

COMMISSIONS OF INQUIRY ACT

RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

ISSUE OF COMMISSION

SWORN WITNESS STATEMENT
OF DR JOEY BRITTO

I, DR JOEY BRITTO of [REDACTED] Chairman of the Gibraltar Police Authority **MAKE OATH AND SAY AS FOLLOWS: -**

1. I make this statement in my capacity as Chairman of the Gibraltar Police Authority (the "GPA"). The contents of this statement are true to the best of my information, knowledge and belief and the facts stated herein are known to me personally unless otherwise stated. Where the facts stated are not known to me personally I have stated the source of my information. I have also relied on a review of documents in my possession or control.
2. I append hereto Appendix A, being a chronology of events and Appendix B, being a list of documents. I shall refer to these below.
3. The GPA was established in accordance with section 3(1) of the Police Act 2006. Section 4(1)(a) of the Police Act 2006 provides that a chairman of the GPA (the "Chairman") shall be appointed by the Governor acting on the advice of the Specified Appointments Commission from among persons proposed by the Governor or the Chief Minister. Pursuant to section 4(2), every member of the GPA, including but not limited to the Chairman, shall hold office for a term of three years and at the expiration of any such period or periods shall be eligible for reappointment. I was first appointed Chairman on 18th May 2018 with effect from 1st August 2018 and my appointment was renewed for a further three years as from 1st August 2021.

4. At all material times, the members of the GPA were:

Mr Nick Pyle ("Mr Pyle");
Mr Ernest Gomez;
Mr Edgar Lavarello;
Ms Nadine Collado;
Ms Rebecca Figueras;
Mr Julio Alcantara;
Mr Frank Carreras;
Ms Claire Pizzarello;
Mr Darren Grech; *and*
me

5. I have been advised by solicitors for the GPA, TSN ("TSN") that pursuant to Legal Notice LN.2022/034 (the "Legal Notice"), the Governor of Gibraltar, Vice Admiral Sir David Steel KBE, DL, on behalf of the Government of Gibraltar, at the request of the Chief Minister, has formally issued a notice of a commission appointing Sir Charles Peter Lawford Openshaw, DL, (formerly, a judge of the High Court of England and Wales, Queen's Bench Division), as Commissioner (the "Commissioner") to inquire, as he shall in his absolute discretion consider appropriate, into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police ("Mr McGrail") in June 2020 by taking early retirement (the "Terms of Reference"). I have been further advised by TSN of my duty to assist the Commissioner as may be required.
6. I am aware that pursuant to the provisions of the Commissions of Inquiry Act 1888 (references to sections immediately below being to sections of the said act), that if summoned to appear in person before the Inquiry I must answer questions put to me by the Commissioner and produce all books, papers and writings required by the summons with the following provisos:
- 6.1. no statement by myself in answer to any question put to me in the Inquiry shall be admissible in evidence in any proceedings whether civil or criminal except in cases of indictment for perjury committed in such answers (section 8(2)); *and*
- 6.2. such evidence which I may give in the Inquiry shall not directly and/or indirectly render me liable to any civil proceedings or criminal prosecution although subject to the qualification that I shall not be excused from answering any question put to me in the Inquiry on the

ground of any privilege, or in accordance with the privilege against self-incrimination.
(Section 10).

