

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 the 4th February 2022 in Legal Notice No 34 of 2022 (“the Inquiry”)

**AFFIDAVIT OF
NICHOLAS PYLE OBE**

I, Nicholas Pyle, c/o Office of the Governor, The Convent, Main Street, Gibraltar make oath and say as follows:

1. I currently hold the post of Deputy Governor in the Office of the Governor, Gibraltar to which post I was appointed in September 2016. I am a grade 6 officer in the Foreign, Commonwealth and Development Office of the United Kingdom posted to the Office of the Governor in Gibraltar. I am a career diplomat who joined the FCDO in 1981 and prior to my posting to Gibraltar was the British High Commissioner to Botswana.
2. I swear this affidavit in response to the request by Sir Charles Peter Lawford Openshaw, DL, the commissioner appointed to conduct the Inquiry, communicated to me by letter dated 4 April 2022 from the Solicitors to the Inquiry, Attias & Levy, that I prepare and produce:
 - (i) 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

- (ii) Any documents (including but not limited to electronic documents such as emails, word documents, PDFs and SMS, WhatsApp or other instant messages) in my possession or control relevant to the subject-matter of the Inquiry. In particular, production was requested of any emails between me and the Foreign, Commonwealth & Development Office on the subject of Mr McGrail's retirement, as were referred to in a report in the Gibraltar Chronicle on 9 February 2022.
3. Insofar as the contents of this affidavit are within my personal knowledge, they are true. Insofar as they are not within my personal knowledge, they are true to the best of my information and belief and the source of that information or belief is identified.
4. In this affidavit I refer to a bundle of documents marked Exhibit NP1. References to documents in this bundle are to [NP1/page #].

The post of Deputy Governor

5. The principal function of the Deputy Governor is to support and assist His Excellency the Governor in the discharge of his constitutional and statutory functions and responsibilities.
6. The Constitution makes provisions for two specific circumstances affecting the office of Governor, namely when there is a vacancy in the Office (Section 22) and when the Governor is temporarily unable to the functions of his office through short illness or absence (Section 23).
7. Under section 23, when the Governor is absent from Gibraltar or suffering from an illness, in both cases for a period which he has reason to believe will be of short duration, the Deputy Governor takes up the position of Deputy to the Governor (commonly referred to as Acting Governor). In these circumstances powers remain vested in the Governor and the Deputy to the Governor exercises such of them as are

specified in his written appointment on the Governor's behalf and subject to any his instructions. The Deputy to the Governor is thus distinct from the Deputy Governor.

8. Under Section 22, during any period that the Office of Governor is vacant or he is absent or ill for a more extended period of time, the Deputy Governor is appointed, during Her Majesty's pleasure, to assume and discharge the functions of Governor. In this case the appointment is substantive, and the appointee is the Governor.
9. Neither Section 22 or 23 specifies that the appointee must be the Deputy Governor (in both cases it could be "any person") but the practice is, invariably that the Deputy Governor is appointed. I refer to these constitutional provisions because I have held both these positions during key times of the matters to which I refer in this Affidavit.

The Governor's powers in relation to policing in Gibraltar

10. The functions and powers of the Governor are as prescribed in the Constitution of Gibraltar (which is set out in Annex 1 to the Gibraltar Constitution Order 2006) and in any other law (section 20 of the Constitution).
11. By virtue of section 47(1) of the Constitution, the Governor has special responsibility for external affairs and internal security, including (subject to section 48) the police. Section 48 establishes and makes provision for the Gibraltar Police Authority.
12. Under the Police Act 2006, the Governor, amongst other things, –
 - (i) has "overall, ultimate responsibility for, (a) the integrity, probity and independence of policing in Gibraltar, and (b) the policing aspects of national security including internal security (Section 11);
 - (ii) may hold the Gibraltar Police Authority to account for any matter to which section 11 relates and for the professional standards of the Royal Gibraltar Police force (Section 12);
 - (iii) may exercise a number of powers where the Gibraltar Police Authority "has failed to discharge or perform a responsibility imposed on the Authority under

this Act” (Section 13(1)) . These include the power “to suspend from duty, or call for the resignation of the Commissioner (Section 13(1)(f)); and

- (iv) may grant or withhold approval to the exercise by the Gibraltar Police Authority of its power under section 34 of the Police Act to call upon the Commissioner of Police to retire in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar (section 34(1)). The Chief Minister has a similar power, and the approval of only one or other of the Governor and the Chief Minister is required to permit the Authority to exercise this power.

