

INQUIRY INTO THE RETIREMENT  
OF THE FORMER COMMISSIONER OF POLICE

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OPENING SUBMISSIONS ON BEHALF  
OF THE OP DELHI DEFENDANTS

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**I. INTRODUCTION**

1 This is the written opening of the Op Delhi Defendants, Thomas Cornelio, John Perez MBE and Caine Sanchez. It will be supplemented orally.

2 This document is divided into five parts:

- (1) This introduction.
- (2) An analysis of the issues and sub-issues where the Op Delhi Ds can assist the Inquiry.
- (3) A summary of the Op Delhi Ds' position.
- (4) Questions which are raised on the evidence that has been filed with the Inquiry and which are pertinent to the issues that affect the Op Delhi Ds.
- (5) Conclusion.

3 References in braces { } are to pages in the bundles prepared by the Solicitors to the Inquiry: Bundle A — Witness Statements; Bundle B — Exhibits; Bundle C — Chrono Docs Issue 5.

**II. ISSUES**

4 Following amendment by the Ruling of 08 November 2023, Issue 5 now reads:

5. The investigation into the alleged hacking and/or sabotage of the National Security Centralised Intelligence System and alleged conspiracy to defraud (“the Conspiracy

Investigation”), and the RGP’s handling of the same, including but not limited to the RGP’s stated intention to execute search warrants as part of that investigation on 12 May 2020 (“the Search Warrants”). In particular:

- 5.1. Did Mr McGrail seek or receive advice from the Director of Public Prosecutions (“DPP”) or the AG regarding the Search Warrants, and did Mr McGrail accurately communicate any advice from the DPP or the AG on the Search Warrants (or lack thereof) to the CM and/or AG?
- 5.2. Was the RGP’s intention to execute the search warrants on 12 May 2020 contrary to an agreement or understanding with the AG and/or the DPP?
- 5.3. Did the AG and/or CM place any or any inappropriate pressure on Mr McGrail regarding the investigation or otherwise interfere with the investigation, and in particular the RGP’s intention to execute the Search Warrants

5 The Op Delhi Defendants (Thomas Cornelio, John Perez MBE and Caine Sanchez) cannot directly assist the Inquiry with sub-issues 5.1 or 5.2. They can however assist in two areas:

- (1) the RGP’s handling of the Conspiracy Investigation generally; and
- (2) if the Inquiry comes to the view that pressure was applied to Mr McGrail regarding the Investigation, whether that pressure was ‘inappropriate’.

### **III. SUMMARY OF POSITION**

6 According to Mr McGrail, at a meeting on 12 May 2020 the Chief Minister (‘CM’) expressed a “*view that the complainant in the case, Mr James Gaggero, the Chairman of Bland Ltd, was actually using the RGP, and that the RGP was knowingly allowing itself to be used, to pursue what in essence was a commercial dispute without there being any conspiracy to defraud.*” {A12}.

7 Since this meeting was not one of those covertly recorded by Mr McGrail, it may never be entirely clear whether or not words to this effect were said by the CM. Whether or not they were said, they are (the Op Delhi Ds suggest) an accurate assessment of the genesis of Op Delhi.

8 Moreover, it may be possible, once the Inquiry has heard the evidence, to go further, and find that it was not (or not just) the RGP that was “*knowingly allowing itself to be used*”, but Mr McGrail personally. That it was the Commissioner of Police himself who seized on a legally incoherent and obviously retaliatory allegation from James Gaggero and used it to put in motion a substantial criminal investigation.

9 Why did Mr McGrail do this? It may have been to protect his own position as Commissioner of Police, which has evidently never been entirely secure since the day he took office. It may simply have been a combination of credulity combined with an excess of zeal. In any event, it is plain (the Op Delhi Ds submit) that the decision to execute search warrants against James Levy CBE KC was not the first mis-step in the Op Delhi investigation.

#### **IV. QUESTIONS**

10 It is submitted that the Inquiry should bear in mind the following questions when hearing the evidence.

*When did Mr McGrail become aware of the Hassans connection?*

11 The Inquiry already knows that the economic interest in 36 North Ltd, the corporate vehicle alleged by James Gaggero to have been set up to dishonestly obtain business from Bland Ltd, was ultimately owned in part by the equity partners of Hassans, including the CM and James Levy KC.

