

**In the Matter of the Commissions of Inquiry Act**

**-and-**

**In the Matter of an Inquiry into the retirement of the former Commissioner of Police convened by a Commission issued by HM Government of Gibraltar on 4 February 2022 in Legal Notice No 34 of 2022 ("the Inquiry")**

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**SECOND AFFIDAVIT OF  
MICHAEL LLAMAS CMG KC**

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I, **Michael Llamas CMG KC**, HM Attorney General for Gibraltar of 40 Town Range, Gibraltar **MAKE OATH** and say as follows:

1. I swear this my Second Affidavit in relation to the Inquiry in order to respond to various statements made by Mr Ian McGrail ("**IM**") in his First Affidavit dated 20 June 2022 ("**McGrail 1**"), his Second Affidavit dated 26 September 2022 ("**McGrail 2**") and his Third Affidavit dated 4 October 2022 ("**McGrail 3**"). I also address certain matters which the Solicitors to the Inquiry have, by their letter dated 14 June 2023, specifically requested me to address in my responsive statement.
2. The fact that I do not respond to any particular matter addressed or allegation made by IM or any other witness does not mean that I accept or agree with what they say.
3. Insofar as the content of this affidavit is within my personal knowledge, it is true and, insofar as it is not, it is true to the best of my knowledge, information and belief, and the sources of such beliefs are identified herein as appropriate and relevant.

## A. RESPONSE TO MCGRAIL 1

### *(i) Op Delhi Investigation*

4. In **paras 12 to 27 of McGrail 1**, which concern the Op Delhi investigation, IM clearly seeks to create the impression that I was in regular contact with him in relation to Op Delhi, between 13 May 2019 (**para 10, McGrail 1**) and the execution of the search warrants on 12 May 2020 (**para 28, McGrail 1**). This is not true. The position is as stated in **paras 16-36** of my First Affidavit dated 24 June 2022 (“**Llamas 1**”). That is to say that, after the meeting that he called with the Chief Minister and others which took place on 13 May 2019, I had no substantial, meaningful contact with IM (let alone meetings) in respect of Op Delhi until our first meeting on 7 April 2020.
5. In this respect, I note that IM makes no reference to our meeting of 7 April 2020 at which many of the things that IM alludes to in **paras 12 to 27 of McGrail 1** were indeed discussed, but the impression he tries to give in these paragraphs that I was regularly enquiring and discussing with him as to how the investigation was proceeding as from 13 May 2019 is simply untrue. I further note that, aside from 13 May 2019, there is not a single reference in **paras 12 to 27 of McGrail 1** to a date for any of the numerous exchanges, discussions and meetings that he claims took place with me.
6. IM’s narrative that I was putting pressure on him with respect to Op Delhi “*for many months*” (see para 35 of the Gomez letter to the GPA dated 29 May 2020 at **MLL1/18**), is entirely untrue.
7. During this period we had no meetings, I made no enquiries of IM, and he provided me with no briefings in relation to Op Delhi of any specific or substantive kind. I cannot completely rule out the possibility (although I have no recollection of any instance) that, in a chance encounter, perhaps in the margins of a meeting on a different matter, the subject of Op Delhi may have been mentioned by him or by me and there may have been the most superficial, brief and perfunctory exchange between us on that subject. But I am absolutely certain that any such incidence would not provide a foundation in truth for the statements or insinuations made by IM at **paras 12 to 27 of McGrail 1**.

As to para 15 of McGrail 1

8. At **para 15 of McGrail 1**, IM refers to Caine Sanchez (“CS”) and says that I enquired whether CS “could be dealt with internally via the Civil Service route”.
9. I do not recollect mentioning CS in the way IM describes. If I did so, it would have been during the meeting on 7 April 2020 and just to enquire on how he would be proceeded with in view of civil service disciplinary procedures and nothing more.
10. Any suggestion by IM that I was trying to get CS off the hook is utterly false. This is borne out by the following facts, which emerge from IM’s own evidence:
  - 10.1. CS was mentioned by IM, Supt Richardson and the DPP during our meeting of 13 May 2020<sup>1</sup> and by Supt Richardson and the DPP during our meeting of 15 May 2020,<sup>2</sup> on both occasions with a view to prosecuting him.
  - 10.2. In our meeting of 15 May 2020, I believe that my words “*the other idiot*” (at **IM Exhibit 6B, p.21**) were a reference to CS, and I was certainly referring to CS where I stated:
    - (i) “*We have what seems to be a very strong case against Cornelio and, the other one, Sanchez, and possibly Perez.*” [**IM Exhibit 6B, p.22**];
    - (ii) “*I think there’s a lot of support for the prosecution to continue in relation to Cornelio, Sanchez and possibly Perez.*” [**IM Exhibit 6B, p.23**];
    - (iii) “*Exactly*”, in reply to the DPP’s comment that “*In order to get Cornelio, Sanchez etc we needed to go down this route*” [**IM Exhibit 6B, p.23-24**]

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<sup>1</sup> See **IM Exhibit 5B** (translated transcript of 13 May 2020 meeting), at pp. 11, 13, 20, 23, 24, 31, 46, 59, 60, 62 and 63.

