

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

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**SECOND RESPONSIVE AFFIDAVIT OF IAN MCGRAIL**

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

1. I provide this 2<sup>nd</sup> Responsive Affidavit in response to documents disclosed to me on or after 28<sup>th</sup> June 2023. I also include further material which was generated after the submission of my 3<sup>rd</sup> Affidavit on 4<sup>th</sup> October 2022 and which relates to what I consider to be the unfair treatment I continue to be subjected to since I retired.
2. This affidavit is supplemental to those I swore on (i) 20<sup>th</sup> June 2022, (ii) 26<sup>th</sup> September 2022, (iii) 4<sup>th</sup> October 2022, (iv) 15<sup>th</sup> February 2023 and (v) 3<sup>rd</sup> August 2023.
3. The contents of this affidavit are true to the best of my knowledge and belief.
4. I will keep this affidavit focussed on specific material points and I will draw necessary linkage to the List of Issues where appropriate.
5. In this affidavit references e.g. to “EB/1” are to TMX Exhibits Bundle, page 1, “CB/1” are to TMX Chronological Bundle page 1 and “WSB/1” are to TMX Witness Statements Bundle, page 1.

**The Airport Incident – Issue 1**

6. In my previous affidavits I have covered my involvement in this incident in considerable detail appending many exhibits to respond to the accounts by Mr Nick Pyle (NP), Mr Fabian Picardo (FP), Mr Michael Walliker (MW) and Mr Scott O’Malley (SO). I will now respond to the statement of Mr Christopher Collins (CC), who was the Joint Provost Service Unit’s Provost Marshall at the material times and whose statement I received in late June 2023.
7. CC provides a very detailed though somewhat biased account of the Airport Incident and the events leading up to it. He misses the crucial point which is that he and the Services Police unit he commanded took executive action in an *ultra vires* manner in the jurisdiction of Gibraltar. He may well have been acting under the honestly held belief that he was legally empowered to act as he did, but to persist as he did, whether on ill-informed legal advice or otherwise, with his actions of removing evidence from Gibraltar *after* knowing that his unit had no legal

authority to operate in Gibraltar displayed a lack of respect towards the Royal Gibraltar Police and the rule of law in Gibraltar.

8. I would have also expected CC not to have omitted from his evidence to the Inquiry the letter of apology he sent to my predecessor, Mr Eddie Yome, which I duly introduce now (**EXHIBIT IM/43**). His wholehearted *unreserved* apology and regrets simply do not square off with the forcefulness he asserts in his affidavit that the RGP acted inappropriately. In this letter, CC admits he was not aware that he was operating outside his legal remit and that if such an event were to occur again he would certainly have approached the matter in a more constructive manner (by default admitting that his approach was not constructive but rather, in my view, very rigid and ill-informed) which is what I and my RGP colleagues were striving to achieve from the outset.
9. According to NP, the RGP officers attending to CC at the Gibraltar Airport created unnecessary drama by removing him from within the commercial flight which he had arrived in. Nowhere in his statement does CC say that the RGP ill-treated him but rather, that they were discreet and accommodating to his personal needs. For CC to describe as a dereliction of duty the fact that the RGP officers dealing with him did not place him in handcuffs or lock him in a cell (which most likely was not warranted) is certainly disingenuous because evidently what the RGP officers were doing was showing due courtesy in the awkward situation they were in.

### **Assault on helicopter pilot – Issue 2**

10. I am now in possession of some but not all of the RGP documents relating to this issue. The RGP has disclosed the investigation file and some emails which contains the following:
  - (i) Witness statements obtained by the officers investigating the case totalling 74 pages from 18 witnesses (CB/C399).
  - (ii) A CCTV timeline of events (CB/C369).
  - (iii) The report prepared by the officer in charge of the case for the submission of exhibits for forensic examination.
  - (iv) A file note detailing the investigating officer's actions when viewing CCTV evidence footage.
  - (v) The final report named "Op Bolero Report" which summarizes all the investigation activity for this matter (CB/C352).
  - (vi) Email exchanges on the progress of the investigation and updates provided to the UK Services Police.

(still missing from the data I inspected from the RGP is the letter from the Commanding Officer of HMS Monmouth thanking CoP Eddie Yome for the RGP's handling of the case).

11. This material which the RGP have now disclosed at my request shows how wrong-headed and ill-informed NP's assertions are that the RGP took no interest in investigating the assault on the pilot on the basis of rumours and gossip from his so called undisclosed, unknown or unrated sources. This included the very unfair and improper comment "*the widely held belief in MOD circles is that the RGP did not investigate the crime correctly to protect those involved in the attack.*"

### **Incident as sea – Issue 3**

12. NP's narrative and main issue for his alleged loss of confidence in me as head of the RGP was that I had been evasive and that I withheld key information from him with regards to the location where the collision had occurred. In my third affidavit I have covered all my actions on this issue and have refuted NP's allegation. It was totally inconceivable that I would have briefed FP and the Attorney General (ML), who incidentally was present when I briefed NP, with any

other than the same information I had at my disposal. Moreover, there was absolutely no reason why NP should be kept in the dark.

