

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

**OPENING SUBMISSIONS ON BEHALF OF IAN MCGRAIL,
FORMER COMMISSIONER OF THE ROYAL GIBRALTAR POLICE**

Caoilfhionn Gallagher K.C.
Adam Wagner
Doughty Street Chambers, London

Charles Gomez
Nicholas Gomez
Daniel Benyunes
Charles A. Gomez & Co., Gibraltar

21st March 2024
Updated 9th April 2024

Key

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[CB/1]	Chronological Bundle, page 1
CR	Christian Rocca K.C., Director of Public Prosecutions
FP	Fabian Picardo K.C., Chief Minister
HMGoG	His Majesty's Government of Gibraltar
IM	Ian McGrail, Commissioner of the Royal Gibraltar Police until 9 th June 2020
JB	Dr Joey Britto, Chair of the Gibraltar Police Authority ('GPA')
JL	James Levy K.C.
ML	Michael Llamas K.C., Attorney General
MOD	Ministry of Defence
NP	Nick Pyle, Acting Governor until 11 th June 2020
PR	Paul Richardson
RGP	Royal Gibraltar Police

A. INTRODUCTION AND SUMMARY

1. These submissions adopt the following structure:

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2. These opening submissions are filed in remarkable, bizarre circumstances. After two years of preparation for the final hearings, with under three weeks to go the Commissioner and the Inquiry, and all Core Participants, remain in the dark about what legislative framework will apply. Since 2022 when the Inquiry was established, all have been proceeding based on the existing legislative framework (and in particular, the Commissions of Inquiry Act 1888, as updated in 1933, 1966, 1983 and 2007). That is the statutory backdrop against which all have been proceeding; decisions have been made by the Chairman; and detailed policies and processes have been developed and put in place on this basis.

3. However, out of the blue, earlier this month the Government of Gibraltar (**‘HMGoG’**) announced it was bringing forward emergency legislation to “modernise” the legal framework. Initially it was thought that this emergency legislation would not be imposed upon this Inquiry, but rather, if HMGoG sought to convert the Inquiry, the Chairman would at least be consulted. However, it is clear from the both the wording of the draft Bill itself, and HMGoG’s recent statements, that this new proposed legislation is being rushed through precisely because HMGoG seeks to apply it at this eleventh hour to this Inquiry. From an interview given to the media this week by the Chief Minister, Fabian Picardo (**‘FP’**), it appears that FP intends to use these new powers – if passed – to restrict public access to certain evidence. It is unclear to Mr McGrail and his legal representatives precisely what FP and/ or HMGoG seek to achieve, but it appears that this is at least in

part motivated by a wish to essentially overturn, through emergency legislation, rulings that the Chairman has already made, and which went against HMGoG.¹ It is also extremely concerning that FP is presenting a one-sided narrative about what he says the Inquiry is about, and simultaneously making clear that he may seek to use these new powers to control the public narrative and prevent the public learning the central allegations regarding his alleged ulterior motives in acting to remove Mr McGrail from office: namely, linked to Op Delhi, as we explain further below.

4. FP stating that lawyers would still be able to see documents is not the point: the public would not be able to see it, hearings concerning it would be held privately, and findings could not make public reference to it – all due to the eleventh-hour actions of a Core Participant, acting to shut down public discussion. FP is plainly conflicted from imposing restrictions orders of this kind when he and his colleagues are the beneficiaries of them - as is clear from the fact that an impartial judge, the Commissioner, having heard detailed argument, has ruled against them.
5. This is deeply concerning and an abuse of power. But it is also a direct challenge to the authority of the Commissioner and the role of this Inquiry – which has, from the outset, been styled a *public* inquiry, with the Commissioner and the public being assured HMGoG would not interfere in its conduct.
6. In the deeply concerning and unsatisfactory circumstances, we file these opening submissions in order to comply with the existing directions. It is not acceptable that FP and HMGoG are behaving in this way, undermining the Inquiry and seeking to alter the legal framework for their own ends at this very late stage.

Summary of submissions

7. On the morning of 12th May 2020, the RGP attempted to execute a search warrant against James Levy K.C. (**‘JL’**), the Senior Partner of Hassans, Gibraltar’s largest law firm (**‘Hassans’**). The warrant was part of an investigation into the suspected hacking and sabotage of Gibraltar’s National Centralised Security Intelligence System platform, allegedly done for the commercial gain of a company which was partly owned by JL and FP.
8. The investigation, known to the RGP as “Op Delhi”, related to a company, 36 North Limited (**‘36 North’**), which was founded in April 2018 by three individuals, John Perez (**‘JP’**), Thomas Cornelio (**‘TC’**) and Edward Asquez (**‘EA’**), all of whom had previously worked at Bland Limited (**‘Bland’**). 36 North was set up with the close assistance of Hassans. In exchange for a loan of £476,000, and various other financial guarantees, the

¹ <https://coircomp.gi/wp-content/uploads/2023/12/2023-12-15-Summary-of-Rulings.pdf>

partners of Hassans had taken a 33% ownership stake through a shell company called Astelon Limited (**'Astelon'**). JL himself indirectly owned 10% of 36 North, and FP indirectly owned a 2.94% stake along with the other Hassans partners, including Albert Mena, the then-Financial Secretary.

9. The business plan for 36 North relied on securing, from His Majesty's Government of Gibraltar (**'HMGoG'**), the contract to maintain of the National Security Centralised Intelligence System ("**NSCIS**"). The contract was worth around £720,000 per year. At the time when 36 North was incorporated, this contract was held by Bland Limited (**'Bland'**), which maintained NSCIS for HMGoG. 36 North was set up with the close assistance of FP, who remains a partner at Hassans as well as being Chief Minister, and JL. At all relevant times, FP, in his capacity of Chief Minister, was also the primary decision-maker, in relation to whether the NSCIS contract would be transferred from Bland to 36 North. He carried out this function whilst being in regular contact with JL in relation to the progress of 36 North, the company which they both part owned.
10. On 9th July 2018, JP, TC, and EA simultaneously resigned from Bland. Prior to this, FP had met with them, and had been regularly updated on their plans. Albert Mena, the Financial Secretary and also a partner at Hassans, had also been kept updated. FP texted JP and TC the day before they resigned to wish them luck.
11. Despite leaving Bland, TC initially agreed to continue to maintain the NSCIS system, which he had been responsible for, but on around 30th August 2018, he informed Bland that he would no longer be able to do so and would relinquish access to the system. Despite this, and without Bland's knowledge, TC continued regularly to access NSCIS during the Autumn and Winter of 2018. FP was made aware of this by JL. He did not object to and later accepted he may have authorised TC's continued access without Bland's knowledge.
12. During the Autumn of 2018, Bland came to suspect that NSCIS was being deliberately tampered with, with the objective of giving the impression that Bland was unable to maintain the system, therefore giving HMGoG justification to transfer the NSCIS contract to 36 North. In October 2018, Bland commissioned Price Waterhouse Coopers (**'PwC'**), an independent consultancy, to investigate what was happening and to regain control of the NSCIS platform. PwC subsequently reported to Bland that the NSCIS system had been repeatedly and deliberately sabotaged by TC. Bland reported this to the RGP, which proceeded to open the Op Delhi investigation.
13. By the Spring of 2020, the RGP's investigation had led them to the highest echelons of Gibraltar's political and business community. Based on text messages they found on the three 36 North co-owners' phones, as well as emails which the co-owners had attempted

to delete but had been recovered by the RGP, the RGP suspected that JL, the Senior Partner of Hassans, and FP's close personal friend, mentor and business partner, had conspired with JP, TC and EA to commit various serious offences, supported by an allegedly corrupt official, Caine Sanchez, the then-Principal Secretary to the Deputy Chief Minister. FP was kept up to date with the investigation and was informed by May 2019 that JL was a person of interest. From that time, FP spoke to JL on a very large number of occasions about being a person of interest in the investigation, and says he regularly reassured him that he was sure the RGP would exonerate him. In April 2020, the RGP applied to the Stipendiary Magistrate for, and, after a two-hour hearing, were granted, a search warrant to obtain JL's electronic devices.

14. On 12th May 2020, the RGP attempted to execute the search warrant at JL's offices. Just after midday, IM texted FP to let him know that detectives were executing a search warrant at Hassans for JL. This text message set in motion the sequence of events which ultimately led to IM relinquishing his position as Commissioner of the RGP at 18:00 on 9 June 2020, just 28 days later. At the centre of the events was FP, who used his considerable political and personal skills to ensure that IM would not remain in post and that he, and his close friend and mentor JL, were protected from the RGP investigation, along with JL's phone which FP said he was concerned held sensitive private messages between him and JL. FP achieved these aims in part by persuading the Interim Governor, Nick Pyle, to approach the Gibraltar Police Authority with FP and claim that they had both 'lost confidence' in the Commissioner. Neither NP or FP had expressed any concern to IM about his performance as Commissioner until after 12th May 2020, and both had good relationships with him until then.
15. At a meeting at the Governor's Residence on 14th May 2020, which FP had called, FP and NP discussed a number of issues of concern about IM, including an impression that NP says he had in March 2020 that IM had not kept him fully up to date in relation to a fatal incident at sea involving the RGP and alleged drug smugglers. Both quickly decided they had 'lost confidence' in IM, who in his 35 years as a police officer had received no reprimands but many commendations, and until that date had a good relationship with both NP and FP, without putting any of their concerns to IM, or referring them to the RGP's independent regulator, the GPA.
16. A conflict of interest is defined by Transparency International as a "*situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests*".² At this point we introduce

² <https://www.transparency.org/en/corruptionary/conflict-of-interests>

what we say is the **first key theme**: **FP's triple conflict of interest in relation to the Op Delhi investigation**. This should have prevented him taking any decisions relating to the investigation, and certainly precluded him from putting any pressure on the police relating to it. The reasons for this are multiple and should have been blindingly obvious to FP. First, FP had several personal connections to the investigation. He had been instrumental in 36 North being set up, was kept up to date with its progress and texted two of the co-founders to wish them luck before they left Bland. He was always likely to be a person of interest – indeed, he was later requested to submit a witness statement to the court when the 36 North founders were prosecuted. Second, FP had a direct financial interest in the outcome of the alleged conspiracy as a part owner of 36 North, the company which the alleged conspiracy was designed to benefit, because as a partner in Hassans he, along with the other partners, indirectly owned a third of 36 North. Hassans was owed a large amount of money by 36 North. That alone should have been enough for any self-respecting public official in a democracy to exclude themselves from all matters relating to the investigation. But in addition, third, JL, the subject of the action taken by the RGP on 12th May, is a close friend, mentor and business partner of FP.

17. It is difficult to imagine a more obvious conflict of interest, and that it is without considering the constitutional separation of powers which should prevent any Chief Minister from interfering in an RGP investigation. FP accepted this himself, texting IM on 12th May at 12:28 that “[g]iven my close personal relationship with JL, I won’t comment further.” If he had taken his own advice, IM would still be in post and this Inquiry would have been unnecessary. But instead, within minutes FP, hearing that IM was at 6 Covent Place for another meeting, had demanded that IM meet him in his office. Whilst the RGP officers were still attempting to execute the search warrant, FP angrily berated IM in the presence of the Attorney General, making clear in no uncertain terms that the RGP should not have obtained – and should not execute – the search warrant against JL. FP proceeded to use all of his significant political and personal powers and skills to engineer the removal of IM from post.
18. A **second key theme** is the **inappropriate interference by FP in the RGP investigation**. Despite seeming to accept, in his text to IM on 12th May, that he should not comment further on the investigation, FP proceeded to interfere in a number of ways. He provided frequent advice to Lewis Baglietto K.C. (‘LB’), another partner at Hassans, FP’s close personal friend and co-Hassans partner, and JL’s defence lawyer, and JL himself, who FP admits having spoken to multiple times about Op Delhi, both before and after the search warrant. From 12th May, FP was enthusiastically texting LB, whom he referred in the messages to as “Bro”, with potential legal points LB could make on behalf of JL, and it appears sharing highly confidential information relating to advice which the DPP allegedly provided to the investigative officers during the investigation. Just two

days after the attempted search warrant, FP even appears to have suggested, to LB, disciplinary action which could be taken against IM. Plainly, FP's intention was to punish IM not because (as he later claimed) because he felt IM misled him, but because of the search warrant itself – otherwise, why would he have been discussing punishment with JL's lawyer? FP admits that after 12th May, he discussed at length with LB potential avenues of challenge to the search warrant, whilst at the same time, as he has admitted, the “*mechanisms to see Mr McGrail removed*”. In other words – and to make the inappropriateness of his actions as clear as possible – the Chief Minister had lengthy, private discussions with the lawyer of a criminal suspect, his personal friend, in a criminal investigation in which FP was potentially implicated and certainly had a strong personal and financial interest in the outcome of, about how to prevent the RGP proceeding with a search warrant and at the same time how to remove the RGP Commissioner.

19. It is no surprise that FP reacted as he did to the attempted execution of the search warrant, angrily (a description he accepts) and in total and robust defence of JL, given that he had in his “*large number*” of previous discussions with JL about JL's status as a suspect on repeatedly reassured him that he was “*sure*” the investigation would exonerate JL, despite FP not having seen the underlying evidence. Given the constitutional separation of powers, and his obvious conflict of interest, FP should not have reassured JL in this way but rather said that he could not comment given his role as Chief Minister. He should also not have discussed the 12th May search warrant with JL, as he admits he “*frequently*” did. Extraordinarily, even four years later, FP says that these interactions were “*proper, natural and appropriate*”, demonstrating – as if another demonstration was needed – that FP does not understand still less adhere to the concept of conflict of interest or the constitutional separation of functions.
20. To return to the events which unfolded rapidly from the RGP's actions on 12th of May, at the same time as advising LB and JL on how to challenge the search warrant, FP took a series of steps to remove IM from his post, all of which appear to have been taken in close consultation with JL and his lawyer, LB. By 14th May, on the same day that FP was proposing to LB disciplinary measures which could be taken against IM, FP contacted the Acting Governor, NP, providing a list of reasons why he said he was “*beginning to lose confidence*” in IM. At a meeting called by FP at the Governor's residence, FP persuaded NP that they would approach the GPA together to claim that both had ‘lost confidence’. They would, therefore, present the GPA with a *fait accompli*, forcing its hand to use its statutory powers to dismiss IM. All of these actions were deeply constitutionally inappropriate, and well outside of FP's functions under the Constitution.

21. The role of the GPA will be closely examined by this Inquiry. The GPA is required by law to be independent from HMGoG and the Governor. A **third key theme** is the **GPA's failure to safeguard its constitutional independence and the integrity of the section 34 process**. The GPA Chair allowed FP to dictate and stage manage the GPA process, to the extent of FP advising JB on the exact sequence of actions the GPA should take and, then, secretly drafting most of the second letter, sent by the GPA on 22nd May 2020, calling for IM to retire. This second letter was sent prior to IM being given an opportunity to respond to the serious allegations being made against him. Despite it being drafted mostly by FP, the second 22nd May letter contained no reference to Op Delhi or JL, but instead cited two other 'reasons' why FP and NP had 'lost confidence' in IM. More fundamentally, the Constitution and Police Act set out a clear structure whereby the GPA, and the GPA alone, may require the Commissioner to retire if it is in the interests of "*efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar*". There is no power for the Chief Minister or Governor to remove the Commissioner if they "*lose confidence*". The Chief Minister has no relevant function in relation to the RGP Commissioner. And, although the Governor retains a residual power to force the the Commissioner to retire if the GPA is in "*default*", the GPA was not in default in the current situation – indeed, the GPA (eventually) did the right thing by not acceding to the demands of FP and NP which, if it had acceded, would have driven a coach and hoses through the statutory process IM, through his lawyers, responded on 29th May, maintaining that the GPA process was fundamentally procedurally flawed. The GPA consulted with lawyers and agreed that its processes were flawed, and withdrew the call for IM to retire.
22. Following the GPA's withdrawal, NP rushed to force IM to retire or resign before the new Governor, His Excellency Vice Admiral Sir David Steel, was due to arrive in Gibraltar on 11th June. NP threatened IM that if he did not voluntarily relinquish his post, he would exercise his 'powers' under section 13 of the Police Act 2006, requiring the Commissioner to resign. In fact, though he may not to have realised this, NP had no such power because, under s.29 of the Gibraltar Constitution, he was prevented from exercising any functions of the Governor after he had been notified that the permanent Governor vacancy was about to be filled, as had been the case throughout most if not all of the relevant period, therefore potentially rendering all of his actions relating to IM legally in excess of his powers as Interim Governor.
23. Under this enormous and relentless pressure, IM reluctantly agreed to retire early, rather than being forced to resign and therefore – in addition to the huge reputational damage he would suffer – potentially putting his pension rights at risk. IM relinquished command of the RGP on 9th June 2020. After an otherwise highly successful 35-year career, IM was unceremoniously ejected from the job which had been the pinnacle of his career,

driven home by a police officer and deposited at his door, with his belongings to follow in a cardboard box. Despite his pension rights were in any event curtailed significantly by the early retirement.

24. The Op Delhi investigation limped on. In the days that followed 12th May, amid heavy lobbying by the Attorney General, ML, much of which was secretly recorded by IM, the RGP returned JL's electronic devices without them being examined and, for the first time the officer in charge could remember, JL was permitted to answer questions not by interview under caution but through a written statement. The **fourth key theme** is the **failure by the Attorney General to act independently from the Chief Minister**. ML, prior to 12th May, had expressed concern to IM about the progress of the Op Delhi investigation, how embarrassing it could be for the administration and that he was concerned to safeguard the interests and reputation of the Chief Minister and the Financial Secretary. In the meetings that followed 12th May, he said he would "*fight until I die*" for the reputation of the Chief Minister, said he would defend FP "*to the death*". He vigorously advocated from the point of view of JL and Hassans, whom he had been in consultation with via LB, and urged the officers in charge to treat JL as a witness not a suspect. Crucially, he appears to have taken no action to prevent the triply conflicted CM from intervening in the Op Delhi investigation, despite how inappropriate it was.
25. The Chief Minister, a person of interest, later gave a written statement. Three individuals – Cornelio, Perez and Sanchez – were later charged with a range of offences, however, on 26th January 2022, the prosecutions were discontinued by the Attorney General using his powers under the Constitution. This decision came after the Director of Public Prosecutions informed ML, by email, that the prosecution had unearthed possible financial arrangements relating to civil servants "*that would, in the absence of cogent explanations, be wholly improper in the circumstances*" and that the Chief Minister was likely to be called to give evidence. This Inquiry was announced less than two weeks after the prosecution was discontinued.
26. The 28 days between 12th May 2020 and 9th June 2020 should be the focus of this Inquiry. Understanding what happened in those days will answer the central question which arises from the Inquiry's terms of reference, namely what reasons and circumstances led to IM ceasing to be Commissioner of Police in June 2020 by taking early retirement. The Government Parties have, in the almost four years since the material events, raised a range of issues which they say are "*reasons and circumstances*" which led to IM taking early retirement, including the "*Airport Incident*" and the "*Assault Investigation*" which happened years before May and June 2020 when IM was not Commissioner, and the February 2020 HMICFRS report which nobody in government had expressed any concern to IM about until after 12th May, indeed IM was told by the Minister of Justice

that he need not worry, and which the GPA was substantially unconcerned about. The Inquiry should not be distracted by these attempts to move attention away from the primary and obvious trigger for the events which led to IM's untimely retirement.

