

COMMISSIONS OF INQUIRY ACT

RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

ISSUE OF COMMISSION

SWORN WITNESS STATEMENT
OF JOHN GONÇALVES MBE

I, **JOHN GONÇALVES** of [REDACTED] Personal Data [REDACTED] former Chairman
of the Gibraltar Police Authority **MAKE OATH AND SAY AS FOLLOWS: -**

1. I make this statement in my capacity as former 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 as more specifically stated at paragraph 7 hereof.
2. I append hereto Appendix A being a list of documents to which I shall refer to 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 appointed Chairman on 20th May 2013 with effect from that same day. My tenure as Chairman came to an end on 31st July 2018 whereupon I was succeeded by Dr Joey Britto, the present Chairman.

4. During my Chairmanship, the other members of the GPA were as listed below:

Mr Julio ALCANTARA – Retired Director of Education
Mr Richard ARMSTRONG – (acting) Chief Secretary
Mr Albert DANINO - Retired Head Teacher
Mr Aurelio FALERO- Retired Managing Director of Land Property Services Limited
Ms Mandy GAGGERO – Director, MH Bland
Mr Ernest GOMEZ- former Chief Secretary of the Government of Gibraltar
Mr Darren GRECH – Chief Secretary of the Government of Gibraltar
Mrs Naomi HASSAN WEISFOGEL - housewife
Mr Edgar LAVARELLO – Chartered Accountant
Ms Alison MACMILLAN – Deputy Governor
Mr Vikram NAGRANI – Barrister-at-Law
Rev Fidel PATRON – Methodist Minister
Ms Claire PIZZARELLO- Barrister-at-Law
Mr Nick PYLE – Deputy Governor
Mr Stephen REYES- Chartered Accountant

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 the foregoing 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 18th August 2022 (the "18th August 2022 Letter"), to provide a statement under oath addressing the subject matter of the Inquiry which fall within the Terms of Reference and various specific matters which are listed at paragraphs 1 to 3 of that letter. A copy of the 18th August 2022 Letter is document no. 1 of Appendix A. 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'. It is also noted that any electronic documents are to be provided in their native format with the original metadata preserved. After reviewing the GPA records in its office, I have identified and compiled the documents requested and these are contained in Appendix A. I did not keep any records relating to my activities as GPA Chairman and such documents as I disclose now I have obtained from the records held by the GPA at its offices with the permission of the GPA current Chairman Dr Joey Britto. I would state that having searched the files at the office of the GPA I have not found any material document other than those disclosed herewith.
8. I can only depose to those matters which I have direct knowledge of during my tenure as former Chairman of the GPA namely between 20th May 2013 and 31st July 2018. This predates Mr Ian McGrail's retirement in June 2020. I therefore have no direct knowledge of the reasons and circumstances leading to Mr McGrail's retirement. I will address below the requests for information and evidence made in the 18th August 2022 Letter in the same order as they are raised therein.

MY KNOWLEDGE OF THE REASONS AND CIRCUMSTANCES LEADING TO IAN MCGRAIL CEASING TO BE COMMISSIONER OF POLICE IN JUNE 2020

9. As stated in the preceding paragraph I have no direct knowledge of the reasons and circumstances leading to Mr McGrail's retirement. The first I learned about this matter was when I received a phone call, on a date which I cannot recall, from an acquaintance in Ballymena, Northern Ireland, who asked me whether it was true that Mr McGrail was retiring. The caller went on to tell me that Mr McGrail was apparently in conflict with the Chief Minister with regard to intended police action against a leading citizen. I replied that I had no knowledge of this. The only other information which I had, subsequent to that telephone conversation, was what I had gathered from local media, namely GBC and the Gibraltar Chronicle. I had also heard the gossip in town about this matter. I would add that as I had known Mr McGrail for a long time and enjoyed a good working relationship with him, a few days after the announcement of his retirement I telephoned him to ask how he was and to inquire about the reasons for his premature retirement. Mr McGrail declined to comment on the reasons and circumstances which led to his retirement, save to say, that hopefully these would become known some day.
10. At the time of making this statement I do not know what other parties may have said about the matters about which I have been asked in the 18th August 2022 Letter as TSN have not shown me the statements of other parties pending clearance to do so.