The retirement of Mr McGrail

13. Loss of Confidence in Mr McGrail

13.1 On the 15th May 2020, during a meeting (of which I provide further details in paragraph 26 below), the Chief Minister and I, as Governor at that time, agreed that we had both lost confidence in Mr McGrail as Commissioner of Police for reasons that we discussed at that meeting.

13.2 My loss of confidence in Mr McGrail’s probity and integrity, and his leadership of the RGP had been progressive over a period of time and by reason of a number of incidents and matters, and I explain these in paragraphs 20 to 25 below.

13.3 The Chief Minister and I agreed to ask for a meeting with the Chairman of the Gibraltar Police Authority during which we would ask the Gibraltar Police Authority to call for the Commissioner of Police’s retirement under section 34 of the Police Act. I therefore asked Joey Britto, the Chairman of the Gibraltar Police Authority (GPA), to meet with the Chief Minister and me at the Convent on the following Monday (18 May 2020), which we did.

14. The Meeting between the Chief Minister, the Chairman of the GPA and me on 18 May 2020

14.1 At my request, the Chief Minister set out the issues of concern to both of us, namely the damning HMIC report (see para 24), the incident at sea involving a

fatal collision (see para 25), the Police Federation allegations of bullying (see para 23), and the mishandling of a high-profile ongoing investigation (see para 26.6). The Chief Minister stated that as a result, we had both lost confidence in the Commissioner and were therefore requesting the GPA to consider using the powers available to them under Section 34 of the Police Act (2006) to call upon the Commissioner to retire.

14.2 I endorsed the Chief Minister's position and said that there had to be accountability for the failings. I said the common thread through all the issues appeared to be a lack of adequate management and leadership and that therefore in my opinion, it is the Commissioner who has to be held accountable.

14.3 I said that should the GPA determine that a call to retire was not appropriate, I would consider using the powers available to me under Section 13.(1)(f) which allowed me to call for the resignation of the Commissioner and that, as things stood, I would need strong and persuasive arguments not to do so. I said whilst I was not looking to pre-judge the deliberations of the GPA and was mindful that the Commissioner is allowed to make representations as Section 34 allows, the GPA should be in no doubt as to the strength of my feelings. I concluded by saying the powers I have under Section 13.(1)(f) only come into play "in default by the Authority".

14.4 Mr Britto said he took note, could see where we were coming from and would convene a meeting of the GPA as soon as practicable, commenting that the Commissioner would most likely fight this.

14.5 The Chief Minister then drafted a note of our meeting which he cleared with me and subsequently sent to the Chairman of the GPA. A copy of that note is at [NP1/1].

14.6 I reported these events to the Foreign, Commonwealth and Development Office in London by email dated 21 May 2020 at [NP1/6], and left the matter to the GPA, in whose consideration of the matter I did not participate because I was Governor at that time.

15. Mr McGrail's letter of 29 May 2020 and my reply dated 3 June

15.1 I was then simply monitoring events until I received a copy of a letter dated 29 May 2020 from Charles Gomez, Mr McGrail's lawyer, to the GPA [at NP1/8] which I took to be a rebuttal of the GPA's basis for seeking Mr McGrail's retirement. The letter contained a number of allegations against me, most notably that I was interfering with the independence of the GPA, and was an attack on my integrity and professionalism which, as I put in my reply, increased my concerns about Mr McGrail's probity and integrity.

15.2 I therefore wrote to the Chairman of the GPA on 3 June 2020 placing my response on the record. A copy of that letter is at [NP1/36].

16. The GPA's flawed actions and default

16.1 I received a letter from the Chairman of the GPA dated 5 June 2020 saying that having taken legal advice, the GPA was unable to process "the complaints made verbally to me as Chairman of the Gibraltar Police Authority on 18th May 2020 by you and the Chief Minister against the Commissioner of Police". A copy of this letter is at [NP1/40]. In a nutshell, the GPA had exercised their power under Section 34 of the Police Act to call upon Mr McGrail to retire, but later adopted the position, but not on the basis of any consideration of the merits of the matter, that by virtue of procedural errors that they had made, their process and decision to call for the retirement of Mr McGrail had to be withdrawn and could not be resumed.

