on NP's account) that it was better for both sides to work on lessons learnt which is why the Memorandum of Understanding was created for a future working relationship, as was the law amended to allow the UK Services Police to act lawfully in the jurisdiction of Gibraltar.
36. In para. 21.9 NP refers to two UK Services Police officers making official complaints to the Police Complaints Board ("PCB"). Indeed, this was the case, albeit the complaints were filed, I believe, around 3 or 4 years after the incident. I responded to the complaint after being asked to do so by the PCB and so did my then colleague, retired Superintendent Wayne Tunbridge. It is my understanding that the complaints were found to be unsubstantiated. The PCB can no doubt elaborate further and produce my response to them and their findings, the fine details of which I have never been privy to.
37. In para. 21.10, NP is correct to state that the RGP failed to uncover the incriminating material from the electronic devices of the serviceman under investigation, and that subsequently these were recovered by the UK Services Police in the UK. Though this was a somewhat embarrassing development in the case as far as the RGP was concerned, it should not and does not detract from the fact that the MOD and UK Services Police did

not handle themselves lawfully throughout which was the main reason why the conflict arose. It is certainly not something that can be laid at my door.

Response to Commodore (rtd) Michael Walliker's affidavit

38. In para. 3 of his affidavit MW refers to his expectation that holding an Inquiry into the "*Airfield Incident*" at the time would have found compelling evidence to question my competencies and suitability for further promotion and responsibility. MW does not seem to be aware that it was the MOD itself who retracted its wish to hold an independent Inquiry – this according to NP who was a senior Foreign Office official in Gibraltar at the time. Further, in very much the same way as I would not be able to comment on the specific competencies and suitability of an aspiring Royal Navy officer to climb up the ranks, because I do not have the experience or knowledge base to do so, I find it striking that MW passes an assessment/opinion of myself and the RGP on a profession which is not akin to his career in the Royal Navy.
39. In any case, MW makes a number of assertions which are factually inaccurate, which I outline below.
40. MW was away from Gibraltar at the time of the incident but states in para. 4 of his affidavit that he was kept up-to-speed with events as they unfolded. Yet, as far as I am aware, MW failed to take any calls from CoP Yome at the time of the events. As far as I am aware, Mr Yome persistently tried to speak to MW to try and resolve the situation – he left voice mails asking to be contacted straight away – he called him numerous times and the calls went unanswered – yet, MW knew what was happening and opted not to engage with CoP Yome. I cannot understand why, given the seriousness of the events, and the extent to which MW now says he was concerned by them, this could be the case. I also recall that CoP Yome was seriously considering MW as a person of interest in this matter too given that he was very arguably involved in obstructing the RGP's investigation.
41. As with NP, MW appears to omit the key issue which is that the MOD UK Services Police had no jurisdiction in Gibraltar – something which the UK Government accepted and apologised for - and this occurred on MW's watch.
42. In para. 5, MW errs in stating that it was the Bedfordshire Police who had uncovered the criminality of the serviceman based in Gibraltar – it was in fact Leicestershire Police. He also is misguided in suggesting that no criminal offences were suspected of having been committed in Gibraltar. The suspect had his electronic devices seized in Gibraltar which could only suggest that the suspected unlawful images *may* have been stored in these devices. The serviceman was suspected of being in possession of the indecent images of children in the jurisdiction of Gibraltar. There was therefore sufficient suspicion that the serviceman had committed a criminal offence in Gibraltar, albeit that the offence(s) may have originally started in the UK at the point of the downloading of the images.
43. MW also alludes to the decision to send the serviceman back to the UK on welfare grounds and the duty of care to a potentially vulnerable individual. I know this was being stated by the military officials at the time, however contradictory evidence exists which suggests that the removal of the serviceman from the jurisdiction was to prevent the RGP from arresting him. I have no access to this evidence, but the RGP surely does. In fact, in support of this, I refer to the WhatsApp messages of the RGP SMT group chat where it is stated that according to the serviceman himself, he was informed by the senior military officials that the reasons he was being removed to the UK was that the RGP wanted to arrest both him and his family.

44. In para. 5 of his affidavit, MW states “my first reaction was to wonder why the RGP felt compelled to insert themselves – unnecessarily in my view – into a criminal investigation being conducted by Bedfordshire Police [sic].” However, in an email MW sent to CoP Yome on the 6th March 2017, in which he was replying to Mr Yome’s email of the 5th March 2017 (drafted by FP – see above), he stated:

“There is not nor has there even been, any doubt in my mind about the RGP’s jurisdiction in this case. The incident has served to assist an even clearer understanding of our mutual positions.”

It is difficult to understand how these two statements can be reconciled.

45. In para. 8, MW claims to have spoken to CoP Yome and myself in the days leading up to the arrest of the three senior military officials, claiming he told us that they would be willing to volunteer to interviews at the police station accompanied by a lawyer. Whilst I cannot say whether he spoke to CoP Yome about this, he certainly did not speak to me. The only personal contact I had with him on this matter was when I attended “The Tower” (which is the headquarters of British Forces Gibraltar) with the warrant to search MW’s Chief-of-Staff’s office and arrest him.
46. He also alleges that those officers that formed part of the team at The Tower behaved in an unprofessional manner as the Chief-of-Staff was arrested. I categorically refute this allegation – I was present and the officers behaved professionally throughout and displayed all due respect and courtesy.
47. In para. 11, MW suggests that the three senior military officials were released from arrest without charge because there was no evidence to charge them with. MW was not privy to the evidence secured and therefore is not qualified to make this statement. The evidence collated uncovered criminal offences on the part of the three arrested officials and I understand that MW was duly advised of this by CoP Yome. It is my understanding that they were released without charge with formal warnings because CoP Yome, after consulting with the AG, exercised his powers of discretion not to charge (see Eddie Yome’s statement para.32). A letter expressing contrition had been sent by each of the officials arrested. The MOD had done the same and it was on that basis, as I understand it, that CoP Yome formed the view that the disposal of the case was best served without proffering any charges.
48. By the tone of his affidavit, it might seem that MW never saw eye to eye with me. This was not the case. I continued working with MW when appointed as CoP in 2018 right up to the end of his posting in Gibraltar. We met often at both my old office and his to discuss matters of mutual interest/concern to our respective organisations. I distinctly recall discussing with him an inspection which had been carried out of the Gibraltar Defence Police (“GDP”) and the mooting of an amalgamation of the GDP with the RGP. As far as I was concerned, I had put the “Airfield Incident” behind me as did the RGP as a corporate. I recognised the value of the MOD as a strategic and operational partner / stakeholder and the rebuilding of any fractured relationship was a priority for me.

Response to Scott O’Malley’s statement

49. SO filed a complaint with the PCB and at their request both my ex-colleague, retired superintendent Wayne Tunbridge and I responded to this complaint (see affidavit of Frank Carreras dated 9/3/2023 Exhibit FC/1). The PCB did not uphold any part of SO’s complaint.

50. His statement to the Inquiry reflects the issues that he submitted to the PCB. I therefore feel there is no need for me to rehearse the contents of that response here save to say that in summary, I refute the allegations that the RGP acted unlawfully because (i) the RGP was acting under a warrant issued by the court and (ii) where the warrant was not applicable, consent was provided by the individuals concerned (even though this is denied by SO).
51. In the last page of his statement, SO alleges that I threatened him with arrest on the 8th February 2017 when I attended to the Services Police offices at Gunwharf armed with a search warrant issued by the Chief Justice. This is not true. The other officers who attended with me can attest to the fact that I treated SO with respect and courtesy. SO was the only service police officer in the premises at the time and I was requesting to see his superior Mr Chris Collins, the Provost Marshall. I did not assert myself over him in the way he alleges. SO contacted Mr Collins who apparently was at The Tower with the acting CBF and who said he would be making his way back to the office.
52. I did not engage with SO much except when he called me to attend to a phone call from his superiors in the UK. The other officers with me at the time can testify to the fact that SO was not treated inappropriately in any way.
53. In the last paragraph of his statement SO states that if his “*complaint had been taken more seriously at the time, I believe that the subsequent actions of Mr McGrail, including his involvement in allegations of bullying, corruption/fraud and two deaths, these could have been avoided.*” I am perplexed at this statement, particularly the part which I have underlined. I have no idea what he is referring to. It is impossible for me to respond to unparticularised allegations. I am also very concerned that this statement suggests that Mr O’Malley has been coached on matters relating to me (which are untrue) and this just serves to add to my firmly held belief that there is a plan to discredit me and tarnish my reputation at the Inquiry. I would be very interested to learn on what basis has SO been briefed with this ‘*information*’, who has briefed him and why. I do hope that the Inquiry is able to establish this.