13. Having received the latest batch of disclosure from NP after June 2023, I would like to refer to an email NP sent to the FCDO at 0757hrs on Monday 9<sup>th</sup> March 2020 (NP2; EB/1748) in which he wrote *“There may be complications around yesterday’s incident in that it might have happened as much as six miles inside Spanish waters.”* It is therefore beyond doubt that NP knew very early on that the collision may have happened in Spanish waters. He communicated this to the FCDO in under 24 hours of him being informed of the incident. The only possible sources of this information were from myself, a senior member of my team dealing with the matter, ML or FP.
14. NP now says in para 15 page 5 of his responsive statement that he had been informed of the suspected location of the collision but cannot recall who told him. With respect I find this very difficult to believe particularly since NP claims to have a very clear recollection of what happened in the first few days after the collision. I have never been in doubt that I had briefed NP appropriately given the information I had at my disposal but having read his email as mentioned above now re-enforces my view that NP’s alleged loss of confidence on this matter lacks substance and answers to an agenda or aims of NP which I am not able to speculate on but clearly involved taking advantage of FP’s fury after the intervention on JL some months later, to remove me from post which NP has admitted he never wanted me to fill when I was appointed in 2018.
15. In another email sent by NP to the FCDO at 1642hrs on 9<sup>th</sup> March 2020 (marked NP2/12; EB/1757), where he provides an update, he relays his understanding that even the Spanish Guardia were not sure where the incident had occurred. He also states *“CoP confirmed that the exact location has still to be determined as were the details of the chase which lasted 10 minutes.”* (underlining added). This briefing he sent was after the one explaining that collision might have occurred six miles into Spanish waters. Moreover, NP further briefs up saying *“the AG was clear, with the entry at some point of the vessel into BGTW, that the law had been broken and therefore the chase was legitimate.”* Yet, NP does not infer or consider any evasiveness on the part of ML given that it transpired that what ML had said was found not to be correct even though at the time we were working on that hypothesis.
16. In NP’s references to the incident at sea there seems to be a heavy implication that I was not taking the question of location sufficiently seriously. Nothing could be further from the truth. As far as I was concerned, the exact location, not just of the collision but also in whose waters the entire chase occurred, was of crucial importance not just because of the obvious international relations implications but also because all issues of criminal liability both as far as the surviving alleged smugglers and the Marine Section crews were concerned, depended on an exact identification of where the chase started and the collision occurred.
17. For this reason, around 12-15 officers were assigned to investigating the incident. At least two officers, (possibly Detective Sergeant Mark Garratt and Detective Sergeant Sam Cottam) were assigned to investigate this crucial issue in conjunction with Gibraltar Port Authority officials. I have gleaned this information from reading the documents disclosed by the RGP on Op. Kram. Evidence of the laborious efforts employed to home in on the details of where the collision and chase took place can be found in the statements of Phillip Paul Mandleberg, a senior Gibraltar Port Authority official, dated 11<sup>th</sup> March and 29<sup>th</sup> April 2020 (**Exhibit IM/44**). It had been unfortunate that previous to Mr Mandleberg’s evidence coming to light (i) the crew members of the RGP interceptor craft had not been able to shed any light on of where the incident had taken place, (ii) there were initial conflicting reports that the collision had occurred in BGTW, (iii) the AIS on the RGP vessel had been switched off and therefore no data was available to confirm its movements, (iv) no data was able to be extracted from the suspect RHIB at the time (v) the Gibraltar Port Authority nor Windmill Hill Signal Station had any available

data to confirm positions and (vi) the Guardia Civil only had a set of provisional coordinates of the possible location of the collision but which they themselves could not verify.

18. Attached marked **IM/45** is a summary of all the officers involved in the 4 days between the 8<sup>th</sup> and 12<sup>th</sup> March 2020 and the tasks allocated to them.

#### **The Hacking and Sabotage of the NSCIS platform – Issue 5**

19. I have been accused by FP and ML of lying to them by saying that the DPP had advised the RGP on the search warrant that was to be executed on JL. From the evidence which has subsequently been disclosed by the RGP (particularly in the exhibits to Mark Wyan's statement), it is clear that the DPP was aware of the intention to execute a search warrant against JL as early as 1<sup>st</sup> April 2020 when he was presented with a copy of the National Decision Model (NDM) document which referred to the intended search warrant at paragraph 31 and to my understanding he deferred on advising on the warrant as this was purely an operational matter for the RGP. This supports the point I made in my 3<sup>rd</sup> Affidavit and elsewhere, that I told FP and ML (under the extreme pressure of FP's angry reaction to much of what I was saying) that the status of JL as a suspect had been the subject of consultation and agreement with the DPP, and that he had advised the team generally on the investigation throughout (see my 3<sup>rd</sup> Affidavit, paragraph 147(iii)(e)). This is further supported by ML's text message to FP on the same day which I refer to below.
20. It now transpires from disclosure provided by FP in his third affidavit (Exhibit FP/3), that what ML refers to as "pure conjecture" (ML 2<sup>nd</sup> Statement, para 52.2) that FP had leaked information to Hassans was probably true. In fact, according to these belated disclosures, FP was in communication with Lewis Baglietto KC (LB), JL's counsel and professional / business partner repeatedly on the date of the search warrant against JL (12<sup>th</sup> May 2020) – a communication that at least stretched right up to 17<sup>th</sup> May. Moreover, FP admits that "*on a very large number of occasions*" he discussed with JL the interest the RGP had in JL.
21. My strongly held but then as yet unsubstantiated suspicion at the time that when it came to Operation Delhi, FP was acting in concert against the RGP with his professional and business colleagues, JL (his mentor) and LB (whom he refers to as "Bro") and his close friend ML, has now been laid bare for all to see.
22. The extent and detail of communications exchanged between LB and FP regarding my situation is shocking to me as a life-long police officer who has always held a strong faith and trust that people in positions of power will always act with decency and integrity. When police officers carry out any action to enforce the law without fear or favour, we do so on the basis that if we are acting honestly, we can count on the support of higher powers.
23. The WhatsApp exchanges from FP3/6 to FP3/7 (EB/B1415 onwards) suggest the following;
  - i. That both men spoke over the phone on a number of occasions about me.
  - ii. That these discussions also included the potential consequences I would face *viz* my pension entitlements in the police disciplinary ambit with FP telling LB "*Dismissal with total loss or redaction of Pension Benefits forfeiture of Pension Benefits will be used as a disciplinary measure only in cases where the Police Officer is convicted of treason or some other offence which is gravely injurious to the State or is liable to lead to serious loss of confidence in the Police Force.*" FP took this from Schedule 2 (8), Disciplinary Penalties of the Police (Discipline) Regulations 1991 which incidentally is the most serious of the whole range of penalties cited in the said Regulations.

