

**COMMISSIONS OF INQUIRY ACT**

**RETIREMENT OF THE FORMER COMMISSIONER OF POLICE**

**ISSUE OF COMMISSION**

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**OPENING SUBMISSIONS BY COUNSEL FOR THE GIBRALTAR POLICE AUTHORITY  
FOR THE MAIN INQUIRY HEARING ON 8 APRIL 2024**

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1. Pursuant to Legal Notice 2022/034 [B2062] the Commissioner is required to inquire into the reasons and circumstances leading to Mr McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement. The Commissioner has identified ten issues, the facts of which he shall investigate to the extent that he considers appropriate to address the matter under inquiry and the extent, if any, that they constituted a reason or circumstance leading to Mr McGrail ceasing to be Commissioner of Police.
2. The GPA has produced Sworn Witness Statements from past and present members addressing those issues in respect of which it had direct involvement. In the context of the Terms of Reference of the Inquiry the GPA can make a substantive evidential contribution only in respect of Issues 1, 6, 8, 9 and 10. Much of the relevant evidence on these issues insofar as it touches the GPA is set out in the Undisputed Facts and is otherwise a matter of record in the Sworn Witness Statements of the various members of the GPA.
3. The GPA addresses the Issues in the same order as they appear in the List of Issues.

**Issue 1.1 – The Airport Incident**

- (i) The GPA only became involved in this matter after the event when the then Chairman, Mr John Goncalves (“Mr Goncalves”), was asked by the Chief Minister on 9 May 2017 to inquire into an incident which had occurred at the airfield on 8 February, 2017. The GPA conducted an investigation under section 19 of the Police Act as it considered that it did not have authority to involve the Ministry of Defence in its investigation.

- (ii) The GPA's involvement is set out in detail at paragraphs 11 to 23 of the First Sworn Witness Statement of Mr Goncalves dated 31 August 2022 **[A338-A340]** and does not bear repeating here. However, it must be highlighted that the GPA's findings were made after consideration of;
- (a) a report submitted by Superintendent McGrail **[B2121-B2134]**;
  - (b) a joint legal opinion by Lord Pannick KC and Emily Neill of Blackstone Chambers dated 28 February 2017 **[B2136-B2146]**;
  - (c) a letter from Rear Admiral A.D. Radakin, Chief of Staff, Joint Forces Command dated 8 March 2017 **[B2149-B2151]**; and
  - (d) the account given to it on 31 August 2017 by the then Commissioner of Police, Mr E Yome, Superintendents McGrail and Ullger and Inspector Tunbridge.
- (iii) The GPA came to the firm conclusion that the action of and restraint shown by the relevant RGP officers during the airport incident were considered, deliberated, entirely proportional and highly commendable. As such the GPA did not doubt the effectiveness and probity of the policing demonstrated by the RGP in respect of the airport incident. The GPA also considered the action of certain MOD personnel deserved censure and that the Chief Minister should consider whether a full inquiry ought to be undertaken by a body independent of the RGP and MOD so that lessons might be learnt from the incident (paragraph 22 of Mr Goncalves' First Sworn Witness Statement of 31 August 2022 **[A340]**).
- (iv) The GPA recommended that an independent inquiry be held. This was in line with what Mr N. Pyle had indicated was envisaged by the Governor (see paragraph 14 of Mr Goncalves' First Sworn Witness Statement dated 31 August 2022 **[A339]**). In the event, the recommended inquiry was not held.
- (v) Mr Nick Pyle has stated in his paragraph 21.7 of his First Affidavit dated 12 May 2022 **[A247]** that he raised his concerns at the RGP's behaviour on numerous occasions with the GPA, the Governor, the Chief Minister and the Foreign and Commonwealth Office. He criticised the behaviour of the RGP and complained that the GPA review which exonerated the RGP followed a methodology which in his view was severely flawed. Mr Goncalves robustly responded to this at paragraph 9 of his Second Sworn Witness Statement dated 6 July 2023 **[A347-A349]**. If the Inquiry decides to make a finding on this issue it is submitted that Mr Goncalves' version is the more credible version. None of the other GPA members at the relevant time mention Mr Pyle having raised any such concerns.

