

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 Her Majesty's Government of Gibraltar on the
4th February 2022 in Legal Notice No 34 of 2022 ('the Inquiry')**

**AFFIDAVIT OF
FABIAN PICARDO QC MP**

I, Fabian Picardo, Chief Minister, of No 6 Convent Place, Gibraltar **MAKE OATH** and say
as follows:

1. I presently hold the office of Chief Minister in Her Majesty's Government of Gibraltar. I was first appointed to the post on the 9th December 2011 after leading the Gibraltar Socialist Labour Party to victory in the General Election to the Gibraltar Parliament held the day before. The current Parliamentary term, which commenced on 18th October 2019, is my third consecutive term as Chief Minister.
2. I am also a member of the Bar in Gibraltar, and had been in private practice, with Hassans International Law Firm, since November 1994, when I was called to the Bar in Gibraltar, until the day I became Chief Minister, since which date, I have not practised and I have been on sabbatical leave from the firm. I publicly declare my continued interests in Hassans and investments made, and liabilities taken on, on behalf of that partnership on the Register of Members Interests in Parliament. I

became a partner of that firm in July 2000. Now produced and shown to me and marked **FP1/1-7** (see para 5 below) is a copy of my entry in the Register of Members' Interests of the Gibraltar Parliament.

3. I swear this affidavit in response to a call for my evidence from the Commissioner appointed to conduct this Inquiry, Sir Charles Peter Lawford Openshaw, DL, and as set out in a letter from the solicitors to the Inquiry, Messrs Attias & Levy which requested that I should provide the Inquiry with:

(a) A statement under oath addressing the subject-matter of the Inquiry, namely my knowledge of the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement; and

(b) Any documents (including but not limited to electronic documents such as emails, word documents, PDFs and SMS, WhatsApp and other instant messages in my possession or control relevant to the subject-matter of the Inquiry.

4. Insofar as the content of this affidavit is within my own 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.

5. There is now produced and shown to me a bundle of documents marked **FP1**. References in this affidavit to documents in this bundle are to **FP1/x**, where **x** is the page number in the bundle.

The Office of Chief Minister

6. Under the structure provided for in the Gibraltar Constitution, the elected Ministers of Her Majesty's Government of Gibraltar have responsibility for all aspects of the executive government of Gibraltar, except for those defined matters which are retained by the Governor, namely, external affairs (with the Government of the United Kingdom retaining overall responsibility for these and with an obligation to

act in consultation with the Chief Minister in this regard), internal security, including the police (subject to the powers granted to the Gibraltar Police Authority ('the Authority')), defence and powers related to public offices. The Governor appoints Ministers and allocates responsibilities to them acting on the advice of the Chief Minister.

7. My portfolio of ministerial responsibilities as Chief Minister includes (among many others) responsibility for the public finances of Gibraltar and the Treasury, and overall responsibility for and supervision of Government Departments and public administration. I also have a number of constitutional and statutory responsibilities.

The Chief Minister's role in respect of policing in Gibraltar

8. The role of the Chief Minister in respect of policing in Gibraltar is provided for in the 2006 Police Act ('the Act'). This Act was fruit of the changes brought about by the 2006 Gibraltar Constitution which saw a number of powers and responsibilities previously held by the Governor redistributed to the elected Government of Gibraltar.
9. The Act provides (in section 4) for the approval by the Chief Minister of names to be selected for appointment to the Gibraltar Police Authority ('the Authority'), including its Chairman and powers in respect of removal of such persons. The Act provides for Consultation between the Chief Minister and others and the Authority (in section 8) on policing priorities and the settling of the Annual Policing Plan, which the Chief Minister then lays before the Gibraltar Parliament (as required by section 9 of the Act). The Chief Minister is also legally entitled (by section 10 of the Act) to receive the Authority's Annual Report. Additionally, before exercising its powers to issue guidance and regulations (under section 23 of the Act), the Authority is required to consult with the Chief Minister.
10. The Act also provides powers to the Governor (in sections 12 and 13). The Chief Minister is entitled (section 13(2)) to be kept informed by the Governor of the exercise by him of any powers under section 13 of the Act, and to be provided with a copy of any report prepared in consequence of the exercise by him of such powers.

11. Sections 14 and 15 of the Act bestow specific powers upon the Minister with responsibility for public finance and the Chief Minister.
12. Section 14 provides that the Minister with responsibility for public finance (a Ministerial portfolio responsibility which, as I have already stated, I hold) “*shall decide, and seek the appropriation of the Parliament for the grant of both recurrent and capital expenditure to be made for the Force and policing in Gibraltar in respect of any financial year*”. I discharge these functions during the course of the debate on the Appropriation Act, which includes the necessary appropriation for these policing functions.
13. Section 15, which sets out the ‘powers of the Government’, exercisable on its behalf by the Chief Minister provides, as follows:

Powers of the Government.

15.(1) The Chief Minister may exercise the following powers on behalf of the Government—

(a) to require factual or assessment reports from the Force or the Authority on any policing matter:

Provided that there may be withheld from any such report any fact disclosure of which is likely to prejudice the effective operation of the Force or the confidentiality of any information which the Force is bound to maintain;

(b) to hold the Force and the Authority to account for the cost effectiveness and efficiency of the Force within its allocated budget;

(c) to hold the Force and the Authority to account for those parts of the Annual Policing Plan which do not relate to National Security;

(d) to call for and hold meetings with the Chairman, the Commissioner and other senior officers of the Force to discuss matters under the Government’s responsibility or in respect of which it has powers under this Act.

(2) The Chief Minister will keep the Governor informed of any exercise by him of a power under this section and shall provide to the Governor a copy of any report produced as a consequence thereof.

14. Section 34 of the Act provides a power to the Authority to remove a Commissioner of Police after consulting the Governor and the Chief Minister, and with the

agreement of one of them. That section, which is relevant to the events that the Inquiry is investigating, provides as follows:

Removal of Commissioner.

34.(1) 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.

(2) Before seeking the approval of the Governor and the Chief Minister under subsection (1), the Authority shall give the Commissioner an opportunity to make representations and shall consider any representations that he makes.

(3) Where the Commissioner is called upon to retire under subsection (1), he shall retire on such date as the Authority may specify or on such earlier date as may be agreed upon between him and the Authority.

15. The consent of the Chief Minister is also required to the exercise by the Gibraltar Police Authority of its powers to appoint an acting Commissioner. Section 37 of the Act provides as follows:

Acting Commissioner.

37.(1) In the absence of the Commissioner and the Assistant Commissioner, (if there be one), the Authority may, with the consent of the Governor and the Chief Minister, appoint any officer of the rank of Superintendent to act as Commissioner for such period as may be specified in his instrument of appointment.

(2) Any act or thing which may be done, ordered or performed by the Commissioner may be done, ordered or performed by the acting Commissioner.

16. These provisions set out the role of the Chief Minister (including as Minister with responsibility for public finances) in relation to policing in Gibraltar, in a constitutional and statutory architecture of shared and split functions with the Governor, none of which derogates from the independence of the Commissioner of Police in operational matters.

Retirement of Mr McGrail

17. The immediate cause of Mr McGrail's retirement was his decision to do so, communicated by him, through his lawyers to the Gibraltar Police Authority's lawyers, by email dated 5th June 2020. In that email it is stated that the reasons for his decision to retire were the unfairness of his treatment (although there is no reference as to who has treated him unfairly) and 'the improper pressure put on him to alter the course of a live investigation'. It is not for me to say what were his reasons, though he certainly well knew by then that both the Governor and I had lost confidence in him and why.
18. In this affidavit I set out the reasons why I lost confidence in Mr McGrail, and (chronologically) my role in the events which preceded his retirement, in relation to which I, at all times I had regard to my rights, powers and roles under the cited provisions of the Police Act, and as Chief Minister, acting both within the letter and spirit of the principles of the rule of law and natural justice.

