INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

CLOSING WRITTEN SUBMISSIONS BY COUNSEL TO THE INQUIRY

Bundle references are to the Witness Bundle [***A--***]***; Exhibits Bundle*** [***B--***]***; Chronological Bundle*** [***C--***]***; and RGP Disclosure Bundle*** [***D--***]**.**

Abbreviations used below are adopted from CTI's Opening Submissions

INTRODUCTION

1. These are CTI's closing submissions following the five-week Main Inquiry Hearing ("**the Hearing**") in April/May 2024. As explained in opening submissions, CTI's role is not to adopt or advocate a "*case*", and CTI continue to adopt a neutral and objective approach in these closing submissions. Similarly, whilst CTI agree that it is suitable and helpful for CPs to have made submissions as to "*lessons learned*" from this Inquiry, it is not CTI's role to go down this path.

2. In line with this approach, CTI's closing submissions are confined to the following discrete matters:
    a. Providing an update on the state of the evidence, by providing an inventory of disclosure that remains outstanding, and in appropriate cases making proposals about next steps;
    b. Addressing two legal issues that arose during the Hearing, namely: (i) the role of the AG in Gibraltar; and (ii) the Ministerial Code in Gibraltar; and
    c. Addressing the issue of the "*job offers*", their impact on the Inquiry's procedure, and proposing how this issue should now be progressed.

3. The bulk of CTI's work in closing has been reviewing the transcripts of the Main Inquiry Hearing and updating the Facts Schedule. This has been a very substantial task, but it is hoped that the updated Facts Schedule will provide a useful resource to the Chairman when drafting the Report, by seeking to state the relevant facts as comprehensively and neutrally as possible. This task has sensibly not been duplicated by CPs, whose submissions are more thematic and argumentative in style.

4. Given CTI is not presenting a "*case*" in closing, and CTI's role in the factfinding process (through questioning) is now complete, the Chairman does not consider it necessary for CTI to make an oral closing on 25 – 26 June 2024. However, the Chairman has requested that 30 minutes be reserved at the end of the hearing for CTI to correct any factual inaccuracies that may arise in closing submissions made by other CPs.

A. THE STATE OF THE EVIDENCE

5. The Inquiry process has resulted in vast quantities of documentary disclosure. During the course of the Hearing, several CPs and witnesses disclosed further documents, for example those which came to the attention of the Inquiry Team during questioning. Regrettably, however, some of the documents requested by the Inquiry Team remain outstanding. It is submitted that if those requested documents are not provided in short order and no good reason has been put forward for their non-disclosure, it will be open to the Chairman to draw any inferences he may deem appropriate from these failures (in those instances where the relevant evidence has not been disclosed to the Inquiry by another CP or witness). It is acknowledged that in some cases an explanation has already been provided for non-disclosure.

6. First, the Inquiry is not in possession of: (i) any messages between the CM and NP regarding Operation Kram; (ii) messages from the "*Senior Wider WhatsApp Group*" containing (at least) NP and the CM; and (iii) any messages between the CM and JL post May 2019.

    a. As to (i), the WhatsApp messages disclosed by the CM begin on 30 April 2020 [**B1439**]. NP has given evidence that he deleted all WhatsApp messages in compliance with FCDO guidance (on which see further below), and so the Inquiry is reliant on messages disclosed by the CM. On 7 May 2024, the Inquiry requested that the CM disclose any relevant WhatsApp messages pre-dating 30 April 2020. Peter Caruana & Co informed STI that "*Subject to what we say in paragraphs 2 below, there are none*." In paragraph 2, they stated: "*There are 6 WhatsApp messages between 7 April 2020 and 28 April 2020 which relate to an aborted target arrival date of 11 May 2020 for Sir David Steel*….". It is somewhat surprising that the CM and NP did not exchange any WhatsApps at all relating to the Incident at Sea, but CTI is prepared to rely on Peter Caruana & Co's assurances.

b. As to (ii), on 15 May 2020 NP informed the FCDO that "*the CM has now informed by WhatsApp the senior wider group of the filing of a case as per the attached*" (regarding the claims arising from the Incident at Sea). The CM has been unable to produce copies of these messages, stating "*because of the date, I believe that that senior wider group probably no longer exists, and that has been deleted …*". He believed that this was a WhatsApp group created to discuss the New Year's Eve Brexit agreement (**Transcript Day 16 p53.11**). It does not appear that this can be taken any further.

