
***Inquiry into the Retirement of the Former Commissioner of Police Mr
Ian McGrail (“the Inquiry”)***

**Determination of an application for funding of Core Participant legal
representation for Thomas Cornelio, John Perez and Caine Sanchez**

1. This is a determination of an application for Legal Expenses Funding made to the Inquiry on behalf of Thomas Cornelio, John Perez and Caine Sanchez (**‘the Applicants’**). This is the second application for funding made by the applicants.
2. On 21 October 2022, the Applicants applied for a legal expenses funding award (**‘Funding Award’**) pursuant to paragraph 12 of the Inquiry Protocol relating to Legal Representation at Public Expense (**‘the Funding Protocol’**).¹
3. By paragraph 6 of my ruling dated 28 October 2022 (**‘the First Funding Decision’**),² I recommended to His Majesty’s Government of Gibraltar (**‘the Government’**) that:
 - a. The Government should fund the Applicants’ two legal counsel, on the condition that time spent is divided between leading/junior counsel on a 20/80 per cent basis.
 - b. The Applicants’ legal team should include a lawyer already approved, admitted and enrolled as a barrister or solicitor in Gibraltar.
 - c. Funding should be limited to that which is necessary for considering initial instructions, considering requests for evidence issued by the Inquiry, and advice in relation to making a witness statement in accordance with requests, including the provision of documents to the Inquiry. As the Applicants were not at that time Core Participants, I recommended that funding should not include funding for representation during oral evidence or travel expenses.
 - d. Funding should include reimbursement of the Supreme Court fees for the admission and enrolment of Mr Cooper KC and Mr Sareen as a barristers for the purposes of the Inquiry under section 28(2) of the Supreme Court Act, as required by paragraph 7 of the Funding Protocol.

¹ Available here: <http://coircomp.gi/wp-content/uploads/2022/05/Commissioner-of-Police-Inquiry-Funding-Protocol.pdf>. See paragraphs 10 - 22 for a detailed discussion of the legal position.

² <https://coircomp.gi/wp-content/uploads/2022/11/Decision-on-Funding-Cornelio-Perez-Sanchez-28.10.22.pdf>.

- e. The hourly rates for counsel shall be subject to the maximum hourly rates listed in paragraph 12(e) of the Funding Protocol.
4. Since that ruling, there have been two important developments:
 - a. On 24 January 2023, the Applicants submitted detailed affidavits to the Inquiry, accompanied by documentation.
 - b. On 17 February 2023, the Applicants applied for Core Participant ('CP') status, which I granted in relation to Issue 5 only on 1 March 2023.³
 5. As a result, the Applicants now seek a further funding award to cover the legal expenses of their representation as CPs. CPs have additional participatory rights to other witnesses, as set out in paragraph 3 of the Core Participants Policy.⁴ These are the rights to:
 - a. Be provided with disclosure of evidence which the Commissioner considers is relevant to their participation in the Inquiry;
 - b. Make opening and closing statements;
 - c. Suggest lines of questioning via Counsel to the Inquiry; and
 - d. Apply to ask questions of witnesses during the main Inquiry hearing.
 6. For the reasons set out below, I am satisfied that the Applicants should receive a further Funding Award. However, to ensure that the quantum of this Funding Award is reasonable and proportionate to the Applicants' role in the Inquiry, I recommend that:
 - a. The Funding Award should cover the funding of either: (i) the Applicants' two UK specialist counsel (Mr Cooper KC and Mr Sareen), and one Gibraltar solicitor (Mr Callum Smith); or (ii) one UK specialist counsel (Mr Cooper KC or Mr Sareen) and two Gibraltar lawyers (Mr Callum Smith and Mr Andrew Cardona). My reasons for this conclusion are set out in paragraph 11 below.
 - b. The quantum of funding awarded should reflect that the Applicants are only CPs in relation to one issue in the Inquiry. Accordingly, the time required to prepare for the Inquiry is likely to be significantly less than parties who are CPs in relation to all issues (for example, the amount of disclosure that the

³ <https://coircomp.gi/wp-content/uploads/2023/03/Ruling-on-Application-for-Core-Participant-Status-by-Perez-Cornelio-Sanchez.pdf>.

⁴ <https://coircomp.gi/wp-content/uploads/2022/09/Core-Participants-Policy-22.09.22.pdf>.

Applicants should expect to receive will be less than other CPs). In addition, it will not be necessary for the Applicants' legal representatives to attend every day of the Inquiry hearing.

- c. The funding should also encompass reasonable travel expenses to Gibraltar for Mr Cooper KC and Mr Sareen, subject to the proviso in paragraph (b) above as to attendance.
- d. This expanded scope of the Funding Award should apply from 1 March 2023, the date upon which the Applicants were granted CP status.

