

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
NICHOLAS PYLE OBE**

I, Nicholas Pyle, of [REDACTED] **MAKE OATH** and say as follows:

1. I swear this my Second Affidavit in relation to the Inquiry in order to respond to:
 - (A) an apparent insinuation by Mr Ian McGrail ("**IM**") at paragraphs 105-106 of his First Affidavit dated 20 June 2022 ("**McGrail 1**");
 - (B) various matters raised by IM in his Third Affidavit dated 4 October 2022 ("**McGrail 3**"), including two matters which the Solicitors to the Inquiry have, by their letter dated 14 June 2023, specifically requested me to address in my responsive statement;
 - (C) paragraphs 25-38 of the statement of Mr John Goncalves ("**JG**") dated 31 August 2022 ("**Goncalves 1**"), regarding the process resulting in IM's appointment as Commissioner of Police; and
 - (D) a discrete issue arising from paragraph 51 of the statement of Richard Ullger ("**RU**") dated 17 November 2022 ("**Ullger 1**").

2. I also wish to make a statement of my intent should IM not have made an application for early retirement.
3. 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.
4. Insofar as the content of this affidavit is within my personal knowledge, it is true and, insofar as it is not, it is true to the best of my knowledge, information and belief, and the sources of such beliefs are identified herein as appropriate and relevant.

A. RESPONSE TO MCGRAIL 1

5. I refer to the following extracts from **paras 105-16 of McGrail 1**:

“105. ... He explained that he had taken advice from the AG on this matter who he said was his lawyer in Gibraltar but that given the severity of the matter, he had also referred the matter to FCO legal and a minister in London (though he did not mention the name).

106. ... He also explained that my lawyers had asked him for the contact details of the FCO officials/lawyers that were dealing with my matter but he said he was not going to provide said details.” (My underlining for emphasis.)

6. It appears from the above that IM is insinuating (or at least speculating) that my reluctance to disclose to him or his lawyer the names and contact details of the FCO officials/lawyers who I was briefing and taking advice from, indicates that (contrary to what I was telling him) I was not in fact doing so.
7. Furthermore, in Written Submissions by IM in the context of the Preliminary Hearings, he has stated that my actions leading to his retirement were pursuant to a corrupt conspiracy between me and the Chief Minister.
8. In order to refute any such insinuation and to demonstrate the extent to which I was keeping the Foreign Commonwealth and Development Office (“**FCDO**”) in London

abreast and was taking its advice, and the extent of its knowledge and involvement in the matter, I exhibit hereto marked “NP2” copies of all the emails I exchanged with FCDO officials throughout the period March 2020 to June 2020 which have been previously disclosed by me to the Inquiry (three of which were exhibited to my First Affidavit, but are re-exhibited hereto for the sake of a complete record).

B. RESPONSE TO MCGRAIL 3

(i) HMIC Report

9. At para 39 of McGrail 3, IM states:

“Neither I nor any of my Command Team colleagues received any feedback on the report from the CM or NP.... I would certainly have expected either NP or the CM to have raised any concerns they had, if any, directly with me or through the GPA but neither occurred. Certainly there was no indication whatsoever that NP had any concerns about the HMICFRS report or any other matter — quite the opposite; there was a Gibraltar Contingency Council (GCC) meeting scheduled for 21st May 2020 (having been organised on 16th May) and I was invited to attend as a key member of the said council which is co-chaired by HE and CM. This Council is the top tier in Gibraltar’s Security / Civil Contingency apparatus. Such a meeting would certainly not have been convened if at the time, or even previous to this date, either HE or CM held grave concerns about my professional ability to discharge my role. The said meeting was cancelled on 20th May by NP. The relevance of these dates will be apparent from my First Affidavit.” (Emphasis added.)

10. As to question of feedback/expressing concerns on the HMICFRS report, I decided to leave the issue of reacting to the HMIC Report in the first instance to the GPA. Evidence which I have already submitted demonstrates that I did raise comment on the matter to the Chief Minister: see my email to the CM on 30 April 2020, at [NP1/63] exhibited to my First Affidavit dated 12 May 2022 (“Pyle 1”).

