

# INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

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## CTI'S FACTS SCHEDULE FOR CLOSING SUBMISSIONS

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## GLOSSARY

<b>The AG</b>	Michael Llamas KC, Attorney General
<b>The CM</b>	Fabian Picardo KC, Chief Minister
<b>The DPP</b>	Christian Rocca KC, Director of Public Prosecutions
<b>GPA</b>	Gibraltar Police Authority
<b>GPF</b>	Gibraltar Police Federation
<b>HMICFRS</b>	His Majesty's Inspectorate of Constabulary and Fire & Rescue Services
<b>IM</b>	Ian McGrail, Former Commissioner of Police
<b>JB</b>	Dr Joey Britto, Chair of the Gibraltar Police Authority
<b>JL</b>	James Levy KC
<b>LB</b>	Lewis Baglietto KC
<b>MW</b>	Superintendent Mark Wyan (formerly Inspector/Chief Inspector)
<b>NP</b>	Nick Pyle, Interim Governor
<b>PR</b>	Superintendent Paul Richardson (now retired)
<b>RGP</b>	Royal Gibraltar Police
<b>RU</b>	Richard Ullger, Commissioner of Police (formerly Assistant Commissioner of Police/Superintendent)

## ISSUE 1 – THE AIRPORT INCIDENT

### Period preceding the Incident

1. Following the Main Inquiry Hearing, there remains little dispute in relation to many of the underlying facts.
2. At the time, IM's position in the RGP was Superintendent (Crime and Protective Services), and Edward Yome was Commissioner of Police. IM led the RGP's operational response to this matter (McGrail 3 para 148(a) [A120]).
3. In early 2017, Leicestershire Police had reasonable grounds to suspect that a serving member of the British Forces stationed in Gibraltar ("**the serviceman**") was in possession of indecent images of children on his IT devices. They issued a "*wanted alert*" for him.
4. On 3 February 2017, the Joint Provost and Security Unit ("**JPSU**") arrested the serviceman in Gibraltar and seized his IT devices. The Ministry of Defence ("**MoD**") believed that it had the power to make the arrest under the (UK) Armed Forces Act 2006. The serviceman was subsequently released as there was no duty solicitor present in Gibraltar, and the JPSU did not have its own custody facilities. His devices were retained with the intention of conducting forensic analysis. The JPSU informed the RGP of these events on the following day.
5. CoP Yome's evidence was that IM informed him of these developments, and that he instructed IM to investigate the matter and report to him (Yome 1 para 12 [A1343]). Then-Assistant Commissioner Richard Mifsud's evidence was that the matter was being operationally led by IM as Superintendent of the Crime Division, in close consultation with CoP Yome (Mifsud 1 para 6 [A1349]). IM attested that he was chosen to prepare the Report as he "*led on the ground in terms of the policing response to that incident*" (**Transcript Day 7 p59.8**).
6. CoP Yome and/or IM sought legal advice from the AG and Senior Crown Counsel (Ricky Rhoda KC, formerly AG), who advised that the serviceman's arrest and detention, and the seizure of his devices, had been unlawful (Yome 1 para 14 [A1343]). CoP Yome was also made aware that the AG had advised the MoD that, in his opinion, the MoD agencies had

and were acting outside of their jurisdiction with regard to the arrest and the seizure of property (Yome 1 para 18 [A1344]).

7. On 7 February 2017 IM contacted Provost Marshal Chris Collins to raise concerns over the handling of the incident. At 11:00 RGP and JPSU officers met for a briefing, in which the JPSU declined to hand the seized devices over to the RGP (see IM's report of events dated 10 February 2017 [C147]). According to IM's account, PM Collins asserted that the RGP had no jurisdiction over the serviceman's actions [C147]. DCI Tunbridge disagreed with that assessment, and pointed out if the serviceman's computer contained indecent images of children, they were now "*in the jurisdiction of Gibraltar and in breach of Gibraltar Law*". PM Collins informed the RGP that the devices would be examined in the UK, and if they contained incriminating evidence the serviceman would be flown back to the UK to answer any potential charges [C147].
8. Then-CBF Walliker's evidence was that his first reaction was to "*wonder why the RGP felt compelled to insert themselves – unnecessarily in my view – into a criminal investigation being conducted by Bedfordshire Police*", that decision to send the serviceman back was "*taken separately and based on a duty of care to a potentially vulnerable individual ... and certainly not as an attempt to prevent him from being arrested and charged by RGP*", and that there was "*no indication that a crime had been committed in Gibraltar*" by the serviceman (Walliker 1 para 5 [A1385]).
9. According to IM's report, he asked DCI Tunbridge to consult with the Office of Criminal Prosecutions and Litigation ("**OCPL**") as to which authority had jurisdiction. It was at this point that Mr Rhoda KC confirmed the position as to the RGP's jurisdiction and also expressed concern that if the RGP were claiming jurisdiction, a repatriation of the serviceman could be deemed to be unlawful, and the proper way to do this was via established judicial processes [C148].
10. At 12:54 there was a further briefing, at which PM Collins disclosed that his legal advisors had supported his position and that arrangements had been made to despatch the exhibits to the UK on the following day (8 February 2017) [C148].
11. At 15:08, the RGP proposed to PM Collins that the RGP would conduct a parallel investigation into any offences committed in Gibraltar. PM Collins declined and reiterated

that forensic analysis would take place in the UK (at least in the first instance) [C149]. IM kept IM briefed of developments [C149].

12. At 16:30, IM met with Colonel Frank Green and PM Collins, who again rejected the proposal of a parallel RGP investigation. According to IM's report, he stated that he "*explained that the situation was seemingly escalating to the extent where the MOD's entrenched position did not fare well for relations with the RGP and by default the wider community in Gibraltar*". IM's account was that PM Collins responded by stating that "*his mandate was very clear; that he had to look after the interests of the troops and the UK investigation*", and that subsequently PM Collins "*told Col GREEN that the solution to the matter was to put [the serviceman] on a plane to the UK at the earliest opportunity*" [C150]. IM's report then states that he responded that the RGP could be driven to take executive action, but stressed that his intentions were not to go down that route and to resolve the issues by discussion and prevent further escalation [C150-1]. Finally, IM reported that PM Collins agreed to put the RGP's arguments to his superiors and revert to IM [C151].
13. At 19:33, CoP Yome sent a message to the WhatsApp RGP SMT chat group, noting that the Governor wanted "*a pragmatic approach*" and, in contrast: "*CM wants us to go for the jugular. Prepare all necessary warrants etc. This person will not be allowed to leave the jurisdiction and retrieve computers etc.*" [C757]. The SMT's full run of messages can be found from [C757] to [C897]. The CM confirmed that at this time (prior to the runway incident), he was "*very clear that the RGP deserved our support*" (**Transcript Day 16 p7.4**). However, he could not recall whether he had used the word "*jugular*", and said that he might have (**Transcript Day 16 p8.17**). During questioning, the CM repeatedly contrasted his support for the runway incident itself, with the subsequent arrests of the three senior MoD officials and search of the Tower (**Transcript Day 16 p3.23, p7.4**), addressed below. The CM stated that "*it shouldn't be fair to extrapolate from something I said about the runway incident how I felt about the tower incident*". NP made a similar point that his objections to IM's involvement in the airport incident was "*more about the arrests and the subsequent action than the actual incident and the blocking of the plane taking off*" (**Transcript Day 18 p15.16**).
14. According to IM's report: at 22:12 Collins informed IM that his position had not changed, and that the plans to fly out the exhibits the next day were on track, but he was not at

liberty to discuss whether the serviceman would be flown out; IM informed PM Collins that CoP Yome was trying to contact the CBF and had left numerous messages for his calls to be returned, but he had not been successful in reaching him, and that “*it would only be proper that he stalled his plans until CoP and CBF spoke*”; ultimately PM Collins maintained that his intentions remained unchanged [C151-2]. Late that night, DI Enriles and DC Howard applied for a warrant from the Stipendiary Magistrate to search the JPSU premises (sanctioned by CoP Yome), but this was declined on the basis that there was insufficient suspicion to believe that the computer devices seized from the serviceman contained incriminating evidence of offences committed in Gibraltar [C152].

15. Prior to 8 February 2017, CoP Yome repeatedly tried to contact Commodore Walliker (Commander of the British Forces in Gibraltar (“**CBF**”)), hoping to arrange that the RGP and the MoD could co-operate in the investigation and reach an agreement as to how to proceed, but Commodore Walliker was not in Gibraltar at the time and CoP Yome was unable to speak to him. CoP Yome did, however, speak to one of his deputies, who maintained that the arrest of the serviceman was lawful and that the MoD were entitled to fly him back to the UK. CoP Yome protested that the arrest was unlawful, and said that he had a legal opinion to support him (Yome 1 para 16 [A1343]). CoP Yome also telephoned the then-Governor, Lieutenant General Edward Davis, and informed him of the events that had transpired (Yome 1 paras 17 and 19 [A1343-4]). As Lt Gen Davis was away from Gibraltar, NP was the acting Governor during the incident (**Transcript Day 18, p4.15**).

#### **The runway incident: 8 February 2017**

16. On 8 February 2017, IM reported that he sought further advice from Mr Rhoda, who contacted NP and Colonel Green, and that NP asked Mr Rhoda to request that the RGP defer any action as he was seeking legal advice from the FCO as to whether the RGP had primacy in the matter [C152]. IM alleged (McGrail 3 para 148(a) [A120]) that NP’s “*inert activity*” in relation to the Airport Incident was “*a contributory factor to the unfortunate escalation of events*”. NP disagreed and maintained that “*the efforts of the Office of Governor were focused on reducing tension*”, pointing out that although he was away from Gibraltar in early February 2017, Lt Gen Davis “*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)*”. NP also stated that he called a meeting

between CoP Yome and the MoD Chief of Staff with a view to deescalating the situation, but the Chief of Staff did not attend (Pyle 2 paras 20-22 [A265]). During questioning, NP maintained that he “*worked quite hard*”, and that Lt Gen Davis has also said that NP worked tirelessly and that they were in regular contact (Transcript Day 18 p22.11).

17. CoP Yome instructed IM to apply for a fresh warrant in the Supreme Court of Gibraltar, and the hearing was listed for 15:00 [C152].
18. At around 14:00, IM learned that a military aircraft had landed at RAF Gibraltar, which he relayed to CoP Yome [C153, 772]. An MoD officer asserted that the flight in question was a purely operational visit. CoP Yome believed that this was untrue. PM Collins maintains that it was a pre-planned flight on official record since January 2017 (Collins 1 para 11 [A1398]).
19. CoP Yome then received information that the serviceman and exhibits would be removed from Gibraltar on the aircraft. CoP Yome thought that flying the serviceman out was “*clearly unacceptable to me and I felt that the RGP’s legal and operational authority was being challenged and undermined by the MoD*” (Yome 1 para 21 [A1344]).
20. At that point CoP Yome ordered that resources be deployed to the RAF station and investigate whether the MoD intended to remove the serviceman and exhibits. CoP Yome’s evidence was that he gave these instructions to RU (Yome 1 para 21 [A1344]), although it is not clear whether this is accepted by RU. RU reported to CoP Yome that the flight manifest did not record that the serviceman or exhibits were on board (Yome 1 para 22 [A1345]).
21. IM reported that at approximately 1520hrs the Chief Justice heard the application for the warrant to search for property seized from the serviceman’s residence by the JPSU and granted the warrant, while expressing that “*it was not a good day for law enforcement when one agency had to take executive action against another law enforcement agency in this fashion*” [C153-4]. Then-CBF Walliker maintains that he “*cannot understand what additional evidence if any was available to the RGP to obtain a Warrant ... at the second time of asking*”, and that at the time there was concern in the UK that the RGP’s actions “*had potentially hindered the investigation in the UK*” (Walliker 1 para 5 [A1385]).

22. CoP Yome then learned (including through Commander Jack Hawkins, Chief of Royal Navy Provost and PM Collins's line manager in the UK [C156]) that the serviceman and exhibits had already been taken on board the aircraft, and that the aircraft was proceeding to its take-off position. He instructed RGP officers to drive police vehicles onto the runway, to prevent the aircraft from taking off, which they then did. CoP Yome attested that "*police officers were deployed to the airport solely on my instructions*" (Yome 1 para 25 [A1345]). However, in questioning IM confirmed that he had not been deployed to the airport on CoP Yome's orders, even though several other officers had been (**Transcript Day 8 p6.24**).
23. There was a confrontation by the north barrier of the airport between Inspector Perera and Station Commander Liz Hutchison, who then spoke to RU over the phone [C154] (and see Ullger 1 para 40 [A540]).
24. IM also affirmed that there were repeated unsuccessful attempts to contact PM Collins throughout this period, and ultimately IM and other officers attended JPSU HQ at Gun Wharf to try and meet him in person [C153-4]. IM reported that he informed PM Collins that he "*practically knew that both [the serviceman] and the exhibits were on board the aircraft and that we would proceed to retrieve them*", at which point PM Collins took one further phone call, after which his behaviour completely changed and mellowed [C156].
25. At this juncture, CoP Yome received two telephone calls from Commodore Walliker. According to CoP Yome, during the first phone call Mr Walliker was adamant that neither the individual nor the computer in question were on the aircraft, and CoP Yome informed him that he had credible information to the contrary, and that Mr Walliker needed to measure his words to the contrary as otherwise he could be held accountable for obstructing police in the execution of their duty. CoP Yome further attests that Mr Walliker then asked CoP Yome to give him a few moments and then called a second time, this time informing CoP Yome that the aircraft would be returning to its stand. Finally, CoP Yome states that shortly after the second telephone conversation he received confirmation that the person and computer in question had been taken off the aircraft. CoP Yome saw this as vindicating the RGP's actions, and proving that the acting CBF, the Station Commander and Commodore Walliker had all been untruthful in their assertions (Yome 1 para 24 [A1345]).

26. The search warrant was not executed. According to IM's report, at 17:45 CoP Yome informed IM that he had received assurances from Commodore Walliker that the exhibits would be handed over to the RGP in due course [C157]. IM's report concludes that "*the escalation of tension was not down to lack of will or desire on our part to resolve the issues in a 'grown up' manner*", and that there "*has certainly been a serious breach of trust and confidence by, in my view, the three senior military officials referred to in this report*" (i.e. Col Green, PM Collins and Stn Cmdr Liz Hutchison) [C157].
27. At approx. 18:00 the CM telephoned Lt Gen Davis and updated him on events. He did not (and still does not) think that the RGP obstructing the runway to prevent a military aircraft from taking off was "*an appropriate way for the civil and military authorities to conduct themselves*", and matters "*should not have reached such a stage*". In order to end the stand-off and ensure that the subject would not leave Gibraltar until the issue had resolved, Lt Gen Davis telephoned CBF Walliker and instructed him to keep the serviceman in Gibraltar until the RGP completed preliminary inquiries, and to hand over the computer to the RGP (Davis 1 para 11 [A1410]). PM Collins asserts that he refused to hand over the computer because he considered the command not to be lawful, but subsequently handed over the evidence when he was ordered to do so by Provost Marshal (Navy) (Collins 1 para 12 [A1399]).
28. CBF Walliker's evidence as to 8 February 2017 was that "*the general behaviour of RGP officers on 8 February from the very top down was bizarre, potentially dangerous and unbecoming*" (Walliker 1 para 6 [A1386]). PM Collins opines that the encroachment onto the runway was "*a vastly disproportionate act*" in the circumstances (Collins 1 para 15 [A1399]). Sgt Sean O'Malley alleges that Ian McGrail entered JSPU and threatened him that he had arrested police officers and would not hesitate to arrest them again (O'Malley 1 p.5 [A1394]). IM responds to Sgt O'Malley's evidence (McGrail 5 paras 49-53 [A155-6]) pointing out that the PCB did not uphold any part of Sgt O'Malley's complaint relating to this incident, and denying that he threatened to arrest Sgt O'Malley, affirming instead that he treated him with "*respect and courtesy*".
29. On 8 February 2017 at 20:57, the CM emailed CoP Yome, IM, RU, Cathal Yeats, then Minister for Justice Neil Costa and the AG stating as follows [C142]:
- "I just want to say as a Gibraltarian, how proud I am of the work you have properly done today. Asserting our jurisdiction properly and reasonably, for all the right*

*reasons and within the law, is what future generations would have expected us to do. It is a pity the MoD have not been more elegant in the way they approached this. We have taught them a number of lessons today. You have done Gibraltar proud.*

*There are a number of obvious questions arising as to how some people behaved today; whether people lied to you or were lied to themselves is going to be a relevant question in coming days. We must not exacerbate matters but we cannot allow people to get away with having misled the RGP or having obstructed you. The law is the law for all of us, and an armed forced (sic.) uniform does not suspend application of the law to an individual, of whatever rank. That is what the UK taught us and we are not going to allow them to talk us out of it when it applies to some. But those are issues for tomorrow.*

*You have enjoyed my full support today at every stage of the way. Excellence (sic.) work. Please pass my sentiments, if not my email, to those who have been on the front line today.”*

30. Asked what he meant by “*we must not exacerbate matters*”, the CM explained that “*we had taught the MoD lessons that we all felt at the time, because we were at loggerheads, that they had to be taught, but we didn’t have to double down on those issues. Also, we would hope that the MOD would be more temperate in the way that they approached things and it takes two to tango*” (**Transcript Day 16 p10.20**).
  
31. IM denied that the subsequent arrests of the three MoD officials “*exacerbated matters*” contrary to the CM’s recommendation in this email. IM stated that the CM was “*egging*” him on, including at a meeting he had with the CM sent after this email (this was possibly a reference to the meeting in the Wessex Lounge addressed below) (**Transcript Day 7 p224.10**).

#### **The aftermath of 8 February 2017**

32. CBF Walliker states that he made his feelings known to Lt Gen Davis and the Chief Minister, and upwards through his command chain to the Joint Force Commander and recommended that an inquiry be conducted as a matter of urgency “*as the narrative on the Rock appeared to eulogise the actions of the RGP whilst demonising the actions of MoD*”. He further states that he could not alter the CM’s view “*that ‘his’ police force had*

*behaved exceptionally well, at the operational level, but that MoD personnel had not”, and that “the RGP had saved the MoD from ‘itself’”, whereas CBF Walliker believed the RGP had behaved “disgracefully”, and his opinion has not changed since that day (Walliker 1 para 6 [A1386]).*

33. Lt Gen Davis’s evidence was that he sensed that “*there was potential for significant and long-term damage to relations between Gibraltar and the UK*”, and that he and NP focused on getting both parties to work together, by having numerous conversations with the CM, the AG, CoP Yome, CBF Walliker and NP, “*advocating an outcome to the investigation that accommodated both civilian and military legal and due process imperatives in a mutually-supporting manner*” (Davis 1 para 14-16, 18 [A1410-1]). He also had a telephone call with the then Minister for Europe to give his account and recommend an independent review (Davis 1 para 17 [A1411]).
34. In the following days, a meeting was held between Lt Gen Davis, CoP Yome and Commodore Walliker, where it was agreed that the RGP would investigate whether sexual offences had been committed in Gibraltar and would be given access to the computer.
35. Also following the incident, CoP Yome instructed IM to “*conduct a thorough investigation into the actions of the senior MoD officers*” (Yome 1 para 28 [A1346]).
36. At some point in mid-February, IM states that he met with the CM (and RU) at the Wessex Lounge, Gibraltar Airport, with the CM in mid-February 2017. As to this meeting:
  - a. IM stated that the CM thanked and congratulated IM and RU for the manner the RGP had dealt with the incident, commenting that he had read IM’s report with great interest describing it as a “*gripping John Grisham novel*” and adding forcefully that he expected the three senior military officials (who he described as “*fucking idiots*”) to face due process for their actions. IM stated he told CM he would report up to CoP Yome (McGrail 5 para 13(d) [A146]).
  - b. At the Main Hearing, IM elaborated that “*not only was [the CM] supportive, but he was encouraging and egging the RGP to take action*” (Transcript Day 7 p64.2).
  - c. The CM stated that he had a “*fleeting recollection that I asked to see the officers involved before I flew to London but I cannot remember the meeting in great detail*”. He stated that the words “*gripping John Grisham novel*” is the sort of language he would have used. He also accepted it was “*very likely*” that he called

the MoD officials “*fucking idiots*”, adding: “*I felt that way then and I would be very unsurprised if I didn’t feel that way again if I once again reviewed the things they were doing at the time. It’s not a position from which I resile.*” The CM commented that he was surprised that IM appeared to have taken his words as “*almost an order*” that the officials should be arrested (**Transcript Day 16 p11.23**).

- d. RU could not recall this meeting, but said he had no reason to doubt IM’s evidence that it occurred. He did not recall the CM using the language “*fucking idiots*” to describe the military officials. His impression, via Commissioner Yome, was that the CM was supportive of the RGP’s approach to the airport incident (**Transcript Day 13 p83.10**).
37. CoP Yome specifically sanctioned IM’s request to execute search warrants at the office of the CBF and his Deputy at the Naval Base, the Naval Provost offices and the RAF Station Commander’s Office. IM explained in questioning that CoP Yome had detailed him to investigate the three officials’ activities, and as part of those inquiries he needed to obtain evidence through the execution of warrants (**Transcript Day 8 p7.19**). IM prepared an operational plan accordingly (Yome 1 para 29 [**A1346**]). The operation (known as Operation Apache) involved a “simultaneous strike” against the three military officers, where the MoD officers would be arrested simultaneously by three RGP teams each headed by a senior officer [**B2663**]. IM explained that a simultaneous strike is a standard approach where officers fear that the persons may confer, dispose of evidence or abscond (**Transcript Day 7 p60.19**).
38. The CM stated that he was unaware whether the arrests were specifically sanctioned by Commissioner Yome (**Transcript Day 16 p27.12**).
39. The search warrants were granted by the Stipendiary Magistrate on 27 February 2017 and not subsequently challenged in the courts [**C190**]. IM conducted the searches, during which material was recovered, and IM advised CoP Yome that there was sufficient evidence to proceed against the acting CBF, the Naval Provost and the RAF Station Commander for obstructing police officers in the execution of their duty. At a meeting between CoP Yome and the AG it was agreed that those individuals should be arrested.
40. Separately, on 28 February 2017, the AG received a Joint Opinion from Lord Pannick KC and Emily Neill as to the JPSU’s jurisdiction in Gibraltar [**C192**]. They advised that the (UK)

Armed Forces Act 2006 did not extend to Gibraltar, and that the Provost Marshal's Department did not have the powers to arrest the serviceman in Gibraltar, nor to seize his IT devices, and that their actions in doing so were ultra vires and unlawful. On the other hand, they advised that the RGP did have the legal power, right and indeed duty to act. No-one has since questioned the correctness of that advice, which was shared by the AG with CoP Yome and IM [C205].

### **The arrests on 1 March 2017**

41. The arrests took place on 1 March 2017. The RGP arrested (1) the Chief of Staff, British Forces Gibraltar, Colonel Frank Green, (2) the Station Commander at the Airport Wing Commander Liz Hutchison, and (3) Squadron Leader Provost Marshal PM Collins, on suspicion of obstructing the police and attempting to pervert the course of justice. The officers were the three most senior MoD members of staff in Gibraltar.
42. PM Collins was arrested at Gibraltar Airport (Collins 1 para 17 [A1400]); Colonel Green was arrested in his office in the presence of the CBF [C2757]; and Station Commander Hutchison was arrested in front of her team at RAF Gibraltar Station Headquarters. In questioning, NP clarified that PM Collins was arrested in the baggage hall (in his written evidence, NP had stated that PM Collins was "*with quite unnecessary drama removed from a civilian commercial flight*" (Pyle 1 para 21.5 [A246])). However, NP maintained that the "*impression I got from MOD at the time*" was that he was arrested with "*unnecessary drama*" (**Transcript Day 18 p18.1**). NP stated: "*I still find it quite incredible to this day that two weeks after an event which nearly caused a rupture in the relationship between Gibraltar and the MOD/UK after the issue of jurisdiction had been resolved, that two-and-a-half weeks later a decision was taken to arrest three senior military people when I'd have thought the opposite should be happening and steps are being taken to ensure that this wouldn't happen again*" (**Transcript Day 18 p18.11**).
43. IM was involved in the execution of the warrant at the British Forces Gibraltar Headquarters, known as The Tower, and arrested Colonel Green.
44. The RGP also seized equipment from HM Naval Base, and executed search warrants at MoD offices. This involved the seizure of MoD property and of personal devices from accommodation and motor vehicles for four MoD officers.

45. At 14:02, CoP Yome emailed the AG to inform him that the three officers were being arrested, and that search warrants had been executed on various offices and computers. The AG responded: “*Thanks for letting me know Eddie*” [C209].
46. CBF Walliker’s evidence was that, aiming to avoid a public arrest, he spoke personally to CoP Yome and IM in the days leading up to the arrests and confirmed that all three were happy to report to New Mole House Police Station, accompanied by a solicitor. NP added that this suggestion had been made at a dinner at the Convent hosted by the Governor with the CM, CBF and Commissioner Yome (Transcript Day 18 p20.22).
47. CBF Walliker accused the RGP of intending to humiliate the MoD in as public a place as possible, and says that he witnessed RGP officers giving each other ‘high fives’ outside the Tower as PM Collins was placed under arrest, and also asserts that “*The Provost Marshal was arrested in the Arrivals section of Gibraltar Airport as he stepped off an aircraft*”, which he deemed “*wholly unnecessary*” (Walliker 1 para 8 [A1387]).
48. Addressing IM specifically, CBF Walliker described his behaviour on the day of the arrests as “*utterly unprofessional*”, acting “*with only self-interest in mind and without a shred of integrity or emotional intelligence*” (Walliker 1 para 9 [A1387]).
49. In response to CBF Walliker’s evidence, IM stated:
- a. CBF Walliker failed to take any calls from CoP Yome at the time of the incident, and “*very arguably*” obstructed the RGP’s investigation (McGrail 5 para 41 [A154]).
  - b. There was sufficient suspicion that the serviceman had committed a criminal offence in Gibraltar, due to his devices being in Gibraltar (McGrail 5 para 42 [A154]).
  - c. The serviceman informed RGP officers that the MoD wished to remove him to the UK to arrest him and his family, and not on welfare grounds as CBF Walliker claims (McGrail 5 para 43 [A154]).
  - d. CBF Walliker’s position in his evidence cannot be reconciled with his email to CoP Yome of 6 March 2017 [C237], in which he unequivocally recognised the RGP’s jurisdiction (McGrail 5 para 44 [A155]).
  - e. He denied that CBF Walliker ever spoke to him or offered that the MoD officials were willing to attend the police station, and maintains that the officers who arrested PM Collins at The Tower “*behaved professionally throughout and displayed all due respect and courtesy*” (McGrail 5 para 45 and 46 [A155]). At the

Main Inquiry Hearing, IM stated that he did not think the RGP considered the option of asking the MoD officials to attend the police station, rather than arresting them. He stated “*due process had to follow to make them account for their actions and their offences were being investigated*” (**Transcript Day 7 p59.24**).

- f. He affirmed that the MoD officials were released by CoP Yome in exercise of his powers of discretion not to charge, and in the light of the letters of apology, rather than any lack of evidence (McGrail 5 para 47 [**A155**]).
  - g. He continued to work with CBF Walliker when appointed as CoP in 2018 right up to the end of CBF Walliker’s posting in Gibraltar, and they often met to discuss matters (McGrail 5 para 48 [**A155**]).
50. The CM stated that he believed he was informed about details of the arrests (**Transcript Day 16 p13.20**). He argued that IM could have procured attendance of witnesses and delivery up of electronic communications devices, in a way which would not have required the RGP to effect a raid in the Tower (**Transcript Day 16 p3.23**).
51. The officers were not ultimately charged, it being accepted that they had honestly, but erroneously, believed that the serviceman’s arrest had been lawful. All three of the arrested officers subsequently apologised [**C2790-6**], and were released from arrest and given formal warnings.
52. At some point around this time, the examination of the serviceman’s devices in Gibraltar failed to find any indecent images on the device, and he was therefore effectively cleared and released. He returned to the UK. A later examination by forensic experts retained by the MoD in the UK found more than 40,000 indecent images of children, some of the most serious level. In due course, the serviceman was arrested by police in the UK, and following pleas of guilty, was sentenced to imprisonment by a Court martial.<sup>1</sup>

### **The reaction of authorities in Gibraltar at the time**

53. On 3 March 2017 CoP Yome sent the AG and the CM an email expressing gratitude for the support received by the AG throughout the situation, asking that the legal position according to Joint Opinion be disseminated to all concerned including the MoD in

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<sup>1</sup> <https://www.gbc.gi/news/runway-incident-serviceman-sentenced-and-placed-sex-offenders-register>.