- iii. That FP also seemingly provided LB with legal advice on how police deal with property that comes by their possession. This particular exchange took place on 14<sup>th</sup> May 2020 at the height of the barrage of letters I was receiving from Hassans following the intervention of JL on 12<sup>th</sup> May 2020. It would be safe for me to deduce that this exchange related to the attempts by Hassans to have JL's devices returned given that LB tells FP his plan of action in this regard.
- iv. There is suggestion that FP met with LB in person and possibly with JL too on the 17<sup>th</sup> May 2020. The pertinent WhatsApp exchange below refers;-

16/5/2020 @ 2320hrs – LB writes to FP – *“Bro. Sorry to disturb you but Can we speak some time tomorrow morning?”*

17/5/2020 @ 0804hrs – FP responds to LB – *“Sure. What time is good for you”*

17/5/2020 @ 0906hrs – LB to FP – *“Thanks. Anytime. And what’s the best way? WhatsApp call? Or Landline?”*

17/5/2020 @ 0943hrs – FP to LB – *“I don’t mind. Ahora te llamo [I’ll call you now]”*

17/5/2020 @ 0944 hrs - LB to FP – *“Perfect. Thanks. Mobile or [redacted].”*

\*It would appear that a quick conversation may have occurred at this time given FP’s previous text and the fact that the WhatsApp conversation then moves to;

17/5/2020 @ 0951hrs - LB to FP – *“12 noon he says”* followed by a series of four missed calls from LB to FP.

17/5/2020 @ 1004hrs – FP to LB - *“OK”*

In the absence of any explanation afforded by FP to provide context and meaning of these exchanges, I think an inference can be drawn that FP and LB had arranged to meet in person at noon on that day with JL too. I say this because of the reference by LB to *“12 noon he says”* (underlined by me). My inferences are strengthened by what follows in their WhatsApp exchange:

17/5/2020 @ 1142hrs - FP to LB – *“Let me know when you are on your way up.”*

17/5/2020 @ 1157hrs - LB to FP – *“OK”*

17/5/2020 @ 1209hrs – FP to LB – *“Como vais (how are you getting on)”. [NOTE that the word Vais refers to the plural (you). the singular is “vas” so FP was clearly referring to LB and another]*

17/5/2020 @ 1403hrs – LB to FP – *“Picking up now”*

- v. That FP also discussed with Hassans (LB and JL) the HMICFRS report sharing what I believe is a screen grab of part of the said report;

17/5/2020 @ 2248hrs – FP to LB – *“That is page 13 of the HMIC report published last week. Look at the bit I have highlighted. Boom.”*

17/5/2020 @ 2252hrs – LB to FP - *Shocking but sadly doesn’t come as a surprise! Thanks for your time bro. I think it reassured him a lot!”*

17/5/2020 @ 2302hrs – FP to LB – *“I think the above is of major [sic] to the issues raised this week. It will be important. Remember HMIC report is public.*

17/5/2020 @ 2303hrs – LB to FP – *“Yes, excellent. We can put it to good use for sure!”*

17/5/2020 @ 2310hrs – FP to LB – *“I have sent to JL. Let me know if he sees it.”* [emphasis added]

17/5/2020 @ 2312hrs – LB to FP – *“thumbs up sign.”*

In this exchange LB gives the strong impression that JL has been reassured by FP at the meeting they attended. Again, taking into account the exchanges about police discipline procedures coupled with this reassurance, I can only infer that FP reassured JL that he was planning to oust me from Office or intimidate me using disciplinary measures and that he should not be worried about the criminal investigation. This is a similar reassurance that ML provided JL when he communicated with him on 13<sup>th</sup> May 2020 and told him “*don't worry.*” (see Llamas1 WB/A289).

24. When I first read the exchange between FP and LB in what appears to have been a discussion about the possibility of depriving me of pension rights which I had earned after 36 years of loyal service to the Crown, I thought that they were motivated by an appalling urge for revenge and punishment.
25. Since then, I have come to the conclusion that there was method in the madness. I believe that the aim was to make an example of me that would ensure that even after I had left the RGP, my successor and the members of the Operation Delhi investigation team understood that they were playing with fire and must discontinue any and all action against JL or anyone connected to FP and his close circle of associates.
26. Certainly, even without knowing that my pension rights were being targeted, the senior management team at the RGP had been put in fear by what they considered to be reprisals that I was being subjected to for having dared to allow Operation Delhi to trespass into the inner sanctum of power in Gibraltar.
27. Returning to the categorical claim by FP and ML that I lied to them both about the DPP having advised on the search warrant for JL, I would like to point out the following. I have rejected and indeed resented that I lied to either of them. Both have insisted that I did, and I have provided evidence of what I really said at that meeting. The revelations of the disclosed WhatsApp chats between FP and ML in FP3/1 show that what they are alleging was not as clear as what they are now making it to be. Nearly four hours later after confronting me in the Cabinet Room they exchange texts as follows:-

12/5/2020 @ 1541hrs – ML to FP – “*Spoken to DPP. He is categorical that whilst he told RGP that an interview with JL would likely be necessary, he strongly advised against a search warrant.*”

12/5/2020 @ 1542hrs – FP to ML – “*Pues entonces nos mintio a los dos [well then he lied to us both]*”

12/5/2020 @ 1543hrs – ML to FP – “*Exactly he certainly gave us the impression that sw (search warrant) was sanctioned by DPP.*”[underlined by me for emphasis].

