

**INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF
POLICE CONVENED BY A COMMISSION ISSUED BY HM GOVERNMENT OF
GIBRALTAR ON THE 4TH FEBRUARY 2022 IN LEGAL NOTICE NO. 34 OF
2022 (“THE INQUIRY”)**

WRITTEN OPENING STATEMENTS

ON BEHALF OF:

- (1) The Hon Fabian Picardo MP KC, Chief Minister**
 - (2) Mr Nicholas Pyle (at all material times, Governor)**
 - (3) Michael Llamas CMG KC, HM Attorney General for Gibraltar**
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A. INTRODUCTORY COMMENTS – THE INQUIRY’S TERMS OF REFERENCE

1. This Inquiry was convened by the Government. It did so in order that the facts relating to the “reasons and circumstances” leading to Mr McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement be independently investigated (“**the matter under inquiry**”). Those are the Inquiry’s terms of reference.
2. In order to carry out its terms of reference to investigate the matter under inquiry, the Commissioner has, as he is entitled to do, identified a number of issues (“**Issues**”) that shall be investigated to the extent that he considers necessary and appropriate to address the matter under inquiry.
3. The Commissioner has rightly said that the facts of each of these Issues should be investigated and ascertained only to the extent that he considers necessary and appropriate to address the matter under inquiry, namely, the extent, if at all, that the issue “constitutes a reason or circumstance leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking an early retirement either because they led to a loss of confidence in Mr McGrail or for some other reason”.
4. This rightly recognises that the inquiry is not an inquiry of and into any of the Issues in themselves.
5. None of the Issues were reasons or circumstances leading to Mr McGrail’s retirement in the sense that they were the cause of it. In the view of the Government Parties they are relevant only in the sense that certain (in some cases very limited) aspects of them contributed (in different measures, at different times and some to one and not the other’s) loss of confidence in Mr McGrail by the (then) Interim Governor, Mr Nicholas Pyle (“**Mr Pyle**”) and the Chief Minister, Mr Fabian Picardo KC (“**Mr Picardo**”).
6. Loss of confidence is a subjective thing. Different people may form different judgments about the same conduct. Also, loss of confidence by a person is about the effect of something on that person, regardless of whether the judgment is right or wrong, justified or unjustified. Both Mr Pyle and Mr Picardo believe that their separate loss of confidence in Mr McGrail was well founded and justified.

7. Regardless of the extent to which they may consider the Issues to be relevant (a matter for the Commissioner) all the Government Parties have provided full accounts of their recollection of their involvement in each of the Issues.

B. MR MCGRAIL'S RETIREMENT

The Governor and the Chief Minister had lost confidence in Mr McGrail, wanted him removed from office and sought to bring that about

8. It is **not** the position of Mr Pyle or Mr Picardo that Mr McGrail retired in June 2020 because he positively wished to stop being Commissioner of Police at that time. Nor is it in dispute that in May 2020 **both** Mr Pyle and Mr Picardo **wanted** Mr McGrail to stop being Commissioner of Police and sought to bring that about.
9. They had both lost confidence in Mr McGrail, albeit for different reasons. The Governor and the Chief Minister were subjectively entitled to lose confidence in the Commissioner of Police, to express it and to act accordingly, and they did so.
10. To that agreed end, they jointly invited the Gibraltar Police Authority to consider exercising its statutory power to call upon Mr McGrail to retire, and set out to its Chairman, Mr Joey Britto, their reasons for losing confidence in Mr McGrail.
11. In doing so, the **Governor** made clear to the GPA Chairman the strength of his own feelings on the subject, telling him that should the GPA determine that a call to retire was not appropriate, he would consider using the powers available to him under Section 13(1)(f) of the Police Act to call for the resignation of Mr McGrail and that, as things stood, he would need strong and persuasive arguments not to do so.
12. In any case, and regardless of the nature and extent of the statutory removal procedures, it is not realistically possible for a Commissioner of Police to properly and effectively discharge his or her functions, and therefore to continue in office, without the confidence of both the Governor and the Chief Minister.
13. This is true in Gibraltar as much as it is in London, where two very recent Metropolitan Police Commissioners, Ian Blair and Cressida Dick, have both retired early (outside of the statutory removal procedure) after losing the confidence of the incumbent Mayor of London.