27. Despite the array of issues which have been raised to obscure the truth about these events, the story of 12th May to 9th June 2020 is a simple one: it is a story of the corrupt use of government power to insulate powerful figures in Gibraltar from a criminal investigation. This is the golden thread which runs through everything that happened from the morning of 12th May to the date, 28 day later, when IM's possessions were delivered to him at his home in the cardboard box. Everything else, from the HMICFRS report to the Incident at Sea, to IM's relationship with the GPF, to the false allegation that IM misled FP or NP, is subsidiary or irrelevant. The two simple points are, first, that if there had been no attempt by the RGP to execute a search warrant against JL on 12th May, and the Chief Minister had not angrily and forcefully intervened in the Op Delhi investigation, none of the events which followed and led to IM seeking early retirement 28 days later would have happened. And, second, the triply conflicted Chief Minister should never have intervened in the Op Delhi investigation, whether by berating IM, advising JL and his lawyer on how to avoid the warrant, or by engineering IM's removal from office.
28. A **fifth key theme** is that however concerned they were by other matters, **FP and NP gave IM no opportunity to respond to those concerns**. Both say they felt 'misled' by IM, but at no point asked IM whether their suspicions were well-founded. Instead, they pressured the GPA to engage in a grossly deficient process which bore no semblance to the basic principles of natural justice, let alone the statutory requirements under section 34 of the Police Act. IM does not claim that the HMICFRS report and the Incident at Sea were unimportant. They were both, plainly, important issues relating to policing in Gibraltar. However, the HMICFRS report was published on 9th April 2020, and the Incident at Sea happened in March 2020. By 12th May, neither FP or NP had expressed a single iota of concern in relation to either to IM, or to the GPA, which is the constitutionally defined and institutionally competent forum for such concerns, and which NP was a member of. FP does not pretend *to this Inquiry* that his loss of confidence was primarily about anything other than the events surrounding the search warrant, but he did pretend in the second 22nd May letter he mostly, and secretly, drafted for the GPA to send to IM on 22nd May that his loss of confidence was about the HMICFRS report and Incident at Sea. The absence of any express mention of Op Delhi or the search warrant in that letter speaks volumes – it is the 'vanishing reason' referred to in IM's lawyers' 29th May letter which, tellingly, FP and NP now say was a further reason they lost confidence in IM. The letter, which raised legitimate legal issues and led to the GPA process being cancelled, should have caused FP and NP to pause for reflection. The fact that it caused them to further 'lose confidence' demonstrates how committed they were

to removing IM, and how dismissive of legitimate concerns at how they were going about it.

29. Nor does IM say that the allegations by NP and FP that he misled them in, relation to the incident at sea and the search warrant respectively, are unimportant. However, he does say they are unwarranted, and he has given his detailed account in response to these allegations in his written evidence, an account which neither NP or FP requested from him, despite the grave seriousness of the actions NP and FP were taking to remove IM from post.
30. NP says that his 'loss of confidence' was primarily due to the incident at sea and the HMICFRS report. We do not say that NP is lying, but we do say that NP was manipulated, and allowed himself to be manipulated, by FP. FP astutely raised issues such the airport incident and recruiting a new RGP commissioner from outside of Gibraltar, which he knew would likely encourage NP to join forces with him in approaching the GPA. It is telling that after IM left post, FP almost instantly reneged on his agreement to recruit an RGP commissioner from abroad, and that the documentation now disclosed to the Inquiry demonstrates that FP's 'concerns' about IM's and the RGP's actions in the airport were totally contrary to his recorded views at the time that the MoD was wholly to blame.
31. Perhaps even more seriously, as well as allowing himself to be manipulated by FP, and this is our **sixth key theme**, **NP failed in his duty as Governor to uphold the constitutional separation of functions between the Crown, the Executive, and the Police**, and failed most egregiously to prevent the Chief Minister from stage-managing the GPA process and therefore IM's ousting, despite FP's obvious, egregious, triple conflict of interest which should have prevented him being involved with matters relating to Op Delhi in any way whatsoever, and NP's own concerns that the FP was exercising a function relating to the police which was, under the Constitution, vested in the Governor. Indeed, FP as Chief Minister had no relevant function in respect of the police.
32. And so it was that IM, a police officer with an impeccable, highly decorated 35-year record of public service, reaching the pinnacle of policing in Gibraltar, was pushed out of the job he loved to spend the next four years in a state of professional limbo, with a pension lower than he had anticipated and, due to the cloud hanging over his departure, unable to take advantage of the consultancy, lecturing and other opportunities which would usually be available to a retired commissioner of his stature and reputation. IM called for this Inquiry to lift the cloud and, more importantly, expose the machinations of the individuals at the centre of these events, for the good of Gibraltar. It is said that

sunlight is the best disinfectant. This Inquiry will, we hope, shine a clarifying light on what happened in the 28 days between 12th May and 9th June 2020.

B. LEGAL BACKGROUND

(i) The Government of Gibraltar and the Chief Minister

33. Section 45 of the Constitution Order in Council 2006 (**‘the Constitution’**) provides that the “Government of Gibraltar” comprises of “*a Council of Ministers which shall consist of a Chief Minister and such number of other Ministers (not being less than four) as may, subject to subsection (2), be prescribed by the Chief Minister; and such Council of Ministers, together with Her Majesty who is represented in Gibraltar by the Governor shall constitute the Government of Gibraltar.*”
34. The appointment of the Chief Minister is prescribed by section 45(3): “*The Governor, acting in his discretion, shall appoint as Chief Minister the Elected Member of the Parliament who in his judgment is most likely to command the greatest measure of confidence among the Elected Members of the Parliament.*”
35. The Government of Gibraltar is therefore the Chief Minister, the elected Ministers and the Governor as representative of His Majesty.

(ii) The Government and Policing

36. The Police Act 2006 (**‘Police Act’**) was passed in 2006 immediately before the new Constitution. The then Chief Minister, Peter Caruana QC said in Parliament on 13th July 2006 the following at 192-193:

“Mr Speaker, this Bill, which I hope the House will welcome and support, brings the regime applicable to the control of policing in Gibraltar much closer to what it is in almost the whole of the rest of Europe, and indeed very similar to the situation as it is in the United Kingdom. Indeed, in the United Kingdom, the Home Secretary who is an elected Minister of the political Government of the day, has all the powers that this Bill gives to the Governor. So, we have not given to the elected Government in Gibraltar a whole raft of powers which in the United Kingdom it is thought appropriate for a political Minister to have. We have not asked for that, in recognition that in a small community it is perhaps even more necessary that it is everywhere, that there should be distance between the operational control of the Police and the citizen that is being policed. However, all of that said, it would be a mistake for people to regard colonial mechanism in relation to the Police as analogous to independence mechanisms. In other words, it is important that there should be independence of policing. It is important that that independence of policing be enshrined in our Constitution and in our law, but it can be done in the same way as other civilised, democratic societies achieve the same goal, and we must not think that

the only way to achieve it is in the colonial fashion in which it has hitherto been achieved.”³

37. The response by Fabian Picardo, who was then an opposition Member of Parliament, was:

“Mr Speaker ... The spirit of the agreement by the Opposition in the Constitutional Reform Committee for the creation of the new Police Authority, which we now see in this Bill and is envisaged in section 48 of the proposed new Constitution, was not for the control of the Police to move from the Governor to an Authority that is controlled by the Government and by the Governor, or the appointments of which are controlled by the Government and the Governor. A Police Authority, if it is to have any legitimacy in our community, must be truly independent and we do not believe that this status is necessarily achieved for those proposed Police Authority by this Bill.

...

The Bill changes very substantially, and in many ways let me say very positively, the way that the Police is controlled in Gibraltar. ... [194] A Bill like this needs very wide consultation and the consultation must be wider than the one the Chief Minister has alluded to in his address. So that the Police can see themselves, and the community can see the force as a truly independent one, acting always without fear or favour and no one controlled by an Authority, predominantly appointed by the Governor and/or Government on the basis of their names being put forward by them.⁴

38. The Police Act provides the Government and the Chief Minister with various powers in relation to the Police:

- a. Section 14 provides that the Minister with responsibility for public finance shall decide and seek the appropriation of the Parliament for the grant of recurrent and capital expenditure to be made for the RGP and policing in Gibraltar.
- b. Section 15 gives the Chief Minister the following powers on behalf of the Government:

“(a) to require factual or assessment reports from the Force or the Authority on any policing matter: Provided that there may be withheld from any such report any fact disclosure of which is likely to prejudice the effective operation of the Force or the confidentiality of any information which the Force is bound to maintain;

³ Hansard – 13th July 2006, pages 192 and 193

⁴ Hansard – 13th July 2006, pages 193 and 194

(b) to hold the Force and the Authority to account for the cost effectiveness and efficiency of the Force within its allocated budget;

(c) to hold the Force and the Authority to account for those parts of the Annual Policing Plan which do not relate to National Security;

(d) to call for and hold meetings with the Chairman, the Commissioner and other senior officers of the Force to discuss matters under the Government's responsibility or in respect of which it has powers under this Act.

(2) The Chief Minister will keep the Governor informed of any exercise by him of a power under this section and shall provide to the Governor a copy of any report produced as a consequence thereof."

- c. Section 8 provides that the Chief Minister shall be consulted by the GPA in respect of the Policing Plan. Similarly, section 23(3) requires that the GPA consult with the Chief Minister in respect of any guidance it proposes to issue.
- d. Under section 34, Chief Minister must be consulted by the GPA and consent to an intention to call upon the Commissioner of Police to retire, in the interests of efficiency, effectiveness, probity, integrity or independence of policing.

(iii) The Royal Gibraltar Police

39. The Police Act regulates the RGP and the Commissioner of Police.

40. Section 29 of the Police Act provides that the objects of the RGP are the preservation of peace, the maintenance of law and order, the prevention and detection of crime, the apprehension and guarding of offenders and the protection of property.

41. Section 30 describes the RGP as being composed of a Commissioner, an Assistant Commissioner, Superintendents, Chief Inspectors, Inspectors, Sergeants, Constables and Probationary Constables.

42. Section 44 of the Police Act describes the general duties of the RGP as:

“(a) to preserve the peace and prevent and detect crime and other infractions of the law;

(b) to apprehend and bring before a justice of the peace persons found committing any offence rendering them liable to arrest without warrant, or whom they may reasonably suspect of having committed any such offence, or who may be charged with having committed any such offence;

(c) to summon before a justice of the peace and to prosecute persons reasonably suspected of having committed offences, where an order to that effect is made

by the Attorney-General or the Commissioner, either generally or in any particular case or class of cases;

(d) to serve and execute at any time all process which they may be directed by any competent authority to serve or execute;

(e) to keep order in and within the precincts and in the vicinity of all courts during all sittings of such courts;

(f) to collect and communicate to his superior officers intelligence affecting the public peace or public security;

(g) to take all steps necessary to prevent the commission of offences and public nuisances;

(h) to obey all lawful orders of his superior officers; and

(i) generally, to do and perform all the duties appertaining to the office of a police officer or constable.”

(iv) Commissioner of Police

43. Section 32 of the Police Act provides that “the Governor, acting on the advice of the [GPA] and subject to any provision of the Constitution, shall appoint the Commissioner” who shall be appointed for such a term as the GPA will advise.

44. Section 33 of the Police Act provides for the powers and duties of the Commissioner as:

“33(1) The Commissioner shall, subject to the provisions of this Act, have command, superintendence, direction and control of the Force, and shall be responsible for the efficient administration and government of the Force and for the proper expenditure of all public moneys appropriated for the service thereof.”

45. Section 18 of the Police Act provides the general duties of a Commissioner as follows:

“18.(1) It shall be the duty of the Commissioner to ensure that he is kept informed, in relation to the Force about all matters falling within subsection (2).

(2) Those matters are—

(a) matters with respect to which any provision of this Part has effect;

(b) anything which is done under or for the purposes of any such provision; and

(c) any obligations to act or refrain from acting that have arisen by or under this Part but have not yet been complied with, or have been contravened.

(3) It shall be the duty of the Commissioner to provide the Authority and every member of the Authority's staff with all such assistance as the Authority or that member of staff may reasonably require for the purposes of, or in connection with, the carrying out of any investigation by the Authority under this Part.

(4) It shall be the duty of the Commissioner to ensure that a person appointed under this Part to carry out an investigation is given all such assistance and co-operation in the carrying out of that investigation as that person may reasonably require.”

46. A Commissioner of Police can be removed under section 34 of the Police Act by the GPA, acting after consultation with the Governor and the Chief Minister and with the agreement of either of them.

(v) The Governor

47. The Constitution at sections 19 and 20 sets out the role and obligations of the Governor.
48. At section 19, the Governor is also referred to as “*the Commander in Chief*” for Gibraltar who is appointed by His Majesty and shall be “*Her (His) Majesty’s representative in Gibraltar*”.
49. Section 20 provides the powers and duties of the Governor as being those prescribed by the Constitution, any other law, and such other functions as His Majesty may assign in the exercise of the Royal Prerogative. These are the only sources of the Governor’s functions and powers.
50. The Governor’s responsibilities are set out in section 47, which provides:

“47(1) The Governor, acting in his discretion, shall be responsible in Gibraltar for the conduct (subject to this Constitution and any other law) of the following matters:

- (a) External affairs;*
- (b) Defence;*
- (c) Internal security, including subject to (section 48) the police;*
- (d) Such functions in relation to appointments to public offices and related matters as are conferred on him by this Constitution*

Provided that the Governor shall in respect of external affairs as far as practicable act in consultation with the Chief Minister.

(2) For the avoidance of doubt it is declared that any matter which falls outside the special responsibilities of the Governor set out in subsection (1), or which is not a function which this Constitution or any other law requires the Governor to exercise in his discretion, is the responsibility of the Ministers.

(3) ...

(4) The exercise by the Governor of his responsibility for external affairs and defence is without prejudice to the overall responsibility of Her Majesty's Government in the United Kingdom for these matters."

51. Section 22 of the Constitution provides for when there is a vacancy in the office of Governor:

"22.(1) During any period when the office of Governor is vacant or the Governor is absent from Gibraltar or is for any other reason unable to discharge the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and discharged by such person as Her Majesty may have designated in that behalf by instructions given through a Secretary of State.

(2) Before assuming the functions of the office of Governor, any such person as aforesaid shall make the oaths directed by section 21 to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform the functions of that office has notified him that he is about to assume or resume those functions.

(4) The Governor or any other person as aforesaid shall not for the purposes of this section be regarded as absent from Gibraltar or as unable to perform the functions of the office of Governor at any time when there is a subsisting appointment of a deputy under section 23.

(vi) The Governor and Policing

52. The Governor's powers with respect to Policing are found at section 47(1)(c) of the Constitution and also in the Police Act.

53. Section 11 of the Police Act provides that the Governor shall have overall and ultimate responsibility for:

*"(a) the integrity, probity and independence of policing in Gibraltar; and
(b) the policing aspects of national security including internal security."*

54. Under section 12, the Governor's powers are to:

"(a) hold the [Gibraltar Police] Authority to account for any matter to which section 11 relates;

(b) hold the Authority to account for the professional standards of the Force;

(c) call for and hold meetings with the Chairman, the Commissioner and other senior officers of the Force to discuss matters under his responsibility or in respect of which he has powers under this Act.”

55. The Governor also has powers under section 13 in circumstances where there is a failure by the Gibraltar Police Authority (‘GPA’) to discharge or perform a responsibility, when the Governor has authority:

“(a) to require the Authority to provide a report on any policing matter;

(b) to direct the Authority to submit the Force to an inspection by an appropriate inspectorate;

(c) to direct that an inquiry into policing in Gibraltar be made;

(d) where an inspection or inquiry under this section identifies any shortcomings, to direct that, within the financial resources available to it, the Force take appropriate remedial action;

(e) where in the opinion of the Governor the integrity, probity or independence of the police has been compromised or is at risk, to direct the Force to take appropriate action to remedy the situation or avoid the risk;

(f) to suspend from duty, or call for the resignation of the Commissioner.

(2) the Governor will keep the Chief Minister informed of any exercise by him of a power under this section and shall provide to the Chief Minister a copy of any report produced as a consequence thereof.”

56. Under the Police Act, the Governor is the person responsible for appointing the Commissioner of Police (section 32).

(vii) The Gibraltar Police Authority

57. The GPA is established under section 48 of the Constitution.

58. The GPA’s powers and obligations are found in the Police Act.

59. Section 4 of the Police Act provides that the GPA will consist of ten members comprising of a Chairman appointed by the Governor, a member appointed by each of the Governor and the Chief Minister and seven members appointed by the Governor on the advice of the Public Services Commission. The period of office of each member is set at three years.

60. Section 5 provides that the responsibilities and powers of the GPA are:

“(a) to secure the maintenance of an efficient and effective police force for Gibraltar within the financial resources available to it and on a value for money basis;

(b) to ensure high standards of integrity, probity and independence of policing in Gibraltar;

(c) to provide information on police issues to the community;

(d) to establish, operate and supervise the process for investigating complaints against police officers under this Act;

(e) to provide a mechanism for enhanced police accountability through a process of consultation with the community;

(f) to ensure value for money in policing;

(g) to draw up and publish an Annual Policing Plan and an Annual report, in accordance with sections 8 and 10 respectively;

(h) to submit to the Minister for public finance, in accordance with the form, procedures and timetables established by the Government generally in relation to the preparation of its budget, an annual budget bid for the Force;

(i) to hold the Commissioner to account for matters which are the responsibility of the Authority.”

61. Section 8 requires the GPA to prepare a Policing Plan after consulting with the Governor, the Chief Minister and the Commissioner of Police. Which Policing Plan will be laid before Parliament and published.