Gibraltar. He also expressed concern at reports he had received as to a dismissive, “bravado” attitude by MoD personnel to the whole incident and the legal position [C204].

54. In reply (copied to the AG), the CM stated “*If it requires another turn of the screw, which I will not hesitate to support you in, it will once again have been brought about by those who fail to recognise the need to show proper and genuine contrition and respect for the RGP and for our Constitution ... I can also tell you that Gibraltar will not be home for the people in question for long and we won’t be blocking the tarmac for a moment to delay the plane when the time soon comes for them to wave goodbye to the best place these idiots have ever had the good fortune to live in their petty lives. Good riddance. And goodbye won’t come soon enough*”. He concluded: “*Gibraltar, its Chief Minister and its people are proud of their police and the SMT, Commissioner and their Attorney General. The UK as a whole, conversely, has been embarrassed by its senior ranks on the rock...*” [C207]
55. The CM agreed that in this email, he did not appear to be expressing any concern or regret over the RGP’s actions (**Transcript Day 16 p15.1**), and accepted that Commissioner Yome may have interpreted the email as wholehearted support for the RGP’s actions (**Transcript Day 16 p16.18**). The CM stated that by “*another turn of a screw*”, he was referring to “*whatever Eddie [Yome] felt needed to be done*” (**Transcript Day 16 p17.3**). The CM’s explanation for why the email did not reflect his disapproval was that: “*These are my people. The people that I represent – I represent the police officers in the Royal Gibraltar Police – were doing a job which they believed were in the best interests of the people of Gibraltar and I believe jurisdictionally they are doing in the best interests of the people of Gibraltar*” (**Transcript Day 16 p18.16**).
56. NP stated that he did not agree with the CM’s reaction to events in this email, and thought that the sentiments were not conducive to a good relationship between the Government and MOD (**Transcript Day 18 p29.14**).
57. On 4 March 2017 CBF Walliker emailed CoP Yome (copied to Lt Gen Davis and NP) asking that the charges be dropped and the investigation terminated “*by the middle of next week*” on the basis that there was no evidence to support the charges of perverting the course of justice, in exchange for expressions of contrition by the three arrested officers. He also asked for the return of the seized items [C211]. CoP Yome replied on the following day expressing disappointment at the CBF’s approach and maintaining that “*the evidence*

would appear to be conclusive that your officers *HAVE* obstructed and *HAVE* attempted to pervert the course of justice”. He stated that the only way in which the RGP might consider not charging would be if there was a “*GENUINE acceptance of guilt by the individuals in question, acceptance of the gravity of the situation and an unequivocal expression of remorse and apology*” [C225-7]. Later on the same day, Gomez and Co submitted to the RGP a statement by Stn Commander Liz Hutchison [C239], giving an account with which RU (upon reading it three days later) vehemently disagreed [C249].

58. On 5 March 2017 Rear Admiral Radakin proposed a meeting with the AG, the CBF and the CoP to discuss matters. The CM’s reaction, when informed by the AG was that a meeting with the CBF “*doesn’t work*”, stating that “*they just don’t understand the nature of the prosecution process*”. He further noted: “*I have just spoken to Ed and told him they have to allow RGP to have the space to make their own decisions on the criminal aspects of the case ... Let’s keep in touch to ensure that we continue to do Gibraltar proud on all aspects of this matter*” [C232].
59. A WhatsApp message dated 5 March 2017 [C817] to CoP Yome regarding the position adopted by the CBF, describing it as containing “*an error of legal understanding*” in every single operative sentence and presenting “*equivocation in respect of contrition*”, offering to assist in drafting a response. The CM’s WhatsApp message ended stating: “*If those statements come back telling us they ... were right to do what they did, then it is going to be difficult to caution them*”. The email drafted by CoP Yome with the CM’s assistance (CoP Yome states that in the SMT WhatsApp group that he prepared it “*with a little help from a friend*”) on 5 March 2017 [C820] stated that it appeared from his email that “*this failure to understand the law of applicable (sic.) in Gibraltar has not yet been corrected in your mind*”. The email also maintained that the evidence appeared to be conclusive that MoD officials had obstructed and had attempted to pervert the course of justice. The CM accepted that in this correspondence, he was continuing to support the RGP in relation to the dispute, stating: “*nobody should expect me to resile from supporting that which goes to the core of the existence of Gibraltar’s jurisdiction in parts of the MoD estate...*” (Transcript Day 16 p20.22). He drew a distinction between statements about “*jurisdiction and defence of jurisdiction*” and “*the manner in which things had been carried out*” (Transcript Day 16 p23.9).

60. On 6 March 2017 CBF Walliker sent a further email stating that *“the events of 8<sup>th</sup> February and the manner in which they have continued to unfold are a source of deep regret for me, my team, and I know that is also reflected by my higher HQ and the MOD”*, and apologising for any alarm or offence caused by his previous email [C237].
61. On 7 March 2017, CoP Yome forwarded Stn Cmdr Hutchison’s account to the AG and the CM, reporting that it was *“certainly not a letter of contrition or apology on the contrary she is defiant and justifies her actions”*. The CM responded noting: *“This is just a bland “I didn’t do anything wrong” which we know does not accord to the facts”*, and proposed to meet Rear Admiral Radakin again [C256].
62. On 8 March 2017, Rear Admiral Radakin wrote to CoP Yome (copying the AG and Lt Gen Davis) apologising on behalf of the Joint Forces Command. He accepted that the MoD’s view at the time that the case was subject to exclusive Service Police jurisdiction was not correct. He admitted that the Joint Forces Command *“did not immediately recognise the jurisdictional legal primacy in this case for [the RGP] to investigate, and if necessary, prosecute the individual”*. He expressed the *“regret”* that there were *“altercations”* between British Forces personnel and RGP officers, stating that *“I cannot emphasise to you how much we regret, with the benefit of hindsight and the later legal advice we have received, that we were not better able to cooperate with those of your officers in question”*, and regretted the accusations that British Forces Personnel had behaved *“disrespectfully”* towards RGP officers [C260]. Apology letters were subsequently issued by each of Col Frank Green, PM Chis Collins and Wing Commander Liz Hutchison on 9 March 2017 [C2790-6]. Asked whether he maintained that IM was to blame for the fallout from this incident, NP stated that *“there was clearly fault on both sides”* but stated *“to this day I have still not seen any apology for the actions of the Royal Gibraltar Police”* (Transcript Day 18 p26.2).
63. On 9 March 2017, CoP Yome and the RGP SMT drafted a press release addressing the incident and arrests, which they sent to the CM and the AG for their review, and the AG responded with an amended version agreed to by the CM [C278-281].
64. Also on 9 March 2017, a member of FCO staff emailed the CM (copying the AG, NP and Lt Gen Davis) stating: *“I just went to update Sir Alan Duncan [then Minister for Europe] in relation to the events of 8 February and beyond. The Minister was very happy that we*

*appear to have reached a good outcome. He asked me to pass on his personal gratitude to you, and the Commissioner of Police, for helping us to get to this point.*” [C291] Asked whether this email demonstrated that Sir Alan seemed to hold a positive view of how the incident was resolved, NP stated *“I think what they are saying they are happy to have reached a good outcome. It doesn’t mean they’re happy with how we got there. This is diplomacy...”* (Transcript Day 18 p27.6). NP also stated that he reported his concerns about IM’s handling of the incident to the FCDO (Transcript Day 18 p27.12).

65. On 10 March 2017, Lt Gen Davis sent an email to CoP Yome (copying the CM and the AG) offering *“my deep gratitude to you and your Police Officers for the efficacy and manner in which the RGP has conducted this investigation ... In short a very tough job, very well done. Thank you.”* [C293]
66. By contrast, as highlighted above, CBF Walliker and PM Collins have provided statements to the Inquiry which criticise the RGP, including IM’s, actions. Neither were asked to give evidence at the Main Inquiry Hearing.

#### **GPA investigation**

67. On 9 May 2017, in a meeting with GPA Chair John Gonçalves, the CM requested that the GPA inquire into the Airport Incident (Gonçalves 1 para 11 [A338]). Mr Gonçalves clarified in questioning that the scope of this request was to inquire into the airfield incident of 8 February 2017, and not the subsequent arrests.
68. Mr Gonçalves explained that prior to this, he was aware of the incident superficially but that the GPA did not have any details, as it was not the business of the GPA to get involved in RGP operational matters (Transcript Day 14 p113.16). Mr Gonçalves indicated that the CM did not express any view to him about the way that the incident had been handled by the RGP (Transcript Day 14 p114.5).
69. On 11 May 2017, a meeting of the GPA noted the CM’s request and those present agreed to ask CoP Yome for the investigation file [C308]. At the same meeting, NP said that he may excuse himself from any subsequent meeting given he was Acting Governor when the incident broke, but on the following day he emailed other members stating that on reflection he thought he should attend and provide any insights, without breaking

- confidences, that he would be able to bring (although he stated that he would leave the meeting should he deem there to be any conflict or at other members' request) [C314].
70. The matter was raised again at a GPA meeting on 15 May 2017 [C316], at a specially called urgent meeting (**Transcript Day 14 p116.10**). The meeting concluded that the GPA had no authority or jurisdiction over the MoD, but it should seek information from the CoP under s19 of the Police Act 2006 to assist in the preparation of a report to submit to the CM [C316]. The section essentially requires the Commissioner to provide information and documents to the GPA on its request.
71. According to Mr Gonçalves, NP reported that Lt Gen Davis envisaged that the GPA would recommend that an independent inquiry be held (Gonçalves 1 para 14 [A339]). Mr Gonçalves stated that the GPA took note of this request, but did not feel obliged to call an inquiry and ultimately the GPA "*did our own thing*". He does not recall NP sharing his views on the incident or subsequent arrests at that stage (**Transcript Day 14 p116.25, 117.17**). NP stated his belief that Lt Gen Davis wished that there had been an inquiry rather than a review by the GPA, and explained his understanding that an inquiry "*lifts it into a ... completely different game*" (**Transcript Day 18 p37.3**).
72. Later that day Ernest Gomez emailed other members of the GPA informing them that the CM had "*cleared for me that he has not agreed to any MOD involvement in or approval of in respect of members*" of an independent panel [C333]. GPA members (including NP) therefore agreed to remove any reference in a letter to the CM to the MOD agreeing to members on any panel [C334, 338].
73. On 16 May 2017, Mr Gonçalves wrote to the CM informing him that the GPA would seek information from the CoP and then submit a report to the CM under s15 of the Police Act 2006 [C319].
74. On 15 July 2017, Mr Gonçalves informed the GPA that the CM had requested a report on the GPA's assessment of the RGP's actions before, during and after the Airport Incident, "*preferably by early September*" [C473].
75. On 17 August 2017, CoP Yome provided three documents to the GPA about the airport incident (IM's report of 10 February 2017, the Joint Legal Opinion of 28 February 2017, and

Rear Admiral Radakin's letter of 8 March 2017) [C477]. The GPA met to discuss those documents in August 2017 (Gonçalves 1 para 19 [A340]).

76. On 31 August 2017, the GPA met with CoP Yome, IM, RU and Chief Inspector Tunbridge to discuss the matter. No minutes of that meeting are available (Gonçalves 1 paras 19-20 [A340]). IM explained that there was a *“question and answer session and we had to deliver individual inputs to the Authority on our actions and our decision making”* (Transcript Day 8 p10.2). Mr Gonçalves does not believe that NP was present at this meeting, and stated that he had been unable to locate the meetings for this meeting in the GPA records (Transcript Day 8 p120.15). Mr Edgar Lavarello, another member of the GPA who gave evidence, could not remember whether NP was present but noted that NP at times missed GPA meetings due to conflicts (Transcript Day 14 p195.19).
77. Mr Gonçalves explained to the Inquiry that the GPA's review did not involve seeking evidence from the MoD officers. This was because Mr Vikram Nagrani, a GPA member who was its *“unofficial legal adviser”* said *“we cannot talk to or investigate or interview anyone outside the RGP on this”* (Transcript Day 14 p119.22). Mr Gonçalves says that he accepted the advice that it would be out of order to ask for their accounts (Transcript Day 14 p120.13). He acknowledged that the accounts provided to the GPA by the RGP officers was only *“one side of the story”*, but said that *“we chose after much deliberation to accept that the evidence provided to us by the RGP was the truth and nothing but the truth”* (Transcript Day 14 p123.13).
78. NP said that he did not believe he was present at the deliberations which resulted in Mr Gonçalves sending the email on 5 September 2017 (Transcript Day 18 p38.22), by which he is presumably referring to the GPA's meeting in August 2017 to discuss the documents, and their meeting with the RGP on 31 August 2017.
79. On 5 September 2017, Mr Gonçalves wrote to the CM communicating the GPA's conclusions. These were captured in an email dated 6 December 2017, which states [B2157-2158]:
- “...The GPA has come to the firm conclusion that the actions of and the restraint shown by the relevant RGP officers during the ... Incident were considered, deliberated, entirely proportional and highly commendable. As such, we do not doubt the effectiveness and probity of the policing demonstrated by the RGP in respect of the ... Incident. We would take the liberty of adding, though it may not*

*be our place to do so, that the actions of certain MOD personnel in respect of the ... Incident deserve censure and that you should consider whether a full inquiry ought to be undertaken by a body independent of the RGP and the MOD so that lessons may be learnt from this incident.”*

80. This position is affirmed in evidence by several members of the GPA (see, e.g. Falero 1 para 11 [A379], Gomez 1 para 21 [A396], Hassan-Weisfogel 1 para 22 [A413], Lavarello 1 para 21 [A428], Nagrani 1 para 22 [A446], Patron 1 para 20 [A459], Reyes 1 para 22 [A483]). Mr Gonçalves confirmed that:
- a. The GPA’s conclusion in this email was limited to how the RGP handled the airfield incident, and not the arrests (**Transcript Day 14 p167.23**). The GPA had not considered it necessary to show an interest in the arrests and inquire into their proportionality (**Transcript Day 14 p169.24**).
  - b. The matter was serious enough to be taken further, *“and that’s why we decided that we had come as far as we could and that a full inquiry ought to be undertaken by an independent body...”* (**Transcript Day 14 p125.1**).
81. NP’s evidence was that he raised concerns over the RGP’s and particularly IM’s behaviours formally on numerous occasions with the GPA, the Governor, the CM and the FCDO. When asked what behaviours of IM he raised with those parties, NP stated that *“I was informed by not just Colonel Frank Green but people who were in the Tower at the time and the CBF that Mr McGrail was just a bit aggressive”* (**Transcript Day 18 p31.9**). NP clarified that he did not raise these concerns in writing, but that there may be a written record in London of his reports in weekly video conferences (**Transcript Day 18 p32.9**).
82. NP also stated that the GPA methodology in conducting the review was *“in my opinion seriously flawed”*, as they did not seek any information from or interview the MoD officers (Pyle 1 para 21.7 [A247]). During questioning, NP added that the GPA did not interview him or the Governor (**Transcript Day 18 p33.19**). NP described this as a *“fairness issue”* or a *“sort of natural justice point”* (**Transcript Day 19 p63.3**).
83. In response to this:
- a. Mr Gonçalves stated that NP never raised concerns about IM’s actions during the airport incident to him or the GPA (**Transcript Day 14 p120.21 p121.18**). Mr Lavarello also could not remember anyone raising concerns about IM’s actions

during the incident, and said that NP had not raised any concerns with him about the subsequent arrests (**Transcript Day 14 p197.12, 198.9**). Mr Lavarello stated that: *“this was a huge embarrassment to the MoD. I don’t think at the time anyone dared speak out against what happened because it was so embarrassing for them”* (**Transcript Day 14 p199.9**). NP accepted that he probably did not complain about the GPA’s methodology at the time, but that *“I probably just expressed my view that it wasn’t right that only one side were approached about this”* (**Transcript Day 18 p35.19**).

- b. Mr Gonçalves added that NP did not raise any concerns with him about the GPA’s methodology (**Transcript Day 14 p129.11**). He noted that NP was present at the GPA meetings on 11 and 15 May when the GPA decided that the GPA had no jurisdiction to involve the MOD in its inquiries, and that NP did not dissent (Gonçalves 1 para 9 [A347]). NP agreed that he *“probably”* did not object to the section 19 procedure, but that *“I did say that all they had to do was ask the MOD. Just because you don’t have jurisdiction and the legal authority to do something, it doesn’t mean you can [sic] make an inquiry as to whether that could happen”* (**Transcript Day 18 p354.25; see also Day 19 p17.2**). This was not recorded in the GPA minutes.
- c. Mr Gonçalves disagreed with NP that the process of the GPA’s inquiry was flawed, and argued that the fact the GPA did not seek evidence from anyone other than the RGP themselves did not demonstrate that the process was flawed (**Transcript Day 14 p129.2**).
- d. Mr Lavarello added that he doubted there were people from the MOD who wanted to speak out, and he couldn’t imagine how the MOD could defend their actions (**Transcript Day 14 p201.20**). Mr Gonçalves considered that the GPA fully complied with its process under s19 of the Police Act (**Transcript Day 14 p156.24**). By contrast, NP stated that he was *“absolutely unequivocal in my belief that MOD would have said yes and provided full cooperation”* ((**Transcript Day 18 p35.4**).
- e. IM stated that he was not aware of NP alerting the GPA to any concerns about IM’s actions, and that the first time he learned that NP had concerns about the airport incident was when the Inquiry was convened (**Transcript Day 8 p11.18, 12.22**).

#### **Subsequent complaint to the PCB**

84. On 19 August 2019, two junior MoD personnel made a complaint to the PCB making several accusations against RGP officers involved in the arrests following the Airport Incident, including IM. The complaints centred around DCI Tunbridge's execution of the warrant, alleging that he had acted outside its remit (IM did not execute the warrant or conduct the searches), but also complained about comments made by IM in a recent conference about potentially reopening the investigation (an allegation which IM denied) [C2536-44].
85. It appears from a WhatsApp exchange between IM and JB on 21 October 2019 that IM initially wished to object to the complaint against him specifically being investigated at all, on the ground that as CoP he was not subject to the Police Discipline Regulations 1991 [C6543] although it is unclear how this issue was resolved.
86. A sub-committee of the PCB was constituted to investigate the complaints. IM filed a report to the PCB on 4 November 2019 [C2757]. The PCB dismissed the complaints on the ground of insufficient evidence, and in relation to IM found that his involvement was limited to applying to the Supreme Court for the warrant to enter and search the JPSU [C2552] (this is confirmed in Carreras 1 para 10 [A515] and Carreras 2 para 4 [A523]). This was communicated to the complainants on 29 May 2020, and also to the GPA (Carreras 2 para 5 [A523]). IM stated that he did not receive a response from the PCB, but understood that the complaints were not upheld (Transcript Day 8 p8.5). NP stated that he did not check in on the complaints process (to see whether his concerns about IM's incidents were well-founded) as he did not believe he had a right to (Transcript Day 19 p207.5).
87. On 7 and 8 July 2020 the complainants asked that the GPA review the decision of the PCB [C2553-4, C2560-1]. On 2 September 2020 the GPA concluded that the request to the GPA for review of the decision of the PCB did not qualify for an appeal given that no new evidence had been provided and the decision of the PCB could not be construed as perverse [C5143]. JB gave evidence that he was the person that made this decision (Transcript Day 15 p260.19).

#### **MoD review**

88. NP affirmed that there was agreement between Lt Gen Davis, the CM and the Chief of Staff, Joint Forces Command, MoD in the UK on the need for an independent review.

However, this did not proceed after the MoD changed its position for “*bigger picture relationship reasons and a wish to conclude negotiations between HMGOG and MOD around the Armed Forces Act*” (Pyle 1 para 21.8 [A247]). Lt Gen Davis attested that he recommended an independent review, and was supported by the MoD’s Director of International Security Policy and the Commander and Chief of Staff UK JFC, but that by the time the parties felt they were in a position to take part in a review in the autumn of 2017, “*it was considered that a review would be to the detriment of the significant progress that had by then been made in strengthening the relationship and cooperation between the RGP and MOD/BFG*” (Davis 1 paras 13, 20-21 [A1410, 1412]).

89. CBF Walliker attested that his understanding was that the CM had argued for not having an Inquiry to save the MoD’s “*blushes*”, and that the FCO prevailed upon MoD at a senior level to let the matter rest. He maintained, however, that the three officers were released without charge “*because there was nothing to charge them with*”. He asserted that such an inquiry would have concluded that “*Supt McGrail was neither a competent nor credible candidate to succeed Commissioner Yome*” (Walliker 1 para 12 [A1388]).

#### **Long term impact of the incident**

90. The AG gave evidence that, following the airport incident, he was required to “*pick up the pieces*” and as a result spent most of 2017-2018 drafting an Armed Forces Gibraltar Act and a protocol on the exercise of criminal jurisdiction in Gibraltar (**Transcript Day 12 p121.14**). The AG expressed the view that the “*wound that had been created by the way those three senior officers had been arrested, ran very deep*”, and that as a result he had concerns about IM’s policing method and style (**Transcript Day 12 p122.10**). However, the AG acknowledged in questioning that there was no written record of his concerns about the airport incident, and he had not expressed them in his written evidence to the Inquiry (**Transcript Day 12 p165.1**)
91. The CM also gave evidence that “*massive damage*” was done to Gibraltar’s relationship with the MoD as a result of the Airport Incident (**Transcript Day 16 p4.15**). Like the AG, the CM agreed that there was no written record of him expressing concern about IM’s actions, including to Commissioner Yome. However, he said: “*it doesn’t mean that because I didn’t put it in writing at the time, I didn’t express that to Eddie [Yome] at different times...*” (**Transcript Day 16 p28.18**).

92. NP agreed that the relationship between the MOD and Government was damaged by the airport incident, and that it took “*a good six to 12 months*” to repair (**Transcript Day 18 p29.18**).

## ISSUE 2 - THE ASSAULT INVESTIGATION

93. The Assault Investigation is cited as a “reason” in Pyle 1. NP states that his loss and confidence in Mr McGrail’s probity and integrity was “*progressive over a period of time*” which “*began early on after [his] arrival in Gibraltar*” (Pyle 1 para 20 [A245]). Amongst the items that he then lists is “*the helicopter Pilot incident*”, which NP explains as follows (Pyle 1 para 22 [A248]):

*“In March 2017, during a stop-over in Gibraltar, a helicopter and another member of the crew were assaulted in a bar in Gibraltar, the pilot so severely that his cheek or jawbone was fractured to prevent 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.”*

94. The Inquiry also received evidence on the Assault Investigation from Commodore Michael Walliker, then CBF Gibraltar, who stated (Walliker para 13 [A81388]):

*“... there is no evidence of any investigation being conducted whatsoever. At the time, there were rumours that an assailant had been arrested, but allowed to go home to change his clothes, and that he was released without charge only a few hours later. When I spoke to Supt McGrail about the incident, I was told that whilst the RGP was investigating the incident, there was evidence that the helicopter pilot was drunk and abusive and therefore deserved what he got. I reported this conversation back up my command chain.”*

95. The Inquiry sought disclosure from the RGP in relation to the Assault Investigation, and established the following:

- a. At the time Mr Yome was CoP and IM was Superintendent in Charge of the Crime and Protective Services Division.
- b. The investigation of the assault was named “Operation Bolero” and handled by officers of the CID. According to IM, the investigation was led by Detective Inspector Roy Perez (McGrail 5 para 58 [A157]).
- c. The officer in charge of the case, PC Stefan Figueras, obtained witness statements from 18 witnesses [C399], and compiled a forensic report [C347] and a report to

Chief Inspector Wayne Tunbridge (IM's Deputy at the time) [C352], which concluded as follows:

- i. The CCTV showed two suspects following the two naval officers ("F" and "J") out of the bar, but no more than that.
- ii. There was no CCTV of the attack upon J, and no eyewitness (not even the victims themselves) was able to describe, still less identify, anyone who had been involved in the attack.
- iii. The suspects were arrested and interviewed, but gave "no comment".
- iv. The likelihood of any conviction was "non-existent", and thus the evidence was insufficient to justify charging the suspects [C368].

96. Based on the evidence available, it appears that there was a thorough and professional investigation into the incident. IM's evidence was that his involvement in the investigation was limited to seeking updates on its progress (McGrail 5 para 61 [A157]), so that he could update the Provost Marshall (Transcript Day 7 p65.9). IM described NP's allegation that the RGP did not investigate the crime properly as "*absurd and insulting*" (McGrail 5 paras 64 [A157]). He pointed out that the Commanding Officer of HMS Monmouth wrote to CoP Yome expressing appreciation for how the RGP had dealt with the matter (McGrail 5 para 63 [A157]), and added that "*having seen the work that the officers carried out and the lengths that the RGP went to in terms of sending exhibits off for forensic examination to the UK, arresting four or five individuals, questioning them, trawling through hours on end of CCTV footage, I think it was an investigation well-conducted*" (Transcript Day 7 65.9). IM also has no recollection of any conversation as alleged by CBF Walliker, and denies that he would ever have said that a victim of an assault deserved a beating (McGrail 5 paras 68-70 [A158]).

97. NP gave evidence that he did not take any steps to verify the "*widely held belief in MOD circles*" that the RGP did not investigate the crime, but stated that he had no reason to doubt CBF Walliker's version of events ((Transcript Day 18 p42.10, Day 19 p209.1). When asked if he accepted the information was hearsay, NP stated "*well, it was hearsay from the Commander of British Forces so I suspect – I suggest it is more than hearsay*" (Transcript Day 19 p209.7). NP stated that he had a "*very close relationship*" with CBF Walliker, and had IM's comments been untrue, it would have been a "*very brave thing*" to report them up the command chain (Transcript Day 19 p34.14). In questioning, NP

accepted that he gave more weight to information coming from MOD sources than from other people, as he had no reason to doubt what they were telling him (**Transcript Day 19 p35.12**).

98. NP stated that he did not believe he raised this matter with the GPA, but that there might have been a newspaper article about it discussed at a GPA meeting, and that he did not raise it during the process of IM's appointment as Commissioner (**Transcript Day 18 p44.4, 54.13, Day 19 p5.3**). IM also stated that neither NP nor the GPA raised this issue with him (**Transcript Day 7 p66.20**).

### ISSUE 3 - THE INCIDENT AT SEA

99. The Undisputed Facts contain a detailed overview of the Incident at Sea and its aftermath, which it is not necessary to repeat in full. The paragraphs below focus on the three matters expressly identified in the List of Issues and addressed during the Main Inquiry Hearing, namely: (1) whether faults or failings in operational instructions or procedures of the RGP contributed to the collision; (2) communication between the RGP and the CM, the AG and NP about the location of the Incident; and (3) communication between the RGP and the CM, the AG and NP about legal claims arising from the Incident.