The assault on a helicopter pilot – Issue 2

54. I had no recollection of the issue of the assault on the Royal Navy helicopter pilot when this was originally brought up by NP in his affidavit of the 12th May 2022. It was only after the RGP allowed me to inspect my old work e-mail account that I managed to identify a few e-mails relating to this incident.
55. This incident happened on March 2017 and at the time I was superintendent in charge of the Crime and Protective Services Division. Mr Eddie Yome was the Commissioner of Police and Chief Superintendent Mifsud was his deputy.
56. I am currently unable to quote from these emails as, at the time of drafting this statement, the RGP is still to disclose them to me. Accordingly, what follows are the details of these emails which I noted at the time of inspecting my old work email account. I will add a brief recollection of what I read in some of these emails to afford as much assistance possible at this stage.
57. The recollection I am providing at this time is based on what I read during my inspection of documents.
58. It is evident that the investigation of the assault on a crew member of HMS Monmouth (the helicopter pilot) was being handled by officers of the Criminal Investigation

Department (“CID”) led by DI Roy Perez. DCI Wayne Tunbridge was the Crime Division’s Chief Inspector and my deputy. I expect that DI Perez would have been the senior investigating officer for a case such as this one. The investigation was allocated the name “*Operation Bolero*” most likely by the investigating team themselves. 4 or 5 young local men had been arrested for the assault and were on police bail pending further enquiries.

59. Ordinarily, an investigation of this sort would have been commenced by uniformed first responders and then later taken over by detectives. In this case this appears to be so because I noted that there is one officer copied in the emails, PC Stefan Figueras, who as far I know was never a member of the Crime Division. It would have been reasonable and the norm for the uniformed officer who commenced the case to be attached to the unit taking over the investigation.
60. The email exchange provided updates from the RGP to the UK Services Police mainly on how the forensics aspects of the investigation were going.
61. I did not provide any input in the investigation *per se* save for seeking updates on its progress. The hands-on personnel would have been DI Roy Perez and his team of detectives who are copied in the emails. DCI Tunbridge was DI Perez’s line manager and therefore I would expect him to have had more detailed knowledge of this and other investigations being handled by the CID.
62. The forensic examinations carried out of the persons arrested on suspicion of assaulting the helicopter pilot were not sufficiently conclusive to merit charges being proffered. These examinations were carried out in a recognised Home Office forensic science facility in the UK.
63. The Commanding Officer of HMS Monmouth wrote to CoP Yome expressing his appreciation for how the RGP had dealt with the matter.

Response to NP’s affidavit

64. In para. 22 of his affidavit dated 12th May 2020, NP states that “*the widely held belief in MOD circles is that the RGP did not investigate the crime properly to protect those involved in the attack.*” This statement is absurd and insulting. The RGP and / or the investigating officers can provide the investigation file to dispel this unjustified statement. From my recollection of reading the emails referred to above, the RGP effected the arrest of 4 or 5 young local men after enquiries were conducted – this action hardly tallies with the uncorroborated allegation of an RGP cover-up. Add to this the fact that the RGP went through proper and thorough investigative channels of submitting items for forensic examination in the UK only serves to highlight that what NP is claiming is nonsensical.
65. To my knowledge, no formal or informal complaint has been made against the RGP, neither by the helicopter pilot or the MOD. The Police Complaints Board will no doubt be able to apprise the Inquiry of this with more certainty.
66. As with the “*Airfield Incident*” issue, the assault on the helicopter pilot was not referred to by NP when he met with FP and the GPA Chair to discuss their loss of confidence in May 2020. This issue is not reflected in any of their notes or emails and only first appears in the single paragraph 22 of his affidavit which can only suggest that NP has brought this issue up retrospectively to attempt to attack the RGP and, by association, me. Moreover, there is no specific reference to me. I was not CoP at the time but it is possible that NP believes I was as stated earlier in para 26.

67. From the email exchanges referred to, I do not recall NP having had any input or locus in the matter.

Response to MW's 's affidavit

68. This issue is also raised by MW in his affidavit. In para. 13 he claims that he spoke to me on the matter. I have absolutely no recollection of this or any such conversation with him. I totally disassociate myself from the comment which he alleges I made that the helicopter pilot got what he deserved because of his drunk and abusive behaviour. I totally reject it. It is very mischievous for MW to suggest this and even worse, to have reported it up to his chain of command as he says he did when it is not true that I said that. I can only assume that his attitude towards me at the time had been gravely and adversely influenced by the unpleasant experience of the (at the time, very recent) "*Airfield Incident*". For the avoidance of doubt, I would never have said that a victim of an assault deserved a beating.
69. MW states that he reported his discontent at how the RGP were handling the assault investigation. It was only when reading MW's statement that I have heard of his dissatisfaction. To my knowledge, MW never raised his concerns with CoP Yome or made any official complaints to the Police Complaints Board or the Governor. He certainly never raised any dissatisfaction with me.
70. It is evident that MW held me in very poor regard. He states that he expressed his shock at my appointment as Commissioner of Police to the Governor who he says he believes felt the same way. This is certainly the opposite impression the Governor portrayed in his letter of appointment to me and his positive farewell note when he departed.

The Incident at Sea – Issue 3

71. My account on this issue is covered in considerable detail as from paragraph 45 of my Third Affidavit dated 4th October 2022 and with the accompanying exhibits. In the following paragraphs, I provide additional detail and context in response to the various statements of Core Participants.

Response to FP's affidavit

72. In para. 68 of his affidavit, FP states that I told him that the incident had occurred approximately 6NM east of Gibraltar. My message to him was "*CM, the information suggests that the collision took place outside BGTW – approx. 6NM off the runway/Santa Barabara (sic) beach*" (emphasis added). It is important to emphasise that at the time, the said information had not been verified and therefore caution had to be exercised on how it could be assimilated.
73. In para. 64 of his affidavit, FP states that he had referred to all the messages he exchanged with me on the day of the incident. I had further message exchanges with him on the days that followed. I provided him and others with updates as and when it was necessary, but for some reason he omits to mention these. Aside from the messages FP refers to in his affidavit, we also communicated on a WhatsApp chat group which he had opened called "*Maritime Incident*" as a channel for information flow. The exchange of messages in this group chat is very significant in light of his complaint to the GPA and to the Inquiry that he lost confidence in me as CoP because of the way I handled this issue and not keeping him updated which in turn he says brought about diplomatic, reputational and financial ramifications to the UK, Gibraltar and RGP.

74. When I updated the said group chat on 12th March 2020 explaining that the *evidence* now pointed to both the pursuit and collision happening outside our territorial waters, FP responded to me (and the others in this group chat which included the GPA Chair, the Chair of the PCB and the Chief Secretary), saying “*Thank you Ian. Location does not worry me so much. Helps us in a way. Will discuss directly with you.*” The AG confirmed to me that this was FP’s and his own thinking. I should say that I never fully understood the CM’s logic and I was certainly very concerned that the fatal accident had occurred at all, and particularly so that it had happened in Spanish waters. The AG and FP were considering addressing the matter from a law enforcement co-operation / joint operation angle.
75. Whilst I am conscious that I am straddling another of the items in the “*List of Issues*” it is important that I mention the following point at this juncture; to my knowledge the first occasion FP raised with NP any supposed concerns about Op Kram is on the 14th May 2020, i.e. two days after the RGP had taken executive action in respect of Mr James Levy KC and more than two months after the accident itself on 8th March 2020.
76. On the 13th May 2020, the day before FP messaged NP with his ‘*concerns*’ about the losing of confidence in me, I had told the AG that I would need to be reporting up, i.e. to the Governor and the GPA, the fact that Hassans were making very serious allegations against the RGP and myself in connection with Operation Delhi. The AG advised me not to do so as he was going to deal with the allegations personally. I suspect, however, that this was the motive why FP contacted NP on the 14th May 2020 in a pre-emptive move in case I did go ahead and inform the Governor and GPA of his inappropriate interference with the OP Delhi live criminal investigation.
77. The below message was sent against the backdrop of FP’s very hostile reaction and angry attitude towards me following the intervention on Mr Levy two days earlier. In his message to NP on the 14th May 2020 FP listed a number of matters, including “*a particular matter*” which he would alert NP to “*when we meet*”. He claimed he was “*starting to have huge concerns about senior management of the RGP*” and was “*starting to lose confidence*”.
78. By that moment, whilst still – I suspect – raging from the intervention on Mr Levy on the 12th May, FP was preparing the ground to oust me from office. Even though he ends the message saying that he was “*starting to lose confidence here*”, he has himself admitted that he had already made his mind up - he has said that his loss of confidence arose from a meeting on 12th May 2020 when he (wrongly) says that I told him that the DPP had advised the RGP on the search warrant in relation to Mr James Levy.

Response to NP’s affidavit

79. I never acted in a flippant manner towards NP as he is alleging, and at no point was I evasive towards him.
80. In NP’s emails to the FCDO in London dated 8th and 9th March 2020, he describes me as being grateful for his visit, also providing the details of the brief I imparted. There is no mention of the alleged comments I made about the police vessel’s AIS system being switched off, which one would assume was a very serious factor to report on. Neither does NP allude to or suggest that he was suspicious of me or concerned with any possible evasiveness on my part or that indeed I behaved flippantly towards him. Again, these are serious issues which, if they happened, I would expect him to have reported to his superiors. He could not, however, have reported on them at the time because they did not

happen. There are witnesses who were present at the relevant meetings who can attest to this, including the AG who in his affidavit of 24th June 2022 does not corroborate NP's account.