THE AIRPORT INCIDENT

11. On 9th May 2017 I met the Chief Minister at his request. At that meeting the Chief Minister asked the GPA to inquire into an incident which had occurred at the airfield on 8th February 2017. The RGP had blockaded the airfield with police cars to stop an RAF plane from taking off carrying a suspected sex offender, an RAF serviceman, out of the jurisdiction of Gibraltar. I informed the Chief Minister that the GPA did not have jurisdiction to deal with third parties. The Chief Minister asked me to raise the matter with the GPA and that if it decided that there should be an inquiry funds would be made available to engage an independent legal adviser.
12. On 11th May 2017, under "Any Other Business" I informed the GPA of my meeting with the Chief Minister on 9th May 2017. The GPA agreed to ask the Commissioner of Police (then Mr Edward Yome) whether the investigation into the alleged offences by the RAF serviceman had

been concluded and, if so, request the file on the investigation. The Commissioner of Police would also be informed that the GPA intended to interview the police officers who were directly involved in the incident.

13. A copy of the minutes of the meeting of the GPA held on 11th May 2017, referred to in the preceding paragraph hereof is document no. 2 of Appendix A. I note that the date of the airport incident is erroneously stated as 7th February 2017, when it should be the 8th February 2017.
14. On 15th May 2017, a meeting was held to further consider the Chief Minister's request to me. It was agreed that as the GPA had no authority to involve the Ministry of Defence ("MOD") it should proceed under the provisions of Section 19 of the Police Act in order to submit a report to him. During the course of the meeting Mr Nick Pyle reported on a conversation which he had held with the Governor Lt Gen Edward Davis CB CBE KStJ, who envisaged that the GPA would recommend that an independent inquiry be held.
15. A copy of the minutes of the meeting of the GPA held on 15th May 2017, referred to in the preceding paragraph is document no. 3 of Appendix A.
16. On 16th May 2017, I wrote to the Chief Minister informing him of the decision by the GPA on how it proposed to proceed in this matter. A copy of that letter is document no. 4 of Appendix A.
17. On a date on which I cannot recall I verbally requested the Commissioner of Police to provide the GPA with documents relating to the airport incident. He informed me by letter dated 8th August 2017, that he would have a package ready which would show how the incident unfolded, the decisions taken on the day and the actions thereafter. A copy of that letter is document no. 5 of Appendix A.
18. On 17th August 2017, the Commissioner of Police wrote to me attaching the documents referred to in the preceding paragraph. A copy of that letter is document no. 6 of Appendix A. The three documents were:
 - (i) A report submitted by Superintendent McGrail. This is document no. 7 of Appendix A.
 - (ii) Joint legal opinion by Lord Pannick QC and Emily Neill of Blackstone Chambers, Temple, London dated 28th February 2017. A summary of the opinion is set out in paragraph 35 thereof. This is document no. 8 of Appendix A.
 - (iii) Letter from Rear Admiral A.D. Radakin, Chief of Staff, Joint Services Command, Northwood Headquarters dated 8th March 2017. The letter is self-explanatory and is document no. 9 of Appendix A.

