

<p>1 2 (Monday, 6 May 2024) 3 (10.00) 4 MR SANTOS: Our chief witness today is 5 the Chief Minister, the Honourable Fabian 6 Picardo, KC. 7 FABIAN PICARDO, KC, sworn 8 Questioned by MR SANTOS 9 Q. Good morning, Mr Picardo. 10 A. Good morning, Mr Santos. 11 Q. Can I please ask you to turn to the bundle 12 in front of you that is marked "Witness 13 Statements"? That should have the four 14 statements that you have provided to this 15 inquiry inside. Can I please ask you to go 16 through each one and check that it is a copy 17 of your statement and that your signature is 18 on the final page, please? 19 A. I confirm that is the case and I adopt 20 these as my evidence. 21 Q. Thank you very much. Just to make it 22 clear, do you confirm that the contents of 23 those statements are true to the best of your 24 knowledge, information and belief? 25 A. To the best of my knowledge,</p> <p style="text-align: center;">Page 1</p>	<p>1 It became apparent to me that the manner in 2 which Mr McGrail had led that investigation 3 was unnecessarily institutionally 4 confrontational in respect of the MoD. 5 While I believe that the policing objectives 6 were meritorious in the pursuit of the 7 investigation in question, and I gave the RGP 8 my fulsome public support in that respect, 9 that objective could and should have been 10 more quickly, effectively and easily achieved 11 via a more collaborative and conventional 12 route. I was clear in my view that while the 13 MoD had not handled the matter well either, 14 Mr McGrail had led the RGP into a 15 dangerous difficult and damaging situation 16 for Gibraltar in terms of its relationship with 17 the MoD which would and subsequently did 18 require a lot of my time and effort to 19 mitigate". Can you please elaborate on how 20 you say that Mr McGrail led the investigation 21 in an unnecessarily institutionally 22 confrontational way, please? 23 A. Well, I think it's evident from what you 24 will have seen in the evidence already before 25 this inquiry that there were ways in which Mr</p> <p style="text-align: center;">Page 3</p>
<p>1 information and belief, they are the truth, the 2 whole truth and nothing but the truth. 3 Q. Thank you. There is also, if we go to 4 B1109 - it may be at the back of that file; it 5 is, I am told, at the back of that file - the 6 statement that you provided to the RGP as 7 part of the criminal investigation. It should 8 be dated 25 June 2021 and it is exhibited to 9 your first statement to this inquiry. Can I ask 10 you to confirm that the contents of that 11 statement are true to the best of your 12 knowledge, information and belief? 13 A. It is my statement and it is true to the best 14 of my knowledge, information and belief. It 15 is signed on every page as is the custom in 16 the context of criminal statements. 17 Q. Thank you. Mr Picardo, I want to start 18 with the airport incident. Can we please go 19 to A186? This is your first statement, 20 paragraphs 21 and 22. You will have that in 21 front of you. You are welcome to look at it, 22 even in the file in front of you or on screen, 23 and this is what you say at 21 and 22 of your 24 statement. "Mr McGrail led this 25 investigation and the operations in question.</p> <p style="text-align: center;">Page 2</p>	<p>1 McGrail as the lead officer in that 2 investigation could have procured attendance 3 of witnesses from the MoD to New Mole 4 House, could have procured if not seizure the 5 delivery up of electronic communications 6 devices and, indeed, computers or laptops 7 which would not have required that the RGP 8 in effect raid the tower, which I thought was 9 unnecessarily confrontational. We are not 10 talking about the incident at the airport; we 11 are talking about the aftermath of the incident 12 at the airport. 13 Q. What damage do you say was done to the 14 relationship with the MoD as a result of that? 15 A. Well, massive damage. At one stage it 16 was very difficult for me to have my 17 meetings with the CBF. I could sense that the 18 United Kingdom felt that Gibraltar was 19 acting in a manner which was unnecessarily 20 confrontational, that objectives could have 21 been achieved in a different way and that 22 cooler heads should have prevailed. Now, 23 let's not go into politics because this is not 24 what this tribunal is about but one of the key 25 planks of what I do every day is secure</p> <p style="text-align: center;">Page 4</p>

<p>1 British sovereignty over Gibraltar, and the 2 United Kingdom's in my view main and key 3 interest in Gibraltar is as a military base. Of 4 course, it respects the wishes of the people of 5 Gibraltar; of course it would not abandon the 6 people of Gibraltar, but Gibraltar as an asset, 7 as a military asset, is a hugely important 8 plank of how British sovereignty over 9 Gibraltar is secured and maintained and we 10 should not pretend to each other it is not the 11 case. If you undo the United Kingdom's 12 ability to operate its base in a way which is in 13 keeping with what we might all consider to 14 be the reasonable manner of operation, and 15 you have Gibraltar's police, in effect, 16 unnecessarily raiding the tower, then you 17 have a confrontation which could have been 18 and should have been avoided and was not in 19 the interests of anyone in Gibraltar. 20 Q. Can we go to C757, please? You should 21 have those documents in hard copy in front 22 of you. They will also appear on the screen 23 but I am happy for you to work from the hard 24 copy. It should be towards the front. 25 A. Well, if I have the hard copy I can see the</p> <p style="text-align: center;">Page 5</p>	<p>1 Q. This is 7 February. 2 A. This is the runway incident or - 3 Q. Prior[?] to the runway incident. 4 A. Exactly, so the remarks I made to you a 5 moment ago about the tower, on the runway 6 incident, my feeling was completely 7 different. I felt that action was required in 8 that moment. I didn't quite expect that we 9 would be running a car in front of an aircraft, 10 but I was very clear from what I had been 11 told, and I had only been told one side of this 12 equation, that the RGP had to have our 13 support in defence of the jurisdiction of 14 Gibraltar because there appeared to be a 15 misunderstanding, a key misunderstanding, 16 going to the route of jurisdiction in the MoD 17 to suggest that they somehow had exclusive 18 jurisdiction over those areas which were part 19 of the MoD estate, and indeed, on some 20 occasions it has been thought by elements of 21 the MoD that the laws that applied on the 22 MoD estate are not the laws of Gibraltar but 23 the laws of the United Kingdom, and that is 24 not the case of course. So, I was very clear 25 that the RGP deserved our support in this</p> <p style="text-align: center;">Page 7</p>
<p>1 whole thing. 2 Q. Yes, I understand. 3 A. Yes, I now have it. 4 Q. Do you have that? 5 A. Yes. 6 Q. It is a WhatsApp exchange between 7 Commissioner of Police Yome and his senior 8 management team on 7 February, so this is 9 prior to the runway - what we call the 10 runway incident rather than the subsequent 11 arrests. 12 A. Mm-hmm. 13 Q. Commissioner of Police Yome says, "Ian, 14 I've tried calling CBF. It goes into answer 15 machine. Told HE", presumably His 16 Excellency, "and CM", Chief Minister. "HE 17 wants a pragmatic approach and to speak to 18 CBF. I've texted CBF waiting for him to call 19 me. CM wants us to go for the jugular." So, 20 your approach seems to be in contrast with 21 the Governor's. Were those your instructions 22 or your proposals to Commissioner of Police 23 Yome? 24 A. Can you just remind me of what date this 25 refers to?</p> <p style="text-align: center;">Page 6</p>	<p>1 respect. You do recall, of course - I am 2 sorry to extend myself - that the allegation 3 that was put to us at the time was that the 4 Ministry of Defence were putting I think an 5 admitted paedophile on an aircraft in order to 6 ensure that he could avoid the jurisdiction of 7 Gibraltar's courts. That's what we were 8 dealing with in the heat of that moment. 9 Q. Would you accept that that instruction to 10 go for the jugular might have encouraged the 11 RGP to act as it did in the runway incident? 12 A. I didn't know that that was my word. We 13 are not even talking about - I don't think 14 you're talking about four years ago there. I 15 think you're talking about - 16 Q. Seven years ago. 17 A. Seven years ago. I don't know that that 18 was my word. It might have been. 19 Q. If we go to C1 - 20 A. Certainly, Mr Santos, after that I have 21 said in writing that they should be more 22 temperate in the approach that they took, and 23 so it shouldn't be fair to extrapolate from 24 something I said about the runway incident 25 how I felt about the tower incident.</p> <p style="text-align: center;">Page 8</p>

2 (Pages 5 to 8)

1 Q. I am about to take you to C142, which is
 2 I think maybe what you are referring to. This
 3 is an email that you send on the evening of
 4 the runway incident, following the runway
 5 incident.
 6 **A. What is this reference, sorry?**
 7 Q. C142. And you say, "Gents, I just want
 8 to say as a Gibraltarian how proud I am of
 9 the work you've properly done today
 10 asserting our jurisdiction properly and
 11 reasonably for all the right reasons within the
 12 law. It's what future generations would have
 13 expected us to do. It is a pity the MoD have
 14 not been more elegant in the way they
 15 approach this. We have taught them a
 16 number of lessons today. You've done
 17 Gibraltar proud. There are a number of
 18 obvious questions arising as to how some
 19 people behave today. Whether people lied to
 20 you or were lying to themselves is going to
 21 be a relevant question in coming days. We
 22 must not exacerbate matters but we cannot
 23 allow people to get away with having misled
 24 the RGP or having instructed you. The law
 25 is the law for all of us and an armed force

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1 uniform does not suspend application of the
 2 law to an individual, whatever rank. That is
 3 what the UK taught us and we are not going
 4 to allow them to talk us out of it when it
 5 applies to some, but those are issues for
 6 tomorrow. You have enjoyed my full
 7 support today at every stage of the way.
 8 Excellent work. Please pass my sentiments,
 9 if not my email, to those who have been on
 10 the frontline today." Is it fair to say that at
 11 that stage you were expressing wholehearted
 12 support for the runway or what we refer to as
 13 the runway incident and the RGP's handling
 14 of it?
 15 **A. Yes, although perhaps I would not have
 16 run it that way myself if I was the one who
 17 was involved in it, but that's how they had
 18 run it and I was supporting them having done
 19 so.**
 20 Q. And then you say, "we must not
 21 exacerbate matters". What did you intend by
 22 that?
 23 **A. Well, we had taught the MoD the lessons
 24 that we all felt at the time, because we were
 25 at loggerheads, that they had to be taught, but**

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1 **we didn't have to double down on those**
 2 **issues. Also, we would hope that the MoD**
 3 **would be more temperate in the way that**
 4 **they approached things and it takes two to**
 5 **tango.**
 6 Q. If we go to A146 now, please -
 7 **A. I am afraid I don't have that here.**
 8 Q. This is Mr McGrail's statement, fifth
 9 statement to this inquiry, paragraph 13(d). If
 10 we can go down to (d), this is an account by
 11 Mr McGrail of a meeting on 10 February
 12 2017 at the Wessex Lounge in Gibraltar
 13 Airport. I will just let you read that to
 14 yourself.
 15 **A. The whole of paragraph 13 or 14 also?**
 16 Q. 13(d), just (d).
 17 **A. Just (d)?**
 18 Q. Yes, those three paragraphs there.
 19 **A. Yes.**
 20 Q. Do you recall meeting Commissioner of
 21 Police - I am sorry, Mr McGrail, at the
 22 Wessex Lounge?
 23 **A. I have a fleeting recollection that I asked
 24 to see the officers involved before I flew to
 25 London but I cannot remember the meeting**

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1 **in great detail. Obviously, it was more**
 2 **meaningful to Mr McGrail than it was to me**
 3 **and I perfectly understand that, of course,**
 4 **and that may be an accurate version of what I**
 5 **said. I certainly recognised the words, "a**
 6 **gripping John Grisham novel", because it's**
 7 **something that I say on occasion. So, it's the**
 8 **sort of language I would have used.**
 9 Q. Did you describe the three senior military
 10 officials as fucking idiots?
 11 **A. Very likely and I felt that way then and I**
 12 **would be very unsurprised if I didn't feel that**
 13 **way again if I once again reviewed the things**
 14 **that they were saying and doing at the time.**
 15 **It's not a position from which I resale.**
 16 Q. Do you agree that that sort of language
 17 and sentiment could have been interpreted by
 18 the RGP as support for their arrest of those
 19 officials?
 20 **A. They didn't need my support to arrest**
 21 **anyone, but I'm a little surprised. If I can**
 22 **take you to the sentence that says - I'm**
 23 **surprised, by the way, to see Mr McGrail say**
 24 **that my using that language is uncouth, but**
 25 **anyway - but it almost an order. It was close**

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<p>1 to an order that they should be intercepted. I 2 mean, it's quite something given that here the 3 whole premise of this inquiry is that I should 4 not interfere with things as being Chief 5 Minister that Mr McGrail is now relying on 6 something I said in praying that in aid as if it 7 were an order, which I am not capable or 8 empowered to give. 9 Q. The arrests of the three MoD officials 10 then took place on 1 March 2017. Did you 11 learn of the arrests that day? 12 A. Forgive me, Mr Santos, but from 13 memory, it's difficult to recall the exact 14 chronology. I think I found out on the very 15 day, if not as it was happening because of 16 course this was really now putting the cat 17 amongst the pigeons. 18 Q. Were you provided with details as to how 19 those arrests had taken place? 20 A. I believe I was. I believe I had that detail 21 from either the Commissioner of Police at the 22 time with whom I enjoyed an excellent 23 relationship or the Attorney General or CBF 24 or the Governor, or all of the above. 25 Q. Can we look at C207, please?</p> <p style="text-align: center;">Page 13</p>	<p>1 Q. Sorry, "have sworn an oath to". Yes, 2 apologies. Is it fair to say that you do not 3 appear to be expressing any concern or regret 4 over the RGP's actions in that email? 5 A. No, that's right but again I had partisan 6 information at the time. I also recall that it 7 was fundamentally important that one of the 8 RGP in this instance had acted in keeping 9 with their powers and this was a dispute as to 10 powers and jurisdiction. I had to be very 11 clear what side I was on. If I can call it the 12 politics of this, the politics of Gibraltar and 13 the MoD is not featuring here. This is about 14 jurisdiction. It is about the Constitution. It's 15 about continued positioning on the part of 16 some members of the MoD that they did not 17 have to comply with certain legal 18 requirements in Gibraltar, which I found 19 extraordinarily disappointing, but of course 20 we have been brought to this past by the 21 manner in which the investigation had been 22 led by the RGP and the manner in which the 23 MoD had responded to that investigation. 24 Again, these two weren't really tangoing 25 together. They were tangoing at each other.</p> <p style="text-align: center;">Page 15</p>
<p>1 A. Yes. 2 Q. This is an email that you sent on 3 March 3 2017, so two days after the arrest. It is an 4 email to the Commissioner of Police and the 5 Attorney General and you say: "Eddie, 6 Michael, I've now read this and Michael's 7 response. My impression and clear 8 understanding is that the MoD have now 9 fully understood the position and the 10 nonsense and the bravado have been 11 displayed by fools such as those you refer to 12 below in fact illustrates why and how we 13 have found ourselves in this unnecessarily 14 unpleasant situation. If it requires another 15 turn of the screw, which I will not hesitate to 16 support you in, it will once again have been 17 brought about by those who fail to recognise 18 the need to show proper and genuine 19 contrition and respect for the RGP and for 20 our Constitution. Failing to respect our 21 Constitution is not to fail to respect just 22 Gibraltar; it is to fail to respect the UK 23 Parliament and the same monarch that these 24 clowns in uniform have sworn an oath to." 25 A. "An oath to".</p> <p style="text-align: center;">Page 14</p>	<p>1 Q. Do you accept that this would probably 2 have been interpreted by the RGP as 3 wholehearted support for their actions on 1 4 March? 5 A. It's very difficult to answer that question 6 in the positive, as you lead me to do for two 7 reasons. First of all, the RGP is a large 8 organisation. It's more than one individual 9 and interpretation by an organisation is not 10 something that is something I can give you 11 an opinion on, and the second part of your 12 question, that they would have interpreted as 13 support: well, as support for what they were 14 doing jurisdictionally and constitutionally, 15 but not necessarily for the manner in which it 16 was being done, but they could have taken it 17 that way and the person who was the 18 addressee here is Eddie Yome. He was the 19 person to whom I was communicating and I 20 will say that I assumed that Eddie Yome 21 could have interpreted in that way but not the 22 wider organisation. 23 Q. You say there, "If it requires another turn 24 of the screw, which I will not hesitate to 25 support you in". What were you</p> <p style="text-align: center;">Page 16</p>

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<p>1 contemplating by "another turn of the 2 screw"?</p> <p>3 A. Well, whatever Eddie felt that needed to 4 be done and, you know, this is fundamental 5 to Gibraltar's constitutional order and what I 6 express in this email is of course that the 7 Gibraltar Constitution is an Act of the UK 8 Parliament. It's an Order in Counsel. It's a 9 piece of British - that is to say UK - law as 10 much as all of our laws are British laws, but 11 this is an Act of UK Parliament and United 12 Kingdom Armed Forces officers in Gibraltar 13 have to respect the Gibraltar Constitution and 14 so does everybody else, and the territorial 15 ambit of the Gibraltar jurisdiction - of the 16 Gibraltar Constitution - does not end at the 17 gates of a Ministry of Defence establishment. 18 It flows in and covers all of that area. This is 19 fundamental. It's a misunderstanding which 20 occurs far too frequently perhaps even today, 21 although I think after this incident, less so. I 22 have one incident where I was told before 23 Gibraltar had passed laws to recognise equal 24 marriage, that Ministry of Defence officials 25 were planning to carry out a same sex</p> <p style="text-align: center;">Page 17</p>	<p>1 carry out their functions operationally but 2 now it appears that I am being blamed for 3 having given them permission for carrying 4 them out in a particular manner in respect of 5 this issue. So, it seems to me a little bit 6 duplicitous that in one instance I am told you 7 mustn't interfere, you must stay at arm's 8 length and yet in this instance, my attitude 9 has been prayed in aid for the manner in 10 which the police acted as if I was able to 11 interfere and at least direct the spirit of how 12 things should be done.</p> <p>13 Q. It's fair to say that after 1 March 2007[?] 14 you continued to support the RGP in respect 15 of their actions, for example advising 16 Commissioner Yome on the areas in the 17 RAF's legal approach?</p> <p>18 A. (no reply)</p> <p>19 Q. In fact, why don't I show you -</p> <p>20 A. I am sorry, Mr Santos. I was taken by the 21 fact that the email that I am replying to there 22 related to a statement from one of the MoD 23 officers which had been prepared by Charles 24 Gomez.</p> <p>25 Q. Yes.</p> <p style="text-align: center;">Page 19</p>
<p>1 marriage on the MoD estate on the basis that 2 this was legal in the United Kingdom and 3 that they were just telling us as a matter of 4 courtesy. Now, I said, "Look, in my view, 5 such marriages should be permitted but they 6 are not presently permitted by Gibraltar law, 7 and until Gibraltar's Parliament passes laws 8 to enable that, you are not able to carry out 9 such weddings on the MoD estate. That is 10 the level to which the misunderstanding has 11 arisen on some occasions.</p> <p>12 Q. Is it fair to say, though, that there is 13 nothing in this email which shows 14 disapproval on your part or regret or concern 15 about the manner of the arrests?</p> <p>16 A. No, but these are my people. These are 17 my people. The people that I represent - I 18 represent the police officers in the Royal 19 Gibraltar Police - were doing a job which 20 they believed they are doing in the best 21 interests of the people of Gibraltar and I 22 believe that jurisdictionally they are doing in 23 the best interests of the people of Gibraltar. I 24 am not able - and this is a core issue in these 25 proceedings isn't it - to interfere on how they</p> <p style="text-align: center;">Page 18</p>	<p>1 A. We argue any brief at the Bar.</p> <p>2 Q. If you could just stick to answering the 3 questions.</p> <p>4 A. Yes, of course.</p> <p>5 Q. C820, please. This is another message 6 from Mr Yome to the senior management 7 group and he says, "My reply to CBF with a 8 little help from a friend. I'd welcome your 9 views straightaway." This is a draft email to 10 CBF Walliker and it sets out concerns and 11 disappointment about an email that had been 12 received previously which was exacerbating 13 matters. If we just go back two pages - 14 sorry, three pages - to 817, here we have 15 Commissioner Yome forwarding your 16 message or an email that you had sent to him 17 saying, "Every single operative sentence in 18 the email from the CBF contains an error of 19 legal understanding." It is fair to say, is it 20 not, that you continued to support the RGP in 21 relation to this dispute?</p> <p>22 A. Then, to this day and always. I mean, 23 this is fundamental, as I expressed already. 24 Nobody should ever expect me to resile from 25 supporting that which goes to the core of the</p> <p style="text-align: center;">Page 20</p>

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<p>1 existence of Gibraltar's jurisdiction in parts 2 of the MoD estate, in other words that the 3 law of Gibraltar applies in the whole of 4 Gibraltar and that anybody who fails to 5 understand that is going to necessarily have 6 to have that explained to them. You are 7 never going to find me being prepared to 8 resile from that, but I wasn't in charge of this 9 operation or how it was being carried out. 10 Q. Did you at any point before 2020 ever 11 express disapproval or regret or concern 12 about the arrests and the manner that they 13 were made to the RGP? 14 A. I expressed a lot of concern about those 15 issues. I think I discussed it at length with 16 the Attorney General whose time was taken 17 considerably by having to assist us in 18 resolving those issues, with the Governor, 19 with the Minister for Europe, with the Armed 20 Forces Minister in the United Kingdom. Did 21 I discuss it with Eddie Yome? Probably 22 informally. He was my point of contact at 23 the time, and probably in Spanish, you know, 24 in terms that we would understand. Like I 25 said, (Spanish phrase) that sort of thing,</p> <p style="text-align: center;">Page 21</p>	<p>1 go into bat for them despite all aspects 2 having clearly been mishandled by the RGP 3 and parts of the MoD also." 4 A. Yes. 5 Q. How do you square that statement with 6 all the written statements that we have seen 7 demonstrating complete support, 8 wholehearted support, for the RGP? 9 A. Well, very simply because one was about 10 jurisdiction and about defence of the 11 jurisdiction; the other, the statement I'm 12 making now, is about the manner in which 13 things had been carried out. Now, you can 14 defend Gibraltar's jurisdiction as forcibly as I 15 believe it should always be defended, but you 16 could have done it in a different manner, 17 even with a recalcitrant MoD and indeed 18 what we had in the interim three years was an 19 opportunity principally through Michael and 20 his conversations with Tony Radakin and 21 what we were being told the MoD had been 22 told at the time, etc., etc., to dissect and carry 23 out if you might call a political autopsy of 24 what had happened on the ground in those 25 months, and these were dramatic events. I</p> <p style="text-align: center;">Page 23</p>
<p>1 which would mean, "My goodness, look at 2 what's happened as a result of the airport 3 issue", but did I set that down in writing? 4 No, I carried on doing what I was having to 5 do at that time - this was before Covid. We 6 were already dealing with Brexit. Remind 7 me of the year. This was - 8 Q. 2017. 9 A. 2017, so this was as we were negotiating 10 the beginning of the negotiations of the 11 withdrawal agreement, which was hugely 12 intense and which also, of course, this could 13 have created ructions for. 14 Q. If we go to B1439, please, this is your 15 message of 14 May to Mr Pyle. 16 THE CHAIRMAN: 14 May 2020? 17 MR SANTOS: 14 May 2020, yes. I should 18 specify, we are going forward three years, 14 19 May 2020 and this is a message we will 20 come back to later, but it is one where you 21 set out a number of reasons for you 22 beginning to lose confidence and your huge 23 concerns about the senior management of the 24 RGP, and one of the matters you refer to at 25 (iv) is "the runway incident where we had to</p> <p style="text-align: center;">Page 22</p>	<p>1 mean, the lead item on Gibraltar's media for 2 days and causing huge ructions with the 3 Ministry of Defence of the United Kingdom 4 in particular, which I consider to be 5 fundamental to Gibraltar. So, I think it is 6 perfectly reasonable for me, three years later, 7 to have reflected on how those things had 8 been done and to have felt that they had been 9 done inappropriately, which is what I feel 10 today, despite the fact that in the heat of the 11 action, I will of course always defend the 12 Royal Gibraltar Police or any other 13 institution in Gibraltar defending Gibraltar's 14 jurisdiction as they were properly and legally 15 doing. 16 Q. You refer to going into bat for them. 17 A. Yes. 18 Q. Who went into bat and what did the 19 batting entail? 20 A. Well, you've seen that I was asked to 21 redraft messages. Michael Llamas was asked 22 to become involved in negotiations to resolve 23 issues at the time and then to try and curate - 24 I think we'd call it a protocol now between 25 the RGP and the MoD or the Gibraltar</p> <p style="text-align: center;">Page 24</p>

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<p>1 Defence Police - I think it's with the MoD - 2 to try and avoid these issues ever having to 3 happen again in this way, and by the way, I 4 am as clear in my mind today as I was then 5 that as critical as I am of the manner in which 6 the Royal Gibraltar Police did some of these 7 things, supportive of them though I am 8 jurisdictionally, I am as critical of individuals 9 in the Ministry of Defence of the way that 10 they handled this matter. I think it was a 11 particularly low moment in the relationship 12 and in the behaviour of some of the 13 individuals involved. 14 Q. In your message you say, taking it from 15 about five lines down, "In terms of the past 16 few months alone". 17 A. Mm-hmm. 18 Q. You would accept, of course, that the 19 runway incident was by no means in the past 20 few months. It was by that point three years 21 previous. 22 A. Yes, and I think I've listed them in that 23 way, haven't I? 24 Q. Yes, yes, just because you say that, "In 25 terms of the past few months alone", and</p> <p style="text-align: center;">Page 25</p>	<p>1 moment remorseful of the consequences for 2 Gibraltar that his leadership of the operation 3 had resulted in." Mr McGrail obviously was 4 not commissioner at the time. Do you accept 5 that the Commission of Police Yome 6 specifically sanctioned the arrests? 7 A. Well, Mr Santos, that is not something 8 that is within my knowledge and is not 9 something that I can give evidence of. 10 Q. You are unaware as to whether 11 Commissioner Yome sanctioned the arrests? 12 A. I am unaware as to whether he 13 specifically sanctioned the arrests, but I 14 would be unsurprised if he had. I don't know 15 whether he sanctioned the high fiving outside 16 of the tower when they were executing 17 search warrants. 18 Q. Yes. I was asking about the arrests but - 19 A. Yes. 20 Q. Can you specify what part of Mr 21 McGrail's behaviour was to blame for 22 leading the RGP into that dangerous, difficult 23 and damaging situation with the MoD? 24 A. Well, his was the leadership on the 25 ground, and to such an extent that he sought</p> <p style="text-align: center;">Page 27</p>
<p>1 then you say, one, two, three, four - 2 A. I cannot recall, Mr Santos, exactly when 3 we resolved the protocol between the RGP 4 and the Ministry of Defence, but it took 5 Michael some considerable time. I would 6 venture to suggest it took months if not more 7 than a year. 8 Q. Three years? 9 A. It might have done, but certainly this was 10 very much a live issue in my mind. This is 11 about Ian McGrail and that's why it's relevant 12 because Ian McGrail had featured then as 13 you've seen from his own statement. He and 14 I were in contact about these matters. This 15 was an Ian McGrail issue. 16 Q. Can we go back to your statement, 17 paragraph 25, because I do want to focus on 18 the point that you have just made. You say, 19 "Very considerable damage was done to the 20 relationship with the MoD by Mr McGrail's 21 handling of and conduct during this incident. 22 Despite this and despite the political and 23 diplomatic efforts required to resolve it, I felt 24 that Mr McGrail was not displeased with the 25 manner of his actions and not for one</p> <p style="text-align: center;">Page 26</p>	<p>1 to pray in aid my statements to him at the 2 Wessex Lounge as if to give him licence to 3 act in that way. 4 Q. But there is no written record, is there, of 5 you expressing concern to Mr McGrail or 6 even to Mr Yome about Mr McGrail's 7 actions at the time? 8 A. No, there isn't and there wouldn't be. At 9 that stage, Mr McGrail was not my point of 10 contact in the Royal Gibraltar Police. As I've 11 told you already, I would have had 12 discussions about this matter with a number 13 of individuals. I've listed them and one of 14 them would have been the then 15 Commissioner of Police with whom I had a 16 very good relationship but that was not Mr 17 McGrail. 18 Q. Yes, but my question was as to Mr 19 McGrail and Mr Yome, there is no written 20 record of a communication with Mr Yome - 21 A. About [this issue?] 22 Q. Expressing concern, regrets? 23 A. No, but things don't just happen by 24 written record. We are assisted today by 25 what is in writing because our memories are</p> <p style="text-align: center;">Page 28</p>

7 (Pages 25 to 28)

<p>1 human, but it doesn't mean that because I 2 didn't put it in writing at the time, I didn't 3 express that to Eddie at different times or 4 indeed that the Attorney General might not 5 have expressed my views and his views to 6 the Commissioner of Police at the time. I 7 don't know what communications Mr Llamas 8 had with Mr McGrail when he was trying to 9 resolve issues with Sir Tony Radakin. 10 Q. Let's now move on to the incident at sea, 11 if we may. Can we please go to B87? 12 A. B? 13 Q. B87 please. Do you have that? 14 A. I do. 15 (10.35) 16 Q. There is a message at 09.49... Of course, 17 we have your evidence about the earlier 18 messages between you and Mr McGrail 19 where he first notifies you about the incident, 20 and then there is an exchange between you. 21 At 9.49 Mr McGrail messages you and says, 22 "CM, the information suggests that the 23 collision took place outside BGTW 24 approximately six nautical miles east off the 25 runway Santa Bárbara beach." And then he</p> <p style="text-align: center;">Page 29</p>	<p>1 you work out at the time, or subsequently 2 when preparing this witness statement, or at 3 some point in between, that the collision had 4 taken place clearly in Spanish territorial 5 waters? 6 A. Couldn't be otherwise, once you're 7 dealing with six nautical miles. 8 Q. Well, "six nautical miles east", you say 9 there -- 10 A. Yeah. 11 Q. -- so, six nautical miles east, it certainly 12 could not be in Gibraltar waters but it could 13 (depending on where east from) be in, for 14 example from the runway it could be in 15 international waters. 16 A. I do not think that that would be the 17 attitude that Spain would take to six nautical 18 miles off Gibraltar, even if they were to 19 accept our position under the United Nations 20 Convention on the Law of the Sea, because 21 once you are out six miles there, remember 22 that the Gibraltar territorial sea is like a 23 funnel there: it's not straight out, it goes out 24 like a funnel. Right? So, if you are going six 25 nautical miles out from the runway it appears</p> <p style="text-align: center;">Page 31</p>
<p>1 says, "When a death arises from police 2 contact it's best practice to engage with 3 independent investigating team, and I am 4 studying how to achieve this." You respond, 5 "OK, we need to liaise with AG on this and 6 ensure we're transparent on this." "Yes, 7 agreed. Any necessary additional 8 expenditure will be approved." And he says, 9 "Many thanks." Sorry, just before I ask you a 10 question I also want to show you A197, 11 which is your first witness statement at 12 paragraph 63 where you say, "In my above 13 WhatsApp of 0741 hrs, I had asked Mr 14 McGrail specifically about the location of the 15 events, asking if it 'was firmly within BGTW 16 or questionable' and I set out specifically that 17 we should be transparent about what had 18 happened." Then, just skipping over a 19 sentence, "Importantly, by 0949hrs on the 20 day of the incident, some two and a half 21 hours after first communication with me, I 22 was told by Mr McGrail that the incident had 23 occurred approximately six nautical miles 24 east of Gibraltar, north of the easterly runway 25 i.e. clearly in Spanish territorial waters." Did</p> <p style="text-align: center;">Page 30</p>	<p>1 to me to be impossible that you are in 2 BGTW; it appears to me almost impossible 3 to suggest that you are not in Spanish 4 territorial waters and that you are in 5 international waters, by whatever plan you 6 are using to plot your position. So for me, 7 once I was told six nautical miles off 8 Gibraltar, it's in Spanish territorial waters. 9 Q. Then A294, this is Mr Llamas's evidence 10 at paragraph 83, he says, "At 11.40 hrs I sent 11 a WhatsApp message to Mr McGrail 12 erroneously believing that I was sending it to 13 the Chief Minister. That message does not 14 appear in my WhatsApp chat with the Chief 15 Minister, but does appear in my chat with Mr 16 McGrail as an original (not a forwarded) 17 transmission. The message read as follows:" 18 A. Could you just wait for a moment Mr 19 Santos, because I've got A294 but I do not 20 have A295 -- 21 Q. Ah. 22 A. -- and you have -- 23 Q. Thank you. 24 A. -- just gone on to that. 25 Q. Yes.</p> <p style="text-align: center;">Page 32</p>

<p>1 A. Yeah, okay.</p> <p>2 Q. That is probably my fault for not --</p> <p>3 A. No, it's alright.</p> <p>4 Q. -- setting that out --</p> <p>5 A. Don't worry, I can follow. (?)</p> <p>6 Q. -- in my script, but A295 contains the</p> <p>7 message. All I want to focus on there is the</p> <p>8 penultimate sentence of that message which</p> <p>9 says, "PR will not say where incident</p> <p>10 occurred but it is virtually certain it was</p> <p>11 outside BGTW eastern side opposite</p> <p>12 runway." Now those words, "virtually</p> <p>13 certain", which Mr Llamas states in his</p> <p>14 message -- he ended up sending that message</p> <p>15 to the Commissioner of Police. Did that</p> <p>16 message ever find its way to you? That</p> <p>17 WhatsApp message.</p> <p>18 A. Mr Santos, I've given access to my</p> <p>19 counsel so that they could check all my</p> <p>20 WhatsApp messages. If it is in my disclosure</p> <p>21 it was there; if it wasn't...</p> <p>22 Q. It is not. It is not in your disclosure, so I</p> <p>23 just wanted to check the position. But if you</p> <p>24 have no recollection independent of your</p> <p>25 messages then we will move on, I just</p> <p style="text-align: center;">Page 33</p>	<p>1 but I just wanted to ask whether you had</p> <p>2 spoken to, or had any recollection of</p> <p>3 speaking to, Mr Pyle.</p> <p>4 A. So, just to put this in context. At that</p> <p>5 time I would have been seeing Nick Pyle as</p> <p>6 Governor. I would have been meeting with</p> <p>7 him at least once a week. We had a very</p> <p>8 fluid relationship in that period, more that we</p> <p>9 would have throughout the rest of the time</p> <p>10 that he was here, because my interface is</p> <p>11 usually the Governor not the Deputy</p> <p>12 Governor, but at that time he was Governor.</p> <p>13 In the Covid context things were already</p> <p>14 starting to happen, although I believe this is</p> <p>15 before the lockdowns etc. So, I would have</p> <p>16 been in touch with him, and I cannot tell you</p> <p>17 that I did not discuss those things with him.</p> <p>18 In fact, I would be very surprised if I had not</p> <p>19 spoken to him. You have seen a lot of</p> <p>20 WhatsApp exchanges between me and Mr</p> <p>21 Pyle; those would have been less than there</p> <p>22 were telephone conversations with Mr Pyle.</p> <p>23 Our habit was to speak, not just to</p> <p>24 WhatsApp. And indeed, to meet: he would</p> <p>25 often come to my office, or I would go to his.</p> <p style="text-align: center;">Page 35</p>
<p>1 wanted to --</p> <p>2 A. I mean, I was operating from 9.49 in that</p> <p>3 -- on -- in the morning on the basis that it</p> <p>4 happened in Spanish waters.</p> <p>5 Q. Did you speak to Mr Pyle about the</p> <p>6 location of the collision on either 8 or 9</p> <p>7 March?</p> <p>8 A. Going back, now, four years, without the</p> <p>9 assistance of documentation would be very</p> <p>10 difficult. Can you direct me to any part of</p> <p>11 my statement where I have dealt with that</p> <p>12 period in time and my conversations with Mr</p> <p>13 Pyle?</p> <p>14 Q. If we go back to A197, this is your</p> <p>15 section on Kram, so it starts from 56 and</p> <p>16 goes through a few pages. Actually, it ends</p> <p>17 further along in... Well, you do not have to</p> <p>18 look beyond 68. There is nothing in your</p> <p>19 evidence that suggests that there was any</p> <p>20 conversation between you and Mr Pyle about</p> <p>21 the location of the collision. I just wanted to</p> <p>22 make doubly clear that there was no</p> <p>23 communication between you and Mr Pyle.</p> <p>24 We know for example that Mr Pyle met the</p> <p>25 Attorney General on the evening of 8 March,</p> <p style="text-align: center;">Page 34</p>	<p>1 So, it is unimaginable to me that on an</p> <p>2 incident of this sort I would not have been in</p> <p>3 touch with him orally to discuss this issue.</p> <p>4 Q. Assuming that that conversation took</p> <p>5 place, would you have felt at liberty to share</p> <p>6 that sort of information with him?</p> <p>7 A. Of course I would. And no, not just at</p> <p>8 liberty. I mean, I would have felt obliged, I</p> <p>9 would have thought it was proper, it was</p> <p>10 necessary. Remember, at this stage we are</p> <p>11 deep in negotiations with the European</p> <p>12 Union and with Spanish colleagues. You</p> <p>13 know, this was a hugely difficult issue. I</p> <p>14 seem to recall that there were meetings that</p> <p>15 week, and I cannot recall from memory</p> <p>16 whether I was here or at those meetings, and</p> <p>17 whether those meetings required me to fly or</p> <p>18 whether I was driving to them.</p> <p>19 Q. But you do not have a recollection of</p> <p>20 disclosing that information to Mr Pyle or</p> <p>21 discussing it with him; you are just working</p> <p>22 on assumptions -- working assumptions on</p> <p>23 the basis of your...</p> <p>24 A. I think it would require superhuman</p> <p>25 memory for me to be able to tell you with</p> <p style="text-align: center;">Page 36</p>

<p>1 any degree of accuracy, and I do not want to 2 say anything which is not with a degree of 3 accuracy, to point to particular conversation 4 with Mr Pyle, but I very much expect that I 5 would be speaking to him at different times. 6 Q. Can we now go to B100, please. Just 7 towards the bottom of the page there is a 8 message, this is the maritime incident 9 WhatsApp group. In fact, if we could just go 10 back one page, briefly: B99. You will see on 11 screen, at the very least, that it is a log of a 12 WhatsApp group which involves you, Dr 13 Britto, Mr Carreras, Mr Grech and Mr 14 McGrail. I believe -- well, actually it is 15 evident from the second message there that 16 you created the group, "Maritime"...</p> <p>17 A. That's not a message. That's not a 18 message, that's generated by WhatsApp, but - 19 - 20 Q. Well, the second entry. 21 A. Yeah. 22 Q. That you created the group. Can you tell 23 me why Mr Pyle was not involved in this 24 group? 25 A. Well, because this group needs to deal</p> <p style="text-align: center;">Page 37</p>	<p>1 recall, that Mr McGrail had provided you 2 with an update on location since 8 March, the 3 9.49 message? 4 A. If you haven't been able to locate another 5 in writing, it would be impossible for me to 6 point to one which was oral, but it may have 7 happened. 8 Q. Then on the following page you respond, 9 saying (three from the bottom), "Thank you 10 Ian. Location does not worry me so much, 11 helps us in a way. Will discuss directly with 12 you." You explained this, in response to a 13 question by the Inquiry in your evidence, 14 second statement, paragraph 20. This is at 15 A230. 16 A. Yeah. 17 Q. And you say, "The reason I said that the 18 location could help us was twofold: (i) First 19 in demonstrating to the general public in 20 Gibraltar that, in some instances, police co- 21 operation involves cross border activity and 22 that our own police may stray into Spanish 23 waters in the same was as Spanish police 24 often stray into British Gibraltar Territorial 25 Waters. (ii) Secondly, I thought that -</p> <p style="text-align: center;">Page 39</p>
<p>1 with what I might call the Gibraltar issues. 2 This is, as you can see, GPA, it's Police 3 Complaints, it's the Chief Secretary and the 4 Commissioner of Police with the Chief 5 Minister: those were all the issues that were 6 obviously going to come our way. 7 Q. Well, you also envisaged potential 8 questions of sovereignty etc. 9 A. But not in that context. 10 Q. Yes. 11 A. Not in the context of having to deal with 12 those individuals and the issues that were 13 going to come their way. I mean, in fact 14 those are still live. As you know, the recent 15 judgment of the Court of Appeal has made 16 those issues still live. 17 Q. If we look at the second page, at 12 18 March 2020, towards the bottom. There is a 19 message from the Commissioner of Police: 20 "All, an update for your info". And then, the 21 final sentence on that page says, "In terms of 22 the investigation proper, the evidence points 23 at the pursuit and collision occurring outside 24 BGTW, not the best news we want to hear." 25 Was that the first time, as far as you can</p> <p style="text-align: center;">Page 38</p>	<p>1 although it was to cause huge diplomatic 2 issues in the negotiations on foot with Spain 3 at the time - it would be helpful in showing 4 our Spanish counterparts that our police 5 officers were seeking out illicit activity." 6 Does that remain your position? 7 A. Making the best of a bad lot. You have 8 got to find positives, when you're dealing 9 with issues like this, in order to be able to 10 advance things. How else could I try and 11 deal with this issue in a way that assisted the 12 Royal Gibraltar Police, and assisted Gibraltar 13 in the context of the difficult moment we 14 were in in the negotiations? 15 Q. If we go now to C4740. This is your 16 letter on 5 June, and... My apologies, we are 17 actually on the previous page. If we pick this 18 up on the previous page, 4739. Do you have 19 that? 20 A. Yeah. 21 Q. I am looking at the final paragraph, and 22 this is where you deal with, first of all, the 23 search warrants. But in the final line you say, 24 "In fact, it is now clearly established that at 25 no time did the CoP"... Sorry, I think...</p> <p style="text-align: center;">Page 40</p>

10 (Pages 37 to 40)

<p>1 A. Is it the next paragraph? 2 Q. Sorry, it is in the next paragraph. 3 A. The one that says, (inaudible), yes. 4 Q. "Additionally", yes. "Additionally, I 5 cannot accept the CoP's statement in relation 6 to his briefings to me about the incident at 7 sea. This was an incident with extremely 8 serious external political consequences, and 9 very material potential financial 10 consequences to the Government. I have 11 since our original discussion already had to 12 answer questions in the Parliament on this 13 matter, and there has been an additional 14 media reporting related to it both before and 15 arising from my answer, including on the 16 Spanish national broadcaster RTVE. It has 17 been established practice for at least 50 years 18 that Commissioners of Police keep the Chief 19 Minister of the day fully, timeously and 20 spontaneously informed in detail about 21 incidents of that kind. Had CoP properly 22 done so in this case it would not have been 23 necessary for me to exercise the Chief 24 Minister's powers under section 15 of the 25 Police Act for the first ever time. As I</p> <p style="text-align: center;">Page 41</p>	<p>1 could have repercussions for the public 2 purse, for Gibraltar's international reputation, 3 in respect of the negotiations, etc. And so 4 therefore, in consultation with the Governor 5 as the law requires, I exercised the power set 6 out in section 15(1)(a) of the Police Act. 7 Q. Focusing now on the legal claims, if we 8 can go first of all to B1355. This is the 9 timeline that Mr McGrail prepared on 10 Operation Kram, as it was referred to, in 11 response to your section 15 request. And 12 there is an entry in red font towards the 13 bottom of the page, the second red entry, and 14 it records a meeting on 22 April 2020 at 15 midday between Mr McGrail, the Attorney 16 General and the DPP. And it says, "Meeting 17 to discuss Operation Kram and (?) 18 correspondence being received from the 19 lawyers representing the families indicating 20 that they would be making civil claims for 21 damages. I enquired about legal 22 representation, and again the need to agree a 23 Gibraltar strategy. Given all the strands the 24 matter had, 1: Coroner's Inquiry, 2: 25 Professional Standards investigation, 3: the</p> <p style="text-align: center;">Page 43</p>
<p>1 confirmed to the Parliament, His Excellency 2 the Governor has complained of the very 3 same thing." Just to clarify here, in this 4 paragraph you are saying that the 5 Commissioner had not kept you properly 6 informed. Was that only in relation to the 7 legal claims, which we will come to, or was 8 it also as to the location of the incident? 9 A. Well, I didn't know any more. I knew 10 that he hadn't told me about the fact that 11 they'd received claims, and I had had to find 12 out about that (I believe, from memory, 13 because I think it's etched in my memory) 14 from El Faro de Ceuta, in a morning report I 15 receive on all references to Gibraltar in the 16 world's media. And, I was very concerned 17 that I was not getting the full picture about 18 any of this. There were other issues that, as 19 you know, were arising in respect of this 20 matter. The thing that had been fitted at the 21 front of that fast launch that the RGP had had 22 made available to them by the Government. 23 So, it appeared to me that there were a lot of 24 issues that I was not confidently able to say I 25 had been kept fully informed about which</p> <p style="text-align: center;">Page 42</p>	<p>1 Spanish dimension in terms of courts and 2 politics. AG undertook to keep the matter 3 alive with the CM, pending any development 4 on the political front. A Spanish judge has 5 still not been appointed because of the Covid 6 19 lockdown measures in Spain. DPP said 7 the civil claim hadn't been filed yet, so there 8 was no need to engage counsel as yet. AG 9 wanted to have sight of the final investigation 10 report from the UK before giving further 11 thought to the strategy." The Attorney 12 General's evidence to the Inquiry is that he 13 kept the issue of the legal claims alive with 14 you as much as he could. Do you agree that 15 the Attorney General did so? 16 A. I don't know that I can agree with that. 17 He may have mentioned it, but remember 18 that at this stage we are in lockdown: I am 19 hardly seeing the Attorney General. I am 20 seeing, sometimes, the Commissioner of 21 Police more than I am seeing the Attorney 22 General because of lockdown issues, from 23 memory. But certainly, when I read in about 24 the filing of the legal claims it came to me 25 like a bolt from the blue, and that's why I</p> <p style="text-align: center;">Page 44</p>