#### **RGP policies and procedures**

100. The (undated) Standard Operating Procedures at the time of the Incident provided that: *“marine crews will conduct systematic periodic patrols of Gibraltar’s coastline and territorial waters throughout their tour of duty. They will pursue suspect vessels in a determined though safe manner within their territorial waters and liaise with their Spanish counterparts.”* They add: *“we will only operate outside BGTW when we are called upon to attend to a lifesaving situation”* [D10183].
101. On 8 June 2015, Inspector Albert Buhagiar sent an email to the RGP Marine Section providing *“revised instructions to be adhered to forthwith”* [C135]. He stated: *“Previous instructions allowing crews to leave BGTW at the invitation of the Guardia Civil, whilst in pursuit of a vessel and with the authority of the Duty Inspector or other senior officer are revoked. RGP vessels will not operate outside BGTW other than in support of a search and rescue operation led by the Gibraltar Port Authority. In summary:*
- a. PMB will not operate outside BGTW in pursuit of criminal activity.*
  - b. PMB may operate outside BGTW in support of search and rescue operations coordinated by the Gibraltar Port Authority.”*
102. Inspector Albert Buhagiar sent a further email on 17 February 2016 to the Marine Section [B1703], stating: *“I would like to remind **ALL** of the current and existing instructions that under no circumstances are you allowed to police/patrol outside the limits of BGTW. The only exception would be in a GPA led SAR [search and rescue] operation or of a*

*vessel or person(s) in distress. In any case, you should first seek authority from either myself, Sgt. Stone or the Duty Officer.*

*Furthermore, the AIS on the vessel being used will be **switched-on** at all times...”.*

103. On 8 July 2016 a set of Marine Section Instructions were created and/or circulated (“**the Instructions**”) [C5251]. The Instructions state that: “*Officers are NOT authorised to operate outside BGTW and in Spanish Waters unless when responding to a situation as described in paragraph 4(a). (a) Participating in a Search and Rescue operation at the invitation of Spanish Authorities.*” It is clear from these instructions that officers were not to operate in Spanish waters except at the invitation of Spanish Authorities and only for search and rescue operations. On 16 September 2016, the Instructions were sent to the Marine Section by PS Stuart Stone [C5509, D1162].
104. On 19 April 2017, there is a record of a Daily Taskings Group Meeting which states: “*Marine section – only use vessels with AIS*” [B2911].<sup>2</sup>
105. The Misconduct Report also records that Marine Section Officers were reminded on the Instructions again on 16 September 2019 by PS Stone; and again by Ch Insp Finlayson on 21 January 2020 [B1295]. The Inquiry has not seen the underlying emails referred to.
106. It is clear from these documents that the formal instructions were for officers not to operate in Spanish waters except at the invitation of Spanish Authorities and only for search and rescue operations. Since 8 June 2015, pursuits of vessels outside BGTW have not been permitted, and even prior to that date, it appears that the permission of the Guardia Civil (“**GC**”) and a senior officer was required to do so.
107. Given the undisputed position of the collision and the evidence as to pursuit of the Suspect Vessel, it appears clear that the RGP Marine Officers’ conduct in navigating the RGP Vessel was contrary to the RGP’s formal policy position. However, a matter for consideration is whether those officers’ actions nevertheless reflected a de facto practice of RGP vessels entering Spanish waters for pursuits. If so, it is necessary to ascertain: (a) whether IM knew or ought to have known about this practice; and (b) if IM knew, whether

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<sup>2</sup> The Inquiry does not have the original copy of this email and has relied on its description in the Summary of Evidence.

he sanctioned the practice. A good starting point for this analysis is the conclusions in the Draft Solis Report and two reports by the Metropolitan Police.

108. The Draft Solis Report dated 30 April 2020 made the following findings (which were subsequently maintained in the Final Solis Report unless specified below):

- a. As to the RGP's policies on leaving BGTW:
  - i. The RGP crew did not comply with the instructions that were issued (3.13.3 [B1732]).
  - ii. It was not known why the RGP crew headed into Spanish waters (3.13.1 [B1732]).
  - iii. The crew placed themselves so close to the suspect RHIB as to place themselves and the suspects in considerable danger (3.13.3 [B1732]).
  - iv. Despite the RGP Marine Section instructions, "*anecdotal evidence from the RGP Marine Support Unit's Senior Marine Mechanic stated that 'hot pursuits' into Spanish waters could be permitted with the approval of the Guardia Civil*" (2.10.17 [B1705]). However in the Final Solis Report, this was amended to: "*...had historically been permitted with the approval of the Guardia Civil; however this was not the case at the time of the Incident*" (2.10.7 [C5600]).
  - v. Senior Marine Section Officers were aware and accepted that highspeed pursuits were being routinely carried out (for example, instructions had been issued on the use of PPE when faced with missiles). "*They must have also been aware that pursuits also strayed into Spanish waters and records should exist internally or with the Guardian Civil of any previous operations taking place...*" (3.17.5 [B1734]). This second sentence was deleted from the Final Solis Report, which added instead: "*The RGP maintained a database of police actions which included when chases of suspect vessels occurred and recorded whether these events were inside or outside of BGTW. An internal review by the RGP showed that between 1 April 2017 and 1 June 2020 that, of the 59 entries that involved a chase, two (including this case) had continued outside of BGTW*" (3.17.6 [C5633]). During questioning, IM accepted that patrols where AIS had been switched off would not show within those stats as having strayed into Spanish waters (Transcript Day 6 p50.21).

- vi. From the evidence reviewed to date, it appears that Marine Section Managers did not apply effective oversight into how their patrols were being carried out (3.17.6 [B1734]).
- b. As to navigational equipment:
- i. The GPS plotter in the RGP vessel was left off, as Officer 1 stated that the equipment reduced his night vision. The chart plotter also activated the vehicle's AIS, which was therefore also not turned on (1.8.5, 2.3.1 [B1692, B1700]).
  - ii. There was no evidence produced to support Officer 1's statement that the brightness of the chart plotter interfered with night vision, or that the alleged issue had previously been reported to managers. There was a clear instruction that the vessel's AIS system should always be turned on (3.11.2 [B1731]). In the Final Solis Report, this was amended to read: "*The dimming facility of the chart plotter was tested and found to dim the display as would be expected for use in night-time navigation and would, if set correctly, not have interfered with the coxswain's night vision*" (3.10.2 [C5629]).
  - iii. It would have been clear to the officers that they were in Spanish waters and "*well to the North of BGTW*" (3.2.3 [B1713]).
  - iv. While the limits of BGTW were known to the RGP crew, the engagement, chase and collision were all carried out at least 1.5 nautical miles beyond the limits of BGTW (3.3.2 [B1716]).
  - v. While the limits of BGTW were not visible on the chart plotter, the northern limit of BGTW is generally indicated by reference to the lights from Gibraltar Airport. As the RGP vessel was significantly to the north of the airport, it would have been clear to the officers that they were in Spanish waters (3.3.3 [B1716]).
- c. As to officer training:
- i. The RGP Marine Support Unit, which provided training to Marine Division Officers, provided training in "*spacing*" (where two powerboats manoeuvre alongside each other at speed), but there was no specific training provided in highspeed pursuits or apprehension of suspect vessels (2.5.3 [B1702]). The Final Solis Report added that as there is no established safe method of stopping a suspect at sea, and this is prohibited by the

instructions, no training is provided on this manoeuvre (2.5.10 [C5597]). The Final Solis Report also added that the RGP Marine Section Trainers considered that aspects of other modules in training, such as pacing and safe manoeuvring, were applied to safely pursuing vessels (2.5.8[C5597]).

- ii. While numerous pursuits had been carried out, the coxswain's experience in pursuits was learned on the job, watching more experienced coxswains. There was no proper established oversight (3.15.1 [B1733]).
- iii. There were apparently no guidance/instructions/orders as to what navigation equipment was to be used when on patrol, either in daylight or at night. A poor standard of navigation was being practised at the material time (3.12.1, 3.12.3 [B1732]).
- iv. *"Marines Section Managers did not have an effective oversight of how their patrols were being carried out"* (5.11 [B1738]). In the Final Solis Report, this was amended to: *"Marine Section Managers could have had a more effective oversight of how their patrols were being carried out"* (5.16 [C5640]).

d. The Draft Report therefore recommended that:

- i. The RGP Marine Section's management structure and operation requires further examination. The instructions and guidance provided to the Response Teams should be better understood (4.2.1 [B1735]). This recommendation was deleted in the Final Solis Report.
- ii. The operational arrangements between the RGP and Guardia Civil, both formal and informal, required further investigation (4.2.2 [B1735]). This recommendation was deleted in the Final Solis Report.
- iii. A study of AIS data over a period of several months would provide an insight into the operating patterns of RGP vessels and the frequency at which they operate outside BGTW (4.3.1 [B1735]). In the Final Solis Report, this was amended to *"has provided"* (5.19 [C5640]).

109. The Summary of Evidence recorded the following:

- a. As to the RGP's policies on leaving BGTW:
  - i. 59 chases at sea involving RGP marine vessels had taken place between 1 April 2017 and 1 April 2020. Of these, 57 were terminated due to arriving at the limit of territorial waters, and one of the Officers had been involved

in 18 of the chases. The Summary of Evidence concluded that “*it is clear that [the Officer] was aware of his obligation to remain inside BGTW as many of the chases he was involved in were terminated prior to leaving territorial waters*” [B2910].

- ii. “*While there are no formal arrangements between the Governments of Spain and Gibraltar, it is clear that the Law Enforcement Agencies (LEA’s) in the area have a degree of professional co-operation ... This is evidence ... that the Guardia Civil are able to communicate directly with the RGP Marine Section.*” [B2915]
- iii. “*RGP instructions regarding BGTW are very clear – RGP vessels must only enter Spanish territorial waters at the invitation of the Spanish authorities and only for the intention of search and rescue.*” [B2915]

b. As to navigational equipment:

- i. Officer 1 gave evidence that the GPS chart plotter was “*left off due to the bright backlight, which is safer not to have on in order to be able to see more safely at night*” [B2891].
- ii. “*RGP instructions regarding the navigational equipment are clear – RGP must operate radar and AIS at all times when at sea.*” [B2915]
- iii. As to Officer 1 (the coxswain), “*there is evidence that he disobeyed orders to ensure the correct navigational equipment was in use when deployed and left BGTW for an unauthorised purpose and without authority*”. [B2915]
- iv. Officer 2 “*had sufficient knowledge, training and experience to know that the Marine Section should always operate with their navigational equipment in use and they should not leave BGTW other than for search and rescue operations...*”. [B2916]
- v. “*Had [Officer 1 and 2] followed standing orders by using their navigation equipment, they would not have left BGTW. This is supported by the fact that the coxswain has previously stopped at the limit of BGTW on numerous other occasions involving pursuits at sea*” [B2918].
- vi. “[E]vidence shows [Officer 1 and 2] knew or ought to have known that there were standing orders to use navigational equipment on board marine section vessels when deployed at sea.” [B2919]

- vii. There appeared to be the “*wilful failure to follow correct procedures by not using the navigation equipment on board the SJC*” [B2921].
- c. As to officer training:
  - i. Both Officer 1 and Officer 2 held a “*Government of Gibraltar Competency Certificate*” stating they were competent in the capacity of Boatmaster, with limitations “*for Royal Gibraltar Police operated launches in Gibraltar Territorial Waters only*” [B2902].
  - ii. An RGP Marine Section Instructor confirmed that “*there is no module or content in the training course for ‘pursuit training’*”, and that “*he instructs trainees not to come alongside suspects RHIB’s. Instead, they should maintain a safe distance...*” [B2905]. Another Instructor added “*there is little or no training for pursuits at sea due to the hazardous conditions and narrow margin for error*” [B2905].
  - iii. The manner in which the boat was navigated was “*far below the standard expected of trained mariners*”; no first aid was delivered; and no distress signal was sent [B2920].

110. The Summary of Evidence was accompanied by “*Organisational Learning*” recommendations, which included:

- a. The RGP ensuring their vessels’ AIS and GPS equipment is always activated;
- b. The RGP introducing additional or updated training, to include pursuits;
- c. The RGP issuing renewed instructions to not leave BGTW unless for search & rescue missions/life-saving [B2924].

111. On 23 October 2020, some six months after the incident, the RGP issued a ‘Police Vessel Patrol and Pursuit Policy’ [B4276] which replaced the Marine Section Instructions dated 8 July 2016. This Policy states:

- a. The RGP Police Marine Boats (“**PMB**”) will operate within BGTW only.
- b. Under no circumstances will RGP vessels leave BGTW whilst engaged on a patrol or pursuit, unless responding to a Search and Rescue Operation (led by the GPA) or responding to an incident where there is an imminent and serious threat to life. (Note: This guidance does not apply to entering Spanish waters.)

- c. *“Officers are **NOT** authorised to enter Spanish territorial waters unless when responding to and participating in a SAR operation at the invitation of Spanish authorities and only when incidents are being co-ordinated by the GPA.”*

112. The Metropolitan Police Misconduct Report dated 4 June 2021 records the following:

- a. The instructions regarding both BGTW and navigational equipment are very clear [C6236].
- b. Evidence from the RGP technical team showed that Officers 1 and 2 were part of the email group who received the instructions dated 17 February 2016 and 16 September 2016 [C6233].
- c. As to officer training:
  - i. Officer 1 had never received any training regarding pursuits, but since 2015 had been involved in many police pursuits at sea [C6204].
  - ii. The RGP do not have a tactic for stopping a vessel at sea other than presence and persuasion. As a result, there is no module or content in the training course for “pursuit training” [C6227].
- d. According to evidence given by PC Leif Simpson, a police boat should be crewed by three competent and qualified police officers; this was not the case during the Incident as Officer 3 had no training or operational experience at sea. This hindered the operational ability of the crew and the vessel [C6223].

113. At the Coroner’s Inquest, the Officers maintained that they believed at all times that they were within BGTW. The Coroner stated the following in his summing up to the jury (regrettably, the transcript is low quality and marks many aspects of what was said as inaudible):

- a. Officer 1 *“said they'd not been trained in pursuits at speed, although the training does cover [inaudible] both travelling at speed [inaudible]. There's no training for pursuits, that you have to handle as best you can, but there is some training for [inaudible] safely handling the boat at speed.”*
- b. Officer 1 *“was also aware that the crews were not to leave British Gibraltar territorial waters other than for search and rescue and only with authorisation.”*
- c. Officer 1 *“also stated the chartplotter would give him [inaudible] position, exact position, was switched off [inaudible] because the light from the screen affected his night vision and could not be dimmed, [inaudible] Meikle, but he said that it*

*could be dimmed and Mr Phillips said [inaudible] colour palette for night vision, so that was either not done by Mr... by Officer One or not known. But curiously Mr Phillips also said that depending... that many officers have this complaint, that the lights affected the night vision and that depending on [height] that there was no problem for some [inaudible] But then he did say that some covered it with a cloth and that it seemed to be a mystery, but certainly means that, in Officer One's case, maybe covering the cloth wasn't... [inaudible]"*

114. In questioning:

- a. IM stated that he expected the instructions about not operating outside BGTW and inside Spanish waters except where invited “*to be followed all the time and I would have expected, if there were any breaches of them, depending on their gravity, to be reported up*”, and as far as he was aware, they were followed at all times (**Transcript Day 6 p67.6**).
- b. Dr Britto stated that he had heard comments from retired officers about the AIS being switched off, both in Gibraltar and amongst the Spanish police, but that the information was purely anecdotal (**Transcript Day 15 p193.11**). He did not raise those rumours with the GPA or Mr McGrail (**Transcript Day 10, p193.22**). He agreed that the lack of AIS data made the position complex (**Transcript Day 19, p89.12**).

115. IM did not accept responsibility for the marine officers’ shortfalls identified in the Solis Report, but accepted that “*there is room for improvement*” in terms of more effective oversight by marine section managers (**Transcript Day 6 p69.7**). IM did not accept responsibility as head of the organisation for the collision at sea, making the point that individual officers have to be accountable for their actions and that he was at home asleep at the time. He did accept that in addition to the human cost and reputational risk to Gibraltar there was also a serious diplomatic and political risk cost, and that under section 33 of the Police Act he was responsible for the efficient administration and governance of the police force, and that he had overall responsibility for ensuring: (i) proper training, (ii) effective oversight and supervision, and systems are in place to ensure policies and procedures are adhered to (**Transcript Day 7 p198.7**). He maintained, however, that he had no reason to doubt that the marine section was functioning and there was no cause for concern (**Transcript Day 7 p200.3**), and that he had no reason to believe that the officers would disobey mandatory standing orders or instructions, that

the order not to enter Spanish waters was not an obscure one, and that the officers should be held to account (**Transcript Day 8 p77.2**). He also said that none of NP, the CM, the GPA or the AG ever raised any concerns with him about the Incident at Sea (**Transcript Day 7 p201.10**), and NP never notified him of any concerns he had about his communications around Operation Kram at any time before he retired (**Transcript Day 8 p104.3**).

### **Location of the incident**

116. The facts of the collision itself are set out in the Undisputed Facts document. The collision occurred in the early morning of 8 March 2020, and was first reported to the RGP via the Duty Inspector at New Mole House at 03:48. IM's evidence was that the Command Team met at 05:00 in IM's office, and DCI Field, who was the gold commander on call that weekend<sup>3</sup>, provided a verbal briefing. IM stated: "*I recall there being unconfirmed reports that the incident had occurred outside Gibraltar's territorial waters together with conflicting reports that it had actually happened in Gibraltar waters*" (McGrail 3 para 47vii [**A66**]). IM added that "*initial reports suggested the collision to have occurred 3 miles off Europa Point (and to my understanding within BGTW)...*" (McGrail 3 para 50 [**A67**]).
117. At 06:05, IM sent WhatsApp messages to the CM [**B86**] and to NP [**B85**] informing them (identically): "*...We're dealing with a critical incident - one of our boats has been involved in a collision with a smuggling RHIB with 4 on board. 2 on the smuggling RHIB are fatalities. Our crew are uninjured but clearly shaken & shocked. I am invoking Post Incident Procedures and planning for consequence management. Once I have further updates I will let you know. ...*"
118. At 07:00 an entry in DCI Field's daybook<sup>4</sup> records three separate reports in the following order:
- a. First, one of the suspect vessel crew informed an RGP officer that the incident had happened "*by the Alcaidesa*", the north end of Santa Barbara beach, in La Linea [**C6953**].

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<sup>3</sup> DCI Field was responsible for Crime and Protective Services, and not responsible for or part of the marine section (**Transcript Day 13 p3.11; p7.4**).

<sup>4</sup> A few days before DCI Field gave evidence, the RGP disclosed his daybook from the time of Operation Kram (**Transcript Day 13 p4.23**).

- b. Second, on the following page, there is a record of a separate report that the incident had occurred “3 miles off Europa Point” [C6954]. That report came from the crew of the RGP vessel, and was as to where the crew said that they had started the chase (Transcript Day 13 p32.6). In questioning DCI Field stated that there was no log of any communication from the RGP vessel about a suspect boat operating in BGTW (Transcript Day 13 p70.14).
  - c. Further down on the same page there is another record, this time recording a report from Iain Undery of the Gibraltar Port Authority saying that they had received a phone call from Tarifa Traffic in Spain saying that there had been an incident by “la Atunara”, a fishing port along Santa Barbara beach [C6954].
119. The entry in DCI Field’s daybook for 0700hrs also records that the Port Authority did not have any AIS data for the RGP vessel, and therefore it was possibly not working or switched on [C6955]. DCI Field stated that he had read “a long time ago” that the AIS had to be switched on, and that it concerned him to know it was not working or switched off (Transcript Day 13 p19.19). He confirmed that he would have reported this information to PR, who was deputy gold on that day (Transcript Day 13 p20.19). DCI Field’s daybook also contains the question “Could Tarifa Traffic have coordinates?” on the same page, and DCI Field explained that was most probably a question he was asking himself and he later asked DI Paul Chipolina to follow that inquiry, which resulted in the Guardia Civil providing the provisional coordinates (Transcript Day 13 p21.12).
120. At 07.41, the CM asked IM via WhatsApp: “What time did it occur and was it firmly within BGTW or questionable?” At 07.43, IM replied to the CM: “Collision occurred approx 0340hrs. Location still to be confirmed”. IM stated that during this messaging with the CM he was continuing to meet with the Command Team, and the meeting received an update “that neither Wind Mill Hill Signal Station nor Gibraltar Port Authority had any coordinates plotted for the police vessel, this potentially meaning the vessel, this potentially meaning the vessel’s Automatic Identification System (AIS) was either switched off or faulty” (McGrail 3 paras 56-57 [A71]). In questioning, IM described the lack of data available from Windmill Hill Signal Station or the Gibraltar Port Authority, potentially meaning that the RGP vessel’s AIS was switched off or faulty, as “regrettable”, and said he was surprised to learn that (Transcript Day 6 p22.15). He later stated that he was “not pleased at all” when he found out that AIS had not been switched on (Transcript Day 6 p46.12). He said that

he did not know of any practice of not turning AIS on, and that there were specific instructions that they had to be switched on (**Transcript Day 6 p46.18**).

121. At 07:50, PR's note of the Gold Command meeting records that "*Windy/Port have no coordinates – AIS either switched off or faulty*" [**B1682**]. DCI Field confirmed in oral evidence that he believed based on the record that he informed IM that AIS was either switched off or faulty at that point (**Transcript Day 13 p27.6**). IM also stated that at some point in these early hours the duty VTS Officer of the Port Authority had reported to the RGP that he had been advised by Spanish marine traffic control in Tarifa of an incident in Alcaidesa (a residential development on the Spanish coast to the north of La Linea), but was uncertain whether this was the same incident (McGrail 3 para 58 [**A71**]).
122. An entry in DCI Field's daybook at 08:35 records him asking Superintendent Nolan Romero to speak to HM Customs to ask whether they had coordinates, and asking Alex another officer (Alex Enriles) to contact Windmill Hill, the Port Authority and Tarifa Traffic to "*confirm/identify coordinates*" [**C6956**].
123. At 09:27, NP replied to IM's initial WhatsApp message at 06:05 about the Incident, thanking him for letting him know, and "*And of course if ty (sic.) need anything from us/HMG just ask.*" [**B85**]. When asked why he did not ask any further questions, NP said he wanted to immediately respond given that IM had sent the message at 06:05, and he expected that "*over the next few hours he would be briefed, called or emailed, and updated on events*" (**Transcript Day 18, p65.16**). He confirmed it is standard practice for the Governor to be updated by the RGP when there are major incidents which fall within the Governor's responsibilities under section 47 of the Constitution (**Transcript Day 18, p66.2**).
124. At 09:35, Comandante Pacheco Polo of the GC telephoned DI Chipolina and stated that according to COS radar tracing of the incident the approximate coordinates of the collision were 36'09 N 5'12 W, 6.54 miles east off Santa Barbara Beach. The GC apparently stated that this data was "*subject to confirmation by technical extraction*" [**B1319**]. DI Chipolina then contacted DCI Field. IM stated in questioning that he believed, based on the contemporaneous notes, that DCI Field briefed him with these coordinates at 0940hrs (**Transcript Day 6 p13.1**, and see also McGrail 3 para 60 [**A72**]). When asked whether the Guardia Civil report placed the collision comfortably within Spanish waters,

IM replied “*I can’t say that with 100 per cent certainty because I don’t know what distance. The distance of 6.54 miles is from the coastline eastwards, but I do not know in relation to international waters laterally as opposed to just the vertical. ... It could be anywhere within one kilometre beach, or it could be ... The most southern end of the beach, which is practically joining up with our own runway, or it could have been its northern aspect which would have taken it closer to the fishing village commonly known as La Atunara*” (Transcript Day 6 p13.22).

125. DCI Field’s daybook records the advice received from the Guardia Civil (via DI Chipolina) with coordinates of the collision and the distance off Santa Barbara beach [C6957]. DCI Field confirmed that DI Chipolina had told him that the coordinates related to the collision, and that they had to be confirmed, because the technical officers had to extract it from their database (Transcript Day 13 p29.4). From his experience in receiving information from the Guardia Civil, it was very strongly likely that the coordinates were accurate, and the information appeared more reliable than the other initial reports (Transcript Day 13 p30.2). DCI Field briefed three officers (Enriles, Perera and Garratt) in relation to the coordinates at 10:10 so that they could get as much information as possible and arrange for them to be plotted, and then had them printed out [6957] (Transcript Day 13 p36.1). DCI Field eventually received information that the coordinates of the collision were formally confirmed on 25 March (Transcript Day 13 p32.7).
126. An email sent at 10:11 by PR stated that at 09:40, DCI Field informed the Gold Command meeting (IM, PR and JF) that the “*collision occurred 36’09 N, 5” 12” W, approx... 6.54 east of Play (sic.) de Santa Barbara*”. [B1680] This is slightly different to DCI Field’s evidence, which was that he received the verbal report from DI Chipolina at 09:40, and then had the coordinates plotted on a map before going up to IM’s office (Field 1 para 36 [A801], Field 2 para 6 [A808]). IM also states that at 09:40 he received information from DCI Field who in turn relayed information provided by the Guardia Civil “*suggesting the collision had occurred in Spanish territorial waters though this required confirmation by them*” (McGrail 3 para 60 [A72]). DCI Field stated that he briefed IM, PR and the AG on the “*suspected exact coordinates*” at 11:05 (Field 1 para 38 [A801]) – but it is submitted that this must have taken place before 10:11, when PR sent the email above. DCI Field recalled telling IM and PR that the coordinates “*had to be confirmed*”, but was not sure whether he referred to the coordinates by number or referred to six nautical miles off Santa Barbara beach (Transcript Day 13 p40.13; 43.19). DCI Field said that he informed the AG that the

- coordinates were in Spanish waters, and that it was plain to see from the map (**Transcript Day 13 p44.8**). It is possible that IM and PR were told the coordinates at 09:40, and then the AG was informed at 11:05. The AG could not recall being shown a map, but was happy to accept DCI Field's evidence that he did show a map to him (**Transcript Day 11 p197.6**).
127. In questioning, PR stated that he did not recall DCI Field attending the meeting with PR, the AG and IM (**Transcript Day 4 p163.2**). He did not believe that he was with IM when DCI Field briefed him (**Transcript Day 4 p163.16**). DCI's oral evidence was that he was the one who gave the briefing at 11:05 (**Transcript Day 13 p41.7**). He recalled that the RGP had received the information from the Spanish authorities, but it was on an unofficial basis, "*not ... information that you can ... rely on until you've asked for it officially*" (**Transcript Day 4 p164.23**).
128. Despite being provided the coordinates around this time, IM's evidence was that he was "*nonetheless working on a provisional hypothesis that the pursuit had taken place in BGTW. My reasoning for this was based on the premise that RGP marine crews had no authority to operate outside BGTW unless it was on a specific search and rescue mission which in this case did not apply. ...*" (McGrail 3 para 60 [**A72**]). In questioning, IM said "*we were working on the hypothesis that there had been a pursuit that had taken place in [BGTW] and/or straddled into Spanish waters or international waters, but certainly that something had happened within our waters and that the collision seemed to have occurred in Spanish waters*" (**Transcript Day 6 p16.19**, and see also **p24.21**). He also said that he had seen reference to the coordinates being plotted, and he did not doubt Mr Field's evidence, but it was "*a very dynamic and fast-paced incident*" (**Transcript Day 6 p14.21**). He stressed that he wanted to work on obtaining confirmation and "*best information, best evidence*" (**Transcript Day 6 p17.12**), and did not want to inaccurate information that "*could cause knock-on effects*" (**Transcript Day 6 p17.8**).
129. At 09:49, IM sent a WhatsApp message to the CM stating: "*CM - the information suggests that the collision took place outside BGTW – approx 6NM east off (sic.) the runway/Santa Barbara Beach.*" [**C6699**] IM emphasised that he used the term "*information*" not evidence at this stage as "*said information had not been verified and therefore caution had to be exercised*" (McGrail 5 para 72 [**A158**]). The CM responded saying "*OK. We need to liaise with AG on this and ensure we are transparent on this.*" [**C6699**]. In questioning IM stated that BGTW only extend three miles to the east, and therefore six nautical miles

east off the runway or Santa Barbara beach was necessarily outside BGTW (**Transcript Day 7 p203.12**). He said his suspicions were that the collision was in Spanish waters, but he was not certain until its confirmation (**Transcript Day 7 p204.25**). He was not overthinking what he had to write and was relaying what he had at the time to the CM, who did not attend any of the briefings (**Transcript Day 8 p90.15**). DCI Field did not believe he mentioned any distance off the runway during this briefing (**Transcript Day 13 p40.10**). The CM said that upon receiving that message he worked out that the collision had taken place clearly in Spanish waters (**Transcript Day 16 p31.6**). He also said that he would be very surprised if he had not spoken to NP on 8 or 9 March 2020 about the incident at sea, and would have felt it “*proper*” and “*necessary*” to share with NP the information provided to him by IM as to location of the collision (**Transcript Day 16 p35.18**).

130. When asked why he sent that message to the CM IM said it was in response to the CM’s question (**Transcript Day 6 p19.7**). When asked why he did not send the same message at the same time to the Governor, he said: “*I was engaged in a form of conversation with the Chief Minister and I was responding to questions from him in the same way as I was responding to questions from the Interim Governor*” (**Transcript Day 6 p19.4**). He added: “*There is absolutely no doubt whatsoever that this information would have been shared with Mr Pyle at the next point of communication with him. That I didn’t do it at the time I’ve got no explanation for other than saying that this was a dynamic moving matter and it’s not that I was focused solely on responding to WhatsApp messages. ... it’s not that as soon as I stopped chatting with the CM ... that it kept in my head I’ve got to tell the Governor this. It didn’t flow like that.*” (**Transcript Day 6 p19.19**). He reiterated that there was “*absolutely no doubt*” in his mind that he was not going to withhold anything from the Governor (**Transcript Day 6 p20.5**) and there was “*absolutely no reason or motive not to brief up to Mr Pyle with the same information. It’s nonsensical, as far as I’m concerned*” (**Transcript Day 6 p21.16**). He agreed that he had identified NP as a person requiring to be advised of the incident (**Transcript Day 7 p201.23**).