62. Section 16 provides for the general functions of the GPA:

“16(1) The Authority shall–

(a) secure the maintenance by the Authority itself, and by the Force, of suitable arrangements with respect to the matters mentioned in subsection (2);

(b) keep under review all arrangements maintained with respect to those matters;

(c) secure that arrangements maintained with respect to those matters comply with the requirements of the following provisions of this Part, are efficient and effective and contain and manifest an appropriate degree of independence;

(d) secure that public confidence is established and maintained in the existence of suitable arrangements with respect to those matters and

with the operation of the arrangements that are in fact maintained with respect to those matters;

(e) make such recommendations, and give such advice, for the modification of the arrangements maintained with respect to those matters, and also of police practice in relation to other matters, as appear, from the carrying out by the Authority of its other functions, to be necessary or desirable.

(2) Those matters are—

(a) the handling of complaints made about the conduct of persons serving with the Force;

(b) the recording of matters from which it appears that there may have been conduct by such persons which constitutes or involves the commission of a criminal offence or behaviour justifying disciplinary proceedings;

(c) the manner in which any such complaints or any such matters as are mentioned in paragraph (b) are investigated or otherwise handled and dealt with.

(3) It shall be the duty of the Authority—

(a) to exercise the powers and perform the duties conferred on it by the following provisions of this Part in the manner that it considers best calculated for the purpose of securing the proper carrying out of its obligations under subsection (1); and

(b) to secure that arrangements exist which are conducive to, and facilitate, the reporting of misconduct by persons in relation to whose conduct the Authority has obligations.

(4) Subject to the other provisions of this Part, the Authority may do anything which appears to it to be calculated to facilitate, or is incidental or conducive to, the carrying out of its functions.

(5) Nothing in this Part shall confer any function on the Authority in relation to so much of any complaint or conduct matter as relates to the direction and control of a police force by— (a) the Commissioner; or (b) a person for the time being carrying out the functions of the Commissioner.”

63. Under sections 19, 20 and 23, the GPA has the power to require information from the Commissioner of Police; allow inspection of Police premises by persons on behalf of the GPA; and issue written guidance.
64. Under section 32 of the Police Act, the GPA recommends the appointment of a Commissioner of Police to the Governor and for a period of time.

65. Under section 34, the GPA retains the power to remove a Commissioner from post. This reads:

“34.(1) The Authority acting after consultation with the Governor and the Chief Minister and with the agreement of either of them, may call upon the Commissioner to retire, in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar.

(2) Before seeking the approval of the Governor and the Chief Minister under subsection (1), the Authority shall give the Commissioner an opportunity to make representations and shall consider any representations that he makes.

(3) Where the Commissioner is called upon to retire under subsection (1), he shall retire on such date as the Authority may specify or on such earlier date as may be agreed upon between him and the Authority.”

66. At the time of the first reading of the Police Act, section 34 was described by the then Chief Minister, Peter Caruana QC in these terms:

“Section 34, which deals with the removal of the Commissioner, is new and also reflects the new Authority structure. That section says that the Authority acting after consultation with the Governor and the Chief Minister, and with the agreement of either of them, may call upon the Commissioner to retire in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar. In other words, neither the Governor nor the Chief Minister can remove the Commissioner. Only the Authority can remove the Commissioner and not even by themselves. They need to persuade either the governor or the Chief Minister that the Commissioner should be removed. In other words, of the three players, Authority, Governor and Government, at least two of them must believe that the commissioner should be removed and one of them must be the Authority. Obviously there are provisions there before he can be removed, the Commissioner must be given opportunity to make representations et cetera.”⁵ [emphasis added]

(viii) The Attorney General

67. Section 59 of the Constitution creates the role and sets the obligations of the Attorney General. It provides that the office is a “*public office*” which is defined as “*subject to section 79, any civil office of emolument under the Crown in Gibraltar*”.

68. The Attorney General has the power under section 59(2) to:

“a) institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);

⁵ Hansard – 13th July 2006 page 191

b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.”

69. Section 59(3) allows the Attorney General to exercise those powers in person or through others acting in accordance with his general or special instructions. In this respect, the Attorney General has issued a Certificate of Delegation under which various statutory obligations and powers under civil and criminal law are delegated to the Director of Public Prosecutions.
70. Section 59(5) provides that the powers conferred on the Attorney General shall “*not be subject to the direction or control of any other person or authority.*”
71. As in other British Overseas Territories, the Attorney General has traditionally been regarded as the principal legal advisor to the Government. His role however is dual in that as well as advising the Gibraltar Government, of which the Governor is a part, he or she must also separately advise the Governor as Head of Government and His Majesty’s representative in Gibraltar. Thus,

“It is incumbent on the Attorney General to give objective and professional legal advice to anyone in Government who seeks it, and the different aspects of the role should not cause a problem for an Attorney General most of the time. If, however, an Attorney General feels in a particular situation that it is not possible to advise without being conflicted in some way, it is open to the Attorney General to use members of his/her chambers, or even instruct outside counsel to advise one of the parties involved.”

(Hendry and Dickson. *British Overseas Territories Law*⁶)

72. The Attorney General is not a member, either full or *ex officio* of the Council of Ministers of the Gibraltar Parliament.

(ix) Director of Public Prosecutions

73. The Director of Public Prosecutions is a relatively new role which was established under the Director of Public Prosecutions Act 2018.
74. Section 3(2) provides that the DPP is “responsible to the Attorney General for the discharge of his duties and functions under this Act.”

⁶ (2011 Hart Publishing) page 125

75. Section 5 provides the duties and functions of a DPP as those which “may be bestowed upon him under general or special instructions issued by the Attorney General pursuant to section 59(3) of the [Constitution].”

76. Christian Rocca KC is the first DPP since the role was established in August 2018.

C. SUBMISSIONS

(x) Background: Ian McGrail’s exceptional RGP record

77. IM retired after serving in the RGP for over 35 years. He had a distinguished and decorated career, unblemished by any disciplinary or other complaints:

77.1. From joining as a constable in October 1984, to being appointed as Commissioner on a four-year term of warrant on 1st May 2018, having worked his way up the ranks.

77.2. IM’s many awards and honours include being awarded the Overseas Territories [Police] Medal by Her Majesty the Queen for meritorious service in the Queen’s Birthday Honours List (2015), the Long Service and Good Conduct Medal with first and second clasps, the St John’s Ambulance long service medal for voluntary service and the Queens Gold and Diamond Jubilee medals. He is a Master of Science in Policing Studies and hold a certificate in Criminal Justice from the University of Virginia. After his retirement his efforts in combatting organised crime and fostering cross-border law enforcement cooperation were recognised by the Cuerpo Nacional de Policía (Spanish National Police) where he was presented with an award in 2021.⁷

77.3. IM has a high level of integrity as is confirmed by his senior colleagues, and his impeccable record.⁸

⁷ [RU1/11; WSB/530]: Richard Ullger: “*In fact, in my opinion and judgment Mr McGrail led the organisation with strong ethical values and had the organisation at the heart of everything he did. He was a committed police officer and a dedicated leader, and I was honoured to serve under his command.*”

⁸ Yome 15th November 2017 report on IM: [EXB/2174]: “*Mr McGrail always acts with integrity and has very high ethical standards and values. He leads by example in everything he does*”

D. THE CONSPIRACY INVESTIGATION (ISSUE 5)⁹

(xi) 12th May was the trigger for everything that followed

78. The key events which are the subject of this Inquiry were triggered by the attempt on 12 May 2020 to execute a search warrant against JL. But for this event, IM would have still been in post until his scheduled retirement in 2022.

(xii) The Op Delhi investigation – prior to 12th May 2020

79. FP knew JL was a suspect from a year before the search warrant was executed, and was in regular communication with him about this:

79.1. FP knew about JL being a suspect from 13th May 2019 at the latest.¹⁰

79.2. In the months prior to 12th May 2020, JL was extremely concerned by the police interest in him, and FP repeatedly reassured him about the same:

79.2.1. FP had been in touch with JL about the fact that he **might be** a person of interest on a “*very large number of occasions*” prior to 12th May 2020¹¹;

79.2.2. This created an expectation (explicitly or implicitly) that FP would use his influence to limit the investigation against JL;

79.2.3. FP formed a very strong view as to the innocence of JL without having access to or reviewing the evidence against JL, or with any particular criminal law expertise;

79.2.4. This is contrary to FP’s letter of 5th June 2020, attempting to justify his actions from 12th May onwards, in which he stated that on 12th May 2020 he had “*no reason to believe the investigation was of Mr Levy*”.¹²

⁹ [IM1/6-62; WSB/A2-25] [IM2/3-13 16-20; WSB/A46-50] [IM3/170o-t; WSB/A136-137] [IM Responsive 1/107-129; WSB/A164-169]

¹⁰ [ML1/16-18; WSB/274] ML: “[at the meeting of 11th May 2019, which FP attended] 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 communications with the three suspects and that he was potentially a person of interest to the investigation.”; also confirmed by IM in [IM1/18; WSB/A5]

¹¹ [FP3/5; WSB/A233]: “I recall that I discussed with Mr James Levy KC on a very large number of occasions the fact that the RGP had suggested that he might be a person of interest in the investigation. He raised this with me constantly when I spoke to him on other matters. I consistently replied to him that I was sure that the investigation would exonerate him given that, from what I knew of him, I was sure that he would not have acted in a manner which was contrary to law.”

¹² [EB/C4766]

79.2.5. For his part, JL denies that he knew he was potentially a person of interest prior to 12th May 2020.¹³

80. The Op Delhi investigation was a matter of deep concern to FP, ML and CR, as to which high-up members of the Gibraltar community it would drag in, and the damage it could do to the reputation of Gibraltar.¹⁴
81. In the months prior to 12th May 2020, FP appears to have instructed ML to keep a close eye on the Op Delhi investigation and limit the exposure of high up figures in the Gibraltar community including JL and FP.¹⁵

(xiii) FP’s triple conflict of interest

82. FP had a triple conflict of interest in relation to Op Delhi: personal, financial and due to his close friendship with JL, and it was therefore improper for him to interfere in the investigation in any way:
- 82.1. JL, a suspect, was FP’s close business partner, personal friend of and mentor to CP¹⁶;
- 82.2. A senior civil servant who worked closely with FP, Caine Sanchez, was a key suspect;
- 82.3. FP was concerned about the RGP having access to details of dealings between him and JL which would be on JL’s devices¹⁷
- 82.4. FP, through his partnership at Hassans, had a financial interest in the success of 36 North, the company at the centre of the investigation, because:
- 82.4.1. FP indirectly owned a part of 36 North through his partnership in Hassans¹⁸ whose subsidiary company Astelon owned 33% of 36 North;

¹³ **[JL2/9.7 ; A515]**: *“Given my firm’s involvement in 36 North, it could be reasonably anticipated that to the RGP might wish to speak to me, but not as a suspect, which I only discovered, to my consternation and bewilderment, on the date the RGP sought to execute the warrants.”*

¹⁴ **[CB/C3312]**: CR email to ML 4.4.20: *“This is something we are going to have to discuss soon because it does have serious implications in terms of people who might be dragged in”. “Sure, Christian, Whenever you want.”*

¹⁵ **[IM1/12-17; WSB/A4]**

¹⁶ FP1/38: FP statement §38 [330] *“life-long relationship between my family and [Levy’s uncle]... “I consider Mr Levy to be a mentor in my previous legal practice, a supporter in my current political career and a close personal friend”*; FP1/47 *“As a result of this deep relationship, I am regularly in contact with Mr Levy QC on matters related to politics and to his attraction to Gibraltar of persons who would establish themselves or their businesses here and on personal matters as a close friend”*

¹⁷FP1/45 *“I told Mr McGrail that there would be myriad, unrelated, conversations between Mr Levy and me, for example, on matters outside the RGP’s interest, but which would be private”.*

¹⁸ See company structure diagram at **[EB/5187]**

- 82.4.2. Hassans was owed a substantial amount of money (£476.000¹⁹) by 36 North;
- 82.4.3. The success of 36 North relied directly on obtaining the NSCIS contract as proved by the projected cash flow document which showed the NSCIS as 36 North's primary source of projected income²⁰;
- 82.4.4. If the business failed, Hassans was committed to employ the three Op Delhi defendants as consultants or in some other post with £300k p/a salaries²¹ therefore increasing the direct financial risk to Hassans and its partners if 36 North did not secure the NSCIS contract.
- 82.4.5. FP was himself a person of interest or at the very least a potential witness in the investigation:
- (a) having been in close contact with the three founders prior to them leaving Bland and before they set up 36 North²²,
 - (b) texting three founders to wish them luck the evening before they resigned²³, and been directly involved in the decisions taken relating to the operation of NSCIS²⁴;
 - (c) FP knew that TC retained access to NSCIS after 30th August 2018 despite Blands being told nobody else would have access, and may have authorised this directly, which may therefore have

¹⁹ [JL Exh1/7; EB/5234]: “The total loan, which stands at £476.000, is to be repaid at the end of August 2020”

²⁰ [JG Exh 1/30; EB/5161]: The cash flow shows NSCIS as bringing in £62,519 pcm for 2018-2019 out of a total projected income of £103,094 pcm with a total expenditure per month of £61,950, therefore the business would lose money without the NSCIS contract

²¹ [EB/5282]: Draft Letter from JL to JP and TC, 24.4.28: “in the event the Company ceases trading within a period {the “Relevant Period”) of 3 years commencing on today's date, Hassans would by mutual agreement between us take you onto our staff as full time consultants for the balance of the Relevant Period in each case at an annual consultancy fee of £300,000 gross or offer you a suitable alternative post.”; [EB/5350] JL appears to have authorised JP and TC being taken onto Hassans staff on 8th November 2018 due to a “material adverse change” but then this is reversed on 21st November 2018 [EB/5357]

²² [JP1/23; WSB/1236]: “From the beginning, I ensured that HMGoG was aware of our plans... On 30 January 2018, I met the CM, The Honourable Fabian Picardo KC and told him about our plans; he was encouraging and supportive and asked that I let him know before we tendered our resignations. I also informed the I also informed the Financial Secretary, Albert Mena.”; JP/41 “From January to October 2018, the CM was periodically updated as to progress with 36N, either by me directly, or through James Levy CBE KC, or by CS

²³ [TC1/25] CM was kept “up to date” and texted them the evening before they resigned; [WSB/1236-7] John Perez informed CM that they were resigning “tomorrow” on 8 July 2018 [27] – “All is in place” – FP replied “Good luck for tomorrow my friend”

²⁴ [Perez 1/71; WSB/1429]: “the CM's involvement in the events of the summer of 2018 was critical.”

facilitated the conspiracy to undermine NSCIS (whether FP knew this is how the access would be used or not)²⁵.

- 82.5. FP as Chief Minister had an interest in the outcome of the investigation because one issue to be resolved was the ownership of the NSCIS system, which was disputed between Bland and the Government;
- 82.6. In general terms, FP should not, as Chief Minister, have intervened in an RGP investigation due to the clear statutory separation of functions between his office and the police.²⁶
83. FP's encouragement of and support for the 36 North founders was itself deeply inappropriate – he knew that in order for 36 North to succeed (success which would enrich him and his Hassans partners), 36 North would have to take the NSCIS maintenance contract from Bland, a decision which ultimately would rest with him in his capacity as Chief Minister;
84. FP should have recused himself from decisions relating to NSCIS, the contract for its maintenance and the criminal investigation relating to it:
- 84.1. The Ministerial Code states that ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.²⁷

²⁵ [TC1/35] “The CM, through James Levy CBE KC and CS, was also aware that I continued maintaining the platforms”; FP's affidavit as part of the Op Delhi investigation, 25.6.21 [FP1/41 CB/C6255]: FP says I “do not believe” I ever gave any “express” authority for Tommy Cornelio (TC) to access the NCIS platform after he terminated his consultancy period with Bland Ltd, Says he was asked by Perez whether CM would support him and TC setting themselves up on their own – said he “was supportive of them setting themselves up on their own but that in doing so they should regularise their position with Mr Gaggero”, Says “I had conversations” with Perez and Levy about Hassans investing in 36 North – was “asked by Mr Levy QC whether or not I would object to this”; [EB/B3267] JL text message to CM 30.8.18 (which seems to be the cut off date after which Bland aren't monitoring the system any more?): . “You should know that I have spoken to Tommy and despite his letter to James G he will continue ensuring that the system is kept going until a solution is found acceptable the government”, [FP1/52 CB/C6264] “No express authority was given by me, at least that I can recall or that I can find recorded in writing, for Mr Cornelio to access the NSCIS platform at any time after the termination of his arrangement for access with or through Bland Ltd. I do not believe that any other communication from me can be considered to be ostensible authority from me for anyone to access the system, although I am unable to comment on whether a communication from me could legitimately be interpreted in a manner that could be considered to convey such ostensible or implied authority.”

²⁶ See the Legal Background section above

²⁷ “7.1 Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.”; “7.7 Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision they should be guided by the advice given to them by the Chief Secretary. Ministers' decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation.”

- 84.2. Throughout 2018 and 2019, FP continued to make decisions related to the NSCIS contact whilst also, privately, remaining in contact with JL about 36 North²⁸;
- 84.2.1. On at least one occasion FP used his personal email address when JL asked FP whether a draft email on 29th August 2018 from TC to JG regarding him no longer maintaining NSCIS platform.²⁹
- 84.3. FP on occasions admitted that he had a conflict of interest, relating to the criminal investigation, but did not take any action to mitigate it:
- 84.3.1. FP told James Gaggero that if Bland made a criminal complaint, it would be improper for him to interfere.³⁰
- 84.3.2. FP texted IM on 12th May 2020, after IM had informed him that the RGP were executing a search warrant against JL, saying that “[g]iven my close personal relationship with JL, I won't comment further.”³¹
85. FP’s failure to act on his conflict of interest was improper, a view which appears to have been shared by at least one Government official, the Senior Advisory Counsel, later Solicitor General,³² and grossly contrary to the Ministerial Code.

²⁸ [HJML1; EB/5242]; “I was aware that the NSCIS platform was one in which the GoG had a direct interest, as owners of it, and I therefore discussed the Blands/36N issues with the Chief Minister on a few occasions”

²⁹ [JL Exh 2; EB/5318]: Email from JL to FP’s personal email address, 30th August 2018, 12:01: “Tommy wants to send this – I have asked him to wait. What do you think”; [JL Exh 1; EB/5242]: “in August 2018, I forwarded to the Chief Minister an email containing a draft email prepared by TC addressed to JG regarding the termination of the NSCIS maintenance service that TC had been providing after his departure from Blands [...] The Chief Minister informed me that he had discussed this matter with JG also on a number of occasions and had tried to promote a settlement between him, JP and TC of the commercial dispute that was emerging between them. It was clear that JG was very concerned at losing his 2 key employees on whom he depended to enable Blands to continue to meet its contractual obligations. [...] . In those conversations I suggested that the Chief Minister should continue to encourage JP, TC and JG to find a way to work together amicably in the interests of maintaining the NSCIS platform for the benefit of GoG as I had been informed that Blands did not have the expertise or capability to maintain it. I mentioned to the Chief Minister, and separately to JP and TC, that Hassans would be willing to give up all its shareholding in 36N if that would help reach an agreement between JP, TC and JG.”