c. As to (iii), on Saturday 4 May 2024, two days before the CM was due to attend the Inquiry for questioning, he disclosed a log of WhatsApp messages with JL, which was substantially redacted. Peter Caruana & Co clarified that this late disclosure was due to their oversight, not the CM's. The last unredacted message was dated 2 May 2019. In questioning, the CM stated that there were no relevant WhatsApp messages after that date (**Transcript Day 16 p227.2**). CTI asked the CM whether he had any messages with JL in May 2020, and the CM stated "*I would have to look*" (**Transcript Day 16 p229.3**). The following day at approximately 9.55am, the CM's legal team informed CTI that WhatsApp messages between JL and the CM continued beyond 2020 (and perhaps even to date). By email dated 7 May 2024 at 12:06, STI requested that the CM disclose any relevant messages between JL and the CM after March/April 2020 in unredacted form by the lunchtime adjournment, so that the CM could be questioned on these messages. On 8 May 2024 at 18:53, STI followed up on this request and sought disclosure before close of the hearing on 9 May 2024. On 9 May 2024 at 09:37, Peter Caruana & Co informed STI that they had sought instructions but that the CM was travelling. Having received no response, STI chased the matter again on 20 May 2024 at 15:43. No response has been received to date.

7. Second, NP has not disclosed any WhatsApp messages to the Inquiry. During questioning, he explained this on the basis that he had regularly deleted messages in accordance with FCDO policy that "*if you did any work of any sensitive nature, or indeed any nature at all, you had to transcribe it on to a note or into a diary and then at some stage save it as a Word file*". NP stated that he recorded his WhatsApp messages in a black notebook, which he would then transcribe into emails from London, and destroy the note.

He stated this was "*best practice in FCO methodology*" (**Transcript Day 15 p13.22**). On 9 May 2024, STI requested that NP provide a copy of that FCDO policy. On 10 May 2024, Peter Caruana & Co replied:

> "*What Mr Pyle provided to us was the below extract, which he had copied and pasted into an email to us (he believes the source of the extract was the FCDO intranet, to which he no longer has access). We do not have a copy of the policy itself, and the hyperlink is not accessible without an FCDO account. You may therefore need to contact the FCDO to obtain a copy of the policy.*
>
> > ***Use of Instant Messaging***
> >
> > *A reminder that while WhatsApp and similar instant messaging apps may be used in certain circumstances, use should comply with the FCDO Instant Messaging Policy. WhatsApp is only suitable for short-term or temporary communications and conversations should be deleted as soon as possible. Substantive work with FCDO colleagues should be done using MS Teams. Key information that needs to be kept for accountability reasons should be transferred to and stored in MS Teams.*"

8. On 11 June 2024, the FCDO supplied a copy of the "FCDO Instant Messaging Policy" to the Inquiry, which was in force prior to April 2023. This document contains the following paragraph, which supports NP's position:

> "*All conversations by IM should be deleted as soon as possible. If the conversations become a matter of record, they need to be manually recorded on the FCDO's IT to ensure accountability and facilitate ease of search for FOI requests.*"

9. Third, neither JL nor LB have disclosed any WhatsApp messages to the Inquiry.
    a. JL's explanation is that when the RGP took possession of his phone, his messages were copied onto a "*copy phone*". The "*copy phone*" stopped working and the Hassans IT Department copied the messages onto a "*replacement phone*", but not all of his messages pre-dating 12 May 2020 were preserved during the transfer (**Transcript Day 8 p199-201**). JL maintained that "*I have not hidden any messages or deleted any messages*". However, if at least some pre-2020 messages were preserved and some of them are relevant, JL has not disclosed them to the Inquiry. For example, JL stated that his messages with the AG about being "*hung out to*

dry" were still on his phone, but JL has not disclosed these to the Inquiry (**Transcript Day 8 p253.19**).