The Runway Incident & Relationship with the Ministry of Defence

19. Although as a lawyer in private practice in Gibraltar, and with relatives in the RGP, I had known Ian McGrail for many years, I had never known him well. I also cannot recall ever having any extensive dealings with him in my professional capacity. I came to know Mr McGrail as a member of the RGP's Senior Management Team ('SMT') after my appointment as Chief Minister.
20. A case involving allegations of serious criminal behaviour against a serving junior member of the Ministry of Defence in Gibraltar led to a real breakdown in the relationship between British Forces Gibraltar and the RGP. The relevant aspects of this incident involved the detention of senior MOD personnel in Gibraltar, the searching of their offices (with or without search warrants) and a dramatic incident in which an RGP vehicle blocked the operation of the runway at Gibraltar Airport in order to prevent a Royal Air Force flight from taking off because the RGP (correctly) believed that the suspect was on board as a passenger in order to remove him from the jurisdiction of the RGP.

21. Mr McGrail led this investigation and the operations in question. It became apparent to me that the manner in which Mr McGrail had led that investigation was unnecessarily institutionally confrontational in respect of the MOD. While I believed that the policing objectives were meritorious in the pursuit of the investigation in question, and I gave the RGP my fulsome public support in that respect, that objective could and should have been more quickly, effectively and easily achieved via a more collaborative and conventional route.
22. I was clear in my view that, while the MOD had not handled the matter well either, Mr McGrail had led the RGP into a dangerous, difficult and damaging situation for Gibraltar in terms of its relationship with the MOD, which would, and subsequently did, require a lot of my time and effort to mitigate.
23. In fact, working with the Attorney General Michael Llamas QC, and the now Chief of the Defence Staff (formerly First Sea Lord), Tony Radakin, we were able to put in place new procedures to ensure that there was never a re-occurrence of events such as those which Mr McGrail's approach had resulted in.
24. The relationship with the United Kingdom MOD is a vitally important feature of British sovereignty, and an equally important element of Gibraltar's constitutional and political relationship with the UK, and thus politically essential to Gibraltar in the face of Spain's continuing sovereignty claim. In the past, it has also been the essential basis of our economy. We share key joint equities in the operation of very important parts of Gibraltar, not least, Gibraltar Port and Harbour, the airport and parts of the nature reserve, among other areas of Gibraltar. In my view, and in the view of the Government, the relationship with the MOD is critical for Gibraltar, as I believe almost everyone in Gibraltar knows, understands and agrees. Therefore, and despite, inevitably, having areas of disagreement which are dealt with as disagreements between friends, as a matter of policy, successive governments of Gibraltar, including my own, have nurtured the relationship with the MOD.
25. Very considerable damage was done to the relationship with the MOD by Mr McGrail's handling of and conduct during this incident. Despite this, and despite the political and diplomatic efforts required to resolve it, I felt that Mr McGrail was not

displeased with the manner of his actions, and not for one moment remorseful of the consequences for Gibraltar that his leadership of the operation had resulted in.

The Appointment of Ian McGrail as Commissioner of Police

26. In the circumstances, I was surprised that Mr McGrail emerged as the Authority's choice to be Commissioner of Police in 2017.
27. At the time of his appointment Mr McGrail came to see me at No 6 Convent Place, which is both the address and the way that the office of the Chief Minister is commonly referred to in Gibraltar. He gave me an overview of the things he was keen to get on with as Commissioner. At that meeting, he left me with a copy of his application documents for the post of Commissioner, dated 1st November 2017. Now produced and shown to me at **FP1/8-40** is a true copy of Mr McGrail's said application documents.
28. For reasons which will become relevant when considering aspects of a report by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services ('HMIC') (with which I deal in paragraphs 103 to 108 below), I note that point (x) of a document he headed 'A Vision for the Royal Gibraltar Police 2018 to 2022' set out how he intended to deal with the recommendations in a HMIC report from 2015. He added that: 'It is imperative that a working group is created to see this project through'.

Operation Delhi

29. For some time after May 2018, I was aware that the RGP were investigating matters arising from complaint by Bland Limited relating to the alleged conduct of two of its former employees. The investigation also included matters related to the actions of a Civil Servant, who had been the Private Secretary to the Deputy Chief Minister, Hon Joseph Garcia CMG MP. The investigation involved a new entity formed by the former employees of Bland Limited, 36 North Limited ('36NL'), in which the partners of Hassans had made an investment and held a minority of the shares.

30. Mr McGrail sought a meeting with me to brief me in relation to that investigation. We met, together with Attorney General, Michael Llamas QC, in my office on 13th May 2019. In that meeting Mr McGrail gave us details of that investigation. The request from Mr McGrail to brief me in relation to this matter is set out in a WhatsApp of the 11th May 2019. The full exchange between us is set out here as follows:

[11/05/2019, 18:42] Ian McGrail:

CM - I have sent an email requesting an opportunity to brief yourself, MoJ, FS, CS, AG & DPP on a case. I believe you are flying out on Monday with Albert M. Could we meet first thing on Monday. It is important and sensitive.

Rgds

Ian

[11/05/2019, 19:07] Fabian Picardo:

Hi Ian. Just read. Sorry delay but have been trying to avoid looking at my phone for one day! I am able to change things and have a meeting early Monday or do we need to do it even sooner?

[11/05/2019, 19:08] Ian McGrail:

First thing Monday will be good. Just let me know the time and I will circulate. Many thanks.

[11/05/2019, 19:10] Fabian Picardo:

Ok. Got you.

[11/05/2019, 19:11] Fabian Picardo:

0915hrs Monday.

31. This is the criminal investigation referred to by Mr McGrail's lawyers in the email of 5th June 2020. I have never interfered in any police investigation, still less sought or tried to divert its course, and I certainly did not do so in this case. The suggestion that I may have done so is as offensive to me as it is belied by the events which have happened, despite my close links with James Levy CBE, QC, its senior partner and Hassans.
32. In fact, I made clear during the course of that meeting that, should there be evidence of corruption in respect of a government officer or officers, then the Government itself would be a complainant in respect of that case. As it turned out, when the time came, the RGP refused to provide the Government with the evidence that there was corruption so that we could be a complainant against the Civil Servant.

33. Despite Mr McGrail's stated reason for his decision to retire, the police's investigation into this case continued unabated and, as far as I am aware, on an un-diverted course.
34. On 25th June 2021, that is over a year after Mr McGrail's retirement, at the RGP's request, I provided a statement to them in support of their investigation. Now produced and shown to me **FP1/41-136** is a copy of the Witness Statement (together with the relevant exhibits thereto), that I provided for the prosecution in that criminal case. The Witness Statement is set out as a set of answers to questions which the investigating officers sought my evidence on. Taken as a whole, however, the Witness Statement sets out, fully and frankly, the relevant information in relation to Operation Delhi.
35. Despite Mr McGrail's statement and suggestions of improper attempts by the Government to stop the investigation of Operation Delhi, the Government continued to provide information and statements to the police and the prosecution throughout, the RGP completed their investigation and brought serious criminal charges against the persons to whom the complaint had related.
36. Indeed, my interventions in matters connected to the investigation have been contrary to what may be thought to have been my personal interests. The civil law aspects linked to the complaint being investigated by the police, involved a government contract which the persons being investigated by the Police were alleged by the holder of that contract, the complainant company, Bland Limited, to have diverted to 36 North Limited. When those matters were brought to my attention by Bland Limited, I intervened to ensure that the contract remained with Bland, despite Hassans' part ownership of 36 North Limited and therefore my own (albeit very small) interest in it as a partner of Hassans. The sole consideration in my mind, as all Gibraltarians and residents of Gibraltar would expect, was the security of Gibraltar and the well-being of the People of Gibraltar.