7. Since the publication of the Legal Notice, I have been asked by Solicitors to the Inquiry, Attias & Levy (the "Solicitors to the Inquiry"), by letter dated 4th April 2022, to provide a statement under oath in respect of matters which fall within the Terms of Reference. Additionally, Solicitors to the Inquiry, by that letter, have requested that I produce 'any documents (including but not limited to electronic documents such as emails, word documents, PDFs and SMS, Whatsapp or other instant messages) in [my] possession or control relevant to the subject-matter of the inquiry'. After reviewing my records, I have identified and compiled the documents requested and these are contained in Appendix B.
8. Solicitors to the Inquiry state that they consider me to be an individual whose evidence is likely to be of central relevance and importance to the Inquiry. I was not privy to the events which may have taken place between 5th June 2020 and the announcement made on 9th June 2020 regarding the retirement of Mr McGrail save and as more particularly, stated at paragraphs 37 and 38. I cannot therefore depose as to events between those dates. However, I can depose to my and the GPA's involvement in, and contemporaneous knowledge of, events between 12th May 2020 and 5th June 2020 as set out below.
9. By email dated 19th February 2020, Mr Pyle suggested that I, should send an email to all GPA members stating that for as long as Mr Pyle was interim Governor (the "Interim Governor") I intended to omit Mr Pyle from general GPA correspondence etc but that he had offered to continue to attend GPA meetings, recusing himself as necessary or at anyone's request. The Interim Governor suggested that I put this suggestion to the members of the GPA and ask for their views. One objection to his attendance should be enough to preclude it. A copy of that email is document no.1 of Appendix B. In the event, the Interim Governor did not participate, in his capacity as a member of the GPA, on any matter which is the subject of the Inquiry.
10. On 12th May 2020, Mr McGrail asked to see me. I agreed to his request and met him at his office at New Mole House Police Station on 15th May 2020. I did not take a note of the meeting but to the best of my recollection, Mr McGrail informed me of an investigation called "Operation Delhi". Mr McGrail said that Mr James Levy Q.C was a suspect in connection with this investigation and that he had Mr Levy's mobile phone in a safe. This was the first time I had heard of Operation Delhi or of Mr Levy's suspected involvement in it. Mr McGrail further stated

that the Chief Minister was not happy with him and that this had been expressed to Mr McGrail by the Chief Minister directly. Mr McGrail also told me that he was due to have a further meeting with the Attorney General whom he had already met in relation to this investigation. I also recall that Mr McGrail asked Mr Richard Ullger, the Assistant Commissioner of Police at the time, to be present during this meeting. Mr McGrail had not spoken to me before about this operation. Whilst it struck me as unusual that he should do so then, I thought nothing further about it at the time. I did not comment, other than to state, something to the effect that, I hoped the issue would resolve itself in due course.

11. Mr McGrail had previously informed me, over the telephone, on a date which I cannot recall, that there had been an incident at sea involving a Royal Gibraltar Police boat which may have happened outside British Gibraltar territorial waters. I asked him whether he had informed the Governor, to which he replied that he had. I do not recall any further involvement in this matter until my meeting with the Interim Governor and Chief Minister on 18th May 2020, referred to in paragraph 12 hereof.
12. On 16th May 2020 the Interim Governor sent me an email inviting me as Chairman of the GPA, to meet him and the Chief Minister. This email is document no.2 of Appendix B. I duly met both of them at the Convent on 18th May 2020 (the "18th May 2020 Meeting"). During that meeting I was informed by the Interim Governor and the Chief Minister that both of them had lost confidence in Mr McGrail. The Interim Governor and Chief Minister stated the reasons for their loss of confidence. An informal note of this meeting was circulated by the Chief Minister shortly afterwards (the "Informal Note") which accurately records what was said at the meeting. A copy of the Informal Note is document no. 3 of Appendix B.
13. The Interim Governor and the Chief Minister stated that it was a matter for the GPA, having been appraised of these concerns, whether in its discretion, it wanted to invoke the powers vested in it pursuant to Section 34 of the Police Act 2006 (the "Act") which provides:

'The Authority acting after consultation with the Governor and the Chief Minister and with the agreement of either of them, may call upon the Commissioner to retire, in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar' (section 34(1))