14. This reality was recognised by the Gibraltar Police Authority who, in consequence of the loss of confidence in Mr McGrail by the Governor and the Chief Minister, itself decided to call for Mr McGrail's retirement, considering his position to have become untenable by virtue of the Governor's and the Chief Minister's loss of confidence in him.
15. When that failed due to procedural errors in the way it was done by the GPA, the **Governor** decided (as he had previously indicated that he would) that he would consider using his statutory power to call for Mr McGrail's resignation. That would effectively remove him from office.
16. Following the failure, for procedural reasons, of the GPA's attempt to remove Mr McGrail, only the Governor had the legal power to call for Mr McGrail's resignation.
17. The Chief Minister, Mr Picardo, did not have the power to remove Mr McGrail from office or call for his resignation, and he did not do so. Mr McGrail knew this. Nor did Mr Picardo put any pressure on the Governor to do so.
18. The Governor, Mr Pyle, has made it clear that the decision to invoke, or consider invoking, his power under the Police Act to call for Mr McGrail's resignation was entirely his own, and that at no time was he put under any pressure to do so by anyone else, including the Chief Minister, Mr Picardo.
19. This does not mean that the Chief Minister did not want Mr McGrail to be removed from office. He most certainly did, having lost confidence in him primarily because he considered that Mr McGrail had lied to him.
20. To that end, the Chief Minister had joined with the Governor to invite the Gibraltar Police Authority to consider removing Mr McGrail, and assisted its Chairman, Mr Britto in this respect. Mr Picardo was also in full agreement with the Governor later using his power to call for Mr McGrail's resignation, if necessary.

Mr McGrail chose to retire

21. For the purpose of initiating the process of consideration by him of removing Mr McGrail by calling for his resignation, the Governor, Mr Pyle called Mr McGrail to a meeting with him on 5th June 2020. At that meeting, Mr McGrail handed Mr Pyle an email that his lawyers had already sent to the GPA's lawyers applying for early retirement.

22. Mr McGrail had therefore already applied for early retirement even before Mr Pyle formally initiated the process to consider calling for his resignation. Mr McGrail did so because he envisaged that Mr Pyle would call for his resignation and wished to pre-empt him for reasons to do with (unjustified and unchecked) personal concerns about his pension.
23. So, although an unsuccessful attempt to remove him was made by the Gibraltar Police Authority, and was intimated and envisaged by the Governor, Mr McGrail was, in fact, **not** removed from office by the Governor or anyone else. This because, in the end, it was not necessary to do so.
24. As already stated, in the end, Mr McGrail ceased to be Commissioner of Police because **he** chose to **retire**, anticipating that he would be removed from office **by the Governor** if he did not do so.
25. As admitted by Mr McGrail, he did so because he thought that if he did not retire, he would be sacked and that if he was sacked he might lose his pension. But Mr McGrail did not ask anyone whether that would be the case. In fact, this was not correct.

Mr McGrail's retirement – the real reason

26. Mr McGrail therefore ceased to be Commissioner of Police because **he** sought early retirement consequent on-
 - (i) He knew (having been told by Mr Britto, the Chairman of the Gibraltar Police Authority) that he had lost the confidence of both the Governor and the Chief Minister;
 - (ii) his understanding that, had he not sought early retirement, there was a very real risk that the Governor would call publicly for his resignation, under section 13(1)(f) of the Police Act; and
 - (iii) he was concerned that if the Governor did that he may lose his pension.

This is evident from Mr McGrail's own stated case.