³⁰ JG/75 [WSB/A1374]: I then asked [FP] if I could speak to him in private as everyone left his office. I advise him that it had become clear to me that James Levy KC was involved with 36 North. told him that once a case against 36 North had been commenced by Bland the matter would be out of my hands. He stated that if this occurred it would be improper for him to interfere.”

³¹ [WSB/A191]: “I think that is a bad decision. A search warrant should only have been sought if you believed that the person in question was not going to cooperate and will try destroy evidence. If, as you say, you are hoping for cooperation, especially in a case involving a senior Silk and head of Gibraltar's largest legal firm, you should, in my view, first have sought to contact that person and obtain cooperation. Given my close personal relationship with JL, I won't comment further.

³² LD; [WSB/1302-3] “deeply concerned about the implications of this information if true, given that the Chief Minister and others in the political and administrative spheres of Government were themselves partners of Hassans.” (21) “I recall mentioning to the Attorney General that, in the context of this nexus, it would be especially important to be alive to the possibility that those with an interest in the outcome of the NSCIS matter could seek to influence the investigative or legal process, either directly or indirectly. I was especially anxious

(xiv) It was appropriate to treat JL as a suspect

86. There was, in at least the two or so months prior to 12th May 2020, sufficient evidence to treat JL as a suspect³³ as part of a legitimate and serious criminal investigation into the hacking and sabotage of the NSCIS system³⁴:

86.1. On 19th October 2018 TC wrote to JL saying, *“Morning James. Very confidential. Note Gaggero has brought in a forensic team of six to look at anything John and I may have done to tamper with the system etc. Gaggero is going all out it seems.”*

86.2. On the 19th October 2018 TC wrote to JP saying, *“Spoke to James ref forensic team confidentially. Spoke to him on the phone. Call me and I can discuss. He says not to worry. I am very concerned they will try to prove I have acted to sabotage the system in any way etc.”*³⁵

86.3. JL has never accounted for the telephone conversation with TC he made after the text on 19th October 2018.³⁶

86.4. On 11th April 2019 TC wrote to JL, *“I am preparing a report for Caine/Albert Mena with regards to the failures of the National Security platform of which [REDACTED] ----- Redacted pursuant to Government Restriction Notice ----- [REDACTED]. Lesley is preparing a legal letter for your review in an attempt to speed up the process. This is ok?”* He continued, *“[w]e are going to have a field day on the national security report.. just wait until you see it. For now I am reviewing every single module 1 by 1. [REDACTED] [REDACTED]”*

86.5. Around 30th August 2018, Levy wrote to the Chief Minister informing him *“[y]ou should know that I have spoken to Tommy and despite his letter to James G he will continue ensuring that the system is kept going until a solution is found acceptable the government [sic].”*³⁷

that concern for the good reputation of the jurisdiction and its offices and institutions not be exploited by anyone with an incentive to conflate Gibraltar's interests with their own. I particularly recall mentioning the importance of not regarding Gibraltar as a 'PLC' but as a community whose values transcend corporate ones, even if it was important not to be naïve about the need to safeguard Gibraltar's economic well-being and international standing” (22)

³³ The application for a search warrant is at [MW/20; EB/3208]

³⁴ [EB/B3630] NDM report

³⁵ [EB/2957]

³⁶ [EB/3032]

³⁷ [EB/2968]

87. CR as DPP was consulted on and approved on 8th April 2020 the status of JL as a suspect.³⁸
88. Although JL was ultimately not charged, PR's and MW's view was that this should not be seen as a vindication of his innocence³⁹:
- 88.1. They considered that *"the investigation [...] may have resulted in a different outcome had the warrant been executed and Levy interviewed under caution."*
- 88.2. They considered that *"Levy gave partial explanations in his account but did not answer all of the issues that we sought to clarify"*
- 88.3. PR also recalled that the *"AG advised that he would deal with the allegations of impropriety explaining that that was what lawyers did and not to worry"*.

(xv) There was sufficient justification for a search warrant against JL

89. It was proper and appropriate for the RGP to apply for a search warrant in relation to JL.
- 89.1. The RGP's justification is objectively reasonable⁴⁰
- 89.2. There was substantial evidence to support JL's status as a suspect, as confirmed by CR/the DPP's advice;
- 89.3. The warrant was granted by the Stipendiary Magistrate after a 1-2 hour hearing.
- 89.3.1. That decision was never challenged or withdrawn.

(xvi) FP inappropriately interfered with the RGP investigation

90. FP had formed a concluded view on the propriety of the search warrant immediately upon hearing about it despite (a) having no expertise or experience in criminal law or police investigations, (b) not having seen the underlying evidence:
- 90.1.1. FP's concluded view on the propriety of the search warrant is no surprise because he had expressed his view on JL's innocence repeatedly to JL in the preceding months;
- 90.1.2. FP did not at any point alter this view;

³⁸ [EB/3681]

³⁹ [EB/3445]

⁴⁰ [PR1/17; WSB/1290]: PR: *"I decided to apply for a search warrant rather than a production order for access to Mr Levy's mobile devices because the application for a search warrant would be determined without notice. An application for a production order would have been determined on notice, giving rise to a risk that Mr Levy might be forewarned."*

90.1.3. FP's actions from 12th May 2020 must be seen in this context.

91. On 12th May 2020, after hearing about the search warrant against JL, FP immediately and inappropriately interfered with the Op Delhi investigation:

91.1. When IM told FP that a search warrant was to be executed against JL, FP immediately texted IM saying it was a “*bad decision*” but he would not “*comment further*” due to his friendship with JL.⁴¹

91.1.1. Even at that point, and despite his apparent acknowledgement of a conflict of interest, FP expressed a clear negative opinion about the RGP's actions.

91.2. Following the text, FP exploded in anger and called IM to a meeting with ML where he berated him not for lying to him but for the RGP's actions in executing a search warrant against JL:

91.2.1. This was prior to FP's purported reason for the loss of confidence i.e. being allegedly told by IM that the DPP had advised on the warrant.

91.3. FP misrepresents the position when he says that he raised this matter “*after the event*”⁴² – the true position is that he raised it whilst the search warrant was being executed.

91.4. At the meeting on 12th May 2020, whilst the search warrant was being executed, FP (supported by ML) inappropriately and angrily⁴³ berated IM for the RGP's actions⁴⁴:

91.4.1. FP expressed his anger and dissatisfaction at the fact that warrants had been executed against JL, who was a senior silk, an important Jewish communal figure, an officer of the court and the head of the biggest law firm in Gibraltar;

⁴¹ [WSB/A191]: “*I think that is a bad decision. A search warrant should only have been sought if you believed that the person in question was not going to cooperate and will try to destroy evidence. If, as you say, you are hoping for cooperation, especially in a case involving a senior Silk and head of Gibraltar's largest legal firm, you should, in my view, first have sought to contact that person and obtain cooperation. Given my close personal relationship with JL, I won't comment further.*”

⁴² [FP2/11.2; WSB/A225]

⁴³ FP1/51 “*I was very angry about this turn of events and Mr Mcgrail's attitude in the meeting and used robust language throughout the meeting, very likely laced with expletives*”; NP1/1 EB/B1453, NP email to FCDO: “*The CM was visibly angry during our meeting on Friday and is clearly worried at the political, financial and sovereignty damage the fatal collision incident could do to Gibraltar.*”; NP1/7 “*without doubt, the CM has the bit between his teeth and wants the Commissioner removed from his position as soon as possible*”

⁴⁴ [IM Exh. 3; EB/B74]: See IM's notes of the same date, emailed to himself at 22:05 on 12th May 2020 and then, slightly amended, at 12:20 on 13th May 2020

- 91.4.2. FP told IM he was managing the investigation “*very wrongly*”;
 - 91.4.3. FP said that he hoped IM was right and he was wrong as there would be “*consequences*” if he was found to be right;
 - 91.4.4. FP asked why the RGP were not focussing on Chris Miles, a barrister, rather than JL;
 - 91.4.5. FP expressed a critical view of the complainant in the case, James Gaggero, and said that the RGP was allowing itself to be used to pursue what was in essence a commercial dispute;
 - 91.4.6. FP expressed concern that the actions carried “*serious implications*” politically given that the Financial Secretary, himself and others all being partners of Hassans, and said that the VOX, the right-wing party in Spain, would likely capitalise on the issue;
 - 91.4.7. ML told IM that he had “*betrayed*” him because the action carried out by the team had not been agreed by him;
 - 91.4.8. ML said words to the effect of “*Ian, I liked you and how you worked, but as from today I cannot entertain you again*”
92. FP subsequently used his power and influence to (i) limit the exposure of FP and JL to, and generally intervene in, the Op Delhi investigation, and (ii) remove IM from post. This included:
- 92.1. FP appears to have instructed ML to follow up in a number of meetings and communications with IM, PR and CR to attempt to limit JL’s exposure to the SW and ensure his electronic devices were returned without being examined;
 - 92.2. FP and ML discussed various options to use the AG’s powers under the Constitution to discontinue the prosecution or take over the search warrant from the police.⁴⁵
 - 92.3. FP was in very regular communications and meetings with JL⁴⁶ and his lawyer, LB, **including a call with him on 13th May and a meeting between FP, LB and JL**

⁴⁵ Lloyd Devencenzi/19: shortly after the 13 May 2020 meeting with IM and ML, ML “*raising briefly with me the applicable legal test or threshold for a nolle prosequi. The conversation was of an academic nature, and to the best of my recollection it was against the background of protecting the jurisdiction and the office of Chief Minister.*”; [FP3/2; EXH/1418]: In a text message on 18th May 2020 at 00:36, FP refers ML to s.59(2)(b) of the Gibraltar Constitution that the AG has power “*to take over and continue any such criminal proceedings that may have been instituted by any other person or authority*” – FP proposes that a search warrant is a “*proceeding*”

⁴⁶ [FP3/11; WSB/A234] FP had “*frequent conversations with Mr Levy KC about the search warrants*”

on 17th May, which were likely to have concerned JL and the warrant.⁴⁷ In FP's communications with LB and (it is assumed) JL he:

92.3.1. offered advice on how to take action directly against IM including proposing disciplinary sanctions to JL's lawyer, LB⁴⁸, and sharing with LB *"views as to the mechanisms to see Mr McGrail removed and the consequences thereof"*⁴⁹;

92.3.2. offered advice on how secure the return of JL's property from the RGP by threatened/actual litigation, including *"at length how best he should raise these issues in his representations of [JL]"* and *"whether [JL] should be advised to judicially review the RGP's actions in this respect"*⁵⁰;

92.3.3. appears to have provided inside information which he had obtained in his communications with IM, informing LB or JL (inaccurately – see paragraph 100 below) that the DPP advised against the making of the search warrant applications.⁵¹

92.3.4. must also have known about, authorised and potentially directed the series of calls and meetings which ML had with JL, LB and JL's son Moshe Levy (see para. 102 below)

92.4. Despite being in regular communication with JL and his lawyer, and offering JL's lawyer advice on arguments to use with the RGP against the warrant, FP has given evidence to the Inquiry that none of his communications with JL *"in any way amounted to be encouraging, supporting or otherwise promoting Mr Levy's claims"*⁵² and that he has *"never interfered in any police investigation, still less sought or tried to divert its course, and I certainly did not do so in this case"*⁵³. These statements are clearly false, as were similar statements he made to Parliament that he had *"never put pressure on any police officer to do his job in*

⁴⁷ [LB1/7, 10; A1510-A1511]

⁴⁸ [FP3; EB/1422]: Text from FP to LB, 14th May 2020, 16:45: *"Dismissal with total loss or reduction 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."*

⁴⁹ [FP4/14; WB/A1448]

⁵⁰ [FP4/13; WB/A1448]

⁵¹ As communicated in the letter from Hassans on 15th May 2020 – see [EB/5419]. It is accepted that this leak of information could have also been provided by ML to Hassans

⁵² [FP2/10; WSB/A224]

⁵³ [FP1/31; WSB/A188]

*a particular way or another” and that he himself had “not raised with the Commissioner any operational issue”.*⁵⁴

92.5. FP has not disclosed any text messages or emails with JL about the search warrants despite obliquely admitting they exist when he says in his third statement that his *“frequent conversations with Mr Levy KC about the search warrants were mostly telephonic”* (emphasis added)⁵⁵. He has answered the Inquiry’s subsequent questions about the messages in a prolix and seemingly evasive manner.⁵⁶

92.6. FP inexplicably believes his actions are justified by his *“right”* as a citizen to level criticism of the police which is not the same as interfering⁵⁷ and that he is *“entitled”* to express his view that the warrant was *“unnecessary and inappropriate”* to the Commissioner of Police and *“and to whomever else I pleased”*⁵⁸;

92.6.1. FP, as Chief Minister, had no relevant function over policing as is clearly set out in the Constitution. Whilst he has a right as a citizen to express a view, he cannot do so at the same time as acting in his role as Chief Minister.

92.6.2. Even if FP is right that he is entitled to express a view, he went much further than expressing a view and actively interfered with the investigation.

93. FP’s intervention had the desired effect, because the RGP decided not to execute the search warrant, to allow JL to retain his phone for hours before handing it in, and to give a statement rather than being interviewed under caution, perhaps the first time the RGP had permitted this.⁵⁹

⁵⁴ 27th July 2020, Hansard 1512-1523

⁵⁵ [FP3/11; WSB/A234]

⁵⁶ [FP4/4-5; WSB/A1446] *“Without reference to any specific document or digital message that may suggest the contrary, (the existence of which I cannot recall) I cannot recall any such documents having been created or existing and subsequently lost or any relevant message having been deleted or lost) ... I should, however add that I will have changed my phone (which is where my WhatsApp messages are principally created and stored) four or five times and deletions may have happened inadvertently or for technical reasons.”*

⁵⁷ [FP2/11.2; WSB/A225]

⁵⁸ [FP3/8; WSB/A233]

⁵⁹ [PR1/5; EB/1288] PR: *“As far as I am aware, this was the first time we had allowed a suspect [JL] to provide a statement before interview. The statement was generally obtained after the interview when a suspect had refused to answer questions.”*

- 93.1. FP's intervention contributed to the decision to treat JL more leniently than the other suspects, by not interrogating his devices and not interviewing him under caution.⁶⁰
- 93.2. At the very least FP's actions, and the ensuing fate of IM, sent a clear message to the investigating officers that further action against JL would not be tolerated.
94. FP was in regular communications with NP to encourage him to join forces with FP to oust IM, first via the GPA and then directly using the powers purportedly held by NP as Acting Governor:
- 94.1. FP manipulated NP by promising him (a promise that he later rescinded) that the next RGP commissioner would be recruited from outside Gibraltar, knowing this was a longstanding strategic priority for NP⁶¹;
- 94.2. FP manipulated NP by exploiting what he knew was NP's longstanding grievance over the handling of the Airport Incident, and pretending to also have concerns over this, despite there being no record before 14th May 2020 of FP expressing anything but the strongest of support for the RGP's actions and criticism of the Ministry of Defence's actions⁶²;
- 94.3. FP falsely claimed that IM had lied to him about obtaining the DPP's advice, and that IM had gone against the advice of the DPP and AG (see para. 100 below).
95. FP heavily influenced, directed and manipulated the GPA process through intense, regular contacts with JB, directing procedural steps and even drafting correspondence purportedly from the GPA (see below).

⁶⁰ [PR1/5; EB/1288] PR: *"As far as I am aware, this was the first time we had allowed a suspect [JL] to provide a statement before interview. The statement was generally obtained after the interview when a suspect had refused to answer questions."*

⁶¹FP1/69: *"CM: "if we are going to do this, do we very discretely at your end, line someone up. We cannot have it headless"*

FP1/143: FP text to NP: *"The first thing I want to avoid is any suggestion that this issue is somehow a product of a by-gone colonialism returning in disguise. It clearly is not and we must not allow any suggestion of that by acting other than very closely together, and being seen to act closely together"*

⁶² [EB/B947]: FP email to Edward Yome, then-Commissioner of Police, 3rd March 2017: *"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... I can tell you one thing Eddie: Gibraltar, it's Chief Minister, it's 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."*

(xvii) IM did not mislead FP or ML on whether the DPP had advised on the search warrant

96. FP's assertion that he lost confidence in IM because he misled him about the DPP advising on the search warrant is either a self-serving lie, an exaggeration, or a misunderstanding:

96.1. Self-serving lie: FP identified and exploited an obvious misunderstanding arising during the fractious and aggressive meeting he called with IM on 12 May whilst the search warrant was being executed.

96.1.1. Had this been the real and legitimate reason, FP would have referred to it explicitly in the second GPA letter to IM on 20 May which he substantially drafted;

96.1.2. Instead, FP (along with ML) carefully concealed the true reason for the actions taken against IM by avoiding mentioning Op Delhi in any written communications⁶³:

96.1.3. There is in any event ample evidence that FP was concerned about other factors such as his own position, JL's reputation and Gibraltar's reputation as he saw it.⁶⁴ It is impossible for FP to have separated out those issues from the apparent 'lie'.

96.2. Exaggeration: IM accurately told FP and ML that the DPP had been advising the investigating team throughout the course of the investigation, and that he was privy to the evidence involving Mr Levy and he agreed with his classification as a suspect.⁶⁵ This was wrongly interpreted by FP and ML as IM saying that the DPP had advised explicitly on the search warrant:

96.2.1. This is supported by ML's text message to FP on 12th May 2020 at 15:43 in which he states, "*he certainly gave us the impression that [the search warrant] decision was sanctioned by DPP*" (emphasis added).⁶⁶

96.3. Misunderstanding: FP and ML had little knowledge and no expertise on criminal procedure and misunderstood IM to be saying that DPP had advised on the search

⁶³ FP1/67: "I will alert you to a particular matter when we meet"

⁶⁴ FP1/53 "I do not think [Commissioner McGrail] appreciated the negative effects to Gibraltar's international reputation, as both a finance centre and a properly policed jurisdiction, from police behaviour of this kind."