<sup>2</sup> See **IM Exhibit 6B** (translated transcript of 15 May 2020 meeting), at pp. 20, 21, 23, 27, 31 and 33.

- (iv) "...other things that need to be happening need to happen in relation to the three individuals we are talking about, need to happen" [IM Exhibit 6B, p.28].

As to para 16 of McGrail 1

11. At para 16 of McGrail 1, IM states:

*"16. The AG also advised that the investigation should not progress until such time as the question of ownership of the NSCIS platform was clarified. This was a matter that the investigation team had already identified and were working to address together with the DPP. It was my understanding that the question of ownership of the platform, though important, was not critical to the prosecution of the suspects."*  
(Emphasis added)

12. The question of ownership of the NSCIS platform was most certainly discussed during my meeting with IM on 7 April 2020. The position is as set out in **para 32 of Llamas 1**.

13. However, the final sentence of the above paragraph (underlined) is demonstrably untrue: see IM's email and letter to the Financial Secretary dated 8 April 2020, exhibited at **para 34 of Llamas 1** marked **MLL1/37-39**. In IM's covering email, he stated that the enclosed letter concerned "*a key issue that remains pending in the investigation...*" (my emphasis) and in the letter itself, IM stated the following [MLL1/39]:

*"The Director of Public Prosecutions has advised that the issue of ownership of the platform is integral to the prosecution of this case. This is based, in part, on statements made on 26<sup>th</sup> July 2019 by two of the subjects under investigation that the platform is owned by HMGoG. You will appreciate that this point needs clarification in fairness to the accused."* (My emphasis)

As to para 17 of McGrail 1

14. At para 17 of McGrail 1, IM states:

*“17. At a point during one of the meetings with the AG and whilst discussing the issue of ownership of the platform, the AG mentioned what he described as a hypothetical situation, enquiring what the RGP’s position would be in terms of pursuing the investigation were it to be assumed that HMGoG were the defined owners of the platform and that they consented to the alleged hacking / sabotage taking place. The AG’s thinking really startled me despite it being a hypothetical situation. I was beginning to read that there were seemingly some signs of reluctance from HMGoG being transmitted by the AG for this investigation to proceed. I expressed my concerns there and then about this thought process, exclaiming that if it were the case as suggested, that HMGoG had consented to the hacking / sabotage, they would by default have been part of the alleged conspiracy to defraud Bland Ltd of the contract to run the platform. The AG agreed with me and we agreed to literally rubbish the hypothetical situation. It nonetheless left me bemused and to a degree worried that the suggestion had even been mooted by the AG”*

15. I do not recall this precise example being given by me, but I may have given it (or something similar) in our meeting of 7 April 2020. If I did put such a hypothetical situation to IM, it was in the context of the discussion on the importance of establishing ownership of the platform and how this would help with the rationalisation of the charges. All I would have been trying to do would have been to make him understand the importance and relevance of establishing ownership in order to know what charges should be brought. In other words, if HMGoG were the owners of the platform, how would this affect the charges to defraud Bland Ltd?

*As to para 20 of McGrail 1*

16. At **para 20 of McGrail 1**, IM asserts that he and I “discussed” James Levy (“JL”) as a person of interest to the investigation. While JL was mentioned in passing by IM at our meeting on 7 April 2020, there was no discussion about him. My recollection, as set out in **para 31 of Llamas 1**, is that IM simply remarked that he hoped JL would assist the investigation, and I do not recall saying anything to this. As such, the matters stated at **para 20 of McGrail 1** would appear to be IM’s thoughts, rather than anything that was said at our meeting.

As to para 21 of McGrail 1

17. The exchange referred to at **para 21 of McGrail 1** occurred during our meeting on 7 April 2020: see **para 32 of Llamas 1**. I do not know what IM means by “*As the investigation was approaching its conclusion...*”. It was at whatever stage it was at on that date.
18. As I have already stated, my concern with the excessive number of charges and the need for rationalisation was based on the concerns expressed to me by the DPP: see **paras 23 and 25 of Llamas 1**.
19. Insofar as IM’s reference to CS is another insinuation that I was somehow trying to get CS off the hook, this is denied. My position in relation to CS has already been dealt with in response to **para 15 of McGrail 1**. See paras 8-10 above.