It is therefore clear from these contemporaneous messages exchanged nearly four years ago that it was only a mere *impression* that ML says I gave them that the DPP had advised on the warrant - certainly *not* that I had specifically said that he had. There is an important distinction to be drawn here because of the serious allegation levelled at me. Moreover, as mentioned above, the DPP had notice of the intention to execute the warrant on JL when he received the copy of the NDM on 1<sup>st</sup> April 2020.

28. I also want to comment on the assertion by the ML in his WhatsApp message to FP that the DPP “*strongly advised against a search warrant.*” This is certainly not what my understanding has been from the outset. Whilst I had no dealings with the DPP in this regard, I have read the evidence presented by Mr Paul Richardson (PR), Mr Mark Wyan and the DPP himself and nowhere in their respective statements is this so-called strong advice against the warrant referred to. In fact, the DPP states that the RGP did not seek advice from him on the search warrant as this was purely an operational matter. This is corroborated by PR who emailed the DPP on 1<sup>st</sup> April 2020 (see para.19 of PR’s third affidavit) stating amongst other things:-

*“....I have also included my NDM assessment of the need to interview JL which sets out my rationale. Although this document is not intended as the basis of seeking legal advice I hope it that it will assist on the understanding of why we feel that it is necessary to follow the course of action that is proposed.*

*What we are seeking is your advice on whether in your views the charges that we propose are warranted by the evidence and whether there is a reasonable prospect of conviction and (given the inherent political nature of this investigation) that it is in the public interest to proceed. In addition and in respect of James Levy, we are seeking legal advice as to whether there are reasonable grounds to suspect that he committed the offence as alleged.....”*

It therefore follows, that the DPP is unlikely to have strongly objected to the search warrant as claimed in the message by ML because he was not asked for advice on this (see paras. 12 and 13 of DPP's affidavit dated 21<sup>st</sup> June 2022). Moreover, it is my understanding from the evidence of PR that even though the DPP said he thought that a production order was more appropriate, that he would be more than happy to defend the warrant if challenged (see Richardson3 WB/A1432).

29. ML also informs FP by WhatsApp message that “CoP has since called DPP. Trying to cover his back with him.” I cannot recall having a conversation with the DPP at this time as otherwise I would have included it in my evidence in my previous affidavits. However, if I did have a conversation with the DPP it was certainly not to cover my back as ML suggested to FP – I resent this allegation. The DPP has not referred in his evidence to such a conversation taking place and therefore it may be prudent to inquire from him because I am certain that he will state that he could not have perceived that I was in any way shape or form trying to cover anything up.
30. What is evident is that FP and ML exchanged WhatsApp messages concerning me, with ML even sharing with FP the messages he and I had exchanged. All this shows that the mind set that I unfortunately developed back then that I could not trust these high-powered officials in supporting the Op Delhi investigation were justified. The fact that FP consulted with Hassans on matters relating to the challenge of the search warrant has surprised me, all this against the backdrop that FP had told me that he would not comment further on the matter given his close personal and professional relationship with JL. Evidently, FP never distanced himself from the matter but instead got further involved meeting up / communicating with JL's lawyers and the suspect himself as previously highlighted above.

*Second Affidavit of Mr John Perez (JP)*

31. In para.2 JP refers to a personal perception which he developed concerning an improper and abnormal relationship the RGP and I developed with James Gaggero (JG). To back up his beliefs he makes reference to entries made by Paul Richardson (PR) in his daybook regarding the Op Delhi Investigation. It is key to note that this perception of JP's is one akin to what FP told myself when he told me that JG was using the RGP to achieve commercial gains and that the RGP was allowing itself to be used by Bland Ltd.
32. In para. 4 of his second statement JP states that PR's Day Book would be of value to the Inquiry as it would demonstrate the relationship between the RGP and myself on the one hand and JG and Bland Ltd on the other. I have checked PR's Day Book entry notes and I have also crossed referred what JP is stating with JG's statement which confirms that a meeting took place it seems via telephone. It was the day I introduced JG to the RGP investigation Team. This has

refreshed my memory and I do recall mentioning to JG that the complaint he was filing appeared to be a very complex one which would require a considerable amount of time and resources to investigate. That I hoped JG would not change his mind in pursuing the complaint after the investigation had concluded because that would be tantamount to a waste of police time and resources. In my police career I have on many occasions faced this dilemma where crimes are investigated but on concluding the investigation, complaints are withdrawn. This has a negative effect on a number of things, not least; that those investigated can feel very hard done by, having been put through the investigative process with all the reputational consequences this can bring about; the investigating team can end up demoralised after all their hard work ends up nowhere; public confidence in the police can be affected etc. By seeking these assurances from JG it actually demonstrates that JG or Bland Ltd were NOT manipulating the RGP to pursue the investigation – quite the contrary, I did not want JG to use the RGP investigation for any ulterior motives and settle any scores he may have had. This should therefore answer the erroneous notion that JP, his co-defendants and FP had of the relationship I had with JG.