The Search Warrant in Operation Delhi

37. My only intervention in relation to this case has been to express my views to Mr McGrail about his decision to obtain and execute search warrants at the home and professional office at Hassans of James Levy CBE, QC - and that was after the event.
38. I have known James Levy CBE QC since I was a teenager and he, additionally, knew my family since well before I was born. Mr Levy was the nephew of Gibraltar's first Chief Minister, Sir Joshua Hassan (the founder of Hassans), and my mother was Sir Joshua's secretary for many years, creating a life-long relationship between my family and Sir Joshua and his family. Mr Levy had become the senior partner of Hassans by the time that I decided to read law. I worked with him from the time that I started to attend Hassans (then J A Hassan & Partners) as a law student. I subsequently worked even more closely with Mr Levy on many professional matters when I joined the firm after I had qualified and been called to the Bar. I consider Mr Levy to be a mentor in my previous legal practice, a supporter in my current political career and a close personal friend. I believe it is uncontroversial to say that Mr Levy is also very highly regarded by his peers in the legal profession, is widely considered to be one of Gibraltar's leading lawyers in the financial services industry and a key 'rainmaker' for the whole jurisdiction, and is one of Gibraltar's most senior lawyers, as well as senior partner of its largest law firm. Mr Levy is also regarded as a leading citizen and is the longest serving President of the Jewish Community in Gibraltar, having held that post for many years.
39. In the context of operation Delhi, I became aware from Mr Levy himself that he was one of the persons who was 'of interest' to investigators.
40. On 12th May 2020 I received a WhatsApp message from Mr McGrail that said:

[12/05/2020, 12:25] Ian McGrail:

CM - before you hear it from anyone else I want to inform you that detectives are executing a search warrant at Hassans for (JL) in relation to the case against Perez, Cornelio & Sanchez. Its been done in the most discreet of ways and we're hoping there is co-operation.
Rgds

Worthy of note is the fact that Mr McGrail described the case as being against persons that did not include Mr Levy. I responded nine minutes later, also by WhatsApp as follows:

[12/05/2020, 12:34] Fabian Picardo:

Ian, Thank you for the courtesy of this information. I think that is a bad decision. A search warrant should only have been sought if you believed that the person in question was not going to cooperate and will try destroy evidence. If, as you say, you are hoping for cooperation, especially in a case involving a senior Silk and head of Gibraltar's largest legal firm, you should, in my view, first have sought to contact that person and obtain cooperation. Given my close personal relationship with JL, I won't comment further.

41. Just after sending my response, I was informed that Mr McGrail was actually, at that moment, in No6 Convent Place on an unrelated matter. I therefore asked that he should come up to my office to see me, which he did.
42. The Attorney General, Michael Llamas QC, who I believe was with me at that time that I received the WhatsApp from Mr McGrail, was present during the whole of this meeting.
43. Although that conversation was now two years ago, I believe I have a good recollection of it. I set out in the following paragraphs my memory of that conversation and the upshot of it for me.
44. I made clear, in firm and forthright language, to Mr McGrail that I considered that the RGP had not acted properly in the execution of a search warrant in respect of a senior lawyer like Mr Levy. I repeated the points made in my WhatsApp reply. In person, I robustly told Mr McGrail that he should not think that I was making this point because I was close to Mr Levy. I told him that I would be making the same point if any other senior member of the legal profession had been involved. I used the names of Sir Peter Caruana QC and Melo Triay as senior lawyers who I am not personally linked to (and who have not been seen as personal or political supporters of mine) as examples of lawyers in respect of whom I would have made exactly the same points. (Sir Peter, who represents me in this Inquiry, is my predecessor in Office as Chief Minister and, until he stood down from active politics, had been my political opponent and rival for many years).

45. I recall telling Mr McGrail that the communications devices of senior lawyers were likely to include legally privileged material which would have to be sifted through by the RGP in a warrant type situation such as this one they had brought about, an expertise which the RGP did not have in dealing with 'white collar crime'. Additionally, there would be personally sensitive information on such devices. I told Mr McGrail that there would be myriad, unrelated, conversations between Mr Levy and me, for example, on matters outside the RGP's interest, but which would be private.
46. I said that if the police were investigating a lawyer for an offence in respect of which they might destroy evidence, then they could seek to persuade a magistrate of the need for a search warrant. I believe I also gave the example of another ongoing investigation which Mr McGrail had himself also alerted me to, namely an investigation into another lawyer who I had been informed by the then Commissioner was being investigated for large scale drug money laundering with, he had told me, greatly incriminating factors. Mr McGrail had alerted me to this latter case given the potential damage to Gibraltar's reputation as a financial services centre from the impending arrest of this lawyer, which he had told me repeatedly was imminent.
47. During the course of this conversation, I was both angry and seriously concerned about the effect of the RGP's actions. I told Mr McGrail that I could imagine that the Government might face financial consequences from claims for damages for breaches of privacy, confidentiality and other claims. I told Mr McGrail that Mr Levy and we were all officers of the Court. In circumstances such as these, the duties of an officer of the Court would require us to cooperate and provide such information as we might have available on the basis of an Order (be it a Production Order or another type of Order to disclose information or for discovery of documents and data). I added that I believed that Mr McGrail knew that my position in respect of this investigation was that it should of course continue and that if evidence was found of corruption in public office of one of the persons being investigated, who was a civil servant, I had been clear that the Government would be the complainant in those circumstances.

48. In response to my points Mr McGrail's only retort was to tell me that the warrant had been granted by the Court and that we should let the Court decide if it had been properly granted. I said this was not the point, as the damage in attending Mr Levy's home and office in execution of the warrant in question had already been done and that I knew from my previous practice as a young Barrister that Justices of the Peace routinely granted warrants based on the information laid before them, relying on the RGP's submissions, without careful legal analysis.
49. Mr McGrail then retorted that he had taken the advice of the Attorney General on this matter. Mr Llamas, who was in the room with us throughout, stated that this was not true. Mr McGrail then insisted that he had sought the advice of the Director of Public Prosecutions on whether to obtain a search warrant or a production order for Mr Levy. Mr McGrail then specifically told me that the advice of the DPP was that they should proceed by way of search warrant. The Attorney General said he did not believe that the DPP had given such advice. I responded by saying that I too did not believe that would have been the advice of the DPP (with whom I have never discussed the matter), but that if that was the advice of the DPP, then I would have to disagree with the DPP also.
50. Further, the Attorney General made the point, of which I was not aware until that moment, that Mr McGrail had indeed sought his advice in respect of this matter and that he and Mr McGrail had agreed that there should be no further actions in that respect without them speaking further. The Attorney General told Mr McGrail that he felt seriously let down by him as a result of the RGP's actions being contrary to their latest agreed position in respect of this very sensitive matter.
51. I believe I told Mr McGrail, as that meeting ended, that I was greatly disappointed by the manner in which the RGP had acted and that I believed that they had acted improperly and outside the law. I was very angry about this turn of events and Mr McGrail's attitude in the meeting and used robust language throughout the meeting, very likely laced with expletives.
52. At the end of that fractious meeting with Mr McGrail I felt very disappointed in him. I believed that he had misled me over the question of the Attorney General's position on the issue of the search warrant. I also felt sure that the advice of the DPP would

not be as he had stated it to have been and that he had lied to me. In fact, for me the meeting ended worse than it had begun. I had not just established that the totally incorrect procedure had been followed in a sensitive matter, I was left with the feeling that Mr McGrail believed that the RGP, under his direction, could act almost with impunity and with no regard to established principles of criminal procedure that are designed to protect suspects and others who may be able to assist the police with their inquiries.

53. I do not think Mr McGrail understood then, or now, the consequences of his actions. I do not think he appreciated the negative effects to Gibraltar's international reputation, as both a finance centre and a properly policed jurisdiction, from police behaviour of this kind.
54. After Mr McGrail left the short and ill-tempered meeting with us, I subsequently asked the Attorney General to confirm for me whether or not the DPP had, in fact, agreed that a search warrant was the correct manner for the RGP to seek to obtain relevant evidence from Mr Levy. The Attorney General subsequently confirmed to me that the DPP had NOT, in fact, advised the RGP to proceed by way of search warrant in respect of Mr Levy.
55. Confirmation from the DPP that he had not advised that the evidence from Mr Levy should have been obtained by way of search warrant, was confirmation that Mr McGrail, the most senior law enforcement officer in Gibraltar, had lied to me, the most senior elected representative of the People of Gibraltar, in my office. The DPP's assertions were totally contrary to Mr McGrail's express statements to me, and on that day (12th May 2020), I lost all confidence in his probity and integrity in his dealings with me and generally in him as a result.

Operation Kramm – the incident at sea

56. The matter of the collision at sea in Spanish Territorial Waters on 8th March 2020 between an RGP fast launch and a suspect vessel in which two Spanish nationals died, has caused serious financial, legal and political problems and consequences for Gibraltar. I understand that this incident is referred to by the RGP as 'Operation Kramm'.