b. On 17 April 2024 (the day before he gave evidence), LB disclosed a single SMS dated 15 May 2020, which states: "*M, I was asked to come over to your office*" (and also the surrounding messages in that chain). Beyond this, LB has not disclosed any WhatsApp messages or SMS to the Inquiry, and states that he does not have correspondence with the CM or AG going back to 2020 (Baglietto 1 para 4.1 and 4.5 [**A948-9**]). He stated in evidence that he routinely cleared old chats with clients and family members, and that "*the whole Operation Delhi saga … insofar as it affected Mr Levy was done and dusted by October I think it was 2020 and there was no pending litigation or any other proceedings…*" (**Transcript Day 9 p89.12**). LB gave evidence that the earliest message on his phone with the CM is January 2021 (**Transcript Day 9 p186.6**). He denied that he had deleted communications with the CM as a result of the Inquiry being called: "*I would never have done that, had the remotest inkling that those emails – that those WhatsApps were going to be relevant to this Inquiry*" (**Transcript Day 9 p189.25**). Based on LB's evidence, it does not appear that there are any outstanding WhatsApp messages that he is able to disclose, without recovering deleted messages (as to which see below).

c. Both JL and LB indicated during questioning that they would be willing for a member of the IT Department to provide evidence as to the missing WhatsApp messages and efforts taken to retrieve them (**Transcript Day 8 p199.25, Day 9 p92.14**). This statement was provided by Arthur Mills on 5 May 2024, which attested that:

    i. Hassans does not have a facility to back up lawyers' personal data (para 1a).

    ii. With limited exceptions, Hassans IT have no visibility of lawyers' personal mobile phones (para 1b).

    iii. When JL's original phone was returned by the RGP, it was wiped, reused for another purpose, and later disposed of (para 5). JL did not give IT any instructions to preserve data on this phone (para 6).

    iv. The copy phone collapsed in March 2023, likely due to a software update, and Mr Mills transferred the data to the replacement phone, which should have included all data on the copy phone. However, he did not verify if

everything had been copied as the copy phone became corrupted. He wiped and disposed of the copy phone (para 8).

v. Mr Mills checked the replacement phone for WhatsApp messages between JL, the CM and the AG. There were no WhatsApp messages between the CM and JL from 12 May – 9 June 2020, but there were some messages with the AG which he provided to JL (para 8f). JL has not disclosed these messages with the AG to the Inquiry, although it is not known whether they contain any relevant messages.

vi. Mr Mills has unsuccessfully attempted to recover missing WhatsApps from the replacement phone (para 9), as well as on LB's phone (para 12). CTI proposes that (subject to clarification of the point in 8(a) above with JL). This evidence has not been tested in questioning, and of course the Chairman is not obliged to accept it, but it is submitted that it would not be proportionate or time-efficient to take the matter further, and the Chairman is able to arrive at a general impression based on the evidence available.

10. Fourth, the Inquiry is missing the "*media*" or attachments to various WhatsApp messages disclosed by the CM, JB and IM to the Inquiry. In some instances this makes it difficult to interpret WhatsApp exchanges, as they appear incomplete. It is not clear whether these media attachments are available to be disclosed by IM, and CTI proposes that the position be clarified. However, the Inquiry Team has been informed by the CM and JB's legal teams that they are not able to disclose the media.

11. Fifth, the Inquiry learned during the course of IM's evidence that: (i) IM kept a Daybook during his time as CoP (**Transcript Day 6 p131.11**); (ii) IM drafted the email of 12 May 2020 at 22:05 (sent to himself) [**B74**] in a file saved on his desktop (**Transcript Day 6 p194.4**); and (iii) upon leaving the RGP, IM retained paper files, some of which may have related to Operation Delhi (**Transcript Day 7 p31.4, Day 8 p107.4**). IM revealed that he destroyed those papers without the RGP taking copies of them, stating "*they no longer had use for them*" (**Transcript Day 8 p107.19**).

    a. As to (i) and (ii), the RGP has only located three pages of IM's Daybook (dated 27 September 2018, 12 October 2018 and 22 October 2018), which are held in an Operation Delhi disclosure file. Assistant Commissioner Yeats submitted a

witness statement on 24 April 2024 on the efforts to date, and has committed to providing a further witness statement. In an email dated 29 May 2024, AC Yeats informed Cruz & Co that the Digital Forensics Unit officer responsible for the digital search had been on leave and then in hospital, and so was delayed in providing a statement. AC Yeats anticipated that the statement would be provided before closing oral submissions, but no further updates were received until 16:59 on 19 June 2024, when Mr Cruz, Counsel for the RGP, sent the Inquiry Team the 4th Witness Statement of Cathal Yeats, which CTI have been unable to consider before circulating these submissions. The search for IM's Day Books, which was raised with the RGP in the second week of the hearing, remains outstanding. It is difficult to understand how IM's daybooks could have been lost given the exceptional circumstances of his departure.