33. It is common courtesy for the police to inform a complainant of critical phases occurring in an investigation e.g., whenever an arrest takes place, when charges are proffered, when there is any risk to personal safety, if the investigation is discontinued etc. This can hardly be interpreted as improper or abnormal. In any police investigation, more so such a complex one as Op Delhi was, it is not abnormal or improper for investigators to maintain contact with complainants throughout the investigation to seek out and discuss pertinent details that emerge, and which may require clarification. It is not good victim support to forget about a witness / complainant after a statement has been obtained more so when there are issues that may have to be put to the witness or clarified for the sake of a diligent investigative process. The entire matter of Victim Support has now and for many years been given regulatory effect under the Victim in Criminal Proceedings Regulations 2015.
34. In Paras. 11 and 12 of JP's second statement he suggests that Sir Peter Caruana KC influenced the RGP's charge decision making. I am not aware of any such influence at all and I certainly DID NOT meet with Sir Peter Caruana or any members of his firm on any occasion.
35. It follows that JP's assertion that this type of relationship with Bland afforded no recognition to the distinction between Bland's interests and the public interest is totally absurd given the very serious nature of the crimes under investigation and its implications on National Security. JP cannot simply water down the OP Delhi investigation which was looking into the sabotage and hacking of the NSCIS. I find this approach on the part of JP to be particularly disingenuous given that he is a retired Army Lt. Colonel and will have been intimately aware of the security implications of the hacking of the system.
36. In para 6. JP is very critical of PR and his team for not having conducted a proper investigation and given consideration to reasonable lines of inquiry that may have uncovered evidence which would have cast doubt on JG's complaint. As the evidence proves, the RGP conducted a thorough and pain staking investigation of the complaint filed by JG. The DPP and Crown Counsel were consulted throughout the investigation and charges were proffered on the basis that there was a realistic prospect of securing a conviction.
37. Indeed, when ML announced the discontinuance of the prosecution, he made it clear that he thought that there was ample evidence to take the matter to trial and that the reason for his discontinuance had nothing to do with evidence.



38. At para.8 of his statement, JP says that according to PR's Day Book entry on 7<sup>th</sup> May 2020, a discussion was held where I say that the RGP have not been swayed by submissions made by JP's lawyers and that I also say that there is "very sensitive executive action pending" with reference made to a "grey man". I cannot recall having had that discussion, certainly not in person, but I cannot doubt it was held if PR recorded it in his Day Book. Again, this must have been said in the same context of keeping the complainant abreast of critical moments in an investigation and / or enquiring from JG on aspects that defence counsel had put to the RGP in the letter referred to and which needed clarification. I did not follow up with any face-to-face meeting with JG to explain what I meant by further "sensitive executive action was still pending." I can say however, that the "grey man" is how JG referred to JL.
39. In reference to para 13, I did not maintain an active involvement in Op Delhi as claimed by JP. He bases his argument on the references in PR's Day Book which are actually very few in the context of the 168 pages of Day Book notes. If I communicated with senior government officials it was because I was asked to do so by PR or Mr Wyan simply to keep these communications at that high level – much in the same way as I wrote to the Director General of the National Crime Agency seeking their support. This does not mean that I was heavily involved in the investigation *per se*.
40. At para. 15 JP suggests that I was playing a leading role in trying to persuade HMGOG to interdict Caine Sanchez. He bases this on evidence provided by the then Financial Secretary Albert Mena. I have checked the pertinent paragraphs as highlighted by JP (paras 17 to 28 of Albert Mena's statement) and cannot identify where in those paragraphs there is any mention by me of persuading HMGOG to interdict Caine Sanchez. These paragraphs mention Mr Mena's interactions with me and factual briefings he attended and nowhere does it suggest what JP is claiming.
41. At para 21 JP refers to an email I had received from JG the day after I retired where JG wished me well. JG was amongst many others (including the Chief Justice, the Stipendiary Magistrate and the former Governor, Lt. General Ed. Davis) who reached out to me to wish me well around that time and I do not see this to be abnormal or inappropriate at all. As JG alludes in his statement, it is true that I did not hold any face-to-face meeting with JG after my retirement to discuss the reasons why I retired.

#### **Complaints by GPF – Issue 6**

42. Now that the Inquiry has determined the pertinent parts of the evidence of Mr Leif Simpson (LS) which are deemed to be relevant I will provide comments in response to his statement. By and large, LS' evidence mirrors that provided by Mr Maurice Morello (MM) and therefore I will not repeat my comments which I have already dealt with in my first responsive affidavit dated 3<sup>rd</sup> August 2023 and third affidavit.
43. The paragraphs of LS' affidavit which the Inquiry have deemed to be relevant are paras. [1]-[5], [23], [38]-39, [67]-[73], [99]-[100], [103]-[104], [109], [119]-[162].
44. In paragraphs 4 and 5 LS describes the relationship between the GPF and myself as a very difficult one. I would not disagree with this but would add that it was not only with myself that the GPF had a difficult relationship, but this also applied to others in the RGP's Command Team. Following my departure, the strained relationship continued to the extent that my successor has been quoted publicly as saying that the relationship had deteriorated even further. Needless to say, this has caused a great deal of public concern and whereas the HMICFRS report of 2020 referred to "*enthusiasm*" among the workforce, this has now deteriorated to an

alarming level (see page 31 of the HMICFRS report 2020 of the RGP). I deny LS' claim that I ever displayed aggressiveness and that my attitude was controversial whenever I had any dealings with them. In fact, it was their own demeanour that left a lot to be desired in the context of a disciplined force such as the RGP.