- (vi) Notwithstanding the criticism by Mr Pyle it is submitted that given the material before it, particularly the legal opinion of Lord Pannick and Ms Neill [B2136-B2146] and the apology by Rear Admiral Radakin [B2149-B2151], the conclusion of the GPA was fully justified.

### **Issue 1.2 – The Arrest of MOD Personnel and removal of Service Personnel Equipment**

- (i) The GPA's involvement in this matter was limited. On or about 19 August 2019 a complaint was made by two MOD employees to the Police Complaints Board ("PCB"), alleging that Mr McGrail had acted outside the remit of a search warrant served on the Joint Provost and Security Unit in relation to the Airport Incident. The PCB's investigation revealed that Mr McGrail had not been involved in the execution of the warrant nor had he been involved in the search of the premises. His involvement had been limited to applying for a warrant. The PCB found that Mr McGrail had not abused his authority (see paragraph 10 of the First Sworn Witness Statement of Mr Francis Carreras dated 18 October 2022 [A515] and paragraphs 3 to 5 inclusive of Mr Francis Carreras' Second Sworn Witness Statement dated 9 March 2023 [A522-A524]) this was communicated to the GPA whose members included the Chief Secretary of HMGOG, Mr Darren Grech and the then Deputy Governor, Mr Nick Pyle. On the 7/8 July the MOD personnel asked that the GPA review the decision of the PCB. The GPA concluded that the request to the GPA to review the decision did not qualify for an appeal given that no new evidence had been provided and the decision of the PCB could not be construed as perverse. This was communicated to Miss Claire Bell by the secretary of the GPA by email dated 2 September 2020 (see document no. 17 pages 87 to 90 of exhibit FC1 [B5993-B5996]).

### **Issue 2 – Assault on the Helicopter Pilot ("the Assault Investigation")**

- (i) The GPA had no knowledge of this incident which played no part in any of its deliberations. The Commissioner has made a ruling on this issue. The GPA has nothing to say on this matter.

### **Issue 3 – Incident at Sea**

- (i) The GPA's involvement in this issue was limited to:

- (a) Dr Britto being informed by telephone by Mr McGrail on a date which he cannot recall that there had been an incident at sea which may have happened outside British Gibraltar Territorial Waters (see paragraph 11 of Dr Britto's First Sworn Witness Statement dated 13 May 2022 [A322]). It would appear that this was done on 8 March 2020 from paragraph 52 vii of Mr McGrail's Third Affidavit dated 4 October 2022 [A69]. It appears from paragraph 63 of the Third Affidavit of Mr McGrail dated 4 October 2022 [A73] that Dr. Britto told him on Whatsapp "*not asking any questions of you in view that it is under investigation and for Coroner to determine. Just like to say that it is unfortunate, to say the least!*". Dr Britto did not have a recollection of this at the time he made his Sworn Witness Statement. On 9 March 2020 there was an exchange of Whatsapp messages between Mr McGrail and Dr Britto in which Dr Britto expressed the view that the investigation into the incident at sea was best outsourced as neither the GPA nor the PCB had the necessary expertise to deal with an incident of this nature (see paragraphs 70 to 71 of Mr McGrail's Third Affidavit dated 4 October 2022 [A76-A77] and Exhibit 16 thereto [B576-B578]). Dr Britto together with Mr Francis Carreras was briefed personally on 11 March 2020 by Mr McGrail (see paragraph 80 of Mr McGrail's Third Affidavit dated 4 October 2022 [A79]). Dr Britto was also a member of a Whatsapp Group named 'Maritime Incident' comprising of the Chief Minister, Dr. Britto, Commissioner of Police, Mr Francis Carreras and the Chief Secretary. The GPA played no investigative or executive role in this matter; and
- (b) the Incident at Sea being invoked by the Governor and the Chief Minister at their meeting with Dr Britto on 18 May 2020 as one of the two reasons for their loss of confidence in Mr McGrail as Commissioner of Police.
- (ii) The GPA did not, however, inquire into the incident and took at face value what the Governor and Chief Minister had told Dr Britto.