81. The AG states in para. 86 of his affidavit that on 9th March 2020, the day after the incident, "Mr McGrail briefed and explained that he was not in a position to formally confirm where the collision had taken place." I was aware that the AG and NP had been together the night before because NP informed me so at 1015hrs on 9th March 2020. NP asked me to meet again with the AG for a further update (see para. 68 of my Third Affidavit and para. 25 of NP's Affidavit). In his message to me, NP wrote "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)." From this I understood that the AG and NP were actively in communication with each other and therefore it is inconceivable that I would have told the AG key information which he would have failed to pass on to NP given that they were both in close contact throughout and very much focussed on the accident. This shows that NP was aware by that stage of the possibility that the collision occurred in Spanish waters, and that is why it was a matter for high level diplomatic discussions planned for the following week.
82. In para. 25.8(i) of his statement, NP states that by 0940hrs on 8th March 2020, I knew of the exact co-ordinates of the collision. However, NP omits to state that these co-ordinates had been provisionally provided by the Spanish Guardia Civil and that even the Guardia Civil could not confirm them as certain – they needed verification by their own technicians.
83. In para. 25.8(iv), NP claims that I caused him to report to London incomplete and erroneous information and less information than what was then available. I have previously stated that my intention was to impart as accurate information as possible. I certainly did not impart erroneous information. There was, moreover, no reason for me to do so.
84. I also refer to para. 25.8(vi) where even the team from the Metropolitan Police, as late as the 18th or 19th March, briefed NP saying "all indications were that the incident happened in Spanish waters possibly up to 3 miles out of BGTW." The underlined parts of this message highlight the uncertainty of the independent investigating team as to the location of the collision. The Metropolitan Police was obviously not being "evasive" towards NP by not providing the provisional co-ordinates which they were aware of, and which still required verification by the Guardia Civil.
85. It is my view that NP, three months after the incident occurred, and only after having read the Section 15 Police Act 2006 report which I produced to FP, has blown out of context the message I sent to FP informing him that the "information" suggested the collision to have occurred in Spanish waters – using this to insinuate evasiveness on my part. I reiterate that I refute this allegation for all the reasons previously explained in my Third Affidavit.
86. In para. 25.9, NP makes reference to the draft report prepared by the maritime accident investigator, Capt Meikle from Solis Maritime Consultants. This report he described as the "Solis Report." I do not understand why NP quotes from a draft version of the report, which was the only version available to me at the time I was asked to provide the section 15 report to FP on 21st May 2020.
87. I have requested the final Solis Report from the RGP but it has not been made available to me so that I could comment if necessary.

Response to AG's affidavit of 24th June 2022

88. I have two points to comment on regarding the AG's account and recollection of this issue.
89. The first relates to para. 89 where he states that the RGP were seeking funds to outsource legal representation. This is not entirely correct. According to Superintendent Yeats' email to the AG on 20th May 2020, the RGP were seeking advice from the AG as to who would be best placed to represent the RGP to defend any incoming civil claims from the families of the deceased. In fact, Mr Yeats closed his email to the AG telling him that it is the RGP's experience that claims made against the force have been handled by Government. He asks the AG whether he would want this to be the case or whether he would prefer the RGP managing it itself with an appointed counsel. The email was therefore not a direct request for funding but rather one seeking advice on how to proceed with the question of representation. It is this email, that the AG sent to FP, which FP claims to have left him feeling that I had not been keeping him updated with events surrounding this issue.
90. The second point relates to para. 93. He quotes from an email dated 29th May 2020 which NP wrote enclosing the *Note Verbale* issued by the Spanish Government in protest of RGP officers operating in Spanish waters. NP wrote "*Not quite where I was expecting the collision to have taken place.*" By this date NP and FP apparently had it very clear in their minds that that they had lost confidence in my ability to lead the RGP. It is odd that NP expresses surprise as to the exact location of where the collision occurred when, in fact, he had this information in the section 15 Police Act 2006 report which I had submitted and which he perused and digested.

Response to Gary Smith's (GS) affidavit

91. In para. 19 of his affidavit, GS alludes to an indirect approach I made to him to meet up when he was next in Gibraltar. I cannot recall exactly how I came to know that GS' team were returning to Gibraltar to pursue their investigation, but I had thought it odd that I had not been contacted by him since I retired, because I was expecting to be approached for a witness statement or for some other reason to do with the case. That is why I mentioned to my ex-secretary that I would be available to GS to offer any evidence that was required from me. That my retirement party was arranged when GS was present in Gibraltar was a coincidence. It was during these exchanges with my ex-secretary who was the one making all the arrangements for my retirement party that she asked whether I would mind if she asked GS to come along. I raised no objections and in fact I think that GS may have accepted the invitation. However, I was later informed by her that CoP Ullger had advised GS that his attendance at my retirement party would not be appropriate.

The HMICFRS Inspection Report – Issue 4

Response to FP's affidavit

92. In relation to the HMICFRS Inspection Report, there are a number of points which I would ask be considered to balance the negative points raised by FP and NP from the report. Hopefully, the below points will provide a more balanced perspective of where some of the shortfalls rest:-

93. First, the RGP has always depended on Government funding to invest in resources and technology, infrastructure and real estate. On page 7 the report states that *“limited resources and poor quality technology and infrastructure have delayed progress as have competing demands.”* Ultimately, the RGP can only make the best with the funding that it has received from the Government.
94. Second, the enacting of laws in Gibraltar is the responsibility of the Government. In terms of how the RGP dealt with victims of crime and particularly those affected by domestic violence, the report says on pages 16 and 17 that *“since 2010, police officers in England and Wales have additional powers to protect victims of domestic abuse. Domestic violence prevention orders and notices give similar power to emergency banning order, which are used in many European jurisdictions and recommended by the Council of Europe. But there is no equivalent in Gibraltar. This means that the Royal Gibraltar Police and the courts are unable to give victims of domestic violence in Gibraltar the level of protection to victims of domestic violence elsewhere.”* This does not seem to be a criticism of the RGP (which enforces the laws passed by the Gibraltar Parliament), but rather of the Government and Parliament. In fact, the Domestic Abuse Act only came into force on the 6th of July 2023.
95. Third, page 17 of the report refers to Multi-Agency Partnership working. This is key to the success of effective policing. The RGP has historically been proactive in working in partnership with other government agencies. However, the RGP has experienced resistance from some government agencies when dedicating time/resources to multi agency partnerships, probably due to departmental pressures and priorities. Whilst the report highlighted that the RGP works well with several partner organisations, the report was also critical of Government when it states:

“there is no youth offending team (YOT) with trained youth case managers to identify a child’s vulnerabilities and needs: for example, mental health, victimisation and speech and language therapy. This limits the force to offer out-of-court disposals to divert young people from offending.”

“There is no victim support scheme. So police officers are responsible for victim support from the initial report through to the court case, which is not a sustainable or efficient use of their time. A witness care or victim support service would improve victim satisfaction and free officers for this commitment.”

96. Fourth, the RGP has historically carried the burden of the responsibility of which rests on other government departments and has impinged in its ability to focus on core policing functions. This was picked up by HMICFRS who reported that the RGP *“should do further work on demand management, supported by the Government of Gibraltar, HM Governor and GPA”* (see page 20 of the report).
97. Fifth, to make the RGP more effective and efficient, there was a project that needed rolling out: the reassigning of non-core policing functions to unsworn police staff. This was something that I was pursuing from the impending business case produced to Government back in 2015 or 2016. The posts identified were call handlers and despatchers in the police control room and detention officers in the custody suite. This exercise would have released 25 police officers back to front line duties. However, the Government would have to replace the vacant positions with civilian support staff. Government did not fulfil this

commitment and therefore the much-needed uplift to policing resources did not materialise to its full extent.

98. Sixth, unlike UK police forces, the RGP does not operate a devolved budget, and this is something that HMICFRS view as not an ideal scenario. They recognise that the Government sets the annual budgets which are mainly based on the previous years' budget and there are "*limited freedoms and flexibilities to manage the budget in-year as the Government does the financial planning and budget monitoring.*" The report further highlighted that the "*GPA has little influence over the funding available but it retains responsibility for policing. And the commissioner of police has little ability to influence how resources are allocated yet is accountable for managing the budget.*" The report states that "*The Minister for Finance hasn't set out a funding formula. This limits the Royal Gibraltar Police's ability to conduct the type of financial planning we would expect from English and Welsh Forces.*" (see page 25 of the report). FP was at all material times also the Minister of Finance.
99. In paras. 107-108, FP states that the HMICFRS Inspection Report was not an issue which caused him to lose confidence in my integrity or probity as CoP. He describes as having changed his view after he reviewed the report in slower time (although he does not say when he did so), but even still, the key issue of his alleged loss of confidence remained to be that I allegedly lied to him on the issue of the search warrant taken out on Mr James Levy.

Response to NP's affidavit

100. In para. 24.1 NP states that I had called for the inspection by HMICFRS "*to demonstrate progress made since the 2016 Report.*" Though this was one of a number of issues up for inspection in the Terms of Reference, it was not the main reason why I called for the inspection. In light of the adverse GPF survey results, I felt it was imperative that in addition to having contracted AAP Associates to address issues arising in this survey, that I requested an inspection by HMICFRS to demonstrate openness, transparency and willingness to progress. The poor relationship between the GPF and RGP was also a reason why I requested the said inspection.
101. In para. 24.3, NP states that he emailed FP and the GPA chair on 30th April 2020 (NP1/63 refers) with his views on the Inspection Report. I have not seen FP's response, if any. NP omits to include in his affidavit that he wrote to FP saying "*...I don't think the issue is as bad as the headlines suggest and believe it is an issue of culture and leadership more than anything else. Most of the issues should be relatively easy to fix though it will take a collective effort....*" This is a similar statement to the one I received from Minister of Justice, Samantha Sacramento.
102. NP also omits to mention that his "*initial thoughts is to suggest the Commissioner makes the report public at the same time he publishes his road map on the way forward. So reactive rather than proactive.*" NP adds, "*but the inspection report will undoubtedly become public at some stage, It is important that we (Commissioner, GPA, CM, Governor) are all ready to respond collectively and as one when it does.*" (see Email from NP to FP on 30/04/2020 Exhibit NP1/63 refers). Evidently, NP was at that stage not expressing any lack of confidence in me and my ability to see the recommendations through because he is considering me in the fold of addressing the recommendations as part of a collective that had to be seen as operating in unison.