57. The clearly stated position of the Her Majesty's Government of Gibraltar has consistently been that our maritime law enforcement agencies should not operate outside of British Gibraltar Territorial Waters, other than in instances which involve life-saving operations where the Safety of Life At Seas Convention, or SOLAS, applies. The only exceptions to this should be instances when our maritime law enforcement agencies might:
- (i) for serious operational reasons arising from cooperation with neighbouring (essentially Spanish) law enforcement agencies, be invited into the Spanish Territorial Seas;
 - (ii) might have to navigate their way into the international channel in the area of the Straits of Gibraltar; or
 - (iii) in the event that our law enforcement agencies detected that a Gibraltar registered vessel was being challenged outside in international waters by Spanish law enforcement.
58. In fact, since early in my tenure of Office as Chief Minister, I have made it clear to successive Commissioners that I do not consider it is jurisdictionally appropriate for the RGP to operate outside of BGTW other than in the instances already set out by me.
59. I have expressed similar sentiments to the Collector of Customs in respect of the use of their maritime assets for law enforcement. Customs have not had any instances reported to me of operations outside of BGTW.
60. I was very concerned when I received the report of the occurrence of the incident in Spanish Territorial Waters in the early hours of 8th March 2020.
61. I was first alerted to the incident by Mr McGrail himself by Whatsapp message at 0605hrs:

[08/03/2020, 06:05] Ian McGrail:

CM - We're dealing with a critical incident - one of our boats has been involved in a collision with a smuggling RHIB with 4 on board. 2 on the smuggling RHIB are fatalities. Our crew are uninjured but clearly shaken & shocked.

I am invoking Post Incident Procedures and planning for consequence management.

Once I have further updates I will let you know.

Rgds

Ian

62. I replied at 0724hrs and, further, more detailed Whatsapp exchange occurred between us that day as follows. I made clear in my questions that I wanted to know if there was involvement of Spanish law enforcement.

[08/03/2020, 07:24] Fabian Picardo:

Ian. Thank you. What are the nationalities of the deceased? Was it drugs or tobacco? Any GC or SVA involvement?

[08/03/2020, 07:33] Ian McGrail: So far we have 3 identified. 2 from Ceuta (moroccan decent) & a Portuguese. No Spanish law enforcement agency involved. RHIB suspected to be involved in drug smuggling. I have also informed The Convent. I have held a "Gold" command meeting in my office to address, welfare of the crew, the investigation that will now follow, security/safety to our law enforcement officers, community impact et al. Also linked up with GC and CNP more so after the disturbances in La Linea after the other death involving the our customs patrol boat but given that those on the RHIB are not from this region it may not have an impact. I am still waiting for the 4th & (also deceased) to be identified.

[08/03/2020, 07:37] Ian McGrail: Just had the ID of the 4th one confirmed. He is also from Ceuta of Moroccan decent.

[08/03/2020, 07:40] Fabian Picardo: Thank you. Are our officers safely ashore and seen by med staff if necessary? Are their families informed they are ok, in case social media lets on there has been a fatal collision, so they don't worry?

[08/03/2020, 07:41] Fabian Picardo: Also, what time did it occur and was it firmly within BGTW or questionable?

[08/03/2020, 07:42] Fabian Picardo: I think we should announce if possible to avoid social media speculation. Have you prepared media release or do you want Stuart's help?

[08/03/2020, 07:42] Ian McGrail: Our crew are ok. Their welfare is being totally safeguarded. I am also circulating a notice to all staff to

prevent speculation and social media reporting from within. I will issue a very brief press notice shortly.

[08/03/2020, 07:43] Fabian Picardo: Ok. Re the two who survived, captured? Hospital or cells?

[08/03/2020, 07:43] Ian McGrail: Collision occurred at approx 0340hrs. Location still to be confirmed.

[08/03/2020, 07:44] Ian McGrail: The two who survived are in hospital with non critical injuries as far as I am informed.

[08/03/2020, 08:13] Fabian Picardo: Arrested, correct?

[08/03/2020, 08:14] Ian McGrail: They will be if they haven't been already.

63. In my above WhatsApp of 0741hrs, I had asked Mr McGrail specifically about the location of the events, asking if it 'was firmly within BGTW or questionable' and I set out specifically that we should be transparent about what had happened. With sensitive, ongoing, negotiations with Spain, we could not afford to have a situation where we failed to be transparent about what might have happened. Importantly, by 0949hrs on the day of the incident, some two and a half hours after first communication with me, I was told by Mr McGrail that the incident had occurred approximately six nautical miles east of Gibraltar, north of the easterly runway i.e. clearly in Spanish territorial waters.

[08/03/2020, 09:49] Ian McGrail: CM - the information suggests that the collision took place outside BGTW - approx 6NM east off the runway/Santa Barbara beach.

[08/03/2020, 09:53] Ian McGrail: When a death arises from police contact its best practice to engage with an independent investigating team & I am studying how to achieve this.

[08/03/2020, 09:53] Fabian Picardo: Ok. We need to liaise with AG on this and ensure we are transparent on this.

[08/03/2020, 09:54] Fabian Picardo: Yes, agreed. Any necessary additional expenditure will be approved.

[08/03/2020, 09:54] Ian McGrail: Many thanks.

64. These were all the WhatsApp messages that I exchanged with Mr McGrail on the day of the incident at sea.

Claims arising from collision at sea, and my exchanges and meeting with the Governor

65. On the 14th May 2020, two days after the meeting in my office in respect of Operation Delhi, which had resulted in my loss of confidence in Mr McGrail, an article appeared in a regional newspaper in Ceuta, the home of one of the deceased in the collision, which set out that claims were being filed by the survivors and the relatives / dependants of the deceased and homicide charges brought against the relevant serving officers of the RGP. Now produced and shown to me at **FP1/137-141** is a translation of the said article.
66. This article appeared barely 48 hours after the meeting I had held in my office with Mr McGrail in which I had determined that he had lied to me over the issue of the advice he had received from the DPP in relation to the search warrant executed at the home and office of James Levy.
67. I wrote to the Governor about this article and set out my concerns about it in a WhatsApp exchange which resulted in our agreeing to meet. By this stage, I was very concerned about the leadership of the RGP. I had already had to think hard about my view of Ian McGrail and his probity as a result of the integrity of his dealings with me. Now I had found out from a newspaper that there were claims being made in foreign courts (which was no surprise, as I had expected they would come) involving the RGP and of which I had not been made aware of, despite my responsibilities for public finance. The self-explanatory WhatsApp exchange is set out in its entirety hereunder, as follows:

[14/05/2020, 09:49] Fabian Picardo: Hi.

This article has just appeared. A civil claim has been filed in Spain (in Ceuta) by the families of the deceased in the incident with the RGP off the Eastside. This is obviously going to cause us huge issues. Damages claims, political problems etc. I am totally there to support the officers on the front line. I am starting to have huge concerns about the senior management of the RGP. I will alert to a particular matter when we meet, but in terms of the past few months alone: (i) this case of deaths occasioned outside of BGTW (where the statute gives them no status as police officer; (ii) the HMIC inspection issues; (iii) the Federation bullying allegations; (iv) the runway incident, where we had to go in to bat for them despite all aspects having clearly been mishandled by the

RGP (and parts of MoD also); and (v) the continuing saga of the Alcaidesa claims. I think I will be asking Ian MacGrail to provide more detail and in writing as to what happened here and what they are going to do to engage with these claims before there is any requirement that they do so. I am starting lose confidence here. Best wishes. Fabian

[14/05/2020, 09:49] Fabian Picardo:

<https://elfarodeceuta.es/denuncian-policia-gibraltar-muerte-dos-ceuties/>

[14/05/2020, 09:58] Deputy Governor Mobile:

Agree. As we thought at the time, wrong appointment. Remind me to tell you about the recruitment process which was abject. Should we meet tomorrow after or before platinum?