As to para 24 of McGrail 1

20. Again, IM’s reference at **para 24 of McGrail 1** to “*During one of the meetings with the AG*” is false insofar as it suggests that there were any meetings other than the one on 7 April 2020. Notably, IM does not provide any date for any such meeting.
21. I do not recall having said, as asserted by IM, that I “*would be taking a step back from discussing the criminal investigation as [I] was now advising HMGoG on the intellectual property rights of the NSCIS platform case and it was not compatible to advise on both matters.*” But if I did say this, it was at the meeting on 7 April 2020. The fact that, after this meeting, I concentrated on helping to clarify the question of ownership of the platform (and, in that sense, aid the investigation as per my discussion with IM on 7 April 2020) is confirmed by Lloyd Devincenzi at **paras 13-15 of Devincenzi 1**. See also **para 35 of Llamas 1**.

As to para 26 of McGrail 1

22. As stated in **para 26 of McGrail 1**, I did indeed pass the submissions from Robert Fischel KC on to the Chief Secretary. I did so in order to see whether these detailed submissions and, notably, the copies of many HMGoG documents that were annexed, could assist the Chief Secretary in establishing the history with regard to ownership of

the NSCIS platform. I was aware that the Chief Secretary was having difficulty locating documents and I thought this could be of assistance to him.

***(ii) 12 May 2020 meeting***

23. The exchange in the Chief Minister's office on 12 May 2020 was almost exclusively an exchange between the Chief Minister and IM. This is borne out by the fact that **paras 32-42 of McGrail 1** refer only to exchanges between the two of them. I was largely a bystander. Thus, insofar as IM may have received "*the dressing down of [his] 36 year law enforcement career*", it was not by me.

*As to para 39 of McGrail 1*

24. At **para 39 of McGrail 1**, IM suggests that that the Chief Minister made comments about CS which "*significantly resonated with the AG's previous suggestion that Caine Sanchez should be dealt with via the Civil Service disciplinary route.*" My position in relation to CS has already been dealt with in response to **para 15 of McGrail 1**. See paras 8-10 above.
25. Furthermore, IM's statement that he "*also informed the CM and the AG that the question of ownership of the platform was not critical to a prosecution – this is what I understood from the investigating officers who had held consultations with the DPP about this matter specifically*" is a complete contradiction of what he told the Financial Secretary in his email and letter of 8 April 2020: see para 13 above and **MLL1/37-39**.

*As to para 43 of McGrail 1*

26. I have set out my clear understanding of what IM and I had agreed at our meeting on 7 April 2020 at **para 32 of Llamas 1**. I convened this meeting further to the concerns that the DPP had expressed to me and these were in relation to the investigation proceeding without first determining ownership of the platform and the rationalisation of charges. As I have stated (see para 16 above), at this meeting there was a reference by IM to James Levy, but no discussion and certainly none as to the execution of search warrants. It therefore begs the question as to what interference I was apparently engaging in. I was only concerned about the ownership/rationalisation issues and it should have been abundantly clear to IM from that meeting how sensitive this

investigation was (as he had acknowledged himself) and that he would not take such draconian and disproportionate action as executing search warrants on James Levy without first having bottomed out the issue of ownership of the platform/rationalisation of the charges. That is all there was to it.

As to para 55 of McGrail 1

27. At **para 55 of McGrail 1**, IM states:

*“55. I should add that although I cannot be certain and this will no doubt emerge from evidence at the hearing, that I got the impression that, aside from the correspondence, the AG was talking to Mr. Baglietto. I was dismayed that proper boundaries were not being maintained.”*

28. I would like to clarify that, while it is possible that I may have spoken to Lewis Baglietto KC (“LB”) on 12 May 2020, it would have been to take a call from him saying how aggrieved James Levy was and that the letter/email (subsequently received at 23:03 hrs) was coming. I was certainly not *“talking to Mr Baglietto”* other than to that extent. In this regard I would also like to clarify that, contrary to what IM appears to suggest at **para 53 of McGrail 1**, there was a single email from LB and not a “thread” of emails from him.

As to para 56 of McGrail 1

29. At **para 56 of McGrail 1**, IM states that he *“offered to meet [me] to discuss the preparation of legal arguments for any potential legal challenge to the execution of the search warrant.”* It is correct that he asked to meet on 13 May 2020 for that purpose, and that I agreed to see him for that purpose and that was what the meeting was largely about. I did not seek the meeting still less did I seek to interfere with the investigation.

As to para 58 of McGrail 1

30. At **para 58 of McGrail 1**, IM sets out his recollection of the meeting with me and others on 13 May 2020. It gives the impression that the meeting was largely an exchange between IM and me. IM has subsequently produced a covert recording and



transcript of this meeting (**IM Exhibit 5B refers**), which fully corroborates everything I said about this meeting at **paras 52-67 of Llamas 1**.