⁶⁵ [IM3/117; WSB/A166]

⁶⁶ [EB/1417]

warrant when he said that the DPP advised on the investigation generally and on JL's status as a suspect:

- 96.3.1. ML accepted on 15th May 2020 that he was "*learning criminal procedure on the hoof*"⁶⁷ and was "*not knowledgeable enough to speak on the criminal procedure*"⁶⁸;
- 96.3.2. IM may have said he went to the "*AG's chambers*" as this had been (until recently) the term commonly used to mean the DPP's office.⁶⁹
- 96.3.3. FP was so angry and emotional that it is unsurprising that he misunderstood what IM told him;
- 96.3.4. FP and ML would not have known that it was not the DPP's role to advise directly on the search warrant as this was an operational matter for the RGP, and so misinterpreted IM's statement;
- 96.3.5. The meeting was fractious and aggressive, and it was the investigative team, not IM, who had been advised by the DPP, and it is therefore no surprise if IM's words were open to misinterpretation by those who had little experience of the progress of a criminal investigation, or the DPP's role in such an investigation.

(xviii) FP deliberately concealed or downplayed the relevance of Op Delhi

97. FP did not tell NP or the GPA the full details of Op Delhi, or the extent of his own conflict of interest, and reduced the significance of Op Delhi in written records:

- 97.1. The record of the meeting between NP, FP and JB on 18th May 2020, drafted by FP, begins by referring to the "*purpose of the meeting*" being to express "*grave concerns about certain aspects of policing which had come to a head in the week before*"⁷⁰ - those aspects were (a) the HMICFRS Report and (b) the filing of legal claims in Spain by relatives of Spanish citizens killed in an incident at sea. The report then mentions an "*issue of the deepest concern as it goes to the integrity and probity of a key individual in the maintenance of the Rule of Law*", however no mention is made of the concern relating to a criminal investigation or JL, and still less an investigation involving Hassans.⁷¹

⁶⁷ [EB/272]

⁶⁸ [EB/292]

⁶⁹ [IM3/115; WSB/A166]

⁷⁰ *Informal Record of Meeting with HE the Governor and the Chief Minister, Monday 18th May 2020*

⁷¹ [EB/1360]

- 97.2. Neither the search warrant, Op Delhi or the allegation that IM lied to FP appeared in the GPA letter of 22nd May 2020 which FP substantially drafted⁷²
- 97.2.1. This is despite FP saying in his letter of 5th June 2020 that it was the “*primary reason*” for his loss of confidence.⁷³
- 97.2.2. FP’s claim that by adding allusion to the views of the Attorney General he “*ensured that in the letter from the Authority to Mr McGrail he was aware that the events of the 12th May were important in the context of the loss of confidence of him*” is implausible and unreal⁷⁴
- 97.2.3. Neither the search warrant, Op Delhi or the so-called “*lie*” was communicated to the members of the GPA who were to vote on the dismissal of IM⁷⁵;
98. FP appears to have told Sir Peter Caruana KC that Op Delhi was unrelated to the reasons for losing confidence in IM:
- 98.1. FP had instructed Sir Peter Caruana KC (‘PC’) by 22 May 2020⁷⁶.
- 98.2. When PR asked PC to act for IM, PC told PR that “*there was no link with Op Delhi*”⁷⁷
- 98.3. This raises the inference that FP misrepresented the position to PC, perhaps in order to ensure he would agree to act despite him acting for James Gaggero and Blands in relation to Op Delhi.
99. FP’s downplaying of Op Delhi in correspondence raises the strong inference that he knew it was inappropriate to raise it as a reason for “*losing confidence*” in IM.

⁷² [FP1/294; EB/1362] original version, [FP1/296; EB/1366] version amended by CM

⁷³ [EB/1400]

⁷⁴ FP1/92

⁷⁵ ” Julio Alcantara [WSB/A356]: ““*Dr Britto... informed me that he had been called to a meeting on 18th May 2020 with Mr Pyle, in his capacity as Interim Governor, and the Chief Minister. At that meeting he had been told that they had both lost confidence in Mr McGrail because of his failure to adequately implement the police inspectorate’s report and his failure to report where outside British Territorial Waters exactly an incident at sea had occurred which had resulted in the death of two Spanish Nationals...* ”; “*Operation Delhi was not mentioned by Dr Britto during our conversation and that operation did not therefore influence my thinking any way whatsoever*” [ESB/A358]; Francis Carreras [WSB/517] “*Dr Britto made an incidental reference to a conversation which he had with Mr McGrail prior to the 18th May 2020 Meeting during which Mr McGrail alleged that they were trying to interfere in an investigation being carried out by the RGP which involved a senior partner in a law firm*”; Nadine Collado [WSB/A492]: “*The reason for the loss in confidence was, as I recall, mainly due to [...] The HMICFRS report [...] the Collision at sea*”; Ernest Gomez [WSB/A401]: “*I would state that Operation Delhi did not figure at all in the deliberations of the GPA*”

⁷⁶ [EB/1780] NP email: “*The CM has instructed Sir Peter Caruana to act for him in this matter on the basis that he wanted to “get it right and having Sir Peter in my corner means he won’t be in the other one”*”.

⁷⁷ PR Day Book, p. 74

(xix) The DPP did not advise against obtaining a search warrant against JL, did know it was planned, did not object and later said he considered it had been lawful

100. CR did not ‘strongly advise’ nor advise at all against the RGP against obtaining a warrant.⁷⁸

100.1. One of the key reasons FP cited to NP in reasons for losing confidence in IM was that he “*went against the advice of the DPP*”⁷⁹. This was untrue and raises the inference that ML misrepresented what the DPP had told him:

100.1.1. The false information appears to have originated from a text message ML sent to FP on 12th May 2020 at 15:41: “*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.*”⁸⁰

100.1.2. That the DPP told ML he “*strongly advised against a search warrant*” is not supported by any witness evidence:

(a) ML himself states that “*The DPP confirmed to me that he had never given such advice*” (i.e. had not advised at all on the search warrant)⁸¹.

(b) FP states that “*The Attorney General subsequently confirmed to me that the DPP had NOT, in fact, advised the RGP to proceed by way of search warrant in respect of Mr Levy.*”⁸²

(c) CR states: “*I informed [ML] that my advice had not been sought and that it was unlikely that they would ever do so in such circumstances as these were operational matters for the RGP*”⁸³

(d) CR confirmed the same in the meeting on 13th May in the AG’s office.⁸⁴

100.1.3. Therefore, there is an inference that ML falsely reported a conversation with the DPP to FP (whether deliberately or not), which then led to FP

⁷⁸ Paul Richardson 3; [CR1/12]: DPP believed that a production order would have been the “*more suitable and appropriate*” way to proceed but that “*these were operational matters for the RGP and the RGP’s position would be defensible if those actions were subjected to a judicial review*”;

⁷⁹ [NP1/26.6; WSB/256]

⁸⁰ [EB/1417]

⁸¹ [ML1/46; WSB/282]

⁸² [FP1/54; WSB/194]

⁸³ [WSB/1297]

⁸⁴ [EB/112]: CR: “*I’ve always made it clear to Paul and to you, I don’t get involved n operational matters*”.

giving false (and damning) information to NP and either FP or ML relaying that information to Hassans.

100.1.4. The same information appears to have been passed by FP or ML to Hassans and was incorporated into a Hassans letter threatening litigation against the RGP dated 15th May 2020.⁸⁵

100.1.5. ML appears to have made no attempt to correct the false impression which he gave to FP on 12th May 2020, despite being told by CR that he had not advised against the warrant.

101. CR was asked for and provided supportive advice on the treatment of JL as a suspect, and was fully briefed on the plan to obtain a search warrant:

101.1. On 1st March 2020, IM requested that PR “*consult with the DPP to ensure our intended activity is legally supported*”⁸⁶;

101.2. CR was asked by PR for advice on whether JL could reasonably be treated as a suspect, and PR enclosed a National Decision Model (‘NDM’) assessment for CR’s review⁸⁷;

101.3. CR was not asked to advise on the operational steps which were due to be taken against JL however The NDM assessment also made reference to the intention to obtain a search warrant in relation to JL⁸⁸ and set out the plan and rationale for doing so.⁸⁹

101.4. At a meeting on 8th April 2020, CR advised the Op Delhi investigating officers that JL could be treated as a suspect.⁹⁰

101.4.1. CR advised that he was “*comfortable to run the case on the basis of the summary of evidence provided*”, that there were “[n]o grounds at this stage for him to pull any prosecution but mentioned that the AG would

⁸⁵ [EB/5419]: “There can be little surprise that, as we believe is the case, the DPP advised the Commissioner against the making of these applications.”

⁸⁶ [EB/3272]

⁸⁷ [EB/3610] “What we are seeking is your advice on whether the charges that we propose are warranted by the evidence, 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 has committed the offence as alleged.”

⁸⁸ [EB/B3456] “The seizure of the digital devices referred to in paragraph 25b should be by search warrant obtained in advance of approaching JL for interview.” (§31) “In the event that there are reasonable grounds to suspect Levy has committed any offence, the police will consider whether it is necessary to conduct further investigations in the form of search warrants / interview under caution” (§339) [EB/B3666]

⁸⁹

⁹⁰ [EB/3681]

*be speaking to the COP” and that there were “reasonable grounds” to question JL under caution and “if we need to pull in JL then so be it”.*⁹¹

101.4.2. CR told the Op Delhi investigative officers that whether or not to obtain a search warrant was an operational decision for the police, and that although he would have opted for a production order rather than a warrant, he said that whatever they chose he would back.⁹²

101.5. IM had requested that the DPP was consulted and was aware in general terms that the DPP had *“advised the team accordingly”*, though he was not present at the 8th April meeting.⁹³

101.6. After 12th May, CR repeatedly confirmed to the RGP that he considered he warrant had been lawfully obtained:

101.6.1. CR accepted at the meeting on 13th May 2020, that the decision to apply for a warrant was an operational matter for the police.⁹⁴

101.6.2. CR called PR to confirm that he would be more than happy to defend the warrant, it was lawful and ML agreed.

101.6.3. CR confirmed in an email on 16th May 2020 that whilst it was an operational matter for the police, there was nothing he could see in the documentation which suggested it was unlawful⁹⁵

101.6.4. CR stated at a meeting with MW on 29th May 2020 that he believed the warrant had been lawfully obtained and he would *“protect if challenged”*⁹⁶

⁹¹ [EB/3681]; Also see [EB/3198]: Richardson’s note: *“He agreed that Mr Levy should be treated as a suspect as there were questions which needed to be answered. He should be interviewed.”*

⁹² [PR3/41; WSB/1432]: *“At the time of the Application we did not know of any concerns on the part of either the DPP or AG. At the end of a video conference call on 8 April 2020, I remember the DPP confirming that he understood our rationale for preferring a warrant to a production order. This was an operational decision for the police. Although he would have opted for a production order rather than a warrant, whatever we chose he would back us. At that point the choice between a warrant and a production order was secondary to the DPP agreeing that JL should be treated as a suspect, and I did not note this exchange.”*

⁹³ [EB/B80]: IM notes to self, 12th May 2020

⁹⁴ Page 6, H IM 5B [EB/B173]

⁹⁵ [PR3/43; WSB/1432] *“There is a record of a call I received from the DPP when he confirmed that he would be more than happy to defend the warrant. It was lawful and he said the AG agreed. The note is contained in PR 34, one of two timelines I created when Mr McGrail was under pressure to retire.”*; [EB/4411]: Email to Paul Richardson cc’ing IM *“I will not comment on operational matters which are matters solely for the RGP. There is nothing that I can see in the document at this stage and given the knowledge that I have at stage which would impact any potential JR as to the lawfulness of the search warrant”*

⁹⁶ [EB/3138]

(xx) FP, ML and CR inappropriately communicated with JL and his lawyer on and after 12th May 2020

102. ML inappropriately was in contact with JL and LB on the day of the search warrant and after that:

102.1. ML spoke to JL on the day of the warrant.⁹⁷

102.2. on 13th May 2020 replied to JL texting him “*I feel I have been hung out to dry. Certainly not by you*” with “*don ’t worry*”⁹⁸, therefore raising the strong inference that he intended to intervene;

102.3. On 12th May ML spoke to LB, JL’s lawyer.⁹⁹

102.4. On 13th May, at around 12:30-12:45, ML met with JL’s son, Moshe Levy, who is a partner at Hassans, and LB.¹⁰⁰

103. FP was inappropriately in regular communications with JL and his lawyer LB advising them on how to challenge the warrant and take retributive action against IM (see paragraph 92.3 above)

(xxi) The Attorney General failed to act independently of the Chief Minister and recuse himself from intervening in the criminal investigation

104. ML failed to maintain the constitutionally required¹⁰¹ separation between the Attorney General and Chief Minister;

105. ML allowed himself to be directed by FP to take a number of inappropriate steps to intervene in the Op Delhi investigation;

106. There is a strong inference that, prior to 12th May 2020, ML was tasked by FP to keep updated with the Op Delhi investigation and limit the exposure of FP and JL:

⁹⁷ [ML1/48; WSB/A282]; [JL1/11];

⁹⁸ [ML1/68; WSB/289]

⁹⁹ [ML2/28; WSB/A305]: ML accepts that it is “*possible I may have spoken to Lewis Baglietto KC on 12 May 2020*” to “*take a call from him saying how aggrieved James Levy was*”

¹⁰⁰ [C6806] ML WhatsApp messages with LD: “*Lewis and another gent are here to see you... Moshe Levy is the other gentleman*”

¹⁰¹ Section 59 (5) of the Constitution: “*In the exercise of the powers conferred on him by this section the Attorney General shall not be subject to the direction or control of any other person or authority.*”

106.1. ML spoke to IM about the investigation on a number of occasions, as is clearly recalled by IM¹⁰² and not explicitly denied by ML¹⁰³;

106.2. During those conversations, ML:

106.2.1. Expressed concern about how chaotic and messy the matter was for HMGoG and the potential embarrassment to the administration;

106.2.2. Said that he is aware of the potential conflict and/or embarrassing situation involving FP and AM (and all other partners of Hassans) being shareholders in the company that is part owner of 36 North and who it is alleged would have benefited from the fraud, and said that this was a concern to him from a position of safeguarding the interests and reputation of the Chief Minister and the Government's Financial Secretary both of whom (as indeed the other partners)¹⁰⁴

106.2.3. Asked whether Caine Sanchez could be dealt with internally through the Civil Service disciplinary route;

106.2.4. Advised that the investigation should not progress until the ownership issue could be clarified;

106.2.5. Advised at some stage that he would be stepping back from discussing the Investigation as he was now advising HMGoG on the intellectual property rights relating to the NSCIS platform;

106.2.6. Inquired at one point about the "*hypothetical situation*" where HMGoG were owners of and consented to the hacking / sabotage taking place.¹⁰⁵

107. ML should have recused himself from advising on or being involved in any way with the Op Delhi investigation because he was advising the Government on the ownership issue:

¹⁰² [IM1/12-17; WSB/A4]

¹⁰³ ML's claim that 7 April 2020 was the "*first time I met with Mr McGrail or the RGP about the Criminal Investigation other than the 13 May 2019 meeting*"¹⁰³ [ML1/28; WSB/A277] and that after 13 May 2019 he had no "*substantial, meaningful contact with IM (let alone meetings)*"¹⁰³ [ML2/4; WSB/A299] are carefully worded and do not deny IM's account. He says that "*the impression he tries to give in these paragraphs that I was regularly enquiring and discussing with him as to how the investigation was proceeding as from 13 May 2019 is simply untrue*"¹⁰³ though he cannot "*rule out the possibility that, perhaps on the margins of a meeting on a different matter, the subject of Op Delhi may have been mentioned by him or by me and there may have been the most superficial, brief and perfunctory exchange between us on that subject*" [ML2/7; WSB/A299]

¹⁰⁴ [EB/B79]: See IM's 12th May 2020 note to self

¹⁰⁵ [IM1/12-17; WSB/A4]; [ML2/15; WSB/A302]

107.1. At the 7th April 2020 meeting with IM, ML said he would step back from discussing the criminal investigation as he was advising HMGoG on the intellectual property rights of the NSCIS platform;

107.2. Despite this, from 12th May ML became deeply involved in the criminal investigation;¹⁰⁶

107.3. ML accepted to NP that there could be a “*perception of a conflict*” but did not act on that conflict.¹⁰⁷

108. ML’s key motivations were:

108.1. Protecting JL from Op Delhi:

108.1.1. During the meeting of 13th May 2020, ML proposed and argued for confirming in writing to Hassans that the RGP would not access JL’s phone for at least seven days¹⁰⁸;

108.2. Protecting “*Gibraltar PLC*”¹⁰⁹

108.3. Protecting FP and/or the office of the Chief Minister and/or JL:

108.3.1. At the 13th May 2020 meeting, ML’s focus was ascertaining the extent to which FP was implicated in Op Delhi, and made clear that he would “*fight until I die*” for the “*reputation of the Chief Minister*”¹¹⁰:

¹⁰⁶ [ML2/21; WSB/A303]: “*I do not recall having said, as asserted by IM, that I “would be taking a step back from discussing the criminal investigation as {1} was now advising HMGoG on the intellectual property rights of the NSCJS platform case and it was not compatible to advise on both matters.” But if I did say this, it was at the meeting on 7 April 2020*”

¹⁰⁷ [EB/1814] Email from NP 5th June 2020: “*the AG accepted that there could be the perception of a conflict between his role as our HLA and his involvement in proceedings*”

¹⁰⁸ [EB/224]

¹⁰⁹ Lloyd Devincenzi 1/19 [WSB/1302]: shortly after the 13 May 2020 meeting with IM and ML, ML “*raising briefly with me the applicable legal test or threshold for a nolle prosequi. The conversation was of an academic nature, and to the best of my recollection it was against the background of protecting the jurisdiction and the office of Chief Minister.*”; [LD2/4; WSB/1304-5]; LD/22: “*I recall mentioning to the Attorney General that, in the context of this nexus, it would be especially important to be alive to the possibility that those with an interest in the outcome of the NSCIS matter could seek to influence the investigative or legal process, either directly or indirectly. I was especially anxious that concern for the good reputation of the jurisdiction and its offices and institutions not be exploited by anyone with an incentive to conflate Gibraltar’s interests with their own. I particularly recall mentioning the importance of not regarding Gibraltar as a ‘PLC’ but as a community whose values transcend corporate ones, even if it was important not to be naïve about the need to safeguard Gibraltar’s economic well-being and international standing*”

¹¹⁰ [EB/124]: In the Meeting of 13th May 2020 ML said “*My concern here, is the reputation of this jurisdiction and that passes to the reputation of our Chief Minister. Especially in this moment in time. And for that I shall fight until I die*”.