12 Any person who was aware of this fact would also be aware that an investigation into 36 North Ltd or its directors would have the

potential to cause embarrassment to the CM and others associated with Hassans.

13 James Gaggero states that he became aware of the involvement of 36 North Ltd “*within days of Mr Perez and Mr Cornelio’s resignations*” {A1368, ¶150} — so in mid-July 2018. From that point on he undoubtedly had the means to discover who was behind the company that he believed was trying to steal business from him, and on 27 September 2018 he told the CM that James Levy CBE KC was involved with 36 North Ltd {A1374, ¶175}.

14 Mr Gaggero went to see Mr McGrail on the same day, 27 September 2018 {A1374, ¶172}. Did he tell Mr McGrail what he had told the CM? He went to see him again on 27 October 2018 {A1374, ¶176}. Did he inform him on that occasion of the Hassans connection? If not — why not?

15 The Inquiry may need to consider when Mr McGrail first became aware of the Hassans connection. He was undoubtedly aware of this by the time of the meeting of 13 May 2019. Was he aware beforehand — perhaps as early as autumn 2018? And did this influence his approach to the allegations brought by James Gaggero?

#### *How did the Op Delhi investigation commence?*

16 Although he went to see Mr McGrail in September and October 2018, James Gaggero did not file a formal complaint with the RGP until 18 December 2018 {A1374, ¶177}.

17 Paul Richardson became the senior investigating officer (‘SIO’) in “*late December 2018*” {A1285, ¶111} and the first dated entry in his ‘day book’ dedicated to the case is on 09 January 2019 {C1657}. Mark Wyan, who became the Officer in the Case, did not become involved until April 2019 {A1021}.

18 However, Mr McGrail records that Op Delhi was ‘commenced’ on 15 October 2018 {A3, ¶17}. He describes it as a ‘re-active’ investigation.

19 How was it that an operation of this nature was commenced before a formal complaint was made? Who was the SIO prior to Mr Richardson? Was it Mr McGrail himself? What took place during period between the investigation being opened and Mr Richardson’s appointment?

*What was the extent of Mr McGrail’s operational involvement?*

20 Mr McGrail’s evidence to the Inquiry is that he took no operational role in Op Delhi:

*“apart from periodic briefings which I received from Superintendent Richardson, the senior officer in the investigating team, my personal involvement in [Op Delhi] was limited to requesting assistance from the Director General of the UK’s National Crime Agency” — {A4}*

*“I had initially received Mr Gaggero’s complaint but then passed the matter on to a team headed by Superintendent Richardson” — {A12}*

21 And yet the evidence to date suggests that Mr Grail involved himself at least as follows:

- (1) On 04 January 2019 {C1657} he conducted a briefing.
- (2) On 08 January 2019 {C1659} he participated in a conference call with James Gaggero. He sought an assurance that the civil case would not be withdrawn in favour of action, and suggested a meeting with James Gaggero’s lawyer, Sir Peter Caruana KC, to ‘clear the legal approach’.
- (3) On 28 January 2019 {C1676} he attended a meeting with John Paul Payas, a senior manager within the Bland group, and others, in which the possibility of using an “*ex GCHQ contact*” to take control of an account in the name of Thomas Cornelio was discussed.