11 (Pages 41 to 44)

<p>1 sent it round that morning and was so</p> <p>2 concerned that I'd had to find that out from a</p> <p>3 Spanish newspaper, in effect.</p> <p>4 Q. Did the Attorney General inform you</p> <p>5 about correspondence indicating that the</p> <p>6 individuals would be making civil claims?</p> <p>7 A. No. You saw how that issue arose in the</p> <p>8 emails that I forwarded to the Attorney</p> <p>9 General, and then the responses I had back. I</p> <p>10 think --</p> <p>11 Q. The Attorney General forwarded to you?</p> <p>12 A. Forwarded to me and Mr Yeats, etc.</p> <p>13 Q. We will come to those.</p> <p>14 A. Yeah.</p> <p>15 Q. We will come to those.</p> <p>16 A. So, that's what's happening there after</p> <p>17 I've sent this article and said: what on earth is</p> <p>18 happening here? I mean, what is the case,</p> <p>19 that the Attorney General should have told</p> <p>20 me what was going on in this police</p> <p>21 investigation?</p> <p>22 Q. Well --</p> <p>23 A. Quite contrary to what it is alleged</p> <p>24 throughout the rest of the document.</p> <p>25 Q. Actually I do not think it was the police</p> <p style="text-align: center;">Page 45</p>	<p>1 I think your evidence is that the Attorney</p> <p>2 General did not inform you of the</p> <p>3 correspondence referring to potential civil</p> <p>4 claims.</p> <p>5 A. That's exactly the point, because I found</p> <p>6 out about that in El Faro de Ceuta.</p> <p>7 Q. On the 14th?</p> <p>8 A. Exactly.</p> <p>9 Q. Yes. And presumably the DPP did not</p> <p>10 tell you either, about these claims?</p> <p>11 A. No, as I think is established, I have hardly</p> <p>12 any contact with the DPP.</p> <p>13 Q. Then, on 14 May, as you say, you become</p> <p>14 aware through an article in El Faro de Ceuta</p> <p>15 about the claims. If we look at your</p> <p>16 evidence, A198 please. Paragraph 67 of your</p> <p>17 evidence. Actually we can pick it up from</p> <p>18 65, where you refer to the article itself. You</p> <p>19 say, "On the 14th May an article</p> <p>20 appeared in a regional newspaper in Ceuta,</p> <p>21 the home of one of the deceased in the</p> <p>22 collision, which set out that claims were</p> <p>23 being filed by the survivors and the relatives</p> <p>24 / dependants of the deceased and homicide</p> <p>25 charges brought against the relevant serving</p> <p style="text-align: center;">Page 47</p>
<p>1 investigation that was being discussed; what</p> <p>2 was being discussed was correspondence --</p> <p>3 A. Well, there w-- there was a death of two</p> <p>4 individuals at the hands of the Royal</p> <p>5 Gibraltar Police.</p> <p>6 Q. Yes, correct. (?)</p> <p>7 A. There's (?) certainly an investigation into</p> <p>8 that. In fact it is going to have to continue,</p> <p>9 because as I just alluded to a moment ago the</p> <p>10 recent Court of Appeal decision in effect</p> <p>11 sends this back to the Coroner's Court.</p> <p>12 Q. Yes. Mr Picardo, my question was the</p> <p>13 correspondence indicating that civil claims</p> <p>14 would be brought, which was not</p> <p>15 correspondence about a police investigation;</p> <p>16 it was correspondence about civil claims.</p> <p>17 That was what my question related to.</p> <p>18 A. Yeah. And what aspect of it haven't I</p> <p>19 answered?</p> <p>20 Q. I was just clarifying that you said there</p> <p>21 was a criminal investigation, and you implied</p> <p>22 that the Attorney General perhaps should not</p> <p>23 be informing you about a criminal</p> <p>24 investigation, but in fact I was pointing out</p> <p>25 that my question was about correspondence.</p> <p style="text-align: center;">Page 46</p>	<p>1 officers of the RGP.", and you provide a</p> <p>2 translation of that article. You say, "This</p> <p>3 article appeared barely 48 hours after the</p> <p>4 meeting I had held in my office with Mr</p> <p>5 McGrail in which I had determined that he</p> <p>6 had lied to me over the issue of the advice he</p> <p>7 had received from the DPP in relation to the</p> <p>8 search warrant executed at the home and</p> <p>9 office of James Levy. I wrote to the</p> <p>10 Governor about this article and set out my</p> <p>11 concerns about it in a WhatsApp exchange</p> <p>12 which resulted in our agreeing to meet. By</p> <p>13 this stage, I was very concerned about the</p> <p>14 leadership of the RGP. I had already had to</p> <p>15 think hard about my view of Ian McGrail and</p> <p>16 his probity as a result of the integrity of his</p> <p>17 dealings with me. Now I had found out from</p> <p>18 a newspaper that there were claims being</p> <p>19 made in foreign courts (which was no</p> <p>20 surprise, as I had expected they would come)</p> <p>21 involving the RGP and of which I had not</p> <p>22 been made aware of, despite my</p> <p>23 responsibilities for public finance. The self-</p> <p>24 explanatory WhatsApp exchange is set out in</p> <p>25 its entirety hereunder". Did you read that</p> <p style="text-align: center;">Page 48</p>

12 (Pages 45 to 48)

<p>1 article in full at the time? Do you recall 2 whether you read that article in full at the 3 time? 4 A. I believe I would have. 5 Q. If we go to B1209, this is the translation 6 that you provide to the Inquiry as part of 7 exhibit FP1. The penultimate sentence says, 8 "The complaint filed in Spain was also filed 9 in Gibraltar. Now, it only remains to know 10 the judicial response that will be given to the 11 request for the practice of investigative 12 measures that have already been.". And I do 13 not think that is a very accurate translation, it 14 is probably just a Google Translate, but all I 15 want to point out is that the article itself 16 referred to claims filed in Gibraltar. So, were 17 you aware on 14 May that the claims had 18 been filed in Gibraltar as well as in Spain? 19 A. I believe I was not. 20 Q. You believe you were not? 21 A. I believe I was not. That's the day that I 22 find out that these things are happening. 23 Q. Sorry, let me be clearer in my question. 24 Were you aware from the article that the 25 claims were --</p> <p style="text-align: center;">Page 49</p>	<p>1 was another one of the many straws that 2 broke the camel's back in this case. 3 Q. Did you do anything to progress the issue 4 of the claims potentially filed in Gibraltar, 5 before Superintendent Yeats contacted the 6 Attorney General six days later on 20 May? 7 A. To progress the claims? 8 Q. To address it. But, you see this article -- 9 A. What is the -- what is the date of my 10 section 15(1)(a) notice? 11 Q. I believe it is 21 May. 12 A. So, I think that that was where my mind 13 was going as a result of this. 14 Q. Yes, but I am focusing on the claims 15 themselves. Did you give any instructions, 16 or ask for anything to be done, to address -- 17 or at least, for example, a court search to see 18 whether the claim had been filed? 19 A. I believe I -- I believe I would have done 20 so. I cannot recall with who and how, but if 21 there isn't any written evidence of that then I 22 would not have done it in writing, I would 23 have done it orally. 24 Q. If we now go to C3905, please. 25 A. Sorry, which?</p> <p style="text-align: center;">Page 51</p>
<p>1 A. Well yes, that's the point. 2 Q. Yes. 3 A. That I became aware from the article. At 4 least I was put on inquiry -- I mean, believe 5 me, I more than anyone don't believe 6 everything I read in the Spanish press, but I 7 was put on inquiry about it, to check whether 8 this had been the case. 9 Q. Yes. I just want to make clear that by 14 10 May you were aware (or at least put on 11 inquiry, as you say) that claims may well 12 have been filed in Spain and Gibraltar in 13 relation to the incident. Did you raise that 14 with Mr McGrail? 15 A. I don't think my relationship with Mr 16 McGrail at the time was such that I wanted to 17 raise anything with him. 18 Q. You (inaudible) two days after -- 19 A. This was 48 hours after -- 20 Q. -- 12 May. 21 A. -- 12 May, absolutely. 22 Q. Did you do anything to progress the issue 23 before -- 24 A. This was -- if I may put it this way Mr 25 Santos, if you'll allow me a moment -- this</p> <p style="text-align: center;">Page 50</p>	<p>1 Q. C3905. This is an email from Mr Pyle to 2 a contact at the FCO on 15 May 2020, the 3 morning of 15 May. And Mr Pyle says, "We 4 spoke about this yesterday, and as you know 5 the CM has now informed by WhatsApp the 6 senior, wider group of the filing of a case, as 7 per the attached. I've also attached my email 8 to you of 9 March for ease of reference. I am 9 meeting the CM later today to discuss this 10 and other issues relating to the behaviour of 11 the RPG, and in particular its leadership. I 12 will report thereafter. Needless to say, he is 13 extremely worried about many aspects of the 14 case, which we agreed is not good news and 15 will require extremely careful handling." It 16 looks from that that you had forwarded the 17 link to that article to a WhatsApp group 18 which Mr Pyle describes as "the senior, wider 19 group". We -- 20 A. Yes -- 21 Q. -- we have not seen any messages from 22 that group; is that group still available to 23 you? 24 A. Can I just say, I don't think it's fair to 25 characterise this as a message from Nick Pyle</p> <p style="text-align: center;">Page 52</p>

<p>1 to "a contact" at the Foreign and 2 Commonwealth Office. It is actually sent to 3 five individuals I think, from what I can see, 4 at the Foreign and Commonwealth Office. 5 Those would not be contacts; those would be 6 in effect the Gibraltar desk, the Gibraltar 7 office at the Foreign and Commonwealth 8 Office, in my view. So, it's not -- he's not 9 sending it to somebody to inform them -- 10 Q. No, no, I -- 11 A. -- this is part of what you might call the 12 Gibraltar infrastructure in King Charles 13 Street. I have looked for that WhatsApp of 14 the senior, wider group. Because of the date, 15 I believe that that senior, wider group 16 probably no longer exists, and that has been 17 deleted. The amount of WhatsApp traffic 18 that is generated means it's just impossible to 19 keep all chats etc. I think it would have 20 been, at the time (this is before the New 21 Year's Eve Agreement) a WhatsApp group 22 established as we were in the process of 23 negotiation of that particular part of the 24 infrastructure of post-Brexit agreements. 25 Remember, you've got Withdrawal</p> <p style="text-align: center;">Page 53</p>	<p>1 the claims on 19 May. 2 A. Can you just remind me of the date of the 3 report in El Faro de Ceuta? 4 Q. 14th, so five days previously. 5 A. So yes, of course. 6 Q. And by 19 May, had either of you raised 7 that claim with Mr McGrail? The knowledge 8 of the claim. Had either of you raised that 9 with Mr McGrail? 10 A. I don't think there'd been any 11 communication between me and Mr McGrail 12 between 12 May and when I sent in my 13 15(1)(a) letter. And there had been other 14 communications with -- through the Attorney 15 General and Mr Yeats etc, I believe. 16 Q. Yes. 17 A. But not between me and Mr McGrail; he 18 hadn't reached out to me at all. 19 Q. Can we now go to C4090, please. This is 20 an email that you send to the Attorney 21 General in response to an email from Mr 22 Yeats to the Attorney General earlier that day. 23 I think you were already referring to this. I 24 we look at Mr Yeats's email first of all, Mr 25 Yeats says, "The Commissioner of Police is</p> <p style="text-align: center;">Page 55</p>
<p>1 Agreement, then you've got New Year's Eve 2 political declaration, and now you've got the 3 negotiation of what we might call the 4 agreement or treaty between the United 5 Kingdom and the European Union. And, that 6 would probably have been that group. 7 Q. At B1441, please, is an exchange between 8 you and Mr Pyle on 19 May. And I am 9 focusing on 19 May, two messages: one at 10 11.44 and the other at 12.15. And you say, 11 "On the other, what's your instinct on the 12 15(1)(a) report? Shall I seek it, given Met 13 report isn't imminent? I am in two minds." 14 And Mr Pyle responds, "I'm sure or hope 15 CoP has done his own internal investigation 16 and therefore has an internal report. You 17 could (a) ask on the basis of the claim being 18 filed as the peg, or (b) wait until say Friday 19 to see what Joey comes up with. Slight 20 preference to leave this to the GPA, but 21 worry they will not be timely enough. Using 22 15(1)(a) would speed things up, and on 23 balance I'd go for that." It looks from that 24 message that both you and Mr Pyle had 25 discussed, and were aware of, the filing of</p> <p style="text-align: center;">Page 54</p>	<p>1 in receipt of correspondence with regard to a 2 claim for damages following a collision at 3 sea on 8 March this year. I understand the 4 DPP has raised the issue of who should 5 represent the RGP. Effectively" -- 6 THE CHAIRMAN: Have you got it on the 7 screen? 8 A (?). It's on the screen. Thank you. 9 Q. Thank you. Take your time to read it as 10 much as you want to, but it is effectively an 11 email to the Attorney General seeking 12 authority to appoint counsel and advice on 13 who would be best placed, because the DPP 14 had indicated that he did not feel that the 15 OCPL could, as a result of conflict issues. 16 And that gets forwarded by the Attorney 17 General to you, and then your response that 18 you send to the Attorney General but ask him 19 to pass on to the DPP and Superintendent 20 Yeats. You say, "I think it is entirely 21 inappropriate for this matter not to have been 22 raised with me in the first instance by the 23 Commissioner. This matter raises issues of 24 fundamental human rights, the right to life, 25 potential payment of huge amounts of</p> <p style="text-align: center;">Page 56</p>

<p>1 damages, potential extradition and liberty of 2 serving police officers being at stake, the 3 issues of strangled operating procedures 4 which may be in place and the management 5 thereof. All of that is in addition to the huge 6 potential political exposure that arises for 7 Gibraltar as a result thereof, and the 8 concomitant and dangerous issues of 9 sovereignty and the United Nations 10 Convention on the Law of the Sea. Indeed, it 11 is difficult to think of an issue as fundamental 12 as this affecting the RGP, certainly in the 13 time I have been in office. There is no 14 consideration in the email below of claims or 15 offences going beyond the officers crewing 16 the vessel, which is also in my view an issue 17 that may need further consideration. As you 18 know, it comes against the backdrop of the 19 very unflattering report from the HMICFRS. 20 I am therefore surprised and greatly 21 disappointed that these issues have not been 22 the subject of a detailed submission to me by 23 the Commissioner in respect of the events in 24 question and the events which now arise. I 25 shall therefore be writing directly to the</p> <p style="text-align: center;">Page 57</p>	<p>1 have occurred to you at the time of collision, 2 or shortly after the collision? 3 A. They would from the first moment have 4 arisen in my mind, and I was expressing 5 them here in the context of the filing of those 6 self-same claims about those fundamental 7 issues. 8 Q. So was your issue purely that you had 9 learnt about these claims from the media 10 rather than the Commissioner of Police? 11 A. No, no, my issues were multifaceted and 12 I cannot accept that they should be suggested 13 to be just one. It was of course fundamental 14 that I had heard this from public sources in 15 another jurisdiction and not from the 16 Commissioner. It was fundamental that we 17 get right something which had resulted in the 18 death of two individuals at sea, whoever 19 those individuals might be. It was 20 fundamental that we get to the bottom of why 21 on earth our Royal Gibraltar Police officers 22 were operating outside the jurisdiction of 23 Gibraltar. It was fundamental that the Chief 24 Minister and the Governor should have all 25 information timeously about this. It was</p> <p style="text-align: center;">Page 59</p>
<p>1 Commissioner on on this and all other 2 aspects of this matter. In the interim, I do not 3 authorise the incurring of any expenditure in 4 briefing out of this matter at this stage." And 5 as I say, you ask for it to be passed on. Were 6 you surprised by Mr Yeats's email and its 7 reference to the claims? 8 A. I was very surprised. I -- I'm very clear 9 in my mind that if 12 May hadn't happened, 10 what would have happened is that the 11 Commissioner would have written to me 12 about these issues, and hopefully more 13 timeously. 14 Q. So you were surprised by the fact that the 15 Commissioner had not written to you, but 16 obviously you were not surprised by the fact 17 there were claims. 18 A. Of course not, I was expecting that. 19 Especially by then: this is six days after I'd 20 read in the Spanish newspaper that this was 21 happening. 22 Q. You refer to "issues of fundamental 23 human rights, the right to life, potential 24 payment of huge amounts of damages". It is 25 fair to say that those issues would already</p> <p style="text-align: center;">Page 58</p>	<p>1 going to be a key issue going forward that the 2 Parliament in Gibraltar was going to have to 3 make an appropriation in respect of the costs 4 that were going to arise, both in respect of 5 legal fees and payments that might 6 eventually have to be made if liability was 7 found. All of these things are playing on my 8 mind at the time. And, you know, look at this 9 very formal message I've sent to Michael 10 Llamas, who I know well and with whom I 11 correspond very fluidly: I was very, very, 12 very worried about this. I was, and remain, 13 very worried about this. This was in my 14 view more than just a tragic case; this was an 15 incident that led to the loss of two lives. 16 Whoever those individuals may be, we have 17 to be very conscious of the fact that they 18 should not have lost their lives that night. 19 We had police officers who had been put at 20 risk. And frankly, in my view it was very 21 clear that standard operating procedures 22 should have prevented an incident like this 23 from happening in these circumstances, and I 24 have always been very clear in the views I 25 had expressed to Commissioners of Police</p> <p style="text-align: center;">Page 60</p>

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<p>1 that the Royal Gibraltar Police should 2 operate within Gibraltar's jurisdiction and 3 should only go outside it in certain very 4 defined circumstances which I think I have 5 set out in my evidence and I don't need to go 6 into it today but I had many things playing in 7 my mind at that time. 8 (11.10) 9 Q. Were you annoyed at the Attorney 10 General for not informing you about the 11 claims until 20 May? 12 A. Well, I wasn't aware that the Attorney 13 General should have informed me about the 14 claims before then until I've seen the timeline 15 in these proceedings but what I would say is 16 that the intensity of the work that we were 17 doing at that time, both in relation to Covid 18 and negotiations, suggests to me that nobody 19 should have relied on the Attorney General 20 as an interlocutor to me on these issues; in 21 particular, given my section 14 22 responsibilities in respect of funding for the 23 Royal Gibraltar Police and this, as Mr Yeats 24 identifies, in this guise it is essentially an 25 issue of funding.</p> <p style="text-align: center;">Page 61</p>	<p>1 that Mr McGrail sent to you as a result of 2 your email that we have just looked at and 3 you say, "Dear Governor, please see below 4 which I have just received from the CoP. 5 Given the seriousness of the matter I would 6 appreciate the opportunity to discuss with 7 you my intended response. I consider this is 8 a trigger, the only appropriate response to 9 which will be the exercise of my powers 10 under section 15(1)(a)." Why did you feel 11 the need to forward this to Mr Pyle? 12 A. Because you have already shown me that 13 I was corresponding with Mr Pyle on these 14 issues and he and I had a very fluid 15 discussion about this issue and I thought it 16 was appropriate that he should have this 17 email so that he and I could continue to 18 discuss this matter with all of the information 19 open and transparent before each of us. 20 Q. Were you adding fuel to his concerns, his 21 existing concerns about the incident at sea? 22 A. The Governor was not a stove to which 23 one adds fuel. The Governor has 24 responsibilities under the constitution in 25 respect of policing and in respect of external</p> <p style="text-align: center;">Page 63</p>
<p>1 Q. Is it fair to say that by this point, after 12 2 May, Mr McGrail simply could do nothing 3 right in your eyes? 4 A. To a very great extent, it is true that after 5 12 May I found it very difficult to believe 6 anything that Mr McGrail did or said or to 7 even consider that the things that he did he 8 was doing in good faith. My loss of 9 confidence in him after 12 May and finding 10 out that after that meeting in my office that 11 what he had said was untrue was huge. I 12 cannot underestimate for you just how 13 catastrophic the loss of confidence was. I 14 considered that the relationship between a 15 Commissioner of Police and a Chief Minister 16 is a little like the relationship between an 17 insurer and an insured. It has to be a 18 relationship of utmost good faith, uber bone 19 fides, and I had lost confidence in Mr 20 McGrail's relationship with me as a result of 21 what happened on 12 May. 22 Q. If we go to C4117 please, this is an email 23 exchange between you and Mr Pyle on 20 24 May 2020 and you send him --- you have 25 effectively forwarded to him the response</p> <p style="text-align: center;">Page 62</p>	<p>1 relations and it is fundamentally important 2 that the relationship between Governor and 3 Chief Minister is as open and as positive as it 4 can be and that is how I have discharged my 5 functions in the 12 plus years I have had the 6 distinction and honour of being Chief 7 Minister and will continue to do so. It would 8 have been remarkable, given the 9 circumstances that we were dealing with, that 10 I had not shared this with the Governor and I 11 would have been rightly open to criticism for 12 failure to have done so. 13 Q. Why did you consider that the only 14 appropriate response to that email was to 15 exercise your powers under section 15? 16 A. For the reasons that I think I had already 17 indicated in the messages you took me to 18 before, because I had already said before that 19 I was not confident that I was getting all of 20 the information and, therefore, this was the 21 culmination of my view in respect of this 22 particular matter. 23 Q. If we go back to B1441, this is the two 24 messages that are exchanged between you 25 and the governor and just focusing on the</p> <p style="text-align: center;">Page 64</p>

<p>1 governor's message, his second sentence, 2 "You could (a) ask on the basis of the claim 3 being filed as the peg," was this a case of 4 using the claims being filed as a "peg" for the 5 section 15 report? 6 A. He uses the word "peg," I use the word 7 "trigger." I mean, it really is the moment that 8 we felt I had to act and you will know that 9 section 15 requires me to act with the consent 10 or information of the governors. 11 Q. I only ask you that because that message 12 predates Commissioner Yeats' email and he 13 is referring to the claim being filed as the 14 "peg" on 19 May. 15 A. Yes. 16 Q. So the following day the Yeats email 17 comes in? 18 A. Yes, but, Mr Santos, remember that you 19 have also rightly taken me to the fact that we 20 became aware through this public source on 21 14 May --- 22 Q. Yes, the 14th. 23 A. --- that claims have been filed, all the 24 more so reason to be very concerned about 25 this and wanting the section 15 report.</p> <p style="text-align: center;">Page 65</p>	<p>1 why did you not seek the section 15 report 2 earlier than that? 3 A. So can you just remind me --- and you 4 may not be able to but I have referenced it 5 there, that I made a ministerial statement on 6 the day before. A ministerial statement is not 7 something that I make lightly. It would have 8 been something important but there were a 9 number around that time because of Covid, 10 so it's very likely that it was a Covid related 11 matter. So a ministerial statement is being 12 drafted. I don't know whether people realise 13 this but this is not the United States of 14 America, nobody drafts my ministerial 15 statements, I have to draft them myself and 16 this section 15 letter which I can see extends 17 to nine pages was not drafted by anybody 18 other than myself, so this is a period through 19 which information is coming to me and I am 20 exchanging views with the governor which is 21 what the statute requires I should do in terms 22 of information until we decide whether or not 23 I should press this button, so we press it at 24 the time that we consider it is necessary to 25 press it. Could we have pressed it earlier?</p> <p style="text-align: center;">Page 67</p>
<p>1 Q. On 21 May you send the section 15 2 request to Mr McGrail, this is at B1249, and - 3 --- 4 A. I have given up trying to understand your 5 numbering. 6 Q. I am not in control of that. 7 A. So B1249. I have got it, I am sorry. 8 Q. It is all right. My understanding is that 9 they are prepared in accordance with the 10 order of references in my note but it may be 11 that things have changed since then, but 12 apologies for the confusion. 13 A. That's all right, it's a matter for you. 14 Q. At B1249 there is a --- your section 15 15 request, and you set out in that request all the 16 concerns that have given rise to it, this is on 17 the third page of that document, "Reasons for 18 exercise of section 15 powers," reports in the 19 Spanish and Gibraltar media, questions in the 20 Spanish congress, answer provided in 21 congress, diplomatic note for Val (?) and 22 email communications culminating in an 23 email of 20 May. Apart from that email of 24 20 May, you were aware of all the other 25 concerns that you raised for some time, so</p> <p style="text-align: center;">Page 66</p>	<p>1 Perhaps we could have but that is to suggest 2 that this is the only thing I was dealing with 3 at the time and it was not and unfortunately it 4 is necessary to make time for everything and 5 to prioritise things as may be necessary. 6 Q. By this point on 21 May you had already 7 met Mr Pyle, you had already met Dr Britto, 8 and informed him of your loss of confidence 9 and Mr Pyle's loss of confidence in Mr 10 McGrail, and the GPA was going through its 11 section 34 process, why did you still feel the 12 need to seek this report if you already 13 understood that the GPA would be calling on 14 him to retire? 15 A. First of all, that process was not a fait 16 accompli as unfortunately later transpired. 17 Second, the world does not stand still when 18 the commissioner is replaced. This section 19 15 notice would have to be complied with by 20 the next commissioner if it had not been 21 complied with by this commissioner. The 22 lack of information in the context of this 23 report had to be taken up with Ian McGrail 24 but it would have been something in respect 25 of which the rest of the Royal Gibraltar</p> <p style="text-align: center;">Page 68</p>

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<p>1 Police should also answer, at least the senior</p> <p>2 management team. So that is why we had to</p> <p>3 continue through this process.</p> <p>4 Q. Were you intending to put further</p> <p>5 pressure on him by doing so?</p> <p>6 A. This is not about pressure. Imagine the</p> <p>7 pressure that I was under in respect of these</p> <p>8 matters. If you are sending me into</p> <p>9 negotiations with Spain, I think literally in</p> <p>10 the morning or the morning after the two</p> <p>11 Spanish citizens have been killed in Spanish</p> <p>12 waters by the Royal Gibraltar Police on the</p> <p>13 east side of Gibraltar, so, you know, pressure</p> <p>14 is something that we all had to deal with in</p> <p>15 the roles that we are designated to discharge.</p> <p>16 It was not my intention to do this thing, the</p> <p>17 section 15 notice, in order to put pressure</p> <p>18 but, you believe me, Mr Santos, drafting a</p> <p>19 nine page section 15 notice and ensuring it</p> <p>20 was in keeping with the statute and set out all</p> <p>21 the requirements of the information I had to</p> <p>22 give the RGP, to elicit all the information I</p> <p>23 needed from the RGP also put a lot of</p> <p>24 pressure on me.</p> <p>25 Q. Can we now look at the end of this which</p> <p style="text-align: center;">Page 69</p>	<p>1 A. Yes.</p> <p>2 Q. Mr McGrail says, "The CM's comments</p> <p>3 [referring to the section 15 request] were</p> <p>4 completely at variance with the WhatsApp</p> <p>5 discussions which we had had in a special</p> <p>6 group that he had himself initiated the day</p> <p>7 after the accident. The report was requested</p> <p>8 within seven days of the date of the letter (i.e.</p> <p>9 by 28 May). I duly submitted a 30-page</p> <p>10 report on 27 May 2020. I have to this date</p> <p>11 received no acknowledgement of receipt, or</p> <p>12 any comments or feedback on the report."</p> <p>13 Do you agree with Mr McGrail that your</p> <p>14 request was at variance with your earlier</p> <p>15 communications to him?</p> <p>16 A. Of course not. My earlier</p> <p>17 communications with him were setting out</p> <p>18 my support for the officers on the front line.</p> <p>19 This, some three months later, was saying,</p> <p>20 "I'm not getting the information I need in</p> <p>21 order to properly discharge my functions in</p> <p>22 respect of this matter." There was no conflict</p> <p>23 between the two. They both dealt with</p> <p>24 completely different aspects of the matter.</p> <p>25 Q. Had you previously expressed any</p> <p style="text-align: center;">Page 71</p>
<p>1 is on 1257, the end of your notice, you</p> <p>2 require --- well, you say, "I shall look</p> <p>3 forward to hearing from you and I would</p> <p>4 expect to have formal confirmation of receipt</p> <p>5 of this requirement within the next 24 hours</p> <p>6 and within seven days of the date of this</p> <p>7 letter, a detailed response." Why did you</p> <p>8 require a report within seven days?</p> <p>9 A. In order to be able to make the</p> <p>10 assessments I needed to make. Indeed at that</p> <p>11 time, you will recall the date is one day</p> <p>12 ahead of June, so if I needed to make a</p> <p>13 different statement to the Parliament about</p> <p>14 the lines in the police budget for that year in</p> <p>15 order to appropriate more money for a</p> <p>16 purpose, I would need to know quickly. As it</p> <p>17 turned out, I also opened the door for more</p> <p>18 time to be sought but no more time was</p> <p>19 sought so I must have got it relatively right</p> <p>20 because they responded in that period.</p> <p>21 Q. If we look at A27, this is Mr McGrail's</p> <p>22 first statement, we may have to pick it up on</p> <p>23 the string but I can assure you that it is two</p> <p>24 very short paragraphs, paragraph 70 and 71.</p> <p>25 Do you have that?</p> <p style="text-align: center;">Page 70</p>	<p>1 dissatisfaction or concern to Mr McGrail as</p> <p>2 to his sharing of information, other than the</p> <p>3 email of course, the 20 May email?</p> <p>4 A. I had set that out in the 20 May email.</p> <p>5 Q. Other than that?</p> <p>6 A. I don't think I was expected to be chasing</p> <p>7 the Commissioner of Police for information I</p> <p>8 did not know existed. In other words, how</p> <p>9 was I supposed to discharge all of my</p> <p>10 functions and also badger him for</p> <p>11 information on things that may or may not be</p> <p>12 happening in the context of an investigation?</p> <p>13 Please recall, these things don't happen in</p> <p>14 vacuo. This happened, I think, on 3 March --</p> <p>15 --</p> <p>16 Q. 8 March.</p> <p>17 A. 8 March, we are now at the end of May.</p> <p>18 For the first time in the history of Gibraltar</p> <p>19 and western civilisation, democratic</p> <p>20 governments had locked up their people in</p> <p>21 breach of liberal traditions that we have all</p> <p>22 defended since democracy arrived in</p> <p>23 Gibraltar and certainly in the western world.</p> <p>24 It was a very difficult period. The last thing I</p> <p>25 would expect to have to be doing was to be</p> <p style="text-align: center;">Page 72</p>

<p>1 chasing the Commissioner of Police for 2 information that he had and should be 3 sending me, which I didn't know he had, so 4 should I today when I leave here write to the 5 current commissioner and say, "Look, is 6 there anything you need to tell me that you 7 haven't told me"? 8 Q. I will take that as a rhetorical question. 9 A. Yes, of course, absolutely. 10 MR SANTOS: Thank you. I think, given 11 the time, it is 25 past eleven, now would be a 12 good time for the mid-morning break, sir. 13 THE CHAIRMAN: Yes, a short break. 14 (Short adjournment) 15 FABIAN PICARDO (Continued): 16 Questioned by MR SANTOS (Continued): 17 Q. Chief Minister, can we now turn to 18 C3344, which should be an email of 30 April 19 2020? 20 A. Yes, I have it. 21 Q. This is an email from you to --- we are 22 moving on to the HMIC report. 23 A. Right. 24 Q. This is an email to you from Mr Pyle on 25 evening of 30 April 2020 about two weeks</p> <p style="text-align: center;">Page 73</p>	<p>1 Quite simply, as I see it, the RGP needs to 2 modernise in all senses of the word." Did 3 you read the report at that point? 4 A. I don't know that I did at that point. I 5 mean --- and again I am sorry to harp back to 6 this, but it is fundamental that we do, we had 7 just locked down Gibraltar. I think at this 8 stage in April we were still very much in 9 lockdown. I had just taken an emergency 10 budget to the Parliament, I had just sought a 11 loan of half a billion pounds from the United 12 Kingdom and a sovereign guarantee in 13 respect of security for that. There were a lot 14 of things in my mind at the time. The last 15 thing I needed were problems with the RGP 16 and HMIC inspection report. I don't believe 17 I answered this email and it is very likely that 18 is why you are asking me about it and it is 19 very likely I think I had a video conference 20 with Nic Pyle at that time - I think we were 21 having video conferences - in which we 22 mentioned this email but I didn't at that stage 23 have time to read it or drill down into it. I 24 think somewhere else in the evidence there is 25 a reference to communication between me</p> <p style="text-align: center;">Page 75</p>
<p>1 before the meeting at number 6 between you 2 and Mr McGrail and moving on now from 3 the incident at sea, so in between those two 4 points in time, and he sends you an email that 5 says, "Dear CM," he refers to the report, and 6 he then says in the second paragraph, 7 "Having studied the report I find it to be 8 quite damning and it will need careful 9 handling. In essence, HMIC found the RGP 10 to have only met two out of the eight areas 11 for improvement identified in 2016. My own 12 sense is that HMIC were very disappointed 13 indeed to find so little progress had been 14 made since their last inspection. This is a 15 shame and their willingness to help the RGP 16 in the future may have diminished as a result. 17 This is something we must help correct but I 18 don't think the issue is as bad as the headline 19 suggests and believe that it is an issue of 20 culture and leadership more than anything 21 else. Most of the issues should be relatively 22 easy to fix though it will take a collective 23 effort, driven bottom up from within the RGP 24 as much as from its leadership which needs 25 to be both more strategic and directive.</p> <p style="text-align: center;">Page 74</p>	<p>1 and my then Minister for Justice about the 2 issue of the report, so I don't think at that 3 stage I had had a chance to look at this in 4 detail. 5 Q. If we can go to your statement at 107, this 6 is your first statement, 107? 7 A. Page 107 or ---- 8 Q. Sorry, paragraph 107, page A206 which 9 is the 37th page of your statement ---- 10 A. Yes. 11 Q. You say, "I want to be clear in telling the 12 Inquiry that I was not able to find sufficient 13 time to review the detail of the HMIC 14 recommendations at this time," and you 15 make the point that you now make about 16 lockdown but you say then, "I want to be 17 clear also in stating that the report did not 18 make me lose confidence in the integrity or 19 probity of Mr McGrail as Commissioner of 20 Police. I was, however, clearly of the view 21 that, once I reviewed the conclusions, I was 22 persuaded that they did reflect on Mr 23 McGrail's ability to maintain the efficiency 24 and effectiveness of the RGP, which are also 25 key aspects of the criteria of the power of the</p> <p style="text-align: center;">Page 76</p>

<p>1 Authority in section 34(1) of the Police Act. 2 I was, thereafter, also not confident that Mr 3 McGrail could be the person to address the 4 HMIC recommendations, given he had 5 demonstrably failed to act since 2018 and 6 matters had obviously deteriorated and not 7 improved on his watch. He had, for instance, 8 as far as I am aware, not established the 9 working group he had suggested in his job 10 application was 'imperative.' So you say 11 that once you read the report you found it 12 was very damning, did you raise that with 13 anyone at the time when you read it? 14 A. I think I may have raised it with my then 15 minister for justice, I think I may have raised 16 it with the former minister for justice in 17 discussion as well and certainly in 18 discussions with the governor. 19 Q. Mr Pyle we have seen in his evidence 20 says, "Most of the issues should be relatively 21 easy to fix although it will take a collective 22 effort," and then he says --- I am sorry, I 23 should give you the benefit of that but it is at 24 C3344 ---- 25 A. Yes, I have it.</p> <p style="text-align: center;">Page 77</p>	<p>1 at that stage with many, many, many other 2 pre-occupations on my mind, I was happy to 3 leave to Nic that which was Nic's because 4 this is a matter for the Governor really. The 5 police are a matter for the Governor and for 6 the Minister for Justice unless the issue 7 becomes so important that it has to come to 8 me, so when you look at these issues 9 individually at this time, yes, of course I was 10 happy to allow the Governor's view to 11 prevail in this respect but all of these things 12 then came together like the strands of 13 circumstantial evidence and became a cord 14 that for me was the straw that broke the 15 camel's back after my huge loss of 16 confidence in Mr McGrail on 12 May 2020. 17 Q. You referred a couple of times to the 18 Minister for Justice, Minister of Justice, what 19 was your recollection of her views at the 20 time? 21 A. I think --- and there is a reference I think 22 in one of the WhatsApp between me and her, 23 I think, where she says, "I think it's 24 manageable," or words to that effect. 25 Q. I think you are referring to --- in fairness</p> <p style="text-align: center;">Page 79</p>
<p>1 Q. He says in the final substantive 2 paragraph, "My initial thought is to suggest 3 the Commissioner makes the report public at 4 the same time he publishes his road map on 5 the way forward, so being pre-active rather 6 than reactive," and your evidence on this is at 7 A105, so just going back two paragraphs in 8 your statement, you say, "I replied that same 9 evening, (at 17:28 hrs) saying that I agreed 10 with the Governor's proposal, adding that I 11 thought we might meet with the 12 Commissioner and gently point him in that 13 direction." It does look from those 14 exchanges as though Mr Pyle and you both 15 believe that there was a way forward and that 16 Mr McGrail could continue to lead the RGP 17 as at 30 April and address these issues, were 18 you effectively agreeing, supporting that 19 approach when you agreed with Mr Pyle on 20 30 April? 21 A. Certainly and, you know, this is like the 22 strands of evidence, you know, when you 23 bring them all together is when you see that 24 you have a cord strong enough that the 25 evidence is sustainable and here, on its own,</p> <p style="text-align: center;">Page 78</p>	<p>1 to you, you are referring to a message from 2 her to Mr McGrail. 3 A. Maybe from her to Mr McGrail. 4 Q. Yes. 5 A. Where she says, "I think it's manageable," 6 and if she didn't say that to me in a 7 WhatsApp, then she said it to me in person. 8 She would have come to my office --- 9 remember at that time we were doing these 10 notorious four o'clock press conferences and 11 on occasion it was Samantha's turn to do 12 them and I do remember her talking to me 13 about the report and saying, "Look, I think 14 we can manage this," and "I think at this time 15 people are not going to be looking at the 16 detail of this report, there's far too much on 17 with Covid, et cetera, for people to be 18 concentrating on this issue." 19 Q. I think I am right in saying that we do not 20 have the WhatsApp between you and Ms 21 Sacramento. Do you know whether they still 22 exist or ---- 23 A. They probably do but I don't --- I mean, I 24 can literally see her standing in my room 25 telling me. I knew I had read a WhatsApp</p> <p style="text-align: center;">Page 80</p>

20 (Pages 77 to 80)

<p>1 but you are probably right that I had read a 2 WhatsApp between her and Mr McGrail 3 because the phrases I am giving you are 4 phrases that I remember her saying viva voce 5 in my working office. 6 Q. If we now look at Mr McGrail's evidence, 7 paragraph 39, it is page A63, his third 8 witness statement, at the bottom of that page, 9 A63, he says, "Neither I nor any of my 10 Command Team colleagues received any 11 feedback on the report from the CM or NP. I 12 was aware that the CM was very tied up with 13 the unfolding response to the Covid-19 14 pandemic but I was informed by the GPA 15 Chair that the CM had eventually given him 16 direct confirmation that it was okay to make 17 the report public and this was done on 7 May 18 2020." 19 A. Not that I have any jurisdiction to decide 20 whether things should be made public or not 21 and not that the GPA requires my permission 22 to do anything. 23 Q. But does that accord with your 24 recollection that you ok'd the publication of 25 the report?</p> <p style="text-align: center;">Page 81</p>	<p>1 A. Yes, I am happy to adopt my evidence 2 and of course it raised concerns although 3 they were not my principal concerns. I 4 mean, you have to understand what my life 5 was like at that time. I had a bed in number 6 6 Convent Place in case I had to be confined 7 there because of Covid, right, so in the 8 pecking order of crocodiles nearest the 9 canoe, this was definitely a crocodile but it 10 wasn't the one nearest the canoe. 11 Q. When did you first get the opportunity to 12 review the 2020 --- sorry, the --- yes, the 13 2020 report, when did you get the chance to 14 review it in detail? 15 A. All things in the RGP became my priority 16 after 12 May, so I think I will have looked at 17 it after then. 18 Q. Was it on 17 May 2020 when you sent a 19 photograph of page 13 to Mr Baglietto and to 20 the Attorney General? 21 A. Very likely that was the day and that 22 photograph I think deals with issues relating 23 to electronic communication devices which is 24 why it was particularly poignant. 25 Q. If we go to B1573, please, this is area for</p> <p style="text-align: center;">Page 83</p>
<p>1 A. I believe I did that and Joey Britto will 2 give different evidence if I am wrong but I 3 believe I did that through the Minister for 4 Justice. I don't believe I did it myself but it 5 may be possible I did. I mean, at that time, I 6 remember there were a lot of conversations 7 with Samantha and I may have said 8 something to her and to Mr Britto about this 9 subject, given that my unnecessary 10 authorisation was being sought for the 11 publication of something. 12 Q. That was on 7 May, the publication was 13 on 7 May 2020, had you read the report in 14 full prior to making that decision? 15 A. I think I had read the headlines of the 16 report but not all of the report, as I tell you 17 and 7 May is eight days after 30 April, so 18 things I was saying to you were relevant on 19 30 April were just as relevant on 5 and 6 20 May before publication on the 7th. This was 21 not something I needed on my plate in April 22 and May 2020. 23 Q. Did the report raise concerns for you at 24 that point? Are you happy to adopt your 25 evidence as set out?</p> <p style="text-align: center;">Page 82</p>	<p>1 improvement 8 and it says ---- this is the 2 2016 report which the HMIC FRS held that 3 the RGP had only met 2 out of the 8 4 recommendations from and one of those 5 areas for improvement says, "By July 2016 6 the Minister for Finance should set out the 7 funding formula including the associated 8 criteria thresholds and conditions that need to 9 be met for resources needing to police 10 Gibraltar." 11 A. I entirely disregarded that. It is entirely 12 misconceived that people who drafted this 13 report did not seek to see the Minister for 14 Finance before asking how the public 15 appropriation process in Gibraltar works. 16 They seemed to have failed to understand 17 how Gibraltar's budget operates and I 18 therefore had little regard for that 19 recommendation at all. 20 Q. You did not consider it necessary to 21 comply with that recommendation? 22 A. I think it's a complete misunderstanding 23 of how budgeting in Gibraltar works. It's a 24 little like bringing UK budgeting of schools, 25 which is what you might loosely called</p> <p style="text-align: center;">Page 84</p>

21 (Pages 81 to 84)