16.2 I sought and received legal advice on how I could proceed, given that my concerns about Mr McGrail remained, and would now not be addressed or considered by the GPA. I received advice that the GPA's stated decision that, as presently constituted it was unable to consider "the complaints" without being vulnerable to legal challenge (for bias), and that it was therefore not prepared to do so, engaged my powers in Section 13 of the Police Act, the GPA having failed to discharge or perform a responsibility imposed on it under the Police Act.

16.3 I then met with the Chief Minister and the Attorney General to discuss the situation, given that I had not expected to be in the position of having to consider actually using Governor's powers under Section 13. I told them that—

(i) I would look to speak to Mr McGrail later in the day about the process moving forward, and that I intended to tell him that I would review all the papers in my possession over the weekend and would meet with him on Monday (8th June) to discuss the issue.

(ii) I would leave Mr McGrail in no doubt that I would be prepared to use the powers invested in me as Governor under the Police Act and that I would let him know of my drivers by handing over to him a copy of my letter dated 3 June 2020 to the Chairman on the GPA [at NP1/36]. Both the CM and AG said I could also hand over the letters they had written to the Chairman of the GPA, also in response to the Gomez letter of 29 May. The Chief Minister's letter dated 5 June 2020 is at NP1/41, and the Attorney General's, of the same date, is at [at NP1/49]. I refer to these letters together as "the Three Letters".

16.4 The Chief Minister and I were keen that I should proceed quickly as we both wanted the matter resolved one way or the other, if possible, before the new Governor arrived on 10 June, so that his arrival and start of tenure would not be marred by such a controversial, ongoing issue. Whilst agreeing, I made it clear that I did need time to review all the papers again plus consider any further representations Mr McGrail may make when we met later in the day. I thought a pause to reflect was the right thing to do.

17. Meeting between Mr McGrail and me on 5th June 2020

17.1 Mr McGrail came to see me late in the afternoon of Friday 5th June, as requested by me. He immediately said that he had a note that he wanted me to read. I said I too had something I wanted him to read, but this was not a meeting to read new documents and to then immediately get into a debate about the issues. I said the meeting was to allow me to set out the process moving forward. I said that I would review all the papers in my possession over the weekend, including the

note that he had just given me. I said I would then like to see him on Monday during which I would inform him of my decision as to the way forward. I said that whilst I had not made up my mind as to whether I would use the powers invested in me, I would be prepared to do so.

17.2 I asked Mr McGrail if he knew the reasons behind my loss of confidence in him. He said he did not. I said they were contained in the letter I was going to hand over to him, which was a copy of my letter dated 3 June to the Chairman of the GPA that I had written in response to the letter dated 27 May 2020 written to the GPA by Charles Gomez on his behalf, and to which I had taken some offence. I told him that having said to the Chief Minister and Attorney General that I would be doing this, they both said I could hand over copies of their own letters to Charles Gomez & Co. I said he should read all three letters before we meet on Monday. I then handed Mr McGrail copies of the Three Letters.

17.3 Mr McGrail's stated (on 5th June) wish to retire.

- (i) Mr McGrail in turn handed me a note, which I read in the early morning of 6 June. This was an email dated 5 June 2020, addressed by his lawyer Charles Gomez and Co, to Mr James Neish QC of TSN, Solicitors for the Gibraltar Police Authority, in which he informed that for reasons that he stated in the final paragraph of that email, Mr McGrail “feels he must apply for early retirement from the Royal Gibraltar Police” [at NP1/53].
- (ii) I immediately wrote on 6th June to Mr McGrail asking that before I review all the papers, could he confirm that this was indeed his position and if so, whether he would be tendering a letter of resignation at our scheduled meeting on Monday [at NP1/54A].

18. Meeting with Mr McGrail on 8th June 2020 and his retirement

18.1 Mr McGrail came to see me on Monday 8 June and confirmed his intention to retire subject to terms being agreed. I said that was a matter for the Chief Secretary but I would pass his request to him. Following the meeting, I wrote to Mr McGrail that same day [at NP1/55] setting out our agreed course of action,

and that I would need a letter from him requesting retirement. I ended by reaffirming my commitment to ensuring he was treated fairly and with respect at all times.