Mr McGrail's retirement – the reasons asserted by him

27. In his lawyer's email dated 5 June 2020 to the Gibraltar Police Authority asking to retire, Mr McGrail gave, as his reasons for doing so that:
- (i) he had been unfairly treated in the flawed process by the GPA; and
 - (ii) improper pressure had been put upon him to alter the course of a live criminal investigation (a reference to Operation Delhi, the RGP investigation into alleged fraud in relation to the contract for the maintenance of the NSCIS national security platform).
28. But it cannot be true that Mr McGrail retired because of supposed pressure put on him in relation to the Operation Delhi investigation because –
- (i) just a few days earlier, on 29 May 2020, Mr McGrail's own lawyers had written to the Gibraltar Police Authority saying that he should be allowed to continue as Commissioner of Police. Absolutely nothing relevant had happened in the Operation Delhi investigation between the 29 May and 5 June.
 - (ii) So, on 29th May Mr McGrail plainly did **not** think that any supposed interference in the investigation was an obstacle to his ability to carrying on as COP, nor a reason for not wishing to do so.
 - (iii) He **did** wish to carry on as Commissioner (despite the supposed interference), he felt able to do so and he asked to be allowed to continue.
29. If Mr McGrail had genuinely thought that the required statutory independence of his office was being compromised, his duty, as the holder of such an office, would have been to defend the office by resisting any unjustified pressure or unlawful attempts to remove him. Similarly, the proper reaction of a Commissioner of Police to an improper attempt to interfere in the administration of justice is not to seek early retirement, but rather to enforce laws that exist precisely in relation to such unlawful conduct.
30. These are the inescapable realities, much as Mr McGrail may try to conjure the smokescreen that this Inquiry is about "corruption" or "corrupt conspiracies" or about the

alleged fraud relating to the national security platform contract, or that he retired because of alleged improper interference in a live police investigation.

Mr McGrail's retirement – the Attorney General, Mr Llamas played no role in the decisions

31. Mr Llamas did not participate in the making of the decision by the Governor and the Chief Minister that they had lost confidence in Mr McGrail or in their consequent decision to seek Mr McGrail's removal from office. Mr McGrail's attempt to construct a conspiracy in this respect involving Mr Llamas is therefore completely without foundation and untrue.

Mr Pyle loss of Confidence

32. Mr Pyle's loss of confidence in Mr McGrail's probity and integrity, and his leadership of the RGP had been progressive over an extended period of time and by reason of the view that Mr Pyle had formed in respect of a number of incidents.
33. These incidents were—
 - (i) The airfield incident. Mr McGrail's role in the handling, as senior operational officer in charge, of an incident at the airfield in February 2017 involving an RAF airplane and some of the most senior military officers in Gibraltar, and the RGP's handling of its aftermath by Mr McGrail, which incident unnecessarily brought the relationship between Gibraltar and the Ministry of Defence to near crisis point.
 - (ii) The helicopter pilot incident. The RGP's handling of an investigation into an incident in March 2017 in which an RAF pilot was severely assaulted during a stop-over in Gibraltar, and which resulted in no-one being prosecuted.
 - (iii) Low staff morale and the relationship with the Gibraltar Police Federation. The fractured and almost hostile relationship between Mr McGrail and the Gibraltar Police Federation, which was resulting in very low morale in the RGP.

- (iv) HMIC Report. Mr McGrail's failure to address or effectively tackle the serious issues raised in the 2016 report on the RGP conducted by Her Majesty's Inspectorate of Constabularies, as confirmed by the (April) 2020 HMIC Report.
- (v) The incident at sea.
 - (a) The single most important incident was in relation to the fatal incident at sea on 8 March 2020 in which two persons died and the RGP had acted in breach of its own operating mandate, and its aftermath.
 - (b) As well as the seriousness of the incident itself, Mr Pyle considers that Mr McGrail intentionally misled him (by evasiveness and lack of candour) in an important matter. This was the intentional omission to provide the Governor with the best information or intelligence available to Mr McGrail (which he was providing to others) in relation to a matter which touched very specifically upon HMG's and the Governor's responsibilities for external affairs, namely information relating to the location of the incident, and for which Mr McGrail was directly accountable to the Governor.
 - (c) This was the tipping point which caused his "growing concerns" to become a recognition that things could not go on as they were, and that change was needed.
 - (d) It led Mr Pyle to further lose confidence in the abilities of Mr McGrail to effectively lead the police force, and indeed caused Mr Pyle to lose confidence in his probity. This (bolstered by the HMIC report issue) was the reason that effectively caused him to act as he did to seek bring about Mr McGrail's removal.

