

COMMISSIONS OF INQUIRY ACT

RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

ISSUE OF COMMISSION

SWORN WITNESS STATEMENT
OF JULIO JAMES ALCANTARA

I, **JULIO JAMES ALCANTARA MBE GMD MA** of [REDACTED]

[REDACTED] former Director of Education, member of the Gibraltar Police Authority **MAKE**

OATH AND SAY AS FOLLOWS: -

1. I make this statement in my capacity as a member of the Gibraltar Police Authority (the "GPA"). The contents of this statement are true to the best of my information, knowledge and belief and the facts stated herein are known to me personally unless otherwise stated. Where the facts stated are not known to me personally, I have stated the source of my information. I have also relied on a review of documents in my possession or control as more specifically stated at paragraphs 2 and 6 hereof.
2. I have reviewed those documents referred to herein in the course of preparing this witness statement but do not produce them as I have been advised by the Solicitors to the GPA, TSN, that these have already been produced by Mr John Gonçalves ("Mr Gonçalves") and Dr Joey Britto ("Dr Britto") and that the Inquiry wishes to avoid the duplication of documents bundles. These documents are extracted from the GPA files and are held currently by TSN for ease of use. I have been shown the documents

exhibited by Dr Britto at Appendix B of his Witness Statement dated 13th May 2022 ("J.B's Appendix B"). Cross references are to the documents in J.B's Appendix B respectively, as referred to by me.

3. The GPA was established in accordance with section 3(1) of the Police Act 2006. Section 4(1)(a) of the Police Act 2006 provides that its members shall be appointed by the Governor acting on the advice of the Public Service Commission. Pursuant to section 4(2), every member of the GPA, shall hold office for a term of three years and at the expiration of any such period or periods shall be eligible for reappointment. I was appointed with effect from 1st April 2018 for the term of 3 years and then for a further term of 3 years from 1st April 2021. I continue to be a serving member of the GPA.

4. I have been advised by TSN that pursuant to Legal Notice LN.2022/034 (the "Legal Notice"), the Governor of Gibraltar, Vice Admiral Sir David Steel KBE, DL, on behalf of the Government of Gibraltar, at the request of the Chief Minister, has formally issued a notice of a commission appointing Sir Charles Peter Lawford Openshaw, DL, (formerly, a judge of the High Court of England and Wales, Queen's Bench Division), as Commissioner (the "Commissioner") to inquire, as he shall in his absolute discretion consider appropriate, into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police ("Mr McGrail") in June 2020 by taking early retirement (the "Terms of Reference"). I have been further advised by TSN of my duty to assist the Commissioner as may be required.

5. I am aware that pursuant to the provisions of the Commissions of Inquiry Act 1888 (references to sections immediately below being to the foregoing act), that if summoned to appear in person before the Inquiry I must answer questions put to me by the Commissioner and produce all books, papers and writings required by the summons with the following provisos:

5.1. no statement by me in answer to any question put to me in the Inquiry shall be admissible in evidence in any proceedings whether civil or criminal except in cases of indictment for perjury committed in such answers (section 8(2)); *and*

5.2. such evidence which I may give in the Inquiry shall not directly and/or indirectly render me liable to any civil proceedings or criminal prosecution although subject to the qualification that I shall not be excused from answering any question put to me in the Inquiry on the ground of any privilege, or in accordance with the privilege against self-incrimination. (Section 10).

6. Since the publication of the Legal Notice, I, and other former members and current members of the GPA have been asked by Solicitors to the Inquiry, Attias & Levy (the "Solicitors to the Inquiry"), by letter dated 23rd September 2022 (the "23rd September 2022 Letter"), to provide a statement under oath addressing the subject matter of the Inquiry which fall within the Terms of Reference and various specific matters which are listed at numbered paragraphs 1 to 3 of that letter. Additionally, Solicitors to the Inquiry, by that letter, have requested that I produce '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'. It is also noted that any electronic documents are to be provided in their native format with the original metadata preserved. After reviewing the GPA records at the TSN office, J.G's Appendix A and J.B's Appendix B I have identified and referred to those documents which fall within the scope of the request but for the reasons stated at paragraph 2 hereof I do not produce them, I am of course willing to do so if requested by the Commissioner. I did not keep any records relating to my activities as GPA member I share my home computer with my family and, in order to maintain confidentiality, I promptly delete all communications etc. relating to or originating from the GPA. Such documents as I refer to herein, I have obtained from the records of the GPA held at the office of TSN with the permission of the GPA's current Chairman Dr Joey Britto. I would state that I have not found any material document other than those referred to herein

7. I can only depose to those matters which I have direct knowledge of during my continuing tenure as member of the GPA.
8. At the time of making this statement I do not know what other deponents may have said about the matters about which I have been asked in the 23rd September 2022 Letter as TSN have not shown me the statements of any other deponent pending clearance to do so.