31. In particular, the transcript shows that the DPP, rightly, played an important and indeed leading role in this meeting (as he did in others), which dispels any suggestion that the meeting was effectively a ‘fight’ between IM and me, or an interference by me. The transcript also confirms that my and the DPP’s positions were aligned on all issues viz. the inappropriateness of the warrants, the treatment of James Levy, the desirability of avoiding further escalation.
32. I wish to reiterate that the meeting was convened at the request of IM, not me, and that mine and the DPP’s focus was to help the RGP to deal with the serious accusations that were being made by Hassans. We were not interfering with anything. This is borne out by the transcript.
33. At **paras 58.16 and 58.18 of McGrail 1**, IM cites me as seeking to protect the Chief Minister. Insofar as IM is trying to say that my motive was to protect Fabian Picardo the individual, this is wrong. As I consider to be abundantly clear particularly from **pp.20, 21 and 61 of IM Exhibit 5B**, I was referring to the importance of the Office of the Chief Minister to the reputation of our jurisdiction, not the person. It was the Office that I would protect, and then only from allegations on “flimsy” grounds. That remains my position.
34. At **para 58.19 of McGrail 1**, he states that he “*explained to those present what remained to be done in terms of lines of enquiries for the investigation to be completed.*” In this connection, I would like to highlight my words to IM at **p.25 of IM Exhibit 5B** when I was summarising the state of play and said: “*the criminal investigation, which is yours.*”
35. At **para 58.22 of McGrail 1**, IM asserts that I asked him “*what JL should say in order to achieve the best possible outcome for himself during the forthcoming interview*”. This is not correct. The question I in fact asked, per the transcript, was a different one: “*...from Jaime Levy’s point of view, what is the best outcome of doing the interview on Monday?*” [**Exhibit IM 5B, p.30**]. Supt Richardson’s response was that JL “*would have to give an explanation which accounts for what he has done, which holds some degree of water.*” It was thus Supt Richardson (and the DPP) who volunteered possible

explanations by JL. But it is important to note that I did not ask the question imputed to me by IM.

36. I asked the question that I did in the context of the discussion we were having on what would happen to JL's devices, which was the issue that was causing the most tension at the time and which was most likely to derail the investigation altogether. I was simply trying to see whether at least this aspect of the investigation could be defused. This is reflected by the DPP's point at **p.31 of IM Exhibit 5B** where he states: "*I think what Michael is asking is, if he, if he, if he satisfies you in the interview, would you give the phone back or would you still need to do the sift of the phone? That's the question, I think. No?*" It is also reflected at **para 58.24 of McGrail 1**.
37. At **para 58.29 of McGrail 1**, IM states that the "*DPP said that the AG could not enter a nolle prosequi...*". This is the first and only reference to the *nolle* in **McGrail 1**. It appears as if it was raised by the DPP for the first time and discussed between him and me. This is highly misleading, and is important considering what he tries to make of the *nolle* that I entered two years later.
38. What he refers to at **para 58.29** is recorded at pp. 53-54 of the translated transcript (**IM Exhibit 5B**). However, consistently with what I have said at **paras 62-63 of Llamas 1**, it is clear that the issue of stopping the prosecution and/or the issuing of a *nolle*, was raised by IM himself much earlier in the meeting (and dismissed by me and DPP) and this is set out at p. 12 of the translated transcript. I reproduce below the relevant parts of IM's translated transcript:

(i) At **p.12 of IM Exhibit 5B**:

COP	...my proposal for this will be put for the third time; we as the investigators, we are doing a job, we produce the evidence, we've consulted with the DPP. The DPP sees that there is, we thought that there is, but confirmed with the DPP, the DPP sees that there is a case to be put to the, to...to...to trial. I get the whole periphery, I get it all. I cannot pull it, you can. You can, Michael.
Mr Llamas	But it hasn't got to, it hasn't got to get to that Ian.
COP	Well then, then who stops it, I cannot stop it. I... I cannot say, I... there is no offence. We have determined there are offences,

	we've determined that there is a, a, a, a high prospect, which is not, even the DPP's call, but he supports that.
Mr Rocca	Evidential, there's evidential...
COP	Threshold
Mr Rocca	Evidential...passed
Mr Llamas	Absolutely, and I've known that from the beginning.
COP	Now, now, if, if we cannot and I, I would understand and.. .and I've said it, I've said it before, I would not raise any objections if this is pulled, but I will not pull it, Ian, the RGP cannot pull it. And if there are legal routes to pull it, those, I'm asking why not.

(ii) At p. 20 of IM Exhibit 5B IM reverts to this by making the following completely unsolicited remark to me: *"The thing is you have the magic wand here. You have it"*.