Operation Delhi was irrelevant to Mr Pyle's loss of confidence and decision

- 34. The Operation Delhi investigation played no role in Mr Pyle's loss of confidence in Mr McGrail or in his decision to consider calling for Mr McGrail's resignation.

35. Indeed, Mr Pyle had-

- (i) no prior knowledge about the Operation Delhi criminal investigation until the Chief Minister briefed him in headline fashion about it at their meeting on 15 May in which they decided to seek Mr McGrail's removal; and
- (ii) already expressed his deep concerns about the RGP leadership to the Chief Minister before Mr Picardo raised with him the issue relating to the Operation Delhi criminal investigation.

Mr Picardo's loss of confidence

36. Contrary to Mr McGrail's self-serving case theory, Mr Picardo did not lose confidence in Mr McGrail because he obtained and proceeded to execute a search warrant instead of a Production Order against Mr James Levy KC. Nor because the RGP was investigating the nature and extent of Mr Levy's involvement in the matters being investigated by them.

37. The primary reason for Mr Picardo's loss of confidence in Mr McGrail (though there were others, including the incident at sea and the HMIC report issues) is that Mr Picardo believed that Mr McGrail had lied to him when stating to Mr Picardo that, in relation to the execution of the warrant, he was acting on the advice of the Director of Public Prosecutions, which was not the case, as the DPP has himself confirmed.

38. This resulted in Mr Picardo losing all confidence in Mr McGrail's probity and integrity in his dealing with the Chief Minister, and generally in him, as Mr Picardo told the Gibraltar Police Authority 6 days later in his (and Mr Pyle's) meeting on 18 May with the Chairman, namely that "*the Commissioner had expressly misled him and which left him unable to believe the Commissioner.*"

C. ALLEGATION BY MCGRAIL THAT HE WAS CORRUPTLY FORCED OUT OF OFFICE

39. Mr McGrail and his legal team have persistently and publicly made very serious allegations of corruption namely, that Mr McGrail "*was forced out of his post because he had executed a search warrant against a friend of the Chief Minister, in a brazen act of*

corruption designed to protect the personal and political interests of the Chief Minister and other powerful figures”.

40. This is wholly untrue. The person who “forced him out” (actually he did not in the end have to force him out, because Mr McGrail chose to ask to retire, rendering consideration of forcing him out unnecessary) was the Governor, Mr Pyle. The Governor knew nothing about the Operation Delhi investigation, the warrant etc and this formed no part of **his** reasons for **his** loss of confidence in Mr McGrail.
41. Mr McGrail was not forced out. And in any event, he was not “forced out” because he executed the search warrant against Mr Levy. That simply did not feature in Mr Pyle’s loss of confidence reasons for threatening to call for Mr McGrail’s resignation (which was the reason why Mr McGrail felt the need to choose to retire).

The Foreign Commonwealth and Development Office was aware

42. Mr McGrail’s allegation that he was forced out as a result of a corrupt conspiracy between Mr Picardo and Mr Pyle because he had executed a search warrant against Mr James Levy KC in the Operation Delhi investigation, and for the other reasons that he alleges, is also completely undermined by the fact that Mr Pyle’s actions and intended actions were fully reported and known to his superiors in London.
43. Mr Pyle’s intention to call for Mr McGrail’s resignation, and the reasons for it, were reported to and known by the Foreign, Commonwealth and Development Office in London (at very senior level), who indeed provided guidance and advice to Mr Pyle in relation to his intended course of action. So, this was not some improper (still less corrupt, as irresponsibly alleged by Mr McGrail and his legal team) conspiracy by Mr Pyle and Mr Picardo.
44. Nor was it “rushed through by them”, before the new Governor’s then imminent arrival in Gibraltar, for any improper reason. The FCDO in London fully supported Mr Pyle’s attempt to “get it done”, if possible, before the new Governor Sir David Steel’s arrival in Gibraltar. Indeed, Sir David Steel himself was fully briefed and aware of what Mr Pyle was doing and seeking to do before his arrival.

45. Under the Constitution, as interim Governor, Mr Pyle was and had all the constitutional and statutory responsibilities and powers of Governor until the new Governor's arrival and swearing in in Gibraltar.