103. In para. 24.6 NP claims that the Report “*represented deterioration rather than the expected progress and went some way to validating the Gibraltar Police Federation’s grievances stated above. I believe that these differences between the 2016 and 2020 reports reflected Mr McGrail’s management style.*” I respond to this statement with two points:
104. First, during my time as a senior officer of the RGP and latterly as its Commissioner, I had very little personal contact with NP. He therefore appears to be expressing a skewed, negative opinion of me based on what others may have told him. I believe this to be totally unfair. NP hardly knew me or the way I worked. Like I said in my previous affidavits, I would have welcomed for NP to have engaged with me whilst he was interim governor in the same way as I had interacted with his predecessor Lt. General Ed Davis so that he could have got to know me better – and he would have had the opportunity to air any concerns he had about me, and I would have had an opportunity to respond, and where the concerns were justified, improve.
105. Then again, having assimilated the statements provided by the members of the GPA who selected me for the post, it is evident that NP was not supportive of me even before I was appointed as CoP. I suspect that his negative mindset towards me was deep-rooted. The crucial fact is that he never brought any of his apparent concerns to me in either his roles of Deputy Governor, Interim Governor or a longstanding member of the GPA. He would have been ideally placed to raise these matters with me but did not. Even when he threatened to force my resignation, he did not request that I respond to any of his apparently serious concerns, which may suggest he had no interest in hearing what I had to say, or that his concerns were not as serious as he now suggests.
106. Second, in terms of NP’s claims that the report validates the grievances of the GPF, it is important to note that the GPF continues to claim the same grievances three years after I was forced out of my post. In fact, the relationship between RGP Senior Management and GPF recently reached an all-time low when the incumbent CoP, Mr Richard Ullger, said that it was impossible for him to work with the GPF Chair and Secretary. I will be elaborating on this matter when I respond to the issue of my relationship with the GPF. To therefore single out my management style (which I repeat, with respect, he is not qualified to comment on) as the cause for issues raised in the HMICFRS report is to my view incongruous. At no point does His Majesty’s Inspector Matt Parr, the author of the report, make any reference to my lack of leadership and ability to see the recommendations through – and Mr Parr would certainly have had no qualms to state this had it been the case.

Operation Delhi – Issue 5

Response to statement by FP

107. In para. 37 p11 of his affidavit, FP states that “*my only intervention in relation to this case has been to express my views to Mr McGrail about his decision to obtain and execute search warrants at the home and professional office at Hassans of James Levy CBE QC – and that was after the event.*” The Government made a similar public statement on the 21st September 2022 to the media in answer to questions raised by the opposition party. FP had been questioned about the legitimacy of his interference with the live criminal investigation. He responded that he had not acted wrongly and had not interfered to prevent any RGP activity from taking place – that he had only raised his views/concerns with me about the reasoning for the RGP obtaining warrants of Mr James Levy after the RGP had dealt with Mr Levy. (Exhibit IM/40A)

108. This statement by FP is totally misleading. The fact is that FP did interfere with the investigation, not before or after the warrant, but more worryingly, during its execution. The investigating team had yet not asserted their authority under the warrant when I was called by FP and the AG and intemperately rebuked for the team's actions. This was a totally inappropriate thing for FP and AG to do.
109. In para. 39 p11, FP claims that he learned that the RGP had an interest in Mr Levy from Mr Levy himself. This must be untrue. I assume FP first became aware of this when I told him at the meeting on 13th May 2019 where I provided a brief about the case to FP and other government officials (there is no reason I can think of why he would have known before this). This is corroborated by the AG in his affidavit of 24th June 2022 who on describing his recollection of what was said at this meeting in para. 18 p8 says "*Mr McGrail confirmed that the law firm 'Hassans', the partners of which include the Chief Minister, held shares in that company. He also said that Mr James Levy CBE QC, the senior partner of Hassans, was mentioned in communication with the three suspects and that he was potentially a person of interest to the investigation.*"
110. In para. 46, FP has totally spun the context of the brief I provided him in relation to another investigation which involved another law practitioner. He falsely suggests that I briefed him out of concern for the reputational damage to Gibraltar as a finance centre and that I repeatedly told him the arrest of this other lawyer was imminent. The true account of this is that I had in November 2018 raised the matter of a large anti money laundering operation (which happened to include this other lawyer as a suspect amongst others) because I wanted FP's support to create a multi-agency team to deal with the investigation. I wanted to pool resources in to the RGP investigating team from HM Customs, Gibraltar Financial Services Commission, Income Tax Department and Office of Criminal Prosecution and Litigation (DPP's Chambers). It was felt that if the RGP had the support, in principle, of FP it would be a lot easier to create such a task force. I recall writing to all the heads of the stipulated agencies (**Exhibit IM/41**) and copying FP who on 9th November 2018 replied by WhatsApp message saying "*Morning Ian. Got your cc letter re; an international money laundering investigation. You have my full support. Feel free to tell all other departments that you have my full backing in respect of this matter and your approach. Best wishes. Fabian.*"
111. This is extent of my brief to FP on this other lawyer who was being separately investigated. I had certainly not raised the matter "*repeatedly*" as FP is claiming.
112. In para. 47, FP admits to challenging me on the operational actions carried out by the RGP and to expressing anger and disapproval. This admission does not reconcile with his denial in Parliament on 27th July 2020 (see Hansard, lines 1510-1525) when he was asked about this by the Leader of the Opposition and stated that he had "*not raised with the Commissioner any operational issue*" and had "*never put pressure on any police officer to do his job in a particular way or other*".
113. In para. 48 p14, FP claims that the warrant to search Mr Levy's home and office was granted by a Justice of the Peace adding that in his experience warrants were routinely granted on information laid before the Justices of the Peace who relied on RGP submissions without careful legal analysis. Again, FP has got this totally wrong. The warrants in question were issued by the learned Stipendiary Magistrate and it is my information that he probed the officers laying the information after giving due consideration to legal matters. It is notable that Mr Levy has not pursued any legal challenge to the process adopted in obtaining the warrants despite originally having threatened to do so through his lawyers.
114. I refer to FP's comments in para. 49, that I claimed the RGP had obtained advice from the AG regarding the warrant and that, on being challenged by the AG on this, I said that I had

obtained advice from the DPP. Whilst I have no recollection of having said I obtained advice from the AG, it is quite possible that I mentioned the Attorney General, and I will explain the context of how (if I did) refer to the AG.

115. Historically in the RGP, the prosecutor's office has been known as the AG's Chambers. This is because from time immemorial prosecuting crown counsel operated under the AG and from his chambers. Veteran police officers still refer to the prosecutor's office as the AG's Chambers. In fact, all AGs during my career in the RGP, except for Mr Llamas, performed prosecutorial duties in the courts. It was not until the creation of the Office of Criminal Prosecution and Litigation (OCPL) and the first ever post of Director of Public Prosecutions in December 2018 that reference to the AG's Chambers as the prosecuting chambers could technically be regarded as incorrect. If I did mention that the "AG's Chambers" had been involved in providing any advice, it was in the above explained context. It would be illogical to have said that the RGP had received advice from the AG himself when this was not the case, but it was the case that the DPP had been consulted by the investigating officers throughout the investigation. It is indeed regrettable that both FP and the AG (at para. 43 of his statement) have interpreted this to be a sinister act on my part.
116. In para. 50 FP claims that until that moment in the meeting of the 12th May 2020 he had not been aware that according to the AG I had sought the advice of the AG and that it had been agreed between the AG and me that no further actions would be carried out until we spoke further. I had not sought advice from the AG on this matter at all. In fact, I had not sought advice from the DPP either. Legal advice on matters pertinent to the case was sought by the investigating officers, which is what I said in the meeting. Neither does the AG himself say that he provided advice to me in this case (see paras 42 to 43 of the AG's affidavit).
117. In para. 52 p14 & 15, FP claims I misled him in to making him believe that the AG had advised me on the search warrant and that he also felt sure that the DPP would not have advised as FP claims I said he had. He described the procedure adopted to obtain the warrant as incorrect. As previously stated, I did not say that the DPP had advised on the warrant – what I said was that the DPP had been advising the investigating team throughout the course of the investigation (confirmed by the DPP in his statement dated 21st June 2022, para. 5) and that he was privy to the evidence involving Mr Levy and that he agreed with his classification as a suspect. FP disagreed with this classification and told me the RGP had been wrongly advised. Moreover, the process for obtaining the warrants against Mr Levy was to the best of my knowledge and belief the correct one. In fact, it was my understanding via Superintendent Richardson that even though the DPP did not advise on the warrant, he told the investigating officers that he would defend any potential challenge if any arose from the RGP's actions.
118. In my First Affidavit I make reference to when I was called up to the "Cabinet Room" by FP on the 12th May 2020 where amongst other things he said he mentioned that he had communicated with Mr Levy earlier that same day. This comment was somewhat out-of-place in the context of the reprimand I was getting. However, now that I am aware that FP also admits to having discussed with Mr Levy the RGP's interest in him (see para 39 of FP's Affidavit); the fact that FP also communicated with Mr Levy to inform him that the DPP had not advised the RGP on the warrants (see page 8 of transcript of meeting with AG on 15th May 2020) and the blurring of lines by the AG when dealing with counsel representing Mr Levy and with Mr Levy himself (see page 24 of transcript of meeting with AG on 13th May 2020, page 30 of transcript of meeting with AG on 15th May 2020, page 5 of transcript of meeting with AG on 20th May 2020 and page 22 of the AG's Affidavit of 24th June 2022), I arrive to the suspicion that FP and Mr Levy were in actual communication with each other at the time the investigating officers were at Hassans with the warrant. I suspect that FP mentioned to me that he had been speaking to Mr Levy earlier