131. At 10:00, a meeting was held at Guardia Civil Headquarters, which DI Chipolina and DI Perera attended. IM’s timeline recorded that: “*DC were asked whether an incident report had been generated and if they could provide the confirmed coordinates for the collision. GC stated that an initial report had been prepared but needed to be referred/discussed with the designated duty court/judge. GC stated that the approximate coordinates supplied previously to DI Chipolina stood and that the SIVE technicians had yet to extract*

and validate such data. They confirmed the approximate collision location was 6 to 6.5 miles off Santa Barbara Beach. ..." [B1321].

132. At 10:10, IM gave a briefing to the AG. The AG did not have a precise recollection of what IM told him about the location of the collision, and stated *"to the best of my recollection, I believe he referred to the fact that there had been a chase that straddled BGTW and Spanish waters, that there had been some element of contact between the RGP and the Spanish Guardia Civil and that it seemed highly likely that the collision had occurred in Spanish waters but that he was waiting for formal, technical confirmation of this"* (Llamas 1 para 82 [A294]). In questioning, the AG said that he thought that PR was there most of the time and there were other officers coming in and out, including DCI Field, and that IM was conducting the briefing (**Transcript Day 11 p106.1**). He recalled DCI Field entering with some coordinates which the AG understood he had received from the Spanish Guardia Civil, and that he may have mentioned six nautical miles (**Transcript Day 11 p107.10**). He could not recall whether an explanation was given for the RGP vessel's AIS not being switched on, but was surprised to learn that information (**Transcript Day 11 p108.2**). In response to the Chairman's question, IM confirmed that he thought, and had said to the AG during that briefing, that it was *"highly likely"* that the collision occurred in Spanish waters, and that he believed at that time that part of the chase had occurred in BGTW (**Transcript Day 6 p25.7**). IM's timeline recorded that *"AG feeds up to the CM"*, and that *"HE [NP] joins the meeting @1215Hrs"* [B1319].
133. At 10:11, PR emailed IM, RU and DCI Field [B1680] with a "brief" on the Incident following the Gold Meeting. The email stated: *"Incident believed to have occurred at approx. 3NM within BGTW."* Under "Actions", PR stated: *"Need to determine location of incident ASAP"*. DCI Field described this in oral evidence as *"one of the main priorities"* (**Transcript Day 13 p25.15**). In questioning IM stated that it was important to determine the location to establish whether there had been criminality in Gibraltar and *"in consequence of that all the management of the situation would have an impact"* (**Transcript Day 8 p79.4**). He confirmed that while there would be coronial jurisdiction over the events, there would not be criminal jurisdiction if there had not been criminality in Gibraltar (**Transcript Day 8 p79.13**) (and NP agreed that it was important to establish that (**Transcript Day 19, p88.15**)). What was really urgent was understanding whether any part of the incident happened in Gibraltar waters, and other matters were important like where exactly it all

happened (**Transcript Day 8 p80.11**). He was also aware that it was a potential diplomatic incident and was concerned about possible civil unrest (**Transcript Day 8 p86.7**).

134. DCI Field's daybook records that at 11:05 he printed out the coordinates for IM, PR and the AG. In questioning he confirmed that he entered the room and produced the map and showed them the coordinates. He remembered discussion about whether the chase had been plotted, and that based on the information received from the RGP vessel that the chase had started three nautical miles off Europa Point, it was a safe assumption that the chase or part of it could have occurred in BGTW (**Transcript Day 13 p37.14**). He recalled both PR and the AG holding the map, and also believed it was highly probable that he would have left a copy there (**Transcript Day 13 p38.15**). DCI Field believed the information about the location of the collision may have been passed to IM before he (DCI Field) briefed the meeting at 11:05 (**Transcript Day 13 p39.17**).
135. At 11:40, during his meeting with IM, the AG drafted a message to the CM by WhatsApp (and also sent a copy to IM): *"Been in New Mole for the last hour or so. ... PR [Press Release] will not say where incident occurred but it is virtually certain it was outside BGTW eastern side opposite runway. It also seems that part of the chase was within BGTW."* The AG sent that draft message to IM, but it does not appear that he ever sent it to the CM. [B1345] The AG's evidence was that he may not have actually sent the message to the CM and may only have sent it to IM by mistake (Llamas 1 para 83 [A294]). In questioning, he added that he may have drafted the message with IM, that the basis for his use of "virtually certain" was the information that it had taken place six nautical miles off Playa de Santa Barbara, and that there was no question about it having taken place in Spanish waters as opposed to international waters (**Transcript Day 11 p111.19**). IM confirmed in questioning that he had received that message from the AG, that he did not consider the phrase "virtually certain" inappropriate, and that the AG had given that information on the basis of the briefing (**Transcript Day 6 p26.15, p26.25**). He stated that he had briefed NP to similar effect in his office when he arrived later at 12.15 (**Transcript Day 7 p207.23**), although he could not recall discussing coordinates with either of them on that day (**Transcript Day 7 p210.1**).
136. At 12:15, NP attended a meeting in IM's office along with the AG and other RGP officers (McGrail 3 para 65 [A73]). NP suggested that this meeting came about because he was walking his dog outside New Mole House, and decided to call in and ask to see IM (Pyle 1

para 25.3 [A251]). In oral evidence NP stated that he engineered the walk past because he was conscious that close to six hours after his first contact with IM he had no further contact with him (Transcript Day 18, p66.3). NP said that his impression was that the meeting was concluding, that he had a vague picture of the AG (who was “*Maybe ... there for a fleeting moment*”) walking out of the room, and that he thought DCI Field and DI Chipolina were present (Transcript Day 18, p66.24). IM’s evidence was that NP did not “*raise any particular query*” (McGrail 3 para 65 [A73]). However, NP’s evidence was that NP asked IM about the location and whether it was inside or outside BGTW: “*he [IM] replied with a slightly flippant waving of his hands, ‘could be in, and could be out, it’s difficult to tell at night’*” (Pyle 1 para 25.3 [A251]). NP said in oral evidence that this gave him the impression that the location was uncertain to within 2-300 yards (Transcript Day 18, p69.25). In questioning, IM accepted that “*It is possible that he [i.e. NP] asked*”, or that IM briefed NP “*to the same level that I briefed the Attorney General*” (Transcript Day 6 p28.3). He denied any flippancy, and stated that “*we were working on the hypothesis that part of the chase could have happened in Gibraltar waters or could have happened out.*” (Transcript Day 6 p29.17). When asked by the Chairman what precisely he told NP, IM said: “*I cannot tell you with certainty other than say that the matter – that the collision was highly probable that it happened in Spain with part of the chase happening in Gibraltar waters*”. NP stated that the meeting lasted “*possibly ten, fifteen minutes*” (Transcript Day 18, p69.5). NP said that the “*only thing at the time, outside of concern for the welfare of those involved in the incident, was where it happened*”, and he believed he would have explained its importance to IM to set the context (Transcript Day 18, p69.8). He added that it would have been helpful to be told of the provisional coordinates, as this would have placed the death at sea “*firmly inside Spanish waters*”, even if they were yet to be confirmed, and he would have reported them to the FCDO and to Madrid, and that the message would have gone to ministerial level. NP also categorically stated that he was not shown a map of the coordinates (Transcript Day 18, p75.15), and that although he did not ask for unverified coordinates or information he did not know they had them and would assume that the information would be given (Transcript Day 19, p90.24).

137. The AG’s evidence was that IM told NP “*he was still not certain where the collision occurred*” (Llamas 1 para 84 [A295]). In questioning, however, the AG stated that after jogging his memory through reading documents: “*I think that is a mistake. ... I’m pretty sure now that I was not in that meeting and I’ve confused that meeting of 8 March with the*

one the following day on 9 March”, pointing to a phone call from NP to the AG at 12:12 [C6921], which meant that he was not present at New Mole House at the time when NP was there (Transcript Day 11 p113.11). IM said there was “no change in my posture” towards when briefing the AG and when briefing NP, and neither the AG nor PR suggested he had missed out salient information (Transcript Day 8 p94.11).

138. Also in questioning:

- a. PR stated that NP “arrived pretty much towards the very end of the meeting ... I think he just popped in ... I think he was just walking past the station with his dog and he popped in to say hello.” (Transcript Day 4 p169.17). He could not recall whether the location was discussed (Transcript Day 4 p170.3), but believed based on his note that it was discussed that part of the chase was outside BGTW, but could not say with any certainty whether it was discussed that the collision was outside BGTW (Transcript Day 4 p170.14). He initially said that he did not believe the RGP would have known whether AIS had been switched off by that stage (Transcript Day 4 p171.1), but later accepted that based on his email of 8 March 2020 at 10.11am [B1681] he was aware that the RGP vessel’s AIS was “either switched off or faulty” and therefore an officer would have reported that there was no record on the boat’s AIS system (Transcript Day 5 p.107.13). He did not think he had any doubt that the collision had happened outside BGTW, although he had doubt as to whether part, if any, of the chase had happened within BGTW (Transcript Day 4 p 237.2), although it was “a very murky picture during those first few hours” (Transcript Day 4 p239.24). He accepted based on DCI Field’s evidence that NP did not appear to have been present when the exact coordinates were given to the AG (Transcript Day 4 p 241.12).
- b. DCI Field stated that he only saw Mr Pyle once in IM’s office, “on one day” for less than a minute, when he entered to quickly brief the Commissioner about something insignificant, and then left. He did not specify in evidence whether it was on 8 or 9 March (Transcript Day 13 p45.11).

139. After the meeting concluded, NP messaged IM at 13:33 to thank IM for the briefing, stating: “Line will be. Investigation ongoing. Spanish nationals from Cueta (sic.) (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.” [B1346] At 13:46, IM replied “Yes all correct.” At 13:47, IM added in a further

WhatsApp to NP that he was “*Trying to clarify exact position of the collision*”. [B1346] When asked why he had confirmed the accuracy with NP’s proposed email, IM emphasised that they were talking about the “*incident*”, which encompassed both the pursuit and the collision (Transcript Day 6 p32.10; Day 7 p212.20; Day 8 p84.7). His working theory was that part of the pursuit was in BGTW (Transcript Day 8 p94.4). NP said that no such distinction was mentioned on the 8 March 2020, and that IM knew in whose water the incident took place (Transcript Day 18, p71.10). He also accepted that IM may have been referring to the incident as a whole initially, and to the collision in his subsequent message, but said that it was IM’s opportunity to provide further information he had, and IM never drew this distinction, nor did he explain or allude to it, when he was giving information (Transcript Day 19, p97.14; p243.8; p244.4). He still wanted to know that the latest information was that it was highly likely that the collision occurred in Spanish waters (Transcript Day 19, p101.7).

140. When asked by the Chairman whether the proposed summary put forward to IM by NP in the WhatsApp message was misleading because the virtual certainty was that the collision occurred in Spanish waters, he stated that he wanted to provide accurate and confirmed information (Transcript Day 7 p214.1). He defined “*confirmed*” as meaning that “*there is evidence which has been verified and we are satisfied that it is correct, or as close to correct as possible*” (Transcript Day 8 p84.21). If information was not confirmed he would have qualified it beforehand and said he was not sure and it should not be relied on (Transcript Day 8 p85.2). He understood the “*exact position*” to mean the “*exact position of the collision and once it has been confirmed*” (Transcript Day 8 p85.14). He was being very cautious not to jump to any conclusions about the location of any of the incident (Transcript Day 8 p86.23), as was DCI Field (Transcript Day 8 p88.16). He also made the point that he was dealing with many different matters, whereas NP’s sole focus was the location of the incident (Transcript Day 6 p35.13).

141. At 14:09 NP emailed the FCO reporting the incident, stating that: “*I’ve just met with the Commissioner of Police who kindly gave me a briefing on the incident. The facts have yet to be determined and the investigation is ongoing, but initial headlines are as follows: The incident happened @ 04:00 hours though it is not yet known whether it took place in BGTW or just outside...*” [B1746]. NP stated in oral evidence that that reflected the best information that IM had given him in the briefing (Transcript Day 18, p73.18). His written

evidence confirmed orally, was that IM had caused him to report to London “*on the basis of incomplete, indeed erroneous information and less information than was available*” (Pyle 1 para 25.8(iv) [A254]).

142. That evening, NP spoke to the AG, and both agreed that they needed to meet IM the following day, “*not least given the Gibraltar EU exit negotiations with Spain*” (Pyle 1 para 25.5 [A252]; Llamas 1 para 85 [A295]). Neither NP nor the AG addressed what was discussed on that evening in their written evidence, but in questioning:

- a. The AG stated that he had supper with NP that evening, so he “*must have told him what I had been told by Mr McGrail*”, and it was “*completely implausible*” that he would not have told him, although he did not recall telling him (**Transcript Day 11 p116.17**). When asked what the purpose of the meeting was, the AG stated: “*Maybe we wanted to sit down and discuss what had happened that day and in particular as that message indicates, we have very important meetings with the Spanish government coming up that same week and we were both very nervous and very concerned to make sure that this incident would not create problems with that meeting which was very important*”. He added that NP wanted more precise information on the location of the collision in advance of the talks as they anticipated that it was going to be a delicate issue that was discussed in the meeting and wanted to prepare themselves as well as possible (**Transcript Day 11 p119.8**). When asked whether it was fair for IM to infer that the AG and NP would have shared information on the incident with each other, the AG said that he did not think that the gravity of the situation was one for inferences to be made, and it was for IM to report directly to the Governor in accordance with his constitutional and statutory obligations (**Transcript Day 11 p121.16**). He considered that whether IM wanted to report to NP the same detail as he had reported to the AG a matter “*entirely for him*”, and with which the AG did not want to interfere (**Transcript Day 11 p122.20**).
- b. NP said that it was inconceivable that they would not have discussed the incident at sea, and that the AG would not have shared the information he had received from IM with him, but he could not recollect in what way (**Transcript Day 18, p76.20**). He also said that he would be surprised if he was not angry about the disparity between the information given to him by IM and by the AG, although he caveated “*I don’t really do anger*” (**Transcript Day 18, p80.4**). He also recalled

sharing his opinion with the AG that “*what had happened in the incident at sea was that on a bored night with not much going on, suspect activity was reported by Windy Hill, the RGP decided to go and have a look, and I remember saying to Michael: and have some fun, Miami Vice style*” (Transcript Day 18, p78.1). When asked to expand he said he did not know why the chase happened when no part of it was in BGTW, so the only explanation he could come up with was the idea of a boat bringing some interest into what he suspected might have been a dreary night shift (Transcript Day 18, p78.16). He accepted that they were reacting to report from a MoD signal in the course of their duties, although they should have stopped at the edge of BGTW and not turned off their AIS (Transcript Day 19, p39.25). He said he did not provide these details in his first affidavit to the Inquiry because he had not remembered all the details (Transcript Day 18, p79.14).

143. On 9 March 2020 at 07:57, NP emailed the FCO, informing them that “*There may be complications around yesterday’s incident in that it might have happened as much as six miles inside Spanish waters. If true, it’s hard to fathom quite what the RGP were doing chasing a vessel so deep into Spanish waters and one can only hope that it was at the invitation of the Spanish. But this may be why GoG have kept details very close and have asked for no social media speculation.*” NP added: “*Let’s hope ... that there is no negative impact on Thursday’s talks with the Spanish*” [B1748]. NP said that he believed this was based on the information that he had learned from the AG, but he thought it was reinforced that morning by one of his colleagues mentioning to him in the quadrangle of the Convent that the chase was outside BGTW, which he had an “*unclear memory*” of (Transcript Day 18, p83.6; Day 19, p 101.22; p105.19). He said that the initial suspicious activity was called in from Windmill Hill Signal Station, who had a thermal imagery recording and had managed to do “*a loose triangulation and plotting based on other ships that were anchored*”, and they would have reported to British Forces Gibraltar and the MoD. He emphasised that he did not need the exact locations, but rather to know beyond reasonable doubt that the incident happened inside Spanish waters (Transcript Day 18, p84.25). He said he did not refer to this information in his evidence because he “*was always under the impression that there were sensitivities around elements of that operation and of course it was just again on poring through the evidence and seeing the six phone calls between Windy Hill and the PMB...*” (Transcript Day 18, p86.9).

144. IM pointed out in questioning that the reference in the email to six nautical miles meant that NP was passing on information which IM had imparted to him (**Transcript Day 6 p44.16**).
145. At 10:15, NP messaged IM saying that he had been with the AG the previous night and requesting an update later that morning. He said “[w]e are keen to reach ioutnto (sic.) Spain given talks this week in London...”. [B1346] IM stated that it was “clear” to him that “from very early on” NP knew that the collision most likely occurred in Spanish waters, as NP and the AG had been together the previous night – “they had been working together on this” (McGrail 3 para 68 [A74]). NP accepted in oral evidence that IM was correct in his assumption that the AG would pass the information to NP, but maintained that IM should have told him directly himself when he asked, “and certainly should not have misled me on the Sunday when I cleared a draft email I was sending to London on the most important issue of the day” (**Transcript Day 18, p89.20**).
146. At 10:21, NP sent a follow up to the FCDO saying that he had no further details but had asked for a briefing with IM and also invited the AG [B1750].
147. IM stated that “during the course of the morning”, he was informed that the GC were still of the view that the collision had occurred in Spanish waters but they needed this interpretation to be confirmed by their technicians (McGrail 3 para 67 [A74]). In questioning, he said he could not be certain that he passed this information on to NP (**Transcript Day 6 p36.9**).
148. At 12:10, a meeting took place between IM, the AG and NP (McGrail 3 para 69 [A74]).
- a. In questioning, NP said that he thought people were coming in and out of the meeting, and he remembered someone else being present although he could not remember who (**Transcript Day 18, p90.13**).
  - b. IM’s written evidence was that he informed the AG and NP (i) that the exact coordinates of the collision had still not been determined. IM could not recall whether the provisional coordinates were discussed, but considered that they were mentioned albeit with a caveat that this needed verification; and (ii) that the pursuit was believed to have lasted 10 minutes “in and around British Gibraltar Territorial Waters”. In questioning, he stated that he did not have any recollection of providing the provisional coordinates to NP, but that he believed that there was

a discussion “*all about coordinates*”, and denied being evasive or misleading, making the point that if NP needed to challenge him or seek clarity he could have done so (**Transcript Day 6 p41.17**). He was left with no impression that NP believed he was being evasive (**Transcript Day 6 p42.25**).

- c. NP’s evidence was that: (i) he again asked IM about the location of the incident and IM said he was still not sure; and (ii) the GPS/AIS instruments had been switched off, which IM attributed to the officers being “*in the heat of the moment*” (Pyle 1 para 25.6 [**A252**]).
- d. When asked why he was not direct with IM that he had been told that the collision was up to six nautical miles into Spanish waters, NP said “*I don’t have an answer to that. It’s something that I have asked myself and I can accept the suggestion that I should have been more forceful and directive and more open with IM and said that I had had information that sort of quite clearly puts the incident inside Spanish waters*” (**Transcript Day 18, p91.13**). He accepted it would have been a natural thing to do rather than sit on the information that he had obtained, and wished he had approached that meeting differently, and that if he had done so IM would have been able to provide him with better information, such as clarifying that the collision was not six nautical miles into Spanish waters, but rather off the Spanish coast. He repeated, however that his interest was not the exact location, but rather inside or outside Spanish waters (**Transcript Day 18, p91.20**). He added: “*I think it may be an influence from ... the previous day where Mr McGrail had the opportunity to fully disclose what he knew. That was an oversight on his part of such significance and magnitude that I really found it quite hard and still do to understand why Mr McGrail didn’t tell me that and the only conclusion ... either there was this massive oversight or it was deliberate*” (**Transcript Day 18, p93.11**). He later accepted that it was possible that what he thought was evidence of evasiveness was actually a misunderstanding, but his view on it was that there was evasiveness, although not necessarily deliberate concealment as it may have been an oversight or a misunderstanding (**Transcript Day 19, p116.13**). He later accepted that evasiveness contained elements of dishonesty, and IM could not have been “*accidentally evasive*” (**Transcript Day 19, p121.7**). He maintained that he still believed that there were elements of evasiveness on the 8 March 2020 in what IM told him, although he would probably have added now that it may have been a misunderstanding (**Transcript Day 19, p123.4**). He accepted that he had

no evidence of past dishonesty in his dealings with IM (**Transcript Day 19, p126.11**). He denied that he and the AG had decided to test IM and see how long he took to give the information (**Transcript Day 18, p94.2**).

- e. IM denied referring to the heat of the moment in relation to AIS (McGrail 5 para 80 [A159]), and repeated that denial in questioning (**Transcript Day 6 p47.11**). NP said in oral evidence he was struck by “switched off” (**Transcript Day 18, p91.1**). He said he had a vague recollection of RGP incursions into Spanish waters, and also concluded from the repeated internal instructions not to leave GTW that such incursions were still happening (**Transcript Day 18, p95.7**).
- f. When it was pointed out to NP that an email from him to the FCDO later that day at 16:42 [C3278] reported IM referring to the heat of the moment in relation to the RGP helmsman not reporting the start of the chase to Ops Centre as per SOPs, he stated “*You could be right. I could be conflating two issues. ... But the point is that issues of significant importance were brushed off to an oversight so, with respect, which issue it was, given that both were quite substantial issues, is relevant but for me not pivotal.*” (**Transcript Day 18, p97.8**). He also accepted that if there had been a similar exchange with IM in relation to AIS, he would have recorded it in the email (**Transcript Day 18, p97.22**).
- g. In oral evidence IM’s theory was that the officer had switched off AIS because he did not want anybody to find out that he was straying into Spanish waters (**Transcript Day 6 p49.1**).
- h. NP stated that IM did not mention the fact that coordinates had been provided by the GC, let alone share or discuss them (Pyle 2 para 16.1 [A262]). NP stated that had these coordinates been provided to him, he would have immediately passed them on to the FCDO in London and British Embassy in Madrid (Pyle 2 para 16.2 [A262]). He later said: “*I think by that time, because I was aware that the collision ... had happened inside Spanish waters ... I didn’t need to know the exact coordinates. I just needed confirmation ... that it had happened inside Spanish waters. ... I think we were all at that stage assuming that the incident from my perspective was inside Spanish waters*” (**Transcript Day 19, p110.12**). He also confirmed that nobody produced a map at that meeting (**Transcript Day 19, p111.19**).

- i. The AG recalled that NP asked IM why the AIS system could not confirm the location of the collision and that IM replied that it was switched off (Llamas 1 para 86 [A295]).
  - j. PR's note of the meeting is at **A1292**. His note recorded "*exact coordinates of collision still not determined*" and "*element of chase w/l BGTW*". NP confirmed that he recalled the expression "*we're still not certain where it is*" (**Transcript Day 18, p98.9**), and he accepted that the note suggested that there was a more high level discussion as to the rough location of the collision, and that at the time it was thought that an element of the chase took place in BGTW, and "it may have leant me towards being more sympathetic with the Commissioner's view that it could be in or it could be out, in terms or – and we have a different definition of the word "incident" (Transcript Day 18, p98.18).
149. DCI Field stated in questioning that on the 9 March 2020 there was an initial examination of the vessels during which the suspect vessel's Garmin GPS/radar device was switched on, and the screen displayed a time and coordinates, and there was a "*strong indication*" that they were from the moment the vessel lost contact or power. A photograph was taken of the image and is included in the Solis Report [B1715] and the coordinates on screen (N36°09.953', W5°12.511',) tallied with the coordinates that the Guardia Civil had provided (**Transcript Day 13 p32.18**). DCI Field believed that this attempt to extract data from the vessels was recorded in his daybook at 18:50 on 9 March 2020 (**Transcript Day 13 p35.12**). NP said in oral evidence that it would have been helpful for the RGP to inform him of this information: "*I think I would have wanted to know all available information and it would then have been up to me to go through and work out what was relevant*" (**Transcript Day 18, p118.15**).
150. In questioning:
- a. PR did not recall an exchange between NP and IM as to AIS being switched off (**Transcript Day 4 p172.11**). He did not have the impression at any stage in those meetings or otherwise that Mr McGrail was deliberately keeping any information from NP, nor did he know of any reason for IM to do so (**Transcript Day 4 p232.22**).
  - b. The AG agreed that it was very likely that PR's note was accurate and that the AG said that an element of the chase had taken place within BGTW because the RGP were still at that stage trying to determine exactly what had happened (**Transcript**

**Day 11 p125.6).** He did not recall NP raising with IM what he had communicated to the FCO that morning, although he thought he recalled NP specifically asking about location, to which IM responded that the exact coordinates were still not determined, and he did not believe the unconfirmed coordinates were mentioned (**Transcript Day 11 p126.6**). When asked why he did not intervene at that point and say what IM had told him the previous day, he stated that if IM wanted to be absolutely certain of the coordinates before confirming it to the Government, “*that was a matter for him*” (**Transcript Day 11 p127.19**).

151. Following that meeting, NP emailed the FCDO at 13:16 stating that “*we are unlikely to have the facts until tomorrow at the earliest*” [**B1752**]. At 16:42, NP sent a further email to the FCO [**B1757**] stating that:

*“The GC confirmed they had opened up an investigation which they would pursue regardless of where the collision took place. This infers even they are not sure where it happened. ...*

*A “notorious” (CoP’s word) Gibraltar legal company Verralls, have been engaged by those detailed...*

*The RGP helmsman did not report the start of the chase to Ops Centre as per SoPs. CoP brushed this off to an oversight due to the pressure of the moment. I was less forgiving. ...*

*CoP confirmed that the exact location has still to be determined as were details of the chase which lasted 10 minutes.*

*I said it was important that before Thursday’s meetings in London we had one single and agreed version of the facts. I welcomed the fact that there had been communications between the GC and RGP before and since the collision. The AG said it was clear, with the entry at some point of the vessel into BGTW, that the law had been broken and that therefore the chase was legitimate. He said it was important we are able to present this to the Spanish as “cooperation”. He stressed the need for details of the communication between the GC and RGP and especially who instigated it. I suspect this is as much as we will get until the investigation, including the interviews of the RGP and the mining of phones and IAS (sic.), have been completed”*

152. In questioning, IM stated that NP's email was accurate in stating that the "*exact location has still to be determined*", because the exact location was still to be determined, given that the coordinates were yet to be confirmed (**Transcript Day 6 p51.13**). He said it was also not clear at that stage that the vessel had entered BGTW and that the law had been broken, as the AG had said (**Transcript Day 8 p100.3**). The AG also confirmed the accuracy of much of that email in oral evidence, although he said that he remembered IM brushing off the turning off of AIS as being due to an oversight, and agreed with NP's description of IM's manner as "*slightly flippant*" (**Transcript Day 11 p132.14**).
153. DCI Field's daybook for 10 March 2020 contains an entry recording a report from Phil Mandelberg of the Gibraltar Port Authority stating that the vessel's AIS was turned on at 04:47, 6.364km off BGTW. DCI Field confirmed that this was shortly after the RGP vessel met up with HMC Seeker, and stated that he attended the Port with PR, who would have passed this information on to IM (**Transcript Day 13 p49.4**).
154. Also on 10 March 2020 at 13:00, DS Garratt met with Tim Yates of Sheppards Marina, who after examination was unable to retrieve the navigational data from the RGP or suspect vessel [**B1323**].
155. At 13:36, IM forwarded to NP a chain of emails about IM's efforts to source an independent investigation team [**C3294**]. At 13:47, NP stated that he had "*heard back from London who have said they do need a more formal request from you...*" [**C3298**]. This was a reference to NP making the request from the FCDO for UK police assistance, pursuant to s26 of the Police Act 1996.
156. An entry in DCI Field's daybook for 15:00 records that in a meeting between IM, PR, DCI Field and others a policy decision was taken not to remove items or extract GPS/radar equipment and to leave it for the investigation team to decide [**C6961**].
157. On 11 March 2020 at 2031, DI Chipolina emailed the GC requesting vessel radar positioning data [**B1326**]. IM stated that on this day, he was advised on "*the inability to extract the required navigational data*". He stated that it was his understanding that this data "*would provide accurate information relating to what had happened and where it had happened*" (McGrail 3 para 81 [**A79**]).