b. The Inquiry should have been alerted to the existence of IM's Daybooks at the outset, given they are plainly relevant and likely to be of significant evidential value.
c. Additionally, DCI Field's daybooks were also only disclosed to the Inquiry on 23 April 2024, although he stated that he provided them to the RGP disclosure team (**Transcript Day 13 p5.13**).
d. As to (iii), while IM suggested that he only destroyed files after providing evidence to the Inquiry (**Transcript Day 7 p31.4**), the Inquiry does not know whether all of the destroyed documents were in fact provided to the Inquiry, in which case there could be a potentially significant gap in the evidence.

12. Sixth, a feature which has affected the Inquiry's ability to ascertain the facts has been a widespread deficiency in notetaking at meetings that are relevant to the matters under Inquiry. For example, this issue also arose in relation to:
    a. The GPA, which did not take a contemporaneous note of the 21 May 2020, did not take notes of more informal meetings with the GPF, and cannot locate the record of the 5 December 2017 meeting where the merits of the candidates for CoP were deliberated.
    b. The CM, AG and NP, who have not produced notes of the meetings they attended on a range of issues under Inquiry.

c. The brief notes taken by officers of the RGP, for example of the meetings with the DPP in Operation Delhi on 3 March and 8 April 2020, which in both cases the DPP did not follow up with any written advice (or keep a file note himself).
d. LB, who did not have notes of any of the meetings and calls he had with the CM and the AG in relation to Operation Delhi.

C. LEGAL BACKGROUND

13. Paragraphs 22 – 41 of CTI's Opening Submissions set out the statutory and Constitutional provisions that are relevant to issues 8 – 10, including the role played by each of the CM and AG in relation to policing in Gibraltar. It is necessary to supplement these provisions with two further matters:

Ministerial Code

14. The Ministerial Code[1] was first published in draft in 2015. Although it was not adopted in Parliament until 15 March 2023, it had been on the Parliament website for eight years, and the CM stated to Parliament and confirmed to the Inquiry that he considered the Government had adhered to the Code since 2015 (**Day 16 p92.22**). The Code states that Ministers of the Crown are expected to behave in a way that upholds the highest standards of propriety (cl 1.1), and must also observe the Seven Principles of Public Life ("**the Nolan Principles**"). These include selflessness ("*Holders of public office should act solely in terms of public interest*") and integrity ("*Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests or relationships*".

15. During the Hearing, CTI put the following provisions of the Ministerial Code to the CM:
    a. Clause 6.6: "*Particular care also needs to be taken over cases in which a Minister may have a personal interest or connection, for example because they concern family, friends or employees. If, exceptionally, a Minister wishes to raise questions about the handling of such a case they should advise the Chief Secretary and write to the Minister responsible, as with constituency cases, but they should make*

[1] https://www.parliament.gi/uploads/docs/code-of-conduct/ministerial_code_of_conduct.pdf.

clear their personal connection or interest. They responsible Minister should ensure that any enquiry is handled without special treatment."

b. Clause 7.1: "*Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.*"

c. Clause 7.7: "*Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision they should be guided by the advice given to them by the Chief Secretary. …*"

d. Clause 7.8: "*Where exceptionally it is decided that a Minister can retain an interest, the Minister and the department must put processes in place to prohibit access to certain papers and ensure that the Minister is not involved in certain decisions and discussions relating to that interest.*"

16. The CM stated that he had acted in accordance with these provisions at all times in relation to 36 North and Operation Delhi, and believed that he had managed to avoid any danger of perceived conflict ((**Transcript Day 116 p95.20**, **96.5**). However, the CM later argued that the Ministerial Code was not engaged directly, as "*I'm not seeking to protect any financial interests. I'm seeking to protect the reputation of the jurisdiction*" (**Transcript Day 16 p195.18**).