[14/05/2020, 10:43] Fabian Picardo:

After Platinum best from my point of view. I am also concerned about ensuring our Coroner gets this right... We cannot afford to be anything other than 100% transparent on this and show that accountability is the hallmark of what we do as a Government, even if that means dragging RGP kicking and screaming to that higher standard. 'Who polices the police' is such overused shorthand, but it is important!

[15/05/2020, 11:02] Deputy Governor Mobile:

Re the RGP, I'm still happy of course to meet after platinum. I've asked the Met where things are with their independent report. Commissioner has not mentioned it to me.

[15/05/2020, 11:17] Fabian Picardo:

We should meet. It's very concerning. Evidence of a deeper malaise I fear. Come over after platinum.

[15/05/2020, 11:37] Deputy Governor Mobile:



68. After this exchange, I met with the Governor. I am not able to recall that meeting in detail, but subsequent WhatsApp and email exchanges have assisted me to reconstruct the discussion and events that followed. I do specifically recall, however, that I explained to the Governor, Nick Pyle, the issues of the execution of the search warrant in respect of Mr Levy and my views in respect thereof, which was central to my loss of confidence in Mr McGrail and, in fact, is what I was referring to in the first of the WhatsApps I have extracted, when I say: *'...I will alert to a particular matter when we meet...'*.
69. After the meeting the Governor and I continued to exchange WhatsApp messages. These are self-explanatory as to our joint thinking on the issues.

[15/05/2020, 20:03] Deputy Governor Mobile:

Good as always to catch up. I don't see any option re CoP given the evidence. I'll speak to Joey carefully sometime next week. Quite bizarrely, the Federation could end up "defending" Ian! Have a good weekend. Nick

[15/05/2020, 20:42] Fabian Picardo:

Thanks Nick.

I think you have probably seen this coming before I have. To extent I allowed too much of the benefit of the doubt here and strained the most important relationship Gibraltar has (with the UK) in doing so.

I sincerely hope the Federation doesn't make such a mistake, because it would lead me not to have confidence in it if they did. Again, we shall have to set out our thinking clearly and then I doubt anyone would see this cumulative record of behaviour as defensible. But loss of life really puts us now in different territory.

I never would have thought I would be of this view, especially post Castree - but it feels like the RGP has gone backwards not forwards. A real pity for the good people in there who need nurturing and good leadership.

Have brought papers home to get under the skin of this.

Try to have a break this weekend if you can.

Best wishes.

Fabian

[15/05/2020, 20:57] Deputy Governor Mobile:

Thanks. Agree we need to approach this correctly and carefully (but that's a given in my opinion). It's good to have faith in human nature but sometimes we need a reminder that not everyone has the same ethics / morality they should have and group think doesn't help (within the RGP). I will get some rest. I hope you too. Enjoy your bbq. Best. Nick

[16/05/2020, 11:47] Fabian Picardo:

My pillow always gives me the best advice: if we are going to do this, do we very discretely at your end, line someone up. We cannot have it headless.

[16/05/2020, 13:58] Deputy Governor Mobile:

Thinking about it quite a lot. Need to discretely bring Joey Britto into our thinking. I'm happy to do that Monday.

[16/05/2020, 14:04] Fabian Picardo:

Yes. Agreed. Shall we do so early? Morning coffee the three of us in my or yours?

*[16/05/2020, 14:05] Deputy Governor Mobile:
Let's do mine. 09.30?*

*[16/05/2020, 14:06] Fabian Picardo:
Yes. Agreed. Shall I ask him or will you?*

*[16/05/2020, 14:08] Deputy Governor Mobile:
I've just asked him. I'll also try to speak to our OT Police Advisor based
in Miami. I'll update you on my thinking before we meet*

*[16/05/2020, 14:09] Fabian Picardo:
Ok. I will try to fair that draft I have prepared also for discussion. Any
news on the Met's report?*

*[16/05/2020, 14:17] Deputy Governor Mobile:
Nothing yet re Met report. Will call them if necessary.*

70. The following day, in the evening (18:47hrs) of the 17th May 2020, which was a Sunday, I received a lengthy email from the Governor which set out his thinking about the issues we should put, together, to the Chairman of the Authority, Mr Joey Britto. Now produced and shown to me at **FP1/142** a copy of that email. The content of the email from the Governor is self-explanatory.
71. The issue of the leadership of the RGP had become among the top priority issues I was dealing with at this time. The initial social COVID lockdown of Gibraltar was being lifted, we were publishing our 'Unlock The Rock' document on de-escalation of lockdown measures. The Brexit negotiations were already ongoing as we sought to finalise the terms of our withdrawal from the EU and a basis for our future relationship with the EU. Although these issues were of overriding importance, the matter of the leadership of the RGP, given the circumstances I have already alluded to, was also important.
72. As a result, later that same Sunday 17th May, (at 23:52hrs) I sent a reply to the Governor setting out my responses to each of the points he raised in his email and attaching a transcript of Mr McGrail's interview on the Gibraltar Broadcasting Corporation's in-depth news programme, 'Viewpoint'. Now produced and shown to me at **FP1/143-153** a true copy of that email.

73. I would highlight that in this email I make clear, in particular, that I have analysed the five criteria that apply to the Authority's considerations under section 34 of the Police Act. It is also clear from what I tell the Governor, that my concerns were caused principally from the issues arising in relation to the matter of the warrants obtained and executed in respect of Mr Levy, and that I had lost confidence in the probity and integrity of Mr McGrail. The most relevant part of the email specifically provides, in paragraph 4 on integrity, as follows:

"... I have shared with you also the reasons this week why I have lost confidence in the probity and integrity of the Commissioner himself (re James Levy QC warrants). As I told you, I believe that view is shared also by the Attorney General but with whom I have not yet discussed my Police Act concerns. (On the latter, I think we should also find time to seek Michael's advice - if he is able to carve out time given the other demands on his time (vide Brexit) - to us on this subject). This is possibly the issue of deepest concern to me as it goes to the integrity and probity of a key individual in the maintenance of the respect for the Rule of Law. Additionally, that individual, as Commissioner is at the head of the organisation that is institutionally one of the guardians of the Rule of Law alongside the Executive and the Judiciary. To an extent the police becomes a fourth branch of government in the maintenance and preservation of the Rule of Law. Without the Rule of Law we are unrecognisable as a nation. I can imagine no greater concern than this in the context of my ability to discharge my oath to the Crown and to the People as Chief Minister."

74. I received an email response from the Governor early the following morning (at 08:39hrs). Mr Pyle responds fully to my email and specifically states, in the third paragraph of his email (a copy of which is exhibited at **FP1/154**):

"... Thank you also for your preliminary views on the five criteria with I concur and in particular on the issue of integrity."

75. On 20th May (13:48hrs) I was sent an email by the Attorney General forwarding to me a communication from then Superintendent Cathal Yeats. In that email Mr Yeats is seeking funding for legal representation for the RGP in respect of the damages claims communicated to the force and arising from the collision at sea. I responded to that email by writing to the Attorney General within half an hour (14:14hrs) setting out my concerns that, on a matter as fundamental as that, Mr McGrail had not been in contact with me. I stated the following specifically:

“... I think it is entirely inappropriate for this matter not to have been raised with me in the first instance by the Commissioner.

This matter raises issues of fundamental human rights, the right to life, potential payment of huge amounts of damages, the potential extradition and liberty of serving police officers being at stake, the issue of Standard Operating Procedures which may be in place and the management thereof. All of that is in addition to the huge potential political exposure that arises for Gibraltar as a result thereof and the concomitant (and dangerous) issues of sovereignty and the United Nations Convention on the Law of the Sea.

Indeed, it is difficult to think of an issue as fundamental as this affecting the RGP, certainly in the time I have been in office. There is no consideration in the email below of claims or offences going beyond "the officers crewing the vessel", which is also, in my view an issue that may also need further consideration.

As you know, it comes against the backdrop of the very unflattering report from the HMICFRS.

I am therefore surprised and greatly disappointed that these issues have not been the subject of a detailed submission to me by the Commissioner in respect of the events in question and the issues which now arise.

I shall therefore be writing directly to the Commissioner on this and all other aspects of this matter. In the interim, I do not authorise the incurring of any expenditure in briefing out of this matter at this stage.

Please refer both the DPP and Superintendent Yeats to my response.”