18.2 Mr McGrail wrote to me on 9th June 2020 requesting early retirement on terms that he set out in that letter [at NP1/58]. He said that if I agreed to his terms he would relinquish command of the RGP by 1800 hours on 9th June i.e. that same day. I replied to him on the same day (at 12:07) approving his application to retire early and agreeing to his stipulated terms [at NP1/57].

19. My status as Governor

During all this period of time, the Office of Governor was vacant following the end of the appointment of the previous Governor, Ed Davis, on 18 February 2020, since which date I had been appointed Governor under Section 22 of the Constitution, a position that I continued to hold until Sir David Steel, the current Governor, was sworn in on the 12 of June 2020.

My loss of confidence in Mr McGrail

20. As I have already stated, my loss of confidence in Mr McGrail's probity and integrity, and his leadership of the RGP had been progressive over a period of time and by reason of a number of incidents and matters, which I now explain. They began early on after my arrival in Gibraltar.

21. The Airfield Incident

21.1 My concerns over the leadership and management of the RGP, and over the behaviour and judgment of Mr McGrail as its Commissioner of Police, started with what I call the Airfield Incident which happened on 8 February 2017, five months after my arrival in Gibraltar. I was Acting Governor at the time of the incident.

21.2 The salient facts of this incident were as follows. Leicestershire Police had put out a wanted alert notice in respect of an individual who had by that time been

posted to Gibraltar as an employee of the Ministry of Defence. As a result, Leicestershire Police handed the lead over to MoD Service Police who arrested the individual. A decision was taken to return the individual to the UK together with his electronic devices for forensic examination in the UK. The individual and his equipment was subsequently placed on an RAF transport aircraft for that flight back to the UK.

21.3 In the meantime, the RGP had also seen the Leicestershire Police alert notice and took the view that they (the RGP) should process the individual since he was in Gibraltar. A dispute over jurisdiction ensued. Pursuant to their view that they, and not the MOD had jurisdiction, the RGP demanded that the individual be disembarked from the RAF airplane and, pursuant to that demand, blockaded the airplane and the runway with police vehicles so that the RAF airplane could not take off

21.4 After a period of standoff, the MOD relented, disembarked the individual and surrendered him to the RGP. These events naturally became public and caused considerable consternation given the close and friendly nature of the constitutional relationship between the UK and Gibraltar, and indeed the very friendly relations that have always existed between the MOD and Gibraltar.

21.5 On 1 March, the RGP arrested three of the most senior MOD members of staff in Gibraltar on suspicion of conspiracy to pervert the course of justice. Those arrested were: the Chief of Staff, British Forces Gibraltar, Colonel Frank Green; Station Commander Wing Commander Liz Hutchison; and Squadron Leader Provost Marshal Chris Collins in connection with this incident. One of them, the Provost Marshal, was, with quite unnecessary drama, removed from a civilian, commercial flight from the UK as soon as it landed in Gibraltar. Colonel Green was arrested in front of his superior, the Commander of British Forces Gibraltar, Commodore Mike Walliker. Station Commander Hutchison was arrested in front of her team at RAF Gibraltar Station Headquarters. The manner of the arrests were unpleasant.

21.6 Also on 1 March, the RGP entered HM Naval base and seized and removed service personnel equipment, including computer terminals and a whiteboard.

They then took one officer to her home to take possession of her personal phone. These actions were taken by the RGP notwithstanding that the incident had been resolved.

21.7 I raised my concerns over the RGP's above behaviours, and in particular Mr McGrail's formally on numerous occasions with the Gibraltar Police Authority , the Governor, the Chief Minister and with the Foreign Commonwealth and Development Office . Some of the actions and behaviours were described to me by senior MoD people as a cross between the Sweeney and Life on Mars, and extremely and unnecessarily discourteous. I pushed hard for a review (not an inquiry) into the incident to expose the RGP behaviours. This was accepted by the Chief Minister who tasked the GPA to conduct their own review. Their report exonerated the RGP. The GPA methodology however was in my opinion seriously flawed, not least as they did not conduct any interviews with MoD nor seek any information from them.