158. At 18:58, NP emailed IM, stating inter alia: "*Ian, Good to hear about progress re Met help. Are we any clearer as to where the collision took place? London are keen to know whether it was inside or outside BGTW and if the latter, approximately by how far.*" [B1351]. NP agreed in oral evidence that he was asking the question because he did not know the answer yet and wanted confirmation (**Transcript Day 19, p246.18**).
159. At 19:07, IM replied by email 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 further from WHSS and should be able to confirm soon. It is, highly probable it did occur out BGTW. We are getting plotted which will provide a better understanding in terms of distance from BGTW.*" [B1351] NP stated in written evidence that this was the first time IM disclosed this information to him (Pyle 1 para 25.8(iv) [A253]), and confirmed orally that this brought him up to the level of his understanding from the AG and from Windmill Hill (via his colleague) (**Transcript Day 18, p103.13**). In questioning, IM maintained that NP had already reported to the Foreign Office on the morning of 9 March that the collision had occurred in Spanish waters (**Transcript Day 6 p54.22**). NP maintained that this was the first time he heard this information from IM, and that he believed IM was evasive to him from the Sunday morning up until that message, and even then was not saying that the collision took place in Spanish waters, as was reflected in NP's response at 19:28 set out below (**Transcript Day 19, p247.7**)
160. IM explained the content of this message as follows: "*We had been unsuccessful in extracting the key data from the police vessel and suspect RHIB and therefore my colleagues were trying hard to plot the chase and collision using non-technical means but rather observational triangulation methods with the aid of Port Authority officers. The Guardia Civil had not provided confirmation that their coordinates were accurate.*" (McGrail 3 para 87 [A82]). In questioning he said he did not mention the provisional coordinates which suggested that it had happened in Spanish waters, but "*was working on the basis that Mr Pyle was aware of that already*", and he could not be sure or confirm at that stage (**Transcript Day 8 p102.12**).
161. At 19:09, IM messaged the AG stating 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 ie that it is highly probable that it happened outside BGTW*". When asked in questioning whether his use of the word "*informed*" in that sentence

demonstrated that he had not provided this information to NP before this message, IM said: “No, I’m informing him that I don’t have confirmation” (**Transcript Day 7 p217.3**). The AG said that this was different to what IM had said to NP on 8 March, and believed (although without any certainty) that it was different to what IM said to NP on 9 March (**Transcript Day 11 p135.9**).

162. At 19:15, the AG replied to IM’s WhatsApp stating “*Ian that seems fine to me. Factual whilst being amenable to further precision once you obtain further details.*” IM responded at 19:33 with a ‘thumbs-up’ sign. [**B1351**]
163. At 19:28, NP responded to IM’s email: “OK. Thanks. I’ll inform London facts still not established but highly likely to have occurred outside BGTW. Nick” [**A83**]
164. On 12 March 2020 at 08:49, NP emailed the FCO stating “*I asked the Commissioner of Police yesterday if he could, 3 days on, confirm the location of the collision, as per the meeting Michael and I had with him on Monday. He could not and restricted himself to saying more work needed to be done but “it is highly probable it was outside BGTW” ... I have to say I cant (sic.) quite understand why we still don’t definitively know whether the incident took place inside or outside of BGTW, The exact coordinates don’t matter that this savage (sic.) – it’s a matter of inside or out. This leaves me worried that it was significantly outside.*” [**B1761**]
165. At 16:13, IM messaged the ‘Maritime Incident’ WhatsApp group, stating “*the evidence points at the pursuit & collision occurring outside BGTW. Not the best news we wanted to hear*” [**B100**]. IM’s written evidence did not make clear what new evidence he received on this date which prompted this message. In questioning IM stated that this was confirmed using camera footage from the port authority, which meant that the position had “*moved from the information stage to evidence*” (**Transcript Day 6 p57.25**). DCI confirmed in questioning that he briefed IM on the thermal recording at this time (**Transcript Day 13 p55.21**), and it is reflected in his daybook [**C6965**]. However, his evidence was that the thermal imagery only showed part of the chase, and it was only established that the interception, the pursuit and the collision had all taken place in Spanish waters when Captain Meikle provided the rapid replay on 25 March 2020 (**Transcript Day 13 p56.23**).

166. The CM responded: *“Thank you Ian. Location does not worry me so much. Helps us in a way. Will discuss directly with you.”* [B101] The Inquiry asked the CM to explain this remark. He did so in his second witness statement at para 20 [A230]:

*“The reason I said that the location could help us was twofold: (i) First in demonstrating to the general public of Gibraltar that, in some instances, police cooperation involves cross border activity and that our own police may stray into Spanish waters in the same way as Spanish police often stray into British Gibraltar Territorial waters. (ii) Secondly, I thought that – although it was to cause huge diplomatic issues in the negotiations on foot with Spain at the time – it would be helpful in showing our Spanish counterparts that our police officers were seeking out illicit activity.”*

167. In questioning, the CM elaborated on this saying he was *“Making the best of a bad lot”*, given *“the context of the difficult moment we were in in the negotiations”* (Transcript Day 16 p40.7). NP said that he agreed with the CM’s reasoning, although he would probably have added a third, which was that it would also demonstrate in the aftermath cooperation between Gibraltar and Spain determining how the accident happened (Transcript Day 18, p107.1).

168. IM’s evidence was that he then spoke with NP *“to update him in the same vein as I had done with other officials in the ‘Maritime Incident’ group chat”*. IM stated that he has no notes of this call, but that he told NP that the evidence pointed to the dispute and collision occurring outside BGTW. IM stated that *“this was the first occasion I had verified information / evidence that the collision had taken place outside BGTW”* (McGrail 3 para 92 [A83]). As stated above, it was not clear from IM’s evidence what new evidence or verified information he was referring to here. NP’s evidence of this call was that IM *“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”* (Pyle 1 para 25.8(v), [A254]). He did not believe he ever raised with IM the fact that he had known since 8 May 2020 the approximate location of the collision (Transcript Day 18, p108.18).

169. At 16:50, NP updated the FCO by email, stating: *“I’ve just had an update from the Commissioner of Police who confirmed our suspicions that not only did the collision take*

*place in Spanish waters, so did the pursuit. The Commissioner also confirmed that SOPs/Protocols we're (sic.) not followed."* [B1762]

170. DCI Field stated that at some time on 12 March 2020 "we" managed to obtain thermal imagery which captured the collision, and that this was "*later*" brought to the attention of PR and IM (Field 1 para 46 [A802]). This raised a number of questions, including: (a) who DCI Field means by "we", (b) when PR/IM were provided with the footage; and (c) whether it provided insight into the location of the collision.
171. On **14 March 2020** at 15:47, DI Perera emailed the GC requesting authority for the Metropolitan Police team to attend the collision site in an RGP vessel: "*as the location was in Spanish waters his authority was being sought before proceeding*" [B1329]. The GC responded requesting more details of the vessel that would enter Spanish waters, and stated that the request should also be addressed to the UK Magistrate Liaison in Madrid or the Spanish embassy in London.
172. IM messaged the AG requesting to meet him on 16 March 2020, and again on 17 March 2020 [B1352]. It appears that they met at 13:00.
173. On 18 March 2020, a remote conference took place between Commander Pacheco Polo (of the GC), Metropolitan Police team, DI Chipolina and IM. IM's timeline records that "*GC advise that they still require their technicians to extract the coordinates of where the collision took place. That they have an idea where this occurred but required formal confirmation from technicians*" [B1331]. IM subsequently updated the AG on this meeting by WhatsApp, although did not refer to the issue of the coordinates (McGrail 3 para 101 [A86]).
174. On 20 March 2020 at 10:28, JB sent IM a WhatsApp message stating: "*Good morning, Ian – just a thought, are you keeping Governor abreast of developments...? Also, maybe send an update to CM via the WhatsApp? Note that this is just my thinking and nobody has actually asked me but I think it would be prudent...?? See what you think*". At 10:54 JB clarified that he was referring to the "*maritime accident*". [B1354]
175. At 10:58, IM replied stating: "*Yes The Convent is up to speed and AG too. Michael fed up to CM. By next week the UK Team will have more clarity on what route they will be*

*suggesting this should take locally. That is a good point to provide a more formal update.”*

[B1354]

176. At 10:58, JB replied “OK understood! Thank you, Ian.” He added at 10:59: “As long as both are kept updated, that was my concern...” [B1354]
177. A non-contemporaneous note dated 21 May 2020 [C4230] recorded that on 20 March 2020, Supt Smith gave a “*rushed initial debrief*” to NP and Phil Culligan (NP’s deputy). However, NP’s evidence was that this meeting occurred on 18 or 19 March, but the note was made on 20 March (Pyle 1 para 25.8(vi) [A254]). The bullet point record of the meeting stated that: “*all indications were that the incident had happened in Spanish waters possibly up to 3 miles out of BGTW*”. By contrast, Supt Smith’s evidence was that he had no contact with NP and his contact with the FCDO was Mr Culligan (Smith 1 para 32 [A1054]). NP accepted in oral evidence that while he remembered seeing Supt Smith for about two minutes in Mr Culligan’s office, he was only there for the opening remarks of the briefing, and it may have been on 20 March 2020 (Transcript Day 18, p109.18). He did not raise this information with IM (Transcript Day 18, p111.16)
178. On 25 March 2020 at 15:10, IM’s timeline recorded the following entry: “*Email link Rapid Reply Construction using the data of the suspect vessels navigational equipment. Screenshot of the situation around the time of the collision showing suspect RHIB proximity to BGTW. 36° 09 95N Latitude, 005° 12 51W Longitude*” [B1331].
179. On 28 May 2020, NP emailed the CM copies of the “Op Bomere – Situation Report” dated 23 March 2020 and 19 May 2020 [C4467]. It appears that this was a document prepared by the Metropolitan Police team and sent to members of the RGP and NP - see [C4405]. The Report stated:
- “The early indications are that the collision happened three miles outside BGTW and inside Spanish waters. We therefore need to determine if the RGP officers knew or suspected they had left BGTW during the pursuit.*
- We have confirmed that there is a standing instruction that RGP marine vessels should only leave BGTW for search and rescue matters. Where incursions have taken place into Spanish waters in the past, the Spanish have taken over the pursuits. However, on this occasion there were no Spanish vessels in the area. ...”*

180. On 29 May 2020, NP emailed the CM and AG stating: “*According to the Spanish [Note Verbale], the collision took place at 36.09N – 5.12W. ... Not quite where I was expecting the collision to have taken place*” [B1934]. CTI notes that reference had been made to the Note Verbale as early as 15 May 2020 [B3900]. NP stated in questioning that he may have been swayed by the initial reference to one of the people on the RGP vessel saying the collision had taken place “*off the other side of Europa Point*”, which he had read in the Section 15 Report (Transcript Day 18, p112.15; p93.18). NP said that he did not read the Note Verbale immediately, but would have read it in advance of 29 May 2020 (Transcript Day 18, p114.21).
181. On 12 June 2020, someone at the FCDO emailed Ltd Cdr Jon Taylor, who CTI understands to be the Queen’s Harbour Master, asking him to confirm whether the collision took place within Spanish waters or “*the funnel of international waters*”. Taylor confirmed it was within Spanish waters. This information was forwarded to NP, who in turn sent it to the CM, AG and Sir David Steel, stating: “*As we suspected of not knew (sic) but a good question to ask*” [C4981].

### Legal claims

182. On 9 March 2020, in the context of discussing the independent review of the Incident, IM messaged JB: “*technically there isn’t a complaint yet as no family member has filed one but it could happen...*” [B1347]. At the meeting between IM, the AG and NP at 12:10 (see above), IM informed the AG and NP that Mr Christopher Finch from Verralls was representing the families of the deceased and those arrested. However, at this stage there was no reference to claims being brought by those persons.
183. On 10 March 2020, Mr Finch from Verralls informed the RGP that he would like to have his own pathologist present during the post mortem examinations [B1324].
184. On 12 March 2020 at 16:13, IM messaged the “Maritime Incident” WhatsApp Group: “*Chris Finch is representing the families.*” This was in the context of an update about the autopsy and HM Coroner releasing the bodies [C3266].
185. On 17 March 2020, IM and the AG met. IM stated that he explained the “*various strands*” including the “*Coroner, possible civil action, professional standards inquiry, Spanish*

*judicial action, law enforcement co-operation angle ... and political dimension...*” (McGrail 3 para 98 [A85]). IM stated that the AG informed him there was no need for IM to see the CM, and that the AG would speak to the CM about whether he was content for the Metropolitan Police to liaise with the GC. The AG subsequently messaged IM “*proceed as we discussed*”. The AG did not recall this meeting but suggested that IM’s recollection is “*almost certainly correct*” (Llamas 2 para 57 [A314]). In questioning, IM explained that he did not deal directly with the CM at this point because it was “*in the eye of the storm of Covid and ... that was quite a critical time for Gibraltar in adapting*”, but that IM requested and the AG checked that the CM was happy for RGP officers to engage with Spanish authorities (Transcript Day 6 p71.22).

186. On 18 March 2020, IM held a video conference with the GC. He subsequently reported to the AG that: “*GC also expects the family of the deceased to file a complaint in their courts to seek compensation. This will no doubt complicate matters for us as the judge may be swayed to look at the matter from a different perspective in terms of where the collision took place.*” [B98]<sup>5</sup> No reply to that message has been disclosed. On 19 March 2020, IM forwarded his message to the AG to JB, who replied thanking IM and stated “*let’s see what happens*”. [C3207]. In questioning, IM explained that he “*wanted to have a strategy in place to deal with issues ... for when the time came to be kicked into play*”, and that IM told him there was no need for him to see the CM in person because IM was already aware of his position (Transcript Day 6 p73.12).

187. IM stated that in the “*days that followed*”, he was provided with periodic updates and made aware that Mr Finch was making several requests from the RGP which were being shared with HM Coroner and the Metropolitan Police team (McGrail 3 para 105 [A88]).

188. On 26 March 2020, Mr Finch from Verralls contacted CI Perez informing him that he was acting for the families of the deceased in Gibraltar, and was liaising with Spanish lawyers who are working on the matter in Spain [B1331]. CI Perez then liaised with Verralls in the days following.

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<sup>5</sup> The pages of IM’s exhibit appear to be out of sequence here: B98 should follow after B96, and B97 should appear after B92. This error has been reflected in the Chronological Bundle at C3252, which appears out of sequence.

189. On 1 April 2020, DCI Smith emailed IM, PR and DCI Field that he was aware the family of the deceased/survivors were considering legal action against the RGP, and the Spanish were considering a homicide investigation [B1333].
190. On 6 April 2020 at 12:22, IM messaged the AG requesting to discuss the Incident, stating *“I am conscious that this won’t go away and would like to act at least to have the strategy in place for when the time comes to act”* [B1354]. On 7 April 2020, IM met with the AG to discuss strategy for defending the RGP officers in Spanish proceedings [B1334]. IM’s evidence was that the AG said *“yes, perhaps the RGP went too far by going out of BGTW but in essence they were discharging a law enforcement role and he would be happy to defend that position. Discussed the correlations with the Alcaidesa Incident where RGP officers also went beyond their remit in Spain and how that particular case went on for 10 years... AG fully agreed with me and undertook to discuss with the CM whom he had quick access to.”* [B1355] IM added in the same statement that he *“aired concerns about what the RGP officers involved could be facing”* (McGrail 3 para 106 [188]).
191. On 22 April 2020, IM met with the AG and DPP [B1336]. IM stated that they met to discuss a letter from Robert Fischel KC *“suggesting they would be making a civil claim for damages”*, but did not recall on what date he received this letter (McGrail 3 para 107, [A89]). IM stated that *“the DPP advised that no civil claim had yet been filed and therefore there was no immediate need to appoint Crown Counsel”* (McGrail 3 para 107 [A89]) and that the AG did not want to consider further strategy until receipt of the Metropolitan Police report [B1280]. The DPP did not recall this meeting in questioning, but did not doubt the accuracy of the record (Transcript Day 10, p131.23). IM’s record stated that: *“AG undertook to keep the matter alive with CM pending any developments on the political front...”* [B1355]. The AG confirmed the accuracy of the note and his specifically his undertaking to keep the matter alive with the Chief Minister, which he said he did as much as he could, although he did not inform the CM of the potential claims at that point because they had not been filed at that point, as opposed to the subsequent letter from Verralls, at which point the matter *“manifested itself in a real sense”* (Transcript Day 11 p143.5). IM added in evidence that the AG said that the RGP should await the conclusion of the Metropolitan Police investigation (Transcript Day 6 p75.8).
192. When asked whether the AG had kept the issue of the legal claims *“alive”* with him as much as he could, the CM said: *“I don’t know that I can agree with that. He may have*

mentioned it, but remember that at this stage we are in lockdown: I am hardly seeing the Attorney General. ... But certainly, when I read in about the filing of the legal claims it came to me like a bolt from the blue..." (Transcript Day 16 p44.16). When asked whether he raised the matter with IM on 14 May 2020, the CM stated "I don't think my relationship with IM was such that I wanted to raise anything with him ... this was another of the many straws that broke the camel's back in this case." (Transcript Day 16 p50.15). The CM later added that it was a "very difficult period" due to the unprecedented lockdown, and "The last thing I would expect to have to be doing was to be chasing the Commissioner of Police for information that he had and should be sending me, which I didn't know he had" (Transcript Day 16 p72.17),

193. On 14 May 2020, an article was published in *El Faro de Ceuta* (a Spanish local news website) entitled "*Denuncian por delito de homicidio imprudente a la Policía de Gibraltar tras la muerte de dos ceutíes*" ("They denounce the Gibraltar Police for the crime of reckless homicide after the death of two people from Ceuta").<sup>6</sup> The article reported that the family of one of the deceased RHIB crewmembers (Mustafa Dris) had instigated a private prosecution in La Linea, and reported "the complaint, filed in Spain, was also filed in Gibraltar". Following this:
- a. At 09:36, the CM sent the link to the AG, stating "This has appeared TODAY". The AG replied "Couldn't make it up" [B1417].
  - b. At 09:49, the CM sent the link to NP, stating [1439]: "Hi. This article has just appeared. A civil claim has been filed in Spain (in Ceuta) by the families of the deceased in the incident with the RGP off the Eastside. This is obviously going to cause us huge issues. Damages claims, political problems etc. I am totally there to support the officers on the front line. I am starting to have huge concerns about the senior management of the RGP. ...." The CM also referred to his "huge concerns" about the RGP's leadership, as detailed above, which triggered the process of IM's retirement.
194. On the same day, Robert Fischel QC of Verralls sent a letter to IM on behalf of Don Nordin Dris Lahsen, one of the injured RHIB crew members ("the Fischel Letter") [C3762]. The Fischel Letter stated: "We are instructed ... to pursue on his behalf a claim for damages consequent on injuries" and stated "it is important that we establish at the outset whether

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<sup>6</sup> <https://elfarodeceuta.es/denuncian-policia-gibraltar-muerte-dos-ceuties/>.

or not the penetration of an RGP vessel into Spanish waters was authorised or requested by any of your Spanish counterparts”. On the face of the Fischel Letter, it was not clear whether these claims would be pursued in Spain or Gibraltar. IM described this as a “*letter before action*” (McGrail 3 para 108 [A89]), but it is submitted that is not an accurate description of the letter, which was very brief and did not set out a case in detail. In questioning IM described it as “*a notification that the claim was potentially heading our way*”, which the DPP said was “*not a letter of action per se*”, and therefore the RGP was “*not bound to anything*” while it investigated and collected data (Transcript Day 6 p76.10). He further explained that he did not consider referring the matter directly to the CM at this stage because “*I was under the comfortable belief that it was not a firm letter of claim and that’s the information that was being imparted to me by the DPP and the AG*”, and pointed out that he had previously notified the CM that there had been questions raised in the Spanish Parliament by the right wing party Vox (Transcript Day 6 p77.9).

195. IM replied with a holding response on the following day (15 May 2020), stating that he had allocated the matter to Supt Cathal Yeats so that counsel could be instructed to represent the RGP [C3814]. Ms Michelle Hook (IM’s personal assistant) forwarded the Fischel Letter to Supt Yeats at 10:23 [B2592].
196. At 09:59, NP emailed the FCDO [C3904] stating “*the CM has now informed by WhatsApp the senior wider group of the filing of a case as per the attached*”. NP attached a copy of the *El Faro de Ceuta* article. In a follow up email at 14:04, an FCDO colleague stated that “*For the wider chain, the CM’s WhatsApp message is as follows: ‘I am very concerned about the effect that this can have. ... We must be entirely transparent on this to the interior ministry, the Ceuta autonomy and the families, to ensure we grow the relationship from this and not hamper it. I am minded to seek a report from the RGP (I have the power to do this under the Police Act). There is also a pending inquest, although it may be ultra vires, given the incident happened well outside BGTW.’*” The Inquiry did not have disclosure of the “*senior wider group*” WhatsApp messages, and requested further disclosure of this.
197. NP added to the FCDO [C3904]: “*I am meeting the CM later today to discuss this and other issues relating to the behaviour of the RGP and in particular its leadership. I’ll report thereafter. Needless to say, he is extremely worried about many aspects of the case which we agreed is not good news and will require extremely careful handling. As you may*

*remember, the Met Police carried out an independent investigation into the RGP operation. We've asked for sight of their report."*

198. At 11:39, Supt Yeats emailed the DPP informing him of the Fischel Letter [C3801], seeking a meeting in the following week to discuss how to progress the defence of the claim. It does not appear that the Fischel Letter was sent as an attachment to this email. A meeting was arranged for 19 May 2020.
199. On 18 May 2020 at 13:25, the DPP sent a WhatsApp message to the AG stating: "*I have a meeting with the RGP tomorrow regarding the claim filed in respect of the death at sea – I will update you immediately after that so that we can discuss*" [C6854].
200. On 19 May 2020 at 09:06, Supt Yeats sent the "*letter of claim*" (which CTI understand to mean the Fischel Letter) and the RGP's acknowledgment of receipt to the DPP [C4027]. The DPP responded at 09:35 asking "*Is this all we have at the moment?*", and Supt Yeats responded at 09:37 stating "*with respect to the claim, yes*" [C4027].
201. At 12:00, Supt Yeats met the DPP to discuss the claim referred to by Mr Fischel. Supt Yeats's evidence was that: "*[the DPP's] view was that his office was not in a position to act for the RGP to defend the claim as a conflict of interest would arise ... the DPP would discuss the matter with the Attorney General and revert*" (Yeats 1 para 15 [A635]). After the meeting, the DPP messaged the AG asking if they could discuss [C6854], and they both agreed that the OCPL would be conflicted (the AG confirmed this in live evidence (Transcript Day 11 p144.24). IM's understanding of this situation was that the DPP consulted with the AG on who should represent the RGP, and then the DPP asked Supt Yeats to write to the AG seeking the AG's views on representation (McGrail 3 para 108 [A89]). The DPP confirmed this in live evidence (Transcript Day 10, p130.12).
202. At 14:12, Mr Fischel sent another letter to Mr Yeats [C4031, C4029], stating:
  - a. The "*seminal request*" for the RGP is "*whether or not there had been a request from the Guardia Civil to pursue the RHIB the subject of the collision or whether there had been any permission granted for the Sir John Chapple or any other official vessel belonging to authorities in Gibraltar, to enter Spanish waters.*"
  - b. "*... we should be obliged if you would let us have the full names of the crew of the Sir John Chapple on the night of collision ... The reason for this is we are required*

*to issue a letter before action before we issue proceedings claiming damages for personal injury and loss sustained by our client Don Nordin Dris Lahsen...*

- c. *“... we anticipate being instructed by the families of the deceased as well as the fourth person aboard the RHIB.”*

203. On 20 May 2020 at 09:30, Supt Yeats telephoned the DPP. Supt Yeats stated that the DPP told him the AG agreed with his view about the conflict of interest, and that Supt Yeats should write to the AG directly (Yeats 1 para 18 [A635]).

204. At 12:13, Supt Yeats emailed the AG (copying IM), stating:

- a. IM had received correspondence with regard to a claim for damages.
- b. The DPP and Supt Yeats had met to discuss the RGP’s representation, and concluded that it was not appropriate for the Office of Criminal Prosecution and Litigation to do so.
- c. Supt Yeats *“would be grateful for your authority to appoint counsel”*.
- d. Claims against the RGP have generally been handled by Government. Supt Yeats asked *“do you wish this to be the case in this instance or should we manage it ourselves together with appointed counsel?”* [C4088]

205. IM’s evidence about this email was that it was not a *“direct request for funding”*, but one seeking advice from the AG about how to proceed (McGrail 5 para 89, [A161]). The AG forwarded that email to the CM at 13:49 [C4088]. The AG explained that he did so as part of his commitment to keep the CM informed, and due to the financial aspect of instructing outside counsel, which concerned the CM as Minister of Finance (**Transcript Day 11 p145.15**). IM stated that he did not intend the email to be forwarded to the CM, and the purpose of the email had been to seek advice from the AG before the potential need to engage the CM and HMGOG (McGrail 3 para 111, [A91]). In questioning he explained that the assignment to Mr Yeats was to establish who was best placed to represent the RGP, that there was unfortunately a couple of days between when it was assigned to Mr Yeats and when he was able to raise it, and that if and once either crown counsel or external counsel was instructed and he had a *“firm footing of where we are”*, then he would address both the Governor and the CM, but they had not got that far yet (**Transcript Day 6 p79.9**).

206. At 14:15, the CM responded to the AG stating [C4090]:

*“I think it is entirely inappropriate for this matter not to have been raised with me in the first instance by the Commissioner.*

*This matter raises issues of fundamental human rights, the right to life, potential payment of huge amounts of damages, the potential extradition and liberty of serving police officers being at stake, the issue of Standard Operating Procedures which may be in place and the management thereof. All of that is in addition to the huge potential political exposure that arises for Gibraltar as a result thereof and the concomitant (and dangerous) issues of sovereignty and the United Nations Convention on the Law of the Sea.*

*Indeed, it is difficult to think of an issue as fundamental as this affecting the RGP, certainly in the time I have been in office. There is no consideration in the email below of claims or offences going beyond “the officers crewing the vessel”, which is also, in my view an issue that may also need further consideration.*

*... I am therefore surprised and greatly disappointed that these issues have not been the subject of a detailed submission to me by the Commissioner in respect of the events in question and the issues which now arise.*

*I shall therefore be writing directly to the Commissioner on this and all other aspects of this matter. In the interim, I do not authorise the incurring of any expenditure in briefing out of this matter at this stage. ...”*

207. In oral evidence, the CM stated that his issues were “multifaceted”: *“It was of course fundamental that I had heard this from public sources in another jurisdiction and not from the Commissioner. It was fundamental that we get right something which had resulted in the death of two individuals at sea, whoever those individuals might be. It was fundamental that we get to the bottom of why on earth our Royal Gibraltar Police officers were operating outside the jurisdiction of Gibraltar. It was fundamental that the Chief Minister and the Governor should have all information timeously about this. It was going to be a key issue going forward that the Parliament in Gibraltar was going to have to make an appropriation in respect of the costs that were going to arise, both in respect of legal fees and payments that might eventually have to be made if liability was found. All of these things are playing on my mind at the time. ... I was, and remain, very worried about this. ... it was very clear that standard operating procedures should have prevented an incident like this from happening in these circumstances, and I have always been very clear in the*

*views I had expressed to Commissioners of Police that the [RGP] should operate within Gibraltar's jurisdiction and should only go outside it in certain very defined circumstances...". (Transcript Day 16 p59.11).*

208. When asked whether he was annoyed at the AG for not informing him about the claims until 20 May 2020, the CM stated that he was not aware that the AG should have informed him before that date until he had seen the timeline, but the intensity of the work they were doing in relation to COVID and negotiations suggested that "*nobody should have relied on the [AG] as an interlocutor to me on these issues; in particular, given my section 14 responsibilities in respect of funding the [RGP]."* (Transcript Day 16 p61.12).