- (a) ML asked about the RGP’s interest in JL’s communications with the Chief Minister¹¹¹
- (b) ML also appeared to agree that if FP was implicated, he would get out what was described in the meeting as his “*magic wand*”, i.e. his power to discontinue the investigation.¹¹²
- (c) ML confirmed that “*Point 9 here*” is the “*only reason why I am involved in this*”. This is likely to relate to the 9th “*topic area*” which the “*voluntary attendance for police interview under caution*” letter to JL referred to, being “*Communication with the Chief Minister in relation to any of the above*”.¹¹³
- (d) ML commenting on how damaging it would be if JL’s contact with FP came out, and said that whilst “*just maybe, maybe complete unjustified*”, the “*perception*” would be very damaging and “*what I wanted to avert, from the beginning*” which is the “*reason why I asked you to rationalise the ground and then to assume that ownership is with the Government*”.¹¹⁴
- (e) ML responded to IM saying ML was in an “*compromised position*” by saying “*I know what you mean, but you can be sure that Fabian I will... defend to the death... if tomorrow you come and tell me, look what we’ve found, I will break into tears... I will protect them*”.¹¹⁵
- (f) ML said “*there can be no office, more symbolic of the jurisdiction than that of the Chief Minister, I will defend it*”.¹¹⁶

108.3.2. At the meeting on 15th May 2020:

- (a) ML opened the meeting by proposing that the interview with JL still went ahead but “*not have it under caution*”.¹¹⁷

¹¹¹ [EB/119]

¹¹² [EB/126]

¹¹³ [EB/5392]

¹¹⁴ [EB/127]

¹¹⁵ [EB/229]

¹¹⁶ [EB/229]

¹¹⁷ [EB/271]

- (b) ML and CR argued for JL not being treated as a suspect, and not being interviewed under caution, despite the deep reservations expressed by the Officer in Charge, PR¹¹⁸, and IM.
- (c) When IM raised concerns that JL was being treated differently to others, and that IM was being “*sold out*”, ML responded that “*what’s creating the bad atmosphere, well bad is an understatement, what’s creating the tension here is the concept of Jaime being suspect and therefore being interviewed under caution*”. He later referred to “*this damned, suspect, caution thing*”.¹¹⁹
- (d) When MW raised a concern that by treating JL more leniently than the other suspects, this may undermine an eventual prosecution against the others, ML dismissed those concerns.¹²⁰
- (e) ML agreed to speak to LB to say that JL could give a statement, but his status was still to be determined.

108.3.3. At the meeting on 20th May 2020¹²¹:

- (a) It became clear that conversation ML had with LB had given LB the impression that JL was no longer to be treated as a suspect.¹²²
- (b) ML stated that he had given “*advice*” to LB, that it had “*taken [CR] and me quite a bit of persuasion of the RGP to go down this path, let’s leave it, let’s go down this process of written statement*”¹²³

109. ML allowed his name (as Attorney General) to be included in the GPA letter of 22nd May as having concerns over IM’s integrity, despite having told IM, CR and PR on 13th May 2020 that nobody in the room questioned his ethics.¹²⁴

(xxii) There was no agreement between IM and ML about not progressing Op Delhi without first consulting ML

¹¹⁸ E.g. [EB/273-274]

¹¹⁹ [EB/290]

¹²⁰ [EB/278] –

¹²¹ See the translated transcript at [EB/321]

¹²² [EB/322]

¹²³ [EB/326]

¹²⁴ [EB/111]

110. ML's assertion¹²⁵ that IM committed that he would revert to ML before taking any further action in the case, at a meeting on 7th April 2020, is wrong and contradicted or unsupported by other evidence:

110.1. It is unsupported by any other witnesses, including those who were present at the meeting¹²⁶;

110.2. It is not reflected in the letter IM sent to AM the next day (8th April 2020)¹²⁷;

110.3. It would have been illogical for IM to agree to such a request¹²⁸;

110.4. It was not an appropriate request by ML in any event given (a) his constitutional role and (b) the multiple conflicts of interest FP, who ML was the principal legal adviser to, had in the investigation;

111. ML manufactured this 'promise' or misremembered because:

111.1. He had failed in the task he had been given by FP to prevent the Op Delhi investigation from reaching the higher echelons; or

111.2. He had failed in the task he set himself to protect what he calls "*Gibraltar PLC*".

(xxiii) NP allowed himself to be manipulated by FP

112. By 12th May 2020, NP was pre-disposed to wanting IM removed from post:

112.1. NP seems to have harboured a longstanding and ill-founded grievance against IM because of his involvement with the Airport Incident:

112.1.1. NP may have wrongly thought that IM was Commissioner at the time¹²⁹;

¹²⁵ [ML1/32; WSB/A278]

¹²⁶ [LD1/11; WSB/A1300]: "*The Attorney General inquired about the significant number of charges, and expressed concern that these should probably be rationalised, noting that this was a matter for the police to consider and decide (or words to that effect). It was also mentioned during the meeting that Mr James Levy was being investigated. The Attorney General asked Mr McGrail to keep him informed until they could next meet.*"; Paul Richardson 3/71-73 [WSB/1437]: "*do not recall any agreement being reached that the RGP would not take any further action until we had clarified the question of ownership and rationalised the number o charges. Furthermore, I do not remember agreeing that nothing would happen until we met again*". He says that if such an agreement had been reached he would have taken various steps including making a record, discussed with IM, discussed with MW, discussed with DPP and not proceeded to obtain a search warrant, but he did none of those things.

¹²⁷ [MLL1/38; EB/1900]

¹²⁸ [WSB/A14]

¹²⁹ [NP1/21.1; WSB/245]: "*My concerns over the leadership and management of the RGP, and over the behaviour and judgment of Mr McGrail as its Commissioner of Police, started with what I call the Airfield Incident which happened on 8 February 2017, five months after my arrival in Gibraltar.*"

112.2. In 2018, as a member of the GPA, NP objected to IM’s application to be Commissioner and voted against his application¹³⁰;

112.3. NP had a longstanding strategic priority to recruit an RGP Commissioner from outside of Gibraltar.¹³¹

113. NP did not raise any concerns about IM with the GPA or otherwise before 14th May 2020:

113.1. NP was not hugely concerned about the HMICFRS report – certainly not enough to “lose confidence” in IM; his email to FP on 30th April 2020¹³² said that the report was “not as bad as the headline suggests” and the leadership of the RGP “needs to be both more strategic and directive”.

113.2. It is implausible that NP would have shifted from being so unmoved by his concerns that he did not mention them to the GPA (despite being a member) or to IM, and cannot point to any pre-12th May documentary evidence of such “concerns”, to being so concerned that he had lost confidence entirely by 14th May 2020.

¹³⁰ John Goncalves, former GPA Chair [JG1/25; WSB/A341]: “the Deputy Governor, Mr Nick Pyle, who was a member of the GPA at the time, commented at a meeting of the GPA that he felt that applications to fill the vacancy of the Commissioner of Police should not be limited to officers from the RGP but should be opened to police officers in the UK. That view received no support from any of the other members of the GPA”; Lavarello 34 [WSB/A431]: “At some point Mr Pyle said he would not support either candidate which could only mean that he wanted the new Commissioner to be appointed from outside the RGP”. [para 34]

[FP1/67; EB/B1439] NP text to FP 14.5.20 “Agree. As we thought at the time, wrong appointment”;

¹³¹ [NP2/25; WSB/A266] “I was surprised that there were only two candidates and expressed the view that policing in Gibraltar may have benefitted from a wider field of candidates, including external candidates”

[Lavarello 34; WSB/A431]: “At some point Mr Pyle said he would not support either candidate which could only mean that he wanted the new Commissioner to be appointed from outside the RGP”; Albert Danino [WSB/A370]; contrast [NP2/25; WSB/A266]: “I nevertheless marked both IM and Richard Ullger (“RU”) as suitable and credible candidates for the post”; “The two dissenting members were Mr Pyle and me [...] At one point in the selection process, I cannot recall exactly when, Mr Pyle suggested that the post of Commissioner should be open to officers in the United Kingdom.” [para 27]; repeated by Aurelius Falero [WSB/A386]; John Goncalves, former GPA Chair [JG1/25; WSB/A341]: “the Deputy Governor, Mr Nick Pyle, who was a member of the GPA at the time, commented at a meeting of the GPA that he felt that applications to fill the vacancy of Commissioner of Police should not be limited to officers from the RGP but should be opened to police officers in the UK. That view received no support from any of the other members of the GPA”.

¹³² [NP Exh. 1/63 EB/1511] 30.4.20 – email to FP:; “Having studied the report, I find it to be quite damning and it will need careful handling. [...] But I don't think the issue is as bad as the headline suggests 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, driven bottom up from within the RGP as much as from its leadership which needs to be both more strategic and directive. Quite simply, as I see it, the RGP needs to “modernise” in all senses of the word [...] “the RGP as much as from its leadership which needs to be both more strategic and directive. Quite simply, as I see it, the RGP needs to “modernise” in all senses of the word [...] Given your pre-occupations, I'm happy to discuss how best to take this forward with the Chair of the GPA and perhaps the Chief Secretary, in the first instance. My initial thought is to suggest the Commissioner makes the report public at the same time he publishes his roadmap on the way forward. So being proactive rather than reactive.”; [NP2/10; WSB/260]: “I decided to leave the issue of reacting to the HMIC Report in the first instance to the GPA.”

113.3. The only new factor was FP’s report on the “*high profile investigation*”, which NP knew almost nothing about

113.3.1. FP seems to have carefully limited the information NP was provided with.¹³³

113.3.2. NP failed in his responsibility carefully to investigate FP’s allegations rather than accepting them without reservation (see below).

113.4. NP was not intending to do anything about his ‘concerns’ re IM but saw an opportunity and a mutual interest when FP approached him.

(xxiv) NP’s concerns were vague and ill-formed, and he failed to properly investigate them before taking action

114. NP’s concerns on and around 14th May 2020 were vague and ill-formed.¹³⁴

114.1. NP’s concern in relation to Op Kram appears to have been *ex-post facto* and is premised on a misunderstanding of IM’s intention not to be evasive but to avoid sharing unverified conclusions in such a sensitive context.

114.1.1. NP appears to have reached the damning conclusion that IM misled him in relation to Op Kram without (a) carrying out any detailed (or any) analysis of the communications IM had sent to him and others at the relevant time, or (b) asking IM to account for his communications.

114.1.2. NP communicated his damning conclusion to the GPA, and based his threat to force IM to retire, without having carried out basic and necessary investigative steps.

114.1.3. Had NP carried out basic investigative steps, he would have understood that IM had not “misled” him, but instead he rushed to force IM out of his post.

114.2. A number of the issues which NP cited as reasons for his “*progressive*” loss of confidence¹³⁵, such as the Airfield Incident, the Helicopter Pilot Incident and

¹³³ NP1/27.1; WSB/257: “I had no prior knowledge about the criminal investigation referred to in Mr Gomez’s letter of 29 May until the Chief Minister briefed me in headline fashion about it at our meeting on 15 May. I was not aware of any of the detail of the case save that the Deputy Chief Minister’s former PS was implicated in it. I did not know that the investigation was known as Operation Delhi until March of 2022.”

¹³⁴ NP1/23.4; WSB/249: NP refers in his statement to “numerous anecdotal stories of bad practice and behaviours by the RGP” including “*numerous stories of the RGP turning a blind eye with [sic] crimes committed by people they knew*” but these were “*rumours and anecdotal*” and “*were not things on which I felt it was possible to act*”, nonetheless they “*contributed to my growing sense of unease*”

¹³⁵ [NP/1 paras. 20-22; WSB/A245]

“rumours” and anecdotes of “*bad practice and behaviours*” by the RGP were vague or ill-formed:

- 114.2.1. NP had a responsibility to fully investigate these matters before taking them into consideration in support of forcing IM to leave his position;
- 114.2.2. This highlights NP’s general failure to appreciate that the GPA was the appropriate body to investigate such serious allegations, and in any event NP failed to subject them to any scrutiny whatsoever;
- 114.2.3. NP did not attempt to seek further information from IM, or even ask IM’s view, on his concerns;
- 114.2.4. For example, NP claims to have been concerned by the RGP’s relationship with the GPF, but did not even seek IM’s account of this, let alone refer it to the proper authorities i.e. the GPA.

(xxv) NP failed to discharge his constitutional responsibilities

115. NP had “*ultimate responsibility*” under s. 11 of the Police Act for “*the integrity, probity and independence of policing in Gibraltar*”. He failed to discharge that responsibility:

- 115.1. When FP met with NP on 15th May 2020 and was “*visibly angry*” and had the “*bit between his teeth*” relating to an ongoing criminal investigation and a search warrant against James Levy¹³⁶;
- 115.2. NP had a responsibility to tread very carefully indeed, and ensure that FP was not attempting to influence a police investigation for private and/or financial and/or political reasons;
- 115.3. NP was in dereliction of his duties by making no effort to enquire further into the “*serious error of judgment*”, why FP was so interested – and concerned, indeed angry – about the investigation;
- 115.4. NP’s failure to discharge his duty under s.11 of the Police Act was made worse by the fact that he knew from the outset that the warrant was against FP’s personal friend and business partner, JL;

¹³⁶ [NP1/26.6; WSB/A256]: “*The Chief Minister then outlined his belief that Mr McGrail had made a serious error of judgement with regard to the execution of a search warrant against James Levy, gone against the advice of the DPP and AG, and misled the Chief Minister about that. This was in relation to an ongoing criminal investigation.*”

115.5. NP allowed himself to be manipulated by FP who offered what he knew to be NP's longstanding aim, that the RGP Commissioner would be appointed from abroad. Once IM had left his post, FP reneged on this offer¹³⁷;

115.6. NP knew (a) FP was angry¹³⁸, (b) FP was attempting to exercise a competence which was usually reserved to the Governor¹³⁹, but balanced that against the possibility of achieving his long term aims so went along with FP's plan;

115.7. The proper course of action for any concerns within the constitutional structure would have been to raise with the Commissioner in the first instance for his response, and if notwithstanding his response, the concerns remained refer them to the GPA to be independently investigated, with a view to deciding whether to exercise its powers under s.34¹⁴⁰

(xxvi) The 29th May 2020 letter should have prompted NP to suspend his actions in relation to IM

116. The 29th May 2020 letter from Charles Gomez should have prompted NP to pause and consider his duties under s.11 of the Police Act to maintain the integrity and independence of the RGP:

116.1. Had NP known the details of Op Delhi, and who was involved, and FP's deep conflicts of interest, he would (or certainly should) not have proceeded the way he did:

116.1.1. NP only knew the "*headline*" details of the criminal investigation after FP briefed him about it on 15th May¹⁴¹;

¹³⁷ [EB/1843]: "*The CM has backtracked slightly on the suggestion we parachute someone in. Acting Commissioner Richard Ullger has proposed he remains on top and help is sent in below him*"

¹³⁸ NP email to FCDO, 21 May 2020 "*The CM was visibly angry during our meeting on Friday and is clearly worried at the political, financial and sovereignty damage the fatal collision incident could do to Gibraltar... Without doubt, the CM has the bit between his teeth and wants the Commissioner removed from his position as soon as possible*" NP2/32; EB/1777-8;

¹³⁹ NP2/39; EB/1784 "*It's the James Levy angle as well that is interesting. I'm also a touch nervous given that the CM has firmly taken the lead on a competence that is more towards us than them. But we've agreed this approach which on balance is right. It also raises issues about the GPA who should have been monitoring the CoP. But I can't see it ending well for anyone.*"

¹⁴⁰ See "*I'm happy to discuss how best to take this forward with the Chair of the GPA and perhaps the Chief Secretary, in the first instance*" – ref above

¹⁴¹ [NP1/27.1; WSB/257]: "*I had no prior knowledge about the criminal investigation referred to in Mr Gomez's letter of 29 May until the Chief Minister briefed me in headline fashion about it at our meeting on 15 May. I was not aware of any of the detail of the case save that the Deputy Chief Minister's former PS was implicated in it. I did not know that the investigation was known as Operation Delhi until March of 2022.*"

116.1.2. For some reason, perhaps embarrassment, NP did not reveal to London until a day after his first email on the subject, that “*high profile figure*” was JL until around 15:21 on 22nd May¹⁴²;

(a) NP was already nervous about the fact that FP was exercising a competency which was in fact the Governor’s¹⁴³.

117. NP illegitimately threatened to use the Governor’s powers which were not available to him in June 2020 because the new Governor was imminently to arrive;

117.1. NP rushed to remove IM before the new Governor arrived¹⁴⁴,

117.2. NP was convinced by FP that IM had to be removed “*before he meets the Spanish on Tuesday*” so that the government could be seen to be “*taking decisive action*”¹⁴⁵.

117.3. NP then suggested to London that “*the outcome also plays well into our ongoing negotiations with Spain*”.¹⁴⁶

117.4. NP refers to emphasising the “*strength of his feelings*” to the GPA which suggests he was not giving the GPA any room to make a different decision.¹⁴⁷

117.5. NP had no power under the Constitution to exercise the Governor’s functions from the moment he was notified of the imminent arrival of the new Governor.