D. ALLEGATION BY MR MCGRAIL OF IMPROPER INTERFERENCE IN OPERATION DELHI LIVE CRIMINAL INVESTIGATION

46. Mr McGrail alleges that both the Chief Minister, Mr Picardo and the Attorney General, Mr Llamas, improperly interfered in the Operation Delhi criminal investigation into alleged fraud relating to the NSCIS national security platform. The allegation is that this was corruptly done to "change the course of the investigation".
47. This is untrue. Neither the Chief Minister nor the Attorney General, "interfered with a live criminal investigation" or tried "to change the course of a police investigation", still less "to halt it".
48. The contrary is true. After Mr McGrail's retirement, the investigation was continued by the same senior officers, and charges were brought against the same three individuals against whom they were envisaged at the time of Mr McGrail's retirement.
49. Mr McGrail does not appear to distinguish between (i) interference and (ii) after-the-event criticism of his actions. He wrongly equates them. He appears to have a misplaced sense of immunity from criticism for and comment about his decisions and actions. Criticism and comment are not interference, not least when they are after Mr McGrail has done as he pleased. Nor for that matter is advice which he is free to accept or reject.

In so far as concerns the Chief Minister, Mr Picardo

50. The Chief Minister's only supposed "interference" was to berate Mr McGrail on 12 May 2020 for his decision to seek a search warrant rather than a production order against Mr James Levy CBE KC, a leading lawyer, the senior partner of Gibraltar's largest law firm and the leader of the Jewish Community.
51. Whether as Chief Minister or not, and regardless of the manner in which he did so, and regardless also of the merits of the views that he expressed, Mr Picardo has the same right as anybody else to criticise the actions and decisions of the RGP and its Commissioner.

52. Furthermore, such criticism cannot have constituted interference because it occurred **after the event**, i.e. after the RGP had already obtained and proceeded to execute the search warrant. Therefore, it was not and could not possibly have been an attempt to prevent it from happening. It could therefore not be interference. Indeed, it was Mr McGrail himself who reported to Mr Picardo that the warrant was being executed as it was being executed.
53. The allegation of interference by Mr Picardo is simply fanciful and without possible foundation. It simply did not happen, even on Mr McGrail's version of the facts that occurred.
54. The same is true of Mr McGrail's theme that Mr Picardo may have intervened improperly in the police investigation motivated by a personal conflict of interest, namely, his desire to protect or promote the commercial interests of 36 North Limited, in which the partners of Hassans collectively (including Mr Picardo), through that firm, had a minority equity interest. The reverse is true. When Bland's concerns about the attempt to divert its NCSIS contract to 36 North Limited were brought to Mr Picardo's attention, he intervened to ensure that the contract remained with Bland.

In so far as concerns the Attorney General, Mr Llamas

55. The Attorney General did not engage in any conduct that may be thought to amount to improper or inappropriate interference in the Operation Delhi police investigation. His engagements with the investigation, such as they were, were entirely proper and within the scope of his role as Attorney General.
56. Indeed, the few occasions on which Mr Llamas engaged in relation to the Operation Delhi investigation were principally at the request of Mr McGrail himself or the Director of Public Prosecutions, Mr Rocca.
57. And when he did so, it was on the basis of information or concerns brought to him by the DPP, or with Mr Rocca's concurrence. This is plain from the transcripts of the secret tape-recording by Mr McGrail of meetings between himself, the Attorney General and the Director of Public Prosecutions.