17. In relation to clause 6.6, the CM stated that he did not involve the Chief Secretary because he involved the Attorney General, who "*has really taken over the role that previously had been done by the Chief Secretary*" (**Transcript Day 16 p197.3**). At one stage, the CM acknowledged that "*these concepts are subjective and … I'm always open to guidance and learning on these issues*" (**Transcript Day 16 p152.13**). He also suggested that in Gibraltar "*we uphold the same ethical standards but with a level of proximity*", which CTI understand to be a suggestion that it is not necessary to make specific declarations of conflict when the counterparty knows of the various connections (**Transcript Day 16 p197.17**).

18. Ultimately it will be for the Chairman to make any findings he may deem appropriate in relation to the CM's compliance with the Ministerial Code.

The role of the Attorney General in Gibraltar

19. The role of the Attorney General in Gibraltar arose during questioning of both the AG and Mr DeVincenzi at the Hearing. The AG described himself as the "*guardian of the public interest*" (**Transcript Day 11 p245.22**) and stated that he was "*the principal legal adviser to the Government in both its forms under the Constitution, both in relation to the Governor as part of the Government and to the elected Government*" (**Transcript Day 11 p104.20**). The AG also acts as a legal adviser to the RGP, which the AG cites as an aspect of his role as "*legal adviser to all parts of the Gibraltar Government*" (**Llamas 1 para 2 [A269]**). To provide examples relevant to the Inquiry, the AG advised the RGP on potential claims arising from Operation Kram, and advised IM and PR on the RGP's responses to the letters from Hassans about the search warrants. The AG also has particular powers regarding prosecutions under s59 of the Gibraltar Constitution, which overlap with work performed by the RGP and DPP.

20. On 13 May 2020, Mr DeVincenzi sent the AG a link to the "*Trudeau II Report*" prepared by the Office of the Conflict of Interest and Ethics Commissioner in Canada. As summarised by CTI at the Hearing, the Report resulted in a finding that the Prime Minister of Canada had breached a conflict of interest law by seeking to influence the Attorney General of Canada and further the interests of a company that was the subject of a criminal prosecution, and pressured the Attorney General to defer to prosecution. Mr DeVincenzi messaged the AG: "*Also, the Trudeau II report I sent last week is thoroughly worth a read for modern exposition of Shawcross doctrine and phenomenon of Govt going to outside counsel when disagree with AG, among many other issues*" [**C6806**]. The Shawcross doctrine is a principle that the AG may consult Government colleagues on decisions but must ultimately make decisions independently, in their sole discretion.

21. During questioning, the AG expressed the view that he did not think the Shawcross doctrine was "*completely applicable in this jurisdiction*", on the basis that "*I am much more removed from the politicians than an AG would be in the United Kingdom … I'm not part of the political party*" (**Transcript Day 11 p254.19**). However, the AG acknowledged that he nevertheless worked closely with the CM, for example on Gibraltar's Brexit negotiations.

22. CTI have considered the role of the AG in Gibraltar and its impact on the application of the Shawcross doctrine. By contrast to the UK where the AG is a member of Parliament and attends Cabinet, the AG of Gibraltar is not a full or ex officio member of the Council of Ministers or Gibraltar Parliament. This puts the AG in a relatively unique position: the only other British Overseas Territory in which the AG is not a member of cabinet or the legislature is the Falkland Islands, where the AG may participate (with the consent of the person presiding) in, but is not a member of and has no vote at, proceedings of the Executive Council and Legislative Assembly.[2] Among the Commonwealth states, examples of jurisdictions with AGs that are independent of politics are India, Pakistan and Singapore.

23. In Canada (where the AG is also Minister for Justice and a member of Parliament) the Shawcross doctrine is explicitly and well-established, for instance being recognised in a Canadian Dept of Justice Protocol[3] and by the Supreme Court of Canada in *Krieger v Law Society of Alberta (2002) 3 SCR 372*. In the UK, the "Shawcross exercise" was also recognised and explained by the House of Lords in ***R (Corner House Research) v Director of the SFO*** [2008] UKHL 60 at [6]:

> "*On 2 December 2005 the Attorney General and the Director decided that it would be appropriate to invite the views of other Government ministers, in order to acquaint themselves with all the relevant considerations, so as to enable them to assess whether it was contrary to the public interest for the investigation to proceed. This practice is familiarly known as a "Shawcross exercise", since it is based on a statement made by Sir Hartley Shawcross QC, then the Attorney-General, in the House of Commons on 29 January 1951.* ***The effect of the statement was that when deciding whether or not it is in the public interest to prosecute in a case where there is sufficient evidence to do so the Attorney General may, if he chooses, sound opinion among his ministerial colleagues, but that the ultimate decision rests with him alone and he is not to be put under pressure in the matter by his colleagues***." (Emphasis added)

24. However, this raises three further questions:
    a. Does the "Shawcross doctrine" or "exercise" have the status of a constitutional convention in the UK?