11. Furthermore, there is simply no connection between the GCC meeting and the HMIC Report. The GCC is an important part of Gibraltar’s security infrastructure. The suggestion that it would not meet because of the concerns that I had about the IM’s

leadership of the RGP is untenable. Whilst IM remained COP it was obviously necessary to deal with him as such in every respect, and for him to discharge the full role and functions of his Office. The fact that the meeting was convened is therefore in no way probative of the question whether or not I held those concerns. There is simply no link between the two matters. I called a GCC meeting for reasons that had nothing to do with either the HMICFRS Report or COP/RGP performance. It was simply not the forum for any discussion on such issues.

12. I cannot exactly recall why the GCC meeting was cancelled, but I believe it was due to the unexpected unavailability of one of its key members. Short notice postponements were not unusual. But I am clear that it was not for any reason to do with Mr McGrail.

(ii) Concerns about IM's leadership ability

13. As to IM's statements at **paras 40 and 147(i)(f) of McGrail 3** that, prior to 15 May 2020, I had not expressed any concerns about his ability to lead the RGP directly to him or to the GPA, I respond as follows.

- 13.1. I was Deputy Governor for most of my time in the office of the Governor ("the Convent) and, as such, it was not my role to engage with the Commissioner of Police or the RGP directly, save as I may be instructed or requested to do so by the Governor, or in the absence of the Governor. That is a function of the Governor.

- 13.2. As Deputy Governor, I did share my thoughts and raise my concerns about RGP performance and behaviours at various GPA meetings as the agenda and occasion warranted. My view was (and is) that overall responsibility for the RGP performance and behavioural shortcomings rests with its leadership, which must be held accountable.

- 13.3. I also shared my thoughts and raised concerns with the Governor on several occasions.

(iii) Incident at Sea

14. At **para 68 of McGrail 3**, IM states:

“... it was clear to me that from very early on NP knew that the collision had most likely occurred in Spanish waters because I had practically provided NP and the AG with the same briefing and the fact that both had been together the previous night indicated that they had been working together on this”.

15. It is simply not true that I knew from very early on that the collision had mostly likely occurred in Spanish waters. I had been informed (I do not remember by whom, but certainly it was not by IM or the RGP) that it might have happened in Spanish waters. What I needed and repeatedly sought was confirmation as to where it had occurred. Even if technically confirmed information as to where it had occurred was not available, I would expect to be given the best available information. The evasive responses I received from Mr McGrail (as set out **paras 25.3-25.7 of Pyle 1**) did not fill me with confidence, as my reporting to the FCDO in London shows.
16. As to the meeting between IM, the AG and me on 9 March 2020 (**para 69i of McGrail 3**):
 - 16.1. At this meeting, IM did not even mention the fact that coordinates had been provided by the Guardia Civil (“GC”), let alone share or discuss them. Nor was I shown a map on which the coordinates had been plotted (which I note Supt John Field says he prepared the previous morning: **para 36-38 of Field 1**). The first I learned that the GC had provided coordinates to the RGP early on 8 March 2020 was when I saw the RGP log which IM submitted with his Section 15 Report to the Chief Minister.
 - 16.2. I am certain that no coordinates were mentioned at either the meeting on 8 March 2020 or the 9 March 2020 because the key piece of information that I was interested in was whether or not the collision had taken place in BGTW. Had these coordinates been provided to me, I would have been quickly disabused of the impression, given to me by IM’s initial response of “*could be in, could be out*”, that it was very close to the borderline and thus hard to call. If the provisional coordinates had been mentioned or provided to me at this meeting, I would have immediately passed them on to the FCDO in London, and asked the British Embassy in Madrid and the MOD to verify them, but with virtual certainty that it had happened in Spanish waters and not BGTW.