45. I have previously explained what my concerns regarding the trajectory the GPF was taking with their intention to become unionised. I have also quoted from the section 52(1) of the Police Act 2006 which says that the GPF shall be entirely independent of and associated with anybody or person outside the Force. Neither LS nor MM seemed to grasp this and they saw any thing I said or did concerning the GPF as an interference with their independence when this was certainly not the case. As Commissioner of Police I had command and superintendence, direction and control of the Force and was responsible for the efficient administration and government of the Force and for the proper expenditure of public moneys appropriated for the service thereof. Any dealings I had with the GPF fell in line with my responsibilities. This was not a question of trying to bring the GPF under my control as LS alleges.
46. I have no substantive comments to make in relation to paras 38-39, save to say that my intervention on this matter was justified to the extent that following protracted discussions and obtaining legal advice, the GPF had to back down and re-conduct the elections of Board members in accordance with the provisions of the law which they had initially failed to do. It was evident that they took offence with my posture at the time, but as far as I was concerned it was a situation where we had different stances and unfortunately for them, I was found to be correct. I nonetheless put this situation behind me very quickly, but this was not to be the case with the then office holders at the GPF, LS and MM.
47. In paras. 67-73 LS comments on Double Standards and arrest of Officers in Alcaidesa (Spain). I am quite perplexed that LS and MM suggest that I acted improperly in 2019 by protecting the two members of the RGP-GPF, when a Panorama news reporter, the disgruntled ex-RGP officer Leo Olivero, engaged in an incessant attack of the RGP over an incident that occurred in 2010.
48. LS and MM state that I lied to the newspaper and by default was misleading the public when I was asked questions about the court outcome of two serving RGP officers who faced a charge of civil trespass in a Spanish Court. My communications with the Governor, FP and MoJ on this matter have been disclosed to the Inquiry.
49. My responses to Panorama have been true i.e. that to my understanding no RGP officer held any criminal records in Spain. The officers in question had been convicted in late November or early December 2018 after pleading guilty to one count of civil trespass and were fined 450 Euros each (it is important to note that no equivalent offence exists here in Gibraltar). The conviction remained on record, I believe for 6 months (in accordance with the Spanish penal code) after which they were regarded as spent or possibly even completely wiped from their systems. Therefore, at the time I was providing my comments to Panorama towards the end of June 2019, the said convictions were spent. To support my position I attach a bundle of emails marked as **Exhibit IM/46** Which show how I consulted with the then Governor Lt. Gen Ed Davis, FP and GPA chair JB regarding my responses to the Panorama newspaper. Their responses were very supportive as follows:

*From Lt Gen. Davis – “Dear Commissioner, thank you. Very Clear. Let’s speak more tomorrow. As ever, you have my full support in defending the truth as it relates to your Force’s and your officer’s reputation. Kind regards Ed.”*

From the GPA Chair, JB. – “Commissioner, we spoke earlier. It goes without saying that the GPA also fully supports you in defence of the truth.”

From FP – “Dear all, Ian, Needless to say, I have been fully apprised during my time as CM of the progress of this matter. I have supported the actions taken by successive Commissioners in respect of dealing with the aftermath of this matter (but not the actions challenged in Spain). I have no issue with the manner in which past and current CoP’s have answered questions on this. Reality check – we all know what is really behind this type of negative reporting. With very best wishes – and my fulsome support, Fabian.”

50. LS and MM allege double standards on my part on this particular issue but what is really questionable is their support and encouragement of the Panorama newspapers campaign against the RGP when, as representatives of police officers, they should have instead used official mechanisms, including making reports in writing to me and where necessary to the Gibraltar Police Authority or even His Excellency the Governor, as the authority responsible for policing in Gibraltar.
51. In terms of paras. 97-100 it is important that I provide some context to my involvement with the GPF in connection with the Staff Survey which they commissioned. The GPF survey was carried out shortly after I took up post, and I was taken aback as was the then MoJ Neil Costa when then GPF decided to go public with its results without even considering discussing its findings with management. In his email to me of 24<sup>th</sup> September 2018, Minister Costa said “*I share your frustration, as Henry [Bautista] the GPF chair at the time asked me for a meeting to discuss and agree a media strategy. I fixed a date and time for this meeting on the same day. It was a total shock, when I received exactly the same email and attached PR as you have.*”
52. I believe that this survey was framed to elicit negative responses. Both the questions and grading options reflected this. As examples, (i) we noted that there was no option for a ‘Very Good’ rating in the scale for respondents to consider – the rating scale was Good, Neutral, Poor and Very poor. This meant that the highest rating that a respondent could answer was only Good! Accordingly, an officer who did not wish to give the highest level of response, in this case ‘Good’ was likely to have responded with a ‘Neutral’ answer. It was deemed by the senior management team that the scores were skewed downwards and the rating scale un-objective in seeking out more negative responses than positive ones. (ii) on the question design to do with morale we identified that morale is the confidence, enthusiasm, and discipline of a person or group at a *particular* time. Therefore, the survey represented not only a snapshot in time (i.e. when it was conducted) but also it was unclear what *period of time* respondents were commenting on. Morale is in state of flow and subject to many variables; i.e. negative factors include manpower levels that can fluctuate and rest days that need changing whereas positive factors include job satisfaction (where incidentally we scored highly) and acknowledgment and reward (areas where we also knew we had also have done very well in under “Investors in People” programme). The survey results lacked depth to understand all these variables.
53. This is the one reasons why I commissioned an independent firm of UK consultants to assist in better understanding and analysing the survey results (the AAP report refers). AAP Associates interviewed around 150 personnel and reported back with their findings. They provided many recommendations amongst which were some that sought to improve the manner surveys were conducted in the future, but also very importantly, concluded that they found no systematic bullying in the organisation. Work to address the issues raised in the survey was carried out practically immediately with the GPF though LS is very critical of the approach to this.