#### **Issue 4 – the Findings of the HMIC Report**

- (i) The GPA was obviously aware of the HMIC Report and that it was critical on a number of issues. However, until the report was raised with Dr Britto on 18 May 2020 by the Governor and the Chief Minister, Dr Britto was not aware that the findings were viewed with such seriousness by the Governor and the Chief Minister as to warrant Mr McGrail ceasing to be Commissioner of Police. Indeed, it is apparent from the Sworn Witness Statements of

members of the GPA that in considering whether to exercise their powers under section 34 of the Police Act, the basis of their decision was the loss of confidence by the Governor and the Chief Minister. Of the two reasons invoked by the Governor and the Chief Minister for their loss of confidence, the GPA considered that the HMIC Report was the less serious of the two. The incident at Sea, which involved loss of life, had occurred outside British Gibraltar Territorial Waters, could potentially affect Gibraltar's relations with Spain and had led to a claim for damages by the families of the deceased crew members, was considered the more serious of the two (see paragraph 4 of the minutes of the GPA meeting held on the 21 May 2020 - Document No.4 of Appendix B to Dr Britto's Sworn Witness Statements [B1973]).

#### **Issue 5 – Alleged Sabotage of NCIS (“the Conspiracy Investigation”)**

- (i) This was not a factor which was taken into account by the GPA in its decision to invite Mr McGrail to retire as Commissioner of Police. In fact, the GPA as a whole does not appear to have had any knowledge of Operation Delhi until it was mentioned by Dr Britto at the GPA meeting of 21 May 2020. There is in fact difference of recollections of different GPA members as to the extent it was mentioned and whether it was mentioned at all (for example see paragraph 18 of Sworn Witness Statement of Claire Pizzarello dated 20 October 2022 [A472-A473] who has no recollection of Operation Delhi being mentioned and paragraph 14 of the First Sworn Witness Statement of Mr Francis Carreras dated 18 October 2022 [A516-A517] who recalls it being mentioned).
- (ii) Dr Britto deposed at paragraph 10 of his First Sworn Witness Statement dated 13 May 2022 [A321-A322] that when he met Mr McGrail on 15 May 2020 he told him of an investigation called “Operation Delhi”, that Mr James Levy QC was a suspect and that his mobile phone was in his safe. Dr Britto further deposed that Mr McGrail had told him that the Chief Minister was not happy with him and that he was due to have a further meeting with the Attorney General. Dr Britto found this unusual but thought nothing further about it. In the circumstances, the GPA cannot make any material evidential contribution on this issue.
- (iii) The informal record of the meeting between the Governor, Chief Minister and Dr Britto states at paragraph 4(c) page 4 (see Document No.3 of Appendix B to Dr Britto's Sworn Witness Statements [B1970]) that the Chief Minister “*also shared another event occurring last week which had left him also in a situation where the Commissioner had expressly misled*

*him and which left him unable to believe the Commissioner.” This would presumably have been a reference to Operation Delhi.*

- (iv) In the circumstances it is clear that the GPA had very little information about Operation Delhi which had played no part in its decision to invite Mr McGrail to retire.

**Issue 6 – Complaints made by the GPF to the GPA (“the Federation Complaints”)**

- (i) The evidence of past and present members of the GPA is that they did not receive any complaints against Mr McGrail (see for example paragraph 39 of Mr Goncalves’ First Sworn Witness Statement dated 31 August 2022 [A343] or paragraph 21 of the First Sworn Witness Statement of Mr Francis Carreras dated 18 October 2022 [A519]).
- (ii) Dr Britto has deposed that no formal meetings were held between the GPA and GPF whilst Mr McGrail was Commissioner. He acknowledges that the relationship between Mr McGrail and the leadership of the GPF was fractious and deposes on the reasons for this at paragraph 2 of his Second Sworn Witness Statement dated 29 June 2023 [A328-A329] and paragraph 8 of his Fourth Sworn Witness Statement dated 12 March 2024 [A1443].
- (iii) Mr Morello appears to acknowledge at paragraphs 147-148 of his Witness Statement dated 4 November 2022 [A1225-A1226] that no formal complaint was made to GPA because there was no process which would allow him to do so. Mr Morello stated:

*“147. The room was silent and I can recall Mr Britto saying words to the effect “no please, no, that’s all we need now”. Again, I repeated the same “how do I file a complaint against the Commissioner of Police?”. I paused for a few seconds and said “you can’t, there is no recourse.” I informed persons present that the point I was trying to make was that there were no processes to make complaints against the Commissioner or Assistant Commissioner such as were in place in the UK. Both these individuals expressly fall outside the remit of the Police (Discipline) Regulations 1991. Consequently, conduct which falls short of criminal offences but which would constitute disciplinary offences for any other member of the force would not be so for the Commissioner and Assistant Commissioner.*

*148. I followed this up by saying that if there had been a process for doing so, this would have been done....”*

- (iv) In response to surveys conducted by the GPF some respondents complained about bullying within the RGP. This was discussed between Dr Britto and Mr Morello but Dr Britto does not recall when or where. Dr Britto suggested to Mr Morello that he should produce a draft bullying policy based on the Dignity at Work model. To Dr Britto’s knowledge this was not done (see paragraph 8 of Dr Britto’s Fourth Sworn Witness Statement dated 12 March 2024 [A1443]). In the circumstances, the issues between Mr McGrail and the GPF appeared to Dr Britto to be a conflict and contest as to authority and perspectives as to how the force should be run. This was against the background of an unfriendly relationship between Mr McGrail and Mr Morello. However, no formal complaints were made by the GPF to the GPA nor did the GPF attend any formal meetings with the GPA whilst Mr McGrail was Commissioner. Dr Britto was not judgmental about Mr McGrail or Mr Morello.

**Issue 7 – RGP’s Involvement in the Alcaidesa Claims (“the Alcaidesa Claims”)**

- (i) The GPA had no knowledge of this incident which played no part in any of its deliberations. The Commissioner has made a ruling on this issue. The GPA has nothing to say on this matter.

**Issue 8 – The Letter dated 29 May 2020 from Charles Gomez & Co to GPA (“the 29 May Letter”)**

- (i) This issue will be addressed subsequently together with Issue 10.

**Issue 9 – Mr Pyle’s stated intention as to his Powers under Section 13 of the Police Act (“the Section 13 Issue”)**

- (i) The only member of the GPA who had any contact with Mr Pyle at any material time was Dr Britto, who met with Mr Pyle and the Chief Minister on 18 May 2020. An informal record of that meeting can be found at Document no.3 of Appendix B to Dr Britto’s Sworn Witness Statements [B1967-B1971]. Dr Britto does not recall Mr Pyle giving him any indication that he was prepared to exercise his powers under Section 13 of the Police Act. The Chief Minister

mentioned those powers but did not expressly state that the Governor had any intention to exercise them. This is recorded as follows:

*“Ahead of that the Chief Minister noted that section 13(1)(f) of the Police Act also gives the Governor the authority to call for the resignation of the Commissioner where the Authority has failed to discharge its responsibility”.*

- (ii) Mr Pyle, however, at 14.3 and 14.4 of his First Affidavit dated 12 May 2022 **[A241]** deposes that he had stated at the 18 May 2020 meeting that should the GPA determine that a call to retire was not appropriate he would consider using the powers available to him under section 13(1)(f) of the Police Act and that he would need strong and persuasive arguments not to do so. He states that Dr Britto took note and could see where they were coming from.
- (iii) The conclusion that may be drawn from all the evidence is that Dr Britto was fully conscious of the real prospect that the Governor would exercise his section 13 powers if the GPA did not invite the Commissioner of Police to retire and that Dr Britto communicated this to the members of the GPA during the meeting of 21 May 2020, and his subsequent telephone conversations with those members of the GPA who had not attended the meeting. This is reflected at paragraph 5 of the minutes of the GPA meeting held on 21 May 2020 (Document No.4 of Appendix B to Dr Britto’s Sworn Witness Statements **[B1973]**) where the following is recorded:

*“The GPA felt this recourse was better and “gentler” than the Governor potentially activating Section 13 which allows him to seek his resignation”.*
- (iv) The prospect of the Governor exercising his powers under Section 13 left Dr Britto and the GPA in little doubt that the outcome of this matter was that one way or another Mr McGrail would not remain in office given the loss of confidence in him by the Governor and Chief Minister and that the better option was that he should be invited to retire.
- (v) The above does not detract from the fact that the GPA itself had come to the independent conclusion that given the loss of confidence in him by the Governor and Chief Minister Mr McGrail’s position was untenable.