76. Now produced and shown to me at **FP1/160** is a copy of that email of 20th May 2020 from Mr Yeats forwarded to me by the Attorney General and, at **FP1/162**, my response. I also forwarded a copy of that response also to the Governor (at **FP1/165**).

77. My response to the Attorney General was forward by him to Mr Yeats and he forwards it onto Mr McGrail. Mr McGrail responded to me some hours later (at 17:53hrs), also on the 20th May. His email, which is now produced and shown to me marked **FP1/169**, stated as follows:

Dear CM –

I refer to the below thread which includes you response to the AG and which has been forwarded to me.

You are evidently very disappointed but I want to reassure you that it has never been my intention to withhold anything from you concerning this very serious matter. I provided you with an overview on the day of the incident, then engaged with the AG as per your suggestion and have been doing so ever since. I will hopefully be in a better position to brief you on the full details of the incident once I receive the report of the findings of independent investigation team we called in. This team had to return early to the UK because of the COVID-19 crisis and because of the lockdown in UK, they have been unable to progress the matter as expeditiously as we all would have wanted.

The letter from local counsel representing the families and suggesting a future claim for damages was only received a few days ago which is what triggered our enquiry with the DPP only yesterday concerning legal representation.

I am of course available to discuss all the points you allude to at your earliest convenience.

78. It seemed to me that Mr McGrail was making excuses for not having provided me with timely information about the claims, and I was even more disappointed to learn that the RGP had received the damages claims, ‘some days earlier’ and I had not been told. In fact, I had been left to read of the start of the process of the potential claims in the newspaper report at **FP1/137-141** when the RGP had clearly already received notice of these. In the end, it would be my responsibility as Minister for Public Finance to find the funding for the inevitable payment of damages that would eventually likely result, and to deal with the political fall-out and public reactions and explanations.
79. Shortly after I received the email from Mr McGrail, I forwarded it to the Governor (at 18:54hrs on 20th May 2020 – see **FP1/173**). In forwarding that email, I added a note which read as follows:

“Please see below which I have just received from the CoP. Given the seriousness of the matter, I would appreciate the opportunity to discuss with you my intended response. I consider this is a trigger the only appropriate response to which will be the exercise of my powers under s.15(1)(a).”

80. In the circumstances, and having considered the matter further, I concluded that I had no choice but to exercise my power under Section 15(1)(a) of the Police Act to seek a factual report from the RGP on the collision at sea. I was required by section

15(2) of the Police Act to keep the Governor informed of any exercise by me of that power, which I did, and discussed the exercise of the power with him. An exchange of WhatsApps the following day discloses that I shared a draft of the section 15 request for a factual report by email with Governor (at 19:51hrs) on which he commented by WhatsApp.

*[21/05/2020, 19:55] Fabian Picardo:
See your email. Sent draft there. Its here also if easier:*

*[21/05/2020, 19:56] Deputy Governor Mobile:
Ok. Will look at it now.*

*[21/05/2020, 20:12] Deputy Governor Mobile:
👉. 1 typo. 1. The facts. Para 3 first line there is a to missing.*

81. The final, signed, version of the section 15 request to the RGP for a factual report was sent to Mr McGrail at 20:58hrs on 21st May 2020, a copy of which is now produced and shown at **FP1/181-199**. I forwarded copies of the final version of it to the Governor, the Minister for Justice, the Attorney General, the Chairman of the Authority and the Director of Public Prosecutions.
82. In particular, in the context of my section 15 request, the last two paragraphs on the third page of the letter (see **FP1/183**) specifically address matters of confidence. I state the following explicitly:

“...As a result, in light of the above, I have no confidence that you have expeditiously provided me with all the information and documentation that I should have been provided with in the context of the seriousness of the events in question.

In particular, I have no confidence that either the Government or the office of the Governor (with whom I have discussed this matter at length) have had the timely candor and transparency we would have expected from you in the circumstances arising in respect of the Incident.”

83. My discussions with the Governor had led us both to conclude that we had no confidence that we were being provided with all information in respect of the collision at sea. We now knew that we had found out about serious and substantial damages claims from the media before we were informed by the RGP. We also could see that whilst I had been told almost immediately after the incident that it had occurred several nautical miles outside of the BGTW, the same information had

been withheld from the Governor, despite the nature of the incident and his responsibility in respect of external relations.

84. Mr McGrail acknowledged receipt of my section 15 request the following day, the 22nd May (at 10:20hrs), confirming that he noted my request and that he would revert with the factual report as requested. Now produced and shown to me marked **FP1/200** is a copy of this email.
85. I received the factual report I had requested by email on the 28th May at 16:21hrs, within the seven day period of time I had provided in my letter of request of the 21st May. Also attached was a timeline of matters relating to Operation Kram and a timeline of communications. Now produced and shown to me at **FP1/203-234** copy of the Report itself, at **FP1/235-274** copy of the timeline of matters and at **FP1/275-288** copy of the timeline of communications. The factual report was accompanied by five Lever Arch files containing the material referred to in the factual report. I am able to provide this voluminous information to the Inquiry should it be required, but I do not consider it contains any information which is relevant to the deliberations of the Inquiry.
86. It is clear from the timeline of communications that I was told one thing about the location of the incident, hours after it had occurred, and that the Governor was not given the same information until three days later.
87. As I set out in paragraph 6 above, matters of external relations remain the formal responsibility of the Governor under the Gibraltar Constitution (subject to a requirement for consultation with the Chief Minister). In respect of this very serious matter, Mr McGrail was failing to provide information to the Governor on a matter of external relations and, to make matters worse, was providing one version of the truth to me and another to the Governor. This further sustained our loss of confidence in Mr McGrail as Commissioner of Police.

Meeting with Authority Chairman on 18 May 2020

88. As a result of all of the above, but before sending out my request under section 15, and after the various discussions with the Governor I have already referred to, the Governor and I met with Mr Joey Britto, the Chairman of the Authority at the Convent at 0930hrs on Monday the 18th May 2020.
89. I recall that Mr Britto was very concerned, but not surprised, when the Governor and I shared our concerns with him. Although I am unable to recall now the details of the meeting, I had agreed with Mr Britto that I would provide a note of the concerns that the Governor and I had shared with him so that he could accurately reflect these to the members of the full Authority in a way that did not in any respect mischaracterise our position. I know Mr Britto was keen to ensure that he was accurate in his reporting back to the other members of the Authority. As a result of the meeting, I exchanged a number of WhatsApp messages with Mr Britto which culminate in my sending him the note agreed. These messages are self-explanatory and provide as follows:

[18/05/2020, 11:37] Joey Britto: FYI - I'm meeting them this Thursday morning - some of them work so I've had to allow notice

KR
Joey

*[18/05/2020, 11:52] Fabian Picardo:
Thank you. Much appreciated. I am happy to prepare a note for you if you think that would be helpful.*

*[18/05/2020, 12:05] Joey Britto:
Would you? Only if it's no trouble...?*

*[18/05/2020, 12:07] Joey Britto:
I know what I have to say to them but would be good to have something for me to act as a summary of sorts*

*[18/05/2020, 12:12] Fabian Picardo:
Sure. I will set out a file note of this morning so you can use it to reflect what we told you.*

*[18/05/2020, 12:12] Joey Britto:
Thank you*

[20/05/2020, 08:35] Joey Britto:

*Fabian - remember the notes you were going to send me either via WhatsApp or email - I don't want to get this wrong, please... thanks.
Meeting my colleagues tomorrow at 9.30...
KR Joey*

*[20/05/2020, 08:38] Fabian Picardo:
Yup. Onto it already.*

*[20/05/2020, 08:45] Joey Britto:
Thanks*

Now produced and shown to me at **FP1/289-293** a copy of the note I prepared for the Chairman of the Authority which reflects all matters referred to at the meeting between Mr Britto, the Governor and myself on the morning of 18th May 2020 at the Convent. The note demonstrates that the matters we referred to Mr Britto were the ones which the Governor and I had written to each other about by email over the weekend, including my concerns about relating to the matters of the search warrant in respect of Mr Levy.