[2] Falkland Islands Constitution ss 41 and 61.
[3] https://www.justice.gc.ca/eng/rp-pr/csj-sjc/protocol-protocole.html.

b. If yes, does it necessarily follow that UK constitutional conventions have effect in British Overseas Territories? It has been stated (though only in reliance on a 2012 White Paper of the FCO) that the Overseas Territories are "*expected by the United Kingdom Government to abide by, inter alia, the rule of law, internationally recognised human rights standards, and generally recognised standards of decency and good government*".[4] This may be wide enough to encompass parliamentary practices, or conventions, such as the Shawcross doctrine.

c. Even if the Shawcross doctrine does take effect in British Overseas Territories, can it properly be translated to Gibraltar, given the relatively unique position held by the AG? This is because a key element of the doctrine is designed to ensure independence in circumstances where such independence is obviously at risk (because the AG is also a member of the executive). Where the AG is already separated from the executive / legislature in the manner prevailing in Gibraltar (and the Falklands, India, Singapore and Pakistan), this reasoning at least does not apply with the same force.

25. CTI does not consider that the Chairman should (or indeed can in the absence of authority in Gibraltar) decide these complex questions of constitutional law. The issue can be approached more simply and uncontroversially: which is that the AG, as Gibraltar's most senior lawyer, must be aware of the danger of conflicts emerging between different duties that he holds, and must take appropriate steps to resolve or at least mitigate them. It is likely that the roles being performed by the AG in Gibraltar (acting as principal legal adviser to the Government, as well as advisor to the Governor and RGP) may in some instances generate conflicts.

26. CTI notes and endorses as relevant the reference to Hendry & Dickson's *British Overseas Territories Law* (Hart Publishing, 2011) at [71] of Mr McGrail's Opening Submissions:

> *"It is incumbent on the Attorney General to give objective and professional legal advice to anyone in Government who seeks it, and the different aspects of the role should not cause a problem for an Attorney General most of the time. If, however, an Attorney General feels in a particular situation that it is not possible to advise without being conflicted in some way, it is open to the Attorney General*

[4] Albert et al, *Oxford Handbook of Caribbean Constitutions* (OUP 2020), p.214.

to use members of his/her chambers, or even instruct outside counsel to advise one of the parties involved."

D. JOB OFFERS

27. The context of the "*job offers*" allegations are explained in CTI's Opening Submissions. In summary:
    a. The Inquiry received allegations that some of the 19 statements submitted by members of the GPF to the Inquiry were the product of witnesses being offered unlawful incentives or inducements. It was alleged that the CM was involved, and assisted by Government official Michael Crome.
    b. The relevance of these 19 statements, and how the Inquiry should respond to the allegations of inducement, was on the agenda for PH4 on 19 July 2023. However, the matter was adjourned following a request from SIO John McVea, who was concerned that a hearing and ruling on these issues would risk prejudicing the RGP's criminal investigation.
    c. In January 2024, SIO McVea confirmed that the RGP did not object to the Main Inquiry Hearing continuing alongside the criminal investigation. On that basis, and having determined that at least some parts of the 19 statements contained relevant material,[5] the Inquiry requested evidence on this issue from the 19 witnesses, the CM and Mr Crome.
    d. As at the date of the Hearing commencing, these witnesses had not complied with these requests for evidence, either because of the live criminal investigation or on the basis of relevance to the Inquiry's Terms of Reference.