(iii) At pp.53-54 of IM Exhibit 5B:

COP	I tell you, if it's not in the public interest for this to go any further, I cannot make that call.
DPP	It's not at that stage. That's the point we are making.
COP	No, but well, but, but...but we...
DPP	It's not Michael's call.
COP	I know. I know.
DPP	To interfere with you.
COP	I know...
...	...
COP	....Good, the...the evidence is perused, because perhaps with what [Mr Levy] says tomorrow it puts a spanner in the works, and the DPP says, looks this isn't so clear anymore. And you don't want to run with it. If that is the advice that you give to me, I would like that advice in writing, and therefore, that would be the end of the matter for me.
	....
COP	Do you get me? that would be the end of the matter for me, but what I cannot say is nothing is going to happen with this. I can't say that. That's the point that I've been saying all along.

DPP	And Michael can't enter a nolle
Mr Llamas	Hombre, its something that I'd rather not do, I've been approached several times since I was appointed Attorney General to enter a nolle and in both cases, some of them very sensitive, emm.. and have had no doubt, not to do the nolle because I think the threshold for a nolle is extremely, extremely high. If, if, there... I feel, that a prosecution exposes the Chief Minister, I say it very clearly here, on grounds which are flimsy, I'll stop it. I clearly tell you so. If you've got a smoking gun against the Chief Minister, I can't...

39. The issue of the *nolle* or of stopping the investigation was not discussed at all in the two subsequent meetings I had with IM on 15 and 20 May 2020 during which meetings, as I state at **para 51 of Llamas 1**, the DPP and I provided advice to the RGP on the continuation of the investigation and on how to deal with Hassans.

As to para 59 of McGrail 1

40. At **para 59 of McGrail 1**, IM sets out his recollection of the meeting with me and others on 15 May 2020. As with the previous meeting of 13 May 2020, IM's recollection gives the impression that the meeting was largely an exchange between IM and me. IM has subsequently produced a covert recording and transcript of this meeting (**IM Exhibit 6B** refers), which fully corroborates everything I said about this meeting at **paras 71-73 of Llamas 1**. For the avoidance of doubt, I absolutely deny any inference that either I or the DPP were improperly influencing or seeking to influence police officers or seeking to do anything other than to assist the RGP with the successful continuation of the investigation.

As to paras 60-61 of McGrail 1

41. I refute IM's statement at **para 60 of McGrail 1** that I "*again attempted to steer the Investigation seemingly so as to limit the exposure of JL.*"
42. As to **para 61.5 of McGrail 1**, my reference to "*draw the line*" (**Exhibit IM 7B, p.3**) was in relation to the opportunities to be given to JL to answer questions.

As to para 62 of McGrail 1

43. At **para 62 of McGrail 1** IM refers to having learned that “*the AG, the CM and NP had discussed my removal between the 15<sup>th</sup> and 18<sup>th</sup> May 2020*”. I do not have any recollection of having been part of any such discussions, and I believe that I was not. My involvement in the procedure leading to IM’s retirement is as set out in **para 6 of Llamas 1**.

As to para 85 of McGrail 1

44. At **para 85 of McGrail 1**, IM asserts that he retorted that I “*knew full well what this was about – that it was all to do with Op Delhi intervention and the posture adopted by the CM*” and that I “*did not deny this.*” I do not recall not denying anything, and I refute the meaning he attributes to it (if it happened).

**B. RESPONSE TO MCGRAIL 2**

45. As to **para 4 of McGrail 2**, I deny that I “*berated*” him on 12 May 2020. I refer to my comments above in relation to **para 43 of McGrail 1**. He appears to be using this as an excuse for having taken the allegedly “*unprecedented decision*” to covertly and inappropriately record our subsequent meetings. I was most certainly not holding any “*form of brief*” for any suspect.
46. As to **para 16 of McGrail 2**, it is incorrect for IM to state that I entered the *nolle prosequi* “*despite the DPP’s advice that there were grounds for persisting with the prosecution.*” What I said in my statement to the press was that the DPP had advised me, and I had accepted, that the first condition of the prosecutorial “Full Code Test”, namely, the evidential test, was met, and that I took the decision that the second condition, whether it was in the public interest for the case to go to trial, was not met.
47. As to **para 19 of McGrail 2**, and as I have already stated above, all of my references to defending the Chief Minister were references to the Office of the Chief Minister and not to whoever the individual office-holder may happen to be, and that I would defend that Office from any investigation that exposed the Office on flimsy grounds because of the vital importance of that Office to the reputation of our jurisdiction. In any event, a *nolle* was nowhere near my mind at that time and, as the transcript of the meeting on

13 May 2020 shows, it was IM himself who raised the matter, not me, and I dismissed his invitations to consider doing it. Further and in any event the reasons why I entered the *nolle* two years later had nothing to do with protecting the Office of the Chief Minister. My decision was based on matters that were brought to my attention over a year after the events of May/June 2020.