19. The GPA had a preliminary meeting to discuss the documents referred to in the preceding paragraph hereof and decided that it wanted to discuss the matter further with the Commissioner of Police, Superintendents McGrail and Ullger and Chief Inspector Tunbridge. Regretfully, I cannot recall the date of that meeting, which might have been on or just before 23rd August 2017, or whether minutes were made. If such minutes were made, they cannot be found.
20. On 23rd August 2017, I wrote to the Commissioner of Police communicating the request of the GPA and fixing an appointment on 31st August 2017, at the GPA's office. A copy of that letter is document no. 10 of Appendix A.
21. The GPA prepared a list of matters which it proposed to put at the meeting referred to in the preceding paragraph. A copy of this list is document no.11 of Appendix A.
22. The GPA duly met on 31st August 2017, with the RGP officers referred to at paragraph 19 hereof. Minutes of that meeting do not appear to have been made but if they were, they cannot be found. The GPA came to the firm conclusion that the action of and the restraint shown by the relevant RGP officers, during the airport incident were considered, deliberated, entirely proportional and highly commendable. As such the GPA did not doubt the effectiveness and probity of the policing demonstrated by the RGP in respect of the airport incident. The GPA also considered that the actions of certain MOD personnel in respect of this incident deserved censure and that the Chief Minister should consider whether a full inquiry ought to be undertaken by a body independent of the RGP and the MOD so that lessons might be learnt from the incident.
23. On 5th September 2017, I wrote to the Chief Minister communicating the conclusions of the GPA. Regrettably, a copy of that letter cannot now be found. However, its contents were reproduced in an email dated 6th December 2017, from the Secretary of the GPA to Ms Giselle Corby and Mr E Gomez, the Chief Secretary. A copy of that email is document no. 12 of Appendix A. On 4th May 2018, Ms Susan Martinez, Personal Secretary to the Chief Minister, acknowledged receipt of my letter to him dated 5th September 2017. A copy of that letter of acknowledgment is document no. 13 of Appendix A.

THE RGP'S INVESTIGATION INTO AN ASSAULT ON HELICOPTER PILOT AND CREW MEMBER IN MARCH 2017

24. I have no recollection of being informed about or involved in this matter. I have no knowledge of this whatsoever. I have reviewed the minutes of the GPA during that period and can confirm that the matter was not discussed by us.

MR MCGRAIL'S APPOINTMENT AS COMMISSIONER OF POLICE

25. Before proceeding to explain the process which led to the appointment of McGrail as Commissioner of Police I wish to state that I did not, at any time, receive any objection to the said appointment from either the Governor, Lt Gen Edward Davis CB CBE KStJ, or the Chief Minister. However, the Deputy Governor, Mr Nick Pyle, who was a member of the GPA at the time, commented at a meeting of the GPA that he felt that applications to fill the vacancy of Commissioner of Police should not be limited to officers from the RGP but should be opened to police officers in the UK. That view received no support from any of the other members of the GPA. The Deputy Governor further told me that he would not support McGrail's application, to which I replied that it was unfair to prejudge any applicant before the selection process had commenced.

26. The process for appointing the new Commissioner of Police was agreed by all nine members of the GPA (the "Selection Process"). The GPA members at the time throughout the selection process, apart from me, were Mrs Hassan Weisfogel, Rev Patron and Messrs Danino, Falero, Gomez, Lavarello, Nagrani and Pyle. The Selection Process was similar to that adopted at the time of the appointment of Mr McGrail's predecessor, Mr Edward Yome. All members of the GPA were present when the two candidates made their powerpoint presentations on 27th November 2017 and during their interviews on 30th November 2017. The Selection Process was as follows.

27. An invitation for applications for the appointment as Commissioner of Police was issued by the GPA to the Commissioner of Police. A copy of this is document no.14 of Appendix A.

28. A timetable for the Selection Process was prepared by the GPA. A copy of this timetable is document no. 15 of Appendix A.

29. A document setting out the criteria against which candidates for the post of Commissioner of Police would be considered was drawn up (the "Criteria"). A copy of the Criteria is document no. 16 of Appendix A.
30. By letter from the GPA to the Commissioner of Police dated 6th November 2017, I made certain requests in relation to the Selection Process. A copy of this letter is document no. 17 of Appendix A.
31. By separate letter dated 15th November 2017, the Commissioner of Police forwarded to the GPA bundles in respect of each applicant containing confidential written assessments on each candidate and senior command course reports. Copies of each letter and bundle are respectively documents nos 18 & 19 of Appendix A.
32. Each applicant submitted an application docket, Superintendent McGrail's was dated 1st November 2017 and Superintendent Ullger's was dated 3rd November 2017. Copies of the application dockets are respectively document nos 20 & 21 of Appendix A.
33. On 21st November 2017, I wrote to the Commissioner of Police replying to a number of points raised in his letter to me of 15th November 2017. A copy of that letter is document no. 22 of Appendix A.
34. On Monday 27th November 2017, the GPA heard each candidate deliver powerpoint presentations setting out their respective visions for the force within the next 5 years and the priorities that they would set. Following this they answered questions from the members of the GPA.
35. On Thursday 30th November 2017 the candidates were interviewed in depth by a panel, consisting of Mr GOMEZ, Rev PATRON, Mr PYLE and me in the presence of all other members of the GPA. The candidates were probed, in particular, on issues of neighbourhood policing, Gibraltar Defence Police, the viability of working with the unsuccessful candidate, community engagement, preparation of case dockets, cybercrime, resources, partnerships, counter terrorism, management style and major public events.
36. On Tuesday 5th December the GPA met to consider what advice should be given to HE the Governor. It deliberated at length on the different strengths of the candidates, taking into account all the information at its disposal, the performance of the candidates in delivering their written and oral presentations and their interviews. It felt that both candidates were suitable