that day, offering the reasons of the chat to be about the re-opening of the places of worship during the COVID pandemic, was in order to provide a pre-emptive cover for this contact should it subsequently be revealed during the forensic examinations of Mr Levy's phones. I may be totally mistaken on this and if I am, I sincerely apologise, but when one looks at the situation and how it evolved, it is something that could very easily be confirmed or discarded by checking the call history from Mr Levy's and FP's phones for that day, the 12th May 2020. I know my lawyers suggested this line of enquiry to the Inquiry solicitors, Attias and Levy, at the time. I do not know whether this particular enquiry has been carried out. If my suspicions are well founded and Mr Levy was in contact with FP between 1220hrs and 1300hrs on the 12th May 2020 it will show inappropriate behaviour on the part of these two persons.

119. I also reject the accusations by FP and AG that I used robust language and displayed an inappropriate attitude at the meeting of the 12th May 2020. I was certainly very careful in choosing my words for my responses and at no point was I disrespectful to them. I recall disagreeing with them and saying that it should be left to a court to decide whether the actions of the RGP against Mr Levy were unlawful. Evidently, they have taken this posture as challenging of them and inappropriately robust. I want to be clear in explaining that I remained professional throughout despite being threatened by FP that there would be consequences if it was deemed that the RGP had acted inappropriately. I took their rebuke to be an inappropriate interference with the operational independence of the Police, designed to cause me to halt the actions of Superintendent Richardson and his team. I was clearly not relenting to that pressure despite realising that I had seemingly crossed two powerful officials who evidently were displaying a bias in favour of a suspect in a criminal investigation. At that moment, even though I was shocked and hurt at the way I was treated by FP and AG, I still believed there would be an eventual tempering of moods on their part - I was confident that the RGP had not acted unlawfully as was being suggested.
120. To this date, I find it extraordinary that FP failed to include the *main issue* of why he lost confidence in me in the notes he generated from the meeting he had with NP and the GPA Chair and also from the second section 34 letter he drafted on behalf of the GPA. The only plausible explanation for this is that FP knew full well that he could not include this issue in the notes or letter because by doing so would uncover the impropriety of his interference with a live criminal investigation. Therefore, if it was anyone who was set out to mislead by omitting crucial information from being formally recorded, it was FP, and by default NP and the GPA Chair, for also not ensuring to include *the main reason* in the stipulated documents which highlighted FP's loss of confidence. This was a very important matter they were dealing with where accurate record keeping and promulgation of what was said/discussed is paramount in the interests of accountability, integrity, fairness and transparency.

Response to AG's affidavit

121. Para. 18 p19 – The AG is correct to assume that I called for the meeting of the 13th of May 2019 to provide a brief on the investigation that had been instigated due to its seriousness and the delicacy of the issues including that a senior civil servant and principal secretary to the Deputy Chief Minister was also a suspect. It was a Government contract that involved national security, so of course it was a very serious matter. It was not simply a case of a '*commercial dispute*' as I was later told by FP.
122. Para. 20 p8 – It may be technically correct for the AG to state that he had no hands-on involvement in the case, but he certainly expressed an interest in it and discussed with me

the progress of the investigation as I have mentioned in my First Affidavit. He was keen to be told of the evidence the RGP was uncovering and also expressed his concerns about how the contractual arrangements of the NSCIS platform were being managed by the Government and Bland Ltd, describing the consequent situation as 'embarrassing'. He said thi:

Restricted pursuant to Restriction Notice

Restricted pursuant to Restriction Notice

123. Para. 23 p8 – The AG states that the DPP had advised him that the question of the ownership of the NSCIS platform needed to be resolved as this would have a bearing on the number of charges that could be proposed. My information coupled with the facts and how they unfolded indicate this was not the case. Firstly, my understanding from the investigating team was that though important, the non-establishing of the ownership of the platform was not fatal to the prosecution's case. Secondly, it was proved that the aforementioned was indeed the case when the three defendants were indicted without the issue of the ownership of the platform being resolved. Therefore, the AG's understanding of the matter of the ownership and how it needed resolving before charges were considered is incorrect, as far as I understand the situation.
124. Further to the preceding paragraph, the fact that the Government were unable to prove, or refused to provide evidence to suggest that it was the owner of the platform, was most probably the reason why the investigating officers were not able to resolve the question of the ownership of the platform in good time. It is therefore unfair for the AG to suggest the non-resolution of this matter rested with the RGP as he states in para. 25.
125. In para. 27 p10, the AG states "*I would not have known about this or intervened at all if the DPP had not himself brought this matter to my attention and requested to act as aforesaid.*" He was referring to the rationalisation of charges given there were many charges to consider. I do not understand the reasons why the DPP raised this matter with the AG and sought his input – it would have been the DPP's advice / decision what charges were best suited and not a matter for the AG. Yet, the DPP did not attend a meeting to discuss this specific matter. This was attended by Senior Crown Counsel Lloyd Devincenzi, Superintendent Paul Richardson, the AG and myself. This was the meeting on 7th April 2020 where the AG alleges he told me to stop pursuing any further enquiries until such time the RGP reverted with its rationalisation of charges. Of course, this is not what was agreed.
126. Responding to paras. 32 and 33 of the AG's affidavit, I have to challenge what he states. The AG navigates close to the truth but spins it to suggest that he gave clear and specific directions to Mr Richardson and myself (in the presence of the senior crown counsel Mr Devincenzi) that we (i) clarified the question of the ownership of the platform, (ii) the charges were rationalised and (iii) once this was done to then meet with him and DPP to discuss the way forward. These alleged very important directions (which I dispute) were not provided in writing. I have covered my response to the AG's allegations in my First Affidavit.
127. At para. 58, the AG states that he listened to me in disbelief when I defended my standards of integrity at the meeting in his Chambers on 13th May 2020, obviously referring to the aggressive questioning by FP and the AG the previous day. In the presence of those attending this meeting (Mr Devincenzi, DPP, Supt Richardson) he said that he did not question my integrity – clearly either backing down from his comments to me of the previous day or playing to the attendees that this was not the case and therefore making me out to be a sensationalist.
128. Para. 60: the AG implies that I come across as someone who reckons to be immune to receiving to criticism or actions disapproved. This is a completely misplaced assessment. I have always stood to be held accountable but never have I have been subjected to the

vitriol that I was during a live investigation. The Police Act 2006 provides for mechanisms to hold the RGP and the CoP to account, however, the angry and aggressive manner by which I was addressed and the threats I received at the “*Cabinet Room*” do not fall within the category of one of those statutory mechanisms.

129. The rest of what was discussed at the subsequent meetings that I held with the AG in respect of Op Delhi are captured in the audio recordings and transcripts of these recordings. Therefore, the Inquiry can make its own assessment of the AG’s comments as from paras 52 to 73 which do reveal that the AG’s recollection is ostensibly at odds in many parts with the true evidence that the audio recordings present, including the very worrying part where he tells those at the meeting that FP has tipped off Mr Levy on the contested matter of the DPP advising the RGP on the warrants.