28. The Inquiry Team recognised the importance of investigation the allegations to both public confidence in the Inquiry and the integrity of the Inquiry process. However, the Inquiry was constrained by: (1) not creating any risk of prejudice to the criminal investigation or any potential future prosecution; and (2) the fundamental importance beginning as scheduled on 8 April 2024, given the risk that exercising the Inquiry's powers to summons witnesses or documents could potentially have generated judicial review proceedings. With these factors in mind, the Inquiry was able to progress its investigation into the job offers in three ways:

[5] Ruling dated 1 March 2024 (https://coircomp.gi/wp-content/uploads/2024/03/2024-03-01-Summary-of-Rulings-PH4-Agenda-items-8-and-9.pdf).

a. Gomez & Co, on behalf of IM, disclosed three documents to the Inquiry, which they had obtained during the course of IM's sexual assault trial in 2023. Those were:

   i. A letter sent by Mr Crome to the CM dated 9 February 2023, seeking his approval to offer employment terms to the sexual assault complainant [**C6932**]. The letter stated that she had "*volunteered a statement which she believes, may, in the future leave her exposed to potential victimisation. As a consequence, her continued service within the RGP may become untenable.*" The letter was signed by the CM.

   ii. A witness statement sworn by Mr Crome in the criminal proceedings explaining the process by which the employment terms were offered to the sexual assault complainant [**C6933**]. Mr Crome gives evidence that upon receiving a statement from the sexual assault complainant, the CM "*instructed that this information be laid before the Inquiry relating to the former Commissioner of Police for the Commissioner of the Inquiry to determine whether it was of relevance or not*". Mr Crome also stated that at a meeting, he "*explained to [the complainant] that if she wished to volunteer a statement to the Inquiry into former Commissioner Ian McGrail then HMGOG would offer her full protection, including transfer to another government entity if her position within the RGP became untenable as a consequence of her disclosure*." According to Mr Crome, the CM gave him approval to issue a letter to the complainant offering the employment terms.

   iii. A transcript from Day 4 of IM's sexual assault trial, in which Mr Crome, Mr Leif Simpson and Mr Maurice Morello provided evidence on the job offers [**C6935**].

      1. Mr Crome gave evidence as the procedure for providing assurances: "*the federation would submit a statement on behalf of one of their members – it is sometimes just a brief of what the individual wishes to put forward and then the CM will give his assurances that within the whistleblowing legislation and protect any individual who wishes to give a statement*" [**C6938**].
      2. Mr Simpson gave evidence that the GPF did not invite its officers to give statements to the Inquiry, and they came to the GPF

voluntarily after the Inquiry "*made it public that they wanted information in relation to Mr McGrail*" [**C6940**]. Mr Simpson confirmed that the letter to the sexual assault complainant [**C6932**] was a "*standard letter*".

3. Mr Morello gave evidence that prior to the Inquiry, he had not been engaged in any "*whistleblowing situations*" [**C6948**].

iv. An email dated 22 January 2023, in which the CM replied to Mr Crome about the sexual assault complaint, stating: "*This is chilling to the bone. Remarkable. The information must be laid before the Inquiry for the Commissioner to determine whether it is of relevance or not. But it describes the McGrail we know [we] was a corrosive influence*".[6]

b. CTI (and CPs) were able to question several witnesses about the job offers allegations.

i. The CM gave evidence that a written procedure (ie the letters of assurance) was put in place when "*more than a few*" officers came forward with complaints about IM. He stated that he did not make inquiries about the person's account before signing the letters of assurance, and did not see evidence as to whether an officer's position was untenable before signing (based on his understanding of the legislation that the aim was to avoid the position becoming untenable) [**Day 17 p41.22**]. He stated that he was not told the evidence that the complainants were giving against IM before signing the letters [**Day 17 p243.7**]. The CM denied that he was seeking to encourage allegations of wrongdoing against IM being made to the Inquiry [**Day 17 p45.10**], and also denied (when presented with the "*chilling to the bone*" email above) that he was "*responding enthusiastically*" to the negative evidence against IM [**Day 17 p246.20**]. Finally, the CM stated that complainants were interviewed for their new positions in some instances [**Day 17 p249.8**].

ii. JL denied giving assurances to two RGP officers that they would be provided jobs with the Environmental Protection Agency in exchange for evidence against IM [**Day 8 p189.7**], and also denied offering a cash reward in exchange for evidence against IM [**Day 17 p191.22**]. He

[6] This document was disclosed late and does not appear in the Hearing Bundles.

considered it was "*perfectly proper*" for him to give advice to the complainants despite his personal involvement in the Inquiry [**Day 8 p187.1**]. JL stated that he had seen the letter to the sexual assault complainant (which was sent to him by the Inquiry as part of the Salmon letter procedure), but not other letters of this kind [**Day 8 p192.7**]. The Inquiry was unable to ask JL further questions on this topic, due to issues of legal professional privilege caused by JL advising the complainants.