209. At 14:16, the CM forwarded his email to NP, stating "*Given our ongoing discussions, you need to be aware of the below.*" [C4096]

210. At 15:27, the AG forwarded the CM's email to Supt Yeats and the DPP [C4101]. The AG said in questioning that he would have expected IM to be reporting directly to the CM because of his duty to do so, and while he was assisting as he could he was surprised that the CM was not aware of the matter at all (Transcript Day 11 p146.3). At 16:06, Supt Yeats then forwarded the email to IM [C4101]. IM then responded directly to the CM at 17:53 stating:

*"You are evidently very disappointed but I want to reassure you that it has never been my intention to withhold anything from you concerning this very serious matter. I provided you with an overview on the day of the incident, then engaged with the AG as per your suggestion and have been doing so ever since. I will hopefully be in a better position to brief you on the full details of the incident once I receive the report of the findings of the independent investigation team we called in. This team had to return early to the UK because of the COVID-19 crisis and because of the lockdown in the UK, they have been unable to progress the matter as expeditiously as we all would have wanted.*

*The letter from local counsel representing the families and suggesting a future claim for damages was only received a few days ago which is what triggered our enquiry with the DPP only yesterday concerning legal representation. I am of course available to discuss all the points you allude to at your earliest convenience."*

211. The CM's evidence was that he considered IM was "*making excuses for not having provided [the CM] with timely information about the claims*" and was "*even more disappointed to learn that the RGP had received the damages claims 'some days earlier'*" (Picardo 1 para 78 [A204]). In questioning the CM said that he did not know whether it was only in relation to the claims that IM had not kept him properly informed, or whether that also applied to the location of the incident, and he was "*very concerned that I was not getting the full picture about any of this*", also referring to the item fitted at the front of the RGP vessel (**Transcript Day 16 p42.9**). He added: "*So, it appeared to me that there were a lot of issues that I was not confidently able to say I had been kept fully informed about which could have repercussions for the public purse, for Gibraltar's international reputation, in respect of the negotiations, etc.*" (**Transcript Day 16 p42.23**). The CM also stated that he and NP were aware of and would have discussed the legal claims between 14 and 19 May 2020 (**Transcript Day 16 p55.2**). He believed that if 12 May had not happened, IM would have written to him about the claims, and "*hopefully more timeously*" (**Transcript Day 16 p58.8**).
212. In questioning IM said that by 20 May 2020 "*the Chief Minister already knew that he didn't want me in post*", and IM was aware that the CM was "*extremely disappointed and angry ... 'in the wake of the intervention on 12 May when ... all hell broke loose'*", and pointed out that the previous contact with him was when the CM had told him that he was not too concerned about the collision happening in Spain, so the CM's reaction was "*totally unrelated to this*" (**Transcript Day 6 p83.19**). When asked whether by this point, after 12 May, IM simply could do nothing right in his eyes, the CM said: "*To a very great extent, it is true that after 12 May I found it very difficult to believe anything that Mr McGrail did or said or to even consider that the things he did he was doing in good faith. My loss of confidence in him after 12 May and finding out that after that meeting in my office that what he had said was untrue was huge. I cannot underestimate (sic.) for you just how catastrophic the loss of confidence was.*"
213. At 18:34, IM messaged the AG asking "*I honestly do not know why [the CM] has reacted like this. Have you briefed him of our meetings we've had on the matter?*" The AG replied: "*He is aware you and I have spoken about this. ...*" IM replied: "*Good, but the wobbler he's thrown is what I do not understand. Anyway, something for me to take up with him. Thanks.*" [C4104]. The AG also forwarded that message to the CM, and commented "*They*

are very stubborn” [B1418]. In questioning he said he did not consider any reason why he should hide the exchange from the CM, but did not remember why he said the RGP was stubborn (Transcript Day 11 p148.20).

214. The CM forwarded IM’s response to the AG [C4112] and NP [C4117]. To NP, the CM stated: “Given the seriousness of the matter, I would appreciate the opportunity to discuss with you my intended response. I consider this is a trigger the only appropriate response to which will be the exercise of my powers under s.15(1)(a). Happy to speak later or tomorrow...”. The CM stated in oral evidence that he did so because he was corresponding with NP on the issue and they had a “very fluid discussion” about the issue and the CM thought it was appropriate that NP should have the email from IM so that they could continue to discuss the matter with all of the information “open and transparent” before them (Transcript Day 16 p63.12). He considered himself duty bound to do so given the Governor’s responsibilities under the Constitution and the need to ensure the relationship between CM and Governor is as open and positive as it can be (Transcript Day 16 p63.22).

### The Section 15 Report

215. Pursuant to s15 of the Police Act, the Chief Minister may “require factual or assessment reports from the Force or the Authority on any policing matter” within 7 days.
216. On 19 May 2020 at 11:44, the CM sent NP a message via WhatsApp asking: “...what’s your instinct on the 15(1)(a) report? Shall I seek it given Met report isn’t imminent? I am in two minds.” At 12:15 NP replied: “I’m sure (or hope) CoP has done his own internal investigation and therefore has an internal report. You could a) ask on the basis of the claim being filed as the peg or b) wait until say Friday to see what Joey comes up with. Slight preference to leave this to the GPA but worried they will not be timely enough. Using 15(1)(a) would speed things up and on balance, I’d go for that.” [B1441]
217. The CM stated in evidence that IM’s email of 20 May 2020 was the “culmination” of his view that he was not confident that he was getting all of the information in relation to the collision at sea (Transcript Day 16 p42.9; 64.16). When asked about NP’s use of the word “peg”, the CM stated: “He uses the word “peg”, I use the word “trigger”. I mean, it really is the moment that we felt we had to act and you will know that section 15 requires me to

*act with the consent or information of the governors.”* When asked why he did not seek the section 15 report earlier than 20 May 2020 given what he was already aware of, the CM referred to a ministerial statement that he gave around the time relating to COVID and stated: *“Could we have pressed it earlier? Perhaps we could have but that is to suggest that this is the only thing I was dealing with at the time and it was not and unfortunately it is necessary to make time for everything and to prioritise things as necessary.”* (**Transcript Day 16 p67.3**).

218. NP said that he did not think he had previously discussed a section 15 report with the CM, but that *“I think I had a sense tried a horizon scan, which I know is dangerous, that we would end up with a situation where a section 15(1)(a) report would be needed or would be requested”*, and then said he believed it was raised in the general discussion of where they were going (**Transcript Day 18, p121.22**). He later accepted when questioned by Sir Peter Caruana KC that in fact it did appear that they must have discussed the section 15 Report, based on his email to the FCDO dated 15 May 2020 [**B1769**] and his email exchange with the CM on 18 May 2020 [**C3995**]. He thought he could make an argument that the claim being made in Spain on behalf of the relatives alone was sufficient for the report to be requested given its consequences, and the CM did not need an “excuse” for the report. He acknowledged his language could have been tighter (**Transcript Day 18, p123.13**). As to option (b) (i.e. waiting to see *“what Joey comes up with”*), NP said that they expected the GPA to take forward the process, and for IM to make representations which might give a bit more information around the questions they had (**Transcript Day 18, p124.21**). He emphasised the time sensitivity, and said that with hindsight he would not have included option (b) (**Transcript Day 18, p125.13**). He agreed that his messages showed that he believed there would already be an internal report on which the Section 15 Report could be based, and that all he wanted to speed up was receiving all the information possible around the incident (**Transcript Day 19, p258.6**).

219. On 21 May 2020, the CM wrote a letter to IM exercising his s15 powers [**B1250, B1257**]. This letter was copied to JB, NP, the Minister for Justice, the AG and the DPP [**B1257**]. The CM referred (amongst other matters) to the email communications regarding the legal claims on 20 May 2020, and concluded: *“I have no confidence that you have expeditiously provided me with all the information and documentation that I should have been provided with ... I have no confidence that either the Government or the office of the Governor (with whom I have discussed this matter at length) have had the timely candor and*

*transparency that we would have expected from you...*” [B1251]. The letter referred to the following “concerns”:

- a. The fact that the incident took place outside BGTW. The CM requested information about whether the RGP was operating inside Spanish waters at the invitation of or with express/tacit consent of the Spanish [B1253].
- b. The welfare of the RGP officers and the potential for multi-jurisdictional legal action against them [B1253].
- c. The “*very large potential claims in damages against HMGoG*” [B1254].
- d. “*Serious issues as to the operational welfare of officers of the RGP at sea*” [B1254].
- e. “*The events in question can provide grounds for a serious setback in Gibraltar in the context of the relationship with our Spanish counterparts at a political level*” [B1254].
- f. “*The sovereignty implications for Gibraltar and the United Kingdom*” [B1254].

220. IM commented that this letter was “*completely at variance*” with the WhatsApp discussions in the Maritime Incident WhatsApp Group (McGrail 1 para 70 [A27]). The CM denied this in questioning, stating that his earlier communications were setting out his support for the officers on the front line, and that three months later he was saying “*I’m not getting the information I need in order to properly discharge my functions in respect of this matter.*” (Transcript Day 16 p71.16). NP stated that he had raised concerns about political, financial and sovereignty implications with IM on 9 March 2020 (Transcript Day 18, p119.10).

221. When asked why he requested the section 15 report if he already understood by that point that the GPA would be calling on IM to retire, the CM stated: “*First of all, the process was not a fait accompli as unfortunately later transpired. Second, the world does not stand still when the commissioner is replaced. This section 15 notice would have to be complied with by this commissioner. ... it would have been something in respect of which the rest of the [RGP] should also answer, at least the senior management team.*” (Transcript Day 16 p68.15). He denied that he intended to put further pressure on IM with the report, stating that he himself was under pressure, and drafting the section 15 notice put a lot of pressure on him, and both he and IM had to deal with pressure in their respective roles (Transcript Day 16 p69.6). He also pointed out that IM would have “*the*

*whole organisation available to provide the information” (Transcript Day 17 p232.21). As to the 7-day deadline, he stated that seeking the information one day ahead of June would permit him to know whether he needed to make a different statement to the Parliament about the lines in the police budget for that year in order to appropriate more money for a purpose, and that he “opened the door for more time to be sought but no more time was sought so I must have got it relatively right because they responded in that period” (Transcript Day 16 p70.9).*

222. NP said that they sent the Section 15 Report when they did because it was time sensitive, and he and the CM needed all the information possible in view of the claim and the ongoing negotiations with Spain (Transcript Day 18, p126.8). He did not see the draft request before it went out, nor did he think it necessary given the time pressure, and he would have expected the CM to consult the AG on the draft (Transcript Day 18, p128.18).
223. The Section 15 Report is dated 27 May 2020 [B1271], but IM sent it to the CM on 28 May at 16:21 [C4429]. This was within the 7 days requested by the CM. The CM’s evidence was that he received the Section 15 Report on 29 May 2020 (“it was provided to me in my office on the 29<sup>th</sup>”) (Picardo 2 para 8.1, [A222]), but the timestamp of the email is 28 May. IM stated that to date he had received no acknowledgement of receipt or any comments or feedback on the report (McGrail 1 para 71 [A27]).
224. The Section 15 Report set out a detailed timeline of the Incident, which has been incorporated into the timeline above regarding the location of the collision. However, the following additional matters in the Report are worth noting:
- a. IM stated that “I have briefed the Hon Attorney General on several occasions (as suggested by you from the outset), appraised the Chairman of the Gibraltar Police Authority and consulted with the Director of Public prosecutions...” [B1271]
  - b. “At the relevant time this information [the coordinates of the collision] was not available to the Command Team as the police interceptor’s AIS had not been activated. This was contrary to standing orders. It was assumed that the collision was likely to have taken place outside of BGTW as the radar screen of the suspect vessel displayed coordinates indicating this, but this required technical confirmation.” [B1272]. When asked about this, IM said that he did not know how or when this information was obtained, but that the vessel was declared a crime

scene as is standard practice and nobody touched anything until the crime scene investigators took their time to process it (**Transcript Day 6 p66.3**).

- c. *“The intelligence picture at that stage was unclear and confusing with the limited facts recounted by the PMB crew being out of sync with other facts. Such confusion is common in the initial stages of serious investigation...”* [B1273]
- d. After a critical incident was declared, the “fast track actions” that were commenced included: *“Need to determine location of incident ASAP”* [B1276]
- e. WHSS had recorded the chase through infrared thermal cameras, and were able to place the chase outside BGTW by referencing vessels anchored out at sea and captured in the footage [B1285].
- f. There was no evidence to suggest that there was any actual invitation to enter Spanish Waters, and to accept such an invitation would contravene RGP instructions [B1294].
- g. The RGP’s Marine Section Training included a module on “International Rules for Prevention of Collisions at Sea” [B1297].
- h. There have been many instances where the RGP has undertaken chases at sea, but the moment the vessel departed Gibraltar waters the RGP “disengaged” [B1301].

225. The CM’s view was that *“it is clear from the timeline of communications that I was being told one thing about the location of the incident, hours after it had occurred, and that the Governor was not given the same information until three days later”* (Picardo 1 para 86 [A206]). NP stated that he had expressed concerns about information sharing with the AG, and he would be surprised if he had not also done so with the CM, prior to their meeting on 14 May 2020, although he accepted that there was no written evidence of this and apologised if he should have been more thorough, although he believed he had expressed this in one of his early emails to London<sup>7</sup> or orally in phone calls or a weekly meeting (**Transcript Day 19, p79.18; p82.4**). He accepted that the first written record of his specific concern about information sharing was the 3 June letter to the GPA (**Transcript**

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<sup>7</sup> He may have been referring to his email to the FCDO of 12 March 2020 at 08:49, which does appear to imply frustration at a lack of information, but does not suggest that he has been misled: *“I asked the Commissioner of Police yesterday if he could, 3 days on, confirm the location of the collision, as per the meeting Michael and I had with him on Monday. He could not and restricted himself to saying more work needed to be done but “it is highly probable it was outside BGTW” ... I have to say I cant (sic.) quite understand why we still don’t definitively know whether the incident took place inside or outside of BGTW, The exact coordinates don’t matter that this savage (sic.) – it’s a matter of inside or out. This leaves me worried that it was significantly outside.”* [B1761]

**Day 19, p81.11**), and that his memory would have been less clear at that point, three months after the event (although of course the CM had referred to a similar concern in the Section 15 Report request on 21 May 2020).

226. NP said in questioning that he read started reading the Section 15 Report between 29 and 30 May 2020 (**Transcript Day 18, p116.12**). He also said that there was still to be justice or accountability, and *“the question I occasionally ask myself is whether that accountability and responsibility would have been different had, for example, everybody in that incident been killed or those on the boat had not been Spanish and had been Gibraltarian”* (**Transcript Day 18, p137.23**). When asked about that he suggested that *“there may have been a greater acceptance of accountability for the head of the organisation. It pains me to say that, I have to say”* (**Transcript Day 19, p53.5**). He added that the operational reaction would have been different and there would have been a greater public outcry for accountability (**Transcript Day 19, p53.17**), although he later said that the steps taken by the RGP and the operational and prosecutorial processes would have been the same (**Transcript Day 19, p55.2**). He said he thought that if the incident had happened in the UK, the head of the organisation may have reflected on whether their position was tenable (**Transcript Day 19, p147.22**). He denied that he was rewriting history to make it seem like he was dishonestly misled about the incident at sea, when in reality he misremembered or misunderstood (**Transcript Day 19, p79.9**). He maintained that he held IM accountable based on what he knew at the time, before the Metropolitan Police report was completed, and he had a pretty clear understanding of what happened by the time the s34 process was commenced (**Transcript Day 19, p155.1**), in that he knew that two people had suffered deaths at the hands of the RGP outside of BGTW and in Spanish territorial waters, he had seen the draft Solis Report, he knew about AIS being switched off, and therefore believed the Commissioner of Police should be held accountable and did not need the Metropolitan Police report to tell him any of that (**Transcript Day 19, p237.10**).

## ISSUE 4 - THE HMIC REPORT

### The 2016 HMIC Report

227. The 2016 HMIC Report reported as follows:

- a. On 'Leadership, vision, values and culture':
  - i. The RGP was "*generally well led. Senior officers were visible and had a good oversight of policing activity*" [B1517].
  - ii. The Commissioner (at that time Mr Yome) "*adopted an open, transparent and constructive approach*" [B1517].
  - iii. There was "*professional and formal, yet supporting and open, engagement between senior officers and other staff*" and "*when mistakes were made, the emphasis was on putting the matter right and learning from the experience rather than finding blame*" [B1518].
  - iv. There was "*strong evidence that senior officers were committed to improving how the force operates concerning values and standards*" [B1519].
  - v. Members of the public "*reported a high level of confidence in the force in general*" [B1520].
  - vi. The inspection team "*did not encounter any suggestion of bullying or harassment*" [B1522].
- b. On 'Crime prevention, investigation and victim care':
  - i. "*Generally, the prevention and investigation of crime and care for victims was effective*", but there were five areas with scope for improvement (auditing of crime records, recording practice for detected crime, supervision of investigations, identification of vulnerable and repeat victims, and extent of partnership working [B1523].
  - ii. The case file review revealed "*various examples of good police work and appropriate decision-making*", but "*there were examples of inadequate investigations*", for example a complaint of harassment which was not fully investigated [B1527].
  - iii. Overall, the evidence revealed "*a force that is working with the public in an effective way to prevent crime*". However, this was offset by findings about limited evidence of crime auditing, the recording practice for detected crime (which could lead to a false impression of detection rates), the

insufficient level of supervision of crime investigations, the RGP's approach to identifying vulnerable and repeat victims, and the extent of partnership working [B1540].

iv. There was “*scope for the force to improve its effectiveness*” [B1540].

c. On ‘Demand and resources’:

i. The RGP was “*committed to meeting all demands, which led to high levels of public confidence and satisfaction but placed major pressures on the workforce*” [B1531].

228. The 2016 HMIC Report identified eight areas for improvement by the RGP. All bar one are addressed to actions required by the Commissioner (the eight being addressed to the Minister for Finance):

- (1) By July 2016, the Commissioner should augment the existing arrangements for crime recording by establishing and beginning operation of a comprehensive system for auditing crime records. Audits should be conducted regularly and led by a senior officer.
- (2) By July 2016, the Commissioner should align the counting rules policy more closely with Home Office standards, in particular those concerning the recording of detected crimes where multiple offences have taken place in single incidents.
- (3) By October 2016, the Commissioner should ensure that robust arrangements for the supervisory oversight of investigations are introduced. These arrangements should include the creation of investigation plans, regular supervisory checks and constructive challenge to decisions by officers concerning investigations.
- (4) By July 2016, the Commissioner should define in policy and procedures how vulnerable and repeat victims will be identified, how risks to them will be assessed and how appropriate support will be provided. Operation of the policy and procedures should begin as soon as possible thereafter.
- (5) By October 2016, the Commissioner should agree with the Authority a policy and procedure to prioritise - and in so doing match - resources to demand, particularly for response teams.
- (6) By October 2016, the Commissioner should establish an effective way to assess how busy the force is likely to be, by using a range of tools to understand daily calls for service and patterns in their demand.

- (7) By October 2016, the Commissioner should compile a comprehensive prediction of future demand. This should be used to define the capacity and capability the force will need, which will enable the creation of plans for funding, skills, structure, estates, information and communication technology and other equipment.
- (8) By July 2016, the Minister for Finance should set out the funding formula, including the associated criteria, thresholds and conditions that need to be met for resources required to police Gibraltar.

229. IM's application for the role of CoP dated 2 November 2017 noted that some of these recommendations had already been addressed, but that some still required action. He stated "*it is imperative that a working group is created*" to address the recommendations in the 2016 HMIC Report. He identified as the "*most pressing area*" the "*creation of manual guidance which should represent Force policy in crime investigation standards*" [C593].
230. IM's application also included an "*Action Plan*" to address 5 areas of focus that IM identified for the RGP: effective service delivery, improving community safety, working with others, people development, and workplace development [C588]. The Action Plan [from C597] included addressing the 2016 HMIC Report recommendations as one of 12 areas requiring action. Under that heading, it identified two "*Key Actions*". The first of these was: "*A working group to complete addressing of all areas for improvement highlighted in 2015 inspection*", which he said should commence "*ASAP*", with a completion date of 1 March 2019 [C599]. IM did not dispute that the working group was not established, but suggested that the Action Plan was not "*set in stone*". He pointed to the disclaimer in the Action Plan that "*in policing, things change very quickly and therefore whilst the intention is to deliver on the stipulated actions, unexpected exigencies may warrant a review of these actions*" [C4594]. He stressed that he gave priority to operational demands (**Transcript Day 6 p89.5**). According to IM, by May 2020 he had completed 16 of the 37 actions in the Action Plan, and work had commenced in respect of another 10. There remained a further 11 actions to be completed, including the setting up the working group. IM regretted that the GPA never carried out a review of his performance against the "*Action Plan*". (McGrail 3 para 146(i)(c) [A109-10]).

231. RU agreed that although the working group had not been established, the command team and commanders in different portfolios “*would be expected to start doing some work in respect of HMIC recommendations*”. However, he stated “*not much work had happened*” by 2020 (**Transcript Day 13 p99.16**). IM’s letter of 29 May 2020 also stated that: “*the RGP has been addressing the issues raised in the Report by merging them with daily work practices*” [**C4594**].

## The 2020 Report

### *IM’s call for an inspection*

232. IM assumed the role of CoP in May 2018. In August/September 2018, IM decided to ask the GPA to request HMICFRS to conduct an inspection. IM has given the following evidence on his decision to request an inspection:

- a. It is not mandatory for the RGP to submit itself to inspections by HMICFRS, as is the case with UK Home Office police forces, but that it is common for the RGP to voluntarily request inspection every “*4 years or so*” (McGrail 3 para 15 [**A54**]). This does not appear to be in dispute.
- b. When IM decided to ask the GPA to request the inspection, he “*was fully cognisant that there were pending recommendations from the previous inspection report of 2016 which needed actioning*”. However, IM felt it was “*imperative to demonstrate openness, transparency and progress*” following criticism in *Panorama* about the RGP, the GPF survey results (see Issue 6 below), and the “*apparent discontent amongst the rank and file with complaints of bullying*” (McGrail 3 para 16 [**A54**]). IM emphasised this point again at the Main Inquiry Hearing, stating he wanted to “*be transparent, to be seen to be transparent, to be seen to be progressive, in light of the atmosphere and the relationship, adverse relationship that existed with the then Police Federation*” (**Transcript Day 6 p91.14**). IM explained that AAP Associates had already produced a report on internal service issues (“*looking inwards*”), and so he wanted to commission an HMIC report on external issues (“*looking outward*”) and then “*marry the results of both*” (**Transcript Day 6 p92.15, 92.4**). CTI asked IM why the issue of bullying was not within HMIC’s terms of reference, if he saw the HMIC inspection as a response to the GPF survey. IM’s response was that the purpose of the HMIC report was not to address the GPF surveys (**Transcript Day 6 p102.10**) but later that the GPF survey had a bearing on

the HMIC inspection, although it did not trigger it (**Transcript Day 6 p104.3**). JB also stated that he understood IM's motivation in requesting the inspection to "*look at whether or not they could find any elements of bullying in-house*" (**Transcript Day 15 p45.9**). JB agreed that he raised with IM that if his motivation was to look into bullying, the HMIC Report was not going to bottom this out (**Transcript Day 15 p46.21**).

- c. In September 2018, IM visited HM Inspector Matt Parr in London, who assured him HMICFRS had no concerns about how the RGP was functioning and "*applauded the desire to be inspected*" (McGrail 3 para 25 [**A58-9**]).
- d. The terms of reference for the inspection were designed to supplement areas akin to the concerns expressed in the GPF survey results and internal service delivery, rather than a "*full baseline inspection*" which IM had been told was beyond the GPA's budget for the inspection (McGrail 3 para 27 [**A59**]).

233. RU (who at the time was Assistant Commissioner) gave evidence that when IM told the Command Team of this decision, "*we all opposed it; simply because we knew that, whilst progress had been made in such areas we had not done enough to achieve the recommendations or areas of improvement of the previous 2016 inspection*" (Ullger 1 para 42 [**A541**]). At the Main Inquiry Hearing, RU added that IM welcomed their discussion about whether to call an inspection, but that IM's primary motivation to seek an inspection was to address the allegations of bullying (**Transcript Day 13 p95.22**), and that IM's view was we would "*come out better out of it because we would get new learning outcomes*" (**Transcript Day 13 p99.5**). IM therefore went ahead "*Notwithstanding our concerns*" (Ullger 1 para 44 [**A541**]).

234. RU added that in collecting the evidence in advance of the inspection, "*it became apparent to me that my concerns were indeed confirmed, and that we hadn't done what was expected of us. This was further highlighted to me by HMIC Paul Holewell before his visit to Gibraltar*". RU explained that the two main areas of recommendations that he was referring to in this paragraph were "*how we managed and investigated crime and how we recorded crime*", and that the RGP "*should have implemented policies, procedures; we should have resourced departments that needed resourcing...*" (**Transcript Day 13 p97.18**). However, RU acknowledged that: "*to create new departments to do what HMIC were asking us to do would mean that we would have gaps in front line policing and we could potentially have gaps in our crime division and I think, in fairness again to Mr*

McGrail, he opted to be fighting crime more than doing the policy work.” (Transcript Day 13 p98.6). RU also noted that the RGP had been through an HR Audit in 2015, and was in the process of seeking more police officers, so did not have the capacity to be able to implement some of HMIC’s recommendations (Transcript Day 13 p98.15).

235. Supt Yeats confirmed RU’s evidence, stating: “*The entire command team at the time, which comprised of AC Ullger, Supt Richardson, Supt Lopez, Supt Tunbridge and I were uncomfortable with the suggestion ... whilst we felt that it would help to address the bullying issue, the consensus was that not enough progress had been made to address the recommendations of the 2016 HMICFRS Report. We felt that this would expose the organisation to renewed criticism.*” (Yeats 1 para 31 [A638]). At the Main Inquiry Hearing, IM acknowledged that “*with the benefit of hindsight [he] could have taken more heed*” from his Command Team colleagues (Transcript Day 6 p91.14).

236. IM also acknowledged that JB expressed concern about submitting the workforce to two inspections: a private consultancy inspection by AAP Associates and a HMICFRS inspection (McGrail 3 para 24 [A58]). JB explained that he was “*concerned about the ordinary constable, and even senior management, being subjected to another inspection when they had just finished ... I felt it was going to be another intrusion, but Mr McGrail convinced me that it was good to have another inspection*” (Transcript Day 15 p44.20).

#### *The 2019 Inspection*

237. The on the ground inspection was conducted on 14 to 18 October 2019. IM stated that he and RU were briefed by the HMICFRS team at the end of the inspection visit, and that the RGP was “*made aware of some of the areas they were going to provide recommendations on but at no point did Mr Holewell intimate in the slightest any area which in their view raised serious concerns*” (McGrail 1 para 29 [A60]). RU added that the debrief gave a “*relatively positive outlook for the organisation, but also acknowledging that some of the recommendations had not been addressed from the 2016 inspection, stating that there would be further recommendations arising out of this*”. He stated that he was “*relatively surprised at those positive comments*”, and expressed the view to IM that his decision to ask for an inspection had been “*the right decision after all*” (Ullger 1 para 45 [A541]). At the Main Inquiry Hearing, IM added that the debrief was “*very, so positive*” and that he was “*gutted with the final report because that was certainly not what was debriefed to us*”

(**Transcript Day 6 p96.6**). RU stated that he was not expecting a positive report (“*because, again, the inspection is all about learning*”), but that “*what we didn’t expect was for it to be as damning as it was and it was completely the opposite to what both Matt Parr HMI and Paul Holewell had told us in our debrief*” (**Transcript Day 13 p100.24**).

238. A draft of the Report was shared with IM and RU in February 2020 for fact checking (McGrail 3 para 30 [**A60**], [**D1152**]), which IM shared with JB. They exchanged WhatsApp messages about their response to the draft, with JB asking IM to inform HMICFRS that “*the GPA will question the comment about the point they make about not having an appetite for modernisation... if GPA has no appetite then why request an inspection*” [**C6552**]. JB also sent an email to HMI Holewell on 24 March 2020 (which he forwarded to IM on WhatsApp [**C6556**]), stating: “*I can only say that I found the language used to be quite unfortunate and I’m quite sure the same message can be conveyed in a more constructive tone, especially when referring to issues such as ‘corruption’*”. IM agreed with JB’s assessment of the language used in the draft (**Transcript Day 6 p96.7**). JB sent a follow up email stating “*the GPA will work with the RGP to ensure that every effort is made to address the points and areas for development raised in the report, in any case*” [**C6557**]. JB stated that he never received a reply to this email, but that HMIC removed the comment about the GPA not having an appetite for modernisation (**Transcript Day 15 p48.11**). IM’s evidence was that at that time, JB gave the impression that he wanted to work with IM to address the recommendations (**Transcript Day 6 p97.3**). JB confirmed to the Inquiry that he was happy for IM to be Commissioner while the RGP addressed the recommendations (**Transcript Day 15 p53.20**), and agreed that the Report was an opportunity for IM to move forward and improve things for the RGP (**Transcript Day 15 p55.6, p56.22**).

239. On 9 April 2020, the final version of the 2020 HMIC Report was sent to the GPA and IM. HMICFRS reported that all of the 2016 recommendations bar one remained areas for improvement, and additionally improvements were required into ethical behaviour, culture and values and increasing the Force’s understanding of the risk of corruption. The letter noted that “*as with all non-statutory inspections, the decision to publish is yours.*”

#### *The findings of the 2020 Report*

240. The conclusions of the 2020 HMIC Report were that:

- a. The RGP met “*two out of eight areas for improvement*” identified in the 2016 Report. However, a closer review of the Report suggests that only one area for improvement was met (namely area 2, counting rules).
- b. The other seven areas identified in the 2016 Report still required improvement.
- c. There were nine new areas for improvement (Annex A), accompanied by ten new recommendations (Annex B).