Decision as to funding

7. My recommendation above raises three separate issues, which I address in turn below.
8. First, I am satisfied that the Applicants should receive a Funding Award by reference to the considerations in paragraph 4 of the Funding Protocol. I have reached this conclusion for the same reasons as set out in paragraph 11 of the First Funding Decision,⁵ as well as the conclusions in my ruling on the Applicants' Core Participant Status, as to their role and interest in the Inquiry. As the role of the Applicants has now expanded in the Inquiry on being awarded CP status, it is also appropriate that the scope of their funding be expanded. For a CP to participate effectively in the Inquiry, they will require an appropriate level of legal representation.
9. The Applicants have provided assurances that their financial position remains the same as set out in their earlier application for a Funding Award save that they have incurred a further £30,000 in costs in relation to the discontinued criminal proceedings, in which further costs may still be incurred. In the circumstances, I remain satisfied that the Applicants would be unable to fund legal representation as CPs if an award was not granted, and note that the Applicants would request that their CP status be withdrawn if funding is not awarded. However, as several months have passed since that first application, this conclusion shall be subject to and conditional upon the each of the Applicants providing a sworn affidavit within **7 days** of being provided a copy of this draft judgment, disclosing the Applicant's financial resources and confirming (i) their financial position as set out in their first application remains unchanged (or detailing any material change), and (ii) that they have no other source of income or savings or means which would enable them to privately fund their legal representation.

⁵ <https://coircomp.gi/wp-content/uploads/2022/11/Decision-on-Funding-Cornelio-Perez-Sanchez-28.10.22.pdf>.

10. Second, I must consider the composition of the Applicants' legal team. Pursuant to paragraph 11 of the Funding Protocol, where the Chairman determines to make a Legal Expenses Funding award, this will normally be limited to the expenses of a (singular) recognised legal representative. However, as explained in the First Decision, I was satisfied that the Applicants should receive the benefit of advice from their two existing legal counsel, who are both based in the United Kingdom, on the basis of an 80/20 split between senior and junior counsel: see paragraph 13. Due to regulatory requirements in Gibraltar, it was also necessary that the Applicants' legal team included a lawyer already approved, admitted and enrolled as a barrister or solicitor in Gibraltar, and practising from a permanent place of business in Gibraltar: see paragraph 6(b).

11. The Applicants have now made two further proposals:

- a. First, the Applicants propose replacing their existing lawyer in Gibraltar, Mr Andrew Cardona (at £200 per hour), with a more junior lawyer, Mr Callum Smith (£100 per hour). They assert that this will result in a considerable costs saving. As I understand it, both Mr Cardona and Mr Smith are currently representing the Applicants, and were both involved in the related criminal proceedings.
- b. Second, the Applicants invite me to remove the 80/20 split between the work of senior and junior counsel, which mirrored the Funding Award made for Mr Ian McGrail (and had been proposed by Mr Ian McGrail's legal team). The Applicants argue that the arrangement is impractical, that senior counsel is not able to reduce his involvement from 100% preparation, that senior counsel is representing three CPs, and that the difference in hourly rates between senior and junior counsel (£50) is limited.

12. There is logic to this submission as it pertains to the Applicants, and I am therefore willing to remove the 80/20 split between senior and junior counsel. However, to ensure that the Funding Award remains reasonable and proportionate, especially as it is no longer discrete in scope and will fund the Applicants' broader participation as CPs, I recommend that the Award should only extend to funding either:

- a. Mr Smith as solicitor (at his hourly rate of £100), alongside the two existing UK counsel (at their hourly rates of £250 and £200 respectively); Or

- b. Mr Smith as solicitor (£100), Mr Cardona as a second local lawyer, largely in the capacity as a barrister (£200) and one of the existing UK counsel (for example, Mr Cooper KC at £250).
13. These alternatives will come at equal cost to the consolidated fund (a total of £550 per hour for all fee earners), so I am content for the Applicants to decide the most efficient way to structure their team.
14. Third, the Applicants have invited me to backdate the funding award to include expenses incurred from the date of my ruling granting CP status to the Applicants on 1 March 2023. Pursuant to paragraph 16 of the Funding Protocol, expenditure incurred before the making of a Funding Award will not “*normally be recoverable*”. As no reasons have been provided for this request, I am not presently minded to make that recommendation.
15. I draw the attention of the Applicants and their legal team to paragraphs 18 to 28 of the Funding Protocol, by which the assessment of budgets and bills will be managed.

Sir Peter Openshaw

01 June 2023