- (4) On 10 May 2019 {C1733} he made a request for James Gaggero to call him. This is the day on which the Thomas Cornelio and John Perez were arrested.
- (5) On 13 May 2019 he attended a meeting with the Chief Minister and others in which he announced the RGP's intention to arrest Caine Sanchez.
- (6) On 15 May 2019 {B714} he sent a WhatsApp to the Chief Secretary, Darren Grech, asking if Caine Sanchez had been "*interdicted already*".
- (7) On 19 July 2019 {B5065} he contacted Albert Mena via WhatsApp to express his surprise that Thomas Cornelio was still doing work for HMGoG.
- (8) In January and February 2020 he spoke at least twice to the DPP concerning Op Delhi {B749}. This was at a time at which the DPP was advising on potential charges {B3106, ¶254}.
- (9) On 08 April 2020 {B5050} he wrote to the Financial Secretary, Albert Mena, setting out the basis on which it was considered that Bland Ltd owned the intellectual property in NSCIS.
- (10) Through April 2020 {B723-724} he sent WhatsApps to Darren Grech chasing up a further witness statement on the ownership of NSCIS.
- (11) On 30 April 2020 {B3132, ¶425; C1787} he met the Darren Grech, and others. He "*informed the Chief Sec that [Caine Sanchez] has been involved in corrupt practices*" and solicited a complaint from HMGoG against him.
- (12) On 07 May 2020 {C1739} he held a conference call with James Gaggero, and mentioned that "*very sensitive exec[utive] action*" was pending. This can only have been a reference to execution of the warrants to search James

Levy KC's home and offices that had been granted the previous day.

22 This Inquiry will need to consider whether the list above represents the full extent of Mr McGrail's operational involvement in Op Delhi, or whether there may have been further involvement that did not leave a documentary trace. It will also have to consider how to treat the undisputable fact that Mr McGrail was to be a witness in the Op Delhi prosecution, and that his disputed account of a remark made by John Perez to him in a private meeting between them on 10 October 2018 was the principal evidence relied on by the Crown to suggest that Mr Perez knew of the alleged unauthorised modifications that Thomas Cornelio had made to NSCIS.

23 Is Mr McGrail's evidence to this Inquiry consistent with the other evidence of his involvement in Op Delhi? Or is he deliberately minimising the extent of his involvement prior to the decision to execute the search warrants? And if he is so minimising his involvement — why is he doing so?

*Why did the RGP press on in the face of the ownership issue?*

24 It now appears to be settled that, at the time of the acts investigated in the Op Delhi investigation, no offence of conspiracy to defraud existed in the law of Gibraltar.

25 If there had been such an offence, it would have been a common law offence, identical to that in English common law, brought under the 'economic interest' limb. This requires proof of actual or potential injury to a proprietary right or interest of the victim — see *R v Evans* [2014] 1 WLR 2817 (QBD) at [40] and [184], relying on *R v Scott* [1975] AC 819 (HL) at 840.

26 It was therefore an essential ingredient in any charge of conspiracy to defraud Bland Ltd that Bland Ltd could be shown to have a proprietary right or interest in NSCIS. Unless this could be

proved to the criminal standard, then any prosecution of the Op Delhi defendants on such a charge was bound to fail.

27 It appears that James Gaggero initially simply asserted to Mr McGrail and the RGP that the intellectual property in NSCIS belonged to Bland Ltd, notwithstanding that he was aware that this was a matter in dispute. However, on 27 July 2019 the RGP received statements from Thomas Cornelio and John Perez stating that they understood NSCIS to be owned by HMGoG {B3075, ¶183}, and by 13 November 2019 the RGP was sufficiently alive to the issue to discuss it with James Gaggero {C1759}.

28 Awareness that ownership was in dispute should have triggered a fundamental re-examination of the case. It was analogous to discovering, in a theft investigation, that the complainant may not have owned the stolen property in the first place. Instead, RGP officers started to think how they might overcome this obstacle in their way {B3100, ¶1210, C1760}.

29 It can be observed without disrespect to the RGP or its officers that the opportunities for the acquisition of experience in major fraud investigations is more limited in the Gibraltar force than in most UK police forces. The SIO of an investigation similar to Op Delhi in the Metropolitan or City of London Police will almost certainly have served at a more junior level in numerous similar investigations. A police officer whose career has been entirely in the RGP is unlikely to have the benefit of the same depth of experience.

30 Was it merely inexperience that prevented the RGP from seeing the importance of this development regarding ownership? Or was there a different reason for pressing on regardless?