48. As to **para 20 of McGrail 2**, I strongly refute any suggestion of a cover-up.

### **C. RESPONSE TO MCGRAIL 3**

49. As to **paras 68, 69i and 170 A of McGrail 3**, my recollection of what IM told me is set out at **para 82 of Llamas 1** and what he told Mr Pyle is as set out in **para 84 of Llamas 1**. I cannot now recall precisely what information I may or I may not have communicated to Mr Pyle on those occasions that we discussed the incident at sea, nor do I know what information Mr Pyle learnt, when and from whom. I do however wish to make a general point. As Attorney General, I am the Governor's constitutional legal advisor. The constitutional relationship is not such as to make me his legal representative in the sense of me being a post-box through which those with their own constitutional obligation to brief the Governor on matters of the Governor's constitutional responsibility, can do so through me. And given the nature, regularity and extent with which IM communicated directly with the Office of Governor in matters relating to policing, I have no doubt whatsoever that IM fully understands this point and the distinction that I am making. I therefore cannot avoid the conclusion that IM is seeking to deflect criticism of himself for his own failure to properly keep the Governor briefed on a timely basis by manufacturing the pretence that he thought that he was doing it through me.

50. As to **para 142 of McGrail 3**, IM is wrong to say that he waited for communication from me "*but it did not come*". The position is as follows:

50.1. It is correct to say that I contacted Richard Ullger ("RU") with a view to exploring whether a joint statement could be made in order to defuse the situation.

50.2. On 27 July 2020, the Chief Minister emailed me a draft of a statement that he was going to make in Parliament in reply to 20 questions raised by the

Opposition. Now produced and shown to me marked **MLL2/1** is a copy of this email. The purpose of him sending me this was that I would pass it on to RU for him to pass on to IM to see whether he was happy with it. I did so immediately: see **MLL2/4**.

- 50.3. Charles Gomez replied to me several hours later saying that the Chief Minister's draft did not reflect IM's position. Now produced and shown to me marked **MLL2/2** is the email thread in question.
- 50.4. Charles Gomez emailed me again on 29 July 2020 reprimanding me for having approached IM through RU. Now produced and shown to me marked **MLL2/7** is a copy of this email.
- 50.5. I met with Charles Gomez on 31 July 2020 and he emailed me later that day. Now produced and shown to me marked **MLL2/13** is a copy of this email.
- 50.6. Charles Gomez and Nicholas Gomez came to my office (it must have been around this time) to discuss a joint statement. They came with a draft of a statement they had prepared which they said would be acceptable to IM. It amounted to requiring HMGoG to make a public apology to IM.

51. As to **para 147(ii) of McGrail 3**:

- 51.1. As to (a), I repeat what I have said above that all of my references to the Chief Minister were to the Office and not the individual office-holder. See by way of further example my words at **p.61 of IM Exhibit 5B**, where I refer to past Chief Ministers. I also repeat that the *nolle* entered two years later had nothing to do with protecting the Chief Minister.
- 51.2. As to IM's assertion at (b) that when we spoke on 13 May 2020 I said I would put down the issue between us as a "*misunderstanding*", this is a slight mischaracterisation of what the transcript records me saying which was "*I will eventually accept that there was a misunderstanding between us, because that is the type of person I am*" (**p.60 of IM Exhibit 5B**). Moreover, the fact is that I had to draw a line under the matter in order to work with him in view of the crisis that the search warrants had unleashed. I was trying to be

constructive and helpful, and IM was happy about that. We had effectively agreed to disagree. That does not mean that it was not abundantly clear to me what we had agreed between us, and that he had done something completely contrary to our agreement.

51.3. As to (e), the DPP advised me that the evidential test for prosecution was met. That means that he considered there was sufficient evidence for a realistic prospect of conviction, not a guarantee of conviction if that is what IM is suggesting. IM appears to misunderstand the nature of the Full Code Test and the purpose of the AG's power to enter a *nolle*: the cogency of the evidence is distinct from public interest considerations.

51.4. As to (f), IM's speculation that "*the extent to which the AG has gone to protect certain interests goes a long way if not all the way explaining why I was pushed out of office*" is outrageous and I completely refute it. As I have already stated, during the three meetings I held with IM in May 2020, the issue of the *nolle* was raised by him in our first meeting of 13 May 2020 and dismissed by me and the DPP. It was not discussed any further in the subsequent meetings.

52. As to **para 147(iii) of McGrail 3**:

52.1. With reference to sub-paragraph (e), I would restate that IM did state that the search warrants had been executed on the advice of the DPP. This is precisely why I called the DPP after the meeting of 12 May 2020 between the Chief Minister, IM and myself: see **paras 43, 44 and 46 of Llamas 1**.