- (vi) The next the GPA heard was in the form of an email dated 5 June 2020 (Document No.16 of Appendix B to Dr Britto’s Sworn Witness Statements [B2041]) from Charles Gomez & Company to Mr James Neish KC which stated:

*“Our client is gravely concerned by how he has been treated during this process and I welcome your frank acknowledgment that there have been procedural flaws. He is an officer of the highest standing, with an impeccable record over the past 36 years. In those circumstances given how unfairly he has been treated and the improper pressure put upon him to alter the course of a live criminal investigation, our client feels he must apply for early retirement from the Royal Gibraltar Police. [our emphasis]*

*All of Mr McGrail’s rights are reserved”*

- (vii) The GPA had no further involvement in this matter and was under the impression that Mr McGrail would retire without further ado. Dr Britto only gathered that Mr McGrail was negotiating his retirement from an email dated 8<sup>th</sup> June 2020 from the Chief Secretary to the Chief Minister copied to a number of persons including him. On 9 June 2020, after Dr Britto had learnt from the media that Mr McGrail had retired, Dr Britto was informed by the office of the interim Governor that they would be issuing a press release (please refer to paragraphs 37 and 38 of Dr Britto’s First Sworn Witness Statement dated 13 May 2022 [A326]).

**Issue 8 – The 29 May 2020 Letter and Issue 10 - The GPA powers and decision under Section 34 of the Police Act and subsequent withdrawal of that decision**

- (i) Section 34 of the Police Act provides as follows:-

*“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.”*

(ii) The Police Act does not make any provisions as to the process which should be followed by the GPA in the exercise of its powers under section 34. The Police (Discipline) Regulations 1991, which apply to all other members of the force, do not apply to the Commissioner or Assistant Commissioner. The result is that the Commissioner does not have the statutory protections afforded to most other members of the force and the GPA does not have any legislative framework setting out how it should proceed in the exercise of its very important powers under section 34. This is an area which the Inquiry might consider warrants consideration and recommendations.

(iii) The invitation for Mr McGrail to retire was not made on the initiative of the GPA or an independent third party. It was made pursuant to the joint request made by the Governor and the Chief Minister who both have decisive roles under section 34. At page 1 of the informal record of the 18 May 2020 meeting [Document No. 3 of Appendix B to Dr Britto’s Sworn Witness Statements **[B1967-B1971]**] it is recorded that:

*“The Chief Minister said that the position was that BOTH the Governor and the Chief Minister had lost confidence in the Commissioner of Police” **[B1967]***

At page 5 **[B1971]** it is recorded that:

*“...BOTH in fact agree that the Commissioner should be invited to retire by the GPA”*

(iv) Notwithstanding the final three paragraphs of that record, which correctly set out the steps to be followed, it would be inferred that the agreement of the Governor and the Chief Minister would be forthcoming if the GPA wanted to invite the Commissioner to retire.

(v) An inquorate emergency meeting of the GPA was held on 21 May 2020. Minutes of that meeting were produced after the event [Document No.4 of Appendix B to Dr Britto's Sworn Witness Statements **[B1973]**]. It is apparent from these minutes that:

(a) the basis of the decision to invite Mr McGrail to retire was the loss of confidence in him by both the Governor and Chief Minister, which would make it very difficult for him to continue working with them. This, in fact, may be construed as the only reason for the decision. The GPA could not, and in all likelihood, still does not see how, having lost, for whatever reason, the confidence of both the Governor and the Chief Minister, Mr McGrail's position could be tenable.

(b) of the two stated underlying reasons, the Incident at Sea was a major factor in colouring the GPA's decision given the loss of life, its occurrence outside British Gibraltar Territorial Waters, its potential impact on Gibraltar / Spanish relations and civil claims by the families of the deceased crewmen. The GPA however relied on what it was told through Dr Britto by the Governor and Chief Minister and did not make its own inquiries and reach its independent conclusion.