31 In assessing Mr McGrail's role in the conduct of the Op Delhi investigation, the Inquiry will need to consider the advice that he received. Mr McGrail reports that the "*AG also advised that the investigation should not progress until such time as the question of ownership of the NSCIS platform was clarified.*" {A5, ¶116}. If this advice



was in fact given then it was sound advice from an experienced lawyer. It was not followed. Why? Apparently because it was Mr McGrail's "*understanding that the question of ownership of the platform, though important, was not critical to the prosecution of the suspects.*"

32 How did Mr McGrail reach this 'understanding'? Did he really not see how critical the question of ownership was? Or did he appreciate the issue but choose to ignore it, so as to allow the investigation to proceed (contrary to the advice of the Attorney General) for his own purposes? Were his communications with HMGoG setting out the case of Bland Ltd for ownership really attempts to establish the truth? Or was he striving to obtain the evidence that he wanted to obtain?

*Why did the RGP not obtain independent expert evidence until 2021?*

33 Part of the allegations investigated in Op Delhi were of unauthorised access to and modification of a computer system *by the person who had designed, built and administered that system*. It is not necessary to know anything about computers or the law to work out that the investigation of this type of computer misuse will necessarily differ from the investigation of penetration of a computer system by external 'bad actors', or other 'hacking'. One obvious difference is that the question of authorisation will almost inevitably be in issue.

34 Nonetheless, the position taken by Mr McGrail in his evidence to this Inquiry appears to be that he did not perceive any material difference. He recounts the Attorney General, Michael Llamas, asking him to consider what his position would be if HMGoG owned the intellectual property in NSCIS and had consented to the modifications being performed to it {A5, ¶17}. This was an entirely sensible question in circumstances where Caine Sanchez had complete autonomy for NSCIS {C2895, ¶1}. And yet Mr McGrail

claims to have been “startled” by it. Is this a true record of what in fact occurred? Or is it an attempt to show that his commitment to the advancement of the Op Delhi investigation came from a genuine desire to bring serious offenders to book, not out of some collateral motive?

35 Of course, Mr Llamas denies that many of the meetings that Mr McGrail claims took place in fact ever occurred {A299, ¶17}. In these circumstances the Inquiry will have to consider whether Mr McGrail’s account of his motives is sufficiently credible to bear any weight at all. Was he really told by the NCA that “*the ‘actus reus’ in this case was at a level of sophistication akin to that which foreign state actors could attempt in an attack on the UK’s security apparatus.*”? Or is this an embellishment calculated to suggest that he acted out of duty in fostering Op Delhi and not for any other reason?

36 The Inquiry may also have to consider why the RGP failed to obtain any evidence from an independent computer expert until 2021. In the case of an external ‘bad actor’, it is unlikely to be necessary to show that modifications to a computer system were malign. This does not apply when the alleged offender is the system administrator and developer who will inevitably have to make modifications to the system to keep it running and to improve it. It is, or should be, plain to any lawyer or law enforcement professional that independent expert evidence will inevitably be required if system administration is to be provably distinguished from sabotage.

37 It appears that this was plain to the DPP, Christian Rocca, because on 17 January 2021 (four months after charge) he raised concerns regarding expert witnesses {B3196, ¶254}.

38 Why was it not plain to the RGP? Why did they think it appropriate to charge without this evidence? Was it simply inexperience, or a failure to properly analyse the issues? Or was it because the drive to progress the Op Delhi investigation was not grounded solely in a desire to follow all relevant lines of inquiry?

39 It is notable that, when the independent expert evidence was obtained in July 2021, it signally failed to support the prosecution, with Dr Paul Hunton stating that he could not establish if what had occurred had been deliberate and malign action or careless system administration.

## V. CONCLUSION

40 Ian McGrail's decision to execute search warrants for James Levy KC's home and offices will be a matter of intense scrutiny in this Inquiry. He says that it was a proper decision made in the course of his duty as Commissioner of Police, and that interference with it was inappropriate. Others say that it was a misguided decision, and it was entirely proper to ask him, forcefully, to reconsider.

41 The Op Delhi defendants say that it was not the first misguided decision that Ian McGrail made in the investigation that upturned their lives. They cannot be certain why he pursued the case against them with so much zeal and so little judgment, but submit that this question is a relevant one for the Inquiry to consider when inquiring into the reasons and circumstances leading to his ceasing to be Commissioner of Police.

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