<p>1 devolved and the school gets a lot of control, 2 in particular different types of schools, to the 3 way that education budgeting is done in 4 Gibraltar which is down to the department 5 and from the department to the schools, so 6 this was a complete misunderstanding of how 7 budgeting works in Gibraltar and imputing to 8 Gibraltar the budgeting system of police 9 forces into the United Kingdom. The two are 10 night and day and if anybody had bothered to 11 come and see me and talk to me about this, 12 HMIC inspectors are routinely brought to my 13 office as a matter of courtesy, to shake my 14 hand, et cetera, but if they had bothered to 15 talk to me about this issue I would have 16 explained to them how Gibraltar's budgeting 17 process works and they could then have 18 made a recommendation which might have 19 been helpful. We can always learn, as I am 20 sure we will learn through this process, we 21 could have learned through that process, if 22 they were applying their criteria to the 23 manner in which Gibraltar budgets generally 24 for its departments and in particular for the 25 police.</p> <p style="text-align: center;">Page 85</p>	<p>1 you but rather with the Controlling Officer. 2 Did you consider referring that to the 3 Controlling Officer? 4 A. So, correct me if I'm wrong, but I think 5 the Controlling Officer in the context of the 6 Royal Gibraltar Police is the Commissioner 7 of Police. So there may be a senior officer in 8 the RGP, but, you know, these things 9 emanate from, the budget emanates from the 10 Minister of Finance, which my ministry, 11 through the Financial Secretary and then 12 goes to the controlling officers in each of the 13 departments. This is a complete 14 misunderstanding of how budgeting works. 15 So you need to start again in the context of 16 this recommendation because this 17 recommendation has been made in the 18 abstract applying UK budgeting processes to 19 Gibraltar. 20 Q. I understand that position, but did you 21 have a conversation with anybody to say, 22 "This area for improvement is nonsensical 23 because it does not work like that here --" 24 A. Yes, I think I did. 25 Q. "-- and by the way this is not up to me,</p> <p style="text-align: center;">Page 87</p>
<p>1 Q. Who would that recommendation more 2 appropriately have been made to? 3 A. Well, to the controlling officer of the 4 Royal Gibraltar Police and indeed after 5 speaking to me, if they had had the desire to 6 do so, or indeed to the opposition shadow 7 minister for public finances as well, they 8 might have had a more rounded view of how 9 budgeting works in Gibraltar and it could 10 have made a different sort of 11 recommendation. 12 (11.50) 13 Q. Did you read the 2016 Report? 14 A. Sorry? 15 Q. Do you read the 2016, HMIC Report? 16 A. I think I did at the time. 17 Q. Did it occur to you to perhaps pass that 18 recommendation on to the relevant 19 individual? 20 A. Why? 21 Q. You said that they should have -- 22 A. I am the Minister for Finance. 23 Q. I think your evidence is that actually the 24 funding formula, the question of the funding 25 formula, should not have been raised with</p> <p style="text-align: center;">Page 86</p>	<p>1 this is up to somebody else and they had 2 better get working on this." 3 A. No, no. First of all I would have 4 discussed this with the Minister for Justice at 5 the time. But second, this is not a question of 6 it not being up to me because the whole thing 7 is addressed to the Minister for Finance. But 8 the whole misconception is about how 9 budgeting works. We don't set out a funding 10 formula with criteria thresholds and 11 conditions for resources needed in policing in 12 Gibraltar. The process is different. The 13 process is like a funding round, a little like it 14 works in the Ministry of Defence. In other 15 words, you have got the controlling officers 16 and ministers and heads of department who 17 come to the office the Chief Minister with 18 the Financial Secretary, with work diligently 19 through each line of the budget and what 20 they require in each particular year. We are 21 building some tension, we have the ability to 22 bring a supplementary procreation or indeed 23 to alter the budget when it is being debated, 24 hence my point in relation to the deaths at 25 sea. So the whole of --</p> <p style="text-align: center;">Page 88</p>

22 (Pages 85 to 88)

<p>1 Q. Sorry to interrupt you, but we have got 2 a lot to go through. 3 A. Of course, yes. 4 Q. So you did not consider that that needed, 5 effectively that that improvement needed to 6 be dealt with by you or someone else because 7 it really did not understand the position in 8 Gibraltar. 9 A. Exactly. I accepted that this was an issue 10 for the (inaudible) but not in this way. 11 THE CHAIRMAN: We have got the point. 12 Let us move on. 13 MR SANTOS: I think let us move on, yes. 14 Thank you. Just we will turn now to 15 Operation Delhi. Would you accept that 16 under the Constitution, apart from exceptions 17 such as finance, policing priorities, the 18 annual policing plan, for example, the RGP 19 are ultimately answerable to the Governor 20 and not the Chief Minister? 21 A. Absolutely, that's why I couldn't give any 22 orders in the Wessex Lounge of how things 23 should be done at the tower or on the 24 runway. 25 Q. As Chief Minister in what circumstances</p> <p style="text-align: center;">Page 89</p>	<p>1 already. 2 Q. And when if ever would it be appropriate 3 for a Chief Minister to instruct the police to 4 take certain steps within an investigation? 5 A. Well, not within an investigation but 6 section 15 in effect requires me or allows me 7 to give an instruction to the RGP to provide 8 information to the government in the terms 9 set out therein. 10 Q. So is your evidence that it is never 11 appropriate for a Chief Minister to instruct 12 the police to take certain steps within 13 an investigation? 14 A. Operationally absolutely not. But that 15 doesn't mean that there isn't co-operation in 16 the circumstances I have already indicated. 17 Q. Do you think there are red lines which 18 a Chief Minister should not cross in terms of 19 intervening in criminal investigations? 20 A. Absolutely, and not just in respect of not 21 intervening with criminal investigations. 22 There are many red lines a Chief Minister 23 must never cross. 24 Q. Dealings with friends, for example, do 25 those bring about red lines?</p> <p style="text-align: center;">Page 91</p>
<p>1 would you expect the RGP to brief you on 2 criminal investigations? 3 A. When matters affected the jurisdiction 4 and those are the circumstances in which I 5 have been briefed in the past by different 6 Commissioners of Police because of potential 7 reputational or other consequences to 8 Gibraltar's jurisdiction or the exchequer. 9 Q. Sorry, just to clarify, when you say 10 jurisdiction, do you mean Gibraltar as 11 a jurisdiction -- 12 A. Yes, of course. 13 Q. -- rather than jurisdiction in the sense of 14 power? 15 A. Well, in the MOD case -- 16 Q. Yes. 17 A. -- it was a hybrid of the two. 18 Q. Yes. 19 A. But yes, Gibraltar as a jurisdiction. 20 Q. In your view when if ever would it be 21 appropriate for a Chief Minister to express 22 his views on a police investigation to the 23 police? 24 A. When they affected the jurisdiction in 25 some way and the police had involved him</p> <p style="text-align: center;">Page 90</p>	<p>1 A. In the circumstances in which one deals 2 with friends, there may be certain red lines 3 that one needs to observe, but in Gibraltar, as 4 you will know, we very often deal with 5 friends when we are dealing professionally, 6 not least in this room, I may hasten to add. 7 Q. What about in terms of investigations into 8 companies that the Chief Minister has 9 invested in? Would there be red lines there 10 as well? 11 A. Of course there would. 12 Q. Your government introduced the 13 ministerial code on 15 March 2023. That 14 code was drafted in 2015 and was, I believe, 15 was on the Parliament website for about eight 16 years before it was laid before Parliament. Is 17 that correct? 18 A. That's right, and I said in Parliament that 19 I considered it applied from the day that it 20 was laid, not from the date of its formal 21 adoption. 22 Q. I think I am right in saying that you said 23 that the government had adhered to the code 24 since 2015. Is that correct? 25 A. That's right, absolutely.</p> <p style="text-align: center;">Page 92</p>

<p>1 Q. Now, we do have the code. I just want to 2 refer to some provisions. I can paraphrase 3 them but at the same time I do not want to 4 deprive you of the opportunity of referring to 5 them should you wish to point anything out. 6 A. Where are they in the printed bundle? 7 Q. I am not sure it will be in the printed 8 bundle. I am afraid they are not, but it will 9 be on screen. The code states, for example, 10 at 1.3, on page 5 of the code, that it should be 11 read against the background of the 12 overarching duty on ministers on comply 13 with the law and to protect the integrity of 14 public life. They are expected to observe the 15 seven principles of public life set out at 16 annex A and that is what is known as the 17 Nolan principles which are -- 18 A. I know them well. 19 Q. -- annexed to the code. 20 A. Yes. 21 Q. And we can look at those. They are at 22 the end of the document, final page. The first 23 of those is selflessness, holders of public 24 office should act solely in terms of the public 25 interests. Integrity, which paraphrasing</p> <p style="text-align: center;">Page 93</p>	<p>1 between their public duties and their private 2 interests, financial or otherwise." 3 Then 7.7: 4 "Ministers must scrupulously avoid any 5 danger of an actual or perceived conflict of 6 interests between their ministerial position 7 and their private financial interests." 8 And then finally, 7.8: 9 "Where exceptionally it is decided that 10 a minister can retain an interest, the minister 11 and the department must put processes in 12 place to prohibit access to certain papers and 13 ensure that the minister is not involved in 14 certain decisions and discussions relating to 15 that interest." 16 Do you believe that you acted in accordance 17 with those principles and with the ministerial 18 code at all times in relation to 36 North and 19 Operation Delhi? 20 A. Entirely. 21 Q. As we have seen, paragraph 7.7 says that 22 ministers must scrupulously avoid any 23 danger of any actual or perceived conflict of 24 interest between their ministerial position and 25 their private financial interests. Given your</p> <p style="text-align: center;">Page 95</p>
<p>1 means not taking decisions in order to gain 2 financial or other material benefits for 3 themselves, their family or their friends. So 4 that is the overarching principles, but just 5 focusing on one or two specific provisions. 6 If we go to 6.6, page 14, this is in the section 7 that is entitled "Minister's Party Interests", 8 but it goes a little bit beyond that. It says at 9 6.6: 10 "Particular care also needs to be taken over 11 cases in which a minister may have 12 a personal interest or connection, for example 13 because they concern family, friends or 14 employees. If exceptionally a minister 15 wishes to raise questions about the handling 16 of such a case, they should advise a Chief 17 Secretary and write to the minister 18 responsible, as with constituency cases, but 19 they should make clear their personal 20 connection or interest. The responsible 21 minister should ensure that any inquiry is 22 handled without special treatment." 23 And then 7.1 on the next page says: 24 "Ministers must ensure that no conflict arises 25 or could reasonably be perceived to arise</p> <p style="text-align: center;">Page 94</p>	<p>1 own financial interests in both Hassans and 2 36 North, do you believe that you managed 3 to avoid a danger of actual or perceived 4 conflict? 5 A. I do. But perception is not in my eye, it 6 is in the perception of third parties. So I can 7 only tell you that I think I acted in order to 8 avoid any fair and reasonable observer from 9 believing that I had a conflict of interest. 10 Q. How involved were you in the setting up 11 of 36 North and its exchanges with 12 Mr Gaggero and government on the NSCIS 13 contract? 14 A. I was not involved in the setting up of 36 15 North. You have said three things not 16 context of one question. 17 Q. Yes, I might have to break them down 18 actually, if you prefer. 19 A. Please. 20 Q. In the setting up of 36 North you said that 21 you were not involved. 22 A. I was not involved. I was informed of it. 23 Q. And then the exchanges between 24 Mr Gaggero and the government on the 25 NSCIS contract.</p> <p style="text-align: center;">Page 96</p>

<p>1 A. Well, in some instances I dealt with those 2 myself and in others they were dealt with by 3 other individuals. But usually, if it was 4 Mr Gaggero himself, it was more often than 5 not a discussion with me. In fact I think I 6 have exhibited a loose note of a discussion I 7 had with him when he reached out to me for 8 a discussion. 9 Q. If we look at B1111, this is the 10 investigation you gave to the RGP as part of 11 the criminal investigation. Page 3. 12 A. B1? 13 Q. B1111, all the ones. 14 A. Triple one, got it. Here it is. 15 Q. And you address there in the final 16 paragraph your interactions with Mr Perez 17 and Mr Cornelio. This is your statement of 18 25 June 2021. 19 A. Yes. 20 Q. You say: 21 "By spring or early summer 2018 I knew that 22 there were negotiations between Bland 23 Limited and 36 North to take over the 24 running of a platform after the resignations of 25 Mr Cornelio and Mr Perez from Bland</p> <p style="text-align: center;">Page 97</p>	<p>1 A. It's not possible for me to say whether I 2 was involved from the outset or not because I 3 didn't know when the outset was. 4 Q. Sorry, my question to you is -- 5 A. Certainly by spring or early summer 2018 6 but -- 7 Q. Sorry, my question to you was whether 8 you were aware from the outset that Hassans 9 was investing into 36 North. 10 A. No. Um, I think the chronology is that I 11 set out in this paragraph. In other words, 12 John Perez comes to tell me that he is going 13 to leave Bland's with Tommy Cornelio and 14 subsequently, it may have been weeks, I am 15 told that that venture is going to include 16 an investment from Hassans. But I wasn't 17 from the outset aware that it was going to 18 involve an investment from Hassans. 19 Q. I appreciate the point that you are 20 making. My point to you is that you were 21 aware before it happened that the investment 22 was going to made. 23 A. I don't know whether I was aware before 24 it happened or whether it had already 25 happened when I was made aware of it. But</p> <p style="text-align: center;">Page 99</p>
<p>1 Limited. Mr John Perez had repeatedly 2 advised me that he and Mr Cornelio wanted 3 to establish themselves to provide advanced 4 technological services of the type being 5 offered by Bland Limited. I was asked by 6 him whether I would support them branching 7 out in this way. I had replied that I was 8 supportive of them setting themselves up on 9 their own but that in doing so they should 10 regularise their position with Mr Gaggero. 11 Subsequently I had conversations with both 12 Mr Perez and Mr James Levy QC about 13 Hassans Limited, of which I am a partner on 14 sabbatical, supporting Mr Perez and 15 Mr Cornelio through an investment in their 16 venture 36 North Limited. I was asked by 17 Mr Levy QC whether or not I would object to 18 this. I had confirmed I would not object to 19 such investment by the partners of Hassans 20 Limited but that this would not affect 21 government's attitude to 36 North in any 22 positive or negative manner." 23 It is fair to say therefore that you were aware 24 from the outset that Hassans were investing 25 into 36 North.</p> <p style="text-align: center;">Page 98</p>	<p>1 I think James came to see me to ask me 2 whether I objected or not. 3 Q. Your evidence is: "I was asked by 4 Mr Levy to see whether or not I would object 5 to this." 6 A. Yes. 7 Q. Which rather suggests that it was done in 8 advance. 9 A. Yes, but whether James would have 10 waited to make the investment until I said 11 okay is not necessarily an issue on which I 12 put my hand in the fire. He may already 13 have made the decision to go ahead and was 14 asking me whether I objected or not. So, you 15 know, yes, I was asked whether I would 16 object or not, and I did not object, but I 17 cannot give evidence at this tribunal -- 18 Q. I understand the clarification. 19 A. -- about whether or not the investment 20 had been made already. 21 Q. I understand. You were also aware that 22 Mr Perez and Mr Cornelio planned to leave 23 Bland in order to establish their own business 24 offering the same or similar services. 25 A. Yes, I was, as I say.</p> <p style="text-align: center;">Page 100</p>

25 (Pages 97 to 100)

<p>1 Q. And you say that this would not affect 2 government's attitude, that the investment 3 would not affect government's attitude to 36 4 North in any positive or negative manner. 5 But it is fair to say that you effectively held 6 a stake in the company itself, 36 North. So 7 how did you ensure that government's 8 attitude was not affected in any positive or 9 negative manner? 10 A. Well, it's a very open-ended question and 11 you give me an opportunity to just go on 12 about everything that happened. I assume 13 you don't want me to do that. 14 Q. Well, my question is aimed at any 15 safeguards you put in place or anything you 16 did to ensure that government's attitude was 17 not affected. 18 A. So, if I can take you to the denouement of 19 this, I actually made the decision that 36 20 North should not take the contract. But if I 21 can take you to the genesis of it, what was 22 very clear to me was that there was no need 23 for a decision from the government. In other 24 words, this was not something which was 25 going to require me to make a choice or</p> <p style="text-align: center;">Page 101</p>	<p>1 Q. We will come to that decision. 2 A. If I may just finish, by making the 3 decision that the contract should stay with 4 Bland and not go to the entity in which I 5 tangentially had a financial interest in, 6 thereby demonstrating that I acted selflessly 7 and with integrity in the best interests of 8 Gibraltar and its people and not in my 9 self-interest in any way. 10 Q. If we can go to A1236, please. This is 11 Mr Perez's statement to this inquiry and I 12 want to focus on paragraph 23. 13 A. Yes. 14 Q. His evidence in that paragraph -- 15 A. May I say something, Mr Santos? 16 Q. Yes. 17 A. Can I just inform the tribunal that I have 18 not been able to read all of the statements. I 19 know they have been shared with all core 20 participants and I am a core participant, but I 21 have not been able to read all of the 22 statements. So if you can take me to the 23 relevant part. 24 Q. I am only going to take you to two 25 sentences there. It is the final two sentence</p> <p style="text-align: center;">Page 103</p>
<p>1 a decision. What I was being informed about 2 was that Mr Perez and Mr Cornelio had made 3 a decision for themselves, which they were 4 communicating to Bland Limited and to 5 which Bland Limited appeared to be 6 agreeable from the moment that Mr Gaggero 7 was informed, that they would leave and 8 plough their furrow separately and that that 9 was agreed by Bland's. 10 In other words, the government was not 11 going to be called upon to make any decision 12 to migrate a contract from X off from Y. The 13 party that provided it was going to agree that 14 a new entity would provide that service going 15 forward because that departure of Perez and 16 Cornelio from Bland was something that was 17 in train, was going to happen and was going 18 to be agreed between them. There was no 19 call for a decision. If there had been a call 20 for a decision, then all of the references that 21 you have referred me to would become very 22 relevant. Indeed, when the call for a decision 23 came I believe that I managed all of the 24 issues that related to conflict by making the 25 decision.</p> <p style="text-align: center;">Page 102</p>	<p>1 of paragraph 23: 2 "On 30 January 2018, I met the [Chief 3 Minister], The Honourable Fabian Picardo 4 KC and told him about our plans; he was 5 encouraging and supportive and asked that I 6 let him know before we tendered our 7 resignations. I also informed --" 8 A. I am sorry, Mr Santos, I have lost you. 9 Where are you? 10 Q. I am sorry. It is the last four lines of 11 paragraph 23. 12 A. Oh, sorry, further up. Okay. So, "On 30 13 January", okay. 14 Q. Yes. 15 "On 30 January 2018, I met the [Chief 16 Minister] ... and told him about our plans; he 17 was encouraging and supportive and asked 18 that I let him know before we tendered our 19 resignations. I also informed the Financial 20 Secretary, Albert Mena." 21 Does that accord with your recollection that 22 by the end of January 2018 you were aware 23 of Mr Perez's plans? 24 A. It may be. I mean, at that time Mr Perez 25 was not just telling me about this aspect of</p> <p style="text-align: center;">Page 104</p>

26 (Pages 101 to 104)

1 **how he wanted to do things. He presented**
 2 **a plan to sell NSCIS internationally and had**
 3 **wanted the government to agree to that**
 4 **because we had this dispute as to ownership,**
 5 **we have this dispute as to ownership. And**
 6 **therefore, although it was attractive, it would**
 7 **require the resolution of those issues and I**
 8 **recall that the discussions, I think, originated**
 9 **with that international branching out and then**
 10 **led to this, "We are going to do this on our**
 11 **own, we think we should do it on our own,**
 12 **why should we do it with Bland's?"**
 13 Q. Did you ask to be kept up to date on the
 14 resignations? He says there --
 15 **A. I said, "Yes, let me know how it goes**
 16 **with James", etc.**
 17 Q. That was some time before Hassans
 18 invested in 36 North. Were you aware that
 19 they were already instructing Hassans at that
 20 point?
 21 **A. I don't know. Um, he may have told me,**
 22 **he may not have told me.**
 23 Q. Did you refer them to Hassans or to
 24 Mr Levy?
 25 **A. Certainly not.**

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1 Q. Then if we can go to B1112, please. This
 2 is the next paragraph of your witness
 3 statement to the police. (Pause). It is the
 4 very next paragraph after the one that we
 5 read. You say:
 6 "I subsequently had a conversation with
 7 James Gaggero in respect of the departure of
 8 Mr Perez and Mr Cornelio from Bland
 9 Limited on 21 July 2018."
 10 This is the conversation you refer to having
 11 a note of.
 12 **A. Yes.**
 13 Q. Which we do have.
 14 "That was a Saturday and I recall
 15 Mr Gaggero calling me in the morning. It
 16 was unusual for him to call me on a Saturday
 17 when I was with my family. I therefore
 18 decided to make a cursory note of that
 19 conversation, which I did not subsequently
 20 (inaudible) into a full file note at the time that
 21 I was talking to Mr Gaggero that morning. I
 22 was literally typing whilst holding the
 23 telephone to my ear."
 24 And you provide a screen shot. Then just
 25 over the page, 1113, you say, in the third

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1 paragraph there:
 2 "Nonetheless, for reasons that became
 3 apparent in the meetings and in
 4 correspondence in the period from the middle
 5 to the end of August 2018, I did not give any
 6 instructions for Mr Cornelio to take over or
 7 continue running what is referred to in the
 8 question as HMGOG platforms including the
 9 NSCIS platform. I had an exchange of
 10 emails and WhatsApp messages with
 11 Mr Sanchez where I instructed him to seek
 12 legal advice on how to transition from Bland
 13 Limited to 36 North at the time."
 14 So, is it the case that you instructed
 15 Mr Sanchez to seek legal advice on
 16 transitioning from Bland Limited to 36 North
 17 at the time?
 18 **A. You are asking me whether what I have**
 19 **said in my sworn statement is true?**
 20 Q. Yes.
 21 **A. I believe it is, that's why I have set it out.**
 22 **But you have taken me through a very quick**
 23 **tour of what was happening at that time.**
 24 Q. I appreciate that.
 25 **A. And I think it is fundamentally important**

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1 **that I reflect that on 21 July 2018 what James**
 2 **Gaggero was saying to me was, "Look, these**
 3 **guys want to go and I have no difficulty with**
 4 **them going. We have got to sort out a few**
 5 **issues." And I had said to him, you know,**
 6 **that we have got to sort out our issues as**
 7 **well. But this was all an agreed process**
 8 **leading to that exchange. And my concern,**
 9 **and I am taking the risk of speaking from**
 10 **memory without relying on any**
 11 **documentation to support what I am saying,**
 12 **but I think that my concern was that we**
 13 **should tie down on the transfer to 36 North**
 14 **the issue of ownership of the platform**
 15 **because, um, I seem to recall that 36 North**
 16 **doing this also had the advantage (a) of being**
 17 **cheaper on an annual basis and (b) resolving**
 18 **the ownership issue because 36 North would**
 19 **accept that ownership of the platform was**
 20 **His Majesty's, then Her Majesty's,**
 21 **Government of Gibraltar exclusively and**
 22 **they were doing management and**
 23 **maintenance of it and exploitation of it, but**
 24 **that those issues would be resolved. And I**
 25 **think that is hugely important.**

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<p>1 Q. Notwithstanding that it seemed to be 2 agreed, did you not consider perhaps 3 withdrawing from the decision from being 4 involved in that transition as a result of your 5 own investment in 36 North? 6 A. Um, I didn't think that there was a need 7 for me to recuse myself from an agreed 8 process between two party simply because I 9 had a tangential, minor, financial investment 10 in one of them. Because it was minor and it 11 did not call for a decision on my part. And I 12 think it is also fair to ask you to recall in this 13 context that to a very great extent I was the 14 originator of the NSCIS platform, for reasons 15 which I think I explain here, and the growth 16 of it. So I understood what the platform was 17 for, why we needed it, had authorised 18 investment in it, had sought to extend its 19 reach. And therefore I didn't think there was 20 anything wrong in my continuing because at 21 that time I was not being called upon to make 22 any decision which would put me in 23 a conflict situation. I was not called upon to 24 decide something that would produce profit 25 or benefit for me or put me in a position</p> <p style="text-align: center;">Page 109</p>	<p>1 accusations have been made against 2 Cornelio." 3 Peter Caruana of course was acting for Bland 4 at the time in relation to this matter. You 5 say: 6 "It may require some quiet diplomacy of the 7 sort only you are good at. Cornelio, what is 8 he suing on? Wages?" 9 And Mr Levy replies: "Work that Gaggero 10 told him to do after he left." You say: 11 "That may help push the thing over the edge. 12 Albert M [I think that is a reference to the 13 Financial Secretary Albert Mena] is helping 14 with the management of that." 15 And Mr Levy says: "Shall I send the 16 exchange of letters to your Gmail?" And you 17 say: "Yes please." 18 It seems at that point that there is very much 19 a dispute between 36 North and Bland. 20 A. I don't accept that from what I have read 21 there. I know that there is a dispute between 22 Tommy Cornelio and Bland Limited about 23 some wages, but not about the core issue. 24 Those are two fundamentally different issues. 25 Whether Tommy Cornelio was getting on</p> <p style="text-align: center;">Page 111</p>
<p>1 where I would be acting anything less than 2 selflessly. 3 Q. Can we go to C7022, please? 4 A. C7? 5 Q. Zero two two. If you do not have this 6 one -- 7 A. The last page. 8 Q. You have it. 9 A. Yes. 10 Q. "We received your WhatsApp messages 11 with Mr Levy from your lawyers on Saturday 12 evening. In fairness to you, I should make 13 clear that it is your lawyers who have said 14 that it is as a result of their own oversight 15 rather than yours." 16 And they pointed out in the correspondence 17 that you had in fact passed these messages to 18 them at the time of giving disclosure. I just 19 want to focus on the last WhatsApp exchange 20 on 2 May 2019 between you and Mr Levy. 21 The first one is redacted and then he says: 22 "On another matter Tommy Cornelio has sent 23 a letter before action drafted by himself. His 24 wife is a lawyer with TSN and Peter Caruana 25 has replied in a bit of unintelligible way. No</p> <p style="text-align: center;">Page 110</p>	<p>1 with James Gaggero or not did not relate to 2 whether or not it was agreed that the platform 3 should move from the management of Bland 4 to the management of 36 North. And indeed 5 when I speak to James Gaggero on 21 July, 6 which is some weeks after this, some two and 7 a half months after this, James Gaggero is 8 very much in the amicable transfer stage. 9 Q. Sorry, I think there is some confusion 10 because the message that you referred to in -- 11 A. Sorry, this is 2019. 12 Q. -- the conversation is July 2018. This is 2 13 May 2019. 14 A. Oh yes, sorry, you are right, absolutely. 15 But by then I've already made the decision. 16 Q. You have already made the decision to ... 17 when you say the decision, you mean the 18 decision that Mr Cornelio should not have 19 access to the platform in 2018. 20 A. No. No, no, no, no. This is May 2019. 21 Q. Yes. 22 A. I made the decision that 36 North should 23 not have the contract for the management of 24 the NSCIS -- 25 Q. In October 2018.</p> <p style="text-align: center;">Page 112</p>

28 (Pages 109 to 112)

<p>1 A. -- in October 2018.</p> <p>2 Q. Yes.</p> <p>3 A. So that issue has been resolved.</p> <p>4 Q. Yes.</p> <p>5 A. I was talking about it being amicable</p> <p>6 before then.</p> <p>7 Q. When you say at 21.40 in response to</p> <p>8 Mr Levy saying: "Work that Gaggero told</p> <p>9 him to do after he left", you say: "That may</p> <p>10 help push the thing over the edge." What</p> <p>11 were you referring to there?</p> <p>12 A. His claim, I suppose, because if he had</p> <p>13 asked him to do things after he left, it seems</p> <p>14 to me it is a pretty clear case for wages to be</p> <p>15 paid or an amount to be paid in respect of</p> <p>16 work done if you are no longer receiving</p> <p>17 a salary.</p> <p>18 Q. Was that any reference to the contract,</p> <p>19 moving the contract to 36 North?</p> <p>20 A. No, the contract wasn't going anywhere</p> <p>21 because of the issues, perhaps unfairly,</p> <p>22 because of the issues that Mr Gaggero had</p> <p>23 raised with me about potential sabotage of</p> <p>24 the system. This was a system that dealt with</p> <p>25 and deals with Gibraltar's national security</p> <p style="text-align: center;">Page 113</p>	<p>1 messages, etc. I say: "Yes please." I have</p> <p>2 looked overnight to see whether I can find</p> <p>3 that email. I cannot find that email on my</p> <p>4 Gmail, but if James sent that to me, then</p> <p>5 Hassans operate a system since the time that</p> <p>6 I was there and we first had email called</p> <p>7 MailMeter. MailMeter prevents anything</p> <p>8 from being deleted and so if he sent me those</p> <p>9 emails then they would be on Hassans's</p> <p>10 MailMeter should you wish to see them.</p> <p>11 Q. Really my question is more as to why he</p> <p>12 saw it appropriate to send it to your personal</p> <p>13 email address rather than your Chief Minister</p> <p>14 email address.</p> <p>15 A. Well, I mean, I suppose, to tell you the</p> <p>16 truth, it is of no interest to my official</p> <p>17 inboxes (there isn't one unfortunately, there</p> <p>18 are a number of them), um, that Tommy</p> <p>19 Cornelio is having a spat with James</p> <p>20 Gaggero over wages.</p> <p>21 (12.20)</p> <p>22 Q. So, was it him recognising what was a</p> <p>23 personal matter and he was writing to you as a</p> <p>24 partner of Hassans rather than Chief Minister?</p> <p>25 A. At this stage this is also a bit of tittle-tattle,</p> <p style="text-align: center;">Page 115</p>
<p>1 and therefore I was not going to take any</p> <p>2 risk, perhaps unfairly. I mean, if you want to</p> <p>3 criticise me for failing to follow the natural</p> <p>4 legal principle of audi alteram partem, I</p> <p>5 certainly did not hear the other side. I heard</p> <p>6 what Mr Gaggero said to me and I said,</p> <p>7 "Right, that's it, I'm not taking a risk with this</p> <p>8 at all. This contract stays with Bland. It's</p> <p>9 not going to 36 North." Which, as you</p> <p>10 would wish me to remind the tribunal that I</p> <p>11 hold an indirect financial interest in.</p> <p>12 Thereby once again, I say, acting selflessly</p> <p>13 and with integrity in a way that actually did</p> <p>14 not give me a financial benefit but was what I</p> <p>15 believed to be in the interests of the people of</p> <p>16 Gibraltar, sticking to the red lines that I</p> <p>17 believe one should always stick to, to act in</p> <p>18 the best interest of the jurisdiction of</p> <p>19 Gibraltar and its people and not in one's own</p> <p>20 self-interest.</p> <p>21 Q. Mr Levy says: "Shall I send exchange of</p> <p>22 letters to your Gmail?" Why did he offer to</p> <p>23 send letters to your personal email address?</p> <p>24 A. Well, I mean, I was I think away or he</p> <p>25 was away at the time. So accessibility of</p> <p style="text-align: center;">Page 114</p>	<p>1 isn't it?</p> <p>2 Q. And you say you do not have those emails</p> <p>3 in your Gmail?</p> <p>4 A. I don't know whether those emails were</p> <p>5 actually ever sent to me. I certainly looked</p> <p>6 yesterday at length because Sir Peter asked me</p> <p>7 to, to see whether I could find those emails</p> <p>8 either in my Gmail inbox or in my official</p> <p>9 email addresses, and I could not find them, but</p> <p>10 if they originated from James, they are very</p> <p>11 likely to have originated from his Hassan's</p> <p>12 email address and under the Hassan system it</p> <p>13 is impossible ever to delete any email; they are</p> <p>14 always there. And so, it should be possible to</p> <p>15 obtain them if they were sent, but, you know,</p> <p>16 this was 21.51, he might have called me later</p> <p>17 to tell me what was in it. It is not</p> <p>18 uncharacteristic for James to say, "I'm going to</p> <p>19 send you something", then instead of sending</p> <p>20 it phone you and tell you what the thing says.</p> <p>21 Q. If we go to B3598, please. These are your</p> <p>22 communications with Mr Perez and Mr</p> <p>23 Sanchez. I apologise but we are going back to</p> <p>24 July/August 2018. We have gone forwards a</p> <p>25 little bit but now we are going to have to go</p> <p style="text-align: center;">Page 116</p>

1 back.
 2 **A. Yes.**
 3 Q. The first three messages there are between
 4 you and Mr Perez on the 8th of July 2018 and
 5 he says, "Fabian, I hope this note finds you
 6 well. For info, please be aware that I will
 7 tomorrow inform James that both Tommy and
 8 will be serving our notices. All is in place.
 9 Good luck for tomorrow, my friend." You
 10 say, "Best wishes. Fabian" and he says,
 11 "Thank you, Fabian." What did he mean by,
 12 "All is in place"?

13 **A. You're not seriously asking me to tell you
 14 what somebody else meant in something that
 15 they wrote? I can tell you what I interpreted.**
 16 Q. What did you understand him to mean,
 17 then?
 18 **A. That he was ready to leave Blands, all is in
 19 place for him to leave Blands.**
 20 Q. And you respond saying, "Good luck for
 21 tomorrow." Is it fair to say that you were very
 22 much in the loop and supportive in terms of 36
 23 North's plans at that stage?
 24 **A. No, certainly not. No, no, no, this was
 25 something that was happening around me at**

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1 **that time. You know, I then spoke to John
 2 Perez as the face of Blands, I had a
 3 relationship with him as the face of Blands in
 4 Gibraltar. It was a very fluid relationship
 5 because of Blands. There were a lot of issues
 6 on which we were working with Blands, and
 7 we still work with Blands on. James Gaggero
 8 was not really present in Gibraltar around that
 9 time, and so he had let John be the face of
 10 Blands and I had communications with John
 11 not just on the fact that he was leaving Blands
 12 but he still got in touch with me on issues
 13 relating to Blands until that time. So, the
 14 relationship was fairly fluid. He was telling
 15 me he was striking out on his own with
 16 Tommy Cornelio, and I was happy for them to
 17 be doing so on the basis that this was agreed
 18 with Blands, it was two young entrepreneurs
 19 going off to do their own thing, there shouldn't
 20 be an issue there. And I think it's rather
 21 remarkable that the fact that I said, "Good luck
 22 for tomorrow" to anyone - I do that a lot to
 23 people who are off to do things - should be
 24 read in any sinister way, as I understand has
 25 been proposed during the course of these**

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1 **proceedings.**
 2 Q. Going to the next three messages, these are
 3 three further exchanges, moving forward four
 4 days to the 12th of July, and Mr Perez says,
 5 "Fabian, James is likely to come and see you,
 6 he is paying out to our other developers to
 7 stay. Not critical. All law enforcement heads
 8 are aware, but that it's not just about the
 9 software, which I doubt they can sustain, but
 10 about the relationship. Both of us remain
 11 critical to sustain the current NSCIS platform
 12 in place. Just for info" and ...
 13 **A. Sorry, do you mind if I just read that
 14 carefully?**
 15 Q. Yes.
 16 **A. ... Yes.**
 17 Q. You say, "Thanks, noted" and he says,
 18 "Fabian, all good so far. He appears to accept
 19 the birth of 36 North as long as I assist him in
 20 some capacity with Blands. Next meeting set
 21 for Monday." So, that is Mr Perez updating
 22 you and then the next three entries are 13th of
 23 August 2018, this time with Mr Sanchez, he
 24 says, "Fabian, this is the email that Blands
 25 have just sent to Tommy Cornelio. FYI they

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1 are asking for departments to write to Blands
 2 stating that they are changing provider and that
 3 Blands no longer has liability." And you say,
 4 "Okay, noted. Well, I guess if we are saying
 5 the programs are ours then they only really had
 6 maintenance liability or development liability.
 7 Tell the departments to send to you so we can
 8 get Lloyd or JP to look at these ..." - and those
 9 two individuals were Crown Counsel at the
 10 time. It looks from those emails - I think those
 11 are the ones that you are referring to in your
 12 witness statement, when I took you to them,
 13 where you asked Caine Sanchez to ensure that
 14 there was legal oversight over the transition, is
 15 that correct?
 16 **A. I think so.**
 17 Q. Then if we go over the page to 3599, the
 18 17th of August, Mr Perez messages you and
 19 says, "Fabian, thank you for all your support,
 20 as always. Can I call you at a suitable time
 21 please? I'm okay, just keeping my discipline
 22 at the moment which I must admit is very
 23 frustrating. We are meeting one to one on
 24 Tuesday. I think they will try to offer me
 25 payment in lieu and some form of

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<p>1 compromise. I have not fired a single rocket 2 yet. With regards to the system, it's now 3 becoming difficult as we continue to run it 4 under unnecessary strain. Don't worry, we'll 5 continue to do so if necessary." What support 6 is Mr Perez referring to there in his message? 7 "Thank you for all your support, as always"?</p> <p>8 A. Well, I assume support in wanting to see 9 them establish themselves, asking that the 10 departments provide the legal advice necessary 11 for the migration of the system - this is a 12 hugely important system, it's migration was 13 hugely important to the Government, in 14 particular given that the migration would 15 resolve the issue of ownership which was 16 particularly important to the Government.</p> <p>17 Q. If we can now to go C1274, please. This is 18 an email of the 30th of August 2018.</p> <p>19 A. Sorry, can I just, before you take me there 20 ...</p> <p>21 Q. Yes.</p> <p>22 A. Particularly important to the Government 23 in the context of protecting the public's 24 ownership of this system. Remember, if we 25 are with Blands we have a dispute as to</p> <p style="text-align: center;">Page 121</p>	<p>1 effectively, to Mr Gaggero and it says, "As 2 you are aware, I've been running and 3 maintaining the NSCIS platform on behalf of 4 Bland Limited as from midnight on the 11th of 5 August 2018. I have done this in good faith in 6 order to allow you time to resolve the issue 7 with the Government and, of course, to ensure 8 that Gibraltar's national security measures are 9 not affected. I have proceeded on the basis 10 that I will be fairly remunerated for this work. 11 I have done my best to maintain the NSCIS 12 platform during these difficult times, 13 especially in circumstances where our working 14 relationship has ended and at the same time as 15 setting up my own company. I have to date 16 received no communication from either Bland 17 Limited or the Government of Gibraltar with 18 regard to a possible solution to the problems 19 faced by Bland Limited. Unfortunately, 20 circumstances are such that it is not possible 21 for me to continue working under the current 22 conditions ..." and so he gives notice of his 23 departure and that he will be invoicing Bland 24 Limited. So, why did you understand Mr 25 Levy to be sending you this email?</p> <p style="text-align: center;">Page 123</p>
<p>1 ownership. If we are with 36 North, 2 ownership is accepted to be ours. So, it's 3 hugely in the public interest to resolve that in 4 favour of the taxpayer, being the hundred 5 percent undoubted owner of this important 6 platform, which potentially can also be 7 exploited to produce income for the taxpayer 8 through its sale abroad. So, that was very, 9 very important to the Government.</p> <p>10 Q. But is your position that there was in fact 11 nothing to resolve in the sense that it was an 12 agreed transition at all those moments?</p> <p>13 A. Yes, but the thing to resolve is that you 14 didn't do anything in the transition process 15 which might permit there to continue to be a 16 doubt after it's gone to 36 North, that it's not 17 100% owned by Her Majesty's (at the time) 18 Government of Gibraltar.</p> <p>19 Q. If we look at C1274, there is an email of 20 the 30th of August 2018 from Mr Levy to your 21 personal email address and it says, "Tommy 22 wants to send this. I've asked him to wait. 23 What do you think?" And then below is an 24 email from Mr Cornelio to Mr Levy on the 25 29th of August which sets out a draft,</p> <p style="text-align: center;">Page 122</p>	<p>1 A. Well, Mr Levy was sending me a lot of 2 stuff about 36 North, etc., much of which I 3 was ignoring because it didn't really have 4 anything to do with me. I mean, Tommy 5 Cornelio's claims in respect of whether Bland 6 owed him money or not was not really a 7 matter that I cared much about. I subsequently 8 may have said, "Yes, send it to me." The best 9 way to deal with James - if he wants to tell you 10 something, is to tell you and that gets over the 11 issue. Did I reply to this? I probably didn't. I 12 don't know whether ...</p> <p>13 Q. We have not seen a reply to it.</p> <p>14 A. I don't know whether I even read it. I 15 mean, this would have been August 2018. I 16 may have been away, I may have seen it 17 cursorily. If there isn't a WhatsApp or an 18 email reply, I may have spoken to him about 19 it. I probably said, "Look, what's it got to do 20 with me? Do I really need to be involved in 21 these things?" You've got to understand, even 22 in August I get hundreds of emails a day to my 23 personal email address, close to a thousand in 24 my other email addresses. Many, many 25 hundreds of WhatsApps a day and many</p> <p style="text-align: center;">Page 124</p>

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<p>1 telephone conversations. So, I mean, I know 2 that we are looking at this one now and this 3 one matters, but there are many others and you 4 shouldn't take it for granted that I even 5 engaged in the context of something like this. 6 Q. And, again, this is an email to your 7 personal email address. Was that an attempt to 8 delineate between your office and your 9 personal involvement? 10 A. Perhaps it was. Perhaps it was. I mean, 11 and good that it should be, but, you know, 12 frankly, you've seen that I've had a 13 conversation with James Geggero on the 21st 14 of July. That's about the macro issue, the 15 movement of the platform. I'm interested in 16 that, in the movement of the platform, hundred 17 percent ownership for the Gibraltar taxpayer 18 secured, a cheaper deal per annum. All of that 19 is good and something I can and should be 20 interested in, actively selflessly, with integrity 21 and in the interests of the taxpayer and the 22 wider community. But this is not something, 23 this is tittle-tattle, but you shouldn't be 24 surprised to see this. I mean, I get tittle-tattle 25 and incidental stuff all the time in relation to</p> <p style="text-align: center;">Page 125</p>	<p>1 other partners at Hassans. He doesn't always 2 make them on his own and, to his credit, 3 whenever they are successful he shares them 4 with his partners at Hassans. They are not 5 often unsuccessful. 6 Q. Did you expect that 36 North would 7 succeed in its venture? 8 A. I expected that, because Bland and 36 9 North appeared to be dealing with this issue in 10 a way that was entirely agreeable to both of 11 them, at least as far as I could see, despite 12 issues relating to wages, etc., but on the macro 13 issues, the transfer of the platform, that that 14 was being dealt with in a way that was agreed 15 and was in the interest of the wider community 16 and the taxpayer, that that was going to lead to 17 36 North being successful. And 36 North's 18 success would not just be positive for the 19 taxpayer from the point of view I have already 20 referred you to, of 100% ownership of the 21 platform being confirmed and less cost per 22 annum, but also from the international 23 exploitation of that platform, which would 24 produce royalties for the Gibraltar taxpayer, 25 in respect of something that the Gibraltarian</p> <p style="text-align: center;">Page 127</p>
<p>1 matters that the Prime Minister of the United 2 Kingdom would never receive tittle-tattle on 3 from people who he is aware of this. This is 4 Gibraltar, you know, and I get it all the time. 5 Q. It is true, is it not, that Hassans had made a 6 substantial investment in 36 North, specifically 7 a £476,000 loan and guarantees of consultancy 8 to Mr Perez and Mr Cornelio at £300,000 per 9 annum each if the venture did not prosper? 10 A. I found that out later, I found it 11 extraordinary. 12 Q. When Mr Levy came to discuss the 13 investment with you or seek your view on the 14 investment, the potential investment, what did 15 you understand the investment to be? 16 A. I don't think he particularised what the 17 investment would be. I think he just said we 18 would be making an investment. Now, James 19 is a seed investor in many businesses in 20 Gibraltar, what you might call an angel 21 investor in many businesses in Gibraltar. That 22 investment might range from a few thousand 23 pounds or a few hundred pounds to, you know, 24 a few hundred thousand pounds, and he has 25 routinely shared those investments with his</p> <p style="text-align: center;">Page 126</p>	<p>1 taxpayer would not otherwise have been able 2 to do because the Government is not able to 3 say, "Oh, well, look, we have something here 4 which is an asset, let us go out and seek to 5 exploit it by selling this to other governments." 6 We haven't got the expertise, the time or the 7 wherewithal to do that, whilst 36 North might 8 have done that and would have produced 9 something very positive for the taxpayer. 10 Q. It would also have produced income for 11 you? 12 A. Tangentially but that was not what drove 13 me to agree to something which was 14 somebody else's idea and it would not have, 15 and I think I can say with the benefit of the 16 Latin res ipsa loquitur that, when the time 17 came, I made the decision that was bad for my 18 pocket, not good for my pocket, but that was 19 never one of my concerns. That's why I would 20 insist that I always acted selflessly and with 21 integrity because I had no regard to my 22 personal self-interest. Far from it. When I 23 acted I acted to defeat my personal interest. 24 Q. Were you aware that a major part of the 25 business would be the NSCIS contract and</p> <p style="text-align: center;">Page 128</p>