58. Mr Llamas attended a meeting on 13 May 2019, at the invitation of Mr McGrail himself, to be briefed (together with the Chief Minister and other senior officials) by Mr McGrail on certain aspects of the Operation Delhi investigation. No supposed “interference” is alleged by Mr McGrail to have occurred at that meeting.
59. Mr Llamas then had no involvement whatsoever with the investigation until April 2020, nearly a year later. In April 2020 he was contacted by the DPP, Mr Rocca, who wished to brief him and share some concerns that Mr Rocca had about the very large number of proposed charges and other issues.
60. Mr Llamas subsequently met (on 7 April 2020) with Mr McGrail and Mr Richardson of the RGP to discuss the issues of concern that had been raised by the DPP.
61. That meeting (which Mr McGrail appears to have forgotten took place) was entirely amicable and uncontroversial:
- (i) Nothing occurred which could reasonably or properly have been interpreted as interference or pressure to stop the investigation or to change its course or approach.
 - (ii) Mr Llamas gave Mr McGrail appropriate advice and assistance in relation to the issues of (i) clarification of the ownership of the NSCIS platform and (ii) the rationalisation of the number of charges.
 - (iii) That advice was accepted by Mr McGrail and acted upon by him.
 - (iv) There was no complaint by Mr McGrail of alleged improper or inappropriate interference.
62. There was no further engagement between Mr McGrail and Mr Llamas in relation to the Delhi investigation until the 12 May 2020 when Mr Llamas was told by Mr McGrail by WhatsApp, as it was happening, that search warrants were in the process of being executed against Mr Levy. He was also present later when the Chief Minister expressed his views to Mr McGrail about that. Nothing of what Mr Llamas said at that meeting could possibly be thought to constitute interference, proper or improper.

63. Mr Llamas had two further meetings with Mr McGrail, both in May 2020. They were principally in relation to advice on the handling by the RGP of the legal dispute with Mr Levy and his lawyers about the execution of the search warrant against him and the retention by the RGP of Mr Levy's devices.
64. At these meetings:
- (i) both the Attorney General, Mr Llamas and the DPP, Mr Rocca acknowledged that the decision to obtain a search warrant rather than a Production order against Mr Levy had been an operational matter entirely for the RGP. They nevertheless both expressed the view that they thought it had been the wrong decision. They were entitled to think that and to express it. It does not constitute improper interference or interference at all.
 - (ii) The DPP confirmed charging advice in relation to Mr Levy that the DPP had previously given the RGP. The Attorney General had not seen the Charging Advice and was not aware of the evidence available. He therefore simply went along with the views and assessments of the DPP.
 - (iii) No attempt was made to discourage the RGP from interviewing Mr Levy. On the contrary, it was acknowledged that it was necessary and desirable to do so. Advice was given to Mr McGrail about the pros and cons of interviewing Mr Levy (i) under caution or (ii) voluntarily. That advice was accepted by the RGP who proceeded accordingly. In any event, giving advice, which Mr McGrail was free to accept or reject cannot properly be said to constitute interference, improper or otherwise.
65. Accordingly, no pressure of any kind was put on Mr McGrail or the RGP by Mr Llamas, and there was no improper involvement by him in his engagement and discussions with Mr McGrail about this criminal investigation.
66. Furthermore, nothing that Mr Llamas has said or done can possibly be asserted by Mr McGrail as a reason for his retirement. Mr McGrail did not retire for any reason connected with Mr Llamas, unless he felt that he should retire because, apart from losing the confidence of the Governor and the Chief Minister, he had also lost the confidence of the Attorney General (not least by virtue of the contents of his lawyers' letter dated 29 May 2020 to the Gibraltar Police Authority).

67. Following the outrageous allegations of impropriety made by Mr McGrail against Mr Llamas (and the Governor and the Chief Minister) in his solicitors' letter dated 29 May 2020, with all of whom the Commissioner of Police has to work closely, it is inconceivable that Mr McGrail may have thought that they could continue to work together thereafter. He could not. Accordingly, by his own behaviour, Mr McGrail left himself with no option but to have to seek early retirement (which is what he did) or risk being removed from office. The rest is, in the context of his retirement, a smokescreen on his part to dissemble that reality and the real reason for his retirement.
68. There was no improper (still less corruptly motivated) interference by any Government Party in the conduct by the RGP of the Operation Delhi investigation. Mr McGrail's bald and unsubstantiated allegations to this effect are entirely unwarranted and simply constitute a self-serving but manufactured narrative to justify his decision to seek early retirement without acknowledging the real reason, namely that he knew that he had lost the Governor's (and the Chief Minister's) confidence, and that the Governor may have been about to call for his resignation. He was (unjustifiably and unnecessarily) driven by a personal concern to save his pension.
69. The Government Parties consider that these are the relevant reasons and circumstances leading to Mr McGrail ceasing to be Commissioner of Police in June 2020.

21st March 2024

Sir Peter Caruana KCMG KC

Christopher Allan

Philip Dumas