- 16.3. Instead, I reported to the FCDO in London that we were still not sure in whose waters the incident took place (see [NP2/12 and 16]), when it must have been obvious to IM from the coordinates provided by the GC that it was firmly inside Spanish waters. However “provisional” and “subject to verification” the coordinates may have been, the fact is that they placed the incident miles outside BGTW and it would be hard to believe that the GC would have got it so wrong.
- 16.4. As to IM’s denial that he was being evasive (**para 69 i. of McGrail 3**), I would like to highlight the fact that it was I who instigated both of our meetings on 8 and 9 March 2020. It appears to me that IM was in far more regular contact with the CM and the AG than he was with the Governor, and I believe this is borne out by IM’s own evidence.
- 16.5. What IM fails to mention at **para 69 ii. f. of McGrail 3** is that (per para 25.6 of my First Affidavit) he stated that the vessel’s mobile phone, AIS and GPS equipment had all been turned off, and that I was astounded by this fact and by his apparent explanation (or justification) for it: “*you know what it is like in the heat of the moment*”.
17. In relation to the matters to which I depose in paragraph 14 above, the Commissioner will have seen the contents of **paras 87-89 of McGrail 3**. IM told the AG on the evening of 11 March 2020 that I was “*asking for confirmation of where collision took place as London are keen to know*” and that he had told me that “*it is highly probable that it happened outside BGTW.*” As IM says in para 87, he had told me that in an email just two minutes earlier at 1907hrs. Two points arise from this:
- (i) Why would I have been asking if, as IM is now saying, I already knew that; and
 - (ii) Why would IM say that to me if he thought that I already knew it, and that the position at the time was that all Gibraltar parties were merely awaiting confirmation by the Guardia Civil of the co-ordinates?
18. As to **para 92 of McGrail 3**, while it is true that sometime after 1614hrs of 12 March 2020 IM informed me by telephone that the evidence pointed to both the pursuit and collision having taken place outside BGTW, the fact is that he had been in possession

of this evidence (albeit subject to verification/confirmation) for at least 3 days prior to relaying it to me.

19. I note that a general theme running throughout **McGrail 3** is that Mr Llamas, the AG, was my legal advisor, and that IM therefore assumed that the AG was relaying to me all of the information that IM was passing to the AG, including information about the location of the collision, on a timely basis. As to this, I comment as follows:

19.1. As the evidence shows, I asked IM directly on numerous occasions if he was able to confirm whether the incident had taken place in Spanish waters. On 11 March 2020 – three days after the incident – he was still telling that he was “*getting there*”. The simple fact is that I repeatedly asked IM a simple and direct question to which he did not reply candidly with the best information available to him. He withheld highly relevant information from me.

19.2. The first response I was given by IM (“*could be in, could be out*” – **para 25.3 of Pyle 1**) gave me the impression that it was on the line, so in or out of BGTW by less than 100 yards. The fact is that it was out of BGTW by 3 miles so not even close.

19.3. If IM did in fact believe that the AG was timeously passing on all information to me, why would IM not have shared the full picture with me himself when answering my direct questions?

19.4. Furthermore, the AG is not the Governor’s lawyer in the sense of a solicitor/client relationship in a matter such that information conveyed to the solicitor is thereby conveyed to the client. The AG is a legal adviser to the Governor in the sense that he provides legal advice to the Governor on matters of Gibraltar law and constitution, as the Governor may request of him. Information conveyed to the AG is not thereby conveyed to the Governor, nor can anyone reasonably assume that whatever is said to the AG will be conveyed by him to the Governor. IM knew that I was repeatedly myself asking him for this information directly. He could not therefore reasonably have thought that he was discharging his duty to me by assuming that information, different to that which he was providing to me directly, would reach me indirectly through the AG. In my opinion this is simply disingenuous.

19.5. Furthermore still, the suggestion that Mr McGrail now seeks to advance that he believed that the AG was keeping me informed is not consistent or compatible with the fact that he himself told me that on 11th March. Why would he have done so if he thought I already knew? He had told the CM that much on the morning of the 8th March.

(iv) Airfield Incident

20. At **para 148 a) of McGrail 3**, IM asserts (with reference to the Airfield Incident):

“It is my strong view that NP’s inert activity during this dilemma was a contributory factor to the unfortunate escalation of events which attracted a lot of adverse interest from the local/international media and caused a serious fracture in the relationship between HMGoG and the MoD...”

21. I do not accept that any conduct on my part can possibly be said to have contributed to the escalation of the situation. On the contrary, the efforts of the Office of Governor were focused on reducing tension. Even though the then Governor was away from Gibraltar and I was Acting Governor for the early part of February 2017, the Governor nevertheless personally and actively led on the issue from abroad, including by means of direct engagement with the Chief Minister, the MoD and London (and of course regular conversations with me). For my part, I called a meeting between the then Commissioner of Police, Mr Yome, and the MoD Chief of Staff, with a view to de-escalating the situation. Unfortunately, the Chief of Staff did not turn up to the meeting.