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<p>1 without that NSCIS contract it would be 2 difficult for 36 North to be profitable? 3 A. The major part of the work that 36 North 4 was going to do, as far as I was concerned, 5 was the exploitation of the architecture of the 6 NSCIS platform in its sale to third party 7 governments around the world, something 8 which John Perez had been seeking to 9 persuade me of for months when he was at 10 Blands, I think even before he started talking 11 about 36 North. That was going to be the key 12 driver for profit and growth in respect of 36 13 North, as far as John Perez had said to me. 14 Q. Can we now go to B11 ... 15 A. The NSCIS platform and maintenance was 16 sort of what you might call the bread and 17 butter, but then this would be launched 18 internationally, etc. 19 Q. Yes, but that was the most tangible thing 20 on the table at the time? 21 A. At the time, yes. 22 Q. B1117. This is your criminal investigation 23 witness statement. 24 A. Yes. 25 Q. And at the bottom of that page you say,</p> <p style="text-align: center;">Page 129</p>	<p>1 difficult. But he is not peed off, with respect 2 to my language, at the time because of that, but 3 what James had said to me, and had incensed 4 him greatly, was that he had, after notice had 5 been given notice, he had found that they had 6 disbursed costs for the setting up of their new 7 venture using Bland credit cards. So, it stuck 8 in my mind that he said to me that they had 9 bought a book on setting up your own 10 company, etc., using Bland's credit card on 11 Amazon, and he thought this was just unfair 12 and improper. You know, I could understand 13 how James felt, I also thought it was a bit 14 petulant and petty, but I could see that, you 15 know, this was not being resolved. And for the 16 Government, you know, the issue of 17 ownership was going to become a big one 18 because we were never going to let go of the 19 fact that we said this was ours. So, things are 20 starting to become sticky at this time. It's very 21 much in the wider public interest, in the 22 interests of the taxpayer that we deal with this 23 issue of ownership and that it's clear to 36 24 North, to James Gaggero, to Bland Limited 25 and to the whole world that the platform</p> <p style="text-align: center;">Page 131</p>
<p>1 "Given that there was no further 2 communication between me and Mr Levy on 3 this matter after the text in question [the text 4 he had sent previously], Mr Levy sent me a 5 further WhatsApp message on the 4th of 6 September. That text provided as follows: 7 'Have you been able to find a solution with 8 James G?'" You say, "Hi. Saw him yesterday, 9 asked him to give me a bit of time and not to 10 have a row. He is pissed off. F." And Mr 11 Levy says, "That is the attitude of ala derecha", 12 by which he means, "The ring wing." 13 A. Yes. 14 Q. When he says, "Have you been able to find 15 a solution?", by the 4th of September 2018 16 was it apparent to you that there was no longer 17 an agreement between the parties but rather a 18 dispute? 19 A. No, I don't think that's fair because I don't 20 think that that dispute related just to the 21 parties. I think this is where it starts to get 22 sticky because Bland is starting to say, "If you 23 want to go you have to buy the platform from 24 us because it belongs to Blands." I think that's 25 where the whole issues starts to get very</p> <p style="text-align: center;">Page 130</p>	<p>1 belongs to the Government. And in that 2 respect I have heard the things that were said 3 by Mr DeVincenzi, which I am surprised at, 4 which I think are covered by legal professional 5 privilege and which are views that I would not 6 share as to ownership of the platform. 7 Q. Given that things are starting to get sticky, 8 did you not think that that was the moment 9 where you should extricate yourself as 10 someone who had a financial and personal 11 interest in the situation? 12 A. Well, they were only sticky in the context 13 of how to do it. I mean, at this stage, you 14 know, James Gaggero, to be fair to him, 15 because he also has a view, he believes it 16 belongs to Bland Limited and is trying to make 17 a case for some element of remuneration in the 18 context of the migration from Bland Limited 19 of what he says his company has an ownership 20 stake in, not just the maintenance role in. So, I 21 felt that it was very much in everybody's 22 interest because of the nature of this platform 23 that I should continue being involved in this 24 respect. This was not a dispute yet which 25 required - this had not got to the stage of it</p> <p style="text-align: center;">Page 132</p>

<p>1 becoming impossible or difficult or requiring 2 me to bang the table and make a decision to 3 say, "It's going to 36 North because I say so 4 because that's the company I have a stake in, 5 Hassans have invested money and I want it to 6 go there so I can line my pocket." In fact, I 7 never did that, I did the opposite, right? It was 8 actually at the sticky stage but not at the 9 difficult stage, and it didn't require a decision 10 from me which would have required 11 declaration of a conflict because I was going to 12 do it to a company that I had an interest in. 13 Q. Did you not think, nevertheless, that it 14 might be prudent to let someone who did not 15 have those connections, those personal and 16 financial connections, to deal with the 17 stickiness? 18 A. Well, I don't think at that stage there was 19 anything which required a decision which 20 could have been dealt with by anybody else. 21 In other words, I held the relationship with 22 James Geggero, I had been the one talking to 23 him throughout. He had engaged with me in 24 this process, he would expect to, he is the 25 Chairman of one of Gibraltar's largest</p> <p style="text-align: center;">Page 133</p>	<p>1 you in order to land the contract? 2 A. Do you think it's appropriate for me ... 3 Q. From your perspective? 4 A. ... in an inquiry where we're trying to 5 ascertain facts, for me to tell you what other 6 people thought? I just cannot tell you what 7 other people thought. I can tell you that ... 8 Q. But your perception ... 9 A. ... John Perez was in direct communication 10 with me, as you have shown and referred me 11 to. I have never met Tommy Cornelio. I think 12 I have been clear about the fact that our 13 children now play in the same basketball team, 14 but we have never exchanged even a phrase, 15 and I would not be able to pick him out in a 16 line-up because I'm not good with faces. I 17 know he's there on alternate Saturdays when 18 I'm there. But John Perez ... 19 Q. I think, in fairness ... 20 A. ... was able to speak to me, as you can see, 21 very openly and didn't need James Levy to 22 open any channel. 23 Q. I was just going to point out that, in 24 fairness to you, the messages that you 25 disclosed yesterday we could see unfamiliarity</p> <p style="text-align: center;">Page 135</p>
<p>1 corporations, he would not expect to interface 2 with anyone else. He had some interface with 3 the Financial Secretary at different times, but 4 on the macro issue, he would expect to 5 interface with me, and then given the fact that 6 he then sought further meetings with me and 7 he sought that interface with me. 8 Q. In retrospect, do you think that you might 9 have been entertaining Mr Levy and 36 North 10 with these communications in a way that 11 would not be open to the ordinary citizen? 12 A. Far from it. The ordinary citizen expects 13 the same engagement and more often than not 14 gets it from me. My telephone number is no 15 secret, my email address is public and I get 16 engagement all the time from people seeking 17 to establish businesses, from people seeking to 18 change Gibraltar's tax code so that their 19 businesses can prosper, etc. The Chief 20 Minister of Gibraltar is not a remote individual 21 who is not accessible to people who want to 22 engage with him on matters which relate to 23 their commercial benefit - far from it. 24 Q. Do you think that Mr Cornelio and Mr 25 Perez expected Mr Levy to open the door to</p> <p style="text-align: center;">Page 134</p>	<p>1 on your part vis-a-vis Mr Cornelio earlier in 2 the stage. 3 A. Yes, and then, as you kindly said before, I 4 didn't disclose them yesterday. 5 Q. Yes. A1374 please, paragraph 75. This is 6 Mr Gaggero's witness statement and he says 7 here - this is at a meeting between you and him 8 on the 27th of September - he says, "I then 9 asked him if I could speak to him in private as 10 everyone left his office. I advised him that it 11 had become clear to me that James Levy, KC 12 was involved with 36 North. I told him that 13 once the case against 36 North had been 14 commenced by Bland the matter would be out 15 of my hands. He stated that, if this occurred, it 16 would be improper for him to interfere." Did 17 you say that to Mr Gaggero? 18 A. Yes, I very probably did. 19 Q. Why did you think it was improper to 20 interfere once a case had been started by Bland 21 against 36 North? 22 A. Well, because then it would be in dispute 23 territory. 24 Q. Was Mr Gaggero at that time ... 25 A. As I understand it, by the way, no such</p> <p style="text-align: center;">Page 136</p>

<p>1 case has been commenced as yet.</p> <p>2 Q. Had you made Mr Gaggero aware at that</p> <p>3 time of your own stake or ultimate beneficial</p> <p>4 ownership of 36 North?</p> <p>5 A. I believe he was aware of it from the way</p> <p>6 that he communicated with me. I mean, my</p> <p>7 declaration of a member's interest is a public</p> <p>8 document, it has long been commented on in</p> <p>9 Gibraltar. James would have been aware of</p> <p>10 that and I don't know whether we specifically</p> <p>11 talked about it, but the reference that I made</p> <p>12 which he refers to about my not becoming</p> <p>13 involved because it was improper suggests that</p> <p>14 we specifically discussed that, or that he was</p> <p>15 specifically aware of it.</p> <p>16 Q. You say in your witness statement to the</p> <p>17 police, you say that it was in response to Mr</p> <p>18 Gaggero's allegations of sabotage against 36</p> <p>19 North that you gave instructions to ensure that</p> <p>20 36 North and Mr Cornelio in particular were</p> <p>21 not to have access to the system.</p> <p>22 A. Yes.</p> <p>23 Q. Did you explore the basis for Mr Gaggero's</p> <p>24 allegation at the time?</p> <p>25 A. Do you want to take me to that so that I am</p> <p style="text-align: center;">Page 137</p>	<p>1 was very concerned of an allegation, at an</p> <p>2 allegation of this sort being made. It wasn't</p> <p>3 something that I felt I had the ability for No. 6</p> <p>4 Convent Place to investigate. It was</p> <p>5 something that was being said about the</p> <p>6 system we were operating, which we</p> <p>7 considered to be essential to the security, the</p> <p>8 immigration security aspect of Gibraltar and</p> <p>9 therefore my view was very clear: if there's</p> <p>10 even the slightest and remotest risk that this is</p> <p>11 the case, then I'm not going anywhere near the</p> <p>12 transfer of the NSCIS platform to 36 North,</p> <p>13 despite the potential financial benefits to the</p> <p>14 taxpayer, whatever my own minor financial</p> <p>15 interest may be. The overwhelming concern I</p> <p>16 have is the interest of Gibraltar and its people,</p> <p>17 the public interest and therefore the contract is</p> <p>18 going to stay with Bland, who, let's face it, had</p> <p>19 been the ones who had been operating it until</p> <p>20 that time and by then for a period without</p> <p>21 Tommy Cornelio or John Perez being</p> <p>22 involved.</p> <p>23 Q. Would it be fair to say that, faced with that</p> <p>24 information and at that point, you had no</p> <p>25 option but to order that the contract remain</p> <p style="text-align: center;">Page 139</p>
<p>1 aware of the circumstances?</p> <p>2 Q. Yes, B1123, towards the bottom there is an</p> <p>3 entry in bold and it says, "On the 4th of</p> <p>4 October 2018 you instructed Caine Sanchez to</p> <p>5 provide Bland with full control of the</p> <p>6 management, maintenance and support of the</p> <p>7 NSCIS platform in two emails from Mr Peter</p> <p>8 Canessa to Mr Caine Sanchez." And just over</p> <p>9 the page, your answer to that question is, "I</p> <p>10 gave this instruction as a result of information</p> <p>11 provided by Mr Gaggero that Mr Cornelio had</p> <p>12 continued to access the NSCIS platform</p> <p>13 despite his consultancy arrangements having</p> <p>14 ended with Bland Limited. At some stage then</p> <p>15 or thereafter we were also told by Mr Gaggero</p> <p>16 that, in enjoying continued access to the</p> <p>17 NSCIS system, Mr Cornelio might have</p> <p>18 sought to sabotage the operation of the system</p> <p>19 for short periods in order to demonstrate that</p> <p>20 Bland Limited were unable to properly operate</p> <p>21 it." Did you explore the voracity of those</p> <p>22 allegations by Mr Gaggero at the time?</p> <p>23 A. No, I think I answered that before when I</p> <p>24 told you that I felt the principle of natural</p> <p>25 justice, that I should listen to both parties, but I</p> <p style="text-align: center;">Page 138</p>	<p>1 with Bland?</p> <p>2 A. No, I believe I did have options. I could</p> <p>3 have chosen to do something else. I could</p> <p>4 have chosen to ask Bland to particularise their</p> <p>5 complaint. I could have asked my ITLD</p> <p>6 department (my information, technology and</p> <p>7 logistics department) to become involved and</p> <p>8 see whether they could operate the system. I</p> <p>9 could have asked to see Tommy Cornelio and</p> <p>10 sought explanations from him. I did have</p> <p>11 many different options, but I was driven</p> <p>12 principally by my concern that Gibraltar's</p> <p>13 borders should be secure, and if this allegation</p> <p>14 was being made, the bald allegation was</p> <p>15 enough for me to say, "Right, we're not going</p> <p>16 anywhere near this, this is now breaking down,</p> <p>17 this is staying with Blands because ..." - what I</p> <p>18 should say, I think, is that there was an</p> <p>19 assurance from Bland Limited, which may be</p> <p>20 in Mr Gaggero's statement, or it may be in one</p> <p>21 of my statements, but there was an assurance</p> <p>22 from Bland Limited that they could deal with</p> <p>23 the system and make it stable because they had</p> <p>24 identified what was making it unstable, which</p> <p>25 was this sabotage. So, I had an assurance from</p> <p style="text-align: center;">Page 140</p>

35 (Pages 137 to 140)

<p>1 Gibraltar's, one of Gibraltar's largest 2 companies, if not Gibraltar's largest company, 3 that had operated the system successfully until 4 then that they could now operate it and that's 5 what I felt was the key issue for me, that I had 6 to secure Gibraltar's borders and I did it in this 7 way, acting selflessly, with integrity and 8 without regard to my personal self-interest. 9 Q. Can we now go to your witness statement, 10 paragraph 39, your first affidavit, at page 11 A233. We are moving - sorry, A190. I had 12 read it the wrong way first. Paragraph 39 and 13 we now move forward to the investigation 14 itself and you say, "In the context of Operation 15 Delhi, I became aware from Mr Levy himself 16 that he was one of the persons who was of 17 interest to investigators." What exactly did Mr 18 Levy tell you in this regard? 19 A. I can't remember when, but long before the 20 12th of May 2020, that police might want to 21 speak to him, that the police were being very 22 unfair and that they might want to speak to 23 him. There was the phrase, "A person of 24 interest" - I mean, I see it arose in the Eddie 25 Yome WhatsApp that you referred me to at the</p> <p style="text-align: center;">Page 141</p>	<p>1 I discussed with Mr James Levy, KC on a very 2 large number of occasions the fact that the 3 RGP had suggested that he might be a person 4 of interest in the investigation. He raised this 5 with me constantly when I spoke to him on 6 other matters. I consistently replied to him 7 that I was sure that the investigation would 8 exonerate him given that, from what I knew of 9 him, I was sure that he would not have acted in 10 a manner which was contrary to law. In fact, 11 this was also the conclusion reached by the 12 police when they made the decisions about 13 who to charge in consequence of their Op 14 Delhi investigation." What was your 15 understanding as to why Mr Levy was raising 16 this with you constantly and on a very large 17 number of occasions? 18 A. Both before the 12th of May and, in a 19 different way, after the 12th of May, he 20 thought that the police investigation was 21 completely unfair, that it was motivated by the 22 competitor, that it was an issue of business 23 competition raised to a criminal investigation, 24 he was very disparaging, of course, about Mr 25 Gaggero's ability to interest the police in a</p> <p style="text-align: center;">Page 143</p>
<p>1 beginning of today as well. It's a phrase that 2 does not mean "suspect" and does not mean 3 "witness", it is a phrase which perhaps is a 4 hybrid for the fork in the road between one 5 person being determined to be one thing or the 6 other, no? 7 Q. We have had witnesses who have said, 8 within the police, who have said that they do 9 not recognise the term, but I think that is the 10 way in which it is used. 11 A. But you saw it was in the WhatsApp from 12 Eddie Yome to me that you referred me to at 13 the beginning of the session today. So, it's 14 obviously a term of art in the police. 15 Q. For some within the police, yes. 16 A. For some. 17 THE CHAIRMAN: It absolutely is not a term 18 of art to others; it has no legal significance. 19 MR SANTOS: Exactly. 20 THE CHAIRMAN: And it has no legal standing 21 as well. 22 MR SANTOS: That is exactly the point, yes. 23 So, if we go now to A2333, which is the 24 reference I read out earlier. This is your third 25 affidavit, paragraph 5, you say, "I recalled that</p> <p style="text-align: center;">Page 142</p>	<p>1 matter which he insisted was commercial in 2 nature and not criminal in nature, and in that 3 way we would when we spoke have those 4 discussions. 5 Q. Did he ask you for help? 6 A. No, not at all. He didn't, I don't think he 7 felt he needed help and neither did I think he 8 needed help. 9 Q. Was he concerned about his status as a 10 person of interest, to adopt the phrase? 11 A. I don't think that I would say he was 12 concerned in that respect. Obviously, things 13 change after the 12th of May. I wouldn't 14 describe him as concerned, I would describe 15 him as annoyed and frustrated at the way that 16 the police were conducting the investigation 17 and the reasons why the police were 18 investigating with such vigor in relation to 19 certain aspects of the matter, which made it 20 feel to him that it was a crime to compete 21 against Bland Limited and Mr Gaggero, and I 22 think he might have expressed it in that way 23 on a number of occasions. 24 Q. Do you recall the dates of these 25 conversations with him?</p> <p style="text-align: center;">Page 144</p>

<p>1 A. No, no, no.</p> <p>2 Q. Are you able to give a time ...</p> <p>3 A. No, no, no. I mean, I ...</p> <p>4 Q. ... a time range?</p> <p>5 A. I can tell you that they changed after the</p> <p>6 12th of May, so what I'm relating to you is</p> <p>7 before the 12th of May.</p> <p>8 Q. How far back, are you able to say how far</p> <p>9 back from the 12th of May they go?</p> <p>10 A. During the course of the year, between</p> <p>11 May '19 when the investigation kicks off, what</p> <p>12 you might call, in earnest, and May '20, during</p> <p>13 the course of that year, at different times.</p> <p>14 Q. Would you be able to estimate roughly</p> <p>15 how many conversations? Are we talking</p> <p>16 five/10/a hundred?</p> <p>17 A. It's impossible for me to give you anything</p> <p>18 which is a rational explanation for that. I think</p> <p>19 I may have read in reports of the proceedings</p> <p>20 that Mr Levy felt it was a handful of</p> <p>21 occasions. My impression is that it was</p> <p>22 slightly more than that, but anyone who knows</p> <p>23 Mr Levy will know that he is vehement in</p> <p>24 making his point and repeats it, even though</p> <p>25 he might not realise how many times he is</p> <p style="text-align: center;">Page 145</p>	<p>1 sitting in this room either watching the</p> <p>2 proceedings or involved in the proceedings,</p> <p>3 and those conversations happen all the time,</p> <p>4 and they are not file noted.</p> <p>5 Q. Did you consider whether it was</p> <p>6 appropriate to communicate with Mr Levy</p> <p>7 about him being a person of interest given that</p> <p>8 it was a live criminal investigation in which</p> <p>9 the Government was liaising with the RGP at</p> <p>10 the same time?</p> <p>11 A. So, this is an important point. The Chief</p> <p>12 Minister of Gibraltar speaks to a lot of people,</p> <p>13 his friends and former partners or current</p> <p>14 partners (on sabbatical) included all the time</p> <p>15 about many issues. You have made the point</p> <p>16 repeatedly, and I do not challenge it, that the</p> <p>17 RGP is completely independent of the</p> <p>18 Government. So, the RGP can be</p> <p>19 investigating whatever it wants to investigate</p> <p>20 and the Government can be talking about that</p> <p>21 self-same issue with parties to that</p> <p>22 investigation, either in the knowledge, because</p> <p>23 the knowledge has been provided without</p> <p>24 detail that that investigation is ongoing, or</p> <p>25 without knowledge that the investigation is</p> <p style="text-align: center;">Page 147</p>
<p>1 making it. So, he would have raised it with me</p> <p>2 on a number of occasions, more than just two</p> <p>3 or three, in my view, and I could sense how</p> <p>4 incensed he was about the fact that this</p> <p>5 investigation was taking the course that it was</p> <p>6 taking from where he could see and the way</p> <p>7 that he was being dragged into a criminal</p> <p>8 matter when he felt had simply made a</p> <p>9 commercial investment as an angel investor.</p> <p>10 Q. Why are there no notes of any of these</p> <p>11 conversations?</p> <p>12 A. If I had a note of every conversation I have</p> <p>13 had with James Levy I would have spent my</p> <p>14 time in Government writing down the things</p> <p>15 that James Levy has said to me and I have said</p> <p>16 to him. But if I had conversations noted down</p> <p>17 with everybody that I have a phone discussion</p> <p>18 with - I mean, I'm on the phone a lot, and those</p> <p>19 conversations are not official, and therefore</p> <p>20 there are not phone records or logs or file notes</p> <p>21 of conversations. With James Levy, with</p> <p>22 Lewis Baglietto, with - I hesitate to name</p> <p>23 people who have not been named in this</p> <p>24 inquiry, but with the many other people who I</p> <p>25 have conversations with, many of whom are</p> <p style="text-align: center;">Page 146</p>	<p>1 ongoing. In this context it's a little even more</p> <p>2 complex than that because in this context, after</p> <p>3 May '19, the Government is potentially a</p> <p>4 complainant in this criminal investigation. So,</p> <p>5 you haven't got the Government here as the</p> <p>6 Government aloof from the RGP, where the</p> <p>7 RGP is carrying out a criminal investigation;</p> <p>8 you have got the Government here briefed by</p> <p>9 the Commissioner of Police at the time about</p> <p>10 alleged damage done to the Government itself.</p> <p>11 Therefore, this was an issue that we were</p> <p>12 talking about because I wasn't just talking</p> <p>13 about it to James Levy, I was talking about it</p> <p>14 to a lot of parties, not just in my capacity as</p> <p>15 representative of the Government, which is</p> <p>16 separate to the RGP, but as the representative</p> <p>17 of the alleged potential victim of offences</p> <p>18 having been committed. I do not believe that</p> <p>19 there is a ring of privilege or confidentiality</p> <p>20 which prevents the victim or the arm's length</p> <p>21 Government from talking to third parties about</p> <p>22 things that the RGP may be doing because, if</p> <p>23 you were to suggest that, it would suggest that</p> <p>24 the RGP are the Government are one in the</p> <p>25 context of an investigation, which we are not,</p> <p style="text-align: center;">Page 148</p>

37 (Pages 145 to 148)

1 **and the ring of information/privilege, etc. does**
 2 **not extend from the RGP to the Government.**
 3 Q. It is not just any old third party, though, it
 4 is someone who is a person of interest in the
 5 same investigation and someone who is
 6 suspected, not suspected ...
 7 THE CHAIRMAN: Not a suspect.
 8 MR SANTOS: ... but being investigated for a
 9 potential conspiracy against the Government.
 10 **A. I don't think anybody has ever said that in**
 11 **the context even of these proceedings. I think**
 12 **that the most that has been said, from what I**
 13 **have gleaned, and again I have not read the**
 14 **transcripts and I have not been able to see all**
 15 **the information, is that the translation of the**
 16 **words, "Person of interest" in the context of**
 17 **James Levy is that the DPP felt, and officers in**
 18 **the investigation felt, that he had questions to**
 19 **answer. Now, in the same way as person of**
 20 **interest does not translate to suspect or witness**
 21 **...**
 22 Q. Yes, I corrected - for the record, and I am
 23 very happy to clarify that - I corrected myself
 24 and I said someone who was being
 25 investigated rather than someone who is

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1 suspected.
 2 **A. I mean, the DPP said that he is somebody**
 3 **who had questions to answer. Even that is not**
 4 **necessarily, in my view, a person who is being**
 5 **investigated, although when you cut forward**
 6 **to the 12th of May, a search warrant, in my**
 7 **view, can only be obtained against somebody**
 8 **who is being investigated.**
 9 Q. Precisely. I mean, the information, I think,
 10 makes the RGP's position by the 6th and 7th of
 11 May very clear.
 12 **A. 7th of May '20?**
 13 Q. 2020, yes.
 14 THE CHAIRMAN: Do you not mean the 7th
 15 of April?
 16 MR SANTOS: The information that is laid
 17 before the Magistrates on the 6th and 7th of
 18 May.
 19 **A. May '20. Remember, we are talking also**
 20 **about May '19.**
 21 Q. Let me try not to draw you into a semantic
 22 or a dispute over the first part of my question.
 23 Whatever you considered Mr Levy to be, and,
 24 "A person of interest", we can agree on that
 25 wording - did you consider that it was

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1 appropriate for you to communicate with him
 2 notwithstanding the Government's dealings
 3 with the RGP?
 4 **A. I did not consider that it was inappropriate**
 5 **for me to be communicating with him, but I**
 6 **did not give full vent to his desire for**
 7 **communication on the subject. I oft avoided it**
 8 **and sought to move on in relation to other**
 9 **matters because there were issue that I was**
 10 **uncomfortable in discussing with him. For**
 11 **example, James was very defensive of Thomas**
 12 **Cornelio and John Perez, whilst, after the**
 13 **discussions I had with Mr Gaggero, where he**
 14 **said that there was a potential for us to have**
 15 **suffered sabotage, I wanted nothing to do with**
 16 **anything that they might say. I mean, I was at**
 17 **different times ready to listen to certain things,**
 18 **depending on what time I had, etc., but I**
 19 **wasn't going to be persuaded to change my**
 20 **view, although I did sometimes entertain**
 21 **James just for the sake of entertaining James.**
 22 Q. Did you not think it might have been
 23 prudent to impose boundaries to avoid
 24 conflicts between your role as Chief Minister,
 25 your role as leading the Government that was

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1 making the complaint and your personal and
 2 financial relationship with Mr Levy?
 3 **A. Yes, and I think I did in the way that I dealt**
 4 **with him on certain occasions and the way that**
 5 **I pushed back on certain occasions, and indeed**
 6 **in the way that I acted when I made the**
 7 **decision that the contract should stay with**
 8 **Blands.**
 9 Q. And do you think that you maintained
 10 compliance with the Ministerial Code in all
 11 your dealings with Mr Levy, 36 North and Mr
 12 McGrail in relation to the investigation?
 13 **A. At every stage, but these concepts are**
 14 **subjective and therefore, you know, I'm**
 15 **always open to guidance and learning on these**
 16 **issues. Even in the United Kingdom the Code**
 17 **is live and you have to always address how**
 18 **you have acted and second-guess yourself. I**
 19 **don't pretend to be perfect. I genuinely believe**
 20 **that I acted properly. I have defended that**
 21 **from the first moment that suggestions have**
 22 **been made that I didn't act properly and I fall**
 23 **back, finally, on what I think is for me the**
 24 **denouement of this, which is when I made the**
 25 **decision which is that the contract should not**

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<p>1 go to the entity in which I have a minor</p> <p>2 financial interest, it should go, it should stay</p> <p>3 with Bland Limited. So, that, in my view, is</p> <p>4 why I can discharge the burden of</p> <p>5 demonstrating that I acted properly and in</p> <p>6 keeping with the Code.</p> <p>7 Q. Thank you. Sir, I notice the time, it is three</p> <p>8 past 1, and perhaps we should break for lunch?</p> <p>9 A. Mr Chairman, if I may just very quickly</p> <p>10 say that, as I have shared with counsel to the</p> <p>11 inquiry, the Attorney General is in Brussels</p> <p>12 today dealing with the European negotiation. I</p> <p>13 expect I will be talking to him and I think it's</p> <p>14 important that all parties should know that I</p> <p>15 will be having discussions with him, but will,</p> <p>16 of course, studiously avoid discussing</p> <p>17 anything to do with the proceedings, but he</p> <p>18 will need steers from me in relation to the</p> <p>19 negotiation.</p> <p>20 THE CHAIRMAN: Yes, I entirely understand</p> <p>21 that and that is perfectly proper.</p> <p>22 A. Thank you.</p> <p>23 MR SANTOS: We are making progress. I</p> <p>24 would say that I am about two fifths of the</p> <p>25 way through.</p> <p style="text-align: center;">Page 153</p>	<p>1 is set out in a WhatsApp of the 11th May</p> <p>2 2019." You helpfully set out the message</p> <p>3 from Mr McGrail there, "CM - I have sent an</p> <p>4 email requesting an opportunity to brief</p> <p>5 yourself, MoJ, FS, CS, AG & DPP on a case.</p> <p>6 I believe you are flying out on Monday with</p> <p>7 Albert M. Could we meet first thing on</p> <p>8 Monday. It is important and sensitive." Your</p> <p>9 evidence there is that the Attorney General</p> <p>10 was present at the meeting, but there has</p> <p>11 been some doubt raised by one or two</p> <p>12 witnesses (including the Attorney General</p> <p>13 himself) as to whether he was there. Do you</p> <p>14 distinctly recall him being there, or is it based</p> <p>15 on the message?</p> <p>16 A. I remember a full table of attendees, or</p> <p>17 what I might call my side of the table, which</p> <p>18 is the right-hand side of the table. I sit at the</p> <p>19 head; my attendees sit on the right-hand side</p> <p>20 of the table. I don't know whether all of</p> <p>21 those listed here attended but, you know, I'm</p> <p>22 relying on that to say that he was there.</p> <p>23 Q. At 32 of your statement, at the bottom of</p> <p>24 the page, you say, "If fact, I made clear</p> <p>25 during the course of that meeting that, should</p> <p style="text-align: center;">Page 155</p>
<p>1 THE CHAIRMAN: Are we making sufficient</p> <p>2 progress?</p> <p>3 MR SANTOS: I think we are making</p> <p>4 sufficient progress, not to make any inroads</p> <p>5 into the lunch hour because I have had pleas</p> <p>6 about not interfering with that.</p> <p>7 THE CHAIRMAN: 2 o'clock.</p> <p>8 MR SANTOS: Thank you.</p> <p>9 (13.04)</p> <p>10 (The short adjournment)</p> <p>11 (14.00)</p> <p>12 MR SANTOS: Good afternoon, sir. Good</p> <p>13 afternoon, Chief Minister.</p> <p>14 A. Good afternoon.</p> <p>15 Q. Can we now look at your witness</p> <p>16 statement, A188, paragraph 30, please. Your</p> <p>17 affidavit. We are moving forward to May</p> <p>18 2019 now, 13 May 2019. You say, "Mr</p> <p>19 McGrail sought a meeting with me to brief</p> <p>20 me in relation to that investigation. We met,</p> <p>21 together with Attorney General, Michael</p> <p>22 Llamas QC, in my office on 13th May 2019.</p> <p>23 In that meeting Mr McGrail gave us details</p> <p>24 of that investigation. The request from Mr</p> <p>25 McGrail to brief me in relation to this matter</p> <p style="text-align: center;">Page 154</p>	<p>1 there be evidence of corruption in respect of</p> <p>2 a government officer or officers, then the</p> <p>3 Government itself would be a complainant in</p> <p>4 respect of that case. As it turned out, when</p> <p>5 the time came, the RGP refused to provide</p> <p>6 the Government with the evidence that there</p> <p>7 was corruption so that we could be a</p> <p>8 complainant against the Civil Servant." You</p> <p>9 say that "the RGP refused to provide the</p> <p>10 Government with the evidence", were you</p> <p>11 not prepared to accept the RGP's assessment</p> <p>12 as to whether there was such evidence?</p> <p>13 A. Of course not.</p> <p>14 Q. You were not? (?)</p> <p>15 A. My Government's involved, at that time</p> <p>16 between two thousand and (let me just think)</p> <p>17 2015 and 2019, a number of lawyers. I will</p> <p>18 start with myself (just so I don't forget</p> <p>19 myself), the Minister for Justice at that I</p> <p>20 think was Samantha Sacramento, Neil Costa</p> <p>21 I think was still a minister in the</p> <p>22 Government, Steven Linares was a lawyer,</p> <p>23 Gilbert Licudi was a lawyer. I think half of</p> <p>24 the Government were legally qualified; at</p> <p>25 least two of us were leading counsel. So,</p> <p style="text-align: center;">Page 156</p>

<p>1 when it comes to something quite as 2 consequential -- quite as consequential as an 3 allegation of corruption by a senior civil 4 servant in Government, why should we 5 simply accept that the RGP say that there is 6 evidence of that, without as complainant 7 being entitled to see what it was alleged had 8 been done to us so that we could become the 9 complainant in that respect. Otherwise, if I 10 could put it this way to you, what the RGP 11 are asking is that somebody make a 12 complaint based on their facts -- on the 13 RGP's facts, not on their own facts as found 14 out. This was not an allegation of something 15 that had been done to us physically; we had 16 not felt the pain of the alleged crime, it was a 17 metaphysical thing, so I think it's absolutely 18 incumbent on the Government to have that 19 evidence in order to be able to advance the 20 complaint. 21 Q. But you had had an account from the 22 RGP as to what had occurred. 23 A. An account. Yes, but not the evidence. 24 Why would the complainant not be entitled 25 to see what it is alleged had been done</p> <p style="text-align: center;">Page 157</p>	<p>1 ensure that they were engaging on the issues 2 that were relevant to Hassans and which they 3 were raising in that meeting.", and you say, "I 4 am reinforced in that view by the evidence of 5 retired Superintendent Paul Richardson". 6 Can you please expand on that explanation? 7 Why did you think that the RGP needed to 8 talk to Mr Levy? 9 A. Well, I would have thought it was 10 obvious: they were talking to me about the 11 NSCIS and the transfer of it from Blands to 12 36 North. 13 Q. Did you consider whether to disclose 14 what you knew about 36 North, and the 15 interactions you had had with 36 North, to 16 the RGP? 17 A. Well, I believe I did. I believe I had 18 stated during the course during the course of 19 that meeting that I'd had these dealings with 20 36 North, and I believe that they were also 21 aware of them from Mr Gaggero, who had 22 relayed to them his dealings with me. 23 Q. Did that not make you think that you 24 should stay out of future discussions on that 25 criminal investigation, given your own</p> <p style="text-align: center;">Page 159</p>
<p>1 against them? I find it very difficult to 2 understand that there is for some reason a 3 reluctance on the part of the RGP to share 4 with the alleged victim -- sorry, the alleged 5 victim -- the evidence of the crime visited 6 upon that victim. 7 Q. Well, I do not think it is meritorious to go 8 into the correspondence. There was 9 correspondence between the DPP and 10 ISOLAS, I believe, but I think we will leave 11 it there. 12 A. I don't think we've been made -- I don't 13 think the government was at all privy to that 14 correspondence. 15 Q. We can have a look at that. The Inquiry 16 asked you about your comment at the end of 17 that meeting that the RGP should speak to the 18 senior partner at Hassans, and your 19 explanation is in your third statement, 20 paragraphs three and four, page A232. And 21 you say at paragraph three, "I do believe, 22 however, that my comment about contact 23 with the senior partner of Hassans, James 24 Levy KC, was to suggest that the RGP 25 should establish that contact in order to</p> <p style="text-align: center;">Page 158</p>	<p>1 personal involvement in the factual matrix 2 and your relationship with Mr Levy? 3 A. Well, the then Commissioner of Police 4 obviously does not share your view, because 5 he's the one who specifically involves me in 6 the discussion on the date in May 2019 and 7 on the date in May 2020. 8 Q. Well, I think it is fair to say that the date 9 in 2019 is when you say that you disclosed 10 this information. 11 A. I didn't say I disclosed it, Commissioner, 12 I say they talk -- they need to talk to James at 13 Hassans -- 14 Q. Yes. 15 A. -- about details which may relate to 16 aspects of what was being discussed. 17 Q. So, you did not disclose any information 18 yourself about your involvement -- 19 A. I can't disclose -- 20 Q. -- with 36 North? 21 A. -- I can't -- I can't recall what I said in that 22 meeting, which is now some five years ago, 23 but I'm sure that by reference to Hassans I 24 was also including reference to the aspects of 25 Hassans' involvement. And in fact, as you</p> <p style="text-align: center;">Page 160</p>

40 (Pages 157 to 160)

<p>1 have referred me to, as I say in my statement,</p> <p>2 Paul Richardson confirms that I made that</p> <p>3 reference, and it's in, I think, his witness</p> <p>4 statement that I made that reference.</p> <p>5 Q. Did you discuss the investigation with the</p> <p>6 Attorney General at any point between then</p> <p>7 (13 May 2019) and 12 May 2020?</p> <p>8 A. In that whole year?</p> <p>9 Q. Yes.</p> <p>10 A. I don't believe this was an issue that the</p> <p>11 Attorney General and I were discussing at</p> <p>12 that time, but I can't tell you that we didn't at</p> <p>13 some stage have cause to exchange a few</p> <p>14 words on it.</p> <p>15 Q. Would that have related solely to the</p> <p>16 NSCIS element, or would you have discussed</p> <p>17 the fact of Mr Levy being a person of</p> <p>18 interest?</p> <p>19 A. I don't think that Mr Levy's relevance to</p> <p>20 the proceedings was relevant to whatever</p> <p>21 minor discussion I would have had with the</p> <p>22 Attorney General, but if there is evidence</p> <p>23 that we talked about James... I mean, you're</p> <p>24 asking me to go back now not just four years;</p> <p>25 you are asking me to go back five years, and</p> <p style="text-align: center;">Page 161</p>	<p>1 Levy. It's "a search warrant at Hassans", " in</p> <p>2 relation to" that case. So at that stage, you</p> <p>3 know, it says "for (JL)". I mean, the bracket</p> <p>4 seems to be in the wrong, place, it's: (for JL).</p> <p>5 But he had been the one who was</p> <p>6 representing Perez and Cornelio's interests in</p> <p>7 the context of the transfer from Bland to 36</p> <p>8 North, so what's not clear there is whether</p> <p>9 they are seeking to obtain the files that</p> <p>10 related to Perez and Cornelio and their</p> <p>11 information from their lawyer, or whether</p> <p>12 they're seeking to obtain information from</p> <p>13 their lawyer in respect of his own actions.</p> <p>14 What is very clear is that I'm being told that</p> <p>15 the warrant is being executed, they "are</p> <p>16 executing". Not that they are going to</p> <p>17 execute, or they are standing there with a</p> <p>18 warrant hoping not to execute it; that they are</p> <p>19 actually executing.</p> <p>20 Q. Of course, at this point you were aware</p> <p>21 that Mr Levy was a person of interest in the</p> <p>22 investigation.</p> <p>23 A. Yes, although we've agreed that that</p> <p>24 means neither fish nor fowl, in the context of</p> <p>25 witness or suspect.</p> <p style="text-align: center;">Page 163</p>
<p>1 to recall any oral discussion with the</p> <p>2 Attorney General and, you know, in trying to</p> <p>3 ensure that I'm accurate and truthful I cannot</p> <p>4 point to anything that sticks in my mind.</p> <p>5 Q. Moving on to 12 May 2020, which is the</p> <p>6 day that the RGP attended Hassans with the</p> <p>7 warrant. Can we go to your statement at</p> <p>8 paragraph 40 first of all, please, A190.</p> <p>9 A. I have it.</p> <p>10 Q. You say that on 12 May 2020 you</p> <p>11 "received a WhatsApp message from Mr</p> <p>12 McGrail that said: 'CM - before you</p> <p>13 hear it from anyone else I want to inform you</p> <p>14 that detectives are executing a search warrant</p> <p>15 at Hassans for (JL) in relation to the case</p> <p>16 against Perez, Cornelio & Sanchez. Its been</p> <p>17 done in the most discreet of ways and we're</p> <p>18 hoping there is co-operation. Rgds". You</p> <p>19 have given evidence as to your interpretation</p> <p>20 of that message; how did you interpret that</p> <p>21 message as far as the reference to Mr Levy</p> <p>22 was involved and his status in the</p> <p>23 investigation?</p> <p>24 A. Well, the case is not referred to being a</p> <p>25 case against Perez, Cornelio, Sanchez and</p> <p style="text-align: center;">Page 162</p>	<p>1 Q. If we then go to B141--</p> <p>2 THE CHAIRMAN: Did you know he was a</p> <p>3 suspect in that case? (?)</p> <p>4 A. No, I didn't.</p> <p>5 Q. If we can go to B1417, please.</p> <p>6 A. B?</p> <p>7 Q. 1417. These are your WhatsApp</p> <p>8 exchanges with Mr Llamas. And the first</p> <p>9 entry, at the top of the page, is at 12.29. And</p> <p>10 the Attorney General says to you, "Are you</p> <p>11 free? Two minutes." That is at 12.29, four</p> <p>12 minutes after you were informed by Mr</p> <p>13 McGrail about the warrant. Did you speak to</p> <p>14 the Attorney General at that stage?</p> <p>15 A. Yes, I did, but I don't remember whether</p> <p>16 that was face-to-face or whether he was on</p> <p>17 the phone before he came to my office.</p> <p>18 Q. And we see that both of you responded to</p> <p>19 Mr McGrail by WhatsApp, which we will</p> <p>20 look at shortly, but do you recall whether you</p> <p>21 spoke to Mr Llamas before responding to Mr</p> <p>22 McGrail or afterwards?</p> <p>23 A. I don't recall. I know my response to Mr</p> <p>24 McGrail because it's over the page --</p> <p>25 Q. Yes.</p> <p style="text-align: center;">Page 164</p>

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<p>1 A. -- in my statement. I don't know Mr 2 Llamas's response. 3 Q. In terms of your response, you do not 4 remember whether you spoke to Mr Llamas 5 before responding to Mr... 6 A. I cannot specifically tell you that I 7 remember speaking to him before I 8 WhatsApp Mr McGrail or not. 9 Q. Did you agree to speak to Mr McGrail 10 with Mr Llamas? 11 A. Did I agree with Mr Llamas to speak -- 12 Q. To speak to Mr -- 13 A. -- with Mr McGrail? 14 Q. Yes. 15 A. I cannot recall whether I agreed that with 16 Mr Llamas or whether I sought myself to 17 speak to Mr McGrail. I didn't need Mr 18 Llamas's agreement to speak to Mr McGrail. 19 Q. Then at 12.34, nine minutes after the 20 message, you respond. This is in your 21 statement, A191, and you say, "Ian, Thank 22 you for the courtesy of this information. I 23 think that is a bad decision. A search warrant 24 should only have been sought if you believed 25 that the person in question was not going to</p> <p style="text-align: center;">Page 165</p>	<p>1 in other words, seeking to obtain evidence 2 from James Levy could have happened in a 3 way that was less intrusive and did not 4 expose the jurisdiction to reputational risk in 5 the way that this did. 6 THE CHAIRMAN: But you did not know 7 he was a suspect? 8 A. Sorry? 9 THE CHAIRMAN: You did not know he 10 was a suspect at that time. 11 A. But search warrants are not executed 12 against people who are not suspects. By that 13 stage I was starting to become concerned that 14 he might be a suspect. 15 THE CHAIRMAN: But you did not know 16 that he was a suspect? 17 A. Well, I didn't know because I wouldn't 18 know -- 19 THE CHAIRMAN: You did not need (?) to 20 confirm that. 21 A. Yes, but from what I'm trying to -- what 22 I'm trying to get across is that people 23 wouldn't tell me whether someone was or 24 was not a suspect. What McGrail tells me in 25 his texts suggests that he isn't, but the</p> <p style="text-align: center;">Page 167</p>
<p>1 cooperate and will try destroy evidence. If, 2 as you say, you are hoping for cooperation, 3 especially in a case involving a senior Silk 4 and head of Gibraltar's largest legal firm, you 5 should, in my view, first have sought to 6 contact that person and obtain cooperation. 7 Given my close personal relationship with 8 JL, I won't comment further." You say "I 9 think that is a bad decision." Why did you 10 feel that it was appropriate to give your view 11 on the decision at that point? 12 A. Because Mr Levy, for the reason's I've set 13 out there, is Gibraltar's most senior silk, I 14 think at that time, and the head of Gibraltar's 15 largest law firm. And the consequences of 16 carrying out a search warrant against such a 17 person where (?) jurisdiction. In other 18 words, there was a jurisdictional risk as a 19 result of the execution of that search warrant. 20 Gibraltar's reputation was in play; indeed, 21 Gibraltar's reputation has been brought in 22 play as a result of a lot less than that, not 23 least by these proceedings. So, I was very 24 concerned that that should be an issue that 25 should not have been progressed in that way;</p> <p style="text-align: center;">Page 166</p>	<p>1 execution of a search warrant points towards 2 him being... put it this way, I'll use the words 3 of the DPP: having questions to answer. 4 THE CHAIRMAN: But you asked about the 5 words, you "think that is a bad decision." 6 But, you are saying that when you did not 7 actually know that he was a suspect. 8 A. I was saying that with the information 9 that I had, which was only the message from 10 Ian McGrail that day. 11 THE CHAIRMAN: Yes. 12 Q. Do you think that you would have 13 expressed such a view so readily if it had not 14 been for the fact it involved Mr Levy? 15 A. I expressed that view when Mr McGrail 16 came to see me, by telling him that I would 17 be expressing exactly those same sentiments 18 even if it had been another senior lawyer in 19 Gibraltar. And I'm reinforced in that view 20 because Mr McGrail had thought it 21 appropriate to come and brief me in relation 22 to another search warrant that was going to 23 be executed again-- in respect of a much 24 more junior member of the Bar in Gibraltar, 25 because he understood the reputational risks</p> <p style="text-align: center;">Page 168</p>