(xxvii) The discontinuance of the Op Delhi prosecution further shows that the events of 12th May to 9th June 2020 were about limiting Op Delhi, not IM

118. After IM had departed from office, HMGoG became increasingly concerned about the embarrassment which the Op Delhi prosecutions would cause it:

¹⁴² [EB/1780]: Email from NP to FCDO 22.5.20: “*The Commissioner believes this is in part driven by the ongoing investigation. The high-profile person referred to below is James Levy!*”

¹⁴³ [EB/1784]: “*It’s the James Levy angle as well that is interesting. I’m also a touch nervous given that the CM has firmly taken the lead on a competence that is more towards us than them. But we’ve agreed this approach which on balance is right. It also raises issues about the GPA who should have been monitoring the CoP. But I can’t see it ending well for anyone.*”

¹⁴⁴ [EB/1832]: Email from NP, 7th June 2020, 20:26: “*I’ve just met with the AG and CM. We agreed that, on balance, we needed to protect Sir David and felt that should CoP still be in office after his swearing in, he would more likely than not retract his request to retire and appeal to Sir David, thus taking us back to square one.*”

¹⁴⁵ [EB/1832] Email, 7th June 2020, 20:26

¹⁴⁶ [EB/1839]

¹⁴⁷ NP/14.3; WSB/241

118.1. CR emailed ML with a summary of why the Op Delhi prosecutions were likely to be very difficult and embarrassing for the Government¹⁴⁸;

118.2. LD assisted DG with a formal complaint on behalf of the Government in mid-July 2020 but the Chief Minister subsequently reversed the decision¹⁴⁹;

118.3. It seems likely that FP instructed the Chief Secretary of the Government, Darren Grech, to withdraw government support as a complainant in the investigation in an attempt to prevent the case proceeding¹⁵⁰;

118.4. The prosecution continued despite the Government withdrawing support;

118.5. FP then ~~directed~~ may have influenced ML to discontinue the prosecution.

119. ML says that the discontinuance/*nolle* was entered despite the evidential test for prosecution being met and for reasons that “*had nothing to do with protecting the Chief Minister*”.¹⁵¹

119.1. However, almost immediately after 12th May, ML was discussing entering the *nolle*:

119.1.1. ML also said, in the 13th May 2020 meeting, that “*If... I feel, that a prosecution, exposes the Chief Minister, ... on grounds, which are flimsy, I'll stop it. [...] If you've got a smoking gun against the Chief Minister, I can't....*”. He continued that he can “*assure you, you are not going to have it*” and that “*it would be awful, awful to the... for me personally and awful for the jurisdiction... because we know whats going to happen at this critical moment in our history*”¹⁵²

¹⁴⁸ [CB/C5871] : 8th March 2021 email from CR to ML setting out matters raised by defence counsel in the Op Delhi prosecution, including “*Unfortunately, the defence will of course raise the beneficial ownership issue [...] there appear to be potential conduct issues with other senior civil servants with disclosure of confidential information to Mr Perez as well as possible financial arrangements that would, in the absence of cogent explanations, be wholly improper in the circumstances [...] there is nothing in the communications that I have seen in relation to the CM or FS that concern me*”; [...] “*Additionally, the defence have made it clear that they will be seeking orders for disclosure of government/CM's communications etc. which could contain confidential information. Defence counsel sets this out against the backdrop of Hassans' beneficial interest in 36N and there seems to be a suggestion by the defence that the equity partners of Hassans sought to benefit.*” [...] “*Certainly, the clear indication from the defence is that they will be asking the CM to give live evidence at the trial.*”

¹⁴⁹ [LD/24-25; WSB/1303]

¹⁵⁰ [JP1/67; WSB/1247]: “*“A related issue is the failure of the RGP and the DPP to secure consent in a timely manner from HMGoG to act as a complainant in the prosecution. This has led to a dispute between the Chief Secretary Darren Grech and the DPP of such seriousness that the Chief Secretary saw fit to instruct the Honourable Neil Costa of Isolais LPP to act for him*”. [64] – re the press release of 15.9.20 suggesting that the government supported the prosecution

¹⁵¹ [ML2/47, 51.1; WSB/A312]

¹⁵² [EB/158]

119.1.2. On the evening of 13th May, ML was texting LD about other potential legal routes to avoid, in other similar cases in future, what LD referred to as the “*nuclear nolle*”.¹⁵³

120. James Gaggero claims that he was told that *nolle prosequi/discontinuance* was entered for reasons “*related to national security*”¹⁵⁴:

120.1. One possible inference is that the same spurious reasons as were cited to the Inquiry as justification by the Government for the proposed redaction of parts of the investigation file were used to justify the discontinuance.

E. THE GIBRALTAR POLICE AUTHORITY PROCESS (ISSUE 10)¹⁵⁵

(xxviii) **The careful constitutional balance (which was not respected)**

121. The Constitution and Police Act together set up a careful balance between the functions of the Crown (represented by the Governor), the Executive, the Police and the Gibraltar Police Authority.¹⁵⁶

121.1. The GPA¹⁵⁷:

121.1.1. must be scrupulously independent from the Executive and the Crown;

121.1.2. must not be directed by either the Governor or the Chief Minister;

121.1.3. is responsible for complaints about Police performance, and has the legal powers, subject-matter expertise and institutional competence to investigate such complaints:

(a) When investigating a complaint, the GPA seeks out representations and evidence and reaches a reasoned conclusion;

¹⁵³ [C6806] Text message from LD to ML, 13th May 2020, 22:54: “*Michael, especially after today, working some kind of ‘deferred prosecution agreement’ provisions into the Criminal Procedure and Evidence Act could make sense. Timing of legislation would need to be considered, but dpa provisions would allow a recorded settlement to take place where a potential defendant (e.g.) pays a fine and/or agrees (e.g.) not to engage in certain business lines for a time, and in exchange there is no prosecution. It wouldn’t necessarily be useable in the present situation (essentially its for businesses) but it could be in a future example of corporate economic crime. US, UK and Canada use them. Takes heat off unfair collateral damages to corporations where only a few individuals might have committed wrongdoing and means you as AG would have a more subtle and proportionate tool than the nuclear nolle*”

¹⁵⁴ [JG/119; WSB/A1383]: “*At that meeting he explained that there was strong evidence of criminality but for reasons related to national security the decision to enter a Nolle Prosequi had been taken. I do not consider it appropriate that I elaborate on this issue in this statement.*”

¹⁵⁵ [IM1/78-95; WSB/A28-40] [IM3/145-147 170u-170dd; WSB/A108-120 A138-139] [IM Responsive/176-180; WSB/A178-179]

¹⁵⁶ See Legal Background above

¹⁵⁷ See paragraphs 57-66 above

121.1.4. is responsible for monitoring the performance of, and holding to account, the RGP Commissioner.

121.1.5. must contain and manifest an appropriate degree of independence¹⁵⁸

122. At no stage prior to FP and NP approaching JB on 18th May 2020 did the GPA have any concerns about IM.¹⁵⁹

(xxix) NP and FP circumvented the section 34 process, and the GPA allowed them to do so

123. FP and NP circumvented the required process under s.34 of the Police Act 2006:

123.1. FP and NP presented the GPA with a *fait accompli*, by claiming that certain issues had caused them to “lose confidence” in the RGP Commissioner.

123.2. FP’s and NP’s approach did not follow, and indeed circumvented, the requirements of section 34 of the Police Act:

123.2.1. If the Chief Minister and Governor could effectively force the GPA to require the Commissioner to retire, (a) the section 34 process which requires consultation and agreement from the Governor and Chief Minister after investigating the relevant issue including seeking representations from the Commissioner would be turned back to front, and (b) the Governor’s powers under section 13 of the Police Act would be redundant.

123.3. JB accepted in his meeting with IM on 22nd May 2020 that “*it’s been done the wrong way round, in other words, they told us we are going to trigger this.*”¹⁶⁰

123.4. There is no power in the Constitution or Police Act for the Governor and/or Chief Minister to force the Commissioner to retire if they “lose confidence”;

123.5. The Chief Minister has no power to force the Commissioner to retire, and plays no more than a consultative role if the GPA is deciding whether to exercise its s.34 power;

¹⁵⁸ PA s.16(1)(c)

¹⁵⁹ [EB/355]: Transcript of 22nd May 2020 meeting between IM and JB: IM “*But what is the position of the Authority? Is the Authority accepting that? Have you had any concerns about me?*” JB: “*No, no wait, we would have told you*”

¹⁶⁰ [EB/5]

123.6. The Chief Minister has no legal function as regards the Commissioner of the RGP. This is for good reason, as it is clearly intended to protect the independence of the RGP from political influence.

124. The GPA Chair should not have permitted FP to play such a central role in the process, and by doing so undermined the statutory requirement that the GPA must contain and manifest an appropriate degree of independence:

124.1. JB should not have allowed FP to play such a direct role, and in particular:

124.1.1. Directing the sequencing and content of the process, and

124.1.2. In drafting substantial sections of the 22nd May 2020 letter to IM¹⁶¹

124.2. JB failed to appreciate that the involvement of JL, Hassans, and the FP in Op Delhi (which he had been informed of when IM briefed him on 12th and 15th May 2020 –, or at the latest at the 22nd May 2020 meeting he had with IM¹⁶²) meant that FP had an irresolvable conflict of interest in intervening in the investigation as Chief Minister.

124.2.1. Had JB properly grappled with this this, he would not have allowed FP to be so central to the s.34 process (which in any event was inappropriate because of the statutory division of responsibilities).

124.2.2. Instead, JB ignored or minimised the importance of Op Delhi to the sequence of events.¹⁶³

124.3. Separately, and cumulatively, these actions fatally undermined the statutory process.

124.4. The GPA inappropriately allowed Darren Grech, the then-Chief Secretary, to attend the key meeting relating to the exercise of the s.34 power, as being a member of the government, he was conflicted:¹⁶⁴

¹⁶¹ [FP1/294; EB/B1362] original version, [FP1/296; EB/B1364] version amended by CM

¹⁶² [EB/362]: IM said “*This has all been triggered off from the impromptu meeting that I was called to in the chief minister’s chamber with the AG. That is where it all stems from. There’s no doubt at all, at all, at all that that is where this is stemming from. The fact that he has not been in agreement with the way we have been handling the case of the involving Jaime Levy. I was threatened there and then, and I was told that he was going to call up, In other words there was like, total interference with the operational running. That is against the law itself.*” [EB/363]: “*Because the chief minister is suspected of a crime*”.

¹⁶³ [EB/366] JB’s response was “*The Governor seemed to be in the know because, because at the meeting they were talking about the way that you handled because, because they mentioned the AG had lost faith in you so, so, so they had that conversation. As they were not talking to me I didn’t take note of what they said*”

¹⁶⁴ DG appears to have attended: see [EB/2484]

124.4.1. DG had already expressed a clear and concluded view and had been in conversation with FP about the issue, who had sought out his support at the GPA – he should have recused himself.¹⁶⁵

(xxx) The 22nd May letters did not follow the required statutory process

125. Neither of the letters sent to IM on 22nd May 2020 satisfied the requirements of s.34 which mandated that the Authority shall “*give the Commissioner an opportunity to make representations and shall consider any representations that he makes*”:

125.1. The letter said “*we are calling upon you to retire... but before doing so we are giving you an opportunity... to make representations*”¹⁶⁶. Therefore, the GPA was already calling upon IM to retire before seeking representations;¹⁶⁷

125.2. This does not follow the sequencing required by s.34(1) which is that the GPA must (in this order): (1) seek representations from the Commissioner, (2) consider representations, (3) consult with Governor and Chief Minister, (4) obtain agreement from either of them, (5) call upon the Commissioner to retire.

125.2.1. Some GPA members have expressed their concern that they thought IM would be given an opportunity to respond to the allegations¹⁶⁸.

125.3. JB was under the misapprehension that IM would have a choice of whether to retire once the GPA invited him to do so:

125.3.1. At the 22nd May 2020 meeting, he said to IM, in response to IM asking what effect the letter would have, “*No, no, no, you’re not suspended or anything. You now have to, it’s an invitation, it’s an invitation. I think*

¹⁶⁵ FP3 [EB/1426]:

“20/05/2020, 16:45 - Fabian Picardo: Darren, when Joey speaks tomorrow at the GPA, he is going to explain my views on a sensitive subject. Your support for me on this is key. I have grave, grave concerns.

20/05/2020, 16:46 - Darren Grech: I know and they are my concerns too for a whole range of reasons. [thumbs up emoji] You have this support.

20/05/2020, 16:47 - Fabian Picardo: [thumbs up emoji]

21/05/2020, 12:28 - Darren Grech: Made my position very clear this morning: HIS position untenable with the massive loss of confidence all over. Here if you need me [...]

¹⁶⁶ FP1/298; EB/1366

¹⁶⁷ This is also supported by the letter JB sent to NP on 5th June 2020 [NP1/40, EB/1487]: “Pursuant to this decision on 22nd May 2020 I on behalf of the Authority invited the Commissioner to retire. I did this at a meeting with him held on 22nd May 2020 at the Commissioner’s office followed up by two letters to him that same day... I also invited him to make representations which we would consider before making the final decision”.

¹⁶⁸ Ernest Gomez [WSB/A401]: “I wish to emphasise at this point the unfortunate circumstance that during that meeting it did not occur to any member present to consult the wording of the Act and instead it was generally assumed that Mr McGrail was indeed being offered a viable choice between accepting the offer to retire in view of the untenable position of the loss of confidence in him or of engaging with the GPA to offer his own version of events for the GPA to then decide on the direction to follow [...] I would state that Operation Delhi did not figure at all in the deliberations of the GPA”

the other way would be, you would lose your job if the Governor [...]”¹⁶⁹;

125.3.2. Section 34(3) of the Police Act states: “*Where the Commissioner is called upon to retire under subsection (1), he shall retire on such date as the Authority may specify or on such earlier date as may be agreed upon between him and the Authority*”, therefore retirement is mandatory once the GPA calls upon the Commissioner to retire *per* Section 34(1);

125.3.3. This misunderstanding of the statutory scheme appears to have led to JB taking two steps at the same time ((a) calling on the Commissioner to retire and (b) seeking representations) which were required to be sequential.

F. THE INCIDENT AT SEA (ISSUE 3)¹⁷⁰

126. FP and NP raised no concerns in relation to IM’s communications, or any matter relating to the Incident at Sea which occurred on 8th March 2020, until after 14th May 2020:

126.1. There is no evidence from prior to 14th May 2020 that either FP or NP were concerned by the information provided by IM;

126.2. NP did not refer his apparent concerns about IM’s information sharing, which he later considered to be a failure of the utmost seriousness, to the GPA, despite his close connections with the Authority;

126.3. NP did not ask IM to explain the position, or address his concerns, prior to deciding he should leave his post.

127. It was unfair and premature to reach any conclusions as to IM’s responsibility or otherwise for the Incident at Sea given that IM had commissioned an independent investigation into the incident and that investigation had not reported as at the time NP and FP ‘lost confidence’ in him.

128. The Incident at Sea investigation was highly complex and sensitive (on both a human and political level), and IM’s did his utmost to keep key individuals updated almost in real time, based on incomplete and rapidly developing information:

¹⁶⁹ [EB/356]

¹⁷⁰ [IM1/63-71; WSB/A26-27] [IM3/45-120; 170a-170g; WSB/A65-94 A134-135] [IM Responsive 1/71-91; WSB/A158-161]

- 128.1. The information IM received was inconclusive and in the first days after the incident, regularly changing¹⁷¹
129. Given the sensitivity, IM was appropriately careful not to provide conclusive information prior to it being verified:
- 129.1. IM was under no duty to provide all unverified information to the Governor and was not asked to do so;
- 129.2. As the RGP Commissioner, he retained some discretion as to what information to feed upwards and when, though of course in general terms he ensured he provided key information when it was available.
130. NP claims that IM caused him to report to London “*on the basis of*” erroneous information¹⁷², but he does not say that IM caused him to provide erroneous information:
- 130.1. This is because NP was, in fact, reporting accurately on the basis of information which was available at the relevant time.
131. IM was under the reasonable and accurate impression that ML as the legal advisor to both FP and NP would himself feed information upwards:
- 131.1. IM reasonably assumed that ML, as Interim Governor’s legal advisor¹⁷³ would keep NP fully informed;
- 131.2. ML “*cannot now recall precisely what information I may or I may not have communicated to Mr Pyle on those occasions that we discussed the incident at sea*”.¹⁷⁴
- 131.3. Despite claiming not to have been kept up to date, NP was keeping the FCDO informed of relevant and up to date information including that the pursuit may have taken place as many as 6 nautical miles from BGTW:
- 131.3.1. 9.3.20: “*I was with the AG last night and we wondered whether it would be worth having an update at some stage later this morning.*”

¹⁷¹ [John Field 1/38; WSB/801] John Field says was briefed at 0940 8 March 2020 on the day of the incident in relation to the coordinates, recalls briefing IM, Richardson, and the AG concerning the “*suspected exact coordinates*” : “*I remember a discussion taking place and being asked if the chase had been plotted/ recorded as the coordinates were well out of BGTW, I was unable to answer this. Considering that the initial report was that PMB had been involved in a chase out at sea, approximately 3miles off Europa Point, at that moment in time, it was a safe assumption that the chase/ part of it, had occurred in our jurisdiction*”

¹⁷² [NP1/25.8(iv); WSB/A254]

¹⁷³ [CB/C5064] see email NP to IM 8.6.20 “*to be clear, the AG is my Hon Legal Advisor so yes it is he who a Governor would take legal advice from*”

¹⁷⁴ [ML2/49; WB/A311]

- 131.4. It would be illogical and implausible for IM to have deliberately kept information from NP whilst at the same time sharing the same information with NP’s legal advisor.
132. NP conflates confirmation of the coordinates with speculation about the coordinates.¹⁷⁵ Due to conflicting evidence, IM was not able to confirm coordinates until 12 March:
133. FP expressed no significant concern about the incident until 14th May 2020:
- 133.1. At the time, he said that the location of the incident “*helps us in a way*”¹⁷⁶;
- 133.2. ML says that the Chief Minister’s concerns were to ensure good and transparent communications with Spain and protect the RGP officers as best we could from having to face court action in Spain, and he cannot recall the Chief Minister expressing any view on the possible civil action before the Gibraltar Courts.¹⁷⁷
134. NP was kept up to date on key information, evidenced by the fact that he was able to provide up to date information to the FCDO in London:
- 134.1. At the meeting on 9th March 2020 12:10, NP was brought up to date with present working theory, which was part of the incident was in BGTW and part was not:
- 134.1.1. Paul Richardson’s notes show that NP was in meeting where “*exact coordinates of collision still not determined*” but “*element of chase within BGTW*” which concurs with email NP sent to London on 9th March 2020 16:42.¹⁷⁸
- 134.2. NP’s first statement refers to an email on 9th March 2020 16:42 when he reported that IM had reported to him and ML that the “*exact location was still to be determined*”¹⁷⁹
- 134.2.1. However, at 07:57 on 9th March 2020 he had reported to London that “*it might have happened as much as six miles inside Spanish waters*”.¹⁸⁰

¹⁷⁵ [NP1/19.1; ESB/A264] “As the evidence shows, I asked IM directly on numerous occasions if he was able to **confirm** whether the incident had taken place in Spanish waters. On 11 March 2020 - three days after the incident - he was still telling that he was “getting there”. The simple fact is that I repeatedly asked IM a simple and direct question to which he did not reply candidly with the best information available to him. He withheld highly relevant information from me”

¹⁷⁶ [WSB/A159]

¹⁷⁷ [ML2/59; WSB/A315]

¹⁷⁸ [EB/1590]: “The AG said it was clear, with entry at some point of the vessel into BGTW”

¹⁷⁹ [EB/1590]

¹⁸⁰ [EB/1748]

- (a) This information is likely to have come from IM, or ML, who had been informed of the same the previous day.

135. The 21 May 2020 request under s.15(1)(A) of the 2006 Act was made by FP to put IM under additional pressure:

136. IM was not at any time evasive, nor did he deliberately withhold information:

136.1. IM had no motive for withholding information

136.1.1. IM in fact wanted to impart as accurate and validated information as possible¹⁸¹.

136.1.2. He was reasonably concerned not to provide information which would later turn out to be inaccurate.

137. At the time when NP and FP decided that the Incident at Sea was sufficiently serious to result in their 'loss of confidence' in IM, they did not have access to the Metropolitan Police's independent findings and organisational learning report into the incident.¹⁸²

G. THE HMICFRS REPORT (ISSUE 4)¹⁸³

138. Prior to the 12th May 2020 neither FP nor NP had raised any serious concerns about the Report which HMICFRS had sent to the GPA on the 9th April 2020 and which the GPA had shared with FP, NP and others.