Complaints from the Gibraltar Police Federation

130. It was only in the run up to the Inquiry’s Second Preliminary Hearing that I became aware that complaints made by Gibraltar Police Federation (“GPF”) against me were being factored in as one of the issues which the Inquiry would be examining. However, the GPF at that stage were not a Core Participant and had not declared any interest in the Inquiry. It is my understanding that the Government Parties were the ones that brought the GPF in to the picture when out of the blue they proposed that any complaints to the GPF should be factored in to the “*List of Issues.*”
131. This particular issue is cited by NP and FP in their affidavits as reasons why they lost confidence in me. Like with the “*Airfield Incident*” and the “*Assault on the Helicopter Pilot*”, this issue was not communicated to me in any of the correspondence from the GPA on the 22nd May 2020 which described the specific reasons why NP and FP claim to have lost confidence in me. The second letter of 22nd May 2020 was, I now know, drafted in substantial part by FP, so he had ample opportunity to raise this issue with me. Neither is this issue reflected in the notes recorded of the meeting between NP, FP and the GPA (at NP1/1-5) where their supposed reasons for their lack of confidence was recorded at great lengths.
132. I make very brief reference to my dealings with the GPF in my Third Affidavit from paras. 10 to 21 where I explain the challenges I faced upon taking up post and the reasons why I requested the HMICFRS inspection of the RGP. I have now received disclosure from the Inquiry of an affidavit from MM, the (former, and recently retired) Chair of the GPF. I will provide my general response to his evidence and that of FP and NP who were the ones who originally brought the GPF into the fore in this Inquiry. I will not answer each and every allegation, many of which are totally spurious or presented in a skewed manner, as I do not consider they are within the terms of the Inquiry’s Issue of Commission or the Issues List, which only refers to complaints made to the GPA, which as far as I am aware, there were none.
133. The broad position is this. One of my main concerns regarding the functioning of the GPF was their desire to achieve trade union status. I came to learn that they were getting too close with established trade unions, meeting with them often. The UK police service is not unionised. It is illegal for UK police officers to join a union under the UK Police Act 1996, and police officers are not permitted to strike. The same applies to Gibraltar. The Police Act 2006 very clearly states in section 52(1) that the GPF shall be “*entirely independent of and unassociated*” with anybody or person outside the Force, unless such an association is authorised by the Government on the recommendation of the GPA. To my knowledge, the GPA has never made any recommendations to the Government for this to ever occur.

134. I was also concerned with how the GPF were setting themselves up in terms of structure. They argued that the Chair and Secretary should be financially aligned with the Police Federation of England and Wales (“PFEW”) who represent approximately 140,000 police officers. I do not know what arguments were put to Government in this respect, but the RGP Command were certainly not consulted. In effect, the chairman who was a constable and the secretary who was a sergeant, would earn the salary of a chief inspector whilst they were full time office holders of the GPF who at the time represented about 230 officers. This would even become pensionable if on retirement they had still been in post.
135. I was aware of the adverse of sentiments from various officers on the unjustifiable remuneration that the convenors were receiving – this had caused an element of discontent amongst some officers.
136. These arrangements and costs were not deemed proportionate when one considers that the GPF did not and could not compare its role to that of the PFEW and neither did they perform such a nationwide function directing/overseeing PFEW representatives from the 43 UK police forces. The GPF was more akin to the set-up arrangements of a small UK county police force or even more pertinent, any other force with similar police officer numbers to the RGP such as Guernsey, Jersey or the Isle of Man.
137. This was not a view that was just expressed by myself or my command team colleagues. FP, the Chief Secretary, the Government’s liaison officer with the GPF, Mr Michael Crome and the Government’s Human Resource Department also agreed that the initial arrangements made were inappropriate. When Mr Ullger and I raised this matter with FP on 23rd July 2019 he said it could be rectified by simply saying that the allowance arrangement was personal to holder and had been given to Mr Bautista and Ms Jones (the original chairman and secretary of the GPF) in recognition of the extra work they had put in in create GPF proper, and that after their retirement, the financial arrangements were to be reviewed. It was because of this standpoint by FP that I pursued the review of the allowances for the convenors in the belief that FP was in agreement with me, and that cost savings would be achieved.
138. This was construed by the GPF as an interference by me in their business, when what I was pursuing was to ensure the GPF was proportionately set up for the needs of the RGP and that efficiency savings were considered. Any chief constable in the UK would have a say on how the PFEW is structured within their Force. In fact, to my understanding it is an arrangement / agreement between the Force and the elected PFEW representatives itself with no involvement from UK Government or even Police and Crime Commissioners.
139. I was also concerned with the inappropriate style of challenging that some in the Executive Board were displaying towards senior management and the negative message this was conveying to the workforce. In the main, Maurice Morello and Leif Simpson showed arrogance and disrespect during the occasions I met with them. They displayed no tact in the approach to our contacts. They gave me the impression that their style of doing business was to generate conflict. I tried to ignore this behaviour but it started to verge on outright insubordination and seemed to me to be geared more to cause offence than to achieve legitimate results.

Response to NP’s affidavit

140. In para. 23.1 p12, NP casts an aspersion that my poor relationship with the GPF resulted in low morale within the RGP. Without any clearer explanation as to what he means by this, all I can say is that no evidence exists to suggest what NP is saying is true. Morale may have been affected by other reasons such as work/life balance, heavy demands and

the likes as specified in the GPF's own staff surveys but there is certainly no reference in the survey to low morale being occasioned because of awkward relationship I had with the GPF Executive. I do not dispute my relationship with the GPF was difficult, not because I wanted it that way, but for reasons which I will explain in finer detail further along and which to an extent have been briefly explained in my Third Affidavit.

141. In para. 23.2 p12, NP makes reference to "*formal complaints*" made by the GPF to the GPA. He goes on to state that the "*GPA regularly spoke at its meetings about the allegations of bullying and intimidation by McGrail.*" As evidence to support this he introduces an email from the GPF to the GPA, dated 22 June 2020, which was nearly two weeks after I was forced to retire (see NP1/59-60). This email is important as the GPF's Chairman, MM, did not write this email in the context that NP is trying to introduce it against me. My understanding is that MM sent this email to the GPA at the request of Mr Ullger given that the GPA were considering bringing over a police chief from abroad to replace me. MM's intentions with the email was therefore to try and influence the GPA not to consider appointing a police chief from abroad and to opt for selecting Mr Ullger instead². It was evidently not meant to be a complaint against me AFTER I had retired. Therefore, I am of the view that NP's reliance on this email as evidence of complaints by the GPF to the GPA against me is flawed. I raise the following further points to counter what NP is stating.
- i. To this date I remain unaware of any complaints brought by the GPF to the GPA during my time in office. If there were indeed any complaints, I was certainly not notified by anyone of them.
 - ii. If as NP states, these complaints were regularly spoken about at the GPA's meetings, there would be an official record in the form of minutes or correspondence held by the GPA to reflect these. I would have expected the GPA or NP to have raised these complaints with me and to have afforded me the opportunity to respond to them.
 - iii. Having read all the statements disclosed to me from the many members that served in the GPA during the time I was in post, I note that ALL of them state not to have been aware of any allegations or complaints of bullying made against me. They go further in also stating that neither did they receive or hear of any complaints about my performance / duties as head of the RGP in terms of efficiency, effectiveness, probity, integrity or independence.
 - iv. My understanding of the GPA's powers is that it has no function in relation to "*any complaint or conduct matter*" against the Commissioner of Police – this is clear from section 16(5) of the Police Act 2006. As a long-standing member of the GPA, I am surprised that Mr Pyle does not appear to be aware of this.
142. In para. 23.4 p13, NP expresses that he grew a sense of unease about "*anecdotal stories*" that he had received from "*credible*" sources about bad behaviours and practices in the RGP. I find it incomprehensible that a former Deputy Governor, who was a member of the GPA, would not have raised these supposedly serious concerns with (i) the Governor, (ii) the GPA or (iii) CoP Yome or myself when I took over as CoP – and that instead, he chooses to *now* raise this against me as supposedly credible evidence, without

² <https://www.gbc.gi/news/police-federation-chairman-says-police-bosses-arent-concerned-enough-about-serious-allegations-belie>

particularising the “*stories*” or explaining where they came from. What in my view he shows is a total lack of responsibility in not having dealt with these concerns when they supposedly reached him and now alluding vaguely to gossip and slurs to protect his own position.

Response to FP’s affidavit

143. In para. 109, FP states CoP Yome worked well with and embraced the newly created GPF. The GPF was established under section 49 of the Police Act 2006 – the Police Federation Regulations 2018 were made on 21st June 2018, nearly two months after CoP Yome retired. He could therefore not have worked with the GPF or embrace its concept as FP claims. In fact, I know that CoP Yome was not in agreement with Government’s plans to create the GPF.
144. FP very loosely states that “*Mr McGrail seemed incapable of accepting even the most basic criticism from the Federation*”. He does not particularise or provide examples of what these most basic criticisms were. I can only presume that he may have been told of this by the GPF or the Government/GPF liaison officer, Michael Crome; he therefore did not know this information to be true – he certainly did not raise this matter with me. This would have been most logical and fair thing to do. He could have at least obtained a more balanced perspective of what he *now* says he regards to have been an important enough issue to raise before the Inquiry. I feel to have been put in a position of disadvantage where FP was accepting the word of others (if in fact it is true that others made such reports to him) but not allowing me any opportunity to even comment. This is just one example of how unfairly I have been treated since 12th May 2020.
145. In para. 110 p38, FP states that “*on one occasion I recall Mr McGrail writing to the Governor to ask him to propose legislation to limit the powers of the Federation in the representation of its members.*” FP is totally mistaken on this. In actual fact, I wrote to the GPA and not the Governor (though he was copied in as was FP and the MoJ). This letter is the one I referred to in paras 18 and 19 p.5-6 of my Third Affidavit and which led to FP calling Mr Richard Ullger and me to a meeting on 7th February 2020 to discuss its contents (**Exhibit IM/42** – letters dated 5th and 7th February 2020). The subject of the letter was not what FP is articulating it to be. I was not proposing any legislation. I was expressing concerns about the GPF’s desire to enact legislation to exclude the convenors from police disciplinary mechanisms – something which MM had boasted about to the RGP’s Professional Standards Department that FP was going to do. MM had also said that FP had a draft piece of legislation on his desk to precisely achieve what the GPF was desiring.
146. I recall that at this meeting FP could not understand the GPF’s conflicting stance with RGP management. He even mentioned that when it came to claims of under resourcing within the RGP, which is something the GPF were constantly highlighting, that the GPF should be taking up issue regarding this with Government and not RGP management.
147. The day before this meeting I had provided the Governor at the time, Lt.Gen. Ed Davis, with a ‘*heads-up*’ that he would be receiving a letter which I had written to the GPA and had copied him. I also told him via WhatsApp that FP had called me to a meeting regarding the letter. He indicated his intention to see FP before or after my scheduled meeting with FP (**Exhibit IM/14** messages dated 6/2/2020). The Governor had been supportive of my concerns.