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<p>1 to the jurisdiction from the execution of a</p> <p>2 search warrant in respect of a legal</p> <p>3 professional, given the issues that are</p> <p>4 relevant in relation to Gibraltar in particular</p> <p>5 in the Spanish media.</p> <p>6 Q. Is it fair to say that from this moment</p> <p>7 onwards you were angry?</p> <p>8 A. That I was angry?</p> <p>9 Q. Yes.</p> <p>10 A. Yes, absolutely I was angry.</p> <p>11 Q. You then say that a search warrant should</p> <p>12 only have been sought if the RGP believed</p> <p>13 that the person was not going to cooperate.</p> <p>14 Had you seen the information laid before the</p> <p>15 magistrate, or been informed as to the RGP's</p> <p>16 basis for thinking there was a risk of</p> <p>17 destruction of evidence?</p> <p>18 A. I self-evidently had not.</p> <p>19 Q. You said in your letter of 5 June that the</p> <p>20 obtaining and execution of a search warrant</p> <p>21 was, in your opinion, "of dubious legality,</p> <p>22 abusive, unprecedented in policing in</p> <p>23 Gibraltar, incompatible with public</p> <p>24 confidence in policing and the good name</p> <p>25 and reputation of Gibraltar as a business and</p> <p style="text-align: center;">Page 169</p>	<p>1 June when you sent that letter?</p> <p>2 A. No, but I'm entitled to have my opinion,</p> <p>3 because of course I know all of the players.</p> <p>4 And of course, it is possible that the RGP</p> <p>5 might have had information which enabled</p> <p>6 them to take the view that a search warrant</p> <p>7 was necessary. No such information was</p> <p>8 shared with me, and given what I've seen in</p> <p>9 these proceedings, where information has</p> <p>10 been disclosed in that respect, I think they</p> <p>11 were relying on the flimsiest of flimsy</p> <p>12 pretences in order to obtain a search warrant</p> <p>13 instead of a production order.</p> <p>14 Q. Do you believe that certain people and</p> <p>15 law firms in Gibraltar are off-limits for police</p> <p>16 investigations?</p> <p>17 A. Absolutely not. Nobody's off-limits.</p> <p>18 Gibraltar is governed by the rule of law and</p> <p>19 entirely so; we are all subject to the law and</p> <p>20 no one is above the law. But there are some</p> <p>21 circumstances when going about the</p> <p>22 enforcement of the law I think requires more</p> <p>23 guile and temperament than was shown in</p> <p>24 this case by the Royal Gibraltar Police.</p> <p>25 Q. You end the message saying, "Given my</p> <p style="text-align: center;">Page 171</p>
<p>1 financial centre." How did you feel able to</p> <p>2 say that, without knowledge of the full facts?</p> <p>3 A. First of all, I said that on the basis of</p> <p>4 legal advice. That letter was prepared for me</p> <p>5 by my counsel in this matter, so I am</p> <p>6 reinforced in the view that I did not reach</p> <p>7 those conclusions without the benefit of legal</p> <p>8 advice. And second, because I am very clear</p> <p>9 in my view (especially after I've seen what</p> <p>10 scant evidence has been provided in these</p> <p>11 proceedings as to the suggestion that a search</p> <p>12 warrant was necessary) that there is nothing</p> <p>13 to substantiate that a search warrant should</p> <p>14 have been executed to -- against Mr Levy,</p> <p>15 and I do not agree that if that search warrant</p> <p>16 had been challenged it would have withstood</p> <p>17 -- indeed, a very recent case of the Court of</p> <p>18 Appeal, of the reference of the King versus</p> <p>19 Verralls, where there is an in-depth analysis</p> <p>20 of the law in respect of search warrants,</p> <p>21 suggests to me that actually this was a</p> <p>22 warrant also obtained improperly, as that</p> <p>23 warrant has been found to have been</p> <p>24 executed improperly.</p> <p>25 Q. But were you aware of those facts on 5</p> <p style="text-align: center;">Page 170</p>	<p>1 close personal relationship with JL, I won't</p> <p>2 comment further." Were you recognising in</p> <p>3 that message that you yourself did not</p> <p>4 consider it appropriate to comment on the</p> <p>5 warrant?</p> <p>6 A. I was saying explicitly what I say in my</p> <p>7 message: that given my close personal</p> <p>8 relationship with James I wasn't going to</p> <p>9 comment further at that stage.</p> <p>10 Q. Why were you not going to comment</p> <p>11 further?</p> <p>12 A. Because I wanted time to think about my</p> <p>13 reaction, and I had time to think my reaction</p> <p>14 -- through my reaction, that's why I wanted</p> <p>15 to see Ian McGrail, who I found out was in</p> <p>16 Number 6. Otherwise I would have spoken</p> <p>17 to him on the phone.</p> <p>18 Q. Were you acknowledging that you were</p> <p>19 conflicted between your duties as Chief</p> <p>20 Minister and your duties as a friend?</p> <p>21 A. I had other duties here, too. I was also</p> <p>22 the senior representative of the party that we</p> <p>23 were being told should be a complainant in</p> <p>24 these proceedings, and I felt that it was</p> <p>25 entirely inappropriate that things had</p> <p style="text-align: center;">Page 172</p>

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<p>1 progressed in the manner that they appear to 2 have progressed. I'm entitled to have 3 opinions even though I have different 4 capacities. 5 Q. As well as your friendship, there was the 6 fact that you were financially invested in 36 7 North's fortunes. You were aware -- 8 A. Well, hang on, but the investment in 36 9 North had two years before already been 10 resolved by me by giving the contract to 11 Bland Limited. A year and a half before this 12 I had already resolved the issue of that 13 conflict, against my financial interest. So I 14 didn't consider that at this stage there was 15 anything relating to that financial interest 16 which was live; that had been extinguished. 17 Q. You were also invested in Hassans as a 18 law firm. 19 A. I am still. 20 Q. And you had communicated with two of 21 the other individuals named in that message 22 from Mr McGrail. Did those connections 23 contribute to your comment that you should 24 not comment further? 25 A. No, my comment was about James,</p> <p style="text-align: center;">Page 173</p>	<p>1 Q. So, is your evidence that straight after 2 saying that you would not comment further, 3 you then sought to call him? 4 A. I don't think it was straight after; I think 5 some minutes had passed. 6 Q. Well, your evidence says, "Just after 7 sending my response, I was informed that Mr 8 McGrail was actually, at that moment, in No6 9 Convent Place on" -- 10 A. Yes. 11 Q. -- "an unrelated matter." 12 A. That "Just after" must have meant a few 13 minutes. 14 Q. So I think you have already alluded to 15 this, but I want to ask you directly. Why, 16 after saying that you would not comment 17 further, did you nevertheless see fit to call Mr 18 McGrail to your office and do just that? 19 A. Because I wanted more information. 20 Because this was this was jurisdictionally 21 important: Gibraltar's reputation was 22 potentially going to be tarnished by this 23 action, carried out in this way. 24 Q. Can you estimate what time that meeting 25 started? Your response to Mr McGrail was</p> <p style="text-align: center;">Page 175</p>
<p>1 which is exactly what it says, but I was also 2 invested with the fact that I'm the senior (at 3 that time and now) elected representative of 4 the people of Gibraltar, and these had -- this 5 warrant, executed in this way, could 6 potentially have reputational consequences 7 for Gibraltar and its people. 8 Q. Did it occur to you that a Chief Minister 9 should not be expressing strong views on a 10 live criminal investigation? 11 A. Well, I'm surprised that that point is being 12 taken, given that when I was expressing 13 strong views about the airfield incident the 14 RGP were very happy to receive my strong 15 views. 16 Q. In paragraph 41 you say, "Just after 17 sending my response, I was informed that Mr 18 McGrail was actually, at that moment, in No6 19 Convent Place on an unrelated matter. I 20 therefore asked that he should come up to my 21 office to see me, which he did." 22 A. I think the way I found out was because I 23 asked for Ian McGrail to be got on the phone 24 for me, and I was then told that he was in 25 Number 6 and did I want him to come up.</p> <p style="text-align: center;">Page 174</p>	<p>1 12.34, and then he is called up to your office. 2 What time, more or less, would you say that 3 the meeting started? 4 A. It's very difficult for me to say with any 5 degree of accuracy, but I would have thought 6 it was before one o'clock. It wasn't a long -- 7 it wasn't a long delay. 8 Q. And how long did the meeting with Mr 9 McGrail take, as far as you can recall? 10 A. Between five and twenty minutes. I 11 wouldn't be able to give you a more accurate 12 estimation of time; it was very fast-moving, 13 it was very fast-paced, it was very ill- 14 tempered. 15 Q. Was there anyone there other than you, 16 Mr McGrail and Mr Llamas? 17 A. Not that I can recall. 18 Q. Given the importance and the sensitivity 19 of what was being discussed, did you not 20 think it appropriate to have someone present 21 to take a note? 22 A. Not necessarily, because Mr McGrail had 23 reached out to me directly on the subject and 24 so I assumed if he'd wanted to say anything 25 further, because it was a live investigation he</p> <p style="text-align: center;">Page 176</p>

<p>1 would want to say it to me rather than say it 2 more widely. 3 Q. Mr McGrail's evidence is that you 4 berated him and gave him the dressing-down 5 of his 36-year law enforcement career. Do 6 you agree with that characterisation? 7 A. I haven't been there for the many other 8 dressings-down he must have had in his 36- 9 year career, so I'm not able to say. 10 Q. Well, let us forget the 36 year law- 11 enforcement career bit: do you agree that you 12 berated him and gave him a dressing-down? 13 A. No, I don't think that I berated him. I 14 think I made my strength of feeling very 15 clear and, you know, Mr McGrail has been 16 present when I've made my strength of 17 feeling clear to the senior management team 18 at the police on other occasions in respect of 19 other matters. I wouldn't say that I was more 20 vehement in my style or presentation on that 21 occasion than I was on other occasions when, 22 admittedly, Mr McGrail was not then 23 Commissioner of Police, but he was present 24 as part of the senior management team when 25 I'd made my views clear.</p> <p style="text-align: center;">Page 177</p>	<p>1 from the outset of the meeting, because 2 you've already accepted that you were angry 3 at the time of the message. Would you 4 accept that? 5 A. I would, yes. Anger is an emotion, it's 6 not something that one necessarily is able to 7 control. 8 Q. In paragraph 44 of your statement you 9 say, "I made clear, in firm and forthright 10 language, to Mr McGrail that I considered 11 that the RGP had not acted properly in the 12 execution of a search warrant in respect of a 13 senior lawyer like Mr Levy. I repeated the 14 points made in my WhatsApp reply. In 15 person, I robustly told Mr McGrail that he 16 should not think that I was making this point 17 because I was close to Mr Levy. I told him 18 that I would be making the same point if any 19 other senior member of the legal profession 20 had been involved." Is it your position that a 21 search warrant could never be proper against 22 a senior lawyer in Gibraltar? 23 A. No, that is not my position; it's not what I 24 said. 25 Q. Did you not allow for the possibility that</p> <p style="text-align: center;">Page 179</p>
<p>1 Q. You acknowledge in your evidence that it 2 was an ill-tempered meeting -- 3 A. Mm-hmm. 4 Q. -- you were very angry -- 5 A. Yeah. 6 Q. -- you used robust language throughout 7 the meeting, very likely laced with 8 expletives. 9 A. Yeah. 10 Q. Do you recognise that a fair-minded 11 observer might have interpreted that as a 12 berating? 13 A. Well, this is a subjective concept and 14 therefore I don't think that much turns on 15 whether it was a berating or it was not a 16 berating. I think it was a robust exchange. 17 Mr Ian McGrail is not a shrinking violet by 18 any stretch of the imagination or by any 19 measure, and he didn't seem to -- appear to 20 be reacting as somebody who was being 21 berated: he was standing up for what he 22 wanted to represent to me were the reasons 23 why it was appropriate to have acted in that 24 way. 25 Q. And it is fair to say that you were angry</p> <p style="text-align: center;">Page 178</p>	<p>1 the RGP may be privy to some information 2 which you were unaware of at the time? 3 A. Of course I did. 4 Q. Did it not occur to you, then, that they 5 may have been aware of information that 6 justified their actions, contrary to your 7 impression? 8 A. That is exactly what Ian McGrail 9 suggested to me by telling me that the DPP 10 had advised that they should go by way of 11 warrant. 12 Q. We will come to that shortly, but at 13 paragraph 45 you say, just over the page, "I 14 recall telling Mr McGrail that the 15 communications devices of senior lawyers 16 were likely to include legally privileged 17 material which would have to be sifted 18 through by the RGP in a warrant type 19 situation such as this one they had brought 20 about, an expertise which the RGP did not 21 have in dealing with 'white collar crime'." 22 Did you think that this disqualified the RGP 23 from using warrants in cases dealing with 24 white collar crime? 25 A. I felt they had to be very careful when</p> <p style="text-align: center;">Page 180</p>

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<p>1 using warrants when there was an alternative,</p> <p>2 perfectly practicable alternative, which is a</p> <p>3 production order. Which in my view, unless</p> <p>4 there is specific evidence that there is going</p> <p>5 to be destruction of evidence should be the</p> <p>6 preferred way of progressing in respect of</p> <p>7 individuals who hold privileged information</p> <p>8 belonging to other parties.</p> <p>9 Q. You would accept, would you not, that in</p> <p>10 raising all of these points you were</p> <p>11 questioning the RGP on an operational matter</p> <p>12 in a live criminal investigation?</p> <p>13 A. I didn't think it was an operational matter,</p> <p>14 because he was telling me he'd (?) already</p> <p>15 executed the warrant.</p> <p>16 Q. Well, his message to you said, "detectives</p> <p>17 are executing a search warrant at Hassans".</p> <p>18 A. Exactly: the horse had bolted.</p> <p>19 Q. Are you saying that you thought that the</p> <p>20 search warrant had already been carried out -</p> <p>21 -</p> <p>22 A. Yes, and the damage --</p> <p>23 Q. -- by then?</p> <p>24 A. -- the damage had been done, because</p> <p>25 they were executing a search warrant in a law</p> <p style="text-align: center;">Page 181</p>	<p>1 whether or not to sign the search warrant.</p> <p>2 That doesn't mean I'm not entitled to my</p> <p>3 opinion in respect of that.</p> <p>4 Q. But if it was good enough for the</p> <p>5 magistrate, was it not good enough for you?</p> <p>6 A. Unless it's legally challenged, and it's</p> <p>7 shown that the magistrate should not have</p> <p>8 granted the warrant.</p> <p>9 Q. It was open to Mr Levy to judicially</p> <p>10 review the warrant, was it not?</p> <p>11 A. Indeed it is.</p> <p>12 Q. And you have given evidence that you</p> <p>13 believed that the warrant would not have</p> <p>14 withstood a challenge through judicial</p> <p>15 review.</p> <p>16 A. I think it is one of the flimsiest warrants</p> <p>17 ever obtained in Gibraltar's courts.</p> <p>18 Q. So, was not the right thing to do for Mr</p> <p>19 Levy to get on with that, and enforce his</p> <p>20 legal rights and seek appropriate remedies</p> <p>21 through legal letters and if necessary the</p> <p>22 court, like any other citizen?</p> <p>23 A. That is a matter for Mr Levy and his</p> <p>24 lawyers, and I expected that they would do so</p> <p>25 and hope that they still will challenge the</p> <p style="text-align: center;">Page 183</p>
<p>1 firm in Gibraltar, and that could lead to a</p> <p>2 serious reputational damage for Gibraltar.</p> <p>3 Q. In paragraph 46 you say, "I said that if the</p> <p>4 police were investigating a lawyer for an</p> <p>5 offence in respect of which they might</p> <p>6 destroy evidence, then they could seek to</p> <p>7 persuade a magistrate of the need for a search</p> <p>8 warrant." Is that not just what the RGP did?</p> <p>9 They went to a magistrate and sought to</p> <p>10 persuade?</p> <p>11 A. They wouldn't have got it otherwise.</p> <p>12 Q. Yes.</p> <p>13 A. The RGP cannot grant itself a search</p> <p>14 warrant; they need to have gone through this</p> <p>15 process. But as we have now seen, on the</p> <p>16 scantiest and flimsiest of evidence, and as I</p> <p>17 know from my own practice magistrates in</p> <p>18 Gibraltar tend to simply grant the warrants</p> <p>19 that are put before them for granting.</p> <p>20 Q. Did you not think that it was really rather</p> <p>21 a matter for the magistrate whether a search</p> <p>22 warrant was appropriate as opposed to a</p> <p>23 production order?</p> <p>24 A. Legally, it is only going to be the</p> <p>25 magistrate who's going to make up his mind</p> <p style="text-align: center;">Page 182</p>	<p>1 grant of the warrant. I think it was an gross</p> <p>2 (sic) abuse, and it should never have</p> <p>3 happened in Gibraltar.</p> <p>4 (14.30)</p> <p>5 Q. But if it was open to them to do that and</p> <p>6 if it was so clear that they would be</p> <p>7 successful in doing so, why was it necessary</p> <p>8 nevertheless for you to involve yourself in it?</p> <p>9 A. I'm not suggesting it was necessary. I'm</p> <p>10 just suggesting that I also had equities in this</p> <p>11 which are not the equities which are</p> <p>12 improper which you put to me about my</p> <p>13 involvement in 36 North, etc. I had equities</p> <p>14 which were proper and which I had to pursue</p> <p>15 as my obligation in defence of the probity of</p> <p>16 this jurisdiction and its reputation.</p> <p>17 Q. But you did have other equities in the</p> <p>18 matter, did you not, Mr Picardo?</p> <p>19 A. But the one that you imply is the one that</p> <p>20 leads me into an improper motive is one that</p> <p>21 I already suggested was fully resolved 18</p> <p>22 months earlier.</p> <p>23 Q. Not your equity in terms of your</p> <p>24 partnership of Hassans?</p> <p>25 A. No, not my equity in terms of my</p> <p style="text-align: center;">Page 184</p>

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<p>1 partnership of Hassans, but yes my 2 involvement in 36 North and my financial 3 interests in 36 North. But as I said 4 specifically, and I said it on the day to Ian 5 McGrail in the heat of that moment, I would 6 be making the same point, and I use the 7 example of Sir Peter and Melo Triay, if the 8 other senior lawyers in the jurisdiction had 9 been subject to actions of this sort by the 10 Royal Gibraltar Police.</p> <p>11 Q. If we go to Mr McGrail's first statement, 12 paragraph 34, page 1.</p> <p>13 A. Where do I see that?</p> <p>14 Q. A10, sorry. (Pause). At the bottom of 15 the page, paragraph 34: 16 "There was a heated debate on whether the 17 actions of the team were proper or not, with 18 me saying they were and the CM saying they 19 were not. I stated that it should be left for the 20 courts to decide who was right or wrong. I 21 said this because the CM said that JL should 22 not hand over his mobile device to the RGP 23 but should do so to a court. He said he hoped 24 I was right and that he was wrong as there 25 would be consequences if he was found to be</p> <p style="text-align: center;">Page 185</p>	<p>1 should not want to see ventilated, you know, 2 the RGP's improperly obtaining search 3 warrants, etc. It certainly wasn't a threat at 4 Mr McGrail himself.</p> <p>5 Q. Reading on in paragraph 34, Mr McGrail 6 says: 7 "I was struggling to understand how the CM 8 was seemingly aware of parts of the evidence 9 gathered in Op Delhi, for example, he was 10 challenging the need to obtain JL's devices 11 when he claimed the investigating team 12 already had the data we needed from the 13 other suspects. What had been extracted 14 from the suspects' mobile devices was 15 information that only the investigating team 16 and the DPP and Crown Counsel would have 17 been privy to. It is certainly not something I 18 would have expected the CM to be aware 19 of."</p> <p>20 A. Well, certainly that's true in respect of the 21 detail, but not in respect of the fact. Because 22 the fact was widely known in Gibraltar.</p> <p>23 Q. The fact, sorry what fact was ... the fact 24 of the arrests and the confiscation of devices? 25 A. Exactly.</p> <p style="text-align: center;">Page 187</p>
<p>1 right in that we had not conducted ourselves 2 properly in this matter. I took this as a sort 3 of threat from the CM."</p> <p>4 Did you say that there would be 5 consequences if Mr McGrail was found to be 6 wrong and you were found to go right?</p> <p>7 A. Not Mr McGrail. I was not making 8 a threat to Mr McGrail. That is entirely 9 incorrect. I was saying that there would be 10 consequences because potentially there 11 would be actions for damages against the 12 Government of Gibraltar. Indeed, in the case 13 I have just referred you to, in the findings of 14 the Court of Appeal in the King and Verrells 15 v the RGP, what is now left to be determined 16 in the damages that the taxpayer is going to 17 have to pay because of improper execution of 18 a search warrant in that case.</p> <p>19 Q. So the consequences you were alluding to 20 and concerned by, is your evidence that the 21 consequences were the financial 22 consequences or claims being brought in as 23 a result of the warrant?</p> <p>24 A. Yes, and indeed reputationally as well 25 that, you know, this is an issue that we</p> <p style="text-align: center;">Page 186</p>	<p>1 Q. But had you been informed as to the 2 evidence that the RGP had extracted from 3 those devices?</p> <p>4 A. No, but I assumed that digital 5 communications, which are exchanges of 6 messages, have two sides to them. So once 7 you have got one side, you have got the 8 whole thing.</p> <p>9 Q. So that was surmised on your part rather 10 than any information that you had?</p> <p>11 A. I hesitate to use the word "surmise" 12 because I was aware of the fact, just like 13 everybody in Gibraltar who was in the know 14 was aware of the fact, that individuals had 15 been arrested and their electronic 16 communications obtained.</p> <p>17 Q. Perhaps we can agree on "deduction". 18 A. Yes.</p> <p>19 Q. Did you allege that the RGP was 20 knowingly allowing itself to be used by 21 Mr Gaggero to pursue a commercial dispute? 22 A. Can you refer me to that? I can't think of 23 Mr Gaggero's number.</p> <p>24 Q. I believe it is dealt with in paragraph 38. 25 Yes:</p> <p style="text-align: center;">Page 188</p>

<p>1 "The CM also expressed a critical view that 2 the complainant in the case, Mr James 3 Gaggero, the Chairman of Bland Limited, 4 was actually using the RGP and that the RGP 5 was knowingly allowing itself to be used to 6 pursue to pursue what in essence was 7 a commercial dispute without there being any 8 conspiracy to defraud." 9 Did you say something to that effect? 10 A. Very likely I would have said something 11 like that, yes. I had been struck by the fact, 12 and I think it is in evidence somewhere, that 13 Mr Gaggero had actually stopped me on the 14 day that Mr Cornelio and Mr Perez were 15 going to be arrested, he actually stopped my 16 car and knocked on my window and said to 17 me in glee, "Today's the day. They're going 18 to be arrested." And I was rather shocked at 19 that because, you know, I didn't find out that 20 Perez and Cornelio had been arrested once 21 they had been arrested. I found out before 22 they were arrested that Mr Gaggero, the 23 alleged victim or one of the alleged victims 24 of what was being investigated, had already 25 been briefed by the RGP in respect of the</p> <p style="text-align: center;">Page 189</p>	<p>1 service disciplinary route. 2 A. I think that is a mischaracterisation of 3 what I said. I said that it should be HMGoG 4 that would lay the complaint, not that it had 5 to be HMGoG that should lay the complaint. 6 I was very clear about my thinking on that. 7 A previous socialist labour government in the 8 1980s/1990s had found its reputation 9 severely tarnished by allegations of 10 corruption at the time of the election in the 11 mid 1990s. I was very clear that if there 12 were going to be allegations of corruption 13 they should be properly investigated and that 14 my government itself would be the one to lay 15 a complaint if credible evidence of 16 corruption could be brought to us in respect 17 of any senior officer or anybody else having 18 incurred in that sort of activity. 19 Q. Did you express a preference for 20 a disciplinary route at all -- 21 A. No. 22 Q. -- for Mr Sanchez? 23 A. That's never been an issue on which I 24 think I have expressed any view whatsoever. 25 Q. Then jumping ahead ... sorry, going back</p> <p style="text-align: center;">Page 191</p>
<p>1 actions they were going to take. So if I was 2 told by the Commissioner of Police as Chief 3 Minister of Gibraltar that the search warrant 4 in respect of Mr Levy was being executed as 5 it was being executed, Mr Gaggero was 6 being advised even before instruments of 7 detention were being enforced by the RGP, 8 which is really quite remarkable and that is I 9 think what led to my statement there. 10 Q. If we then look at paragraph 38, a little 11 bit further down, four lines from the bottom: 12 "He said that if Caine Sanchez was corrupt 13 that it was HMGoG that had to make the 14 complaint. I told the CM the charges Caine 15 Sanchez could face were that of misconduct 16 in public office. He said that even for that 17 offence it had to be HMGoG that that had to 18 lay the complaint, something which to that 19 date had not materialised. What I took from 20 this comment was that the CM was stating 21 that the RGP could not proffer charges 22 against Caine Sanchez without HMGoG's 23 complaint. This significantly resonated with 24 the AG's previous suggestions that Caine 25 Sanchez should be dealt with via the civil</p> <p style="text-align: center;">Page 190</p>	<p>1 to your witness statement, paragraph 51, I 2 think this is 193: 3 "I believe I told Mr McGrail, as that meeting 4 ended, that I was greatly disappointed by the 5 manner in which the RGP had acted and that 6 I believed that they had acted improperly and 7 outside the law. I was very angry about this 8 turn of events and Mr McGrail' s attitude in 9 the meeting and used robust language 10 throughout the meeting [as I have said 11 previously] very likely laced with 12 expletives." 13 Did you feel that you were sufficiently 14 informed to pass such a judgment over the 15 RGP's action at that stage? 16 A. Well, I passed that judgment because I 17 had taken the view that I was able to form it 18 and I was able to form it not just based on the 19 discrete information that I had about this 20 matter, also about the individuals who were 21 involved and what I knew of them. In my 22 view a senior silk in Gibraltar, that also 23 happens to be the head of his own religious 24 community, is not someone who is going to 25 fail to respond to the exigences of</p> <p style="text-align: center;">Page 192</p>

<p>1 a production order if it is provided. That was 2 my view and it's a view that I believe I'm 3 entitled to. In the same way as I wasn't the 4 police officer laying the information, I am 5 a person with wide experience of the legal 6 profession in Gibraltar, um, and I think I am 7 entitled to form a view about something. 8 Q. As we have seen, paragraph 7.7 of the 9 ministerial code says that ministers must 10 scrupulously avoid any danger of actual or 11 perceived conflict of interests between their 12 ministerial position and their private financial 13 interests. Given your financial interests in 14 Hassans, do you believe that you managed to 15 avoid a danger of actual or perceived 16 conflict? 17 A. Entirely, because this was not in any way 18 driven by my financial interest. You have to 19 understand what I am saying about the nature 20 of the effect of this. Whether it was, and I'm 21 sorry to repeat the point, Sir Peter Caruana, 22 Melo Triay, the head of any other one of the 23 important chambers in Gibraltar, this was 24 hugely consequential because of that, not 25 because I am a partner on sabbatical in</p> <p style="text-align: center;">Page 193</p>	<p>1 A. Yes, but if you think laterally in respect 2 of that question, you are then saying that 3 because I have a relationship with someone 4 they are not entitled to the protection that I 5 would deploy in respect of others. Now, 6 there is only one Chief Minister in Gibraltar, 7 right? And there is only one person who is 8 being informed of these things on that day, 9 that's me. It is not possible for me to 10 delegate to another the protection that I 11 would have afforded to senior partners and 12 lawyers of other firms to deploy in respect of 13 James Levy. It had to be me. 14 Q. But is that not precisely what the 15 ministerial code says you should be doing, 16 which is stepping out of that situation and 17 letting someone else do it? 18 A. But I don't think that there is a moment 19 here where the ministerial code engages 20 directly because I'm not dealing with 21 a financial interest of mine. I'm not seeking 22 to protect any financial interests. I'm seeking 23 to protect the reputation of the jurisdiction. 24 This is the key point. This is not an issue 25 about James Levy as one of my partners.</p> <p style="text-align: center;">Page 195</p>
<p>1 Hassans. That is not relevant to the issue 2 here. 3 Now, you may also recall, Mr Santos, that in 4 recent memory a Gibraltar law firm, a very 5 large Gibraltar law firm, has gone into 6 liquidation, partners have been arrested, 7 charges have been laid and there have been 8 convictions. So all of this has played out in 9 the international press. These things are 10 relevant to Gibraltar's jurisdiction, to 11 Gibraltar's reputation as a jurisdiction, and 12 my key equity in this matter is the protection 13 of Gibraltar and its reputation, despite the 14 fact that I also happen to be a partner on 15 sabbatical of Hassans and indeed that I might 16 have had an interest, which is extinguished 17 by the time this is happening, in 36 North. 18 Those things mattered more to me. 19 Q. But is there not a danger there? You see, 20 is there not a difference between Sir Peter 21 Caruana, I am sorry, his ears must be ringing, 22 but Sir Peter Caruana, Melo Triay, with 23 whom you are not a partner, and you 24 intervening there on behalf of Gibraltar as 25 leader of the government?</p> <p style="text-align: center;">Page 194</p>	<p>1 This is about James Levy, a senior partner of 2 the largest law firm in Gibraltar. Indeed if 3 you look at Chambers and Partners, which is 4 considered to be the bible in respect of 5 lawyer standing, the only star performer year 6 after year and Chambers and Partners is 7 James Levy. The top ranked lawyer in 8 Gibraltar in Chambers and Partners, which is 9 an independent third-party guide to the legal 10 profession, is James Levy. I'm sorry to cause 11 mirth by referring to it, but those who are 12 highly ranked there are important to the 13 jurisdiction. And if they are important to the 14 jurisdiction, then the execution of 15 enforcement procedures, such as a search 16 warrant in respect of them, necessarily has 17 jurisdictional consequences. Not 18 consequences in respect of the financial 19 interests of his co-partners in Hassans. 20 Jurisdictional consequences. That was my 21 point. 22 Q. 6.6 of the code says: 23 "Particular care also needs to be taken over 24 cases in which a minister may have 25 a personal interest or connection, for</p> <p style="text-align: center;">Page 196</p>

<p>1 example, because they concern family, 2 friends or employees. If exceptionally 3 a minister wishes to raise questions about the 4 handling of such a case, they should advise 5 the Chief Secretary and write to the minister 6 responsible, as with constituency cases, but 7 they should make clear their personal 8 connection or interest. The responsible 9 minister should ensure that any inquiry is 10 handled without special treatment." 11 Why did you not seek to involve the Chief 12 Secretary? 13 A. I involved the Attorney General. Um, at 14 that time and for many years the Attorney 15 General has really taken over the role that 16 previously had been done by the Chief 17 Secretary. I involved the Attorney General 18 in the presence of the Commissioner and the 19 Commissioner knew all of those connections 20 to which you are referring. This was not, I 21 mean, the reality is that this is not a country 22 of 60 million people. We uphold the same 23 ethical standards but with a level of 24 proximity which therefore necessarily by 25 degree is different. So I didn't need to</p> <p style="text-align: center;">Page 197</p>	<p>1 investigation should of course continue. But 2 was there not a danger that the Commissioner 3 of Police would now be in fear of further 4 angry meetings with you if he took the wrong 5 step? 6 A. Well, that's a hypothesis. In fact the 7 opposite turned out to be true. And what I 8 felt should happen, which was that the 9 investigation should continue, is in fact what 10 he felt should happen and what everybody 11 else felt should happen because the 12 investigation continued. So the hypothesis 13 that you postulate is defeated by the reality of 14 what occurred. 15 Q. In paragraph 53 of your statement you 16 say: 17 "I do not think Mr McGrail understood then, 18 or now, the consequences of his actions. I do 19 not think he appreciated the negative effects 20 to Gibraltar's international reputation, as both 21 a finance centre and a properly policed 22 jurisdiction, from police behaviour of this 23 kind." 24 Assuming that you are right about the search 25 warrant being legally flawed and that it</p> <p style="text-align: center;">Page 199</p>
<p>1 specifically declare those things to 2 Mr McGrail. Indeed, it's given away by the 3 fact that he wrote to me in his WhatsApps 4 alluding to my relationship with Mr Levy. It 5 wasn't something that was in any way 6 hidden. 7 Q. And in fairness to you, you did refer to 8 the personal connection in your text message. 9 A. In my reply. He referred to it in, um, 10 introducing the issue and I referred to it in 11 my reply. 12 Q. In your evidence you say that you were 13 highly critical after the event of the decision 14 to proceed with the search warrant, but do 15 you accept that in fact while you were in that 16 meeting with Mr McGrail the RGP officers 17 were still at Hassans with Mr Levy 18 negotiating whether there would be 19 an execution or not? 20 A. I don't know the chronology, but I 21 approached this on the basis that the warrant 22 had been executed. The horse had bolted as 23 far as I was concerned. 24 Q. You say in paragraph 47 of your 25 statement that your position was that the</p> <p style="text-align: center;">Page 198</p>	<p>1 would be overturned through the judicial 2 review, why do you think that the mere 3 execution of a search warrant, or 4 non-execution as it happened, would have 5 negative effects on Gibraltar's international 6 reputation? 7 A. Well, I proceeded on the basis that this 8 was execution and in fact it has only been 9 very late in these proceedings that the idea 10 that it has not been executed has come up and 11 so -- 12 Q. I am happy for you to proceed on the 13 basis of an executed search warrant. 14 A. Exactly. 15 Q. Why -- 16 A. When I gave this witness statement it was 17 on the basis that the warrant had been 18 executed. So the point is this. When you are 19 looking at production orders versus search 20 warrants, you are not just seeking to protect 21 the subject of the warrant or the order. What 22 you are seeking to protect is the privilege and 23 the communications of the third parties that 24 that individual may represent in respect of 25 other matters. Now, in the context of</p> <p style="text-align: center;">Page 200</p>

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<p>1 Mr Levy and his practice, which is 2 international, very wide-ranging and 3 involving individuals of the highest net worth 4 in the world, they would find that their 5 information was being held by the Royal 6 Gibraltar Police, not subject to a production 7 order where what is being distilled is the 8 information just in relation to the matter that 9 the order relates to, but with a search warrant 10 with a much wider opportunity to trawl 11 through information, and that could make 12 those individuals, who are clients of Mr Levy 13 and who are an important part of how 14 Gibraltar's finance centre makes its business 15 work, very concerned about what happens in 16 Gibraltar when the most senior lawyer in the 17 jurisdiction can have his phone and your 18 information taken away and held by the 19 police. 20 Q. On what basis do you think that those 21 individuals would learn about a search 22 warrant being executed against Mr Levy? 23 A. Well, I mean Gibraltar is not, um, the 24 biggest place on the planet and therefore 25 word spreads quickly. Because word spreads</p> <p style="text-align: center;">Page 201</p>	<p>1 another minister, a member of the opposition 2 and himself all being partners in Hassans and 3 how those in Spain who describe Gibraltar as 4 a pirate's haven would have a field day if this 5 leaked out. He also referred to Mr Rosety, a 6 Spanish Parliamentarian from the right-wing 7 party VOX who was already asking 8 parliamentary questions in connection with 9 the collision at sea on the 8th March 2020 10 and that he would also capitalise on 11 information about this investigation if this 12 came out publicly. He brought this up as I 13 had emailed him on this matter a couple of 14 days earlier as will be explained further on in 15 this statement." 16 First of all, did you say something to that 17 effect about the Financial Secretary, another 18 minister, a member of the opposition and 19 yourself all being partners in Hassans? 20 A. I may have done. I mean, this is ... I don't 21 know whether that detail is in my statement 22 or just in Mr McGrail's, but it may have 23 done. It was a very fast moving, very angry 24 conversation and I may have used those 25 words. I'm surprised there isn't a recording</p> <p style="text-align: center;">Page 203</p>
<p>1 quickly things can then be reported in the 2 Gibraltar media and what is reported in the 3 Gibraltar media is subsequently picked up in 4 the international media. And potentially this 5 could be reported very widely indeed and in 6 fact it has been because we have seen very 7 wide media reporting of the events 8 surrounding the execution of that search 9 warrant which have affected the reputation of 10 Gibraltar very, very negatively indeed. 11 Q. If the warrant had been challenged by 12 way of judicial review and overturned 13 through judicial review without a search 14 being conducted of that device, would that 15 not be a good advert for the reputation of 16 Gibraltar and the operation of the rule of law 17 in Gibraltar? 18 A. It might have been, but you are asking me 19 to answer a question about a hypothesis. 20 Q. If we look at Mr McGrail's first statement 21 again, A13 now, paragraph 41, Mr McGrail 22 quotes you as follows: 23 "The CM also stated that the actions carried 24 out by the team bore serious implications - 25 he referred to the Financial Secretary,</p> <p style="text-align: center;">Page 202</p>	<p>1 of it. 2 Q. Were you concerned about the impact 3 that the search warrant or a future charge 4 might have on your own income as a partner 5 of Hassans? 6 A. That did not cross my mind then and it 7 hasn't crossed my mind at all in all of the 8 time since 12 May 2020. 9 Q. And were you concerned about the fact 10 that a search warrant had been performed at 11 Hassans, a firm with several partners in the 12 government, opposition and also a partner 13 who was a Financial Secretary? 14 A. For reputation reasons, but it's not the 15 first time a search warrant has been executed 16 in certain circumstances, but against the 17 senior partner this is the first such occasion. 18 Q. Now we will focus on the exchange about 19 advice and the Attorney General and the DPP 20 that you had with Mr McGrail. I just want to 21 go to your account first of all, A193, 22 paragraph 49. And in response to the point 23 you made earlier about your own practice 24 and your experience of the routine granting 25 of warrants, you say at paragraph 49:</p> <p style="text-align: center;">Page 204</p>

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<p>1 "Mr McGrail then retorted that he had taken 2 the advice of the Attorney General on this 3 matter. Mr Llamas, who was in the room 4 with us throughout, stated that this was not 5 true. Mr McGrail then insisted that he had 6 sought the advice of the Director of Public 7 Prosecutions on whether to obtain a search 8 warrant or a production order for Mr Levy. 9 Mr McGrail then specifically told me that the 10 advice of the DPP was that they should 11 proceed by way of search warrant. The 12 Attorney General said he did not believe that 13 the DPP had given such advice. I responded 14 by saying that I too did not believe that 15 would have been the advice of the DPP (with 16 whom I have never discussed the matter), but 17 that if that was the advice of the DPP, then I 18 would have to disagree with the DPP also." 19 Just focusing first of all on Mr McGrail's 20 reference as you recall it to the Attorney 21 General giving him advice. Mr McGrail's 22 evidence was that he did not recall saying 23 that but if he had it would have been 24 an honest mistake by referring to the 25 Attorney General's chambers, which is the</p> <p style="text-align: center;">Page 205</p>	<p>1 questions to answer. But, you know, I've 2 heard that phrase afterwards so I may be 3 imputing it to him then. But he certainly 4 didn't use the word "suspect" because that 5 would have stood out like a sore thumb to me 6 and he didn't use that word. 7 THE CHAIRMAN: Why would it have 8 stood out like a sore thumb? 9 A. Because the word "suspect" implies a lot 10 more than person of interest and it takes you 11 from being a witness to being somebody who 12 is involved in the criminality, who is 13 believed to be involved in the criminality 14 itself. And that would have struck me. 15 THE CHAIRMAN: But he was a suspect. 16 A. But I wasn't told he was. 17 THE CHAIRMAN: Well, on reflection do 18 you not think that might make your 19 intervention rather inappropriate? 20 A. If I had been told, then it might have 21 made my intervention inappropriate, but I 22 was not told and therefore I was not 23 labouring under the apprehension that I was 24 intervening in respect of somebody who was 25 a suspect. Somebody having questions to</p> <p style="text-align: center;">Page 207</p>
<p>1 old description of the OCPL. Is that correct? 2 A. No, he referred to the Attorney General 3 and I think he gesticulated towards him. I 4 consider that to be the first lie I was told on 5 that day by Ian McGrail. 6 Q. Then turning to his reference to the DPP, 7 can I ask you to be as specific as possible 8 about the words that he used to describe what 9 advice he had obtained from the DPP? 10 A. The DPP advised that we should go by 11 way of search warrant. The DPP advised we 12 should go by way of search warrant. 13 Q. So your evidence is that he referred 14 specifically to the warrant. 15 A. Yes. 16 Q. Was there any mention of intervention? 17 A. No, that's not a word that I can recall 18 being used at all on that day. 19 Q. Did he state that the DPP -- 20 A. Might have been, but I remember 21 warrant. 22 Q. Did he state that the DPP advised on 23 whether to treat Mr Levy as a suspect? 24 A. I believe ... let me tell you very honestly. 25 I believe that he said, um, that James had</p> <p style="text-align: center;">Page 206</p>	<p>1 answer is not somebody who is a suspect and 2 I believe those are the words that Ian 3 McGrail used on that day. 4 THE CHAIRMAN: As a matter of interest, 5 when did you discover that he was a suspect? 6 A. I don't know whether the documentary 7 trail shows us that in any particular, um, 8 detail, but I cannot put my finger in my mind 9 on when I find out that he has more than just 10 questions to answer. If that ever actually 11 happened in that way. 12 THE CHAIRMAN: You did speak to 13 Mr Levy, did you not? 14 A. Yes. 15 THE CHAIRMAN: Did he not tell you, 16 "Actually it is worse than being a person of 17 interest, they actually suspect me"? 18 A. He may have done in those words, he 19 may have done. But if you are asking me to 20 remember those oral conversations and 21 whether that word was used specifically, I do 22 not remember that word being used 23 specifically. I remember James being very ... 24 sorry. 25 THE CHAIRMAN: Sorry, you have just</p> <p style="text-align: center;">Page 208</p>

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<p>1 said that if he was a suspect it would stick 2 out like a sore thumb. I was wondering when 3 you did realise it stuck out like a sore thumb 4 and you realised he was a suspect. 5 A. I don't think I can put my finger on 6 a moment when I can tell you this sticks out 7 like a sore thumb. I'm directing my mind to 8 the meeting of 12 May and what happened 9 during the course of that fractious five to 10 20-minute meeting and I cannot recall that 11 word being used then. 12 THE CHAIRMAN: Okay. 13 MR SANTOS: Was it perhaps a more 14 general, the DPP has been advising 15 throughout or was there a specific reference 16 to the words? 17 A. Absolutely not. I mean, I've seen how 18 Mr McGrail has sought to rely on that in the 19 context of his later statements to wriggle off 20 the lie that he told me, but that's not what he 21 said. He said, "The DPP has advised that we 22 should go by way of search warrant." 23 Q. Can we look at your statement at 24 paragraph 54 now? You say: 25 "After Mr McGrail left the short and</p> <p style="text-align: center;">Page 209</p>	<p>1 advising at all and the DPP advising against 2 it? 3 A. I accept that those two are different, but 4 they do not vitiate the lie that I was told by 5 Ian McGrail. Those are two different 6 positions, but what I was told was very 7 specific by Ian McGrail and neither of those 8 get him off the hook of the lie that he told 9 me. 10 Q. My point to you is a slightly different 11 one. 12 A. If I may say so, if the DPP had advised 13 that they should go by way of search warrant, 14 I would have had to accept that because then 15 he would have directed his little mind to it 16 and I would have accepted that. Even though 17 I might have disagreed, as I say in my 18 statement. 19 Q. Do you accept that it would be more 20 serious for the RGP to act against advice 21 rather than act without advice? Against the 22 express advice of the DPP rather than acting 23 without his -- 24 A. The only relevance to me of this is 25 simple. That I was told by the Commissioner</p> <p style="text-align: center;">Page 211</p>
<p>1 ill-tempered meeting with us, I subsequently 2 asked the Attorney General to confirm for me 3 whether or not the DPP had, in fact agreed 4 that a search warrant was the correct manner 5 for the RGP to seek to obtain relevant 6 evidence from Mr Levy. The Attorney 7 General subsequently confirmed to me that 8 the DPP had NOT, in fact, advised the RGP 9 to proceed by way of search warrant in 10 respect of Mr Levy." 11 If we go to B1417 now, the Attorney 12 General's text to you is the second one on 13 that page and in fact what the Attorney 14 General says to you, would you accept, is 15 slightly different because the Attorney 16 General says: 17 "Spoken to DPP. He is categorical that 18 whilst he told the RGP that an interview with 19 JL would likely be necessary, he strongly 20 advised against a search warrant." 21 The Attorney General now accepts that that 22 was incorrect and should have said that the 23 DPP did not advise on the search warrant at 24 all. You do accept that there is a difference 25 between those two positions, the DPP not</p> <p style="text-align: center;">Page 210</p>	<p>1 of Police that he had acted with the advice of 2 the DPP to go for a search warrant. And in 3 fact that turned out not to be true. If they had 4 acted contrary to advice of course it would be 5 worse. If they have acted with advice it is 6 not worse, but that does not go to the issue. I 7 was lied to by the most senior law 8 enforcement official in Gibraltar, to my face, 9 in my office, about something that affected 10 the reputation of the jurisdiction. And none 11 of those degrees of advised, strongly advised, 12 didn't advise, get him off the hook for lying 13 to me. 14 (15.00) 15 Q. Let me ask you this question. Did the 16 misquote - because I think it is accepted by 17 the Attorney General that he misquoted the 18 DPP. Did that misquote perhaps make you 19 more concerned that you otherwise would 20 have been, because he was saying that the 21 RGP had acted against the DPP's advice? 22 A. Perhaps initially it did, yes. But when I'm 23 told later that that is not the case, what I'm 24 told doesn't unhook Ian McGrail from the lie 25 that he tells me on 12 May 2020 in the office</p> <p style="text-align: center;">Page 212</p>

1 **of the Chief Minister.**
 2 Q. When did the Attorney General tell you
 3 that he had misquoted the DPP?
 4 **A. I can't recall. I think it must have been**
 5 **during the course of the following day or**
 6 **later that day. I can't recall, but it was fairly**
 7 **soon I'm told. It's not that he's strongly**
 8 **advised against.**
 9 Q. Well, I was going to show you the letter
 10 of 5 June where in fact the position that you
 11 put forward is the corrected position --
 12 **A. Yes, indeed.**
 13 Q. -- but I wanted to ask you whether it was
 14 just before that letter --
 15 **A. It was closer to the time. I think it was**
 16 **still in the 24/48 hours after that original**
 17 **meeting, but please remember this is the**
 18 **second lie he told me on that day. The first**
 19 **lie he told me was that the Attorney General**
 20 **had advised, pointing towards the Attorney**
 21 **General who was in the room, who said that**
 22 **was not true.**
 23 Q. Your response to that message is
 24 [Spanish quoted] translated: "Well, then he
 25 lied to us both." Mr Llamas says: "Exactly.