90. As a result of the Governor's and my concerns, I understand that the Authority met. I exchanged various other WhatsApps with Mr Britto throughout this time. I sent him a copy of the Section 15 request for information I had issued. He also asked to come and see me and asked me a question about the manner of application of Section 34 of the Police Act, which I answered. I set out that exchange of WhatsApps in its entirety as follows:

*[21/05/2020, 11:58] Joey Britto:
Fabian - could I possibly see you this afternoon when Ernest goes to see you at 4.00?*

*[21/05/2020, 11:59] Joey Britto:
Or around that time?*

*[21/05/2020, 12:02] Fabian Picardo:
Yes. Sure. See you then.*

*[21/05/2020, 12:02] Joey Britto:
Thanks see you at 4.00*

*[21/05/2020, 18:26] Joey Britto:
Fabian - it seems to say in 34(2) that he has to be given the opportunity to make representation before the invitation to retire? I need clarity on this point, please. I don't want to get this wrong!*

[21/05/2020, 18:30] Fabian Picardo:

Hi. Yes. That is what you will, in effect be doing. You come back to us to seek our consent after the representations have been received. I will write the sequencing down for you as I see it if you wish. I am just going to finish a note first.

[21/05/2020, 18:42] Joey Britto:

In any case, I'm sending you text of draft letter I plan on giving him after my meeting - grateful for your once over?

[21/05/2020, 19:17] Joey Britto:

Perhaps my letter should say ...you shall be invited to retire unless you wish to make representations as to why you should not within xx days?

[21/05/2020, 19:18] Joey Britto:

PS - be patient with me!

[21/05/2020, 19:31] Fabian Picardo:

Lol. Give me a few minutes as I am finishing something.

[21/05/2020, 19:34] Joey Britto:

Sorry 😊

[21/05/2020, 21:00] Fabian Picardo:

Also sent by email. See references to loss of confidence by me and the Governor.

[21/05/2020, 21:00] Joey Britto:

Oh - so you've sent this already?

[21/05/2020, 21:00] Fabian Picardo:

Yes.

[21/05/2020, 21:02] Joey Britto:

So this would make more sense now:

[21/05/2020, 21:03] Fabian Picardo:

Yes. Exactly. I would suggest that you provide 7 days at the end. If he considers more time is required he should write to you asking for more time. This is too serious to let it ride. Best wishes. Fabian

[21/05/2020, 21:04] Joey Britto:

Ok 🙌

91. The following day, Mr Britto once again asked to see me. In order to ensure that the Inquiry has the full picture of the exchanges between us on that day, I now set them out here as follows:

[22/05/2020, 09:50] Joey Britto:

Can I see you today before lose of play - I've given him letter but he is asking for details in writing - alone about getting a lawyer etc I need to discuss a couple of issues he's raised please

[22/05/2020, 09:59] Fabian Picardo:

Hi Joey. Sure. Shall we meet at 2pm?

[22/05/2020, 09:59] Joey Britto:

See you then – thanks

[22/05/2020, 15:33] Joey Britto:

Fabian - please see main points I felt were the most relevant to put in writing

[22/05/2020, 15:38] Joey Britto:

There's a 'neither nor' that slipped in – typo

[22/05/2020, 15:59] Fabian Picardo:

There are some "his" rather than yours.

[22/05/2020, 16:05] Joey Britto:

Yes sorry - I'll fix it of course - but as summary is it ok?

[22/05/2020, 16:06] Fabian Picardo:

Cant read fully for another hour. In a celac meeting.

[22/05/2020, 16:09] Joey Britto:

Ok sorry

[22/05/2020, 18:19] Joey Britto:

Fixed - this is a summary of main points but I suspect he'll want much more almost expecting something like a charge sheet... see if you feel I can send him this...

[22/05/2020, 18:47] Joey Britto:

Apart from everything I feel worse having to bother you so much - I apologise for this

[22/05/2020, 18:55] Fabian Picardo:

Dont worry. I am checking it now.

[22/05/2020, 19:37] Fabian Picardo:

I have added a little more so that he knows the case he has to meet.

[22/05/2020, 19:37] Joey Britto:

Thank you very much and once again, I really appreciate this!

[22/05/2020, 19:39] Fabian Picardo:

Least I could do

[22/05/2020, 19:39] Fabian Picardo:

.We

[22/05/2020, 19:39] Joey Britto:

De verdad 😊

[22/05/2020, 19:39] Fabian Picardo:

must get it right and he deserves to be given the picture he has to address.

[22/05/2020, 19:40] Joey Britto:

Indeed - he has it verbally and now in writing

[22/05/2020, 19:40] Joey Britto:

Thank you once again

92. As the WhatsApp exchanges reflect, Mr Britto then sent me draft, and then a final version, of the letter that the Authority were sending Mr McGrail pursuant to section 34 of the Police Act. Now produced and shown to me at **FP1/294-295** a copy of the version of the letter that I was sent by Mr Britto and at **FP1/296-298** is the version I sent back to him with amendments designed to ensure that Mr McGrail had greater information as to the reasons why the Governor and I had lost confidence in him. I have highlighted the areas that I added to. As I said in the exchange of WhatsApp messages at the time, I believed it was important that the procedure was properly followed and that Mr McGrail had the information necessary for him to see the picture he had to address in responding to what was being put to him, as he is entitled to do under section 34(2). In this respect, by adding allusion also to the views of the Attorney General, I ensured that in the letter from the Authority to Mr McGrail he was aware that the events of the 12th May were important in the context of the loss of confidence in him.

93. On the morning of the 29th May Mr Britto contacted me seeking my agreement, as the addressee of the RGP factual report, that the said report could be shared with the other members of the Authority. I agreed immediately. The WhatsApp exchange in that respect provided as follows:

[29/05/2020, 11:43] Joey Britto:

Dear Fabian - I feel I should share report from CoP with GPA colleagues under strict confidentiality- given I was copied in I feel obliged to do so... seeing as it was addressed to you, I would need your permission.

*[29/05/2020, 11:44] Fabian Picardo:
Of course. I fully agree.*

*[29/05/2020, 11:44] Joey Britto:
Thank you*

Ian McGrail's response to the Authority's letter

94. The response from Mr McGrail to the Authority's letter was received in a letter from his solicitors, Messrs Gomez & Co, later that same day, the 29th May 2020. The terms of the letter suggested a conspiracy to remove him from office and all manner of impropriety by all the highest authorities in the land, when, in fact, there was a clear statement that he should leave office as a result of a communication to him that the relevant constitutionally established and statutorily empowered individuals had lost confidence in him. Now produced and shown to me at **FP1/299-328** a true copy of that letter.
95. The Chairman of the Authority asked my opinion on whether or not he was able to share it with the Governor, the Attorney General and me when it was received. I agreed it should be shared with all those singled out for mention and attack in the letter from Gomez & Co.

*[29/05/2020, 17:52] Joey Britto:
F- I have just received a letter from CoP as well as a letter from Bicholas Gomez who is representing him. Naturally I shall share with GOA colleagues for their views but I am going to forward to you, Nick and Michael as well. Is this ok?*

*[29/05/2020, 17:52] Fabian Picardo:
Yes please.*

*[29/05/2020, 17:52] Joey Britto:
Nicholas

*[29/05/2020, 17:52] Joey Britto:
Will email it to the three*

*[29/05/2020, 18:15] Fabian Picardo:
Thanks. Got it.*

My response to Ian McGrail's letter

96. Once I had seen the letter from Messrs Gomez & Co it became even clearer to me that the Governor and I had been right to raise with the Authority our concerns as to our loss confidence in Mr McGrail. It would not be possible for Mr McGrail to continue as Commissioner after such a scurrilous letter from his lawyers which cast the worst aspersions upon the character of the Governor, the Chief Minister and the Attorney General. It was clear that, in his mind, Mr McGrail believed he was beyond reproach in all matters, infallible and that, conversely, we – the Governor, the Chief Minister and the Attorney General, were illegally conspiring against him to prevent him from independently conducting an investigation. None of that is true.
97. In the circumstances, and although I had no legal or other obligation to answer the absurd allegations made in the letter from Mr McGrail's solicitors, I did write to the Authority placing my detailed response to those allegations on the record. Now produced and shown to me at **FP1/327-334** a true copy of my letter, dated 5th June 2020, to the Chairman of the Authority. I have also seen copies of letters from the Governor and the Attorney General, also to the Chariman of the Authority, replying to the letters from Gomez & Co to the Authority, copies of which are now produced and shown to me at **FP1/335-338** in the case of the Governor and at **FP1/339-342** in the case of the Attorney General.