241. The 2020 HMIC Report concluded that the RGP “*offers a good level of service. But there are areas where it could improve...*”, and “*we expected to see that rather more had been achieved when we revisited in 2019*” [B1556]. The Report found “*the force isn’t as effective or efficient as it could be*”, “*poor and outdated practice often curtails officers’ effectiveness*” and there was “*little incentive for the force to become more efficient and effective*”, and “*limited appetite to challenge [the force] culture or modernise*” [B1556]. As to each of the areas of improvement identified by the 2016 HMIC Report (the same numbering is adopted as in relation to the 2016 HMIC Report above):

- (1) As to crime recording, the RGP’s 2019 audit conducted by RU had “*highlighted similar problems to those ... found in 2016*” [B1557], for example incorrect classification of crimes, absence of necessary information in crime reports, supervisors not checking crime reports well enough, and not employing “*dip sampling*”.
- (2) The RGP’s counting rules now aligned more closely with Home Office rules – this had addressed the area for improvement.
- (3) As to supervisory oversight:
  - i. There was greater supervisory involvement than evident in the 2016 inspection, but this had caused delay in case files being submitted to Crown Counsel. These problems more acutely affected officers from response teams than specialist units.
  - ii. The RGP had not provided all officers who investigate or supervise criminal investigations with enough training or CPD.
  - iii. The RGP did not have a crime allocation policy, meaning inexperienced officers had been investigating serious crimes.
  - iv. Specialist units were stretched to capacity (safeguarding and economic crime). The Economic Crime Unit did not have the resources to conduct investigations commensurate to Gibraltar’s risk profile.

- v. Officers were using their personal devices to examine offenders' phones, which was not good practice.
  - vi. The relationship between RGP and Crown Counsel was effective and professional, but not always efficient.
  - vii. The RGP "*should do more to make sure that victims of crime get the service they need*". There is no Code of Practice for Victims of Crime, as introduced in the UK in 2016.
- (4) As to victim identification and assessment, there were still areas for improvement.
- i. The RGP did not have a definition of vulnerability.
  - ii. The RGP had introduced the "THRIVE" risk assessment and officers appeared to be using this appropriately, but the RGP lacked comprehensive processes to routinely risk assess all potentially vulnerable victims.
  - iii. The dispatch system did not flag if a caller was a vulnerable or repeat victim, and did not allow searches against names and addresses to establish if a repeat or vulnerable victim is involved.
  - iv. The RGP's response to reports of children absent from care homes was not "*as good*", and the RGP should supervise this more closely to guard against vulnerable children becoming involved in criminality or being sexually exploited.
  - v. Not all of the RGP force understood the policy on body-worn video.
  - vi. The RGP worked well with partner organisations, but there were two notable absences: namely no youth offending team or victim support team.
- (5) As to resourcing and demand:
- i. The RGP had taken steps to better match resources to demand and had "*made progress*", but "*should do more to systematically apply these principles and make best use of its resources*".
  - ii. The RGP was appropriately grading and responding to most emergency calls, but the procedures for recording these assessments were not consistent.
  - iii. A sizeable portion of police officer resources were being used to support work that could be done by others, such as directing traffic at the border,

marine call outs, guarding remand prisoners at court, and escorting vehicles.

(6) As to developing tools to predict how busy the force is likely to be:

- i. Shortcomings in the RGP's IT systems limited its ability to understand demand. The RGP had made "*limited efforts*" to monitor and review demand, but did not have a comprehensive understanding of all demands.
- ii. The RGP had made progress in matching resources to demands it was aware of, including adjusting shift patterns, but that had been at a cost to neighbourhood policing.
- iii. Officers were stretched and carrying heavy workloads, and used a high level of overtime.

(7) As to mapping future demand:

- i. The increase in police officer numbers gave the RGP a "*significant opportunity to change the way it polices*", and it was "*vital that the force manages and leads this change effectively*".
- ii. The RGP had not analysed likely future demand, and did not have a comprehensive understanding of current workforce skills.
- iii. The RGP should design processes to structure and measure training needs.
- iv. The RGP should "*develop overarching plans to give leadership and direction at this critical period of change so that senior leaders and the GPA can oversee and manage the change effectively*".
- v. The RGP had no IT strategy to guide future planning and investment.

(8) As to the RGP's funding arrangements (directed at the Minister for Finance):

- i. The Commissioner had "*little ability to influence how resources are allocated yet is accountable for managing the budget. The Commissioner doesn't have a senior financial manager on his leadership team.*"
- ii. The RGP could only conduct short-term financial planning. As a result, it was very difficult for the GPA to develop longer term change plans.
- iii. There was no incentive for the RGP to reduce spending as overspends were covered by Government.
- iv. The Minister for Finance (at the time, the CM) had not set out a funding formula, which limited the RGP's ability to conduct financial planning.

242. The 2020 HMIC Report also addressed the new topics of “*Ethics, values and culture*” and “*behaving ethically and lawfully*”. The Report found:

- a. The RGP had introduced a new code of ethics (a verbatim copy of the College of Policing Code of Ethics) but had not adopted large sections in its procedures and policies, and some RGP policies contradicted it. The Code of Ethics was not fully integrated across the force and many officers did not understand how to apply it. The new code was not yet fully integrated across the force, with many officers not understanding how it applied to their work.
- b. The RGP had not recognised the potential for employees to abuse their position for a sexual purpose, and unlike UK forces had not briefed or trained its workforce on this issue.
- c. Management behaviours may have amounted to bullying “*in a small number of instances*”. The Report referred to surveys conducted by the GPF, stating: “*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. Whether true or not, this perception is a cause for concern.*” The Report recommends that: “*HM Governor and the GPA should support the commissioner and the force in resolving this problem to ensure that any unacceptable behaviour is dealt with.*” The area for improvement states that: “*With immediate effect, the Royal Gibraltar Police’s senior leadership team should produce an anti-bullying statement and improve the force’s processes to prevent bullying.*”
- d. Many junior officers perceived that some senior officers were “*sometimes too ready to apportion blame when something goes wrong*”, although the inspectors were unable to determine whether there was a “*blame culture*” within the force. That said, on the whole, the RGP was “*professional, committed and enthusiastic about their work*”.
- e. The RGP’s register for monitoring gifts and hospitality for RGP officers was not being used routinely.
- f. The RGP did not have a consistent approach to vetting recruits or those seeking promotion or moving post.
- g. The RGP did not have confidential reporting mechanisms for issues like poor behaviour, bullying and abuse of power for sexual gain.

243. On the issue of corruption (which was specifically noted by the CM and NP as a reason for losing confidence), the 2020 HMIC Report found:

- a. The RGP was not doing enough to counter the risk of corruption, and should do more to protect the public, its organisation and staff from corruption and allegations of corruption.
- b. *“The issue of corruption, even at a low or subconscious level, didn’t appear to be a concern for the force.”*
- c. *“The force doesn’t fully understand its exposure to the risk of corruption.”*
- d. The force was also unable to proactively identify individuals who were corrupt or susceptible to corruption, representing a risk to the force.
- e. The force was also unable to proactively identify individuals who were corrupt or susceptible to corruption.
- f. The RGP workforce lacked a thorough understanding of the risks and signs of corruption.
- g. It is not routine practice in Gibraltar to record, monitor and review business interests in police forces.
- h. There was no clear and well applied policy on reporting notifiable associations.
- i. The RGP’s policy that individuals should recognise any risk and manage it themselves *“isn’t appropriate and increases officers’ personal exposure to allegations of corruption”*.
- j. The Professional Standards Unit lacked resources and expertise to understand, monitor and mitigate the threat.
- k. Better vetting, business interests and notifiable associations policing, plus effective use of ICT auditing could be used to mitigate the risks.

244. IM commented on the 2020 Report as follows in his evidence:

- a. IM did not consider that the HMIC report was *“entirely”* fair, but stressed that he wholeheartedly respected HMIC (**Transcript Day 6 p99.6**). RU considered that the conclusions of the Report were a fair reflection of the RGP’s performance in meeting the 2016 recommendations, and that the methodology had been fair (**Transcript Day 13 p104.1**). RU did not disagree with the areas for improvement identified in the Report (**Transcript Day 13 p106.19**).
- b. IM expressed the view that: *“although in places the report is critical, there is no express criticism of myself”* (McGrail 1 para 74 [**A27**]). CTI asked IM whether he

agreed or disagreed that the leader of an organisation is responsible for the conduct of the organisation. IM responded: “*Depends what conduct you are referring to. If it is general, yes. If it is in departmental silos, it all depends on the conduct and the concern relating to that conduct...*” (Transcript Day 6 p99.21). IM rejected that this was an example of him refusing to accept criticism, and stated that he said publicly “*that I assumed the recommendations and I welcomed them*” (Transcript Day 6 p100.4). As to RU and JB:

- i. When asked about IM’s position, RU stated that “*If that would have been me, I would have felt that I failed*”, but that the whole Command Team was responsible “*so it was a failure on our part as well*” (Transcript Day 13 p111.10). RU accepted that as Commissioner, he is ultimately responsible for criticism that the RGP receives, including criticism in an HMIC Report (Transcript Day 13 p111.20, p186.1).
- ii. JB’s view was that IM “*could have been reluctant to accept the criticism because I don’t think he saw himself as being necessarily responsible for all that, but certainly he did say, ‘Well I’m going to work on this’*” (Transcript Day 15 p53.6). JB added: “*When I asked him he said yes, but that wasn’t me, that was Mr Yome... I didn’t quite feel it was the right response, but I didn’t say anything*” (Transcript Day 15 p50.5). However, JB accepted that despite IM’s initial comments, he took responsibility and answered questions to the public (Transcript Day 15 p207.7).
- c. IM pointed out that the Report stated that “*the Royal Gibraltar Police offers a good level of service to the public*” [B1556], and described the workforce as “*professional, committed and enthusiastic*” (McGrail 3 para 146(i)(a) [A109]).
- d. IM referred to p.7 of the Report, which stated: “*limited resources and poor quality technology and infrastructure have delayed progress as have competing demands*”, and also points to a lack of legislation on domestic abuse until July 2023 and other failings on the part of Government, including a failure by the CM to set out a funding formula (McGrail 5 paras 93-8 [A162-3]). By contrast, the CM gave evidence that this recommendation was “*entirely misconceived ... they seemed to have failed to understand how Gibraltar’s budget operations and I therefore had little regard for that recommendation at all*” (Transcript Day 16 p84.11). He suggested that the recommendation should have been directed at the controlling officer for the RGP (Transcript Day 16 p86.3). CTI asked the CM

whether he referred the recommendation to the relevant person, and the CM's response was unclear, but he ultimately stated that he did not consider that this improvement needed to be dealt with because it "*really did not understand the position in Gibraltar*" (**Transcript Day 16 p89.4**).

- e. IM also argued that support from HMGoG, which was required to have support staff take over non-core policing roles and to make cost savings arising from the appointment of GPF conveners, was "*not forthcoming*" (McGrail 3 para 146(i)(b) [**A109**]). IM stated that lack of resources was "*one of the ingredients to my inability to dedicate time*" to implementing the 2016 recommendations (**Transcript Day 7 p219.11**). In response, the CM noted a section of IM's interview on Viewpoint on 14 May 2020, in which the interviewer asked IM if he would be using the Report to lobby the Government for more resources, and IM responded: "*The government has been very supportive towards us. And in fact, at the time when the inspectors were here in October, we were already in the middle of that uplift that the business case that we submitted to the government had produced. So we are we've already assumed the first tranche of that uplift and there's another two...*" [**B1216; Transcript Day 17 p285.9**].
- f. On the issue of exposure to corruption:
  - i. IM explained that this was a new recommendation in the Report, and not outstanding (McGrail 3 para 146(iv)(b) [**A112**]). IM was therefore of the view that NP's comment that the recommendation about corruption "*tellingly remained unaddressed*" was a mistake, as this was a new area for improvement in the 2020 report and was addressed as soon as the RGP became aware of the recommendation (**Transcript Day 6 p109.16**). NP confirmed that he meant this recommendation had been unaddressed since receiving the 2020 Report, not since the 2016 Report (**Transcript Day 18, p145.2**). According to IM, the recommendation was addressed by a number of measures, including investing in the training up of officers specifically on counter corruption and devising appropriate policies (McGrail 3 para 146(iv)(d) [**A113**]). In written evidence, IM stated: "*I do not associate myself with the parts in the report that suggest that the RGP was not alive to corruption. It is regrettable that the inspecting team has seen it that way without delving into the detail or enquiring how the RGP have*

*dealt with corruption in at last the 36 years I have served*” (McGrail 3 para 170N [A136]).

- ii. IM stressed that the Report did not make findings of corruption, but rather that the RGP did not understand the potential exposure to the risk of corruption (**Transcript Day 6 p107.24**).
  - iii. IM stated that he did not “*fully agree*” with the HMIC’s findings on this issue, for example stating that in Gibraltar it was easier to identify officers with “*potential for derailment*” because in Gibraltar “*you are policing your own back yard*” (**Transcript Day 6 p108.1**).
  - iv. RU added that when the Report came out in 2020, he was probably “*a little naïve*” to this risk, but that the RGP had learned a lot over the last four years (**Transcript Day 13 p110.5**). RU stated that the RGP did not have resources to address this risk, and had been requesting more officers (**Transcript Day 13 p110.8**).
- g. On the issue of bullying:
- i. IM stated that he did produce an anti-bullying statement in line with HMIC’s recommendation. However, the document he referred to (a bulletin sent to RGP force members on 9 August 2019 which contained a “Commissioner’s Message” about bullying) pre-dated the HMIC Report [C2523]. IM’s evidence was that he produced this in response to the HMIC Report once the draft arrived (**Transcript Day 6 p123.8**), but it is suggested that IM must be mistaken as the inspection did not take place until October 2019. IM also stated that the RGP improved its procedures in terms of grievances and bullying and work, and IM believed that policies were implemented during his time to complement the findings of the survey (**Transcript Day 6 p106.16**).
  - ii. RU added that since the Report, the RGP had implemented an anti-bullying statement, stating “*we did a lot of work with the GPF*” (**Transcript Day 13 p108.19**).

IM was not aware of a practice of officers using personal devices to examine offender’s phones, but agreed that if it was happening this did not comply with best evidence standards (**Transcript Day 6 p110.13**).

#### *Reaction to the 2020 Report*

245. After receiving the draft Report, IM shared it with his Command Team, and that they began to prepare a “road map” to achieve the recommendations (McGrail 1 para 31 [A61]). RU stated that “*the upbeat comments in the debrief were not immediately reflected in the report and it was disappointing when we read the report in its entirety*”, and that the SMT’s concerns about seeking an inspection were borne out by the report (Ullger 1 para 46 [A542]).
246. On 14 April 2020, JB requested to meet IM and RU to discuss the Report [D2913]. RU recalled a meeting taking place with JB, IM and RU, but not whether it was the result of this email (Transcript Day 13 p102.1). RU stated that he got the impression that JB was “*very supportive*” of IM and the RGP in responding to the Report (Transcript Day 13 p102.23).
247. On 20 April 2020, JB sent a WhatsApp message to IM stating that he had not yet shared the Report with anyone, but planned to send it to the GPA members that day, and the CM, NP and the then Minister for Justice (Samantha Sacramento) the following day [C6560]. NP cannot remember when he received the Report, but thought it was a logical conclusion that he received it on 21 April 2020 (Transcript Day 18, p130.7). JB shared with IM a draft email to the CM and Ms Sacramento, which stated that the report made for “*uncomfortable reading*” in places, but that IM was keen to publish the Report: “*he is confident that he will be able to expound further on the report and answer any press questions with minimal negative coverage...*” [C6560-1]. IM stated that he was reassured by Ms Sacramento’s message, as well as her comment at the Covid press conference (see below), and that she was “*very supportive*” (Transcript Day 6 p114.16). The CM also gave evidence that Ms Sacramento had commented to him that the Report was “*manageable*”, as people would not be looking at the detail of the Report due to COVID (Transcript Day 6 p80.5).
248. On 22 April 2020, JB sent a WhatsApp message to IM stating that he would be sending an email asking for the RGP’s plan of action in response to the report and recommendations for the benefit of GPA colleagues [C6561]. JB sent this email on 23 April 2020 [D2310], and on 28 April followed up with a request that “*specific references are ... made to the reasons for the recommendations in the previous HMIC Report not being met*” [D2319]. The RGP prepared a Road Map, dated 24 April 2020 [C6729], which set out responses to each of the new areas for improvement identified by HMIC, and assigned a ‘Strategic Task

*Holder* (in each case 'AC' which CTI understand to mean Assistant Commissioner) and a *Task Owner* (a range of officers at various seniority levels). IM sent the Road Map to JB on 29 April 2020 [C2388, C6749] and the MoJ Ms Sacramento on 30 April 2020 [C2458]. NP did not believe he was sent a copy of the Road Map (Transcript Day 18 p139.4).

249. It appears that a meeting was scheduled between the Minister for Justice, IM and JB on 29 April, which was rescheduled to 30 April [C6563]. On 29 April 2020 the MoJ messaged IM stating *"The report is shocking reading on the face of it, but if you analyse deeper it's not that bad, and it has easy solutions"* [C6503]. IM's evidence was that the meeting went ahead on 30 April 2020, where they went through the main themes of the report, and Ms Sacramento *"was very supportive of seeing this through"* (Transcript Day 6 p115.1).

250. Also on 29 April 2020 at 19:39, NP emailed JB stating: *"I've read the report twice. I don't think it should be published in full. Let's chat tomorrow"* [C3343]. In evidence, NP clarified that his intention was not that the Report would never be published in full, but that it should not be published in full *"until we have had a chance to discuss it and work out how we handle it"* (Transcript Day 18, p135.12). NP said he was particularly concerned about the parts of report that touched on bullying in the RGP, but he was also concerned by the lack of progress since the previous report (Transcript Day 18, p131.21). NP did not recall raising his concerns with the GPA, and stated he wanted to leave the Report to the GPA in the first instance as they were the *"penholders"* (Transcript Day 18, p134.1). In his oral evidence, JB appeared to agree with NP's concerns about making the Report public, stating that *"I thought I can't let this get out into the public because it's going to destroy the reputation of - ... or it is going to damage the reputation of the RGP"* (Transcript Day 15 p49.16). JB stated that his concern was that HMIC would possibly publish the Report, regardless of whether the RGP wanted it published (Transcript Day 15 p58.14).

251. Despite being sent the Report on 21 April 2020, the CM states that he was alerted to the *"quite damning"* nature of the report by NP on 30 April 2020 at 17:11. NP stated [C3344]: *"Having studied the report, I find it to be quite damning and it will need careful handling... My own sense is that HMIC were very disappointed indeed to find so little progress had been made since their last inspection. ... But I don't think the issue is as bad as the headline suggests and believe it is an issue of culture and leadership more than anything else. Most of the issues should be relatively easy to fix though it will take collective effort, driven bottom up from within the RGP as much as from its leadership which needs to be*

*both more strategic and directive*". He added: *"the inspection report will undoubtedly become public at some stage. It is important therefore that we (Commissioner, GPA, CM, Governor) are all ready to respond collectively ... This means being upfront and honest about the challenges as well as displaying a commitment to put things right..."*. NP proposed that given the CM's *"pre-occupation"*, NP could take this forward with JB and the Chief Secretary. The CM stated that he replied at 17:28 agreeing with this proposal (Picardo 1 para 105 [A215]), but the Inquiry has not seen a copy of this reply. NP accepted that at this point in time, he was willing to work with IM through the GPA to fix the issues identified in the Report (**Transcript Day 18 p141.15; Day 19 p186.2**). He clarified that the HMIC Report on its own would not have caused him to lose confidence (**Transcript Day 18, p132.15**). The CM also agreed that as of 30 April, it appeared from these exchanges that both the CM and NP believed there was a way forward and that IM could continue to lead the RGP (**Transcript Day 16 p78.14**). Asked about these exchanges, IM's view was that he was the right person to lead the RGP forward in the *"collective effort"* NP mentioned (**Transcript Day 6 p116.15**).

252. On 5 and 6 May 2020, JB and IM exchanged messages in which they discussed getting confirmation from Government that the Report could be made public. On 5 May 2020, IM emailed the CM, NP and MoJ about the HMIC Report, stating he had *"no major issues with the report being made public"* and attaching a press-release in anticipation [C3420]. NP responded on 6 May stating that *"It is right that we look to get ahead of this and be proactive rather than reactive. Can I suggest therefore that publication of both the report and your statement be arranged as soon as possible..."* [C3420]. IM explained that he had no issue with publishing the report because he wanted to be transparent to the community (**Transcript Day 6 p6.7**).

253. The CM did not respond to that email, which he attributes to the pressures of the lockdown and COVID restriction period (Picardo 1 para 107 [A216]). However, IM stated that he *"was informed by the GPA Chair that the CM had eventually given him direct confirmation that it was ok to make the report public"* (McGrail 1 para 39 [A63-4]). On 6 May 2020, JB sent a WhatsApp message to IM stating *"I got direct confirmation that it's OK"* [C6567]. The CM gave evidence that he believed he *"ok'd"* the publication of the Report via Ms Sacramento, but accepted that at that time he had only read the headlines not all of the Report (**Transcript Day 16 p82.1**). The CM qualified his answer by stating

that he did not have any jurisdiction to decide whether things should be made public or not, and that the GPA did not require his permission (**Transcript Day 16 p81.19**).

254. IM received a number of private messages of support about the Report after it was published on 7 May (McGrail 1 para 76 [A28]), and his evidence was that no criticism was communicated to him privately (**Transcript Day 6 p120.23**). That is supported by the following:

- a. On the day of publication, IM and JB liaised about responses to press questions [C6567-9]. On 8 May 2020, JB described the *Chronicle's* headline as “a bit sensationalist” but that “I suppose it could have been worse! We just have to carry on and ensure that as many of the recs are addressed as possible in the time frame” [C6569-70]. JB added “and where these can’t be met, we have to ensure we have recorded the reasons”. At the Main Inquiry Hearing, JB explained that his comment about the headline being “sensationalist” was “trying to make Mr McGrail feel better...” (**Transcript Day 15 p60.3**). In a WhatsApp message to JB about his conversations with the Gibraltar Chronicle about the report, IM stated: “He told me off the record that he smelt of rat (sic.) about the tone of the report – inferring there was some underlying motive for such negative reporting. I have my theories which I will share with you in due course” [C6569]. JB agreed that as of 8 May, he was willing to work with IM on the recommendations (**Transcript Day 15 p61.1**).
- b. On 9 May 2020, IM received a WhatsApp message from Mr Neil Costa (the former MoJ), who stated: “My dear Ian. I cannot imagine that with all of your hard work and untiring dedication that the report made for pleasant reading for you. For what it may be worth, I will forever vouch for your integrity, honesty and professionalism. If ever I can be of any assistance to you, you know where I am. With kind regards, Neil.” [A62]
- c. On 9 May 2020, IM also received a WhatsApp from Lt Comm Davis, who stated: “just to let you know I'm thinking of you and the Force as you lean into taking forward HMIC's report. Given the resource/capability pressures of assuring such a small national Force, I judge the headlines are fundamentally positive being in step with the Force's unique challenges. But never an easy read for the leadership and officers as such reports, purposely, focus on shortfalls not successes. Corruption? Well, nothing wrong with tightening mitigation even if it's not a problem today. So, as I know you and the RGP will, charge on by embracing -

*adapting - progressing. Rooting for you from afar, as always, as you walk that path with belief and pride.” [A63]*

- d. On 10 May 2020, IM and the then Minister of Justice (“**MoJ**”), Samantha Sacramento, appeared together at a daily public briefing on the Covid-19 Pandemic. After a question was asked by a journalist in relation to the Report, the MoJ pledged her support to IM in implementing the recommendations (McGrail 1 para 42 [A64]).
  - e. JB messaged IM after the press conference stating “*very good answer from you and brilliantly followed up by MoJ*” [C6570]. JB added: “*by the way, she [MoJ] told me privately what she said in public about supporting.*” IM replied “*it’s very kind of her indeed and I thanked her after the briefing ... Neil sent a great message of support yesterday which I really appreciated. So did Ed Davis and other prominent people in Gib. ...*” JB asked if the CM had said anything, to which IM replied no [C6570].
255. On 14 May 2020, IM appeared on *Viewpoint* to be interviewed by Jonathan Scott about the HMIC Report [C3764].
- a. On the issue of corruption, IM stated: “*And never, ever has corruption been swept under the carpet here or any indication of any corrupt activity swept, on the [contrary]. If I can reassure the public is that when there is a whiff in the New Mole House of any potential corrupt officer, we ourselves go to town more on that than what we would on a normal criminal because we know the impact this would have, the adverse impact this would have on public respect towards the police and public opinion towards police.*”
  - b. When asked about when the RGP planned to take action, IM stated: “*Well, we’ve got a timeline which has now set a roadmap for the recommendations to kick into place. The seed has sort of been planted. We are living with this every day. So we are under a sort of commitment to the Police Authority to Gibraltar. ...*”
  - c. IM concluded that: “*we value that we submit ourselves to this external audit for the benefits of progression and development. It would be very easy not to call them in and to remain in a plateau but why do that if we are aspiring to develop and improve? Why? Why hide away from submitting yourself to that type of audit.*”
256. On 17 May 2020, the CM met with Mr Lewis Baglietto and James Levy of Hassans. This meeting is addressed in detail in relation to Issue 5 below, but at the time the CM sent Mr

Baglietto an image by WhatsApp, stating “*That is page 13 of the HMIC Report published last week. Look at the bit I have highlighted in red. Boom.*” [B1423] Although the CM was unable to provide a copy of this image due to technological restraints, it has since been disclosed by the AG, and reveals that the underlined passage states: “*We found officers using their personal devices to examine offenders’ phones. This isn’t good practice and doesn’t meet best evidence standards.*” (This corresponds to [B1562]).

257. The CM did not recall when he read the Report in detail, but stated that “*all things the RGP became my priority after 12 May, so I think I will have looked at it after then*” (Transcript Day 16 p83.15). The CM agreed it was “*very likely*” to have been on 17 May 2020 when communicating with Mr Baglietto (Transcript Day 16 p83.21). The CM’s evidence was that once he read the Report and formed the view that it was very damning, he may have raised it with the former Minister for Justice and NP (Transcript Day 16 p77.14). However, he added that in the context of the Covid pandemic “*this was definitely a crocodile but it wasn’t the one nearest the canoe*” (Transcript Day 16 p83.1).

258. On 18 May 2020, the CM sent a transcript of the Viewpoint interview to NP, when he provided his comments on the criteria in s34 of the Police Act [C3958]. NP thanked the CM for the transcript. NP added that he would “*dig out the 2015 HMIC inspection report not least for comparative reasons but also in view of the position the Commissioner held at the time*” [C3958].

259. IM stated that there was no criticism made of him relating to the report, either privately or publicly, until the GPA’s second letter of 22 May 2020 (McGrail 1 para 77 [A28]). IM would not have been aware of the email sent by NP to the CM on 30 April about the “*damning report*” – see above [C3344]. However, the CM’s email dated 20 May 2020 to the AG (ultimately forwarded to IM on the same day) regarding the civil claims arising from the Incident at Sea did refer to the “*backdrop of the very unflattering report of the HMICFRS*” [C4090]. IM acknowledged this in McGrail 3 para 111, although he puts this down to the CM’s “*anger about the conduct of Operation Delhi*” [A91].

## The 2022 Inspection

260. HMICFRS returned to Gibraltar in April 2022, and the latest report gave the RGP a “*favourable outcome*” (Ullger 1 para 47 [A542]). Of the 10 recommendations, 6 had been fully achieved and 4 partially achieved. Of the 15 areas for improvement, 14 had been

achieved and 1 had been partially achieved (Yeats 1 para 36 [A639]). RU considered that this inspection was comparable in terms of methodology and depth to the 2020 Report, and confirmed that it was led by the same lead inspector Paul Holewell supported by Matt Parr, albeit with different team members (**Transcript Day 13 p112.20**). In achieving a favourable report, RU did not consider that he had more resources at his disposal than IM had in 2019. He also noted that the job offers had a significant impact on resourcing within the RGP, which was very challenging alongside the need to deliver on the HMIC recommendations (*“we were expected to open a new department to deal with those HMIC recommendations, but then at the same time we had a massive gap in resilience...”*) (**Transcript Day 13 p143.17**). RU clarified that he did not receive additional resources before the favourable 2022 report (**Transcript Day 13 p159.18**).