54. To counter what LS states in para.104 that I “*was the biggest problem and bully the RGP had*” and that I “*failed to accept that bullying was happening under his [my] watch.*” I again refer to the message I circulated Force wide on this matter which is self-explanatory (see second statement of Richard Ullger Exhibit RU/2). This proves that what LS claims against me is not correct.
55. Still on para.104, LS states that I managed the Force “*with an iron fist although using underhand tactics, so whatever methods he used could not be used against him or his command team.*” This is an unparticularised slur designed to tarnish my reputation and that of the RGP’s command team. I am unable to respond without knowing what he means when he refers to my *methods* and *underhand tactics*.
56. In para. 109, LS introduces several comments extracted from the 2019 survey. This has jogged my memory that even though the respondents to the survey remained anonymous, their individual coding when making comments did not. In effect, I seem to recall that I was informed that having studied the comments section of the survey, it revealed that most of the negative comments were attributable to a batch of the same 20-25 respondents. Whilst this represented 20-25 too many for my liking, it was also somewhat reassuring that the majority of respondents had not commented so unconstructively. I want to stress that the respondents identities were never compromised or revealed. This data was elicited from a numbered coding allocated by the private marketing company to individual respondents taking the survey.
57. I have previously in my first responsive statement (paras 130-164) explained what in my view were the causes for the fractured relationship I had with the GPF. I therefore do not see the value of repeating this position here in response to paras. 119-162. I also provided more context to the issues with the GPF in paras. 10-21 of my third affidavit. I do however want to highlight a particular piece of correspondence generated by the GPF Chair, MM, and addressed to Inspector Albert Fernandez, the representative of the Inspector and Chief Inspector ranks in the GPF which contrasts significantly with the LS and MM’s narrative. This letter came about following complaints and dissatisfaction expressed by members of the GPF about the actions of LS and MM in taking to the media and social media to be overly critical of the RGP, the GPA, the Government and Governor. In this letter of the 7<sup>th</sup> February 2020 MM states:

*“Their may be a perception between members that the relationship between the GPF and Command is not good and things are not progressing. This is not true and I can confirm that we are working closely with Command on issues such as morale, bullying, the grievance procedure, well being and conditions of service which needs to be revamped completely.”*

I also produce a screen grab of a Tweet posted by the GPF on 14/2/2020 which states “*Thank you @Euro\_COP for your continued support. In yesterday, the GPF Board, @RGPolice Commissioner of Police @CoPlanMcGrail, @ACRlcahrdUllger and Command Team, had a very productive meeting regarding their future working relationship and how this could be achieved.*”

58. These two documents are marked **EXHIBIT IM/47**
59. Whilst I have never disputed that the relationship between GPF and Command was difficult, the above serves to highlight that despite this, I tried to make progress in the areas that warranted it and that this effort was recognised by MM and LS albeit it has purposely not been referred to by them.

## **NP's intention to invoke sec. 13 & the sec. 34 Police Act process – Issues 9 & 10**

60. In paras 11-12 pages 3 - 4 of NP's responsive statement he touches on the fact that he had called for a meeting of the Gibraltar Contingency Council of which I was a member. He denies that his call to cancel the said meeting had anything to do with any concerns he had about me. He states "*I cannot recall why the GCC meeting was cancelled but I believe it was due to the unexpected unavailability of one of its key members. Short notice postponements were not unusual. But I am clear that it was not for any reason to do with Mr McGrail.*" (underlined for emphasis). Yet, in an email to the FCDO at 1757hrs on 21<sup>st</sup> May 2020 marked NP2/32-33, he wrote "*Without a doubt, the CM has the bit between his teeth and wants the Commissioner removed from his position as soon as possible. As a result, the CM asked me to postpone the Gibraltar Contingency Council meeting we were due to have tomorrow. I believe the GPA is meeting tomorrow.*" This simply highlights yet another inaccurate, or even arguably, misleading statement provided by NP in his allegations against me.
61. Another example of NP's inaccurate evidence can be found in NP2/40 where he provides a brief to an unknown FCDO minister where amongst other things he writes that "*the Commissioner contacted the AG who told him that he had also lost confidence in him.*" This is wholly untrue; ML never said such a thing to me. He in fact called me on the 22<sup>nd</sup> May 2020, a couple of hours after I had been handed the letter to retire and offered himself to be available to me if I wanted to discuss my situation and never in the slightest suggested anything to do with loss of confidence.
62. In his first affidavit NP (page 7 para 16.3) makes it out to read that by the 5<sup>th</sup> June he had still yet not made up his mind as to whether he would invoking the Governor's powers under section 13 to suspend me or call for me to resign, claiming he would be taking away all the papers to read during the weekend that followed. This is not the impression he gave me at the time – I was left with the understanding that I either retired or he would apply his powers under section 13 – it was one or the other, and he had already decided. I have now read, thanks to newly disclosed material, that my understanding all along was correct. In an email to the FCDO at 2026hrs on Saturday 7<sup>th</sup> June 2020, NP said "*I will carefully get the message across that he either confirms in writing his request for early retirement with immediate effect with details to be confirmed, or I will use the powers available to me under section 13(1)(f).*" This shows he had firmly already made his mind up before giving me the opportunity to assimilate within a reasonable time frame the particulars of what I was facing.
63. It would appear from a briefing email sent by NP to the FCDO at 1241hrs on 9<sup>th</sup> June 2020 marked as NP2/93-94 that the outcome of my tendering for early retirement "*also plays well into our ongoing negotiations with Spain.*" I am very concerned to learn that it would appear I was used as a [political] pawn in some diplomatic negotiations between the UK and Spain – in other words, my reading of this comment in the briefing paper is that by having ousted me from office, it would appease the Spanish that some serious action had been taken by authorities in Gibraltar / UK in response to the actions of the RGP officers on board the interceptor vessel which collided with the smuggling vessel in Spanish waters. The claim that I, as head of the RGP, was the cause for the diplomatic rift between the UK/Gibraltar and Spain cannot be reconciled with the fact that over 18 months after my retirement, in October 2021, I was recognised at an official awards ceremony in Spain by the Spanish National Police and presented with an award for my efforts in cross border cooperation and my approach to tackling organised crime during my service as Commissioner of Police. The said event was attended by regional Spanish government officials.<sup>1</sup>