iii. Commissioner Ullger gave evidence that since becoming Commissioner, 22 officers had left the RGP pursuant to job offers made by the Chief Minister [**Day 13 p131.10**]. Four of these officers were going through a disciplinary process and one was being criminally investigated. He confirmed that once an officer leaves the RGP, the RGP does not have any recourse to be able to continue pursuing disciplinary matters. Commissioner Ullger believed that all of these officers had sought to give evidence to the Inquiry, but that only one of the statements had been deemed relevant [**Day 13 p133.3**]. Commissioner Ullger stated that there was no communication whatsoever between the RGP and Government, for example the Government did not ask for references or ask for details of the disciplinary investigations [**Day 13 p146.10**], and the CM's office did not contact the RGP to ask for information about whether an officer's position had become untenable [**Day 13 p152.1**].

iv. Mr Morello stated that the procedure was that: (1) there was a meeting between the officer, Mr Crome and Mr Morello where they would be assured they would be given protection; (2) the officer would verbally explain the evidence; (3) the officer would sign a witness statement; and (4) the officer would receive a letter of assurance [**Day 14 p50.19**]. He stated that GPF members must have known "*by word of mouth*" to approach Mr Morello about filing statements in the Inquiry, and said they were not encouraged to file statements critical to IM [**Day 14 p39.10**]. However, he did not come across any statements favourable to IM [**Day 14 p40.4**].

v. As to Mr Morello's own evidence, he stated that he received a letter of assurance after he signed his affidavit for the Inquiry [**Day 14 p51.19**]. He stated that he gave his evidence to the Inquiry "*of my own free will*" [**Day**

14 p33.7], and denied that Mr Crome communicated any requests from the CM to him in relation to Mr Morello's evidence or anybody else's evidence [**Day 14 p32.4, 33.1**]. Mr Morello accepted that as a result of the letter of assurance, his pension was "*puffed up*" by approximately three years, such that on retirement he received a pension as if he had worked 27 years, rather than as if he worked 24 years [**Day 14 p70.11**]. He was unable to quantify the monetary difference between these two pensions.

vi. Mr Morello also believed that Mr Simpson, former Secretary of the GPF, had been provided with a letter of assurance [**Day 14, p52.7**].

c. After giving evidence, Mr Morello also disclosed to the Inquiry a letter of assurance sent by Mr Crome to the CM stating that "*Maurice Morello has volunteered a statement which he believes may, in the future, leave him exposed to potential victimisation. As a consequence, his continued service within the RGP may become untenable.*" The letter proposed that "*to enable Sgt Morello to take up early retirement without any financial detriment it is proposed that he be awarded an ex-gratia payment in lieu of pension and gratuity for the shortfall as a consequence of not attaining full reckonable service*".[7] Mr Morello initially disclosed this document with the proviso that it was only for the "*eyes*" of CTI and the Chairman. A notice under s21 of the Inquiries Act was therefore sent to Mr Morello on 16 May 2024 and Mr Morello ultimately complied with that notice and produced the document to the Inquiry.

29. The evidence gathered by the Inquiry on the job offers is a helpful starting point. However, for the reasons explained above, it is submitted that the Inquiry is not in possession of sufficient material to make definitive findings about the "*job offers*". The major reason for which the Inquiry did not seek more comprehensive evidence on the job offers was the risk of prejudicing the criminal investigation. The appropriate course is therefore for the RGP to resume its investigation of these serious allegations and proceed as it deems appropriate.

30. On 1 March 2024, the Chairman ruled that only three of the 19 witness statements contained evidence which is relevant to the Inquiry's Terms of Reference and List of Issues. Following the Hearing, it appears to CTI that only one of those statements – that

[7] This document was disclosed late and does not appear in the Hearing Bundles.

of Mr Morello – is likely to meaningfully contribute to the Chairman's conclusions in the Report. Mr Morello confirmed that he was sent a letter of assurance, and received an enhanced pension following his early retirement from the RGP. It is submitted that this is a relevant consideration when the Chairman is analysing Mr Morello's evidence on other issues (for example, in relation to Issue 6), and the Chairman can do so without reaching concluded views on the job offers themselves.

JULIAN SANTOS

HOPE WILLIAMS

5RB

19 June 2024