14. The Interim Governor and Chief Minister stated that under Section 34(1) of the Act, it is a requirement for the GPA to consult both the Governor and the Chief Minister and obtain the agreement of either of them, before invoking its power to call upon the Commissioner to retire. The Interim Governor and Chief Minister stated that should the GPA be minded to call upon Mr McGrail to retire, both should be deemed to have been consulted and agreed.
15. The Interim Governor and the Chief Minister pointed out that if the GPA were to consider inviting Mr McGrail to retire, the first step would be to allow Mr McGrail to make representations, if he wished to do so.
16. On the 21st May 2020, an emergency meeting (the "Emergency Meeting") of the GPA was held to consider the matters raised by the Chief Minister and the Interim Governor. Five members of the GPA attended. As section 6(1) of the Act, requires a quorum of six members and only five were in attendance, the non-attending members were consulted by telephone on the same day shortly after the Emergency Meeting ended. They all agreed with the decision taken and the reasons therefor. A minute of the meeting, as required by section 6(4) of the Act was not made contemporaneously as members of the GPA felt that their secretary might be compromised as she was a personal friend of Mr McGrail's secretary. A minute was made retrospectively on the advice of TSN. This minute was circulated to all members of GPA and approved by them. A copy of this minute is document no. 4 of Appendix B
17. During the Emergency Meeting, I, as Chairman, discussed the contents of the Informal Note with the other members present and explained that the Interim Governor and the Chief Minister had stated that they had lost all confidence in Mr McGrail.
18. The members of GPA unanimously decided, following consideration of and on the grounds of the matters raised by the Chief Minister and the Interim Governor and their consequent loss of confidence in Mr McGrail, that the GPA should invite Mr McGrail to retire subject to him being afforded an opportunity to make representations before the GPA.
19. The deliberations and agreed course of conduct of the GPA are evidenced by the minutes of the Emergency Meeting referred to at paragraph 16 hereof. To the best of my recollection, when informing the GPA of the meeting I had with Mr McGrail on the 15th May 2020 as referred to at paragraph 10 hereof, I did refer to Mr Levy Q.C by name.

20. I believe that it was on 21st May 2020 that I invited Mr McGrail to meet me in person. We agreed to meet at his office at New Mole House Police Station on the following day.
21. We duly met on 22nd May 2020 (the "22nd May 2020 Meeting"). During the meeting, I handed Mr McGrail a letter (the "First Letter") inviting him to retire. A copy of the First Letter is document no. 5 of Appendix B.
22. Mr McGrail challenged the contents of the First Letter and requested me to substantiate the reasons for the invitation to retire.
23. In response to the request made by Mr McGrail, the GPA set out the reasons for its invitation to retire in a further letter dated 22nd May 2020 (the "Second Letter"). A copy of the Second Letter is document no. 6 of Appendix B. This letter was sent to Mr McGrail by email of even date. A copy of that email is document no. 7 of Appendix B.
24. On 29th May 2020 (the "29th May 2020 Letter") the GPA received a letter addressed to it by Charles Gomez & Co acting as Solicitors for Mr McGrail. The 29th May 2020 Letter was sent to me under cover of an email of even date from Nicholas Gomez of Charles Gomez & Co, of which I acknowledged receipt. A copy of the 29th May 2020 Letter is document no. 8 of Appendix B. A copy of the email accompanying the 29th May 2020 Letter is document no. 9 of Appendix B.
25. I would state that the decision by the GPA to exercise its powers under Section 34 of the Act was not based or influenced by Mr McGrail's conduct of the criminal inquiry in Operation Delhi, as alleged by Charles Gomez & Co in the 29th May 2020 Letter. The reasons for the GPA's decision were those set out at paragraph 18, in the minutes of the Emergency Meeting and in the Second Letter.
26. Following receipt of the 29th May 2020 Letter, the GPA convened a meeting on 1st June 2020. A copy of the minutes of that meeting is document no. 10 of Appendix B. Members unanimously agreed that independent legal advice should be sought. The GPA instructed TSN and Mr James Neish Q.C. of TSN to act as Counsel.
27. Given the nature of the allegations made, I copied the 29th May 2020 Letter to the Chief Minister and the Interim Governor. I do not recall whether I also copied it to the Attorney General.