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1 He certainly gave us the impression that SW
 2 decision was sanctioned by DPP." Mr
 3 Llamas says that "he gave us the impression".
 4 Is that not slightly different to saying that he
 5 had expressly said that the search warrant
 6 decision was sanctioned by the DPP?
 7 **A. Maybe, but that's probably just Michael's**
 8 **shorthand two hours later. I remember**
 9 **distinctly what Ian McGrain said to me. I**
 10 **don't think I will ever forget that meeting.**
 11 Q. Paragraph 55 of your statement is where
 12 you say effectively what you said about two
 13 minutes ago: "... confirmation from the DPP
 14 that he had not advised that the evidence
 15 from Mr Levy should have been obtained by
 16 way of search warrant was confirmation that
 17 Mr McGrail, the most senior law
 18 enforcement officer in Gibraltar, had lied to
 19 me, the most senior elected representative of
 20 the people of Gibraltar, in my office. The
 21 DPP's assertions were totally contrary to Mr
 22 McGrail's express statements to me, and on
 23 that day 12 May 2020 I lost all confidence in
 24 his probity and integrity in his dealings with
 25 me and generally in him as a result." You

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1 have acknowledged that you were angry
 2 about the warrants from the outset. Could it
 3 be that your loss of confidence was
 4 attributable to the facts of the search warrant
 5 itself rather than this lie?
 6 **A. No, not at all. Believe me, in the**
 7 **minutes, hours and weeks after that, I**
 8 **interrogated myself on that issue on a number**
 9 **of occasions. This was not now about the**
 10 **search warrant. This was about the fact that**
 11 **Ian McGrail had lied to me, and he did not**
 12 **reach out to me to say: look, I'm sorry if I**
 13 **mislead you in some way. That's not what I**
 14 **intended. I'm sorry if you feel that I've lied**
 15 **to you; I didn't. No, he never did that. He**
 16 **had specifically - perhaps because the**
 17 **meeting was fractious, perhaps because he**
 18 **was nervous, he told me something which**
 19 **was not true. And the relationship between**
 20 **the Chief Minister and the Commissioner of**
 21 **Police, just like the relationship between a**
 22 **chief minister and his ministers, a chief**
 23 **minister and the Governor, has to be one of**
 24 **utmost good faith, of complete openness,**
 25 **transparency and honesty - and Ian McGrail**

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1 **on that day failed that test. And there was no**
 2 **way back.**
 3 Q. At the time of the meeting you were
 4 expressing doubt as to the DPP's advice. It
 5 was only after the meeting that you verified
 6 the position --
 7 **A. Yes.**
 8 Q. -- with the DPP. Did you reach out to Mr
 9 McGrail to point out, or to give him a chance
 10 to address that new finding on your part?
 11 **A. No. I didn't think that it was the role of**
 12 **the person lied to to reach out to seek the**
 13 **correction of the lie. I felt if anything it**
 14 **would be the other way round and it might**
 15 **have had an effect, you know, when tempers**
 16 **calm and parties reconcile themselves. You**
 17 **know, I'm always one that is ready to accept**
 18 **that perhaps if things in the heat of the**
 19 **moment may have flared, and he could have**
 20 **withdrawn his view in that respect, and**
 21 **perhaps even apologies (if he thought it**
 22 **appropriate) but he obviously did not think it**
 23 **appropriate to reach out to me as he had**
 24 **reached out to me many times before. He did**
 25 **not think it appropriate to take the view that**

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1 **he had misled me perhaps inadvertently. He**
 2 **simply insisted on the position that he had**
 3 **properly represented the facts at the time.**
 4 Q. The lie ends up being your primary
 5 reason for section 34. Did you not think that
 6 before-- Sorry, not for section 34; for your
 7 loss of confidence and for approaching Dr
 8 Britto. Did you not think that before doing
 9 so, you owed him the opportunity of
 10 explaining himself?
 11 **A. Sorry, this bring me back to the point I**
 12 **made before. How is it that the person who**
 13 **is lied to is required to reach out to the**
 14 **person who has lied to give them an**
 15 **opportunity to correct that position -**
 16 **although in fact from what I have seen,**
 17 **Michael Llamas was in contact with him, but**
 18 **you know there was no attempt in the other**
 19 **direction to try and reach out to me. So, I**
 20 **don't think I had an obligation to do that.**
 21 **Indeed, section 34, from memory - I know I**
 22 **am not here to be quizzed about the Police**
 23 **Act - but section 34 from memory is set out**
 24 **on the basis of the GPA when they trigger**
 25 **that process has to permit the individual to**

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1 **give his explanations. So, there is a statutory**
 2 **regime which enables him to put his view in**
 3 **respect of the things that have given rise to**
 4 **my loss of confidence and potentially the**
 5 **Governor's loss of confidence or the GPA's**
 6 **loss of confidence. There is a built-in**
 7 **procedure for that, and what you saw in fact**
 8 **when that representation from him came**
 9 **back, was an allegation of the widest**
 10 **conspiracy in the history of Gibraltar**
 11 **involving every senior officer except him.**
 12 Q. But the difference, when you talk about
 13 the person lying and the person being lied to
 14 in this scenario, you were the person who
 15 was triggering a process by which he would
 16 ultimately lose his job. You still did not
 17 think that you should raise it directly with
 18 him before triggering that process?
 19 **A. The process actually provides for him to**
 20 **be able to have the protection of statute in**
 21 **advancing his position in that respect.**
 22 **Instead of advancing a position which set out**
 23 **that he might have inadvertently misled me**
 24 **or that he had not intended to say that, what**
 25 **came back from Gomez & Co was, as I have**

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1 **characterized, an allegation of a huge**
 2 **conspiracy against him with everybody**
 3 **acting improperly except him. So a doubling**
 4 **down rather than an attempt to resolve the**
 5 **matter through the statutory process. There**
 6 **is a statutory process. There is no other**
 7 **process. There is a statutory process. The**
 8 **statutory process is the one that kicked in for**
 9 **reasons relating, as you know, to the --**
 10 Q. We will cover that process?
 11 **A. But there is, answering the point you are**
 12 **making, there is a procedure for him**
 13 **to --**
 14 Q. For him to explain himself to the GPA,
 15 but I was - my question was addressed in
 16 terms of you, but I think you have addressed
 17 by question. He did have, as we have seen, a
 18 meeting with the Attorney General on 13
 19 May, the following day, where the Attorney
 20 General directly raised this point with him,
 21 and where they came to an understanding or
 22 a conclusion that the Attorney General would
 23 try to smooth things over with you. Did the
 24 Attorney General try to do that?
 25 **A. Well, I wasn't really for smoothing. You**

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1 **know, if somebody had told me that they had**
 2 **got it wrong and he had reached out to me,**
 3 **perhaps my better nature would have kicked**
 4 **in and I would have wanted to resolve the**
 5 **matter, but that was not happening. You**
 6 **know, when I listen to - I mean the fact is**
 7 **that if 12 May was a low point, the 13 May, I**
 8 **think, is an even lower point when you start**
 9 **to see a Gibraltar senior police officer**
 10 **recording all of Gibraltar's senior law**
 11 **officers, the Solicitor General, the DPP, the**
 12 **Attorney General etcetera, and his own**
 13 **senior colleagues without telling them. But**
 14 **if you listen to the bit that is inadvertently**
 15 **recorded in the car, and you listen to how Mr**
 16 **McGrail explains to Mr Richardson the**
 17 **events in my office and how he dissembles**
 18 **and uhms and ahs, I think it is very clear that**
 19 **my recollection of what happened there is**
 20 **what is correct, and that Mr McGrail's**
 21 **recollection is self-servingly designed to try**
 22 **and get him off the hook after the lie that he**
 23 **told me.**
 24 Q. Mr Picardo, I did not want to interrupt
 25 your answer, and you were commenting on

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1 things, but just to be abundantly clear about
 2 this, you said you were not for smoothing -
 3 were not for smoothing over. Did the
 4 Attorney General actually raise that with
 5 you?
 6 **A. I think he did. I think he said: look, Ian**
 7 **McGrail says this. But, you see, what Ian**
 8 **McGrail was saying was not credible to me.**
 9 **It was further doubling-down on how to get**
 10 **round me with the sly. This wasn't: I'm**
 11 **sorry. It should not have happened. I**
 12 **mischaracterized it. Let's sit down and talk**
 13 **about it. This was: no, no, no. I did not**
 14 **mislead you. I did not lie to you, an**
 15 **insistence in that respect, which I did not**
 16 **believe was genuine, and given what I have**
 17 **seen subsequently, I am reinforced in that**
 18 **view.**
 19 Q. What further contact did you have with
 20 the Attorney General following that
 21 WhatsApp exchange on 12 May about the
 22 DPP's advice on these matters?
 23 **A. Is there more in writing? Have I deposed**
 24 **to some element of it?**
 25 Q. I don't think there is, which is why I am

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1 asking you. There are-- We can see the
 2 message on B1417. We can see that there is
 3 a message at 6.42 where the Attorney
 4 General forwards to you a message he has
 5 received from Mr McGrail: "We both are
 6 disappointed but I just can't leave the matter
 7 as it is. I would like to meet face to face.
 8 We have to work together and your wrong
 9 impressions about me need clearing up." So,
 10 there Mr McGrail is attempting to meet with
 11 Mr Llamas, and of course they meet on the
 12 following day. We can see that that was sent
 13 to you but we do not know anything else
 14 about your contact with the Attorney General
 15 on this issue on the 12 May meeting and the
 16 fall out from that in the following days.
 17 What contact was there?
 18 **A. I don't know that there was much more**
 19 **contact. Michael was pursuing a lot of**
 20 **meetings with the police, a record of which**
 21 **has been provided by way of transcript, I**
 22 **think, as a result of the unethical and**
 23 **improper recording that occurred. There**
 24 **might have been some contact with me, but I**
 25 **think it was all turning into contact between**

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1 **Michael and Lewis Baglietto and that aspect**
 2 **of the communication was being played out**
 3 **between them. There may have been one or**
 4 **two calls between Michael and me, and I**
 5 **think there are some WhatsApps later on as**
 6 **the action turns --**
 7 Q. Yes.
 8 **A. -- into the next stage of this.**
 9 Q. We will get to those. But in terms of this
 10 meeting, did you communicate your loss of
 11 confidence in Mr McGrail to the Attorney
 12 General in the aftermath of that meeting?
 13 **A. I don't know whether I would have**
 14 **expressed it in that way to the Attorney**
 15 **General in the immediate aftermath of that**
 16 **meeting, but at some stage I will have**
 17 **expressed it to him in that way, just as I had**
 18 **expressed it in that way to Dr Britto, to the**
 19 **then acting Governor, to other individuals as**
 20 **well, and we can come to all that. But at**
 21 **some stage I would have expressed my views**
 22 **on that.**
 23 Q. But you are not able to assist with when
 24 that was?
 25 **A. If there isn't a documentary piece of**

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1 **evidence, we would have to put that together**
 2 **from what might have been happening at the**
 3 **time.**
 4 THE CHAIRMAN: I think now is probably
 5 a good time for a break. We are anticipating
 6 a late sitting tonight, so probably we would
 7 have two.
 8 MR SANTOS: Yes. I was going to say that
 9 I probably - I think I probably need about - I
 10 am probably about three hours from
 11 finishing. So I am not suggesting that I
 12 finish today.
 13 THE CHAIRMAN: We will need to sit late
 14 for you to finish in a reasonable time
 15 tomorrow to allow everybody else----
 16 MR SANTOS: Precisely. I would not want
 17 to go much more than 45 minutes tomorrow
 18 morning.
 19 THE CHAIRMAN: Okay.
 20 MR SANTOS: So, I may seek your
 21 indulgence and the witness's indulgence.
 22 THE CHAIRMAN: We will have the first
 23 short afternoon break now.
 24 MR SANTOS: Thank you.
 25 (A short break)

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<p>1 THE CHAIRMAN: Okay.</p> <p>2 MR SANTOS: Yes, thank you. We have, as</p> <p>3 I said, received your WhatsApp exchanges</p> <p>4 with Mr Levy on Saturday. The last</p> <p>5 exchange you disclosed is dated 2 May 2019.</p> <p>6 Do you know why it is that they do not go</p> <p>7 beyond that date?</p> <p>8 A. You are referring to the ones on Saturday.</p> <p>9 I think there were other WhatsApp</p> <p>10 exchanges which are exhibited to my</p> <p>11 criminal statement etcetera.</p> <p>12 Q. I think those are within the same time</p> <p>13 period. I don't think we have anything after</p> <p>14 May 2019 and I just wanted to ask you why</p> <p>15 we do not have anything after that date?</p> <p>16 A. I'm not sure. Are we able to see the</p> <p>17 disclosure?</p> <p>18 Q. Yes. C7022?</p> <p>19 A. That is in the --</p> <p>20 Q. It should be in the non-witness statement-</p> <p>21 - I think you have got it there. Is that open</p> <p>22 in front of you?</p> <p>23 A. This one?</p> <p>24 Q. That one. 7022?</p> <p>25 A. Yes. That is the one that was disclosed</p> <p style="text-align: center;">Page 225</p>	<p>1 that one that you refer to in May 2019?</p> <p>2 A. Yes.</p> <p>3 Q. Is there a reason why we do not have any</p> <p>4 more? Are you able to say why we don't</p> <p>5 have any more recent WhatsApp messages</p> <p>6 than that?</p> <p>7 A. Well, no more recent WhatsApp</p> <p>8 messages which are relevant.</p> <p>9 Q. Yes, but I am working on the assumption,</p> <p>10 which I think is a fair, safe assumption that</p> <p>11 there would be some relevant WhatsApp</p> <p>12 communications around the time?</p> <p>13 A. No, there was a lot of discussion around</p> <p>14 the time and therefore a lot of con versations</p> <p>15 around the time, not necessarily so much</p> <p>16 WhatsApping going on around the time, in</p> <p>17 particular with Mr Levy.</p> <p>18 Q. There is a reference, for example, to you</p> <p>19 having sent something to Mr Levy?</p> <p>20 A. Yes.</p> <p>21 Q. And that is the kind of thing that I would</p> <p>22 have expected perhaps to see?</p> <p>23 A. Yes, but that thing which I sent I think</p> <p>24 was the HMIC report, which I assume I</p> <p>25 probably sent by hand, highlighted.</p> <p style="text-align: center;">Page 227</p>
<p>1 over the weekend.</p> <p>2 Q. Yes. Are you asking to see the one that is</p> <p>3 disclosed to you --</p> <p>4 A. Yes.</p> <p>5 Q. -- criminal witness statement. I think that</p> <p>6 is B1 - something like B112. 1130. 1120 is</p> <p>7 the witness statement itself. Perhaps we will</p> <p>8 find those and in the meantime I will move</p> <p>9 on to something else. You explain in your</p> <p>10 fourth witness statement that you made all</p> <p>11 reasonable efforts to retrieve messages.</p> <p>12 What did those reasonable efforts consist of?</p> <p>13 A. Well, reviewing all of the information</p> <p>14 that I have on my phone; making that</p> <p>15 accessible to individuals in my office and the</p> <p>16 office of my legal advisers so that they could</p> <p>17 review the electronic devices as well, in</p> <p>18 order to try and extract messages relating to</p> <p>19 that time and in relation to this subject.</p> <p>20 Q. If we look at 1204, I think that may be</p> <p>21 the one that you are-- You may not have this</p> <p>22 one in front of you but it will certainly appear</p> <p>23 on screen. B1204. I think is the exchange</p> <p>24 that was provided to the police, but that is</p> <p>25 dated September 2018. The latest we have is</p> <p style="text-align: center;">Page 226</p>	<p>1 Q. Is your position that you have WhatsApp</p> <p>2 messages right up to date with Mr Levy? Do</p> <p>3 they end at a particular date?</p> <p>4 A. Well, James Levy had different phones at</p> <p>5 different times, and therefore I was</p> <p>6 exchanging messages with him on those</p> <p>7 different phones, and I have given access to</p> <p>8 my team so that they can look for all of the</p> <p>9 messages which relate to my</p> <p>10 communications with James Levy at that</p> <p>11 time on those phones. So, you have</p> <p>12 everything that I have. I think he's explained</p> <p>13 that he's changed phones on a number of</p> <p>14 occasions. It's also true that Mr Levy - I don't</p> <p>15 know whether he will enjoy me saying this -</p> <p>16 but a man in his mid-70s. I do talk to him a</p> <p>17 lot more than I WhatsApp him.</p> <p>18 Q. Do you have any WhatsApp messages</p> <p>19 with Mr Levy from May 2020?</p> <p>20 A. Whatever I have with Mr Levy has been</p> <p>21 exhibited to the witness statement etcetera in</p> <p>22 these proceedings and has been gone through</p> <p>23 by my office and my solicitors' office.</p> <p>24 Q. That is in terms of relevant messages?</p> <p>25 A. Yes.</p> <p style="text-align: center;">Page 228</p>

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<p>1 Q. But do you have any messages at all with 2 Mr Levy in May --</p> <p>3 A. Ah, I don't know. I would have to look. 4 Yes, I would have to go back and look. I 5 mean, the exercise has been done in relation 6 to things which are relevant to these 7 proceedings.</p> <p>8 Q. Can we go to A234, please? This is your 9 third statement, paragraph 9. You say there: 10 "9. The evidence before the Inquiry, in 11 particular..." Sorry, let me just make sure 12 that you have that. A234?</p> <p>13 A. Yes.</p> <p>14 Q. "The evidence before the Inquiry, in 15 particular retired Superintendent Richardson 16 in his third statement, demonstrates that 17 superintendent Richardson agreed that Mr 18 Levy KC's status as a suspect was borderline, 19 especially in the view of the DPP. 20 Additionally, the statement discloses that no 21 careful consideration appears to have been 22 given to whether the threshold for obtaining a 23 Search Warrant instead do f a Production 24 Order had been met." When you expressed a 25 view on the warrant, is it correct to say that</p> <p style="text-align: center;">Page 229</p>	<p>1 some way.</p> <p>2 Q. In paragraph 11 of your statement - I 3 think it is the same one you have open in 4 front of you, page A234?</p> <p>5 A. Yes, I have it.</p> <p>6 Q. This is in response to questions by the 7 Inquiry as to your contact with Mr Levy on 8 the warrants, you say: "My frequent 9 conversations with Mr Levy KC about the 10 search warrants were mostly telephonic and, 11 as I have already said, there is no record 12 beyond those already disclosed. There is no 13 breakdown of the number or dates or times of 14 these conversations, as there were and still 15 are many of them. There were no meetings 16 in my office such as may have resulted in a 17 note of it." Does that not mean that there 18 were meetings with Mr Levy which did not 19 result in a note? Sorry, does that mean - that 20 last sentence --</p> <p>21 A. No. That means that I haven't had 22 meetings with James Levy in my office at 23 No. 6 Convent Place about the search 24 warrants.</p> <p>25 Q. You say "There were no meetings in my</p> <p style="text-align: center;">Page 231</p>
<p>1 you were told about the warrant in 2 confidence by Mr McGrail?</p> <p>3 A. I haven't seen anything anywhere to 4 suggest that I was ever told anything by Mr 5 McGrail in confidence in respect of this 6 matter.</p> <p>7 Q. Was your interpretation then --</p> <p>8 A. He told me the opposite. If you look at 9 his message to me, he said: I'm telling you 10 before you find out from other people. So, it 11 is hardly something that he is saying he is 12 telling me in confidence; quite the opposite, I 13 would suggest.</p> <p>14 Q. Are you saying that you felt at liberty to 15 share that with whoever you pleased, that 16 information?</p> <p>17 A. What information?</p> <p>18 Q. The information that he provided you in 19 the text.</p> <p>20 A. Absolutely. That was by no stretch of the 21 imagination confidential information. "We 22 are executing a warrant at Hassans. I'm 23 telling you before other people find out." I 24 can't see how that was in any way suggested 25 to be under the cloak of confidentiality in</p> <p style="text-align: center;">Page 230</p>	<p>1 office such as may have resulted in a note of 2 it."?</p> <p>3 A. Yes. In other words, no meetings have 4 been held to discuss the search warrant 5 between me and James Levey in No. 6 6 Covent Place in order to, you know, sit 7 down, discuss these issues, make a not of 8 them etcetera. These have been principally 9 telephonic conversations between me and Mr 10 Levy. I don't see Mr Levy that often. I talk 11 to him very often, as you know. At that time 12 I did see him on occasions, but principally I 13 would be speaking to him on the phone.</p> <p>14 A. You say "principally" and we know about 15 a meeting that took place at your home on 17 16 May?</p> <p>17 A. Yes, on a Sunday.</p> <p>18 Q. Is your evidence that there were no 19 meetings in your office at all with Mr Levy 20 in No. 6 where you discussed the search 21 warrants?</p> <p>22 A. It is my evidence that there were no 23 meetings in my office, No. 6 Convent Place, 24 with Mr Levy to discuss the search warrants. 25 I have had many meetings with Mr Levy in</p> <p style="text-align: center;">Page 232</p>

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<p>1 that office thereafter, usually when he is 2 introducing clients to Gibraltar who want to 3 use Gibraltar as a jurisdiction, etcetera, or 4 indeed other matters in which he may be 5 representing third parties, as I see him and I 6 see many others. He may in passing have 7 mentioned issues relating to the search 8 warrant at those meetings in passing, literally 9 whilst we are standing up and he is going to 10 the door and I am going to the door to say 11 goodbye or say hello, but we held no 12 meetings at 6 Convent Place about the search 13 warrants. 14 Q. We have -- 15 A. I am not telling you because I remember 16 that. I am telling you because it would be 17 untrue for me to assert the contrary. In other 18 words, it is very likely that he has mentioned 19 it when I have been there with him, and he 20 has been going or arriving etcetera etcetera. 21 Q. I have just referred to the meeting of 17 22 May at your home. Why was that meeting 23 not referred to in this affidavit dated 15 24 November 2023? 25 A. Because it fits within exactly what</p> <p style="text-align: center;">Page 233</p>	<p>1 was why that meeting was not mentioned in 2 this witness statement? 3 A. Because it was one of those conversations 4 of which there were and are still many. It 5 was one of the "were". 6 Q. The preceding sentence says "My 7 frequent conversations with Mr Levy KC 8 about the search warrants were mostly 9 telephone." 10 A. Mostly; not exclusively. 11 Q. So, your position is that the Inquiry 12 should have deduced from that that in fact 13 there was at least one meeting, telephonic -- 14 A. Why do you say "deduced"? 15 Q. Because there is no express reference to a 16 meeting in that paragraph. 17 A. There is no express exclusion of it either. 18 If somebody says that something is mostly 19 telephonic, it therefore necessarily - some 20 are not telephonic. They are in person. 21 SIR PETER CARUANA: (Inaudible due to 22 no microphone) WhatsApps, revealing the 23 existence of this meeting where exhibited to 24 the RGP witness statements which were 25 exhibited to - these exchanges to -</p> <p style="text-align: center;">Page 235</p>
<p>1 paragraph 11 sets out. It's not a meeting in 2 my office. There is no record of it and there's 3 no breakdown of those meetings. That is one 4 of the meetings that occurred, but there's 5 nothing contrary to what is set out there 6 about the fact that that meeting happened. In 7 fact, paragraph 11 actually sets out that 8 meetings did happen. 9 Q. Where is it that you say that paragraph 10 11 sets out that meetings did happen? 11 A. "[T]here is no record beyond those 12 already disclosed" because there is no record 13 of that meeting, as you know. There is no 14 breakdown of the numbers or dates of these 15 conversations as there were and are still 16 many, and this was not a meeting in my 17 office and therefore it does not come within 18 the definition of the last sentence of 19 paragraph 11. 20 Q. But there is no specific express mention 21 of that meeting on 17 May in that paragraph, 22 Mr Picardo? 23 A. No, there isn't but that paragraph does not 24 exclude events like the events of 17 May. 25 Q. That was not my question. My question</p> <p style="text-align: center;">Page 234</p>	<p>1 MR SANTOS: I do not know if RGP - if 2 this statement - what RGP witness - Yes, 3 well, perhaps that is something that can be 4 clarified. 5 SIR PETER CARUANA: (Inaudible) 6 MR SANTOS: Yes. We will get to those. 7 (To the witness) In paragraphs 12 and 14 you 8 say: "I recall (because the date is noteworthy 9 by virtue of these events) that I spoke to Mr 10 Levy on the telephone on 12th of May. I do 11 not recall the time at which I spoke to him. I 12 expressed to Mr Levy my consternation at 13 how the Police had acted in executing a 14 Search Warrant at his home. I do not recall 15 the precise method by which we spoke. I 16 may have been able to reach him on his home 17 number ... or on the office number (...) as Mr 18 Levy KC has an office extension at his 19 home." Just jumping over 13, you refer to 20 Gibtelecom having provided records and you 21 said: "Gibtelecom have provided me with 22 their log record of my outgoing mobile 23 telephone traffic on that day. I can confirm 24 that none were to James Levy, nor were there 25 any calls during the period 12:20 to 13:00</p> <p style="text-align: center;">Page 236</p>

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<p>1 hrs. In so far as concerns incoming calls, I 2 am advised by my private secretary that 3 Gibtelecom has informed him that they have 4 no such information available to provide 5 because this has long-since been deleted by 6 them in consequence of their data retention 7 policy in accordance with their obligations 8 under the Data Protection Act. I am however 9 entirely content to confirm, as I have done 10 above, that such calls occurred." When you 11 say "such calls occurred", are you referring to 12 during the period 12: 20 to 13:00 hours or 13 during the whole of 12 May? 14 A. During the whole of the 12 May but it is 15 very likely that there may have been a call 16 round that time. 17 Q. The question - the follow-up question 18 really is you receive a message from Mr 19 McGrail at 12: 25 I believe, and you say that 20 you meet him before 1 o'clock, certainly 21 before 1 o'clock, possibly earlier. From your 22 recollection, did you speak to Mr Levy 23 before you met with Mr McGrail or 24 afterwards? 25 A. It's impossible for me to give truthful</p> <p style="text-align: center;">Page 237</p>	<p>1 other. I know it happened, but I cannot say it 2 happened before or it happened afterwards. I 3 mean, I understand the consequence, and I 4 wish I could recall, but I really cannot. 5 Q. What, to your recollection, was said on 6 that call? 7 A. Well, James was really a combination of 8 incensed and depressed about what was 9 happening. Yeah, it really was a - you 10 know, how can they think that I would not 11 give them evidence if they sought to get it 12 properly? How can they believe that I would 13 be involved in anything that's untoward? I 14 think it was laced with "just because we are 15 seeking to compete with Blands; this is not 16 fair". The language that I saw reported the 17 other day is language that James has been 18 repeating for many years now, that this 19 investigation is fundamentally flawed. You 20 know, all of that was coming out at the time. 21 But laced less with anger and more with 22 frustration at the process that had been 23 followed by the RGP and the unfairness of it. 24 I wouldn't say he was despondent, but he was 25 close to that.</p> <p style="text-align: center;">Page 239</p>
<p>1 evidence there because I just cannot tell you 2 what happened first. I'm afraid it's 3 impossible for me to tell you which happened 4 first. And without a call log that might help 5 us or a WhatsApp that might help us, it's just 6 impossible. 7 Q. Mr Levy's evidence was that he 8 telephoned you as he walked from his home 9 to Hassans office in Midtown and based on 10 the day books which we have from the 11 officers who attended Midtown, it looks like 12 that must have been at around ten past 1.00? 13 A. So that would be after I spoke to Ian 14 McGrail. 15 Q. But this is -- 16 A. (Inaudible due to over-speaking) 17 Q. I do not want to put anything into your 18 mouth. I just want to say - I want to give you 19 the opportunity to say whether you recall that 20 it was before or after the meeting, but you are 21 not able to say? 22 A. Mr Chairman, I am very keen to ensure 23 that I only tell you things which I know are 24 true, and on this I cannot give you evidence 25 where I can confidently say one thing or the</p> <p style="text-align: center;">Page 238</p>	<p>1 Q. Did you discuss potential legal steps at 2 that stage? 3 A. Did we discuss potential legal steps? 4 Perhaps I said, you know, you've got to 5 challenge this CO. It won't stand. You 6 know, if you put this through the ringer you'll 7 be able to show that it's been improperly 8 obtained. I'm sure that they will never be 9 able to justify a suggestion that you would 10 destroy evidence, etcetera. 11 Q. Did you communicate to Mr Levy your 12 loss of confidence in Mr McGrail at that 13 point? 14 A. No. 15 Q. Did you discuss Mr McGrail's position as 16 CoP, as Commission of Police at that point? 17 A. Not at all. If you will allow me to 18 characterize it in this way: I hadn't discussed 19 that with myself yet. 20 Q. Your evidence in paragraph 13 is that you 21 also recall speaking to Mr Levy about 22 reopening places of worship after lockdown. 23 Mr McGrail says that he recalls you making 24 reference to that during the course of the 25 meeting, which would suggest that the call</p> <p style="text-align: center;">Page 240</p>

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<p>1 took place before the meeting with Mr 2 McGrail, but do you recall whether your call 3 with Mr Levy about places of worship was 4 before or after that meeting? 5 A. So, as I think I have said before, I 6 remember the meeting with Ian McGrail 7 vividly, as if it were yesterday; I can relive it 8 like a film in my had. But I cannot recall 9 when this call with James Levy happened. 10 That's part of the morass of memory of that 11 day or days. I know it's been suggested that 12 perhaps that was on the day before or on the 13 day after. I'm clear that I was talking to 14 James about those things at the time, as well 15 as talking to him about these things. So, the 16 Pandemic and its after-effects was living in 17 my relationship with James Levy at that time 18 alongside these issues that we were also 19 discussing. 20 Q. Do you recall mentioning in the meeting 21 to Mr McGrail that you had been discussing 22 places of worship with Mr Levy? 23 A. If Mr McGrail has said that I said that, I 24 have no reason to think that I might not. He 25 might have a much better record of that</p> <p style="text-align: center;">Page 241</p>	<p>1 A. But you have asked me the question 2 about whether or not I have concerns. So, I 3 mean I am very happy for you to break down 4 the question if you like, or I will break it 5 down. 6 Q. Did you take your Chief Minister's hat off 7 in order to make that call? 8 A. I don't think it is a hat that you can take 9 on and off. You are a Chief Minister all of 10 the time. You are a friend all of the time. 11 You are a potential victim and complainant 12 all of the time, until you are not. So, did any 13 of those exclude me from speaking with 14 James Levy, and was I made privy to 15 confidential information given to me on the 16 basis that it was confidential information that 17 I could not share with James Levy? The 18 answer to all of those questions is: no. You 19 might say it is prudent or less prudent for an 20 elective official to speak to an individual who 21 might be the subject of a police investigation, 22 and it might or might not have negative 23 political consequences for the individual 24 holding that political office who has that 25 conversation, in the view of the public. But</p> <p style="text-align: center;">Page 243</p>
<p>1 meeting that I do. 2 Q. If we look at paragraph 17, you say: 3 "Finally, I wish to say that I do not share Mr 4 McGrail's exaggerated and self-serving view 5 and descriptions of my having spoken and 6 expressed by views to Mr Levy ... on the day 7 the search Warrant had been executed in his 8 home. I do not consider that it was 9 'inappropriate behaviour' to do so. To the 10 contrary, I believed and continue to believe 11 that it was entirely proper, natural and 12 appropriate, not least given my very close 13 friendship and relationship with him. The 14 high office that I held (and continue to hold) 15 does not disqualify me from doing so, still 16 less does it required me to engage in an 17 unnatural omission to do so to avoid the 18 speculative and reckless suspicions of Mr 19 McGrail or anyone else." Do you consider 20 that you have no concerns, therefore, about 21 contacting a suspect in a live criminal 22 investigation? 23 A. In what capacity? As Chief Minister? 24 Q. Well, I think it is better if you tell the 25 Inquiry in what capacity you contacted him?</p> <p style="text-align: center;">Page 242</p>	<p>1 it is certainly not improper, because the 2 police, as we are at pains to point out, and I 3 think all parties agree in the context of this 4 Inquiry, is separate to the Government. So, 5 therefore, the fact that the police are 6 investigating someone does not mean that a 7 member of the government cannot talk to that 8 person. Indeed, even after a person has been 9 charged, a member of the government can 10 continue to talk to that person and have a 11 relationship with that person. The two are 12 not mutually exclusive because the 13 government, qua the political government is 14 not the prosecuting authority and it is not the 15 investigating authority, and it has no conflict 16 in speaking to a person who may be the 17 subject of prosecution or investigation. 18 Q. In this position, it was the complainant, 19 though? 20 A. It was a potential complainant. 21 Remember that what I had said to Ian 22 McGrail on 19th - in May 19, was the 23 government would be a complainant if he 24 could be shown evidence that there was 25 misconduct in public office or corruption.</p> <p style="text-align: center;">Page 244</p>

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<p>1 Q. The government was not a complainant at 2 that stage. 3 A. Certainly not at that stage. 4 Q. If we go to B142 -- 5 A. In fact, I believe that there was a police 6 press release at the time had suggested that 7 the government was a complainant, to which 8 the government took great umbrage and we 9 sought that it be withdrawn. 10 Q. If we go to B1422 please, this is a 11 message exchange between you and Mr 12 Baglietto, Hassans. Mr Baglietto messages 13 you at 12: 36 asking whether you can talk, 14 and then there is a further message at ten to 15 4.00? 16 A. Sorry, at 12:36? 17 Q. Yes. Sorry, it is towards the top of page 18 B1422, the third paragraph? 19 A. "Can you talk?" Yes. 20 Q. There are two messages: "Can you talk." 21 "Give me five", you say. He says: "OK" It 22 looks like there was a conversation at around 23 4 p.m. on that occasion. What was discussed 24 during that call? 25 A. Well, I think we probably discussed</p> <p style="text-align: center;">Page 245</p>	<p>1 and I cannot recall whether it would have 2 been on the 13th or the 14th, but his memory 3 is probably better than mine because he's 4 probably had many less meetings and issues 5 in the time between. But this reference, I 6 think it very likely a reference to a telephonic 7 communication, which doesn't exclude the 8 fact that there was potentially likely also an 9 in-person communication. The nature of 10 "Can you talk - give me 5" is not that they 11 are waiting outside or that they are going to 12 pitch up in 5. 13 Q. Do you recall at least one meeting with 14 Mr Baglietto and Mr Levy on this topic? 15 A. Moshe Levy? 16 Q. Yes, sorry, Moshe Levy? 17 THE CHAIRMAN: It would be very 18 memorable, would it not, speaking to the son 19 of the suspect? 20 A. Yes. I mean, the difficulty is that he has 21 represented me on a number of matters, and 22 Lewis has led him on a number of occasions. 23 So, I am trying to see whether I can distil in 24 my mind a meeting with Lewis and Moshe 25 that related to this around that time. I haven't</p> <p style="text-align: center;">Page 247</p>
<p>1 exactly what you imagine we discussed 2 which was the disgraceful way in which the 3 police had abused their powers in seeking to 4 obtain a search warrant when a production 5 order should have been pursued, which was 6 my view. It was (inaudible) view, and it 7 would have been the view of many of us who 8 were partners of Hassans, who were friends 9 of James Levy and who had concerns about 10 Gibraltar's reputation. 11 Q. Did that conversation take place over the 12 phone or in person 13 A. If Lewis says: "Can you talk?" It's very 14 likely that we're doing a telephone 15 conversation at that stage. 16 Q. I ask you because we have received this 17 morning an affidavit from Mr Moshe Levy, 18 Mr Levy's son, and he has given evidence 19 that he attended No. 6 with Mr Levy to meet 20 you at some point between 12th and 14th May. 21 Do you recall that meeting with Baglietto and 22 Mr Levy? 23 A. Not necessarily, no. I don't. I mean I 24 remember a number of meetings with Moshe 25 and Lewis, not necessarily on this subject,</p> <p style="text-align: center;">Page 246</p>	<p>1 seen Moshe's witness statement. If you show 2 it to me, it might jog my memory. 3 MR SANTOS: I think that is a good idea. I 4 think it should be on the screen now, and I 5 want to focus on paragraphs 8 and 9. 6 THE CHAIRMAN: This is a very recent 7 statement, is it not? 8 MR SANTOS: Yes. We received it this 9 morning. 10 SIR PETER CARUANA: (Inaudible) 11 MR SANTOS: I think we received it -- 12 SIR PETER CARUANA: It was disclosed at 13 8 minutes to 10.00. 14 MR SANTOS: Yes. We received it at 9.27 15 a.m., this morning, so about 25 minutes 16 earlier than that. (To the witness) Just 17 focusing on paragraphs 8 and 9-- Sorry, if 18 we can just go up to 8. "However, I can 19 confirm that I met with Mr Picardo and Mr 20 Baglietto at the beginning of the relevant 21 time period. I believe it was between 12 to 22 14 May 2020. I can find no record or entry 23 in my diary of this meeting or any note or 24 email with a record of this meeting. From 25 memory I recall Mr Baglietto telling me that</p> <p style="text-align: center;">Page 248</p>

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<p>1 the meeting had been arranged with Mr 2 Picardo at No. 6 Convent Place. I can 3 remember it attending that meeting. I cannot 4 remember if anyone else was there. I do not 5 remember it being a particularly long 6 meeting. I do not now recall how the 7 meeting was arranged or for what specific 8 purpose, but I do recall that the topic of the 9 meeting was a search warrant. I have no 10 recollection or record of what was exactly 11 discussed, but I remember two things that Mr 12 Picardo said at that meeting. The first was a 13 comment that he made on the fact that if the 14 RGP could treat a leading silk in this way, 15 how had they been treating less prominent 16 members of the general population or words 17 to that effect." Do you recall saying 18 something to that effect to Mr -- 19 A. It was the tenor of what I was thinking 20 and I believe I-- I do believe I said that to Mr 21 Baglietto and to others, and if Moshe was 22 there, then his is a good recollection of that. 23 Q. "Second, I remember him saying 24 something about this was not the only issue 25 that he had with Mr McGrail. I do not</p> <p style="text-align: center;">Page 249</p>	<p>1 Levy's recollection should be preferred. 2 (15.56) 3 Q. Mr Picardo, I recognise the difficulty that 4 it places you in seeing this for the first time 5 in your position, but as I say, I can assure 6 you we received this at 9.27 this morning, 7 and so this is the first time I am seeing it as 8 well, quite frankly. 9 A. I appreciate that. Mr Chairman, if this 10 jogs my memory in any way overnight, if I 11 recall anything, I will make sure that I ask for 12 the opportunity to set that out. 13 Q. Thank you. 14 A. Certainly, those words, "treating the less 15 prominent members of the general 16 population" - that rings a bell with me. 17 THE CHAIRMAN: That is the sort of thing 18 you might have said? 19 A. That's definitely the thing I was saying to 20 Lewis and to others. 21 MR SANTOS: Were you in communication 22 with the Attorney General as to Hassans' 23 letters to him, to the RGP and the 24 magistrates' court. 25 A. Not in detail but I was aware of them, not</p> <p style="text-align: center;">Page 251</p>
<p>1 remember him elaborating on what these 2 issues were. I do not think that he did. I 3 cannot remember the words that he used - 4 only that this was the overall effect he 5 conveyed."? 6 A. Yes, which suggests to me that it is very 7 likely that that meeting might have happened 8 on 14 May, because by then that morning I 9 remember sitting down to start the day's 10 work and to go through the international 11 references to Gibraltar and the international 12 media, and on seeing the falle fasota(?) 13 reference, I believe I was talking about other 14 things and it's very likely that it happened not 15 on the 12th - the 13th, but on the -- 16 Q. On the 14th? 17 A. -- on the 14th or thereafter. But this is a 18 record that I have only seen now and you 19 know I have no specific memory of it, but 20 certainly that bit about treating less common 21 members of the general public rings true with 22 my attitude at the time, and so I would 23 suggest that this is the recollection that 24 should be preferred; Mr Moshe Levy's 25 recollection should be preferred. Mr Moshe</p> <p style="text-align: center;">Page 250</p>	<p>1 least from Lewis. 2 Q. Did he or Mr Baglietto keep you abreast 3 of their communications and meetings with 4 each other? 5 A. Not in detail, but I was aware they were 6 happening and I was aware of some of what 7 was being said there, but not from Michael, 8 not from Lewis. 9 Q. Did you direct the Attorney General in 10 any way as to his conduct at the meetings 11 with Mr McGrail and the RGP? 12 A. I wouldn't dare. I know Michael very, 13 very well but we know when our respective 14 roles are and he wouldn't dare to direct me 15 and I wouldn't dare to direct him. 16 Q. If we go to C3517, this is a document 17 entitled Voluntary Attendance for Police 18 Interview under Caution dated 12 May 2020 19 which was handed to Mr Levy at Hassans' 20 offices when the RGP attended. Do you 21 recognise ever having seen this document 22 previously? 23 A. No, I don't remember having seen this 24 document. 25 Q. If we look on the second page, item 9</p> <p style="text-align: center;">Page 252</p>