148. In essence, it has become blatantly obvious to me that when I met with FP to discuss the convenors' allowances and terms/conditions of their appointments, I was being told one thing by him and he was telling the GPF another. In hindsight, this no doubt contributed to further impairing the GPF / RGP management relations – both RGP and GPF management at the time thinking that FP was supportive of each our respective positions. A WhatsApp message I sent to the Chief Secretary following this meeting with FP on 23rd July 2019 shows that I left the meeting content that FP was supportive of the points I raised. In turn, that encouraged me to pursue the matter to ensure clarity on the terms and conditions of the convenors and that efficiency savings were duly considered.
149. Regrettably and for reasons unbeknown to both the Chief Secretary and I, FP remained well in the loop, contrary to what he told me he would do. Much to the Chief Secretary's and my surprise, FP did not keep to his word and proceeded to ratify the pay conditions proposed by the GPF convenors. Neither the Chief Secretary nor I were consulted.

Response to Mr Maurice Morello's ("MM") affidavit

150. MM's statement contains a scathing and unrelenting attack on my character. As I understand the position, the vast majority of the of issues raised by him do not fall within the Inquiry's Issue of Commission, which relates to the reasons and circumstances leading to me ceasing to be Commissioner, or the list of issues, which only refers to complaints to the GPA, of which there were none as far as I am aware (and as already said, the GPA could not, lawfully, have considered them anyway, because of section 16(5) of the Police Act). Against this backdrop, it would be unnecessary and disproportionate for me to respond to each and every accusation that MM has made against me. This does not mean I accept any of them. In fact, I completely reject the misplaced and unfortunate perceptions he has about me. If the Inquiry considers that it would be useful for me to respond to the minutiae of MM's allegations I would of course be willing to do so.
151. I will, though, be able to provide information and broad responses to MM's points which will hopefully dispel these general perceptions. I will, in particular, provide some context to the fractured relationship the RGP had with the GPF – something which NP apparently now considers me responsible for, despite never having raised the issue with me, let alone asked for my view. Incidentally, CoP Richard Ullger, who no doubt tried to mend bridges with the GPF after my departure (and whom FP, ironically, says the GPF has a "*very positive relationship*" with (26 May 2022 affidavit, para. 113)), has also endured a similar if not worse experience to my own. According reports on GBC TV as recent as 14th March 2023, CoP Ullger informed everyone at the RGP that "*as much as I have tried to work with the Chairman and Secretary of your Federation, to achieve better things for you all, it has been an impossible task and I can no longer work with them.*"
152. All my correspondence with officials and colleagues regarding my dealings with the GPF has been disclosed to the Inquiry. I raised concerns with the approach the GPF was taking in conducting of their affairs, with the GPA, FP, and the Minister of Justice at the time, Neil Costa.
153. It is truly regrettable that in MM's narrative, he does not mention one single attribute about me which had a positive and constructive influence on the RGP. My progression in the RGP through these three and a half decades, which saw me work under (i) six different Commissioners of Police, (ii) thirteen Governors, (iii) five chief ministers and (iv) a Gibraltar Police Authority, speaks for itself and is testimony of the service I provided to the Crown and people of Gibraltar. I will leave it to the Inquiry to judge whether MM's

scurrilous attacks are well founded and/or relevant to the reasons why I retired early from the RGP.

154. I cannot for one instance accept what MM says about my controlling style of leadership which he claims no one dared to challenge. MM has stated that CoP Ullger was totally subservient (against his principles) towards me and that he never challenged any of my alleged inappropriate behaviours. MM is suggesting that my alleged controlling behaviour was also imposed on Command Team colleagues and that no-one dared to speak out against me – and that this cascaded down to the front line. Whilst it is not for me to comment on what others thought of my professional behaviour, the Inquiry could – if it considered it proportionate to do so – seek this information from serving and ex colleagues. I understand that they have in fact already provided evidence in answer to questions from the Inquiry that they have not been aware of any allegations of bullying or intimidation levied against me.

Context to the difficult relationship with the GPF

155. I would like to proceed to explaining what in my view was the reasons for my difficult relationship with the GPF. The RGP has traditionally been regarded as a disciplined essential service – it has its rank structure and systems to deliver a service to the public in a professional and disciplined manner and this includes internal service delivery. The importance of instilling and upholding discipline in the police service cannot be over-estimated. I would go as far as saying that without discipline a police service cannot function. Like with any other modern police service in the world, the RGP has ways of dealing with dips in individual officer behaviours which impinge on the standards expected.
156. I have never been one to shy away from confronting or challenging any behaviour which was deemed to be improper or conducive to poor discipline. I have always been fair in my approach whenever I have had to assert myself in this regard. From my junior / middle / senior management experience I gained experience to understand different personalities and the different methods available to deal with them.
157. I have also been quite understanding and open to being challenged by both members of the public or colleagues alike. I have been receptive to this when the approach has been proper, reasonable and respectful. I have not been as receptive to challenges which have, in my view, been designed to undermine management with either incorrect information or disrespect. Unfortunately, my Command Team colleagues and I have had experience of both of these from the GPF and their immediate predecessor the Gibraltar Police Association.

Complaints of bullying by MM to GPA

158. During my service as CoP I was never informed by anyone at the GPA or anywhere else, that complaints of bullying had been made against me.
159. I refer to all the affidavits of the members of the GPA where in answer to the questions put to them by the Inquiry none say that they have received or heard of any complaints of bullying made against me.

Collison at Sea

160. As hugely regrettable as the incident was because of the loss of life, MM is very critical of the RGP Command Team post to my retirement. He never raised any concerns about my handling of the incident when it happened right up to my retirement – there is nothing in his affidavit to suggest that he did. In fact, I actually feel that the RGP and GPF worked very well together on this matter from the outset and at least right up to when I terminated service. I therefore feel that raising this matter as an adverse issue against me at the Inquiry bears no relevance.

Response to examples of allegations of lack of ethics

161. Different persons can react to and/or perceive persons in authority in different ways. Whilst I acknowledge that perceptions are important when it comes to managing personnel, it cannot be the sole consideration. When adverse perceptions do exist, the best way to resolve these is via good communications. I do not proclaim to have been the perfect police officer during my service but what I certainly was not is what MM is describing me to be. I accept that as CoP it was always going to be very difficult to keep everyone in the Force happy or be popular with everyone – human dynamics and behaviours dictate that that was never going to be the case. I had also been educated at various leadership courses I attended that whilst it was desirable, from a management perspective, to have all staff on side and get on with everyone, one should not expend all one's energy in trying to convert toxic employees to be more positive and engaging. If attempts to bring the problematic employee on board failed, then as a leader I had to move on and deal with the problematic employee accordingly. There is also a school thought that claims that if a leader is popular with every employee without the need to deal with conflict/crisis then he/she cannot be doing the job properly.
162. It was not in my interests to have an adverse relationship with any member of the RGP including the GPF convenors. However, what I could not do is ignore the many instances of insubordination and disrespect displayed by MM. I was very conscious that MM's negative attitude was being transmitted to the rank and file and in turn, this was influencing others to develop negative attitudes themselves. The solace I found in my way of reading MM was that I was not the only senior officer to feel this way. I certainly did not influence any of my colleagues to adopt any particular stance with MM. I knew that MM was friends with Mr Ullger outside work, they had been on holidays together etc, so I banked on that connection to defuse any tensions arising. As it happened, and whilst I was still in service, Mr Ullger had to assert himself over MM on a number of occasions. He did so of his own volition and not at my request. The emails I have disclosed are testimony of this.
163. Mr Ullger may have changed his approach towards MM and the GPF after I retired, no doubt with the best of intentions, but it has also been unfortunate for him that he also seemingly hit a brick wall and found it impossible to work with MM and LS.
164. It would be disproportionate for me to respond to MM's misconstruing of events and facts such as the tabletop exercise sometime between 2012 and 2015 when they bear no relevance to the Inquiry at all. I say the same with the alleged comments he claims that I

made at the mental health coffee morning. It is inconceivable that I would have made those comments under the circumstances that we were gathering. MM's misconstruing is clearly designed to attack my reputation as is evident throughout his affidavit.