MY KNOWLEDGE OF THE REASONS AND CIRCUMSTANCES LEADING TO IAN MCGRAIL CEASING TO BE COMMISSIONER OF POLICE IN JUNE 2020

9. I address this question below under the heading of "The Section 34 Process".

THE AIRPORT INCIDENT

10. This incident preceded my appointment as a member of the GPA and I have no knowledge of this other than what I may have learned from the local media.

THE RGP'S INVESTIGATION INTO AN ASSAULT ON HELICOPTER PILOT AND CREW MEMBER IN MARCH 2017

11. I have no knowledge whatsoever of this matter. The first I heard of this was when I read about it in the 23rd September 2022 Letter.

MR MCGRAIL'S APPOINTMENT AS COMMISSIONER OF POLICE

12. This preceded my appointment as a member of the GPA and I have no knowledge of this whatsoever.

FORMAL COMPLAINTS FOLLOWING MR MCGRAIL'S APPOINTMENT

13. I have not received or heard any complaints in respect of the efficiency, effectiveness, probity, integrity or independence of Mr McGrail in the undertaking of his duties as Commissioner of Police.

THE SECTION 34 PROCESS

14. On the 21st May 2020, an emergency meeting (the "Emergency Meeting") of the GPA was held to consider the matters raised by the Chief Minister and the Interim Governor at a meeting which they had held with Dr Britto on 18th May 2020. Five members of the GPA attended. Section 6(1) of the Act requires a quorum of six members and only five were in attendance. I was one of those members who was not in attendance as I was chairing a meeting of the Mental Health Board at the same time as the GPA meeting was being held. Dr Britto telephoned me in the afternoon of 21st May 2020 and informed me that he had convened an Emergency Meeting and that a certain decision had been taken. I do not recall the details of the conversation but the gist of it was that Dr Britto said that only 5 members had been personally present and that the non-attendees were being consulted by telephone. He informed me that he had been called to a meeting on 18th May 2020 with Mr Pyle, in his capacity as Interim Governor, and the Chief Minister. At that meeting he had been told that they had both lost confidence in Mr McGrail because of his failure to adequately implement the police inspectorate's report and his failure to report where outside British Territorial Waters exactly an incident at sea had occurred which had resulted in the death of two Spanish Nationals. Mr Britto said that Mr Pyle and the Chief Minister had asked him to initiate the Section 34 Process under the Police Act 2006 with a view to inviting Mr McGrail to retire. Mr Britto said that an informal record of that meeting had been prepared which had been produced at the GPA meeting earlier that day. I read that informal record subsequently and it was essentially reflected in what Dr Britto had told me during that telephone conversation. He said that those present at the Emergency Meeting had agreed that Mr McGrail should be invited to retire mainly because of the incident at sea and because given the loss of confidence in him by the Interim

Governor and the Chief Minister his position had become untenable. I said that I agreed with that decision for the same reasons. I did not attach such importance to the issue of the implementation of the Police Inspectorate's report as to require Mr McGrail to retire. However, I was very concerned by the loss of life resulting from an incident involving an RGP vessel outside British Territorial Waters and the Interim Governor's complaint that he had been misinformed about the location of the incident. I could see the seriousness of not being properly informed of events especially in a case such as this where two deaths had occurred and which potentially entailed international consequences. I did not see how Mr McGrail could remain in post if he had lost the confidence of both the Interim Governor and the Chief Minister. Nonetheless I thought that the GPA's decision was not final and effective until Mr McGrail was afforded the opportunity to make representations and these were considered by the GPA. I would have liked to have heard what Mr McGrail had to say for himself but nonetheless I would have had difficulty in seeing how he could remain in post given the loss of confidence in him by the Interim Governor and the Chief Minister.

15. The deliberations and agreed course of conduct of the GPA are evidenced by the minutes of the Emergency Meeting which have been produced at document no 4 of J.B's Appendix B. They reflect what I was told and mirror my views on the issue save that Operation Delhi was not mentioned to me by Dr Britto.
16. I am informed by Dr Britto and verily believe to be true that he invited Mr McGrail to meet him in person. They agreed to meet at Mr McGrail's office at New Mole House Police Station on the following day. They met and during the meeting, Dr Britto handed Mr McGrail a letter (the "First Letter") inviting him to retire. A copy of the First Letter is document

no. 5 of J.B's Appendix B. Mr McGrail challenged the contents of the First Letter and requested Dr Britto to substantiate the reasons for the invitation to retire. In response to the request made by Mr McGrail, the GPA set out the reasons for its invitation to retire in a further letter dated 22nd May 2020 (the "Second Letter"). A copy of the Second Letter is document no. 6 of J.B's Appendix B. It appears that this letter was sent to Mr McGrail by Dr Britto by email of even date. A copy of that email is document no. 7 of J.B's Appendix B.

17. I did not have contemporaneous knowledge of those events or sight of two letters and was informed of them and sent electronic copies of the two letters after the event but before receipt of the letter from Charles Gomez & Co dated 29th May 2020 referred to in the following paragraph. Having read the First Letter and the Second Letter I can say that they reflect my position.