52.2. As to the penultimate sentence in sub-paragraph (f), that "*In essence what the AG was saying was that the CM had communicated to Hassans that I had said that the DPP had advised on the warrant which in turn caused Hassans to refer to this point in their letter*", this was pure conjecture on my part.

53. As to **para 170 O of McGrail 3**, there was no reticence on my part for Op Delhi to proceed and it is not true that I expressed reticence to him in different ways. These are figments of his imagination and what he thought was happening which is not borne out by the facts or the voluminous pages of transcripts of the meetings he has recorded. It



is utter nonsense. Both the DPP and I were helping him with the mess the RGP had created with the search warrants. The reasons for *nolle* two years later had nothing to do with the events of May/June 2020 being examined by the Inquiry.

54. As to **para 170 P of McGrail 3**, there was no improper interference on 12 May 2020. As I have said above (see para 23), I was largely a bystander.

55. As to **para 170 R of McGrail 3**:

55.1. I did not “confirm that there had been improper communication by the CM with Hassans...” It was pure conjecture on my part.

55.2. It is untrue and farcical to suggest that IM’s lie to the CM was a “pretext”. There was no doubt what IM said to the CM, and there is no room for misunderstanding.

55.3. I did not chastise IM on 12 May 2020.

#### **D. SPECIFIC MATTERS THE INQUIRY HAS REQUESTED BE ADDRESSED**

##### ***(i) Para 98 of McGrail 3: 17 March 2020 meeting***

56. At **para 98 of McGrail 3**, IM details a meeting that he says took place between us on 17 March 2020. I am asked to provide details of that meeting and in particular to provide details as to the CM’s attitude towards the incident at sea and discussions of possible civil action.

57. I do not recall a specific meeting with IM on 17 March 2020, but it is quite possible that it took place and that it was part of the contacts that I was having with him at that time as I state at **para 88 of Llamas 1**. By that time, that is to say over a week after the incident had occurred, my involvement would have been “*in relation to the political fallout this incident could have with Spain and the conduct of potential court actions*” (**para 88 of Llamas 1**).

58. Accordingly, everything that IM states at **para 98 of McGrail 3** in connection with contacts with Spain and the Brexit negotiations is almost certainly correct. Indeed, I do recollect mentioning to him (and it may well have been on 17 March 2020) that I was

mind to contact Mr Antonio Garcia Ferrer who was my main point of contact in the Spanish Ministry of Foreign Affairs in the context of the Brexit negotiations. My overriding concern was that this incident should not affect relationships with Spain in the context of those sensitive, ongoing negotiations.

59. With regard to the Chief Minister's attitude towards the incident and possible civil action, to the best of my recollection, his concern was to ensure good and transparent communications with Spain and to protect the RGP officers as best we could from having to face court action in Spain. I do not recall the Chief Minister expressing any view on the possible civil action before the Gibraltar courts.
60. At **para 98 of McGrail 3**, IM refers to a WhatsApp message from the Chief Minister in which he stated that he was not so worried about where the collision had occurred and that this helped in some way. The message is reproduced at **para 93 of Mr McGrail 3** which was when I first saw it. I was not part of the WhatsApp Group in which that message was sent and I do not have any knowledge of what the Chief Minister may have meant by those words. I do not recall saying what IM says I replied to his question as to the meaning of that message, but if I did say words to that effect they would have been my guess as to what the Chief Minister may have had in mind.

***(ii) Para 106 of McGrail 3: 7 April 2020 meeting***

61. With reference to **para 106 of McGrail 3** where he sets out his recollection of a meeting on 7 April 2020, I am asked to provide details of this meeting, and in particular of the possible civil action as a result of the incident at sea.
62. As above, I do not recall a specific meeting with IM on 7 April 2020 to discuss the incident at sea. It is unlikely that a meeting took place on 7 April 2020 since that is the date when I had my first meeting with IM on Op. Delhi. In any event, it is quite possible that a meeting took place around that time and that it was part of the contacts that I was having with IM at that time as I state at **para 88 of Llamas 1**. In this case too, my involvement would have been "*in relation to the political fallout this incident could have with Spain and the conduct of potential court actions*" (**para 88 of Llamas 1**). This is the essence of what IM states at **para 106 of McGrail 3**.

63. Accordingly, everything that IM states at **para 106 of McGrail 3** in connection with contacts with Spain and the Brexit negotiations is almost certainly correct. Indeed, I do recollect discussing such matters with him (and it may well have been on 7 April 2020).