but by a majority of 7-2 considered that Supt McGrail was the stronger of the two. The two dissenting members were Mr Nick Pyle and Mr Albert Danino. I do not recall whether minutes were made but if they were they cannot be found. What I can say is that the decision of the GPA was conveyed to HE the Governor straight away.

37. On the 5th December 2017 I wrote to HE the Governor informing him of the Selection Process and of the GPA's advice that Superintendent McGrail should be appointed Commissioner of Police. A copy of that letter is document no. 23 of Appendix A.
38. On 13th December 2017, HE the Governor wrote to me informing me that, having consulted the Chief Minister, he endorsed the GPA's recommendation that Superintendent McGrail be appointed Commissioner of Police from 1st May 2018 for a four year term of warrant. A copy of that letter is document no. 24 of Appendix A.

FORMAL COMPLAINTS FOLLOWING MR MCGRAIL'S APPOINTMENT

39. Neither I, in my capacity as chairman of the GPA nor the GPA under my Chairmanship made or received any complaints in respect of the efficiency, effectiveness, probity, integrity or independence of Mr McGrail in the undertaking of his duties as Commissioner of Police.

ALLEGATIONS OR COMPLAINTS OF BULLYING/INTIMIDATION

40. During my tenure as Chairman of the GPA for the period following Mr McGrail's appointment as Commissioner of Police I was not aware of any allegations or complaints made in respect of bullying and/or intimidation by him.

MEETINGS

41. Save as stated at paragraphs 11 and 22 of this witness statement I have not attended any meeting with any of the persons listed at paragraph 2 of the 18th August 2022 letter namely:
- (i) The Hon Fabian Picardo QC MP, the Chief Minister
 - (ii) Mr Albert Mena, Financial Secretary
 - (iii) The Hon Neil Costa, former Minister for Justice
 - (iv) Dr Joseph Garcia, Deputy Chief Minister
 - (v) Mr Darren Grech, Chief Secretary

- (vi) Mr Michael Llamas QC, Attorney General
- (vii) Mr Christian Rocca QC, Director of Public Prosecutions
- (viii) Mr Nicholas Pyle, Deputy Governor, other than in his capacity as member of the GPA
- (ix) Lt. General Ed Davis, former Governor of Gibraltar
- (x) The Magistrates' Court (either the Clerk or Deputy Clerk to the Magistrates' Court, the Stipendiary Magistrate or the Justices of the Peace)
- (xi) Mr Lloyd DeVincenzi, Solicitor General
- (xii) Dr Joseph Britto, incumbent Chairman of the Gibraltar Police Authority
- (xiii) Mr Edward Yome, former Commissioner of Police
- (xiv) Deputy Commissioner Richard Mifsud
- (xv) Mr Richard Ullger, incumbent Commissioner of Police
- (xvi) Mr Maurice Morello, Chairman of the Gibraltar Police Federation, or any other member of the Gibraltar Police Federation
- (xvii) Mr Paul Richardson, former Superintendent
- (xviii) Superintendent Mark Wyan (formerly Detective Inspector)
- (xix) Mr Ian McGrail

SWORN by the above named Deponent

**Personal
Data**

at

Suite 7, Hadfield House, Library St, GX11 1AA

Gibraltar this 31 day of August 2022

Before me

Personal Data

Commissioner for Oaths

JAMES P. HAMMOND
COMMISSIONER FOR OATHS
GIBRALTAR

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