

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")

**SECOND AFFIDAVIT OF
FABIAN PICARDO KC MP**

I, **Fabian Picardo**, Chief Minister of No. 6 Convent Place, 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 Third Affidavit dated 4 October 2022 ("McGrail 3"). I also address the 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.
4. I want state that the provision of this affidavit has come at a very complex time and that I have been unable to dedicate as much time to its compilation as I would have wished. The timing of the requirement to provide this affidavit has coincided with considerable political activity (including the Budget Debate 2023 in the Gibraltar

Parliament) and personal difficulties which had made it impossible for me to dedicate more time or deliver this Statement sooner.

A. RESPONSE TO MCGRAIL 3

5. At **paras 9 and 146ib)**, IM says that he was prevented from implementing his intended efficiency plans by Government's failure to deliver the promised financial support. I respond as follows:

5.1. IM fails to reflect in his statements the complexity of the Government's Budgeting process and the competing claims for resources that we have to deal with.

5.2. The Government has, nonetheless, been supportive of the use of civilians to replace police officers where possible. This has been pursued and is a process that has advanced considerably.

5.3. I did not, however, agree with IM's attempts to reduce remuneration for GPF convenors. In all the time he was Commissioner I found IM to be virulently against the work of the GPF, even going as far as trying to persuade me to undo the establishment of the Federation because he considered that he could not work with them.

5.4. Moreover, the Government has provided more resources for the RGP than ever before and it therefore seems to me to be simply 'an excuse for failure' for IM to point to the Government for his failure to be able to deliver 'efficiencies' because he was not given more resources.

6. At **para 23v**, IM says that Mr Diaz Jordan had alleged that, at my request, he had referred his proposed project at North Mole to James Levy of Hassans International Law Firm, to whom he handed a pen drive, following which he heard no further from HMGoG, but later, his proposals were used for other developments. I respond as follows:

6.1. I do not have any recollection of referring Mr Diaz Jordan to Mr Levy. In fact, I believe that the opposite may be the case.

- 6.2. I recall a meeting with Mr Guy Palmer Jnr and Mr Diaz Jordan when they presented a scheme for a reclamation in the North Mole area which would not be acceptable to the Government for a number of reasons.
- 6.3. In fact, a similar proposal for such a reclamation had already been presented to the Government internally by the Chief Technical Officer of the Government. The technical challenges for that potential reclamation project are many and the Government is therefore not currently progressing any such option directly or commercially with any third party.
7. At **para 110**, IM says, with reference to my email to Michael Llamas refusing to provide funds at that time to RGP for external legal representation in relation to the claims by the families of the deceased in the maritime incident, that I was very annoyed to hear of the situation “from the AG” when I expected this to have come directly from IM. I respond as follows:
- 7.1. It is incorrect to say that my annoyance was due to having heard “from the AG”. It was not who I had heard from, but the delay in my being informed that I was annoyed about.
- 7.2. As I stated in para 78 of my First Affidavit, I was 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.
8. At **para 118**, IM says that in my 1st June 2020 statement to Parliament, I wrongly informed Parliament that I had received his Section 15 Police Act report on Friday 29 May 2020 when in fact he had submitted it to me on Thursday 28 May 2020, and further that he asked me to correct the parliamentary record, but has never received a reply from me. I respond as follows:

- 8.1. The fact is that, whatever IM may say, I received the Section 15 report on Friday 29th May 2020. He may have delivered the report earlier, but it was provided to me in my office on the 29th.
- 8.2. Additionally, I did not take any point in suggesting that the report was somehow late, so nothing turns on the date.
9. At **para 119**, IM says that John Perez and I were in communications in terms which made clear that I knew about the intention for 36 North Limited to assume the contract to run the NSCIS platform and that, “to a degree”, I was in agreement with it at that stage, and indeed offered to assist Mr Perez with payment of compensation to Bland.
- 9.1. I was indeed in communication with Mr Perez, but those communications did not have the surreptitious or improper purpose that Mr McGrail seeks to impute to them.
- 9.2. I dealt with these communications in my police interview dated 25 June 2021 (exhibit **FPI/41** to my First Affidavit) in the following terms:

“By spring or early summer 2018, I knew that there were negotiations between Bland Ltd and 36 North Ltd to take over the running of the platform after the resignations of Mr Cornelio and Mr Perez from Bland Ltd. Mr John Perez had repeatedly advised me that he and Mr Cornelio wanted to establish themselves to provide advanced technological services of the type being offered by Bland Ltd. I was asked by him whether I would support them branching out in this way. I had replied that I was supportive of them setting themselves up on their own but that in doing so they should regularise their position with Mr Gaggero . (Subsequently, I had conversations with both Mr Perez and Mr James Levy QC about Hassans Ltd, of which I am a partner on sabbatical, supporting Mr Perez and Mr Cornelio through an investment in their venture, 36 North Ltd. I was asked by Mr Levy QC whether or not I would object to this. I had confirmed I would not object to such an investment by the partners of Hassans Ltd, but that this would not affect Government's attitude to 36 North in any positive or negative manner).

I subsequently had a conversation with James Gaggero in respect of the departure of Mr Perez and Mr Cornelio from Bland Ltd on 21st July 2018. That was a Saturday and I recall Mr Gaggero calling me in the morning. It was unusual for him to call me on a Saturday when I was with my family. I therefore decided to make a cursory note of that conversation, which I did not subsequently

fair into a full file note, at the time that I was talking to Mr Gaggero that morning. I was literally typing whilst holding the telephone to my ear. I now provide a screen shot copy of that note, which I typed on my ipad 'Notes' App and which can be seen not to have been touched since that date, as EXHIBIT FPI.

As can be seen from that note, and as more particularly set out in it, during this conversation, Mr Gaggero informed me that, despite seeking to persuade them to stay, Mr Cornelio and Mr Perez had decided to resign from Bland Ltd, which I told Mr Gaggero I was already aware of. Mr Gaggero further articulated that Bland Ltd had invested 8 years into developing software, and it had become a significant part of the business. (In fact, it could not be 8 years, as at that time in 2018 we had not yet been in Government for 6 years). He explained that his main concern was that this would not impact on the Government and asked for time to transition to the new team of Messrs Perez and Cornelio. I made clear to Mr Gaggero that I would be happy to work with both Bland Ltd and the new entity to assist in the 'transition' between them given that although Government's unequivocal position was - and is that we owned the NSCIS software, (despite Mr Gaggero's assertions to the contrary and his reference to us potentially, 'buying' the software from Bland Ltd), we nonetheless undoubtedly agreed that we had an amount outstanding from the Government to Bland Ltd at that stage.

I considered that the issues between Bland Ltd and Messrs Perez and Cornelio were a matter for them and should not involve me or my colleagues. Her Majesty's Government of Gibraltar had no reason to involve itself in these discussions, in part because there was already an ongoing and developing dispute with Bland Ltd over the ownership of the NSCIS platform. Additionally, as I set out above, given that the new entity that had been established by Messrs Perez and Cornelio, included a investment by the partners of Hassans Ltd (of which I am a partner on sabbatical) and of which I was aware. I therefore did not want to become involved in any aspects of the relationship between Bland Ud and 36 North which were contentious. After that date I continued to receive communications from Mr Gaggero and Mr Perez. I repeatedly emphasised to both my desire to assist both sides, on the basis that Mr Gaggero had himself set out to me on the 21st July 2018.

Nonetheless, for reasons that become apparent in the meetings and in correspondence in the period from the middle to the end of August 2018, I did not give any instructions for Mr Cornelio to 'take over' or 'continue' running what is referred to in the question as "HMGOG Platforms (including the NSCIS platform)". I had an exchange of emails and WhatsApp messages with Mr Sanchez where I instructed him to seek legal advice on how to 'transition' from Bland Ltd to 36 North at that time and I give more details of these exchanges, and I exhibit the correspondence, in answer to further questions below."