21.8 The then Governor and Chief Minister both agreed on the need for an independent review, as did the then Chief of Staff, Joint Forces Command, MoD in the UK. MoD however, changed their position and it was decided there should not be a review for what can be described as bigger picture relationship reasons and a wish to conclude negotiations between HMGOG and MOD around the Armed Forces Act.

21.9 As a result, I was made aware that two of the three MoD Service Police whose equipment was confiscated some weeks after the incident, were considering instigating formal complaint proceedings against the RGP via the Gibraltar Police Complaints Board. I believe one decided not to but the other, who was taken to her home by the RGP who then took possession of her personal phone, did submit a formal complaint. I do not know what is now the status of that complaint.

21.10 Issues over the forensic capabilities of the RGP also came to light during this incident. The RGP insisted that they conducted the forensic examination of the suspect's laptop and phone etc. I can't recollect the exact timeframe, but remember being told that the RGP investigations should only take a couple of

weeks after which the equipment would be handed over to MoD. Some two months or so later, with delays resulting from the RGP forensic officer being off work with stress, the RGP pronounced there was no incriminating evidence on the suspect's computer which was then handed over to the MoD. Within two weeks, MoD forensic examination identified the most serious of imagery on the computer, resulting in the accused being found guilty and given a custodial sentence. Over 1000 images were recovered.

21.11 It is difficult to over-estimate the strain under which the relationship between MOD and Gibraltar was placed, and the damage done to it, by this incident and the RGP conduct in relation to it. It required ministerial intervention in both UK and Gibraltar, and military intervention at the highest level in the UK to draw a line under it.

22. The helicopter Pilot incident

In March 2017, during a stop-over in Gibraltar, a helicopter pilot and another member of the crew were assaulted in a bar in Gibraltar, the pilot so severely that his cheek or jawbone was fractured which prevented him from flying. Despite witnesses and I believe CCTV, charges were never pressed. It took the RGP several weeks to state that the forensic evidence they had collected was not conclusive. The widely held belief in MOD circles is that the RGP did not investigate the crime correctly to protect those involved in the attack.

23. Fractured relationship with the Gibraltar Police Federation

23.1 Mr McGrail's management style resulted in a fractured, almost hostile relationship between him and the Gibraltar Police Federation, the representative body of rank and file and more junior officers in the RGP and in poor morale within the RGP.

23.2 The resulting tensions between the RGP leadership and the Police Federation culminated in formal complaints from the Federation to the GPA about Mr McGrail. The GPA regularly spoke at its meetings about the allegations of

bullying and intimidation by Mr McGrail. As evidence of this, an email from the Federation Chairman to the GPA dated 22 June 2020 states “It is no secret we have had numerous issues with Mr McGrail due his management style and lack of respect” [at NP1/59].

23.3 While this issue was a concern of a lesser order of gravity, it nevertheless fitted into the pattern of behaviours by Mr McGrail which was already causing me concern and causing me to begin to lose confidence in him.

23.4 In similar vein, I often heard numerous anecdotal stories of bad practice and behaviours by the RGP that, given the volume of such stories, were hard to ignore, including numerous stories from different sources of the RGP turning a blind eye with crimes committed by people they know. These were rumours and anecdotal, and therefore, despite some of the sources being credible, were not things on which I felt it was possible to act. They nevertheless contributed to my growing sense of unease.

24. The 2020 Report by Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Services (“HMIC”)

24.1 My concerns grew with the 2020 HMIC review of the RGP which had been called for by Mr McGrail to demonstrate progress made since the 2016 Report, which had made a number of important recommendations that required to be implemented.

24.2 Although the inspection took place in October 2019, the report itself was issued in April 2020, at a time that I was already Governor under section 22 of the Constitution.

24.3 The 2020 report found that only two of the eight recommendations in the 2016 report had been acted on, and identified 10 new recommendations for action. It was, in my opinion, so damning that I sent an email on 29 April to the Chair of the GPA saying that it should not be published in full [at NP1/62]. I sent a further email to the Chief Minister on 30 April [at NP1/63] saying the report was “quite damning and will need careful handling”. I said I thought “it is an

issue of culture and leadership”. I thought the RGP leadership needed to be more strategic and directive and that the RGP needed to modernise.