22. I would also like to emphasise that my issue with the RGP regarding the Airfield Incident was not about the legal jurisdictional wrangling that ensued, but rather the behaviour of the RGP and in particular the conduct of the arrests of the three very senior MoD personnel (described at **para 21.5 of Pyle 1**).

(v) Matters which the Inquiry has specifically requested me to address

23. I have been asked to provide my recollection as to the events that are set out in **para 123 of McGrail 3**, including whether I stated that I would not have accepted anything less if I was in his situation, and what I meant by this. My recollection is that IM had shown me what he wanted in terms of settlement for his early retirement, which

included payment for holiday not taken. Given that we were proceeding by way of early retirement, Mr McGrail's requests as to terms seemed to me to be reasonable.

24. As to the meeting with IM and Mr Britto (GPA Chair) referred to in **para 148 c) of McGrail 3**, whilst I believe the meeting took place, I have no recollection of it or its conclusions.

C. RESPONSE TO JOHN GONCALVES 1 ("JG")

IM's Appointment as Commissioner of Police

25. I wish to respond to the evidence given by JG, the then Chairman of the GPA, regarding his assertion (at **para 25 of Goncalves 1**) that I told him I "*would not support McGrail's application*" for the post of Commissioner of Police. This is incorrect. Whilst I made clear that I was surprised that there were only two candidates and expressed the view that policing in Gibraltar may have benefitted from a wider field of candidates, including external candidates, I nevertheless marked both IM and Richard Ullger ("**RU**") as suitable and credible candidates for the post.
26. I expressed my view that both candidates had performed well, both were clearly credible and that I had scored them within a point of each other. I therefore looked a bit deeper to find something to separate them. I said I was swayed by the reports on each candidate written by the outgoing Commissioner of Police, Eddie Yome ("**EY**"). I said that it was clear to me that EY thought that RU was the better candidate. I agreed, adding that I thought RU had a more modern leadership and management approach which would serve the RGP well. That is why and how I came to vote for the appointment of Mr Ullger, and certainly not because I had, still less had I expressed, any predetermined view that I would not support IM's candidacy, despite the concern that I had in March 2017 about IM's conduct in relation to the arrest of three senior MOD officers in Gibraltar.
27. Insofar as concerns Mr Lavarello's assertion at **para 34** of his statement dated 20 October 2022 that I "*would not support either candidate*", I can only say that Mr Lavarello is mistaken. That this is not correct is demonstrated by the facts that (i) JG does not himself say that I said this of both candidates and (ii) that I actually voted for RU.

D. RESPONSE TO ULLGER 1

28. At para 51 of Ullger 1, RU states that he still does not know the reasons for IM's request to retire early. RU appears to have forgotten that, around a week or so after the arrival of Sir David Steel as Governor, I asked to meet with RU informally. We met at The Waterfront, a restaurant/bar in Queensway Quay, after office hours. I wanted to be open and honest with RU, in an informal context. During this informal meeting, I fully disclosed to RU the reasons for my loss of confidence in IM, which are set out in my First Affidavit.

E. MY INTENDED COURSE OF ACTION HAD IM NOT SOUGHT EARLY RETIREMENT

29. It is perhaps worth stating that my intention, had IM not sought early retirement, was to suspend him pending the arrival of Sir David Steel (Governor Designate). Sir David had discussed the whole issue with the FCDO, including the Permanent Under Secretary (and former Deputy Governor of Gibraltar) on 5 June 2020, prior to his arrival. I refer in this regard to my email to Sir David dated 5 June 2020 at 11:38 [NP2/66] and his reply at 12:50 [NP2/68]. The FCDO agreed both with my preference to conclude this before Sir David's arrival if it could be achieved, and with my intended course of action to suspend IM if it could not be achieved.

SWORN by the above-named deponent)
at Suite 827 EUROPORT,)
Gibraltar)
this 4th day of July 2023)

Personal Data

Before me,

Personal Data

THOMAS SINGETTO
Commissioner for Oaths

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