<p>1 says - 2 THE CHAIRMAN: I think you may not 3 have the second page, but it will be on the 4 screen. 5 MR SANTOS: Apologies, yes. I am only 6 going to show you one line, item 9: 7 "Communication with the Chief Minister in 8 relation to any of the above." That is a list of 9 topic areas which the RGP say that they will 10 be seeking to explore in a formal interview 11 under caution. If you cannot remember this - 12 what I want to ask you is whether you were 13 aware of the inclusion of that item on that list 14 by the RGP at the time. 15 THE CHAIRMAN: At number nine? 16 MR SANTOS: At number nine. 17 A. Perhaps I was from discussions with Mr 18 Levy but I can't remember seeing this 19 document in this form. 20 Q. This document was sent by Mr Baglietto 21 to the Attorney General on the evening of 12 22 May 2020 and the Attorney General then 23 intervened on 13 May - sorry, let me correct 24 my language. The Attorney General, during 25 the course of his meeting on 13 May, with</p> <p style="text-align: center;">Page 253</p>	<p>1 measure, etc. etc." That is an extract from 2 the Police Disciplinary Regulations 1991. 3 A. Yes. 4 Q. And in fact it is the most severe penalty 5 of the eight penalties open to a disciplinary 6 board set out in schedule 2 to the regulations. 7 Why were you sending this to Mr Baglietto? 8 A. Mr Baglietto was aware that Mr Levy's 9 view which he had shared widely with me, I 10 think, during the course of that day, was that 11 Mr Richardson - and I say Mr Richardson 12 because I don't know his rank off the top of 13 my head - 14 Q. Superintendent at the time. 15 A. So, Superintendent Richardson was 16 acting out of bad faith and because he had 17 secured future employment with Bland 18 Limited, the terms of which were very, very 19 generous and that he was doing everything 20 that he was doing in his capacity as a 21 member of Royal Gibraltar Police Force 22 induced to do so by Mr Gaggero of Bland's. 23 I took the view that that was nonsensical, that 24 there was nothing to support that suggestion 25 but James had got it into his head that that</p> <p style="text-align: center;">Page 255</p>
<p>1 Mr McGrail, referred to item 9 and requested 2 that that be removed, and what I was seeking 3 to establish is whether that was on the basis 4 of a discussion that he had had with you 5 about that item or whether you were aware of 6 that item. 7 A. I would have no difficulty whatsoever in 8 having all my communications with Mr Levy 9 in respect of these matters provided. In fact, 10 when I called the inquiry, I was very clear 11 that everybody's communications with 12 everybody else were going to be called in for 13 everyone to look at. 14 Q. If we go back to B1422, on 14 May at 15 4.55 - sorry, 1422. On 14 May at 4.55 there 16 is a message from you to Mr Baglietto which 17 says: "The last limb refers". Now, it may be 18 that this was on the back of the meeting with 19 Mr Baglietto and Mr Levy or may have been 20 sent beforehand, but anyway, I just want to 21 ask you about this message exchange. "The 22 last limb refers", and then you say, 23 "Dismissal with total loss or reduction of 24 pension, benefits, forfeiture of pension 25 benefits, will be used as a disciplinary</p> <p style="text-align: center;">Page 254</p>	<p>1 was the case and what I was referring Lewis 2 to was the fact that if it subsequently became 3 apparent that in fact everything that we had 4 seen play out on the morning of 12 May 5 turned out to be because James was right and 6 Superintendent Richardson left the Royal 7 Gibraltar Police to take up lucrative 8 employment with Bland Limited, which I did 9 not believe was the case, then there could be 10 a case of that being misconduct in public 11 office. It would be very severe. It could lead 12 to serious loss of confidence in the police 13 force and there could be a very strict sanction 14 applied. This reference had absolutely 15 nothing to do with Mr McGrail. This was all 16 about James's theory about Paul Richardson 17 and what the remedy might be if there were 18 any scintilla of truth to that, which I did not 19 believe was the case. 20 Q. Why is none of that explanation included 21 in any of the four statements that you have 22 provided to this inquiry? 23 A. Nobody has asked me to provide an 24 explanation about that particular paragraph. 25 Q. But Mr Picardo, the inquiry asked you to</p> <p style="text-align: center;">Page 256</p>

<p>1 provide evidence as to your discussions with 2 Mr Levy about the search warrant. 3 A. But not about Mr - but about Mr McGrail 4 and the circumstances leading up to his 5 retirement. 6 THE CHAIRMAN: So, this followed on a 7 conversation that you had had with Mr 8 Baglietto about Mr Richardson being 9 employed by Gaggero's? 10 A. With Mr Levy and subsequently with Mr 11 Baglietto about Mr Levy's theory which I did 12 not share, and I believed was not credible 13 that Mr Richardson had obtained lucrative 14 employment with Bland Limited. 15 THE CHAIRMAN: You see, Mr Baglietto 16 has given evidence about this exchange as 17 well and he does not - he has said nothing 18 about this. 19 A. He might not recall it. I recall it like 20 night follows day that this was about Paul 21 Richardson because look, there are many 22 things which I would criticise about the 23 police action in this case. I did not buy into 24 the theory that Paul Richardson had obtained 25 lucrative employment with Bland and was</p> <p style="text-align: center;">Page 257</p>	<p>1 regulations. 2 Q. This is not governed by the regulations. 3 A. Exactly. 4 Q. The next message some 18 minutes later 5 after Mr Baglietto thanks you - actually, just 6 to be clear, there is a gap between you 7 sending that and Mr Baglietto thanking you 8 of about an hour and a half but then you then 9 send him section 76 of the Police Act, which 10 is the power to make orders with respect to 11 property in possession of the police. 12 effectively, a provision that permits an 13 application to be made to the magistrates' 14 court to seek the return of something that had 15 been taken including, for example, in a 16 search warrant. Were you proposing that 17 procedure for the return of Mr Levy's phone? 18 A. Well, as far as I am concerned, this is the 19 most basic reference in the Police Act, the 20 return of property that is in the hands of the 21 police. In my practice, when I was a young 22 lawyer and I used to have to make 23 applications to the magistrates' court for the 24 return of property in the hands of the police, 25 this was the section that you would rely on</p> <p style="text-align: center;">Page 259</p>
<p>1 acting because he was persuaded by Bland 2 Limited to act in that way. I did not buy into 3 that but I was very clear that if that had been 4 the case and it was all improper conduct, then 5 there was a remedy that was available. 6 Q. But if you did not buy into it, why were 7 you the one who was making proposals as to 8 disciplinary penalties? 9 A. I didn't make a proposal. I set out what 10 could happen in the event that it were true. 11 Q. Did you think it was appropriate for the 12 Chief Minister to be getting involved in 13 police disciplinary matters? 14 A. I wasn't getting involved in a police 15 disciplinary matter. There has been no police 16 disciplinary matter. This is the Chief 17 Minister referring to a section of the Police 18 Disciplinary Regulations. No such 19 disciplinary matter has been commenced 20 because, as I told you, the circumstances 21 which I thought were fanciful did not turn 22 out to be true and I was correct to think that 23 they were not true. This could not be about 24 Mr McGrail, as you know, because Mr 25 McGrail's pension is not subject to the</p> <p style="text-align: center;">Page 258</p>	<p>1 under the old Act. I think this is now the 2 new Act, so making a reference to this was 3 simply referring to Mr Baglietto, the part of 4 the statute which provides for the return of 5 property in the control of the police. 6 Q. Was that a proposal in relation to Mr 7 Levy's phone? 8 A. It's very likely a proposal in respect of Mr 9 Levy's phone, yes. This is the section that 10 you would use to try and get the police to 11 return property that they have. 12 Q. Should you, as Chief Minister, have been 13 proposing legal claims against the police? 14 A. This is not a legal claim against the 15 police. This is a claim for the police to return 16 that which they hold which belongs to you. 17 Q. An application, a legal application? 18 A. An application, not a legal claim. 19 Q. Should you, as Chief Minister, have been 20 proposing legal applications against the 21 police? 22 A. Well, I as Chief Minister am not the 23 police; I am not the investigating authority 24 and I am not the prosecuting authority and I 25 think I am free to share my view as to the law</p> <p style="text-align: center;">Page 260</p>

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<p>1 of Gibraltar with any third party that I 2 consider appropriate in particular given my 3 jurisdictional concerns about the effect of the 4 search warrant which I've already shared 5 with you. 6 Q. If Hassans commenced the procedure, it 7 could have resulted in the RGP incurring 8 costs. Were you not concerned about these 9 costs as Minister of Finance? 10 A. Not only was I concerned, I referred to 11 them - I referred them to Mr McGrail in the 12 context of the meeting of 12 May and then he 13 has referred to them as what he says is the 14 threat that I made against him and I say is the 15 reference to the almost automatic reality that 16 unless this was resolved in another way, it 17 would lead to applications which would lead 18 to costs and potentially to damages as they 19 have in the case of R & Verralls v the RGP. 20 Q. Was there not a conflict between you on 21 the one hand proposing an application 22 against the police, and on the other hand 23 having to foot the bill of any such application 24 as Minister of Finance? 25 A. I don't think I would describe that as a</p> <p style="text-align: center;">Page 261</p>	<p>1 achieve that for their clients in a way that 2 reduces costs and obviates aggravation. 3 Q. If you go to C38 - 4 A. I don't see that there is anything improper 5 in that. 6 Q. If we go to C 3802, please, this is a letter 7 from Hassans to the Attorney General. 8 A. Sorry, hang on. Give me a second. 9 Q. Yes. C 3802, yes? This is a letter from 10 Hassans to the Attorney General on 15 May 11 2020 and the final line there says, "There can 12 be little surprise that as we believe is the 13 case, the DPP advised the Commissioner 14 against the making of these applications." 15 This is consistent with the Attorney General's 16 text to you that we saw earlier on which 17 wrongly stated that the DPP had advised 18 against the applications. Did you pass that 19 information on to Hassans? 20 A. Did I refer that to Hassans? I very likely 21 did. I probably told James Levy as soon as I 22 was told myself. I probably wouldn't just tell 23 James Levy and I probably wouldn't just tell 24 Lewis Baglietto and Moshe Levy. I probably 25 told everyone who talked to me about this</p> <p style="text-align: center;">Page 263</p>
<p>1 conflict. I would describe that as a tension 2 but a tension that had been brought about the 3 Royal Gibraltar Police because of the manner 4 in which they had acted. 5 Q. Did you not think it was best to leave 6 Hassans to work that out on their own rather 7 than get involved yourself? 8 A. I didn't think I was getting involved in 9 making the application. The law is public. 10 The law belongs to no one and referring a 11 lawyer to a law doesn't seem to me to be 12 something which is outside the bounds of 13 that which one should be free to be able to do 14 and the idea that only lawyers know the law 15 and only lawyers can refer each other to the 16 law I don't think I share. 17 Q. Mr Baglietto replies, "We prefer not to 18 have to go to court." Was that the aim, 19 securing the return of the phone and Mr Levy 20 no longer being a suspect without having to 21 go to court? 22 A. Well, I would have thought it was the aim 23 and it was the laudable aim of what his 24 lawyers were trying to achieve for him, and 25 it's not unnatural that lawyers might wish to</p> <p style="text-align: center;">Page 262</p>	<p>1 one. This one was vox populi property at the 2 time in Gibraltar. Everyone was talking 3 about it and I was saying how disgraceful I 4 thought it was and how much of an abuse I 5 thought it was and how it was not something 6 that the Director of Public Prosecutions had 7 advised on. I shared that view widely -- 8 Q. Just - 9 A. Sorry, if I may say so for a moment - I 10 know that you want to hurry up. 11 Q. No, no. 12 A. But I think it is important that you 13 understand that when I was given that 14 information, nobody told me that I was being 15 given that information confidentially. 16 Q. Was it not fairly obvious that that was 17 quite sensitive information? 18 A. Why was it sensitive information? The 19 defendant is entitled to know everything 20 there is against him and if somebody has 21 advised that something should not be 22 proceeded with, shouldn't it eventually be 23 told to the defendant as unused material? 24 Q. Perhaps by the RGP - 25 A. Perhaps.</p> <p style="text-align: center;">Page 264</p>

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<p>1 Q. - but not by the Chief Minister.</p> <p>2 A. But once the RGP had gone outside their</p> <p>3 circle of privilege and told me, what</p> <p>4 expectation did they have of confidentiality</p> <p>5 from me? As you say, they were aware of</p> <p>6 what my relationships were and they did not</p> <p>7 for one moment seek that I should not share</p> <p>8 that information. Indeed, the information</p> <p>9 went to the core of my ability to have</p> <p>10 confidence in the RGP and I felt able to share</p> <p>11 that information without having to have</p> <p>12 regard to any privilege or confidentiality that</p> <p>13 had been expressly stated to me or impliedly</p> <p>14 somehow put upon.</p> <p>15 Q. Was it not implicit in the exchange that</p> <p>16 you had with Mr McGrail that the</p> <p>17 information that he was sharing with you</p> <p>18 should not be shared with all and sundry?</p> <p>19 A. Quite the opposite. Look at his</p> <p>20 WhatsApp. I am telling you, before you find</p> <p>21 out from anybody else that this is happening.</p> <p>22 Where is this implication of confidentiality?</p> <p>23 Q. And when the DPP shared the</p> <p>24 information with the Attorney General, was</p> <p>25 that shared with the Attorney General on the</p> <p style="text-align: center;">Page 265</p>	<p>1 comfortable with that advice being shared</p> <p>2 with the other side. What is your reaction to</p> <p>3 that?</p> <p>4 A. Well, that is his view. He is not a</p> <p>5 politician. He is not a member of the</p> <p>6 Executive. Once the information was shared</p> <p>7 with me, I was uncomfortable with it not</p> <p>8 being shared with anybody who had come to</p> <p>9 know of the fact that the search warrant had</p> <p>10 been executed against a prominent person in</p> <p>11 Gibraltar contrary to the advice or without</p> <p>12 the advice of the Director of Public</p> <p>13 Prosecutions in Gibraltar, which in my view</p> <p>14 added to the abuse and we are talking about</p> <p>15 open justice to such an extent that everything</p> <p>16 that we say here is being relayed on</p> <p>17 television. Why not open justice in respect</p> <p>18 of this matter also? Why hide from a</p> <p>19 potential defendant in criminal proceedings</p> <p>20 and from a suspect the fact that the manner in</p> <p>21 which such a warrant had been obtained</p> <p>22 against him was such that the advice of the</p> <p>23 DPP had not been obtained. Indeed, you</p> <p>24 might take the view that the advice of the</p> <p>25 DPP is not required and therefore it is less</p> <p style="text-align: center;">Page 267</p>
<p>1 expectation that that would then be shared</p> <p>2 widely?</p> <p>3 A. It's not me that you're asking that</p> <p>4 question of. You could ask the DPP that</p> <p>5 question. You could ask the Attorney</p> <p>6 General that question.</p> <p>7 Q. Well, as you understood -</p> <p>8 A. Once it was shared with me.</p> <p>9 Q. Well, as you understood it.</p> <p>10 A. Once it was shared with me, remember I</p> <p>11 am a politician. I am a member of the</p> <p>12 Executive. I have rights, duties and</p> <p>13 obligations. None of those as far as I can see</p> <p>14 is an obligation to keep confidential</p> <p>15 information in relation to a prosecution if that</p> <p>16 information has not been shared with me in a</p> <p>17 way that is expressly requiring me to keep it</p> <p>18 confidential or there is another implied duty</p> <p>19 that you point me to that suggests that it</p> <p>20 should be confidential. I was very clear and</p> <p>21 I've said it to you already and I am trying to</p> <p>22 be as frank and open as I can be. I believe</p> <p>23 that I was able to share that information</p> <p>24 widely and I shared it widely.</p> <p>25 Q. The DPP gave evidence that he was not</p> <p style="text-align: center;">Page 266</p>	<p>1 relevant whether the advice has or has not</p> <p>2 been obtained. It is really more relevant to</p> <p>3 my confidence in the Commissioner of</p> <p>4 Police and what he told me than it is relevant</p> <p>5 to anything else.</p> <p>6 Q. If that is the case, then why did you share</p> <p>7 it with Hassans?</p> <p>8 A. I shared it, Mr Santos, with Mr Baglietto,</p> <p>9 with Mr Levy and with many other people</p> <p>10 not just at Hassans because the search</p> <p>11 warrant was vox populi in Gibraltar and this</p> <p>12 piece of information in my view helps to</p> <p>13 demonstrate that it was a complete abuse and</p> <p>14 in my view an improperly obtained search</p> <p>15 warrant and I did not believe that I was</p> <p>16 breaching any confidence or any privilege as</p> <p>17 a result of doing so.</p> <p>18 Q. So, when the Attorney General called the</p> <p>19 DPP and asked him the question your</p> <p>20 position is that the DPP had two choices, one</p> <p>21 either to just say, "I'm not answering that</p> <p>22 question because it's privileged" or to share</p> <p>23 the information and accept by so doing that it</p> <p>24 would be shared with everybody in</p> <p>25 Gibraltar?</p> <p style="text-align: center;">Page 268</p>

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<p>1 A. No, I'm afraid not, not going to be shared 2 with the Attorney General. 3 Q. So, is it the Attorney General sharing it 4 with you that opened it up because - 5 A. The Attorney General shared it with me 6 not in relation to the substance of the advice; 7 he shared it with me in relation to the issue of 8 whether or not Mr McGrail had told me, us, 9 the Attorney General and me, the truth. 10 Q. Yes, but in that case then if that is your 11 position if the substance of the advice - well, 12 the substance of advice must have been 13 passed to you for you to then pass it on to 14 Hassans. 15 A. No, the thing that was shared with me 16 and that mattered to me was the fact that Ian 17 McGrail had not obtained the advice of the 18 DPP as he had said he had in respect of this 19 search warrant being executed. That's what 20 mattered to me and it still matters to me 21 today because it goes to the core of the fact 22 that Ian McGrail lied to me on 12 May in my 23 office about the circumstances leading up to 24 the grant of this search warrant. 25 Q. Do you agree that this information if true</p> <p style="text-align: center;">Page 269</p>	<p>1 McGrail, okay? That's what I was sharing 2 widely because I thought that was a critical 3 moment in my relationship with the RGP and 4 in particular with this Commissioner of 5 Police. 6 Q. But sharing that information with 7 Hassans would naturally encourage them to 8 bring a judicial review against the search 9 warrant and again open the government up to 10 more expenditure. Is that not correct? 11 A. This is the tension that we were talking 12 about before, but there are some tensions that 13 you simply cannot get away from and the 14 reality is that this information was shared 15 with me in relation to the core issue of the 16 credibility of Mr McGrail with me but it had 17 other consequences too because I shared it in 18 the context of Mr McGrail's credibility with 19 me and it had those other consequences. 20 Q. Is not the effect of what you are saying 21 that it was shared with you for one purpose 22 and that you then shared it for a different 23 purpose? 24 A. No. It was shared with me for one 25 purpose. I shared it for that self-same</p> <p style="text-align: center;">Page 271</p>
<p>1 would assist Hassans in any challenge of the 2 warrants and placed the RGP in difficulty? 3 A. Well, I don't think that I would 4 necessarily agree with that because the DPP's 5 view which I think is shared here and that's 6 why I have seen it reported, is that the 7 warrant could nonetheless be defended and 8 there is no requirement that the advice of 9 DPP be sought in order to proceed with the 10 search warrant. 11 Q. Sorry, just to correct you. At the time 12 what you had received from the Attorney 13 General, what you were passing on to 14 Hassans was that the DPP had advised 15 against the making of the application? 16 A. I was not passing on to Hassans. I was 17 saying to all and sundry, to all and sundry, 18 which includes - 19 Q. You weren't passing on just to Hassans? 20 A. Exactly, and I wasn't passing on. I was 21 saying to all and sundry about how 22 improperly the process followed had been 23 but in particular how I had been lied to by 24 Ian McGrail. That's what this went to. It 25 went to the fact that I had been lied to by Ian</p> <p style="text-align: center;">Page 270</p>	<p>1 purpose but it may have had other 2 consequences also. 3 Q. Did you appreciate those other 4 consequences at the time of sharing? 5 A. I appreciated that this might be one of the 6 areas which might become one of the 7 battlegrounds in respect of the search warrant 8 but as you know, it is not necessary under 9 our law or under English law for advice to be 10 obtained from the Director of Public 11 Prosecutions for a search warrant to be 12 granted, so to an extent this is almost 13 irrelevant in that context. It may be part of 14 the window dressing that you might advance 15 in the context of a judicial review or an 16 application - 17 Q. Ultimately it is (inaudible). 18 A. But it is not the key issue. The key issue 19 is whether there was reasonableness behind 20 the suspicion that evidence might be 21 destroyed. That's the key issue and on that 22 there was nothing that was said to me or 23 shared with me. I've seen the material only 24 in the context of this inquiry. The key issue 25 was because Ian McGrail had said so in my</p> <p style="text-align: center;">Page 272</p>

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<p>1 office, it is not relevant otherwise - because</p> <p>2 Ian McGrail said so in my office, first when</p> <p>3 he said that he had obtained the advice of the</p> <p>4 Attorney General, the first lie he told me,</p> <p>5 which the Attorney General said was not</p> <p>6 true, in my presence, and second, he said,</p> <p>7 "We acted because the DPP had said that</p> <p>8 they should go by way of search warrant",</p> <p>9 and that is denied by the DPP in the varying</p> <p>10 degrees that we have seen denied, and it goes</p> <p>11 to that, to the credibility that I put to anything</p> <p>12 that Ian McGrail might say after 12 May. It</p> <p>13 doesn't go to anything else, but I shared it</p> <p>14 widely, not just with individuals at Hassans.</p> <p>15 Q. Two days later we can see on 16 and 17</p> <p>16 May there are further exchanges between you</p> <p>17 and Mr Baglietto on B142. I don't think we</p> <p>18 need to go to those messages because I do</p> <p>19 not think it is in dispute that on 17 May, the</p> <p>20 Sunday, there ends up being a meeting</p> <p>21 between Mr Levy, senior, Mr James Levy,</p> <p>22 Mr Baglietto and you in your home in the</p> <p>23 early afternoon of the 17th. Is that correct?</p> <p>24 A. That's right.</p> <p>25 Q. And in your fourth affidavit dated 18</p> <p style="text-align: center;">Page 273</p>	<p>1 A. Absolutely.</p> <p>2 Q. Can we look at your statement, your</p> <p>3 fourth witness statement at paragraph 17? It</p> <p>4 is A1 448.</p> <p>5 A. Yes.</p> <p>6 Q. You say, "At the meeting with Mr Levy</p> <p>7 KC I remember we discussed again how</p> <p>8 legally improper it had been in our view for</p> <p>9 the RGP to have proceeded by way of search</p> <p>10 warrant and not production order, how</p> <p>11 outraged I was by the fact that I believed that</p> <p>12 Mr McGrail had lied to me about the advice</p> <p>13 he'd had in that respect, and my subsequent</p> <p>14 complete loss of confidence in him." So,</p> <p>15 would you accept that in fact the meeting did</p> <p>16 entail some discussion about Mr McGrail?</p> <p>17 A. References to him, yes, but it was not</p> <p>18 about Mr McGrail.</p> <p>19 Q. Well, partly it was, was it not?</p> <p>20 A. It was not a meeting convened to discuss</p> <p>21 Ian McGrail but we discussed those issues</p> <p>22 around the issues that James wanted to</p> <p>23 discuss.</p> <p>24 Q. You say that you discussed again how</p> <p>25 outraged you were by your belief that Mr</p> <p style="text-align: center;">Page 275</p>
<p>1 March 2024, you state that you recall seeing</p> <p>2 Mr Levy at your home?</p> <p>3 A. Yes.</p> <p>4 Q. That was 17 May, the day after Mr Pyle</p> <p>5 had emailed Dr Britto proposing a meeting</p> <p>6 on 18 May.</p> <p>7 A. Correct. That's right.</p> <p>8 Q. Why did you not mention this meeting</p> <p>9 until your fourth affidavit served three weeks</p> <p>10 before this hearing started?</p> <p>11 A. Well, because this meeting was about Mr</p> <p>12 Levy. It was not about Mr McGrail. This</p> <p>13 inquiry is not about Mr Levy; it's about Mr</p> <p>14 McGrail's early retirement.</p> <p>15 Q. You say that Mr Levy was incensed but</p> <p>16 deeply embarrassed. Did you feel a degree</p> <p>17 of obligation to help him out as his close</p> <p>18 friend and him being your mentor? Did you</p> <p>19 feel an obligation to help him?</p> <p>20 A. Not on that Sunday. It didn't take me until</p> <p>21 Sunday to want to help Mr Levy and I would</p> <p>22 have wanted to help anybody in similar</p> <p>23 circumstances subject to such abusive</p> <p>24 behaviour by the Royal Gibraltar Police.</p> <p>25 Q. So, from 12 May then?</p> <p style="text-align: center;">Page 274</p>	<p>1 McGrail had lied to you about the advice he</p> <p>2 had had. When had you previously discussed</p> <p>3 what Mr McGrail had said to you about the</p> <p>4 DPP's advice?</p> <p>5 A. We again in that paragraph relate to how</p> <p>6 legally improper it had been in our view for</p> <p>7 the RGP to have obtained the warrants.</p> <p>8 Q. Not to the alleged lie?</p> <p>9 A. Yes.</p> <p>10 Q. Was this the first occasion on which you</p> <p>11 informed Mr Levy about your belief that Mr</p> <p>12 McGregor had lied to him?</p> <p>13 A. No, I believe I'd discussed it with him</p> <p>14 before, but in the construction of that</p> <p>15 sentence we again related to it, yes.</p> <p>16 Q. I have said that. I am just trying to</p> <p>17 discover the timeline. When do you believe</p> <p>18 was the first time that you communicated that</p> <p>19 to Mr Levy, that you believed that Mr</p> <p>20 McGrail had lied to you?</p> <p>21 A. Probably sometime after the 13th, 14th at</p> <p>22 some stage around then.</p> <p>23 Q. You say that you discussed your</p> <p>24 complete loss of confidence in Mr McGrail.</p> <p>25 Did you tell Mr Levy that Mr Pyle had also</p> <p style="text-align: center;">Page 276</p>

<p>1 lost confidence in Mr McGrail? 2 A. I don't think I did, no. 3 Q. Did you speak to him about your other 4 reasons for losing confidence in Mr 5 McGrail? 6 A. I don't think I would have done that in 7 any great detail. There was a lot to talk about 8 in respect of the matters relating to James. 9 No need to go into the rest of it, at least not 10 in any detail. 11 Q. Did you tell him that you were meeting 12 Dr Britto on the Monday to ask him to 13 commence the section 34 process? 14 A. I don't believe I did. If I had, James 15 would have sought to dissuade me from 16 doing that, I've no doubt. 17 Q. Why do you say that? 18 A. Because I know his nature and he would 19 have sought to dissuade me from doing 20 something like that. 21 Q. Why did you see fit to share your 22 complete loss of confidence in Mr McGrail 23 given that Mr Levy had no constitutional role 24 in the section 34 process? 25 A. I shared it widely not just with Mr Levy</p> <p style="text-align: center;">Page 277</p>	<p>1 McGrail with Mr Levy until this fourth 2 statement three weeks before this hearing? 3 A. Well, I didn't think that I didn't fail to 4 reveal. It's just that, Mr Santos, I know that 5 you have to ask me these questions, but you 6 must understand as I know you did how 7 difficult the discharge of the functions of my 8 office is and trawling through material 9 providing data is not easy whilst at the same 10 time trying to do everything else that we are 11 trying to do and sometimes it is impossible to 12 jog memory until a document turns up that 13 points you to something that happened, etc. 14 So, I don't recall what it was that led to this 15 specific disclosure. There has been 16 absolutely no attempt whatsoever to hide 17 anything from this tribunal, quite the 18 opposite. I constituted this tribunal in order 19 to ensure that we got to the bottom of 20 everything that had happened in the context 21 of the early retirement of Ian McGrail. 22 Q. In paragraph 18 you say, "The key issue 23 in that meeting however was that Mr Levy, 24 KC, as a result of the acute embarrassment 25 that he felt had wanted to see me to offer me</p> <p style="text-align: center;">Page 279</p>
<p>1 who has no constitutional role but with many 2 other people who I'd spoke to in the run up to 3 that time, not just with Mr Britto and with Mr 4 Pyle but I would have shared that view with 5 others in my office, for example, in 6 discussion. I mean this was really, as far as I 7 was concerned, a point of no return for me 8 and Mr McGrail. 9 Q. So, you shared it with other people before 10 you spoke to Dr Britto? 11 A. I shared with other people my views in 12 that respect before I shared those views with 13 Mr Britto, and not least with Mr Pyle before I 14 spoke to Mr Britto. 15 Q. Yes, but I - 16 A. And probably with others in the office. 17 Q. Outside the constitutional, the statutory 18 process? 19 A. Yes, I would have spoken probably to 20 private secretaries in my office. This was for 21 me a huge issue. I mean, it really - it shook 22 my world that the Commissioner of Police 23 lied to me to my face in my office. 24 Q. Why did you not reveal that you 25 discussed your loss of confidence in Mr</p> <p style="text-align: center;">Page 278</p>	<p>1 his resignation as the chairperson of Gibraltar 2 Community Care Trust, a post he has held for 3 over 30 years. I told Mr Levy KC in that 4 meeting that I continued to have full 5 confidence in him and his integrity and that I 6 do not believe it was necessary for him to 7 resign from the chairmanship of Community 8 Care Trust." Why was it necessary for Mr 9 Levy to come to your home to discuss that 10 issue? 11 A. James was very embarrassed at the time. 12 He was very despondent. I have met with 13 James Levy on a Sunday every day since I 14 became a lawyer at Hassans until more or 15 less 2005 or 2006 and then my practice 16 changed - in fact, practices changed for 17 everyone because we no longer had to be in 18 the same room as the fax machine to have 19 meetings, but meeting on a Sunday was 20 James Levy's normal course of operation and 21 there would have been some occasions when 22 I met with him on a Sunday even after I 23 became Chief Minister. Jo Bossano meets 24 with him on Sundays very often and Joe and 25 James would have met when Joe was Chief</p> <p style="text-align: center;">Page 280</p>

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<p>1 Minister every Sunday, so I met with him on 2 Sunday because at that stage I was doing a 3 lot of work on some of the issues that you 4 will no doubt take me to on the next day. I 5 was at home. I believe my family went to the 6 beach that day so I could continue working. 7 This would also have been in the run up to 8 other work that was being done at the time. 9 It wasn't a normal year; it was 2020. So, him 10 coming to see me was out of deference to my 11 office whilst otherwise I might have come to 12 see him and to the fact that I was working at 13 home on that day, not in the office, and we 14 spent some time ruminating on what had 15 happened in the previous week. 16 Q. I just want to focus on that because you 17 say that the key issue was resignation as 18 chairperson but you were working on what 19 you were doing to say to Dr Britto the 20 following day. 21 A. Yes. 22 Q. We have seen your exchanges with Mr 23 Pyle, which we have turned to. 24 A. Yes. 25 Q. Is it not the case that in fact the purpose</p> <p style="text-align: center;">Page 281</p>	<p>1 my view was that he should not resign as its 2 chairman. He had done 30 years of 3 extraordinarily good work as chairman of the 4 Independent Trust Community Care and I 5 wanted him to continue. 6 Q. Why was it so urgent that he had to come 7 to talk to you on a Sunday about it? 8 A. As I've told you, it's not that things are 9 urgent for James Levy to come and talk to 10 you about them on a Sunday. Unfortunately, 11 when you discharge the high office that I 12 discharge, working on a Sunday is quite 13 common. I am not suggesting it isn't also 14 common if you are a lawyer. I know it is. 15 Q. You have said on several occasions that 16 you are not motivated by your partnership of 17 Hassans, that it had nothing to do with, 18 necessarily your relationship with Mr Levy 19 and that you would have done the same for 20 any senior lawyer. You would have been 21 concerned, but would you accept that the 22 perception of your senior partner, your friend 23 who had just been the subject of a search 24 warrant and is the suspect in a criminal 25 investigation attending your home to discuss</p> <p style="text-align: center;">Page 283</p>
<p>1 of this meeting was to discuss the search 2 warrants and to discuss your loss of 3 confidence in Mr McGrail? 4 A. No. We would have discussed the search 5 warrant. We would also have discussed my 6 loss of confidence in Mr McGrail but 7 principally what we were discussing was 8 James being convinced that he had to leave 9 as chairman of Community Care Trust. At 10 that time in 2020 Community Care Trust - 11 and this is the beginning of Covid - 12 Community Care Trust probably had in the 13 region of £100 million of money provided to 14 that trust as a result of votes by the Gibraltar 15 Parliament to transfer the fund that is in the 16 social assistance fund which creates the nest 17 egg of community care which the trustee 18 administrates, probably the wealthiest charity 19 in Gibraltar, and even Gibraltar's history, 20 probably, and he has been the chairman of it 21 for 30 years, and having been the subject of 22 the search warrant and now subject to the 23 investigation in which he was involved by 24 the Royal Gibraltar Police, he felt he had no 25 alternative but to resign as its chairman and</p> <p style="text-align: center;">Page 282</p>	<p>1 those issues and to discuss your loss of 2 confidence in Mr McGrail? Would you 3 accept that the perception isn't great? 4 Q. It might be, somewhere that's not 5 Gibraltar, but a lot of people have come to 6 my home to discuss problems that they have. 7 I mean, I understand that this would not 8 happen in No 10 Downing Street, but my 9 home at Buena Vista is not my official 10 residence. It's my personal home. A lot of 11 people come to my home to discuss their 12 problems. Some of them just knock on the 13 door and if I'm not dealing with anything 14 else, they may come in and discuss those 15 problems. They may seek to see me at No 6 16 or elsewhere, so in the context of Gibraltar, it 17 is not man bites dog that the Chief Minister 18 should see someone in his home whether it is 19 his friend or not his friend. 20 Q. You emphasised the context of Gibraltar, 21 but does that not perhaps mean that one has 22 to be a bit more careful and impose 23 boundaries so that inopportune meetings do 24 not discuss - sorry, inopportune or 25 coincidental meetings or meetings about</p> <p style="text-align: center;">Page 284</p>

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<p>1 other issues do not result in inappropriate 2 things being discussed? 3 A. Well, you carry those boundaries with 4 you and we didn't discuss inappropriate 5 things. We discussed all the things that were 6 appropriate for us to discuss and which I 7 would have discussed. With any of the other 8 lawyers I've mentioned they would have 9 acted or in exactly the same way they had 10 been the subject of such abusive proceedings 11 and I do not accept that we were discussing 12 anything that we should not discuss. 13 Q. If the meeting was about the Community 14 Care Trust, why did Mr Baglietto need to be 15 with Mr Levy and you at that meeting? 16 A. Mr Baglietto was with Mr Levy because I 17 think he was involved with Mr Levy in all 18 aspects of what Mr Levy was doing in those 19 days in relation to the investigation etc. He 20 is also very close to me and to him. We've 21 always got on extraordinarily well together. 22 He was driving. 23 Q. Yes, the (inaudible). 24 MR SANTOS: I just wonder - I think I still 25 need to make a bit more progress today but I</p> <p style="text-align: center;">Page 285</p>	<p>1 is a matter entirely for the tribunal. 2 THE CHAIRMAN: My experience is that 3 sitting early never works because there is 4 always some drama, as indeed happened 5 today. 6 MR SANTOS: If it assists, my estimate is that 7 we will be, if we do another 45 minutes, 8 maximum one hour today, then I should have 9 made more than enough progress to ensure 10 that I can stick to my 45 minute estimate. 11 THE CHAIRMAN: We will timetable 12 everyone else and we might have a short 13 lunch, which is very popular with everybody 14 else. 15 MR SANTOS: I do 24 hour fasts, so that 16 works for me. 17 THE CHAIRMAN: Yes. 18 MR SANTOS: Can we go to D3346, please. 19 This is an email from Mr Baglietto to Mr 20 Yamas on the 17th of May 2020, which says, 21 "Dear Attorney, further to your confirmation 22 that the Commissioner would be content with 23 a written statement from Mr Levy in lieu of 24 proceeding with the RGP's proposed interview 25 tomorrow, I confirm that Mr Levy will give a</p> <p style="text-align: center;">Page 287</p>
<p>1 just wonder whether that is 2 THE CHAIRMAN: Would you suggest 3 having a second break? Do you think it is a 4 good idea? 5 MR SANTOS: In fairness to the witness, I 6 think that we should have a break. 7 THE CHAIRMAN: For the witness and the 8 transcriber. 9 MR SANTOS: And the transcriber, yes. 10 More importantly the transcriber. 11 THE CHAIRMAN: Okay. We'll take a 12 short break. 13 MR SANTOS: Thank you. 14 (16.34) 15 (Adjourned for a short time) 16 (16.45) 17 THE CHAIRMAN: You are okay with sitting 18 a bit late, are you, today? 19 MR SANTOS: I am. I would not be 20 tomorrow. 21 THE CHAIRMAN: Yes, I understand that. I 22 am going to set a strict time limit about 23 tomorrow. 24 MR SANTOS: I am happy to sit earlier 25 tomorrow if you feel that that is appropriate. It</p> <p style="text-align: center;">Page 286</p>	<p>1 written statement." That is at 2.51 on the 2 Sunday, the same day that you had met in the 3 early afternoon, it seems, and Mr Baglietto 4 says that, " ... it was just after the meeting at 5 your home." Was that discussed at your home, 6 whether Mr Levy would be producing a 7 written statement in lieu of the interview on 8 the following day? 9 A. I don't recall that it was. Can you show me 10 the WhatsApp exchanges with Mr Baglietto 11 which might time the meeting because ... 12 Q. Yes, B1422. There is some confusion in 13 these messages because it seems - I will tell 14 you and then I will let you have a look at them 15 - but it seems as though arrangements are 16 made for a meeting at midday but then it 17 seems actually as though Mr Baglietto says 18 that he is picking something up, he is picking 19 Mr Levy up, sorry, at 2 o'clock. If you just 20 look at the top of B1422. 21 A. Yes, that's what I wanted to raise with you. 22 If he was saying to me at 14.03 that he was 23 picking up now, I think that he was picking Mr 24 Levy up. 25 Q. Just for the sake of completeness, on the</p> <p style="text-align: center;">Page 288</p>

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<p>1 previous page, the penultimate message, he 2 says, "12 noon." So, it seems as though there is 3 an arrangement to meet at 12 noon, then on the 4 following page there are missed calls slightly 5 later on, "Okay" and then you say, at 20 to 12, 6 "Let me know when you're on your way up." 7 "Okay." And then at 10 past 12 you say, 8 "How you going?" but then there is ... 9 A. That's why I've asked you to take me to the 10 timeline because I think - I mean, these 11 timings may not accord to each other because 12 they may be timings that come from different 13 devices. I think that it's very likely that the 14 email to the Attorney went before the meeting 15 with me because I think I was told this rather 16 than discuss it. I mean, I considered this to be 17 a very positive outcome but I think I was told 18 it rather than discussed it and I think that the 19 meeting with me happens after this has been 20 agreed, and perhaps this email even has been 21 sent. 22 Q. The way that it happens, sorry, just to bring 23 you completely up to speed, is that there is a 24 confirmation - if you look at that email, the 25 B33346, Mr Baglietto says, "Further to your</p> <p style="text-align: center;">Page 289</p>	<p>1 B1422, there are a couple of messages later on, 2 at 22.47 and 22.48 from you to Mr Baglietto 3 and we will turn to those shortly, but 22.52, 4 Mr Baglietto says, "Shocking but sadly doesn't 5 come as a surprise." That is in response to 6 your messages, the two preceding messages, I 7 believe, and then he says, "Thanks for your 8 time today. I think it reassured him a lot." In 9 what way did you reassure Mr Levy? 10 A. My view about his probity, his standing in 11 the community, the fact that I insisted he 12 should not resign as Chairman of 13 Communicare Trust and that I believed that 14 people continued to hold him in high regard 15 despite the manner in which the RGP had 16 pursued their investigation. 17 Q. Can we now go to - sorry, just staying 18 there, there are the two messages that we 19 jumped over. It says, "Media omitted" - we 20 know what that is, that is the page of the 21 HMIC report. We may as well just very 22 quickly glance at that, C6761 - do you have 23 that? Otherwise it will appear on screen. 24 A. Yes. 25 Q. And that is a marked page from the HMIC</p> <p style="text-align: center;">Page 291</p>
<p>1 confirmation that the Commissioner would be 2 content with a written statement from Mr 3 Levy." It seems as though that confirmation 4 had come from the Attorney General prior to 5 that email being sent, obviously. So, it may be 6 that at the time you had this meeting you were 7 told that the Attorney General had proposed it, 8 but that Hassans had not actually gone back 9 and given their confirmation. 10 A. That's possible, but I don't believe that my 11 meeting with Mr Levy and Mr Baglietto was 12 so short that he could have - Mr Baglietto had 13 picked up Mr Levy at 14.03, reached my 14 house say by 14.15 and had left my house and 15 sent this email by 14.51, or indeed have sent 16 this email from my house because, from what I 17 recall, we were having a discussion, it wasn't a 18 long meeting but it wasn't such a short 19 meeting, and Lewis wasn't sitting there writing 20 an email, and I think I was told about the 21 voluntary statement, etc., etc. So, it would 22 suggest to me that at least the timing is off 23 kilter somehow. Not that much may turn on it, 24 but I think it's off kilter. 25 Q. Just going back to the text messages,</p> <p style="text-align: center;">Page 290</p>	<p>1 report and in fact you have highlighted the 2 section that is titled, "Investigative support" 3 and particularly emphasise the sentences, "We 4 found officers using their personal devices to 5 examine offenders' phones. This isn't good 6 practice and doesn't meet best evidence 7 standards." You send that to Mr Levy 8 accompanied by - that is page 13 of the HMIC 9 report published last week: "Look at the bit I 10 have highlighted in red. Boom." 11 A. Yes. 12 Q. Why did you send that to Mr Baglietto? 13 A. Because it shows that the RGP's practice in 14 relation to electronic communication devices 15 does not meet the standard and that goes to the 16 very core of the issue that was in play; Mr 17 Levy's electronic communications device 18 being in the hands of the RGP. 19 Q. You say, "Boom" - why did you say that? 20 A. "Boom", it's an expression and it goes 21 directly to the point. 22 Q. Were you celebrating, effectively, what 23 you had found? 24 A. No, I was saying, "Wow, look, this is 25 directly relevant."</p> <p style="text-align: center;">Page 292</p>

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<p>1 Q. Why did you refer to the fact that the 2 HMIC report was public? 3 A. Because it had been published already. It's 4 a public source of information. 5 Q. Were you making the point that it was 6 public and therefore could be used in the sense 7 that it was public information? 8 A. If I hadn't said that it was public you would 9 ask me whether I was referring to a private or 10 privileged source of information. 11 Q. I am sure I would. 12 A. So, I think it's fair that I highlighted the 13 fact that it was public. It had been made 14 public I think the previous week. If I'm not 15 wrong, the Commissioner of Police had 16 actually gone on Viewpoint that week or the 17 week after to defend its contents. 18 Q. But was that referring to the fact that you 19 had referred to other information which was 20 not public? 21 A. No, just the fact that this was public; in 22 other words, the thing I was sending was a 23 public document. 24 Q. Then Mr Baglietto says, "Yes, excellent, 25 we can put it to good use for sure." So, Mr</p> <p style="text-align: center;">Page 293</p>	<p>1 electronic communication devices much. I 2 think I may have got a full copy of it and 3 provided for it to be delivered to him by hand, 4 with that and other parts of the report 5 highlighted for him to see. 6 Q. But you say that you sent it by email. 7 A. Potentially sent it be email. 8 Q. Potentially. 9 A. If I sent it by email it would be in the email 10 trails. 11 Q. Yes. 12 A. If I sent it by WhatsApp it would be in the 13 WhatsApp trails. Otherwise, I would have 14 sent it by hand. I would not have sent it by 15 post. 16 Q. What other parts would you have 17 highlighted from the report? 18 A. I can't recall, but I recall, apart from part 8, 19 which was the part that I had little regard for, 20 which related to the way that we do budgeting, 21 a lot of the rest of it made for very difficult 22 reading from the point of view of the RGP. 23 Q. If we go to C3953, please. This is 11.53 24 now, about 40 minutes after your exchange 25 with Mr Baglietto, and this is you emailing Mr</p> <p style="text-align: center;">Page 295</p>
<p>1 Baglietto seems to be communicating to you 2 that they could use it in the context of what 3 they were planning in terms of Mr Levy's 4 device, is that correct? 5 A. Yes. 6 Q. Was this not you assisting Hassans with 7 Mr Levy's intended claim? 8 A. It was me referring Hassans to open and 9 public sources of information, just like the law 10 is an open and public source of information, 11 and this report was a public and open source of 12 information. 13 Q. Yes, but you sending this public 14 information to Hassans, was that not you 15 assisting with the claim? 16 A. They obviously felt it was because they 17 said they could put it to good use. 18 Q. You say then, "I have sent to JL. Let me 19 know if he sees it." How would you have sent 20 it, WhatsApp/email? 21 A. So, I could have sent it by email. I think 22 James wasn't particularly using WhatsApp in 23 those days. I mean, remember his phone had 24 just been confiscated by the police five days 25 before and I don't think he was relying on</p> <p style="text-align: center;">Page 294</p>	<p>1 Pyle saying, "Dear Governor, thanks for the 2 below note of your thinking. I have read the 3 papers again over the weekend. In order to 4 expedite my response I have commented in red 5 below each relevant paragraph of your email. 6 I am also sending you attached the transcript 7 of the Commissioner's interview on Viewpoint 8 on the HMICFRS reports." Is it fair to say that 9 on the 17th of May you were very much 10 working on securing Mr McGrail's departure 11 from his role? 12 A. Not just that. I would have been working 13 on other things as well. But, yes, this was the 14 thing that the Deputy Governor and I had 15 agreed to look into and be doing and looking 16 at over the weekend. 17 Q. Then if we go back to B1418, please. 18 These are exchanges between you and the 19 Attorney General and there is an entry from 20 the line at the top of the page, the fourth entry - 21 first of all, you can see the first three messages 22 are the same part of the HMIC report that you 23 sent to him? 24 A. Yes. 25 Q. He says, "Hardly encouraging. I</p> <p style="text-align: center;">Page 296</p>