24.4 One noteworthy feature of the 2020 report was the sharp contrast with the 2016 Report in so far as concerns leadership and management style and culture issues within the RGP. Whereas in paras 2.3 to 2.10 of the 2016 report [at NP1/64] HM Inspectorate of Constabulary spoke of a force

- (i) “generally well led”, “with good oversight of policing activities”, “with a committed workforce with a strong sense of pride, a clear direction and, as was described to us, a “one team” culture ” (para 2.3);
- (ii) with senior officers promoting an open-door policy... professional and formal, yet supportive and open, engagement between senior officers and other staff and with the majority of officers confident that their ideas and suggestions would be listened to (para 2.8); and
- (iii) “staff expressing the view that when mistakes were made the emphasis was on putting the matter right and learning from the experience rather than finding blame. This approach enabled supervisors to make decisions in appropriate circumstances without the fear of unwarranted criticism. We saw the result of this in many enthusiastic staff who felt trusted and empowered. This is evidence of an ethical culture within the Force” (para 2.9),

the 2020 report painted a markedly different, deteriorated position in respect of such matters.

24.5 The 2020 Report [at NP1/100] spoke of:

- (i) “... told by less senior staff that the phrase “firm leadership” is occasionally used to describe management behaviours that, in a small number of cases may have amounted to bullying” (page 30)
- (ii) “a perception exists among an apparently large number of officers that some senior officers sometimes behave in an unacceptable manner when dealing with their staff” (page 30)
- (iii) “shortly before our inspection an external review concluded that there wasn’t systematic bullying in the force but it did find some evidence of bullying and harassment by a minority of managers, supervisors and peers

that was not being reported and consequently not addressed. It made recommendations for the Commissioner to acknowledge that the force takes the Federation's concerns about bullying seriously (page 30)

- (iv) "many junior officers perceived that some senior officers were sometimes too ready to apportion blame when something goes wrong" (page 31).

24.6 This represented deterioration rather than the expected progress and went some way to validating the Gibraltar Police Federation's grievances stated above. I believe that these differences between the 2016 and 2020 reports reflected Mr McGrail's management style.

25. The Incident at sea of 8 March 2020

25.1 Without doubt, the most serious incident that was the tipping point from my "growing concerns" changing to recognising that things could not go on as they were and that change was needed, arose in relation to this incident, which set in motion a chain of events that led me to lose confidence in the abilities of the Commissioner to effectively lead his police force, and indeed caused me to lose confidence in his probity.

25.2 At 06:05 on Sunday 8th March 2020 I received a WhatsApp message from Mr McGrail informing me of a collision at sea involving an RGP vessel, as a result of which two people were killed. I replied at 09.27 thanking him for his message and expressing the hope that his men were OK. I asked whether he needed any help from HMG.

25.3 Whilst walking my dog past New Mole House (NMH) at around midday on the 8th March I decided to call in and asked to see Mr McGrail. He was there and agreed to see me. Given the possibility of a diplomatic and political situation with Spain about this incident, which (being external affairs) would be the responsibility of the Governor and HMGOG, my primary concern was to establish the location of the incident, and whether it had occurred in Spanish territorial waters. I therefore asked Mr McGrail about the location and whether it was inside or outside BGTW. He replied with a slightly flippant waving of his hands, "could be in, and could be out, it's difficult to tell at night".

25.4 Following this meeting with Mr McGrail, I sent him a WhatsApp message at 13:33hrs on the 8th March in the following terms:

“Thanks for the briefing. I’ll do a quick note for London for when it hits the press. Line will be. Investigation ongoing. Spanish nationals from Ceuta (did you say one person was Portuguese). Not sure in whose waters incident took place. RGP seeking assistance from UK police authorities. No assistance needed from FCO at this stage.”

Mr McGrail replied by two WhatsApp messages, also on 8th March:

(i) at 13:46 stating:

“Yes all correct. Indeed one was Portuguese”

(ii) at 13:47 stating:

“Trying to clarify exact position of the collision”.

25.5 On the evening of 8th March, the Attorney General and I agreed that we needed to see Mr McGrail the next day to get details and clarity over the incident, not least given the Gibraltar EU Exit negotiations with Spain which were then ongoing, and which were scheduled to continue that week. I said I would set a meeting up and did so.