- 9.3. In the event, when matters were not resolved between Bland Ltd and Mr Perez/Mr Cornelio/36 North Limited, (and given the concerns I had about the system potentially having been compromised by those leaving Bland Ltd), I instructed that Government should continue to retain the services of Bland Limited in relation to the SSCIS Platform and Messrs Perez/Cornelio should be denied access to it. I did not feel I could take any risk whatsoever with the system and that there would be such a risk if I allowed those who had potentially compromised the system to have continued access to it and to run it.
10. At **para 137**, IM says that he was under threat of litigation mounted by Hassans in relation to the James Levy warrant/devices “with whom I knew he was in contact” (in reference to me). The intended insinuation appears to be that I was ‘in cahoots’ with Mr Levy in relation to the threat by him to litigate against Mr McGrail in relation to the warrant issue. I respond as follows.
- 10.1. I recall I had communications with Mr Levy about these claims. He was incensed at what had occurred and was very clear in his view that damages claims would be made against ‘the Government’ for the RGP’s failures, under Mr McGrail’s leadership.
- 10.2. None of those communications in any way amounted to be encouraging, supporting or otherwise promoting Mr Levy’s claims.
- 10.3. What I did think was right was for Mr Levy to challenge the issue of the warrant, even though it had been granted, and the procedure which had been followed in that respect as, from what I could see, such a warrant should never have been issued in respect of Mr Levy or any such similar individual from whom information should have been sought by way of Production Order rather than search warrant.
11. At **para 141**, Mr McGrail says that in my answers to parliamentary questions on 27 July 2020 I blatantly lied to Parliament when I told it that “*I have not raised with the Commissioner any operational matter* (Hansard refers, p.35)”. He alleges that I did raise operational matters with him, namely the execution of the search warrant against Mr James Levy. This is a grave accusation which demonstrates that Mr McGrail sees

the worst in everything without carefully understanding the import of his words. I have not lied to Parliament in this or any other respect. I have a deep respect for the Parliament that I lead and I would never lie to the Members of Parliament who sit alongside or opposite me. Although I presently hold the Office of Chief Minister, I am a Barrister by profession and, as such, I am an Officer of the Supreme Court of Gibraltar and I take my oath in that respect very seriously. I therefore respond as follows to Mr Mc Grail's suggestion that I lied to Parliament:

- 11.1. First, I did not "raise" the matter of the warrant with Mr McGrail. As I stated in para 40 of my First Affidavit, he raised it with me, in his WhatsApp message to me on 12th May 2020 at 12:25 in which he said:

"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"

I responded 9 minutes later, at 12:34 as follows:

"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."

- 11.2. As stated and described in paras 41- 55 of my First Affidavit, we met shortly thereafter in my office (he was in No 6 Convent Place when he sent the above email). I was highly critical (after the event) of his decision to have recourse to a search warrant instead of a production order. Not only was it not I who raised the warrant issue, but levelling criticism of police conduct after the event, as I and every citizen is entitled to do, does not, in a democracy governed by the rule of law, constitute "raising", still less interfering in, "operational matters".

- 11.3. For those reasons it should be clear that (i) the matter was raised by Mr Mc Grail with me and not vice versa and (ii) the issues I responded with were clearly not 'operational'. For those reasons, it should be clear that I did NOT lie to Parliament and that Mr Mc Grail should be invited to withdraw that odious allegation.
12. At **para 144**, Mr McGrail says that on 31 July 2020 in Parliament I “reluctantly” acceded to holding an Inquiry to look into the reasons why he had retired early from the RGP. There was no degree of reluctance in my statement in Parliament that I had decided to convene the Inquiry following Mr McGrail’s public call for one, although I did express the view that I thought an Inquiry to be unnecessary.
13. At **para 147 (iii) c)**, Mr McGrail alleges that, at my meeting with him on 12 May 2020 (the meeting after the execution of the warrant), I levelled a threat against him. He appears to be referring to my statement that I hoped that I was wrong in my criticism of the police conduct because otherwise “there would be consequences”. In fact, by referring to ‘consequences’ I meant that there would be consequences for the RGP in the sense of being exposed to a possible claim for damages, and to the Government that would have to pay them, and the costs of the litigation. There was no threat made against Mr McGrail, nor did he ever complain that he felt so threatened. In fact, I know that most people find Mr McGrail to be quite intimidating and a number have referred him to me as a bully. He is not the type of person who can legitimately suggest that a reference to ‘consequences’ which are not explicitly referred to being aimed at him, constitutes a threat to him that would somehow play on his mind in some way.
14. At **para 147 (iii) d)**, Mr McGrail says that although I said that I had no reason to believe that the investigation “was of JL” this fact had featured in his first briefing to you and others on 11 May 2019. I respond as follows:
- 14.1. This is not correct.
- 14.2. As I said in para 39 of my First Affidavit, “*I became aware from Mr Levy himself that he was one of the persons who was ‘of interest’ to investigators*”. In fact, I believe this was long after the 11th May 2019.