The Authority's default

98. The Authority wrote to Governor, copied to me, also on Friday the 5th June. In that letter the Authority set out that it had been advised that it had followed a 'fundamentally flawed' process under section 34 of the Police Act and that they had to withdraw. Now produced and shown to me at **FP1/343** is a copy of the Authority's letter dated 5th June 2020.
99. I discussed the letter from the Authority with the Governor. As a result of this letter, I am aware that the Governor was advised by the Attorney General that the circumstances envisaged in section 13 of the Police Act, which provide for the engagement of the 'Governor's powers in default by the Authority' came into play.

The Governor's concerns and mine as to the matters which had affected our confidence in Mr McGrail continued unresolved, and had in fact been exacerbated by the statement from his solicitors to the Authority.

100. I am also aware that, pursuant to the above withdrawal by the Authority and the advice from the Attorney General, the Governor sought a meeting with the then Commissioner on Friday the 5th June 2020, in order to start the process of engaging in the exercise of his powers under section 13 of the Police Act. The Governor sent Mr McGrail an email with a letter, dated Saturday 6th June 2020, which the Governor sent me a copy of, pursuant to the obligation under section 13(2) to keep me informed of all developments. Now produced and shown to me at **FP1/344** is a copy of that letter. Importantly, the letter from the Governor to Mr McGrail reflects on statements from Messrs Gomez & Co to the Authority in which they refer to an intention on the part of their client to 'retire' (the language of section 34 of the Police Act, not resign as provided for in section 13 of the said Act).

101. I was also provided with copies by the Governor of letters dated the 8th and 9th of June 2020, copies of which now produced and shown to me at **FP1/345** and **FP1/346**, respectively. In these, the Governor reflected (on Monday the 8th June) that Mr McGrail had confirmed that he was requesting early retirement and the terms on which he would communicate the decision publicly. On the 9th June, the Governor's letter set out the terms of Mr McGrail's early retirement which, given that it engaged financial considerations had been cleared with me.

The period from March 2020 to June 2020- the Covid Pandemic and the HMIC Report

102. The times when these matters were playing out were extraordinary. The 8th March – the date of the collision at sea - was just before the COVID pandemic struck Gibraltar. The Government would announce measures to close hospitality some days later. We would then lock down those aged over 70 on the 17th March. By 22nd March the Government had announced a full social lock down of the general population of Gibraltar. During this period, practically all my, and Government's time, was spent dealing with this first wave of the pandemic.

The HMIC Report

103. I was aware that the HMIC report completed in 2015 had raised a number of recommendations. These had been the subject of the reference in Mr McGrail's own application for the post of Commissioner of Police when he applied in 2017 (see paragraphs 27 and 28). As a result, however, of the many very difficult matters that required my attention at the time, I was not able to focus on the many and serious findings and recommendations which were made in the follow-up visit by HMIC inspectors in 2020.

104. I was alerted to the 'quite damning' nature of report by the Governor by email of 30th April 2020 (at 17:11hrs). The Governor's email concluded as follows:

Given your pre-occupations, I'm happy to discuss how best to take this forward with the Chair of the GPA and perhaps the Chief Secretary, in the first instance. My initial thought is to suggest the Commissioner makes the report public at the same time he publishes his roadmap on the way forward. So being proactive rather than reactive.

Happy to discuss when we next catch up on Business as Usual issues.

105. I replied that same evening, (at 17:28hrs) saying that I agreed with the Governor's proposal, adding that I thought we might meet with the Commissioner and gently point him in that direction.

106. On the 5th May (at 09:00hrs), I received an email from Mr McGrail on the HMIC report, including a draft press statement from him welcoming it. The email stated as follows:

YE, CM, MoJ –

I understand you have all been briefed on the HMICFRS report which was received by the GPA in mid-April.

Having consulted the matter with the Chair, Dr Britto, I have no major issues with the report being made public, but I equally expect a level of interest from the media which is why I have prepared a press statement (see attached) in anticipation of this. I share this because the media will no doubt also ask questions from yourselves and I thought it prudent that you were apprised of the line I was taking.

Happy to discuss further if you feel it necessary.

*Best wishes
Ian*

I did not reply to this email at all.

107. I want to be clear in telling the Inquiry that I was not able to find sufficient time to review the detail of the HMIC recommendations at this time. Gibraltar was still going through its lock-down and initial COVID restriction period. When I was able to review the HMIC report, I found it was very damning. I want to be clear also in stating that the report did not make me lose confidence in the integrity or probity of Mr McGrail as Commissioner of Police. I was, however, clearly of the view that, once I reviewed the conclusions, I was persuaded that they did reflect on Mr McGrail's ability to maintain the efficiency and effectiveness of the RGP, which are also key aspects of the criteria of the power of the Authority in section 34(1) of the Police Act. I was, thereafter, also not confident that Mr McGrail could be the person to address the HMIC recommendations, given he had demonstrably failed to act since 2018 and matters had obviously deteriorated and not improved on his watch. He had, for instance, as far as I am aware, not established the working group he had suggested in his job application was 'imperative'.
108. I considered this issue important, and a key issue in particular for the Governor. For me, the key issue affecting my confidence in Mr McGrail, however, related to my personal loss of confidence in his integrity and probity as a result of his having misled me.

The Gibraltar Police Federation

109. When I was appointed as Chief Minister, one of the policies which we implemented was the implementation of a Police Federation, on the lines of those established in the United Kingdom, for the representation of officers. This worked well and was embraced by Commissioner Yome. I found, nonetheless, that the relationship between the Police Federation and Mr McGrail was very difficult. Mr McGrail seemed incapable of accepting even the most basic criticism from the Federation. He was not able to engage with them positively at all.

110. On one occasion, I recall Mr McGrail writing to the Governor to ask him to propose legislation to limit the powers of the Federation in the representation of its members. I told Mr McGrail that I did not agree with the proposal to curtail the representative rights of those elected by police officers to represent them in the Federation.
111. Although this did not cause me to lose confidence in Mr McGrail, it was a demonstration of his very fractious and difficult approach to relationships. Additionally, I am aware from my continued contact with the Police Federation that, in contrast, they have had a very positive relationship with the new Commissioner, Richard Ullger.

Conclusion

112. It will be apparent that by mid-May 2020, after the meeting of 12th May in my office on the issue of the search warrants, I had completely lost confidence in Mr Ian McGrail's probity and integrity and competence (effectiveness). I believed that Mr McGrail had lied to me about one thing (the alleged advice on the search warrant in Operation Delhi), had misled the Governor about another (the location of the collision at sea), and I had reached the considered view that Mr McGrail had lost my trust and confidence as Chief Minister.
113. In the circumstances, and for all those reasons, but undoubtedly principally for the reasons which related to the deception Mr McGrail had been responsible for in respect of the search warrants in respect of Mr Levy in the Operation Delhi investigation, I considered that, after I had spoken to the Governor, it was right we should express our concerns transparently to the Authority (given their powers under section 34) and, in default of the Authority, that I would agree that the Governor should act thereafter (under section 13 of the Police Act).
114. It was inconceivable to me that Mr McGrail could continue as Commissioner of Police having lost the confidence of both the Governor and the Chief Minister, still less after the letter dated 5 June 2020 from his lawyers Charles Gomez & Co to the Authority. I therefore fully supported the Governor in his intention to have used his

powers under section 12 of the Police Act had Mr McGrail not made it unnecessary for him to do so by choosing to retire, before he could or had to do so.

SWORN by the above-named deponent
at No 6 Convent Place, Gibraltar
this 26th day of May 2022

Personal Data

Before me,

Callum Smith
Commissioner for Oaths

Personal Data

Commissioner for Oaths

This Affidavit is filed by Messrs Peter Caruana & Co of Suite 933, Europort, Gibraltar, solicitors for Fabian Picardo.