25.6 On 9th March the Attorney General and I met Mr McGrail at NMH. I again asked Mr McGrail about the location of the incident. Mr McGrail said he was still not sure. I queried why the GPS/AIS systems could not provide this information. Mr McGrail replied that the instruments had been switched off. I asked why the officers would do that. Mr McGrail replied “you know what it is like in the heat of the moment”. I said I did not, adding that surely Standard Operating Procedures dictated that such equipment should always be on. I said this was a vitally important issue given the state of the negotiations with Spain.

25.7 On 11th March 2020, I sent an email at 18:58 to Mr McGrail asking whether “we are any clearer as to where the collision took place? London keen to know whether inside or outside BGTW and if latter by how far”. Mr McGrail responded by email on the same day at 19:07 stating that “we are getting there on establishing exact co-ordinates of where collision took place. We are tying

up some loose ends and probing from WHSS and should be able to confirm soon. It is highly probable it did occur outside BGTW. We are getting it plotted which will provide a better understanding in terms of distance from BGTW”.

25.8 My strong sense and suspicion at the time that Mr McGrail was answering my questions prior to 11th March about the location of the incident was that Mr McGrail was deliberately withholding from me important information about the nature of his understanding of the location of this incident, which were matters of prime importance to myself as Governor and to HMG in terms of our responsibility for Gibraltar’s external affairs. My suspicions were later confirmed when I discovered from sight of the Section 15 Report prepared by Mr McGrail for the Chief Minister, that Mr. McGrail had information, very early on 8th March, just a few hours after the incident, which suggested, and that had caused him to believe with reasonable clarity, that the incident had occurred well inside Spanish Waters:

- (i) An email timed on 8 March at 10:11 from Paul Richardson to Mr McGrail discloses that a Gold Command meeting chaired by Mr McGrail was advised at 09:40 by DCI John Field that the “collision occurred 36°09 N 5°12”W approx. 6.54 east of Play (sic) de Santa Barbara” and that at 1010 Mr McGrail had briefed the Attorney General to that effect. This obviously placed the location of the incident well within Spanish territorial waters;
- (ii) Furthermore at 0949 on 8th March Mr McGrail had sent a WhatsApp to the Chief Minister stating that the “information suggests that the collision took place outside BGTW – approx. 6NM east off the runway / Santa Barbara beach.
- (iii) On 11 March 2020 at 19:09, Mr McGrail sent a WhatsApp to the Attorney General saying that “HE (Nick) is asking for confirmation of where collision took place as London are keen to know. I have informed him along the same lines that you advised CM i.e. that it is highly probable that it happened outside BGTW.” This was a reference to a WhatsApp sent by the Attorney General to the Chief Minister (copied to Mr McGrail) on 8th

March at 11:40 in which the AG informed the Chief Minister that “it was virtually certain it was outside BGTW eastern side opposite runway”.

- (iv) Accordingly, Mr McGrail’s email to me of 11th March at 19:07 hrs, referred to in paragraph 24.7 above was the first time, nearly three full days later, that Mr McGrail disclosed to me information that he had had since 09:40 hrs on 8th March (a few hours after the incident) and had communicated at the time to others, namely, the Attorney General and the Chief Minister. He had thereby caused me to report to London on the basis of incomplete, indeed erroneous information and less information than was then available. Copies of my email to London dated 8 March 2020 at 14:09 is at NP1/141, and my email dated 9 March 2020 at 16:42 is at NP1/142.
- (v) On 12th March 2020 I received an update from Mr McGrail in which he confirmed that not only did the collision take place in Spanish waters, so did the whole of the pursuit that preceded it. No part of the incident had taken place in British Gibraltar territorial waters. I attach [at NP1/144] an email dated 12 March 2020 at 16:50 in which I report this to the Foreign, Commonwealth and Development Office in London.
- (vi) I had in fact learned on either the 18th or 19th March from a debrief by Acting Detective Superintendent Gary Smith of the Metropolitan Police that “All indications were that the incident had happened in Spanish waters possibly up to 3 miles out of BGTW” and subsequently, on 20th March, wrote a note of the debrief. The source of his information could only have been the RGP. I attach at [NP1/145] a bullet point summary of this debrief set out in an email dated 21 May 2020 to me from Phil Cullinan, the Head of Policy and Liaison at the Office of the Governor (effectively my deputy).

A copy of Mr McGrail’s Section 15 Report to the Chief Minister and those of its appendices to which I make reference in this affidavit are at [NP1/146].