- 14.3. Furthermore, Mr McGrail's assertion is inconsistent with the fact that, in his WhatsApp message to me 12 months later, on 12th May 2020 at 12:25 (as the search warrant was being executed) he said that it was "*for (JL) in relation to the case against Perez, Cornelio & Sanchez.*" (my underlining). Mr Levy was therefore plainly not himself under investigation.
15. At **para 147 (iii) e)**, Mr McGrail says that he did not tell me that the Op Delhi investigation team had executed the search warrant on the advice of the DPP and that what he "*was referring to was the status of suspect for JL had been the subject of consultation and agreement with the DPP who had advised the team generally on the investigation throughout.*" Also, in para 33 of Mr McGrail's 's First Affidavit, he reduces the statement made by him to me in relation to the DPP's advice on the James Levy search warrant to "*all the grounds to deal with JL had been consulted with the DPP*". In other words, he is denying that he said to me in terms, or that he had ever said to Michael Llamas, the Attorney General, that the DPP had advised that a search warrant should be used against James. This is simply untrue. He most certainly told us both that the DPP had advised him that a search warrant could and should be used against Mr Levy. In fact, this was central to my loss of confidence in Mr McGrail. I consider that Mr McGrail is now seeking to wriggle off the hook of his lie by suggesting it was a 'misunderstanding'. There is no room for misunderstanding as Mr McGrail clearly told me in the presence of Mr Llamas that the search warrant for Mr Levy had been issued on the advice of the DPP. He is changing his version only now that he has seen that the DPP does not make out the lie he told me.
16. At **para 149 d)**, Mr McGrail says that HM Customs Gibraltar "*comes directly under the remit of the CM's portfolio. I came to learn from Mr Yome that he came to an agreement with the CM and then the Collector of Customs Mr John Rodriguez, of how to conclude the investigation because pursuing it could potentially cause reputational harm to the jurisdiction. Whilst I was not entirely in agreement with how this investigation was being wrapped up, I accepted that the decision did not rest with me. My colleagues and I had worked hard with some assistance from the UK's National Crime Agency and I felt it was premature to conclude the investigation. The key part of the agreement to bring this investigation to a close was that HM Customs Gibraltar would be subjected to an inspection by a team from the NCA with a view to identifying*

opportunities to mitigate malpractices which were highlighted during the course of the investigation. To my knowledge the said inspection to eradicate potential corruption in HM Customs Gibraltar has never been carried out.” I respond as follows:

- 16.1. In fact, I recall that when I met John Rodriguez about this he was very concerned that Mr McGrail had not shared information with him about this investigation.
 - 16.2. Mr Rodriguez confirmed to me that he would be progressing matters within his department and with the Commissioner.
 - 16.3. I am not aware of how the matter progressed, but I am confident that there are no systemic issues of corruption in the HM Customs Gibraltar.
17. At **para 149 f) v. to vii.** and **para 155**, Mr McGrail sets out several instances of alleged improper intervention to redeploy RGP officers. I do not accept that there is any impropriety at all in the redeployments that he is referring to. Indeed, I consider that the actions taken in respect of these cases is in keeping with practice. Moreover, in working with the current Commissioner of Police we are expecting to make changes to ensure that RGP officers are in future not able to leave the RGP to avoid disciplinary proceedings, but until that change is finalized it is possible for them to do so. I therefore respond as follows:
- 17.1. The matter at **para 149f)v** refers to an officer who was one of my close protection team. He was nearing retirement in the police. The issue in question was that the officer had failed to report a crime and had sought, in his judgement, to deal with the issue in a different way. The officer sought to transfer out of the RGP given he felt he was being very unfairly treated by being made subject to discipline as a result of what he considered to be a proper exercise of his duties, albeit one with which his colleagues did not agree. I spoke to Commissioner Yome about the matter at the request of the officer in question. Commissioner Yome initially agreed with my view. He later got in touch to tell me that his Senior Management Team were not content to proceed on the basis that the officer was moved. I asked to meet the Senior Team. That led to a robust exchange as to the effect that police discipline would have on a

person's employment in the public sector. I was satisfied that the officer in question could continue to work in the public sector despite the issue that had arisen and he has done so until this year. It should be noted that by transferring out of the Police the individual in question has had to continue working until the age of 60 and was not able to retire at 55 as he would have been able to do if he had remained in the RGP. Additionally, it should be noted that Mr McGrail is wrong in that there was any reference to the BCA in respect of this officer's move. That arose only in relation to the officer referred to at para 15.2 below.