(c) the GPA was very aware of the prospective use of section 13 to bring about Mr McGrail's termination of employment if it did not invite Mr McGrail to retire and was concerned to make Mr McGrail's termination of employment as less unpalatable as possible.

(vi) The decision to invite Mr McGrail to retire (paragraph 5 of Document No.4 of Appendix B to Dr Britto's Sworn Witness Statements **[B1973]**) appears to have been understood in different ways by different members of the GPA. This stated:

*"... it was felt that the best course of action would be to activate section 34 of the Act and invite the Commissioner to retire but always affording him the opportunity to make representations to GPA"*

For example Mr Francis Carreras at paragraph 15 of his First Sworn Witness Statement dated 18<sup>th</sup> October 2022 **[A517]** stated "*it was unanimously agreed that the GPA should consider [our emphasis] inviting Mr McGrail to retire but that he should first be allowed to make representations to the GPA*". This, for example, was also the recollection of Mr

Ernest Gomez (paragraph 39 of his Sworn Witness Statement dated 18 October 2022 [A401-A402]) and of Ms Nadine Collado (paragraph 16 of her Sworn Witness Statement dated 20 October 2022 [A493]). Paragraph 14 of the Sworn Witness Statement of Mr J Alcantara dated 14 October 2022 reflects the unclear thoughts of the GPA which on the one hand gave Mr McGrail the opportunity to make representations but on the other hand could not see how he could remain in office [A356-A357]. The GPA had in fact set a date for a meeting to hear Mr McGrail's representations. However, the decision conveyed to Mr McGrail was ambiguously and erroneously in terms of a final decision subject to reconsideration in the light of representations which he might make.

(vii) By letter dated 22 May 2020, Mr McGrail was informed that the Authority felt it had no option but to exercise its powers under Section 34(1) of the Police Act. Somewhat confusingly, the letter invited Mr McGrail to retire in the interests of policing – which conveyed a final decision – but then invited him to make representations if he so wished within 7 days and to indicate if he needed more time [B1975].

(viii) The above letter was handed to Mr McGrail personally by Dr Britto on 22 May 2020, at Mr McGrail's office. Mr McGrail secretly recorded that meeting. A transcript of that recording and its translation into English are at Exhibit 8A and 8B to the Second Affidavit of Mr McGrail [B336-B367]. These documents speak for themselves. However, the following points emerge:

- (a) Dr Britto felt extremely uncomfortable and found what he was doing was extremely unpalatable;
- (b) Dr Britto conveyed the view that the GPA had no option but to invite Mr McGrail to retire given the loss of confidence in him by the Governor and the Chief Minister;
- (c) Dr Britto believed that if Mr McGrail did not retire the Governor would exercise his powers under section 13 of the Police Act, and retirement was a more dignified way out;
- (d) Dr Britto was asserting that the letter was an invitation to retire and that Mr McGrail was not being forced to do so;

- (e) Any representations made by Mr McGrail would be taken into account before a final decision was taken;
  - (f) Operation Delhi was not a factor in the GPA's decision.
- (ix) The tone and contents of these transcripts show the unprecedented nature of the situation in which Dr Britto and the GPA found themselves in, the lack of clarity as to what the GPA was communicating to Mr McGrail, that the GPA was ill-equipped to deal with a situation of such gravity and complexity as it was being faced with, and the lack of legislative or other guidelines upon which the GPA could look to follow a proper process. What emerges with clarity is that the GPA considered it had no option but to invite Mr McGrail to retire given the loss of confidence in him by the Governor and the Chief Minister, which rendered his position untenable. That view is probably still held by the GPA to this day.
- (x) At Mr McGrail's request Dr Britto sent him a second letter, dated 22 May 2020, setting out the reasons for the loss of confidence in him by the Governor and the Chief Minister **[B1977-B1979]**. This letter had input from the Chief Minister at the request of Dr Britto, who wanted to ensure the accuracy of its contents.
- (xi) The 22 May letter was replied to by Charles Gomez & Company by letter dated 29 May 2020 ("the **29 May Letter**"), setting out a very detailed exposition of Mr McGrail's case. This is at Document No.8 of Appendix B to Dr Britto's Sworn Witness Statements **[B1983-B2010]** and does not bear repeating. The salient points alleged fundamental unfairness and procedural flaws and abuse of process. It was also alleged that the real reason why the Governor and the Chief Minister wanted to terminate Mr McGrail's appointment was his conduct of Operation Delhi.
- (xii) Following receipt of the 29 May Letter the GPA obtained independent legal advice, following which it withdrew its invitation to Mr McGrail to retire. The withdrawal was expressed to be on procedural grounds. The substantive points were not addressed. This was communicated to Charles Gomez & Company by letter dated 5 June 2020 [Document No.15 of Appendix B to Dr Britto's Sworn Witness Statements **[B2039]**]. It may be open to the Inquiry to find that the GPA's process was tainted with substantive unfairness also. However the Inquiry may consider that given the GPA's withdrawal of its invitation to Mr McGrail to retire and evidence of the circumstances of and reasons for its decision, looking into this will not