*(iii) Para 107 of McGrail 3: Further meeting*

64. At **para 107 of McGrail 3**, IM sets out a meeting between himself, the DPP and I which may have taken place on 22 April 2020. I am asked to provide any details regarding the discussions that took place.
65. I do not recall a specific meeting with IM and the DPP on or around 22 April 2020, but it is quite possible that it took place and that it was part of the contacts that I was having with IM at that time as I state at **para 88 of Llamas 1**. According to **para 107 of McGrail 3** this meeting would have been in relation to the civil claim and Crown Counsel representation for the RGP. I do recall being present in a meeting where these matters were discussed (and this may well have been on or around 22 April 2020). Being matters directly concerned with potential court proceedings and legal representation by members of the DPP's office, it would have been the DPP who led these discussions with Mr McGrail.

*(iv) Paras 99 and 105 of McGrail 3: CM/AG briefings re incident at sea*

66. At **paras 99 and 115 of McGrail 3**, IM states that I was in discussion with the Chief Minister. I am asked to provide details of any briefings provided to me by the Chief Minister regarding the incident at sea, including the extent to which (if at all) we discussed possible civil action.
67. With regard to **para 99 of McGrail 3**, this concerns a WA message that I sent to IM confirming to him that the Chief Minister was content for IM and the MPS to meet up with the Spanish Guardia Civil. The context for this is provided by IM in the preceding paragraph of **McGrail 3**.
68. With regard to **para 115 of McGrail 3**, I was in regular contact with the Chief Minister in relation to Operation Kram during the period 8 March to around 29 May 2020. My briefings to him would have been made orally and would have primarily concerned how the incident could affect relationships with Spain and the Brexit negotiations. That

had always been the main reason for my involvement in Operation Kram. On occasion I would pass on to the Chief Minister some other information, such as the request from the RGP for funding for potential court action in relation to the civil claims.

69. I did not consider myself, nor did I ever give IM any reason to believe, that I was acting as a go-between between him and the Chief Minister on every aspect of Operation Kram. I was aware that Operation Kram was being discussed in other fora of which I was not a part (for instance, the WhatsApp Group set up on 9 March 2020, as referred to at **para 72 of McGrail 3**). Indeed, my time was fully consumed by the Brexit negotiations and, as already stated, it was for this reason that the Chief Minister wished me to be involved in Operation Kram.
70. I do not recall discussing the civil action with the Chief Minister, other than what I state at **para 89 of Llamas 1**.

***(v) Op Delhi – charges or counts?***

71. I am asked to provide further details as to the charges in relation to Op Delhi, in particular whether I recall whether they were ever drawn up or whether they were only offences/counts of suspected criminality.
72. What I knew of the charges was what I was told by the DPP. I had not seen the charges myself, nor did I ask to see them since I would consider this to be a matter for the DPP. What mattered to me was what the DPP told me in our meeting of early April 2020 and, notably, that he considered the list of 76 charges to be wholly inappropriate and needed to be rationalised (see **para 23 of Llamas 1**).

***(vi) Para 30 of Yome 1: Airport Incident arrests***

73. I am asked whether, as stated by Mr Yome at **para 30 of Yome 1**, I recall meeting with him and agreeing that the three senior military officers should be arrested in respect of the Airport Incident.
74. Quite apart from any legal advice in relation to jurisdiction and other legal matters that I may have been requested to give and may have given, I do not recall the meeting referred to by Mr Yome at **para 30 of Yome 1**. I was not part of the decision to arrest

the three senior military officers in respect of the Airport Incident. I would not have taken a formal part in reaching such a decision. The RGP would have done so. I was in meetings in London when I learnt, in a phone call to me from Mr Yome, that the decision to arrest the three senior military officers had been taken, and that is the first that I knew of it.

75. With regard to the Airport Incident more generally, I provided legal advice to the RGP and I had several discussions and meetings with Mr Yome. Such advice was in relation to jurisdiction, specifically the question as to whether the RGP or the Military Service Police had jurisdiction (exclusive or concurrent) over the individual in question. My advice to the RGP was that the RGP clearly enjoyed jurisdiction.
76. Subsequently, I organised a meeting in my office between the RGP and MOD officials with the aim of finding a way forward in view of the unprecedented tensions that the RGP's handling of the arrest of the three senior military officers in the Airport Incident had caused in the relations between the MOD and HMGoG. This is reported by Mr Yome at **para 33 of Yome 1**. This led to the drafting of the Armed Forces (Gibraltar) Act 2018 and Protocol on the exercise of criminal jurisdiction in Gibraltar which I completed together with Admiral Sir Antony David Radakin, the current Chief of the Defence Staff in the UK.

SWORN by the above-named deponent )  
at *Suite 933 Europort* )  
Gibraltar )  
this *4<sup>th</sup>* day of July 2023 )

Personal Data

Before me,

Personal Data

*THOMAS SARGENTO*  
Commissioner for Oaths

This Affidavit is filed by Messrs Peter Caruana & Co of Suite 933, Europort, Gibraltar, solicitors for Mr Michael Llamas CMG KC.