17.2. The matter at **para 149f)vi.**

In this case the issue in question was an allegation that a young officer had stolen cleaning products (one pack of some detergent). In fact, the case did not proceed as there had been no evidence of theft. The officer found it intolerable to remain in the RGP given the unsubstantiated allegation of theft that had been made against her and sought a transfer to the BCA where there were vacancies that suited her skill set.

17.3. The matter at **para 149f)vii.**

I have no recollection of the detail of these transfers although I may have been asked to approve them in some way as Chairman of the GDC.

17.4. The matter at **para 155** relates to the issues of the whistle blower's legislation (which we introduced, after our election in 2011) where I have acted on advice to ensure that the individual officers in question, not just those mentioned in these paragraphs, were able to provide their evidence to this Inquiry. I nonetheless do not accept the characterisation that Mr McGrail puts on the facts. I have approved other transfers arising from whistle blowing unrelated to this case always on the same basis, acting on advice from officials and as Chairman of the GDC. In doing so, I have always sought to act in the public interest and in keeping with best practice in such cases and in cases of bullying.

18. At **para 165**, IM says that the Chief Secretary's helpful stance on his pension tax-free status on attaining the age of 55 changed after the Chief Secretary had spoken to me

about it. In fact, my view is that once a person has retired, their pension entitlements are not a matter for negotiation or discussion. Pension entitlements are fixed upon retirement. They are matters for the Principal Auditor and for those who calculated entitlements. I believe I may have told the Chief Secretary that when he raised the issue with me.

B. MATTERS WHICH I HAVE BEEN REQUESTED TO ADDRESS BY THE COMMISSIONER

19. At **paragraph 93** of his 3rd affidavit, Mr McGrail has set out the contents of a WhatsApp chat log, in which, upon learning of the location of the incident at sea, I state that the *"location does not worry me so much. Helps us in a way."*

20. The reason I said that the location could help us was twofold:
 - (i) First in demonstrating to the general public in Gibraltar that, in some instances, police co-operation involves cross border activity and that our own police may stray into Spanish waters in the same way as Spanish police often stray into British Gibraltar Territorial Waters.

 - (ii) Secondly, I thought that – although it was to cause huge diplomatic issues in the negotiations on foot with Spain at the time - it would be helpful in showing our Spanish counterparts that our police officers were seeking out illicit activity.

21. **Paragraph 149(f)** of Mr McGrail's 3rd affidavit lists various incidents that took place whilst Mr McGrail was a member of the RGP's Command Team, and in respect of which I either praised/supported the RGP/ Mr McGrail or had a more adverse position towards the conduct of the RGP/ Mr McGrail. These incidents did lead me to communicate praise to or via Mr McGrail. In the case of the airport incident, although I communicated public support for the RGP, I was concerned by the manner they had acted and the consequences for the massively important relationship with the MoD. They have been carefully chosen by Mr McGrail to seek to illustrate my support for him. Mr McGrail has, however, omitted any reference to the occasions when I had cause to take issue with him such as when he sought that the Governor should propose a change to the legislation we had introduced (pursuant to a manifesto commitment) to

create the Gibraltar Police Federation. I found this unacceptable given that the Government had obtained a popular mandate to pass the legislation, which had worked well with Mr Yome as Commissioner. There were few interactions between us as I did not often have reason to direct my attention to RGP matters other than at Budget time.

22. At **paragraph 67** of Mr Perez's affidavit, he states that during meetings with Mr Gaggero in August – September 2018 I was informed [REDACTED] [REDACTED] which Mr Gaggero suggested had been used to sabotage the operation of the NSCIS system. I do recall such information being provided to me by Mr Gaggero at a meeting at No6 Convent Place. I further recall that this concerned me greatly. As a result of the information that I was given, I recall directing that the management of the NSCIS should not be transferred to those who were potentially sabotaging it. I instructed that 36 North should not be permitted to take over the running of the system and that Bland Ltd should be able to recover the system and continue to operate it and that we should work through any contractual issues we might have had with Bland Ltd. I believe that my Principal Private Secretary, Peter Canessa, was with me at that meeting with Mr Gaggero.

SWORN by the above-named deponent
at *No. 6 Convent Place*
Gibraltar)
this *20th* day of July 2023)

Personal Data

Before me,

Personal
Data

Commissioner for Oaths



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