materially advance the Inquiry's objectives. What the GPA strongly denies is that Operation Delhi in any way influenced its decision to invite Mr McGrail to retire.

(xiii) The GPA's withdrawal of its invitation to Mr McGrail to retire was communicated to the Governor and Chief Minister on 5 June 2020 (Document Nos 17 and 18 of Appendix B to Dr Britto's Sworn Witness Statements **[B2044 and B2046]**)

(xiv) Given the allegations in the 29 May Letter about Operation Delhi, Dr Britto copied this letter to the Governor, Chief Minister and Attorney General. Their respective replies are at Document Nos 12 to 14 inclusive of Appendix B to Dr Britto's Sworn Witness Statements **[B2018-B2037]**.

(xv) An email dated 5 June 2020 was sent from Charles Gomez & Company to Mr J Neish KC **[B2041]** stating, amongst other things;

*"In these circumstances, given how unfairly he has been treated and the improper pressure put upon him to alter the course of a live criminal investigation, our client feels he must apply for early retirement from the Royal Gibraltar Police" [our emphasis]*

(xvi) The GPA had no further active involvement in the events which led to Mr McGrail's retirement.

#### **Additional Issue – Appointment of Mr McGrail as Commissioner**

(i) This is not an issue which is listed in the List of Issues. However, the Inquiry has asked the GPA for evidence on this. We are therefore addressing this matter in these opening submissions.

(ii) The process followed is described at paragraphs 25 to 38 inclusive of the First Sworn Witness Statement of Mr John Goncalves dated 31 August 2022 **[A341-A343]**. The recommendations of the GPA to appoint Mr McGrail were accepted by the Governor and the Chief Minister. The Inquiry may find that the process was beyond reproach.

(iii) The decision of the GPA was a majority one of 7 – 2. Mr Albert Danino, one of the dissentients, has stated at paragraph 27 of his Sworn Witness Statement dated 4 October 2022 **[A370]** the reasons why he preferred Mr Ullger's candidacy. The position of Mr Nick

Pyle, the other dissident, is set out at paragraph 26 of his Second Affidavit dated 4 July 2023 [A266].

- (iv) An issue has arisen between Mr Pyle and other members of the GPA. Most members have deposed that Mr Pyle wanted to open the vacancy to officers of other jurisdictions (see for example paragraph 33 of the Sworn Witness Statement of Revd. Fidelio Patron dated 10 October 2022 [A462-A463]). Mr Goncalves has deposed that Mr Pyle said that he would not support Mr McGrail (paragraph 25 of Mr Goncalves' First Sworn Witness Statement dated 31 August 2022 [A341]) and Mr Lavarello has deposed that Mr Pyle said he would not support either of the two candidates (paragraph 34 of Mr Lavarello's Sworn Witness Statement dated 20 October 2022 [A431-A432]). This is disputed by Mr Pyle.
- (v) Notwithstanding any of the above issues it is submitted that the process leading to the selection of Mr McGrail as Commissioner was transparent, thorough and fair.

**JAMES J NEISH KC**

**KELLY POWER**

**TSN**

**21 MARCH 2024**