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

**Determination of an application for funding of legal representation for
the Gibraltar Police Federation**

1. This is a determination of an application for Legal Expenses Funding made to the Inquiry on behalf of the Gibraltar Police Federation (**‘GPF’**).
2. The Inquiry was commissioned under the Commissions of Inquiry Act 1888 (**‘the 1888 Act’**) to inquire into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement. The Inquiry has settled a Provisional List of Issues,¹ which more closely define the issues that shall be investigated. Relevantly to this application, Issue 6 provides that the Inquiry will investigate:

“Any complaint(s) made by the Gibraltar Police Federation (**‘the Federation’**) and/or its members to the Gibraltar Police Authority about Mr McGrail (**‘the Federation Complaints’**).”

3. On 20 October 2022, I granted Core Participant (**‘CP’**) status to the GPF in relation to Issue 6 only² (**‘the CP Ruling’**).
4. On 4 November 2022, following a letter of request from the Inquiry, the Inquiry received a witness statement and exhibits from Mr Maurice Morello, the Chairman of the GPF.
5. On 18 January 2023, the Inquiry received an application 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’**).³ The GPF is seeking a Funding Award in respect of the following matters (which are listed in paragraph 11(a)-(d) of the Funding Protocol):

“(a) considering initial instructions;

¹ Available here: <https://coircomp.gi/wp-content/uploads/2022/09/Provisional-List-of-Issues-22.09.22.pdf>.

² <https://coircomp.gi/wp-content/uploads/2022/10/Ruling-on-CP-Applications-RGP-GPF-Richardson-20.10.22.pdf>. See paragraphs 11 - 13.

³ 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.

(b) considering the material contained in the documentation provided to the applicant with the request issued by the Inquiry that they make a witness statement, so far as is necessary properly to represent the client's interests;

(c) advising the client in relation to and for the purpose of the making of a witness statement, in accordance with a request made by the Inquiry, which request may include a description of the matters and/or issues to be covered in the witness statement;

(d) representing the client during their oral evidence (only Counsel to the Inquiry and the Chairman may ask questions of witnesses; the Chairman may however direct, on application, that a recognised legal representative of a witness may also ask that witness questions)...”

6. Funding is sought in relation to two legal representatives, namely Mr Gilbert Licudi KC and Mr Charles Bonfante, both of Hassans in Gibraltar.
7. According to the GPF's application, funding is sought for: "*the preparation of Mr Maurice Morello's witness statement and for the GPF's legal representation*". As Hassans are also acting for several members of the GPF who have provided evidence to the Inquiry, the Inquiry engaged in correspondence to determine whether the Funding Award was also intended to cover the provision of evidence by these individuals. Hassans has confirmed that the application does not extend to funding of these individuals, and that the extent of the funding it seeks is for representation of the GPF, which is providing evidence through Mr Morello.
8. For the reasons explained below, I have concluded that this application should be rejected, and accordingly do not make a recommendation to the Government for approval in accordance with section 13 of the 1888 Act.

Decision as to funding

9. The Funding Protocol sets out a various considerations which I must take into account when deciding whether to grant a Funding Award. Those include:
 - a. The need to act with fairness (para 1(a));
 - b. The need to avoid any unnecessary cost, including to public funds (para 1(a));
and
 - c. Whether granting the Funding Award would be in the public interest (para 3).

10. According to para 4 of the Funding Protocol, a Funding Award will “*normally ... be made only in cases where*” the Commissioner decides that:

“(a) the conduct of the applicant is the subject of inquiry; and/or the applicant is in any way implicated or concerned in the matters under inquiry; and

(b) significant criticism of the applicant may be inferred from the material contained in the Inquiry Bundle and/or the applicant may be subject to significant criticism in the course of the Inquiry’s proceedings or in its final or any interim report; and

(c) the applicant would be prejudiced in seeking legal representation if there were any doubt about funding for payment of the same and there were no other means for such funding; and

(d) it is fair, necessary, reasonable and proportionate to make a Legal Expenses Funding award to the applicant and that such an award is an appropriate use of public funds.”

11. I have concluded that paragraph (a) is satisfied in relation to Issue 6 for the reasons I set out in paragraph 11 of the CP Ruling. However, the application fails due to the considerations in paragraphs (c) and (d):

a. I am not persuaded that consideration (c) is satisfied by the application. The GPF has clarified that it is seeking funding to prepare the witness statement of a single person (Mr Maurice Morello), and to represent the GPF’s interests at the Main Inquiry Hearing. As the GPF has only been granted CP status in relation to Issue 6, this will also limit both the amount of disclosure that it will receive from the Inquiry and the number of sitting days that it will be necessary for the GPF’s legal representatives to attend at the Main Inquiry Hearing. The work to be completed by the GPF’s legal representatives is therefore contained, and I would expect their fees to be correspondingly modest. The GPF is a representative body, whose functions can reasonably be expected to extend to meeting the legal costs of representing its interests via its elected Chairman. Further, the GPF has another means of funding its legal fees: namely, a deposit account containing substantial funds.⁴ I am satisfied that the GPF has ample resources to meet the costs of its legal representation in the Inquiry.

b. In the circumstances, I do not consider that consideration (d) is satisfied, as it would not be an appropriate use of public funds in circumstances where the GPF has alternative means by which to fund its legal representation, and the

⁴ It is not necessary to reveal the amount contained in this fund in this public ruling.

very purpose of the GPF is to act as a representative body on behalf of its members (who include Mr Morello). By way of comparison, it is commonplace for trade unions to fund the legal costs of its members in employment disputes.

12. As to consideration (b), I accept that there is some criticism of the GPF contained in the evidence of other CPs, including most by Mr McGrail. However, given my findings on considerations (c) and (d) above, I need not reach a definitive conclusion as to whether this amounts to “*significant*” criticism.
13. My conclusions above are consistent with para 6 of the Funding Protocol, which states that Funding Awards “*will ... generally not be made in respect of the legal expenses of substantial bodies... unless there are special circumstances which would justify a call on public funds*”. The Funding Protocol does not define “*substantial bodies*”, but given the size of the GPF’s membership and its level of resources, I am satisfied that it meets this definition. I do not consider that there are any special circumstances which justify a call on public funds, in circumstances where the GPF has sufficient funds at its disposal, and the level of legal funding required is likely to be modest and contained.

Sir Peter Openshaw

01 June 2023