25.9 The Solis Report

- (i) The Solis Report was commissioned by the RGP to investigate the collision. The draft report to the Commissioner of Police is dated 30 April 2020. Copy at [NP1/235]
- (ii) The report found, among other things, that:
 - (a) “Pursuit methods are therefore developed and understood by the coxswains, but without RGP Marine Section management standards or proper established oversight in place.
 - (b) “Marine Section Managers did not apply effective oversight into how their patrols were being carried out.”
 - (c) “There was no proper training in pursuits of suspects vessels for the coxswain who would be required to take evasive action”

26. Meeting between the Governor and the Chief Minister on 15th May 2022

- 26.1 On 14 May 2020 I received a telephone call from the Chief Minister saying he wished to discuss an important issue surrounding the RGP with me. My response was that this was a remarkable coincidence as I wanted to discuss my deep concerns about its leadership with him. We agreed to meet the next day.
- 26.2 We met on 15 May 2020, at the very start of which meeting, the Chief Minister asked me “to go first”. I told him that I had had for some while concerns about the RGP and its leadership which the incident at sea has turned into a firm belief that change in how the RGP works is needed. I briefly ran through my concerns as outlined above. .
- 26.3 I told him that the incident at sea , which had caused the loss of two lives, was without doubt going to cause Gibraltar reputational and political damage. I said I could still not understand how the incident had unfolded but what it did do was further demonstrate a lack of control by RGP leadership. There was a culture at the RGP that was unhealthy and it stemmed from its leadership. I said I believed

I had at best been misled by Mr McGrail over issues that were the Governor's direct responsibility. This was about where the incident had taken place. It was a simple question, which I had posed to Mr McGrail numerous times during the first few days of the incident. It took until Wednesday 11th March before he told me it was highly likely the incident took place outside BGTW.

26.4 I told him that I thought that Mr McGrail had been evasive on this issue. I did not like his flippancy over the location "could be in, could be out", done with a shake of the hand nor his answer as to why the RGP boat's equipment was turned off. "You know what it is like in the heat of the moment". I said that his behaviours and mannerism mirrored those that he had displayed during and after the airfield incident.

26.5 I clearly remember saying something along the lines of "now I've got that off my chest, what is on your mind?" I state that as I was without doubt both frustrated and deeply annoyed. I was as close to anger as I have been. The Chief Minister told me that he shared my concerns but that he wanted to brief me on a different issue.

26.6 The Chief Minister then outlined his belief that Mr McGrail had made a serious error of judgement with regard to the execution of a search warrant against James Levy, gone against the advice of the DPP and AG, and misled the Chief Minister about that. This was in relation to an ongoing criminal investigation.

26.7 Following a long discussion about the leadership of the RGP, we concluded we had both lost confidence in Mr McGrail who, as head of the organisation, we both believed should be held accountable for the RGP's failings.

26.8 I reported this meeting to the Foreign, Commonwealth and Development Office in London by the email dated 21 May 2020 [at NP1/6]

Concluding remarks

27. Given the statements and insinuations that have been made in relation to the retirement of Mr McGrail, I would conclude by stating as follows:

26.1 The decision to invoke the procedure relating to the exercise of my power under section 13 of the Police Act to call for the resignation of Mr McGrail as Commissioner of Police was entirely my own. At no time was I put under any pressure by any person, but in particular by the Chief Minister, to decide on the course of action outlined above, although of course I was comforted by the fact that he shared my view and would be supportive of my decision if I took it.

27.1 I had no prior knowledge about the criminal investigation referred to in Mr Gomez's letter of 29 May until the Chief Minister briefed me in headline fashion about it at our meeting on 15 May. I was not aware of any of the detail of the case save that the Deputy Chief Minister's former PS was implicated in it. I did not know that the investigation was known as Operation Delhi until March of 2022. As stated above, I expressed my deep concerns about the RGP leadership to the CM before he raised the issue of the criminal investigation.

SWORN by the above-named deponent

at Suite 933 Europort,
Gibraltar
this 12th day of May 2022

Personal Data

Before me

Personal Data

Commissioner for Oaths

Dhiraj S. Nagrani
Barrister-at-Law
Commissioner for Oaths
28 Irish Town
Gibraltar

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