28. On the 1st June 2020, following a request by the Attorney General, I provided him with copies of the First and Second Letter by email. A copy of that email is document no. 11 of Appendix B.
29. The Interim Governor, Attorney General and the Chief Minister all replied to me commenting on the contents of the 29th May 2020 Letter. Copies of these letters are exhibited at documents numbers 12, 13 and 14 of Appendix B.
30. Following his consideration of the 29th May 2020 Letter and the contents of the First and Second Letter, Mr James Neish Q.C. advised the GPA that its application of section 34 of the Act had been innocently yet fundamentally flawed because the GPA had wrongfully invited Mr McGrail to retire, without following the process set out in section 34(2) of the Act. The invitation to retire could only have been made after affording Mr McGrail reasonable opportunity to make representations and giving due consideration to those representations.
31. The GPA was advised to withdraw its invitation to Mr McGrail to retire and to abandon the process.
32. Members of the GPA namely, Mr Frank Carreras, Ernest Gomez and I, attended a meeting at TSN's offices to discuss the advice given to it by Mr James Neish Q.C and to consider what action should be taken as a result of that advice. It was agreed that TSN should write to Charles Gomez & Co informing them that the GPA was withdrawing its invitation to Mr McGrail that he should retire and that the process was being abandoned. It was also agreed that the GPA should write to the Chief Minister and the Interim Governor to inform them of the GPA's decision.
33. TSN on behalf of the GPA wrote to Charles Gomez & Co in these terms by letter dated 5th June 2020. A copy of that letter is document no. 15 of Appendix B.
34. The abandonment of the process meant, as far as the GPA was concerned, that the issues raised by the Chief Minister and the Interim Governor during the 18th May 2020 Meeting remained live and unresolved.

35. Solicitors for Mr McGrail replied by email to TSN's letter of 5th June 2020 (a copy of that email is document no. 16 of Appendix B) that same date, in which they reiterated Mr McGrail's position and stated amongst other things that:

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

36. TSN drafted letters for me to send to the Interim Governor and the Chief Minister as referred to at paragraph 32 above. I had these letters duly delivered on 5th June 2020. Unsigned copies of these letters are documents numbers 17 and 18 of Appendix B.
37. Neither I nor any other members of GPA had any further involvement or contemporaneous knowledge in this matter. The next I knew was that Mr McGrail was negotiating his retirement. I gathered this from an email dated 8th June 2020 from the Chief Secretary to the Chief Minister, copied to a number of persons, including me. This email is document no. 19 of Appendix B. I subsequently learnt from the local media on 9th June 2020 that Mr McGrail had retired.
38. On 9th June 2020, after I had learnt from the media that Mr McGrail had retired, I was informed by the office of the Interim Governor, that it would issue a press release. I decided that the GPA should do likewise and the GPA issued its press release that same day. A copy of this press release is document no. 20 of Appendix B
39. Following the publication of the Legal Notice referred to at paragraph 5 above Charles Gomez & Co sent me a letter dated 4th February 2022 purportedly in my personal capacity. This letter is self-explanatory. A copy of this letter is document no. 22 of Appendix B.
40. I sought the advice of TSN with regard to the letter from Charles Gomez & Co dated 4th February 2022 and was advised on the terms of a reply. A reply was duly sent on 17th February 2022 by TSN. A copy of that letter is document no. 23 of Appendix B. I also consulted TSN as to whether I could inform the members of the GPA of the contents of Charles Gomez & Co's letter dated 4th February 2022 and was advised that I could. I did so on the 4th February 2022.

At my request a meeting was held at TSN's offices attended by Mr F Carreras, Mr E Gomez and me on behalf of the GPA and Mr James Neish QC and Mr Shane Danino of TSN. That meeting was arranged in order to explain how a Commission of Inquiry operates and to review in general terms, Charles Gomez & Co's letter dated 4th February 2022.

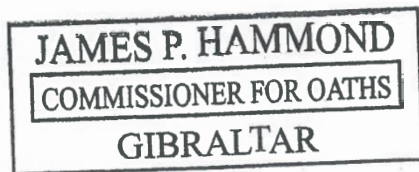
SWORN by the above-named Deponent
at Suite 7, Hadfield House, Library Street,
Gibraltar
this 13 day of May 2022

**Personal
Data**

Before me

Personal Data

Commissioner for Oaths



This Sworn Witness Statement is filed by Messrs TSN, on behalf of the Deponent