18. On 29th May 2020 (the "29th May 2020 Letter") the GPA received a letter addressed to it by Charles Gomez & Co acting as Solicitors for Mr McGrail. The 29th May 2020 Letter was sent to Dr Britto under cover of an email of even date from Nicholas Gomez of Charles Gomez & Co, of which he acknowledged receipt. A copy of the 29th May 2020 Letter is document no. 8 of J.B's Appendix B. A copy of the email accompanying the 29th May 2020 Letter is document no. 9 of J.B's Appendix B.

19. Operation Delhi was not mentioned by Dr Britto during our conversation and that operation did not therefore influence my thinking any way whatsoever. The reasons for my decision to support the proposal to initiate the Section 34 Process are those stated at paragraph 14 hereof. The allegations made by Charles Gomez & Co in their letter dated 29th May 2020 that Operation Delhi was the real reason why Mr McGrail had been asked to retire is wholly unfounded as far as the GPA is concerned.

20. Following receipt of the 29th May 2020 Letter, the GPA convened a meeting on 1st June 2020. A copy of the minutes of that meeting is document no. 10 of J.B's Appendix B. Members unanimously agreed that independent legal advice should be sought. The GPA instructed TSN and Mr James Neish K.C of TSN to act as Counsel.
21. Following his consideration of the 29th May 2020 Letter and the contents of the First and Second Letter, Mr James Neish K.C. advised the GPA that its application of section 34 of the Act had been innocently yet fundamentally flawed because the GPA had wrongfully invited Mr McGrail to retire, without following the process set out in section 34(2) of the Act. The invitation to retire could only have been made after affording Mr McGrail reasonable opportunity to make representations and giving due consideration to those representations.
22. The GPA was advised to withdraw its invitation to Mr McGrail to retire and to abandon the process.
23. A delegation of Members of the GPA namely, Mr Frank Carreras, Mr Ernest Gomez and Dr Britto, attended a meeting at TSN's offices to discuss the advice given by Mr James Neish K.C and to consider what action should be taken as a result of that advice. It was agreed that TSN should write to Charles Gomez & Co informing them that the GPA was withdrawing its invitation to Mr McGrail to retire and that the process was being abandoned. We were informed of this after that meeting. It was also agreed that the GPA should write to the Chief Minister and the Interim Governor to inform them of the GPA's decision.

24. TSN on behalf of the GPA wrote to Charles Gomez & Co in these terms by letter dated 5th June 2020. A copy of that letter is document no. 15 of J.B's Appendix B.

25. Neither I nor, to my knowledge, any other member of GPA had any further involvement or contemporaneous knowledge in this matter.

ALLEGATIONS OR COMPLAINTS OF BULLYING/INTIMIDATION DURING MR MCGRAIL'S TENURE AS COMMISSIONER OF POLICE

26. I am not aware of any allegations or complaints made in respect of bullying and/or intimidation by Mr McGrail.

MEETINGS

27. Save as stated at subparagraphs (viii) below I have not attended any meeting arising with or in connection with any of the matters raised in the 23rd September 2022 Letter or touching the subject of the Inquiry with any of the persons listed at numbered paragraph 2 of the 23rd September 2022 Letter namely:

- (i) The Hon Fabian Picardo KC MP, the Chief Minister
- (ii) Mr Albert Mena, Financial Secretary
- (iii) The Hon Neil Costa, former Minister for Justice
- (iv) Dr Joseph Garcia, Deputy Chief Minister
- (v) Mr Darren Grech, Chief Secretary

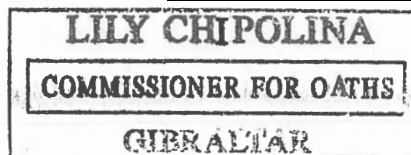
- (vi) Mr Michael Llamas KC, Attorney General
- (vii) Mr Christian Rocca KC, Director of Public Prosecutions
- (viii) Mr Nicholas Pyle, Deputy Governor, other than in his capacity as member of the GPA
- (ix) Lt. General Ed Davis, former Governor of Gibraltar
- (x) The Magistrates' Court (either the Clerk or Deputy Clerk to the Magistrates' Court, the Stipendiary Magistrate or the Justices of the Peace)
- (xi) Mr Lloyd DeVincenzi, Solicitor General
- (xii) Dr Joseph Britto, incumbent Chairman of the Gibraltar Police Authority
- (xiii) Mr Edward Yome, former Commissioner of Police
- (xiv) Deputy Commissioner Richard Mifsud
- (xv) Mr Richard Ullger, incumbent Commissioner of Police
- (xvi) Mr Maurice Morello, Chairman of the Gibraltar Police Federation, or any other member of the Gibraltar Police Federation
- (xvii) Mr Paul Richardson, former Superintendent
- (xviii) Superintendent Mark Wyan (formerly Detective Inspector)
- (xix) Mr Ian McGrail.

SWORN by the above-named Deponent
at
Suite 7, Hadfield House, Library St, GX11 1AA
Gibraltar this 14 day of October 2022

Before me

Personal Data

Commissioner for Oaths



Personal Data

This Sworn witness statement is filed by TSN on behalf of the Deponent