The Alcaidesa claims - Issue 7

165. The "*Alcaidesa Claims*" is clearly irrelevant (or so tangential as to be effectively irrelevant) to FP and NP's '*loss of confidence*' in me:
- a. FP does not make any direct reference to this incident in his affidavit,
 - b. NP does not make reference to this incident in his affidavit,
 - c. The AG does not make reference to this incident in his affidavit,
 - d. No reference to it appears in the detailed note of the meeting between NP, FP and JB on 18th May 2020, when NP and FP expressed their "*grave concerns*" about "*certain aspects of policing in Gibraltar*" (NP1/1),
 - e. No reference to it appears in either letter sent by JB to me on behalf of the GPA on 22nd May 2020 (the second of which was substantially written by FP),
 - f. The GPA Chair, JB, does not make reference to this incident in his affidavit,
 - g. MM does make reference to it. However, neither MM or the GPF had any involvement, as far as I am aware in the events leading up to me leaving the RGP. The GPF is also not a Core Participant for this particular issue. Their participation is restricted to "*any complaint(s) made by the Gibraltar Police Federation ("the Federation") and/or its members to the Gibraltar Police Authority about Mr McGrail ("the Federation Complaints").*" The Alcaidesa Claims are therefore not captured by this.
166. The sole reference to the claims appears to be in a text message sent by FP to NP on 14th May 2020, referred to in FP's affidavit at para. 67. The message refers to a number of issues, including this one.
167. I would be happy to provide a brief on this matter given that the Inquiry Team seemingly still have no information of what this matter is about. However, I do not consider it would be proportionate to provide a detailed statement on the Alcaidesa Claims at present since no other relevant Core Participant has set out what, if any, concerns they had about the Alcaidesa claims or why they had any relevance to the reasons and circumstances leading to me ceasing to be Commissioner of Police in June 2020 by taking early retirement. If this changes then I would of course be willing to provide a full response.

The 29th May 2020 letter - Issue 8

168. I have little to respond to in respect of the letter containing representations to the GPA which my lawyers sent on my behalf. It is notable that the fact that my lawyers provided a suitably robust response to the unconstitutional, improper and unlawful actions by NP, FP and the GPA appears to have angered FP (who refers to the letter as "*scurrilous*" (his

statement at para. 96)), and increased NP's concerns about my "*probity and integrity*" (his statement at para. 15.1) rather than causing them to reflect on their own actions, even once the GPA had (it would appear) accepted the central point made in the letter that its attempt to invoke section 34 of the Police Act was fundamentally flawed.

169. I wish to highlight one other important aspect contained in this letter in light of its relevance to other recent developments relating to FP providing a "*safety net*" to police officers who have provided affidavits to the Inquiry against me. At least eleven of these police officers have apparently been provided with this safety net and offered alternative employment in another Government department. Of those eleven officers, four I believe were facing disciplinary matters.
170. In my representations to the GPA following the invitation to retire under section 34 of the Police Act 2006, I divulged information and make allegations of improper conduct on the part of FP and the AG. This is presented as whistleblowing on my part. The letter refers to the legal protections in this regard (paras. 15 to 24 of the letter). It was incumbent on the GPA as the independent authority overseeing policing in Gibraltar, to provide me with the necessary protection. No such protection was offered or even considered. I was never given the opportunity to explain my serious concerns about the wholly improper interference by FP and the AG with a live major criminal investigation. The original whistle-blower in this whole matter has been hung out to dry by the institution that was meant to have provided the protection.
171. It would appear that my whistleblowing against FP and the AG has not been worthy of consideration by the GPA. I purposely do not include NP in this because as NP's and FP's evidence suggests, they had already agreed to operate in unison to ensure that I was ousted from office. I therefore could not expect NP to entertain my concerns/allegations in an impartial way.

NP's Stated intentions under section 13 – Issue 9

172. From the evidence, it is apparent that FP, and to an extent NP, were the ones who guided/advised the GPA Chair, JB, on how to apply the provisions of section 34 – the invitation to retire. FP texted JB advice/instructions about how (in his view) the section 34 process should be carried out (see para. 90 of FP's statement). FP also drafted the 2nd of the letters on the 22nd May, which JB then signed. This was inappropriate, in my view, given the required constitutional independence of the GPA from the Government. It follows that if the GPA applied the section 34 process wrongly, they did so under the evident instruction of NP and FP. For NP to say that he was going to invoke his powers under section 13 to suspend me or call for my resignation because the GPA had defaulted in their responsibility, is a total abuse of this power. The GPA's retraction of the invitation to retire should not have been the pretext to allow NP a second shot at me.
173. As stated in the letter of the 29th May 2020, "*the entire point of section 13 is that it only applies when the Authority is in default: it is not a mechanism for the Governor to simply use when he disagrees with the Authority, or when he disagrees with an action by the Police Commissioner, and nor is it a power which should be pre-emptively threatened in order to lean on the Authority to trigger section 34.*" The GPA erred in the way they initiated the section 34 process under clear instructions from NP and FP. Their involvement in guiding the GPA on how to proceed with the section 34 process should be considered against their claim that the GPA defaulted in their duties and which therefore

NP claims he was entitled to invoke his section 13 powers. I would even argue that the GPA's process was flawed because of the advice provided by FP and NP.

174. In para. 16.4 of his affidavit, NP states that both FP and he himself wanted to move quickly in resolving the matter before the new Governor arrived on 10th June 2020 so that his arrival was not "*marred by such a controversial ongoing issue.*" It is precisely because of NP's acceptance that the matter was a controversial one, that he should have left the matter to be dealt with by Sir David Steel.
175. I have subsequently been shown section 22(3) of the Gibraltar Constitution which says that a person who is designated as Governor whilst there is a vacancy in the office of Governor shall not continue to perform those functions "*after the Governor or some other person having a prior right to perform the functions has notified him that he is about to assume ... those functions*". This suggests that NP had no power to invoke the s. 13 power in the days immediately before Sir David Steel was to assume his functions as Governor, as NP well knew. Indeed, as I have said in the previous paragraph, NP uses the fact that Sir David Steel was about to arrive as a reason for speeding the process along. This further highlights the deep problems with the process which was carried out against me.

The GPA process under s.34 Police Act 2006 – Issue 10

Response to FP's affidavit

176. In para. 89 of his affidavit FP states that JB was concerned but not surprised when NP and he shared their concerns with him. This is totally at odds with what JB said to me at the meeting held in my office on 22nd May 2020 (see page 5 of transcript of audio recording on 22nd May 2020), that both he and all the members of the GPA were equally surprised about the position the GPA had been put in to invite me to retire.
177. In para. 89 FP states that the notes he provided JB of the meeting they had with NP include reference to Op Delhi "*the note demonstrates that the matters we referred to Mr Britto were the ones which the Governor and I had written to each other about by email over the weekend, including my concerns about relating to the matters of the search warrant in respect of Mr Levy.*" The said notes make no mention of Mr Levy, or the issue of the search warrant, or the Op Delhi investigation per se. There is an apparent intent not to provide clear specifics of what was discussed which is in contrast to the other particulars which were clearly articulated. The following is what the note says;

"The Chief Minister also shared another event occurring last week which had left him also in a situation where the Commissioner had expressly misled him and which left him unable to believe the Commissioner. The Chief Minister stated that for him this is possibly the issue of deepest concern as it goes to the integrity and probity of a key individual in the maintenance of the respect for the Rule of Law. Additionally, that individual, as Commissioner is, in the Chief Minister's view, at the head of the organisation that is institutionally one of the guardians of the Rule of Law alongside the Executive and the Judiciary. For the Chief Minister, to an extent the police becomes a fourth branch of government in the maintenance and preservation of the Rule of Law. The Chief Minister stated that without the Rule of Law we are unrecognisable as a nation. The Chief Minister said that he can imagine no greater concern than this in the context of his ability to discharge his oath to the Crown and to the People as Chief Minister."

178. Notwithstanding, the issue of Op Delhi was not mentioned in any of the two letters of the 22nd May 2020 that I received from the GPA. That the main issue of FP's loss of confidence in me related to Op Delhi and that this was not mentioned in the letters of the 22nd May speaks volumes.
179. There is a clear breach of the GPA independence when (i) JB asks FP for his help to draft the second letter and (ii) when FP proceeds to draft the second letter (pages 30-31 of FP's affidavit). The blurring of lines is further compounded when FP admits that JB sought his advice on whether or not to share my section 34 response to the invitation to retire with the Governor, the AG and himself.

Response to AG's affidavit

180. In para. 11 p6 of his affidavit the AG says that I did not at any stage complain to him or others that his interventions amounted to improper interference. Discussions on criminal cases is common between law officers and police. In my discussions with the AG, I tried to steer these to what I felt was the correct approaches the investigating team were taking and convince/influence the AG accordingly. And as long as the investigating team were still doing the right thing, I was satisfied that the improper suggestions being made by the AG were not having a negative impact on the case. Equally, it got to the stage where I trying to 'suss out' the extent of the AG's possible brief. I had to keep these thoughts well close to my chest in order to uphold operational security of the matter. It was not until the meeting of the 13th May 2020 when the AG asked me to remain behind after the others attending left his office that I felt the AG was in a somewhat awkward and compromised position with Op Delhi and I told him as much. By this I meant that the AG seemingly held a brief to ensure the case was not progressed further, however, I had to be diplomatic but on one reading of what was happening the AG appeared to be potentially in a position of serious conflict. Once I pieced together all of the AG's involvement I formed the view that the AG was effectively improperly interfering with the Op Delhi investigation.

SWORN by the abovenamed Ian McGrail

this 3rd day of August 2023

at **6B CATHEDRAL SQUARE**
GIBRALTAR
Before me

**Personal
Data**

**Personal
Data**

A Commissioner for Oaths

Leanne Turnbull LL.B. (Hons)
Commissioner for Oaths
6b Cathedral Square
Gibraltar

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