<p>1 understand that technical experts can say when 2 a phone has been accessed or otherwise 3 tampered with." 4 A. Yes. 5 Q. And then you say, at 35 minutes past 6 midnight on the 18th, you send another 7 message, "To discuss" and you send a media 8 item. That is at C6763, if we can look at that 9 briefly. That is section 59 of the Constitution 10 which sets out the powers of the Attorney 11 General. And the Attorney General responds - 12 sorry, we are flicking between them, so just 13 keep that open - "To me?" and you say, 14 "Exactly. In re a search warrant as a 15 proceeding." 2(b) there is section 59(2)(b), 16 "The Attorney General shall have power in 17 any case in which he considers it desirable so 18 to do to take over and continue any such 19 criminal proceedings that may have been 20 instituted by any other person or authority." It 21 looks from that exchange like you were 22 proposing that the Attorney General exercise 23 his constitutional power to take over and 24 continue the search warrant proceedings 25 against Mr Levy. Is that what you were</p> <p style="text-align: center;">Page 297</p>	<p>1 then discontinue the proceedings under 2 s.59(2)(c)? 3 A. Which proceedings are you referring to? 4 Q. The search warrant. 5 A. Just the search warrant? 6 Q. Just the search warrant, yes. 7 A. I am alerting Michael here to his power to 8 potentially do that in the event that he 9 considers it appropriate. 10 Q. Yes. Do you consider that it is appropriate 11 for a Chief Minister to be making such 12 proposals to an Attorney General? 13 A. In the circumstances that appertained on 14 that day, I obviously considered that it was 15 appropriate for all the reasons I have already 16 highlighted to you, which caused me great 17 jurisdictional concern that I had. If I thought it 18 was not appropriate but had wanted to do it, I 19 would not have done it in writing in a way that 20 was going to leave a trail. So, I thought it was 21 entirely appropriate for me to do it. I didn't 22 expect that he would do it because I told him. 23 I knew that he would read the section and 24 make up his mind for himself, and I didn't 25 think it was inappropriate to raise such issues</p> <p style="text-align: center;">Page 299</p>
<p>1 doing? 2 A. That was one of the things that I was 3 alerting him to the possibility of doing, yes. 4 Q. Were you proposing that he do so and then 5 discontinue the proceedings under s.59(2)(c)? 6 A. I was very clear that what I meant by the 7 proceeding was the search warrant proceeding, 8 not the investigation, not the Delhi 9 investigation. 10 Q. Yes, so ... 11 A. The search warrant against James Levy 12 and that is what I am suggesting. 13 Q. But were you proposing that he 14 discontinue the search warrant proceedings? 15 A. I was suggesting that he could potentially 16 do that. 17 Q. Under subsection (c)? 18 A. Subsection (c)? 19 Q. Yes, sorry, I just want to be clear here. 20 You send him this section and he comes back 21 and says, "59(2)(b)." 22 A. Yes. 23 Q. And you say, "Exactly." That is to take 24 over and continue any criminal proceedings. 25 Were you suggesting that he do so in order to</p> <p style="text-align: center;">Page 298</p>	<p>1 with him, given that I understood what the 2 state of play was between him and Hassans 3 and the police, etc., etc., and this was 4 highlighting to him a power that exists in our 5 Constitution. I mean, you could put it another 6 way, couldn't you? Is it inappropriate for the 7 Chief Minister to refer the Attorney General to 8 the powers that are set out in the Constitution? 9 Q. Well, I do not think I should answer the 10 question. 11 A. No, no, I am not suggesting that you 12 should. I am saying the question could be put 13 to me: is there anything wrong with a Chief 14 Minister (a senior, elected politician) referring 15 the Attorney General to the powers that he has 16 under the Constitution? I didn't ask him to 17 exercise them, I referred him to them. 18 Q. But you were referring him to them in the 19 context of criminal proceedings against your 20 very close friend, your mentor, your business 21 partner and a senior partner of the firm at 22 which you are still a partner. 23 A. Who is also the only star performer in 24 Chambers and Partners, Gibraltar's biggest 25 rainmaker, one of the greatest sources of</p> <p style="text-align: center;">Page 300</p>

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1 **business for the finance centre, and I think you**
 2 **will find that most lawyers in Gibraltar will**
 3 **tell you that he is that, not just all the other**
 4 **things which he also is which you have also**
 5 **described in relation to me. So, of course,**
 6 **undoubtedly, he is those things to me but he is**
 7 **also those things to Gibraltar and therefore**
 8 **also of my concern in that respect.**
 9 Q. Do you think that that is consistent with the
 10 provisions we have seen from the Ministerial
 11 Code?
 12 A. Yes, because I was acting selflessly, I was
 13 acting in the interests of Gibraltar. I wasn't
 14 acting in the interests of a friend, I wasn't
 15 acting in my business interests, I was acting in
 16 the interests of Gibraltar every time. That's
 17 why I was expending quite so much time on
 18 these issues, because I believed genuinely that
 19 the interests of Gibraltar required me to act in
 20 that way. This is 10 to 1 on a Sunday
 21 morning, and the Chief Minister of Gibraltar
 22 works hard, but he's not always up at 10 to 1
 23 on a Sunday morning.
 24 Q. You have referred to what your intentions
 25 were and what your motivations were, but

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1 from a perception perspective do you think
 2 that that is still compliant with the Ministerial
 3 Code?
 4 A. I do. I mean, the one thing that you have
 5 to factor into the equation as well is that at this
 6 time, and you will correct me if I am wrong,
 7 but I am convinced I am right, at this time Mr
 8 Levy's phone with all of its information,
 9 although a copy, I think, may have been made
 10 of it by this time, is in the hands of the Royal
 11 Gibraltar Police and it contains the information
 12 of all of his many international, very high net
 13 worth clients, who now find that without the
 14 protection of a production order, which goes
 15 for specific forensically identified information,
 16 but under the lesser control of a search
 17 warrant, their information is in the hands of the
 18 Royal Gibraltar Police and there is an HMIC
 19 report that says that the Royal Gibraltar Police
 20 use their own devices to search into devices
 21 that they have confiscated under search
 22 warrants. You know, if that isn't a
 23 jurisdictional concern I don't know what is.
 24 Q. It was being held by the police but it was
 25 being held subject to an undertaking that they

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1 would not look at the phone for seven days in
 2 order to permit Hassans to commence
 3 whatever proceedings they might wish to
 4 commence.
 5 A. Yes, so, in other words, the clock was
 6 ticking. The clock was ticking and you had to
 7 resolve this problem very fast, otherwise the
 8 privileged information of all of these
 9 individuals, who are clients of this particular
 10 lawyer, would have been interrogated as the
 11 Royal Gibraltar Police interrogated that phone,
 12 very often with police officers using their own
 13 personal devices to interrogate that phone.
 14 Not in keeping with the standards required.
 15 All of that is happening at the same time.
 16 Q. Does Mr Levy being Gibraltar's biggest
 17 rainmaker and having global clients put him,
 18 exclude him from the possibility of a search
 19 warrant?
 20 A. Of course not, but we all know that
 21 production orders are designed to protect the
 22 privilege of those who have relationships with
 23 the individual who has information that is
 24 going to be disclosed, and so those who are
 25 protected are not Mr Levy but his clients, and

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1 that is what you need to have particular regard
 2 to. In relation to this issue, there is also, of
 3 course, the fact that you are looking for a
 4 needle in a haystack if you go into someone's
 5 electronic communications devices, anybody's
 6 electronic communications devices, in
 7 particular somebody like Mr Levy. It was
 8 much easier for the RGP to say, with the
 9 strength of an order of the Supreme Court,
 10 "You must give us this information." Then the
 11 obligation is on the individual, who is an
 12 officer of the court and leading counsel, to
 13 identify all that information and disclose it
 14 upon paying a penalty if he doesn't, rather than
 15 have to go into the device and go and look for
 16 all of the things that may be relevant.
 17 Because, you know, of course, it's very easy
 18 given the list of names that we've seen to
 19 identify those individuals who are listed there,
 20 but there are also classes of material that are
 21 referred to there, not just exchanges with
 22 individuals, and what's to say that the Royal
 23 Gibraltar Police would not have gone into
 24 what we colloquially call chats or exchanges
 25 with individuals who have the expectation of

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1 **privilege when dealing with a lawyer in**
 2 **Gibraltar and have had access to those which**
 3 **would create serious concern for those**
 4 **individuals?**
 5 Q. But the search warrant procedure also had
 6 procedures for the protection of privileged
 7 material, did it not?
 8 **A. Very likely it did, but you have seen what**
 9 **the HMIC report said about the way that they**
 10 **interrogated those systems, which, in short,**
 11 **likely means that Royal Gibraltar Police**
 12 **officers were using their own devices to**
 13 **interrogate the electronic devices that they**
 14 **took and therefore keeping that information on**
 15 **their devices going forward.**
 16 Q. Can we now go to B1125, please. This is
 17 your witness statement to the police of the
 18 25th of June 2021 and I just want to go to the
 19 bottom of that page and pick it up ...
 20 **A. By the time you have finished with today I**
 21 **won't know what day it is, yes.**
 22 Q. It is the second half of that paragraph:
 23 "When I became aware of the fact ..." - can
 24 you see?
 25 **A. Yes, I've got it.**

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1 Q. "When I became aware of the fact that the
 2 Government was being referred to as a
 3 complainant, I thought that the Chief Secretary
 4 should provide me with the details of the
 5 evidence available to support the complaint.
 6 The Chief Secretary referred me to the
 7 assertions made to him by the Commissioner
 8 but he was unable to provide me with any
 9 detail of any evidence in support of the
 10 complaint. I consider this to be unsatisfactory
 11 and not a basis on which the Government can
 12 agree that it should be a complainant in this
 13 matter against any of the defendants. The
 14 Cabinet considered this matter and agreed that
 15 I should clarify that any complaint advanced is
 16 therefore not advanced on behalf of the
 17 Government but on behalf of the Chief
 18 Secretary." Were you made aware that the
 19 DPP was resisting providing that evidence?
 20 **A. I was not made aware that the DPP was**
 21 **resisting providing that evidence. I was made**
 22 **aware that the RGP were resisting providing**
 23 **that evidence. By the way, this was not just**
 24 **my motion in the Cabinet; there was another**
 25 **Minister who was extraordinarily concerned**

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1 **about this and who put this issue on the**
 2 **agenda.**
 3 Q. Did you not think that the RGP may have
 4 good reason for their reluctance?
 5 **A. No, I did not and I do not believe that they**
 6 **can have.**
 7 Q. So, you decided to clarify that the
 8 Government was not a complainant. Given ...
 9 **A. That the Government would not be a**
 10 **complainant unless the evidence was shared**
 11 **with us.**
 12 Q. Given your beneficial interest in 36 North,
 13 your partnership, close friendship with Mr
 14 Levy, your previous communications with Mr
 15 Perez and Mr Sanchez, did you not think that
 16 you should leave this decision to someone else
 17 in Government, or at least recuse yourself
 18 from the Cabinet discussion?
 19 **A. I absolutely do not see what the relevance**
 20 **of my involvement in 36 North was there**
 21 **because I had already resolved that matter two**
 22 **years before in a way that demonstrated I was**
 23 **acting selflessly, with integrity and in keeping**
 24 **with the interests of the Gibraltar taxpayer and**
 25 **the public interest more widely, not my own.**

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1 **And in the context of my communications, my**
 2 **other communications with Hassans, I don't**
 3 **see how that can be relevant at all. Let's be**
 4 **very clear, what we were asking for here was**
 5 **evidence that we had in fact suffered the effect**
 6 **of a crime so that we could be a complainant**
 7 **of it. Now, the way I have explained this**
 8 **before is this. If you suffer a physical assault,**
 9 **you know that you've suffered the assault.**
 10 **You may not know who did it because you**
 11 **may not see who did it, but you have suffered**
 12 **the physical assault. Right? So, you go to the**
 13 **police and you complain that you have**
 14 **suffered the physical assault. Here, we were**
 15 **being told that we had suffered an assault, in**
 16 **this case an electronic assault, and what we**
 17 **were saying was, "Well, okay, you're telling us**
 18 **that we've suffered an assault, you are telling**
 19 **us that one of our own people, a senior officer**
 20 **in the Government, is involved or responsible**
 21 **for that assault - show us that that is the case,**
 22 **because at the moment we have no evidence of**
 23 **any of this, so that we can become a**
 24 **complainant in that respect." And that was not**
 25 **forthcoming. We were not seeking any**

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<p>1 information that was privileged or that was 2 confidential, because surely the effect of a 3 crime on a victim cannot be something that is 4 confidential? It is the very thing upon which 5 the charge is to be based, so therefore it cannot 6 be confidential. But they wouldn't give us that 7 information. They wanted to be, the Royal 8 Gibraltar Police wanted to be able to say that 9 the Government was a complainant, without 10 showing the Government why it should be a 11 complainant. 12 Q. Can we now move to what we call issues 8 13 to 10, which is the final weeks following the 14 12th of May, the time period between the 12th 15 of May and Mr McGrail's departure on the 9th 16 of June. If we go to B1439, please. This is a 17 message which I showed you earlier, your 18 message to Mr Pyle on the 14th of May, which 19 you also send to the AG. You say there, you 20 refer to sending the article, you say, "I am 21 totally there to support the officers on the 22 frontline, I'm starting to have huge concerns 23 about the senior management of the RGP" and 24 then you say, "I will alert to a particular matter 25 when we meet." That was, presumably, a</p> <p style="text-align: center;">Page 309</p>	<p>1 Q. Yes, yes, we will turn to that now. 2 A. Yes. 3 (17.15) 4 Q. You say, "In terms of the past few months 5 alone: one, this case of deaths occasioned 6 outside of BGTW, where the statute gives 7 them no status as police officer; two, the 8 HMIC inspection issues; three, the Federation 9 bringing allegations; four, the runway incident 10 where we had to go into bat for them despite 11 all aspects having clearly been mishandled by 12 the RGP and parts of MoD also; and, five, the 13 continuing saga of the Alcaidesa claims. I 14 think I will be asking Ian McGrail to provide 15 more detail and in writing as to what 16 happened here and what they are going to do 17 to engage with these claims before there is 18 any requirement that they do so. I am 19 starting lose confidence here. Best wishes. 20 Fabian". In terms of the runway incident it is 21 fair to say, is it not, that that had not 22 happened in the last -- well, actually we dealt 23 with this this morning; I am not going to ask 24 you that question again. Did you include it 25 on the list because you knew that Mr Pyle</p> <p style="text-align: center;">Page 311</p>
<p>1 reference to the search warrant and the 2 exchange that you had had with Mr McGrail? 3 A. Yes. 4 Q. Why did you only refer to it in that way, 5 without any specifics? 6 A. Well, because, you know, it's already a 7 fairly lengthy message and, you know, typing 8 these things with two thumbs takes some time, 9 and there was a lot to talk about in that respect. 10 Q. You refer to everything else. It is 11 specifics. So, were you ... 12 A. Well, short specifics, but, I mean, I don't 13 think I could have explained the loss of 14 confidence I'd had in McGrail, etc., etc. in a 15 sentence as I have in respect of all the others in 16 a phrase, other than to say, "I've got issues I 17 need to explain to you." 18 Q. You then say, "In terms of the past few 19 months alone ..." 20 A. Excuse me, if I may say so? 21 Q. Sorry. 22 A. It is common ground, I think, that I did 23 speak to Mr Pyle about these things. 24 Q. Yes. 25 A. So ...</p> <p style="text-align: center;">Page 310</p>	<p>1 still felt aggrieved about the incident? 2 A. I still felt aggrieved about the incident. I 3 was very positive about some aspects of what 4 they've done, very disappointed in the MoD 5 and how they'd acted, but nonetheless when 6 you looked at it, this could have been 7 handled in a completely different manner. 8 Perhaps by both sides -- perhaps both sides 9 had been at fault. But clearly there were 10 issues in the way that things had been 11 handled which were just not proper. 12 Q. What did you mean by "the continuing 13 saga of the Alcaidesa claims"? 14 A. Well, that had not been resolved at the 15 time: I understand there was still outstanding 16 litigation in Spain on those issues, which 17 were still causing ruptions within the RGP 18 etc. 19 Q. What claims did you understand to be 20 afoot at the time? 21 A. I understood that there might be criminal 22 proceedings against police officers in Spain, 23 claims for trespass from property owners, 24 etc. 25 Q. Was that a reference to Mr McGrail, or</p> <p style="text-align: center;">Page 312</p>

<p>1 was it a reference to other people within the 2 RGP? 3 A. To the RGP generally and the senior 4 management team in particular. 5 Q. Are you aware that Mr McGrail had no 6 part in that operation, other than interviewing 7 for disciplinary purposes one or two of the 8 officers who were involved? 9 A. I am aware that he was a part of the 10 senior management team at the time; I am 11 not able to say what his involvement was in 12 respect of every aspect of that. 13 Q. Let us put it in a different way, then: were 14 you aware of any involvement on Mr 15 McGrail's part in the Alcaidesa incident at 16 that time? 17 A. No, but he was in superintendence of the 18 force at the time and this was something 19 which related to his force. 20 THE CHAIRMAN: Was he not only a DI at 21 the time? 22 A. I'm sorry? 23 Q. A detective inspector. I am not sure what 24 his position was at the... Chief inspector. 25 THE CHAIRMAN: Chief inspector.</p> <p style="text-align: center;">Page 313</p>	<p>1 this was clear first of all because of the 2 reference to the Attorney General and second 3 because of the reference to the DPP. And 4 when I get the information that the DPP had 5 not given the advice, you know, that results 6 in my losing confidence in him, but it doesn't 7 result in me considering that I'm going down 8 the road of pressing any buttons as a result of 9 that: this is a breakdown of the personal 10 relationship. Then I get the El Faro de Ceuta 11 article, whatever happened on the 13th 12 happened on the 13th, and it's building up to 13 be more than just a personal loss of 14 confidence: there is more here. All of these 15 things are happening at the same time. The 16 call also sees (?) that on 14 May is the day of 17 his Viewpoint interview on the HMIC report, 18 meaning all of these things come together in 19 that week. 20 Q. Then Mr Pyle responds saying (just after 21 you provide the article), "Agree. As we 22 thought at the time, wrong appointment. 23 Remind me to tell you about the recruitment 24 process which was abject. Should we meet 25 tomorrow after or before platinum?" He</p> <p style="text-align: center;">Page 315</p>
<p>1 Q. I think it was (?) chief inspector. 2 A. At the time of the events, but at this time 3 he was in superintendence of the force and 4 this issue had not yet been resolved. 5 Q. You then say, "I am starting lose 6 confidence here.", but we have seen from 7 your evidence in paragraph 55 of your first 8 witness statement, A194 (we saw it earlier 9 today), that you say at the final two lines of 10 55, "on that day (12th May 2020), I lost all 11 confidence in his probity and integrity in his 12 dealings with me and generally in him as a 13 result." 14 A. Yeah. 15 Q. So why did you say, "I am starting lose 16 confidence" in your message of 14 May? 17 A. I was deliberating about all of these 18 things in my mind, and what I should do 19 about them. These are -- I've lost the page, 20 143? Nine? 21 Q. Yes, sorry, 143. 22 A. Yeah, I've just got 55 and this open at the 23 same time. I was deliberating what I should 24 do, at the time. I mean, on 12 May I lost 25 confidence in him because he lied to me, and</p> <p style="text-align: center;">Page 314</p>	<p>1 says, "As we thought at the time, wrong 2 appointment." Had you and Mr Pyle 3 discussed Mr McGrail's appointment at the 4 time? 5 A. I think we had, and I had discussed them 6 with Ed Davis as well. I mean, the way that 7 we were told who the appointee was was that 8 they -- Ed Davis and I were at the Convent, 9 and we were told that there would be one 10 successful applicant who would come to see 11 us and we would congratulate him, and the 12 other applicant we would commiserate with 13 and encourage that person to continue in the 14 force, because habitually those who apply to 15 become commissioner, if they don't get it, 16 can probably leave given their age, and -- a 17 little bit like the Perisher course on 18 submarines, if you do not get it you tend to 19 want to go, and that had happened in the past. 20 And Ed Davis and I were very, very 21 surprised, we discussed at the time, that it 22 was Ian McGrail who became commissioner 23 and not Richard Ullger. And subsequently, 24 when I discussed it with Nick Pyle it was 25 clear that he was just as surprised.</p> <p style="text-align: center;">Page 316</p>

<p>1 Q. Why were you surprised?</p> <p>2 A. Because we believed that the -- I</p> <p>3 believed, and it turned out Ed Davis also</p> <p>4 believed, and it turned out that Nick Pyle also</p> <p>5 believed, that Ian McGrail should not be</p> <p>6 commissioner of police, because he did not</p> <p>7 have the temperament to be commissioner of</p> <p>8 police and he was not the right candidate.</p> <p>9 Q. What was that belief based on?</p> <p>10 A. On our experience of him at the time,</p> <p>11 what we'd seen -- what each of us had seen of</p> <p>12 him, and on the publicly available</p> <p>13 information at the time about Mr McGrail.</p> <p>14 Remember that the application is not made to</p> <p>15 us, so we don't determine the application;</p> <p>16 we're not there for the interview process, but</p> <p>17 we are -- or, despite holding high office we</p> <p>18 are people who have views, also, interpreting</p> <p>19 what we see, and how the things that we see</p> <p>20 affect our view of individuals, and that was</p> <p>21 my view. It turned out also to be Ed Davis's</p> <p>22 view, and when I discussed it with Nick Pyle</p> <p>23 also his view. I think there were very, very,</p> <p>24 very many people in Gibraltar at the time of</p> <p>25 Ian McGrail's appointment who could just</p> <p style="text-align: center;">Page 317</p>	<p>1 I mean, I certainly would have</p> <p>2 communicated my views to the Chief</p> <p>3 Secretary, who was my appointee to the GPA.</p> <p>4 Let me tell you the story, we had one</p> <p>5 moment in the week that I became Chief</p> <p>6 Minister, the afternoon that I became Chief</p> <p>7 Minister. I was consulted by the then acting</p> <p>8 Chief Secretary about the then application</p> <p>9 process for commissioner of police that was</p> <p>10 going to go on on Monday. And I was told:</p> <p>11 Chief Minister, there are two applicants on</p> <p>12 Monday, A and B, who would you wish me</p> <p>13 to support? And I'd just arrived at Number 6,</p> <p>14 Convent Place, hadn't been able to have a</p> <p>15 shower after the count. And I said: look,</p> <p>16 Dicky (?) it's up to you because you're going</p> <p>17 to hear the interviews, you're going to have</p> <p>18 to make up your mind for yourself. And, you</p> <p>19 know, although you're my appointee you</p> <p>20 decide who you think would be best. After</p> <p>21 the interview process he came to see me, and</p> <p>22 he told me that he had voted for Eddie Yome</p> <p>23 to become the appointee because he thought</p> <p>24 he was the best of the two applicants. And I</p> <p>25 said that seemed (as far as I was concerned) a</p> <p style="text-align: center;">Page 319</p>
<p>1 not believe that he was the appointee.</p> <p>2 Q. What was the source of Mr Pyle and the</p> <p>3 then Governor's concerns?</p> <p>4 A. Well, you've seen what he has --</p> <p>5 Q. Yes.</p> <p>6 A. -- said with his concern; I can't really</p> <p>7 give evidence as to what his concerns were</p> <p>8 except the things that he said (inaudible).</p> <p>9 Q. Sorry, yes, let me clarify: as far as you</p> <p>10 were aware.</p> <p>11 A. Well, the things that he has --</p> <p>12 subsequently he's said, and you can see he</p> <p>13 was saying to me in communications at the</p> <p>14 time.</p> <p>15 Q. Is it not fair to say that Mr Ullger was</p> <p>16 also involved in the airport incident?</p> <p>17 A. It was but, you know, when you're</p> <p>18 looking at these issues you're also looking at</p> <p>19 issues of temperament and temperance, and I</p> <p>20 think everyone believed that Mr Ullger had</p> <p>21 better temperance and temperament when it</p> <p>22 came to dealing with issues.</p> <p>23 Q. Did you ever communicate your concerns</p> <p>24 to the GPA, about Mr McGrail?</p> <p>25 A. Depends what you mean about the GPA.</p> <p style="text-align: center;">Page 318</p>	<p>1 very good choice. From what I knew of Mr</p> <p>2 Yome, not because I have heard the interview</p> <p>3 process, because I wasn't there. I wasn't</p> <p>4 asked by the then Chief Secretary, when</p> <p>5 these appointments were going to happen,</p> <p>6 necessarily what my view was in the way</p> <p>7 that has stuck in my mind quite like that. If I</p> <p>8 had been, I would have said my view was</p> <p>9 that it should be Richard Ullger but, you</p> <p>10 know, I was not going to be there for the</p> <p>11 interview process, so --</p> <p>12 Q. My question was --</p> <p>13 A. -- (inaudible) have said just: you make up</p> <p>14 your mind for yourself, because you're a</p> <p>15 member of the board and you have to decide.</p> <p>16 Q. I am sorry, but my question was whether</p> <p>17 you ever communicated your concerns about</p> <p>18 Mr McGrail to the GPA. To Dr Britto --</p> <p>19 A. So, the answer that I've given you is</p> <p>20 about my appointee on the GPA. In other</p> <p>21 words, I would have spoken to the Chief</p> <p>22 Secretary and said: oh my goodness, what's</p> <p>23 happened here? But I would not have</p> <p>24 communicated to, at that stage, Mr</p> <p>25 Gonçalves not Mr Britto, because I believe</p> <p style="text-align: center;">Page 320</p>

1 **Mr Gonçalves was then the chairman of the**
 2 **GPA.**
 3 Q. Yes.
 4 **A. And look (?), I was ready to give Ian**
 5 **McGrail a crack of the whip, and there were**
 6 **some things that we did at that time on which**
 7 **we worked together. There were aspects of**
 8 **Covid on which we worked well together,**
 9 **and there were things we were doing which**
 10 **were working well, but the vast majority**
 11 **were not going as they should.**
 12 Q. Did Mr Pyle ever explain to you why he
 13 considered the application process to have
 14 been abject?
 15 **A. I think that he said to me that - and I'm**
 16 **talking from memory now, from a**
 17 **conversation. I think he said to me that the**
 18 **way that the whole thing had been handled**
 19 **was designed to avoid the views of the**
 20 **Governor's representative on the GPA and**
 21 **the Chief Minister's representative on the**
 22 **GPA being given at the beginning of the**
 23 **process but rather at the end once everyone**
 24 **had spoken so that our views did not carry as**
 25 **much weight as they might otherwise have**

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1 **carried, and as they might have carried in the**
 2 **past.**
 3 Q. On 15 May you met with Mr Pyle to
 4 discuss Mr McGrail and if we can go to your
 5 statement, your first statement, paragraph 68,
 6 A199, you say: "After this exchange..."
 7 which is the exchange we have just been
 8 looking at-you say "I am not able to recall
 9 that meeting in detail, but subsequent
 10 WhatsApp and email exchanges have
 11 assisted me to
 12 reconstruct the discussion and events that
 13 followed. I do specifically recall, however,
 14 that I explained to the Governor, Nick Pyle,
 15 the issues of the execution of the search
 16 warrant in respect of Mr Levy and my views
 17 in respect thereof, which was central
 18 to my loss of confidence in Mr McGrail and,
 19 in fact, is what I was referring to in the
 20 first of the WhatsApps I have extracted,
 21 when I say: "... I will alert to a particular
 22 matter when we meet..." How much did you
 23 explain to Mr Pyle about Operation Dheli
 24 and the search warrants when you - and your
 25 meeting with Mr McGrail on 12 May?

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1 **A. All of it. I was evangelising about this to**
 2 **anyone who would care to listen. I thought it**
 3 **was a disgraceful abuse by the Royal**
 4 **Gibraltar Police and I wasn't going to keep it**
 5 **to myself. I certainly wasn't going to going**
 6 **to keep it from the Governor of Gibraltar.**
 7 Q. Did you inform Mr Pyle about the
 8 connection between you and Hassans and
 9 you and 36 North?
 10 **A. Yes, and how irrelevant it was because I**
 11 **had resolved that matter a year and a half**
 12 **before.**
 13 Q. And obviously he-- Well, did Mr Pyle
 14 know about your close friendship and
 15 business partnership with Mr Levy?
 16 **A. I don't think there is anybody in Gibraltar**
 17 **who doesn't know.**
 18 Q. If we go to B/1440 -
 19 **A. Yes.**
 20 Q. We are moving on with your exchanges
 21 with Mr Pyle.
 22 **A. This is Friday.**
 23 Q. This is Friday, correct, yes. The 15th. At
 24 8: 42 in the evening, you say: "Thanks Nick.
 25 I think you've probably seen this coming

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1 before I have. To extent I allowed too much
 2 of the benefit of the doubt here and strained
 3 the most important relationship Gibraltar has
 4 (with the UK) in doing so. I sincerely hope
 5 the Federation doesn't make such a mistake,
 6 because it would lead me not to have
 7 confident in it if they did." I think that is a
 8 reference to the Federation potentially
 9 opposing. Then you say: "Again, we shall
 10 have to set out our thinking clearly and then I
 11 doubt anyone would see this cumulative
 12 record of behaviour as defensible. But loss
 13 of life really puts us now in different
 14 territory. I never would have thought I
 15 would be of this view, especially post
 16 Castree - but it feels like the RGP has gone
 17 backwards not forwards. A real pity for the
 18 good people in there who need nurturing and
 19 good leadership. Have brought papers home
 20 to get under the skin of this. Try to have a
 21 break this weekend if you can." In this
 22 message, you seem to rank Operation Kram
 23 as the most important matter, because you
 24 say, "loss of life really puts us now in
 25 different territory"?

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1 **A. Mmh.**
 2 Q. Would you agree??
 3 **A. Well, I put many things into the mix, but**
 4 **all of them together, it would be impossible**
 5 **when you look at the list of issues that you**
 6 **are dealing with, it would be impossible not**
 7 **to give top billing, to put it that way, to the**
 8 **loss of life, no? I mean, it really is**
 9 **something that has to eclipse everything else.**
 10 **When you are looking at all the things that**
 11 **are relevant, even though one matters more**
 12 **to me in terms of direct confidence, but if**
 13 **they are relevant then the issue that relates to**
 14 **loss of life has to be at the top of the list. I**
 15 **would never have been forgiven for**
 16 **suggesting the opposite.**
 17 Q. Did you refer particularly to Operation
 18 Kram because you knew that Mr Pyle had
 19 concerns about operation Kramm?
 20 **A. No. I refer to Operation Kramm because I**
 21 **also have concerns, and you will recall that**
 22 **you have taken me to my WhatsApps and**
 23 **emails in relation to what was happening**
 24 **about Operation Kramm on the 14th - that is**
 25 **to say the day before. The search warrant**

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1 **issues and the lie were on the 12th. This issue**
 2 **of Operation Kramm and falle fasota(?)**
 3 **etcetera, that was on the 14th.**
 4 Q. Then over the page -
 5 **A. I am sorry, by the way, and on the night**
 6 **of the 14th... So, I start the day of the 14th**
 7 **with the falle fasota(?), and I end the 14th**
 8 **with the Commissioner on television on**
 9 **Viewpoint on HMIC.**
 10 Q. Over the page, the second message is
 11 from the Deputy Governor. The first
 12 message says, "My pillow also gives me the
 13 best advice: if we are going to do this, do we
 14 very discretely at your end, line someone
 15 up."
 16 **A. You have missed the one where he says**
 17 **about ethics at the bottom of the page at**
 18 **1440.**
 19 Q. I think it is only fair that I read that out.
 20 "Thanks. Agree we need to approach this
 21 correctly and carefully (but that's a given in
 22 my opinion). It's good to have faith in
 23 human nature but sometimes we need a
 24 reminder that not everyone has the same
 25 ethics/morality they should have and group

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1 think doesn't help (within the RGP). I will
 2 get some rest. I hope you too. Enjoy your
 3 [barbeque]. Best. Nick." You respond:
 4 "My pillow always gives me the best advice:
 5 If we are going to do this, do we very
 6 discretely at your end, line someone up. We
 7 cannot have it headless." Then he says:
 8 "Thinking about it quite a lot. Need to
 9 discretely bring Joey Britto into our thinking.
 10 I'm happy to do that Monday." Your
 11 exchange there seems to be one of already
 12 thinking about replacing Mr McGrail before
 13 the section 34 process has even commenced.
 14 Is that not fair?
 15 **A. That was our thinking but we could not**
 16 **action section 34. We had to talk to Joey**
 17 **Britto and he could have told us that he was**
 18 **not persuaded, and that all the GPA could tell**
 19 **us that they were not persuaded that they**
 20 **should act in keeping with the provisions of**
 21 **section 34, regardless of what we might tell**
 22 **them. But we know what happened**
 23 **afterwards.**
 24 Q. Mr Pyle's response is: "Need to
 25 discretely bring Joey Britto into our

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1 thinking." What did you understand him to
 2 be saying by that?
 3 **A. We needed to meet with Mr Britto to**
 4 **share our thinking with him.**
 5 Q. Why "discretely"?
 6 **A. Well, you would not put an advert in the**
 7 **chronical saying, "Joey Britto, please turn up**
 8 **at The Convent on Monday morning so we**
 9 **can tell you how the Governor and the Chief**
 10 **Minister have lost confidence in the**
 11 **Commissioner of Police." You would say:**
 12 **come and see us. We want to explain**
 13 **something to you. How do you think we**
 14 **should break this to the rest of the GPA so**
 15 **that they have all of this detail?**
 16 Q. In fairness to you, Mr Picardo, you have
 17 given evidence that you were telling all and
 18 sundry about your loss of confidence --
 19 **A. Absolutely.**
 20 Q. - in Mr McGrail. Hence my question
 21 about why the discreteness
 22 **A. Because it is discreet in the context of**
 23 **wanting to tell the Chairman of the GPA**
 24 **before everyone else in the GPA is made**
 25 **aware because it is fair that the Chairman**

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<p>1 should have carriage of that process in his 2 Committee. 3 Q. Then C3/953 please. This is your email 4 to Mr Pyle. We looked at this earlier in a 5 different context but what you say to him is 6 that you set out in red underneath his email 7 your responses - your - let me just use the 8 right word, your comments on each relevant 9 paragraph of his email. You send this after 10 you had met with Mr Levy and Mr Baglietto 11 earlier that afternoon at your house. Did you 12 inform Mr Pyle that you had met them earlier 13 that day? 14 A. So, he sends it to me at 8.47. 15 Q. Yes, at 6.47. 16 A. Sorry, 18:47. Yes, you are absolutely 17 right, 6.47 - setting out his thinking over the 18 weekend, and I respond later that night. I 19 don't know that I said to him that I had seen 20 James Levy about his issues and in particular 21 the issue of community care; neither do I 22 think it is relevant that I should have told him 23 that. 24 Q. The question was whether you had - 25 whether you did inform him.</p> <p style="text-align: center;">Page 329</p>	<p>1 59 of the Constitution. 2 A. Yes. 3 Q. So do you think that you were in a 4 sufficiently objective mindset at the time? 5 A. I do and if you look at my contributions, I 6 think that they're fair, objective, well thought 7 through and I stand by them. 8 Q. Why did you send the transcript of the 9 interview and viewpoint? Was there any 10 particular matter that you considered relevant 11 from that programme? 12 A. Do you have it? 13 Q. I think we should somewhere. 14 A. Did I highlight any part of it? 15 Q. Not that we are aware, but perhaps we 16 can look at that overnight and if there is 17 anything we will bring it to your attention 18 and similarly if there is anything that you -- 19 A. I mean, it's a written communication, so 20 if I had felt I had to highlight any particular 21 part of it, I would have referred to it in the 22 text or I would have highlighted it in the 23 transcript itself. But without the benefit of 24 seeing it at the moment I can't help you. 25 Q. At 3955 now, please.</p> <p style="text-align: center;">Page 331</p>
<p>1 A. Well, no because as you can see what I 2 told him is set out in writing, and if it is not 3 set out in writing I didn't say anything about 4 that. 5 Q. Given that this was only a few hours after 6 your meeting, were you in a sufficiently 7 objective mindset to write this email to Mr 8 Pyle? 9 A. A few tends to mean two or three. A 10 couple is two; a few is three. This is 11 actually closer to 8 hours after my meeting 12 with Mr Levy and Mr Baglietto. I did not 13 have passions inflamed in me by Mr 14 Baglietto and Mr Levy on that Sunday 15 afternoon in my home that I couldn't put into 16 their proper context when doing a legal 17 analysis of the letter from-- of the email from 18 the Governor. 19 Q. I accept the correction that it happened 20 several hours, 8 hours even, but it is also 21 right to say that at around this time you were 22 messaging Mr Baglietto about section 76 of 23 the Police Act - 24 A. Yes. 25 Q. - and the Attorney General about section</p> <p style="text-align: center;">Page 330</p>	<p>1 A. Yes. 2 Q. Your answer to Mr Pyle's comment about 3 the sequencing of events. Mr Pyle says -- 4 A. Which paragraph? 5 Q. The second paragraph is: "So, as I see it 6 and to my untrained eye." This is Pyle. 7 A. Yes. 8 Q. "It is for the GPA to take this forward in 9 the first instance. I agree with you that it is 10 important we follow the process to the letter, 11 not look to prejudge and allow the 12 Commissioner to put forward a defence, etc. 13 The last thing we want is to face a charge of 14 constructive dismissal. I suggest we 15 therefore say to Joey tomorrow that we have 16 lost confidence in the Commissioner and set 17 out why and task him to consider the options 18 as to the way forward." 19 And you respond: 20 "Yes, chronologically that is exactly right. 21 Section 34 specifically provides that the 22 GPA's action to call upon the Commissioner 23 to retire cannot be commenced until we have 24 both been consulted and one of us has 25 agreed. The part of the clause that relates to</p> <p style="text-align: center;">Page 332</p>

<p>1 consultation is conjunctive and the part that 2 relates to agreement is disjunctive. We 3 should however at this stage limit ourselves 4 to setting out our concerns." 5 Do you feel that you did limit yourself to 6 setting out your concerns or did you go 7 further and present Dr Britto with no option 8 at the meeting on the following day? 9 A. No, I think that we set out our concerns. 10 That's why, um, Dr Britto asked me to 11 produce a file note of what we had said. That 12 file note follows closely the work I had done 13 the night before. I had used the email from 14 Nick Pyle during the course of the meeting. 15 THE CHAIRMAN: We will come on to the 16 meeting. You are talking about the meeting. 17 We have not come to it. 18 MR SANTOS: In fairness, my question did 19 in fact go to the meeting because I said: did 20 you feel that you limited yourself at the 21 meeting? But we are going to come to the 22 meeting tomorrow, so perhaps it is best that 23 we deal with that, I mean, I think we are 24 probably coming, I am just going to ask you 25 one more question about this email and then I</p> <p style="text-align: center;">Page 333</p>	<p>1 was minded to exercise that power? 2 A. Do I comment on that paragraph? I note 3 that you haven't given me C3954. Do I make 4 a comment in respect of that paragraph? 5 Q. You do. You comment on it quite 6 heavily actually. It is the entire following 7 page. 8 A. Yes. (Pause). 9 Q. I think, if I may assist, I think your first 10 paragraph in response is a reference to the 11 different between section 34 and section 13 12 and the subtle differences between 13 a retirement, which is a section 34 process, 14 and a resignation, which is the section 13 15 process. So I think that is your comment and 16 the following paragraph as well. 17 A. Yes. 18 Q. But my question to you is more one as to 19 your perception at the time, having met 20 Mr Pyle and having received this email, did 21 you understand Mr Pyle to be minded to 22 exercise that section 13 power at that stage if 23 the GPA did not exercise its power under 24 section 34? 25 A. Well, I think he was ready to consider the</p> <p style="text-align: center;">Page 335</p>
<p>1 think we will continue -- 2 THE CHAIRMAN: Yes, it is 20 to 6. It is 3 quite late enough. 4 A. Do you want me to finish the answer? 5 MR SANTOS: By all means. 6 A. So I do believe that we stuck to setting 7 out what our concerns were. I had used this 8 email as the guide to what we should say to 9 Mr Britto. Um, and then I used this email 10 also to inform the file note that I prepared of 11 the meeting that we had had with Mr Britto. 12 Q. Thank you. And my final question is 13 back at the beginning of this email on C3953, 14 the final paragraph on that page is Mr Pyle 15 says: 16 "As to the issue and without getting ahead of 17 myself, section 34 of the Police Act allows 18 for the GPA after consultation with us to call 19 upon the Commissioner to retire. Within this 20 section 13.1F of the Police Act gives me the 21 authority to call for the resignation of the 22 Commissioner where the authority has failed 23 to discharge its responsibility. But you know 24 all that." 25 Did you understand at this stage that Mr Pyle</p> <p style="text-align: center;">Page 334</p>	<p>1 need to use it if we got to it. Whether or not 2 he would use it if we got to it was a matter 3 which I don't believe he had specifically 4 turned his attention to and whether the 5 necessary hurdles had been discharged for 6 him to be able to engage section 13 if 7 necessary. 8 MR SANTOS: Thank you, Mr Picardo, and 9 thank you, Chief Minister, and thank you for 10 sitting late to get through this. 11 A. Pleasure. 12 MR SANTOS: Thank you, sir, as well. 13 THE CHAIRMAN: Yes. 14 MR SANTOS: And to GPC as well. 15 THE CHAIRMAN: So if we start at 16 10 o'clock tomorrow, which we will do, you 17 would hope to finish -- 18 MR SANTOS: By 10.45 according to my -- 19 THE CHAIRMAN: By 10.45, okay. 20 MR SANTOS: -- very best, to get finished 21 by 10.45. Certainly I will not go beyond 22 11 o'clock. But I am happy to confirm that 23 we will not go beyond 10.45 and that is my -- 24 THE CHAIRMAN: I think that is better. 25 MR SANTOS: I cut my cloth.</p> <p style="text-align: center;">Page 336</p>

1 **A. And I should plan for 5 o'clock**
2 **tomorrow?**
3 MR SANTOS: I think 5 o'clock. Well --
4 THE CHAIRMAN: Your flight is at 9, I
5 believe.
6 **A. At 9.**
7 THE CHAIRMAN: Yes, one way or another
8 I am sure we will get you to the flight.
9 **A. Thank you.**
10 MR SANTOS: I think it is probably best if
11 we deal with the timings --
12 THE CHAIRMAN: Privately.
13 MR SANTOS: -- in writing this evening.
14 THE CHAIRMAN: Actually, so nobody
15 goes until the timing is agreed. You have
16 covered matters extremely thoroughly.
17 There is no need for people to retread the
18 same ground.
19 MR SANTOS: Thank you, sir.
20 THE CHAIRMAN: Okay, thank you.
21 (17.41)
22 (Adjourned until Tuesday, 7 May 2024 at 10
23 am)

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