139. In his evidence, FP says that the Report was not an issue which caused him to lose confidence in IM.¹⁸⁴

140. The members of the GPA similarly did not view the Report in a negative light which would lead to a loss of confidence / requiring IM to retire:

140.1. Julio James Alcantara's evidence is that "*I did not attach such importance to the issue of the implementation of the Police Inspectorate's report as to require Mr McGrail to retire*"¹⁸⁵;

¹⁸¹ See [IM3/147; WSB/A114-5];

¹⁸² [Smith1/16; WSB/1052]

¹⁸³ [IM1/72-77; WSB/A27-28] [IM3/15-44 170h-170n; WSB/A54-65 A135-136] [IM Responsive 1/92-106; WSB/A161-164]

¹⁸⁴ [Picardo1/108; WSB/A216]

¹⁸⁵ [Alcantara1/14; WSB/A357]

- 140.2. Ernest Gomez’s evidence is that: “I did not consider that the police report on its own would justify inviting Mr McGrail to retire although the report clearly raised matters which needed to be addressed¹⁸⁶”;
- 140.3. Francis Carreras’ evidence is that “Dr Britto made reference to the Incident at Sea and this was considered by the GPA members to be far more serious and it was felt that this was the major factor to be considered.”¹⁸⁷
141. For his part NP’s reaction to the report on the 30th April, was to say that it was “*quite damning*” but that it was “*not as bad as the headlines suggest*” and, further, that most of the issues should be relatively easy to fix¹⁸⁸. The Minister of Justice, Samantha Sacramento messaged IM on 29th April 2020 to say “*The report is shocking reading on the face of it, but if you analyse it deeper It’s not that bad, and it’s [sic] has easy solutions. [...] it can all be fixed don’t worry*”¹⁸⁹
142. It is striking that neither FP nor NP thought to inquire further from HMICFRS which, it is submitted would have been the appropriate reaction if either FP or NP had considered that the contents of the Report merited sanction or warning to be imposed on IM.
143. In fact, the Report does not make any express criticism of IM. On the other hand, the Report did contain suggestions that the work of the RGP was hampered by lack of resources¹⁹⁰, deficiencies in legislation¹⁹¹, and failure to provide support for vulnerable offenders and victims¹⁹². Moreover, HMICFRS reported that the RGP “*should do further work on demand management, supported by the Government of Gibraltar, HM Governor and GPA*”¹⁹³.
144. Funding issues were highlighted on page 5 of the Report¹⁹⁴.
145. On a fair assessment of the Report, it could be said that the problems identified were institutional and implicated the Government and the Governor as much as the management of the RGP.

H. THE GIBRALTAR POLICE FEDERATION ‘COMPLAINTS’ (ISSUE 6)¹⁹⁵

¹⁸⁶ [Gomez1/38; WSB/A401]

¹⁸⁷ [Carreras1/14; WSB/A517]

¹⁸⁸ [EB/B1511]

¹⁸⁹ [EB/499]

¹⁹⁰ [EB/B1556]

¹⁹¹ [EB/B1565-6]

¹⁹² [EB/B1556]

¹⁹³ [EB/B1569]

¹⁹⁴ [EB/B1574]

¹⁹⁵ [IM Responsive 1/130-164; WSB/A169-176]

(xxxi) There were no formal complaints made by the GPF to the GPA

146. There were no formal complaints made by the GPF to the GPA¹⁹⁶

147. The lack of complaints undermines NP's assertion, made in his witness statement to this Inquiry, that "*tensions between the RGP leadership and the Police Federation culminated in formal complaints from the Federation to the GPA about Mr McGrail.*"¹⁹⁷

148. This further demonstrates the recklessness with which NP raised serious allegations against IM.

(xxxii) The GPF issue did not appear in the key contemporaneous documents so cannot have played any significant role in NP or FP's decisions

149. IM's relationship with the GPF cannot have had any significant bearing on the decisions of FP and NP as it was not included in:

149.1. the email correspondence between NP and FP on the evening of 17th May 2020 relating to the issues they were planning on raising with the GPA the following day¹⁹⁸,

149.2. the detailed note of their meeting with JB on 18th May 2020¹⁹⁹, or

149.3. the 22nd May 2020 letter which JB sent to IM which FP extensively edited.²⁰⁰

150. Had the issue been of any importance whatsoever it would have been referred to in these detailed accounts of FP's and NP's stated reasoning for 'losing confidence' in IM.

(xxxiii) The relationship between the RGP and the GPF was strained – but IM was not primarily to blame

151. It is accepted by IM that the relationship between the senior management of the RGP and the GPF was strained and difficult.

¹⁹⁶ [Goncalves1/39; WSB/A343] [Alcantara1/13; WSB/A355] [Danino1/29; WSB/A371] [Falero1/39; WSB/A386] [Gomez1/36; WSB/A400] [Weisfogel1/39; WSB/A418] [Lavarello1/36; WSB/A432] [Patron1/35; WSB/A463] [Pizzarello1/27; WSB/A475] [Collado1/30; WSB/A498] [Figueras1/26; WSB/A509] [Carreras 1/21; WSB/A519]

¹⁹⁷ [WSB/248]

¹⁹⁸ [EB/1211]

¹⁹⁹ [EB/1357]

²⁰⁰ [EB/1364]

152. The tension between the RGP and GPF was caused at least in substantial part by the disrespectful and hostile behaviour by the GPF leadership²⁰¹:

152.1. To that extent, the accounts given by Maurice Morello and Leif Simpson are inaccurate and one-sided.²⁰²

153. Following IM's departure, the GPF's relationship with RU as Commissioner remained poor. The strong inference is that IM was not the cause of the problems.²⁰³

154. IM did a lot of work to address allegations of bullying in the RGP²⁰⁴:

154.1. Notwithstanding this work, IM was challenged disrespectfully and disruptively by Maurice Morello and Leif Simpson²⁰⁵.

I. THE AIRPORT INCIDENT (ISSUE 1)²⁰⁶

155. The Airport Incident cannot have had any significant bearing on the decisions of FP and NP as it was not included in:

155.1. the email correspondence between NP and FP on the evening of 17th May 2020 relating to the issues they were planning on raising with the GPA the following day²⁰⁷,

155.2. the detailed note of their meeting with JB on 18th May 2020²⁰⁸, or

155.3. the 22nd May 2020 letter which JB sent to IM which FP extensively edited.²⁰⁹

²⁰¹ [John Field 11; WSB/796] There were "occasions when the GPF Chairman wrote to management and was out of order and disrespectful." ; [RU1/15-16; WSB/531]: "There in my view was very little respect offered to Mr McGrail in his tenure as Commissioner, with the Chairman constantly being disrespectful and challenging towards him."

²⁰² See [IM4/130-139; WSB/A169-170] responds broadly to Maurice Morello, then specifically at [IM4/150-164; WSB/A173-176]

²⁰³ [WSB/A603]: Email from RU, then Assistant Commissioner, to Maurice Morello, 29th August 2019: "First, let me express my disgust at the tone of your reply to me and one which I will be raising with the command. Your message to me is filled with little cooperation and signs of confrontation"

²⁰⁴ [RU1/17; WSB/531]: "Before continuing to discuss this fraught relationship created, I believe by M Morello, I think it is important that I detail some of the work Mr McGrail had commissioned in order to deal with allegations of bullying in the RGP. Subsequent to the GPF's survey in late 2018, were the workforce and the GP brought bullying allegations against the fore, Mr McGrail sought to contextualise these allegations and deal with them accordingly"

²⁰⁵ [RU1/18; WSB/532]: "Notwithstanding all the good work Mr McGrail had steered to address possible bullying and other areas of policing issues, he continued to be challenged disrespectfully by Mr Morello and also the GPF Secretary, Mr Leif Simpson, which resulted in discipline processes against them, because of their warranted positions as police officers in the RGP".

²⁰⁶ [IM Responsive 1/5-53; WSB/A143-146]

²⁰⁷ [EB/1211]

²⁰⁸ [EB/1357]

²⁰⁹ [EG/1364]

156. IM was at all material times acting under the direction of the then-RGP Commissioner, Edward Yome.²¹⁰
157. The MoD unambiguously accepted and apologised for its misunderstanding of its jurisdiction.²¹¹
158. The independent review of the RGP's conduct found that it acted impeccably during a highly sensitive and difficult incident.²¹²
159. The three officers who were arrested later apologised claiming that they had acted on UK legal advice.²¹³
160. IM's actions in relation to the Airport Incident were separately reviewed and he was independently and completely cleared of allegations of misconduct.²¹⁴
161. In May 2020, NP knew that (a) that the RGP's conduct had been independently reviewed and it had been exonerated from any wrongdoing, (b) that the MOD had apologised for its conduct and (c) that IM had been cleared of any misconduct.
162. FP had entirely backed the RGP at all material times and had been deeply critical of the MoD.²¹⁵

²¹⁰ [EY/25; WSB/1346]: *"I wish to emphasise that police officers were deployed to the airport solely on my instructions"*

²¹¹ [CB/C260]: Letter from Rear Admiral A. D. Radakin, 8th March 2017: *"Joint Forces Command regrets the events that took place in Gibraltar on the 8th February. This includes the events at Gibraltar International Airport and the dispute as to jurisdiction that led to the confusion by British Forces Gibraltar over the appropriate handling of the individual suspected of downloading indecent material whilst in the United Kingdom; and the detailed management of this particular case. It was the view of Joint Forces Command that the case was to be subject to exclusive Service Police jurisdiction - which turned out not to be correct... I want to reassure you that subsequent additional advice, including at a senior legal level in the Ministry of Defence, recognises the legal primacy point in this case. Joint Forces Command now, therefore, fully understands and respects your legal primacy in this case as the law currently stands today"*

²¹² [EXB/2158]: Watterson Review outcome: *"The GPA has come to the firm conclusion that the actions of and the restraint shown by the relevant RGP officers during the Watterson Incident were considered, deliberated, entirely proportional and highly commendable. As such, we do not doubt the effectiveness and probity of the policing demonstrated by the RGP in respect of the Watterson Incident. We would take the liberty of adding, though it may not be our place to do so, that the actions of certain MOD personnel in respect of the Watterson Incident deserve censure and that you should consider whether a full inquiry ought to be undertaken by a body independent of the RGP and the MOD so that lessons may be learnt from this incident"*

²¹³ [EY/32; WSB/1346]: *"In the days following the arrest of the three senior military officers the RGP received apologies from all three men [sic – one was a woman] who claimed that they had acted on UK legal advice"*

²¹⁴ The document recording the outcome of the complaints is at [EB/2708]

²¹⁵ [Walliker/6; WSB/1386] *"During an interview with the Chief Minister a few days after the Incident, I was able to correct a couple of errors of fact in the RGP's report of the incident, but I could not alter his view that 'his' police force had behaved exceptionally well, at the operational level, but that MoD personnel had not. To his mind the RGP had saved the MoD from 'itself' and to my mind they had behaved disgracefully"; There has been considerable speculation as to why no Inquiry was ever conducted. My understanding from my chain of command was that the Chief Minister had argued for not having an Inquiry to save the "MoD's blushes." [11]*

162.1. There is no evidence that prior to 12 May 2020, FP had criticised the RGP's conduct.

162.2. FP's criticism of the RGP and IM's conduct in the airport incident was self-serving and formed part of his successful attempt to manipulate/persuade NP to remove IM from post.

J. NP'S STATED INTENTION TO USE HIS POWERS UNDER SECTION 13 OF THE POLICE ACT (ISSUE 9)²¹⁶

163. When the GPA withdrew its decision under s.34 of the Police Act NP decided that only section 13(1)(f) was available to him, i.e. to suspend from duty or call for the resignation of the Commissioner.²¹⁷

164. At all relevant times NP had been appointed as Governor under Section 22 of the Constitution.²¹⁸

165. As at 5th June 2020, NP was not able to exercise any functions of the office of Governor because of the operation of section 22(3) of the Constitution, which prohibits an individual who has been temporarily discharging the functions of Governor whilst the office of Governor was vacant to exercise any functions of the office "*after the Governor or some other person having a prior right to perform the functions of that office has notified him that he is about to assume [...] those functions.*"²¹⁹

166. NP was therefore acting unlawfully by continuing to purport to exercise the functions of Governor by threatening to use the s.13 power and therefore prompt IM's early retirement.²²⁰

²¹⁶ [IM1/96-109; WSB/A40-45] [IM2/14-15; WSB/A49] [IM3/121-144; WSB/A94-108] [IM Responsive 1 /172-175; WSB/A177-178]

²¹⁷ [EB/1811] "*things have taken a turn for the worse. The AG told me yesterday the Gibraltar Police Authority (GPA) meeting that was held last week to consider the position of the Commissioner of Police was not quorate. It's deliberations are therefore null and void and the Chair of the GPA should therefore not have called for the Commissioner of Police to resign. The AG advised there is no point in looking to appoint new GPA members as they are chosen by the Public Services Commission from a list proposed by the CM and I. They are then appointed by the Governor. Any new GPA members would therefore likely be perceived as biased, not least by a court. This leaves Section 13(1)(f) of the Police Act as the only way forward to secure the resignation of the Commissioner should it be determined that this is the best way forward*"

²¹⁸ [WSB/A245]: "*During all this period of time, the Office of Governor was vacant following the end of the appointment of the previous Governor, Ed Davis, on 18 February 2020, since which date I had been appointed Governor under Section 22 of the Constitution, a position that I continued to hold until Sir David Steel, the current Governor, was sworn in on the 12 of June 2020.*"

²¹⁹ [EB/1812] Email from NP: "*Apologies for the timeframe, but with a media storm brewing, I would like to resolve this as soon as possible and certainly before Sir David Steel arrives on Wednesday.*"

²²⁰ [EB/1822] Email from NP, 7th June 2020: "*The good news is confirmation that the CoP intends to retire and the issue now is how to achieve this. My instinct is to allow CoP time to work out a deal, but this then means Sir David will have arrived. What we don't want is CoP to withdraw his request and lobby Sir David to keep his*

167. NP may have been acting unlawfully throughout the relevant period, if he was informed of the imminent arrival of the new Governor prior to 14th May 2020.

168. NP should have followed the advice he was given about the risk of using sections 13 and 34 in the way he intended to, and the advice that a negotiation should have taken place whilst the new governor arrived.²²¹

K. THE 29TH MAY LETTER (ISSUE 8)²²²

169. The letter²²³ should not have caused “*anger*”²²⁴, it should have prompted NP to pause and consider his duties under s.11 of the Police Act to maintain the integrity and independence of the RGP.

170. The points made in the letter relating to flaws in the GPA process were vindicated when the GPA withdrew the call for IM to retire, following legal advice, and due to its failure to afford IM a reasonable opportunity to make representations and to give due consideration to those representations.²²⁵

L. THE ASSAULT INVESTIGATION (ISSUE 2)²²⁶

171. The Assault Investigation cannot have had any significant bearing on the decisions of FP and NP as it was not included in:

171.1. the email correspondence between NP and FP on the evening of 17th May 2020 relating to the issues they were planning on raising with the GPA the following day²²⁷,

position”; [EB/1832] Email, 7th June 2020 20:26: “*I have asked the Commissioner to see me tomorrow at 10.00 when I will hand over copies of the letters the Attorney General, Chief Minister and I sent to the Chairman of the GPA setting out our position (we surmised that the Chairman did not forward these letters on to the Commissioner’s lawyer). 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). I will ask that he returns to the Convent at 16.00 to let me know his decision*”

²²¹ [EB/1828] Email 7th June: “*Although any exercise of the Governor’s power under section 13(f) is distinct to the removal procedure under section 34(1) (where the GPA has to secure the Governor’s or the Chief Minister’s approval to call for the Commissioner to retire), the exercise of that power nevertheless risks being liable to challenge for the reasons set out in paragraph 47 of the Commissioner’s lawyer’s 29 May letter to the GPA, namely ‘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. Although you have justifiable grounds on which to exercise your section 13(f) power, there remains a risk that it could be challenged by the Commissioner.’*”

²²² [IM Responsive 1/168-171; WSB/A176-177]

²²³ [EB/B1367]

²²⁴ [EB/1832]: Email from NP 7th June 2020, 20:26: “*The CM, clearly angry at the email from Gomez to me,*”

²²⁵ [WSB/A325]: JB1, para. 30

²²⁶ [IM Responsive 1/54-70; WSB/A156-158]

²²⁷ [EB/1211]

- 171.2. the detailed note of their meeting with JB on 18th May 2020²²⁸, or
- 171.3. the 22nd May 2020 letter which JB sent to IM which FP extensively edited.²²⁹
172. Had the issue been of any importance whatsoever it would have been referred to in these detailed accounts of FP’s and NP’s stated reasoning for ‘losing confidence’ in IM.
173. In any event, had NP (in his capacity as a member of the GPA or otherwise) had carried out any due diligence he would have discovered that the RGP file demonstrate that it carried out a thorough and professional investigation into the incident.
174. The fact that NP appears to have relied on an MoD rumour²³⁰, and done nothing to investigate whether it was true, to justify – in part – ending IM’s 35-year career demonstrates how sloppy and reckless his actions were.

M. THE ALCAIDESA CLAIMS (ISSUE 7)²³¹

175. The Alcaidesa Claims issue cannot have had any significant bearing on the decisions of FP and NP as it was not included in:
- 175.1. the email correspondence between NP and FP on the evening of 17th May 2020 relating to the issues they were planning on raising with the GPA the following day²³²,
- 175.2. the detailed note of their meeting with JB on 18th May 2020²³³, or
- 175.3. the 22nd May 2020 letter which JB sent to IM which FP extensively edited.²³⁴
176. In any event, the issue occurred eight years before IM was appointed Commissioner and he had no involvement in the investigation, so insofar as it bore on FP’s reasoning, it did so illegitimately.

²²⁸ [EB/1357]

²²⁹ [EG/1364]

²³⁰ [WSB/248]: NP refers in his first statement to “*The widely held belief in MOD circles is that the RGP did not investigate the crime correctly to protect those involved in the attack.*”

²³¹ [IMResponsive/165-167; WSB/A176]

²³² [EB/1211]

²³³ [EB/1357]

²³⁴ [EG/1364]

N. CONCLUSION

177. We hope that these submissions are of assistance.

CHARLES GOMEZ
NICHOLAS GOMEZ
DANIEL BENYUNES
Charles A. Gomez & Co., Gibraltar

CAOILFHIONN GALLAGHER K.C.
ADAM WAGNER
Doughty Street Chambers, London

21st March 2024

Updated 9th April 2024