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<sup>1</sup> <https://www.gbc.gi/news/former-commissioner-police-ian-mcgrail-honoured-policia-nacional-spain>  
<https://radiobahia.gibraltar.es/ex-comisario-ian-mcgrail-recibe-placa-en-reconocimiento-a-su-colaboracion-con-la-policia-nacional-espanola/>

64. In their discussions concerning my departure from the RGP, the Chief Secretary Darren Grech (DG) sent a WhatsApp message to FP on 9<sup>th</sup> June 2020 at 0926hrs where he said *“If the person ticks all the other boxes then the RGP needs a woman of substance at the top for a period of time to cut through all the male testosterone nonsense and cowboy behaviour!”* FP responded saying *“Indeed.”* I honestly do not what to make of these uncouth comments more so when I enjoyed a very healthy and good relationship with DG. The contrast of his communications with me from May 2018 to June 2020 is at complete odds to these highly prejudiced comments.

**Update on terms of retirement not being honoured.**

65. In my 3<sup>rd</sup> affidavit paras 162 to 166, I provided information on how I was being financially penalised following my early retirement by the fact that the arrangement I agreed with DG on my pension is not being honoured. This information was accompanied by correspondence I had with DG (see Exhibit IM/34). Since the filing of this affidavit including exhibits, I have pursued the matter with the Chief Secretary as the matter had not been resolved by the time I had filed the affidavit. I requested a face-to-face meeting with the Chief Secretary which was denied because of the pending Public Inquiry. I now produce the latest exchanges of emails I have had with DG and his staff in my attempts to resolve what in my view is clearly an unjust consequence for having called the Public Inquiry (Exhibit IM/48 refers). The potential personal financial loss I would suffer if the agreement reached *prior* to the signing of my application for early retirement continues to be ignored is in the region of £70,000+.
66. Disclosure from DG only received in Mid-February 2024 reveals that in an email to FP at 1910hrs on 8<sup>th</sup> June 2020 DG asked for a steer to the terms I was requesting which were indeed copied to FP. At no point did FP raise any objection to my occupational pension remaining taxable until I attained the age of 55. He provided said steer by reply to DG at 1921hrs on the 8<sup>th</sup> June 2020 (See EB/B5013).
67. There is further corroboration to my claim in an email exchange with Mr Nicholas Richardson, the Director of Social Security, on 11<sup>th</sup> May 2021 at 1639hrs, when DG informs Mr Richardson that he did agree with me to certain terms of my occupational pension and asked Mr Richardson for guidance. The email in Exhibit DG/3 (See EB/B4965) as follows;-

*“Dear Nicholas,  
I hope you are well.  
The below is an email from retired Commissioner Iain McGrail. Can you afford me some guidance?  
I did agree a set of circumstances with him just before he left us.  
Best wishes  
D”*

68. The set of circumstances DG is referring to are precisely the ones raised in my original email to him claiming that my pension was still going to be taxed contrary to what we agreed on. At no point did DG inform Mr Richardson that what he was asking him to look into, *viz* my claim, had not been agreed between us. Surely, if that had been the case and the agreement reached was not true, DG would not have even had to communicate with Mr Richardson in the first place. He would have no doubt informed me from the outset that these were not the terms he agreed with me. As the evidence shows, DG never disagreed with me on this particular issue.

I here provide one of the many examples which further supports my claim. On 5<sup>th</sup> July 2021 @ 1116hrs DG responded to an email chaser I had sent him and he said;

*“On its way to sorting. Will let you know. Please don’t despair with me. D”.*

At 1124hrs same date, I replied:

*“Darren – most grateful. Just needed the reassurance that it was going to be sorted. Promise I won’t despair from hereon.”*

At 1126hrs same date, DG replied with *“Cheers mon ami (cheers my friend).”*  
(EB/B4944)

69. In his exchanges with DG, Mr Nicholas Richardson also advised DG that he had checked that my predecessors, Mr Louis Wink and Mr Eddie Yome, had not had this arrangement incorporated in the retirement package. I have never said that Mr Yome received the terms I was claiming – he retired after he attained 60 and therefore his pension was not taxable in any case. As far as Mr Wink goes, it is quite possible that his request was dealt with via the method suggested by Mr Richardson to DG, i.e. by way of an ex-gratia payment. This could easily be checked up with the Government Treasury. The same applies to the retired Chief Fire Officers and possibly the retired Superintendents of HMP Windmill Hill who retired before 2020 and before attaining the age of 60.

70. In para 18 of his responsive statement, FP comments that in his view pension entitlements are not a matter for negotiation or discussion once the person has retired. It is truly regrettable that FP fails to realise that my pension arrangements were negotiated with the Chief Secretary *before* I retired and not *after* and the evidence is there to show it as highlighted in the above email sent by DG to the Director of Social Security.

SWORN by the abovenamed Ian McGrail

This 22<sup>nd</sup> day of March 2024

At *5 Secrebooy's Lane, Gibraltar*

Before me

**Personal  
Data**

**Personal Data**

—

A Commissioner for Oaths

**James Gerard Oton  
Commissioner For Oaths**

**Date**

*22/3/24*

**Fee pd.**

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