## ISSUE 5 - THE CONSPIRACY INVESTIGATION AND THE SEARCH WARRANTS

261. This issue requires the Inquiry to consider Operation Delhi, an RGP investigation into the alleged hacking of the National Security Centralised Intelligence System (“**NSCIS**”), and the search warrants obtained by the RGP in relation to the office and home of JL in the context of that investigation. By way of broad overview of the investigation:

- a. In October 2018, the RGP commenced a criminal investigation (“**Operation Delhi**”) into the alleged hacking and/or sabotage of the NSCIS pursuant to an oral complaint made by Mr James Gaggero (**Transcript Day 6 p125.11**). IM’s Daybooks include notes of two meetings with Mr Gaggero on 27 September and 22 October 2018. On 18 December 2018, Mr Gaggero of Bland Ltd made a formal written complaint [**B5190**].
- b. The allegation at the centre of that investigation was that Thomas Cornelio had sabotaged the NSCIS, a platform designed to monitor and control Gibraltar’s border with Spain (for example through facial and number plate recognition). This was alleged to be part of a wider conspiracy with John Perez, Caine Sanchez and JL (and possibly others) to transfer the contract for the maintenance of the NSCIS from Bland Ltd to 36 North Ltd. 36 North Ltd was a company established by the Op Delhi suspects, in which Hassans (via Astelon Ltd) had a 33% interest, and JL therefore held a 10% beneficial interest with the remaining partners of Hassans (including the CM and AM) having smaller beneficial interests.
- c. The CM referred to JL as “*a mentor in my previous legal practice, a supporter in my current political career and a close personal friend*” (Picardo 1 para 38 [**A190**]).
- d. In the context of the investigation, a dispute arose as to whether the intellectual property in the NSCIS was owned by HMGoG or Bland Ltd.
- e. From late December 2018, PR was the Senior Investigating Officer (“**SIO**”) in Charge of the Investigation. From May 2019, MW was Officer in Charge of the Investigation (“**OIC**”), reporting to PR. IM’s evidence was that he was “*simply not involved*” in the day-to-day of Operation Delhi (**Transcript Day 6 p150.15**), for example that he did not draft the NDM, Charging Report, plan for action against JL, application for the warrants; attend either of the meetings with the DPP; or make the application for the warrants (**Transcript Day 8 p23.4**). However, the Former Op Delhi Defendants have pointed to several instances where they argue IM was involved in operational decisions, including a meeting with Mr Gaggero on

8 January 2019 [C1659], a conversation with the DPP on 27 January 2020 [B749], a letter to the Financial Secretary on 8 April 2020 [B5050], and a conference call with Mr Gaggero on 7 May 2020 [C1789].

- f. In May 2019, Messrs Perez, Sanchez, Cornelio and another individual were arrested (Messrs Perez and Cornelio on 10 May, and Mr Sanchez on 14 May). Mr Gaggero's evidence was that PR informed Mr Gaggero of the arrests of Messrs Perez and Cornelio on 10 May, and in turn Mr Gaggero informed the CM of the arrests in a chance encounter that day. Further, Mr Gaggero stated that PR expressed upset to Mr Gaggero that he passed this information to the CM (Gaggero para 78-80 [A1374-5]). PR thought that Mr Gaggero was confused about this (**Transcript Day 4 p15.22**). He noted in his Day Book that he did not speak to Mr Gaggero until 11 May 2019, that Mr Gaggero had "*heard of arrests from employee*", and that PR provided various updates for example about the interviews and bail [C1733]. PR has explained that he was in contact with Mr Gaggero because Mr Gaggero intended to commence civil proceedings against the Op Delhi suspects, but PR had asked him to delay this until after the suspects had been arrested, interviewed and bailed (Richardson 2 para 18(g), [A1291]; Richardson 3 para 51 [A1433]). PR stated that IM wanted him to advise Mr Gaggero of the arrests that day, but he wanted to speak to Mr Gaggero after the suspects had been bailed (**Transcript Day 4 p16.7**). IM stated that "*I felt that it was only prudent that he was informed*" so that he could continue with his journey in bringing civil action (**Transcript Day 6 p133.3**).
- g. On 7 May 2020, the RGP applied for and obtained from the Stipendiary Magistrate warrants to search the home and office of JL, on the basis that he was suspected of having committed conspiracy to defraud contrary to the common law.
- h. On 12 May 2020, a team of RGP officers led by PR attended Hassans with the intention of executing the warrants. At 12:20, PR messaged IM stating that he was about to execute the warrants (McGrail 1 para 29 [A9]). PR stated that IM had asked him to advise when the warrant was about to be executed, so he could brief the CM (Richardson 1 para 18(f) [A1291]). This message is not in the WhatsApp disclosure provided by PR to the Inquiry, but IM stated that it was a "*couple of minutes*" before IM messaged the CM (**Transcript Day 6 p202.5**).
- i. PR and MW met with JL in a Hassans boardroom. The meeting was recorded on body worn camera footage [B3463]. The meeting was cordial, and JL repeatedly

thanked PR for his “*sensitivity*” [B3491, B3495]. During the meeting, PR handed a letter inviting him to a voluntary police interview under caution [B5391], as had been canvassed in the NDM. The letter stated: “*whilst the evidence so far indicates that you may have been involved in conspiring to dishonestly obtain the NSCIS maintenance contract, the RGP are keeping an open mind and have a duty to follow all reasonable lines of inquiry*” [B5392]. The letter invited JL to an interview at 10:00 on 18 May 2020, and provided a list of 11 topics that the RGP would seek to explore in the interview, including “*Communication with the Chief Minister in relation to any of the above*”. JL eventually agreed to hand over his devices voluntarily [B113], such that the warrants were not executed.

- j. In the days that followed, extensive correspondence passed between the RGP, Hassans and the Magistrates’ Court, in which Hassans sought the return of the devices and threatened to bring a judicial review of the search warrants.
- k. Although JL had been invited to attend a voluntary interview under caution, the RGP later agreed to accept a written statement in lieu of proceeding with a proposed interview, which he submitted on 9 June 2020 [B5229]. By this time, the warrant obtained by the RGP had expired and been returned to Court (**Transcript Day 5 p96.9**).
- l. JL was not ultimately charged and he did not proceed with the threatened judicial review.
- m. JL’s personal devices were later returned without being examined.
- n. In September 2020 Messrs Cornelio, Perez and Sanchez (“**the Former Op Delhi Defendants**”) were charged with conspiracy to defraud, Mr Cornelio was further charged with 14 computer misuse offences, and Mr Sanchez was charged with misconduct in public office and aiding and abetting unauthorised access to computer material.
- o. On 21 January 2022, the AG discontinued the proceedings against Messrs Cornelio, Perez and Sanchez under section 59(2)(c) of the Gibraltar Constitution Order 2006 [C6751].

## **The factual background to Operation Delhi: 36 North Limited**

### *Hassans’ investment in 36 North Limited*

262. JL's evidence was that Mr Perez approached Hassans "at some point towards the end of 2017 or in the first quarter of 2018" [B5232]. JL stated that there was "an initial meeting to discuss their proposal ... in the first quarter of 2018" [B5232].
263. JL said in oral evidence that Hassans' role was "financing the project and being shareholders" (Transcript Day 8 p127.12). JL denied that his role with 36 North was to use his very close personal and professional connection with the CM to facilitate the migration of the contract, and said that he personally had no role in the project (Transcript Day 8 p127.5), but later said that he may have facilitated contact between the other shareholders and the CM, although he did not recall it and they did not need him (Transcript Day 16 p220.7). He and two other partners assessed the risks and whether to invest into 36 North (Transcript Day 16 p209.1). JL believed the CM was aware of his shareholding in 36 North (through Astelon, as explained below) (Transcript Day 16 p211.6). At this stage, JL involved David Weber, a consultant solicitor at Hassans.
264. On 28 March 2018, Mr Perez sent JL a proposal email containing the "key headers" and sought advice on the type of company that should be set up [B5249]. The proposal included:
- a. Salaries of £300K guaranteed to each of Mr Cornelio and Mr Perez, with no obligation to repay the salaries if the business is not profitable.
  - b. Staff recruitment costs of £200K.
  - c. Start-up costs of £100K.
  - d. A draw-down facility of £1M for year 1 to cover costs.
  - e. Legal support provided by Hassans.
265. JL gave oral evidence that 36 North had two aspects, the NSCIS contract and international expansion of the business to various parts of Africa like Sao Tome, and he was more interested in the international part than the local part (Transcript Day 8 p119.10). He confirmed that 36 North needed to obtain the NSCIS contract to be profitable in its first year (Transcript Day 8 p120.7), and it needed Hassans' money until it was profitable (Transcript Day 16 p207.20). He said in the beginning it seemed that 36 North were going to succeed with the NSCIS contract, but then it was clear quite soon after that it did not, and then the international business was stymied by what had gone on since then (Transcript Day 8 p120.1).

266. When asked what arrangements were in place to ensure that there could be no conflict of interests for Hassans' partners who were in Government at the time of investing in 36 North, JL said "*I assume they would themselves seek whatever consents they needed*", but there was no Hassans protocol to deal with that scenario and it was left to the person in politics to clear with the appropriate person (who JL believed was the Chief Secretary) **(Transcript Day 16 p212.12)**.
267. In early April, Mr Weber and JL prepared a Memorandum of Understanding ('**MOU**') for the venture **[B5250-1, B5275]**. There were ongoing negotiations on the issue of the consultancy fees. It was resolved that if 36N ceased trading, Hassans would employ Mr Perez and Mr Cornelio as consultants for £300K per year until the end of three years **[B5282]**. This became known as the "Hassans Comfort Letter" **[B5295]**, and it appears that it was signed alongside other agreements on 28 June 2018 **[B5298]**.
268. Although the loan facility was £1 million, only £470,000 was drawn down, as follows:
- a. By April 2019, 36N had drawn down £400,000 on the loan in stages **[B5234 para 24]**.
  - b. In June 2019, Mr Weber prepared a Notice pursuant to the Loan Facility Agreement cancelling the Lender's obligation to make further advances to 36N **[Weber para 15 A1424]**. This was on the basis that 36N had failed to generate the anticipated income **[B5234 para 24]**.
  - c. However, on the basis of revised cash flow forecasts, in September 2019, Mr Weber prepared a Supplemental Facility Agreement providing for a further advance **[Weber para 16 A1425]**. Under this supplemental facility a further £76,000 was advanced **[B5234 para 24]**.

*The incorporation of 36 North Ltd and ICODE Ltd*

269. On 23 April 2018, 36N was incorporated **[C928]**. The process of incorporation was carried out by Line Group Ltd, a professional service provider, on Mr Weber's instructions **[B5279]**. Mr Perez and Mr Cornelio were appointed as directors.

270. On 22 June 2018, 36N allotted 2,999 shares. All 2,999 shares were allotted to Line Holdings Ltd,<sup>8</sup> a company owned by the partners of Hassans. The partners did not hold equal shares in Line Holdings Ltd: JL held 32%, whereas the CM and Albert Mena (for example) held 2.94% [**C1776**].
271. On 25 June 2018, Line Holdings Ltd transferred 1 share to Astelon Ltd. Astelon Ltd was owned by Line Holdings Ltd, which in turn is owned by the partners of Hassans. Astelon Ltd was used by Hassans for the specific purpose of investing in 36N, having been selected from Hassans “shelf list” of companies on **26 April 2018** (see **B5263**, **B5264** and **B5277**).
272. On 2 July 2018, Mr Perez and Mr Cornelio were replaced as directors [**B5145**] by Cheam Holdings Ltd, a corporate director. This appears to be pursuant to an agreement between Hassans, Mr Perez and Mr Cornelio that until they were released from employment by Blands, 36N would be inactive and Line Group Ltd would provide a temporary corporate director from the Line Group of companies [**B5298**].
273. On 9 July 2018, Mr Perez resigned from Blands (to take effect 9 September 2018) [**B5152**]. On 10 July 2018, Mr Cornelio resigned from Blands (to take effect 10 August 2018) [**B5153**]. On 20 July 2018, Mr Joey Benrimoj and Mr Marius Zalkauskas, the two software developers working under Mr Cornelio, also resigned from Blands [**A1365 Gaggero 1 para 48**].
274. On 10 August 2018, Mr Cornelio’s employment with Bland terminated, albeit with an agreement that he would continue to maintain the NSCIS system as a consultant for Blands. On this date:
- f. Line Holdings Ltd transferred 1,500 shares (ie 50%) to ICODE Ltd, Mr Cornelio’s company.<sup>9</sup> (ICODE was incorporated on 16 May 2018 [**C1027**]. Cornelio was the director [**C1029**] and allotted all 98 shares in the company [**C1030**].)
  - g. Line Holdings Ltd transferred 1,500 shares (ie 50%) to Astelon Ltd.<sup>10</sup>

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<sup>8</sup> Companies House document Co-117268-2309768.

<sup>9</sup> Companies House document Co-117268-2319880.

<sup>10</sup> Companies House document Co-117268-2319880.

- h. Mr Cornelio was appointed as the director of 36N, and Cheam Directors Ltd's directorship was terminated.<sup>11</sup>
- i. Mr Perez was not allocated shares at this time as his notice period at Blands did not expire until 10 September 2018 [B5303].

275. Therefore, from 10 August 2018 to 12 June 2019, shares in 36N were held 50/50 (1500 shares each) by Astelon Ltd and ICODE Ltd.<sup>12</sup>

276. On 12 June 2019, shares were re-allocated so that one third (1000 shares each) was held by each of Astelon Ltd, Mr Cornelio's company ICODE Ltd and Mr Perez. Namely:

- a. Astelon Ltd transferred 500 of its 1500 shares to Mr Perez.<sup>13</sup>
- b. ICODE Ltd transferred 500 of its 1500 shares to Mr Perez.<sup>14</sup>

277. This was the ownership structure in place at the time of the warrant against JL in May 2020. It is reflected in PR's diagram at C1776. Under this diagram, PR explains that: "*JL owns 32% of Line Holdings Ltd which owns 100% of Astelon Ltd which owns 33% shares of 36N. Therefore JL owns 32% of 33% of 36N or 10.56%*".

278. On 18 August 2021, Hassans divested its interest in 36N. Astelon Ltd transferred all of its remaining shares: 500 to ICODE Limited and 500 to Mr Perez.<sup>15</sup>

*The early days of 36N and interactions with JL and the CM*

279. JL's oral evidence was that that the CM did not play any role in the setting up of 36 North, and had no role in respect of the company itself (**Transcript Day 8 p118.22**). The CM provided a witness statement to the RGP addressing his interactions with 36 North, Mr Gaggero and the NSCIS contract on 25 June 2021 [B1109]. The CM said in oral evidence that he was not involved in the setting up of 36 North (**Transcript Day 16 p96.10**).

280. On 30 January 2018, Mr Perez met with the CM. Mr Perez stated in written evidence that he met the CM and told him about his and Mr Cornelio's plans, and the CM "was

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<sup>11</sup> Companies House document Co-117268-2319899.

<sup>12</sup> Reflected in Companies House document Co-117268-2375966 as at 23 April 2019.

<sup>13</sup> Companies House document Co-117268-2385592.

<sup>14</sup> Companies House document Co-117268-2385592.

<sup>15</sup> Companies House document Co-117268-2532979.

*encouraging and supportive and asked that I let him know before we tendered our resignations*” (Perez 1 para 23) [A663]. The CM confirmed in oral evidence that Mr Perez told him that he would be leaving Bland with Mr Cornelio in order to establish their own business offering the same or similar services, and to sell NSCIS internationally, and had wanted the government to agree to that as there was the dispute as to ownership, and the CM asked to be kept updated on “*how it goes with James etc*” (Transcript Day 16 p99.10, 104.24). When asked whether he was aware that Mr Perez and Mr Cornelio were already instructing Hassans at that point, the CM said “*he may have told me, he may not have told me*”, and that he did not refer them to Hassans or JL (Transcript Day 16 p105.21).

281. In “*spring or early summer 2018*”, the CM was aware of negotiations between Bland and 36 North Ltd about who would run the NSCIS platform [B1111]. The CM stated in his RGP statement that he had a conversation with JL about Hassans’ investment: “*I was asked by Mr Levy QC whether or not I would object to this. I confirmed that I would not object to such an investment by the partners of Hassans Ltd, but that this would not affect Government’s attitude to 36 North in any positive or negative manner*” [B1111]. The CM said in oral evidence later that he found out “*later*” about the level of Hassans’ investment in 36 North, including the consultancy agreements, and he found it “*extraordinary*” (Transcript Day 16 p126.5). He said he was not told those particulars by JL when he came to discuss the investment, and he expected 36 North would succeed in its venture because Bland and 36 North appeared to be dealing with the issue in a way that was “*entirely agreeable to both of them*” despite issues relating to wages, etc. (Transcript Day 16 p126.12). He acknowledged that it might have produced income for him tangentially, but “*that was not what drove me to agree to something which was somebody else’s idea*”, and that he ultimately acted to defeat his personal interest (Transcript Day 16 p128.10). HE acknowledged that the NSCIS platform and maintenance would be 36 North’s “*bread and butter*” and was the most tangible thing on the table at the time, but that it would then be launched internationally (Transcript Day 16 p129.14).

282. When asked about any safeguards he put in place or anything he did to ensure that government’s attitude was not affected by Hassans’ (and thus the CM’s) stake in 36 North, the CM said “*if I can take you to the denouement of this, I actually made the decision that 36 North should not take the contract. But if I can take you to the genesis of it, what was very clear to me was that there was no need for a decision from the government. In other*

*words, this was not something which was going to require me to make a choice or a decision. What I was being informed about was that Mr Perez and Mr Cornelio had made a decision for themselves, which they were communicating to Bland Limited and to which Bland Limited appeared to be agreeable from the moment that Mr Gaggero was informed, that they would leave and plough their furrow separately and that that was agreed by Bland's. In other words, the government was not going to be called upon to make any decision to migrate a contract from X to Y. ... If there had been a call for a decision, then all of the references that you have referred me to would become very relevant. Indeed, when the call for a decision came I believe that I managed all of the issues that related to conflict by making the decision ... that the contract should stay with Bland and not go to the entity in which I tangentially had a financial interest in, thereby demonstrating that I acted selflessly and with integrity in the best interests of Gibraltar and its people and not in my self-interest in any way.” (Transcript Day 16 p102.14).*

283. When asked whether he considered withdrawing from the being involved in the transition as a result of his own investment in 36 North, the CM said he “*didn't think that there was a need for me to recuse myself from an agree process between two parties simply because I had a tangential, minor, financial investment in one of them. Because it was minor and it did not call for a decision on my part. And I think it is also fair to ask you to recall in this context that to a very great extent I was the originator of the NSCIS platform ... and the growth of it. So I understood what the platform was for, why we needed it, had authorised investment in it, had sought to extend its reach. And therefore I didn't think there was anything wrong in my continuing because at that time I was not being called upon to make any decision which would put me in a conflict situation.” (Transcript Day 16 p109.1).*

284. As to whether it was appropriate for the CM to involve himself in the decision as to who would keep the maintenance contract, given that he was also a shareholder of Astelon which held an interest in 36 North, JL said: “*Well, that is a matter which I am sure he cleared politically.*” He did not consider it himself, and when asked whether he might be benefiting from access to the CM which other people would not receive because of his relationship with him, he said “*In this case somebody else had more access than I had, clearly*”, referring to Mr Gaggero (Transcript Day 8 p127.20). He said that many people in Gibraltar had the CM's WhatsApp number and rang him for different things, and Chief

Ministers had a lot of approaches from ordinary people and dealt with it (**Transcript Day 16 p128.17**). When asked whether he ever considered if was receiving information from the CM which ordinary people would not receive, he said he had enough experience to know what the red lines were, which he said were “*to be careful not to ask for any information which is not publicly available*” (**Transcript Day 16 p129.5**). As to whether he was receiving treatment from the CM which other people would not, he said he had been given two pieces of legal work from the CM since 2011, but acknowledged that he did work for Sir Joe Bossano (Minister for Economic Development and Enterprise), and that Hassans received government work (**Transcript Day 16 p130.4**). It was put to JL that the contract was in the gift of the government, the CM was a partner of Hassans and a beneficial owner (to a small extent) of 36 North, whose business plan depended upon obtaining the contract from the government, and therefore the CM was potentially both beneficiary and giver of the benefit, to which JL responded that the result was that the government gave the contract to somebody else, and the decision was taken fairly early on (**Transcript Day 16 p214.20**).

285. MW prepared a list of communications between the CM and the Former Op Delhi Defendants, which span between 8 July 2018 – 30 August 2018 [**B3598**]. There were two exchanges in July:

- a. On 8 July 2018, Mr Perez informed the CM that he would on the following day be informing Mr Gaggero that Mr Perez and Mr Cornelio would be serving their notices, ending the message with: “*All is in place.*”. The CM replied with “*Good luck for tomorrow my friend. Best wishes. Fabian.*” Mr Perez replied with thanks. In questioning the CM said that he understood Mr Perez to mean that he was ready to leave Blands (**Transcript Day 16 p117.18**). He denied he was very much in the loop and supportive of 36 North’s plans, saying that it was “*something that was happening around me at that time*” (**Transcript Day 16 p117.20**).
- b. On 12 July 2018 Mr Perez informed the CM that Mr Gaggero would likely come to see him and was paying other developers to stay, which was “*Not critical*”, and said that all law enforcement heads were aware that “*it’s not just about the software which I doubt they can sustain but about the relationship. Both of us remain critical to sustain the current platform in place. Just for info.*” The CM replied “*Thanks. Noted.*” Mr Perez added: “*Fabian all good so far he appears to*

*accept the birth of 36 North as long as I assist him in some capacity with Blands.  
Next meeting set for Mon.”*

286. On 21 July 2018, Mr Gaggero telephoned the CM to discuss Mr Perez and Cornelio’s departure from Blands [B1112], which the CM noted on his iPad [B1129]. In oral evidence, the CM said that Mr Gaggero told him that he had no difficulty with Mr Perez and Mr Cornelio leaving but that they had to sort out a few issue, but it was all an agree process leading to that exchange, and his concern was to tie down on the transfer to 36 North the issue of ownership of the NSCIS platform, because this would be cheaper and resolve the issue (**Transcript Day 16 p107.25**). The CM stated in his witness statement to the RGP that after this date he “*continued to receive communications from Mr Gaggero and Mr Perez*” [B1113].
287. There were two relevant sets of WhatsApp messages between Mr Sanchez and the CM in August 2018 [B3598]:
- a. An exchange on 13 August 2018 in which Mr Sanchez forwarded an email from Bland to Mr Cornelio asking for departments to write to Bland stating that they are changing provider and that Bland was no longer liable, to which the CM said “*I guess if we are saying the programmes are course, then they only really had maintenance liability or development liability. Tell the depts to send to you so we can get [Crown Counsel] Lloyd or JP Fa to look at these.*” The CM said in questioning that he believed he was asking Mr Sanchez to ensure that there was legal oversight over the transition (**Transcript Day 16 p120.16**).
  - b. A single message on 15 August 2018 in which Mr Sanchez proposed sourcing another programme as a security platform.
288. There were then three sets of messages between Mr Perez and the CM later in August 2018 [B3598]:
- a. A single message on 17 August 2018 in which Mr Perez thanked the CM for “*all your support as always*” and asking to call him, saying “*I am okay just keeping my discipline at the mo which I must admit is very frustrating. ... I think they will try to offer me payment in lieu and some form of compromise. I have not fired a single rocket yet.*” He also pointed out that the system was “*becoming difficult as we continue to run it under unnecessary strain*”, but maintained that they would

continue to do so if necessary. When asked what “support” Mr Perez was referring to in that message, the CM said “*I assume support in wanting to see them establish themselves, asking that the departments provide the legal advice necessary for the migration of the system...*” (**Transcript Day 16 p121.5**).

- b. An exchange on 21 August 2018 when Mr Perez said he had just finished with Mr Gaggero and wanted the CM’s take before reverting, to which the CM said he was happy to help and asked whether it was pleasant or not. Mr Perez responded “*No a bit all over the place. Brief you when we talk.*”
- c. A further message on 23 August 2018 when Mr Perez again asked for a catch up to discuss the situation and to brief the CM about Mr Gaggero.
- d. A final message on 28 August 2018 when Mr Perez refers to having seen Mr Gaggero that morning and says: “*He continues to be a nasty piece of work. Mal [Bad]. I am going to try and get him of our back (sic.) and reach a compromise with him. Will let you know.*”

289. JL agreed in evidence that the decision about who should provide NSCIS was a decision for the government to make, and said that he hoped that there would be a tender for the provision, which 36 North hoped to win (**Transcript Day 16 p205.17**).

290. On 29 August 2018, Mr Cornelio prepared a draft email to Blands stating that he would no longer maintain the NSCIS system after 1 September 2018 [**B5318**]. JL forwarded the email and draft to the CM’s personal email address and asked for his views, stating “*Tommy wants to send this. I have asked him to wait. What do you think.*” [**B5318**]. When asked in questioning why he sent the email to the CM, JL said: “*the relationship between Mr Perez and Mr Cornelio with Bland fluctuated. ... At the beginning ... Blands was quite happy to let them carry on with this part of the business on their own. After that, there were negotiations and ... I think Blands asked them for 50 per cent of the company ... and then they asked for 30 per cent. At that stage I said that Hassans was quite willing to drop out from this business entirely because I thought that the thing, if it went out of hand, it would not be good for anybody. So I was trying to ensure that nothing terrible happened until they came to some agreement but that didn’t happen. So this was an attempt to delay any letter which could upset any possibility of a settlement between the parties.*” He added that “*if this happened, there would have been a big problem with NSCIS and I thought that ... the CM was also trying to avoid a split between them*” (**Transcript Day 8 p121.15, 123.1**).

291. When asked why he sent the email to the CM's personal address, JL said he was on holiday and "*not extremely good at these things so I could have sent them to both for all I know ... I don't use a computer, I only use my phone.*" (**Transcript Day 8 p122.16**). The CM said that "*perhaps*" it was an attempt by JL to delineate between the CM's office and his personal involvement, and "*good that it should be, but ... frankly, you've seen that I've had a conversation with James Gaggero on the 21<sup>st</sup> of July. That's about the macro issue, the movement of the platform. I'm interested in that ... hundred percent ownership for the Gibraltar taxpayer secured, a cheaper deal per annum.*" (**Transcript Day 16 p125.6**).
292. The CM stated in oral evidence that he did not know whether he read the email from JL and probably did not reply to it, and that JL was sending him "*a lot of stuff about 36 North, etc., much of which I was ignoring because it didn't really have anything to do with me*" (**Transcript Day 16 p124.1**). He said he received hundreds of emails a day to his personal email address and close to a thousand in his other email addresses, many hundreds of WhatsApps a day and many telephone conversations (**Transcript Day 16 p124.21**). Mr Cornelio sent the email to Blands on 30 August 2018 [**B5321**].
293. There was also a WhatsApp exchange between JL and the CM on 30 August 2018, in which JL said "*You should know that I have spoken to Tommy and despite his letter to James G he will continue ensuring that the system is kept going until a solution is found acceptable to the government.*" This message was forwarded by JL to Mr Cornelio. The CM responded: "*Will look forward to meeting him. Mena and me are the people who will understand him.*" [**B3599**]
294. JL and CM exchanged further WhatsApp messages on 4 September 2018 as follows [**B1117**]:
- a. JL: "*Have you been able to find a solution with James G?*"
  - b. CM: "*Hi. Saw him yesterday. Asked him to give me a bit of time and not to have a row. He is pissed off. We need a lunch with Joe G Snr. And a didnner with Sir J! F*"
  - c. JL: "*That is the attitude of la derecha [the right wing]*"
295. When asked whether it was apparent to him that by this point there was no longer an agreement between the parties but rather a dispute, the CM said "*I don't think that's fair*"

*because I don't think that that dispute related just to the parties. I think this is where it starts to get sticky because Bland is starting to say, "If you want to go you have to buy the platform from us because it belongs to Blands." It think that's where the whole issues starts to get very difficult. But he is not peed off, with respect to my language, at the time because of that, but what James had said to me, and had incensed him greatly, was that he had, after notice had been given ..., ... found that they had disbursed costs for the setting up of their new venture using Bland credit cards. So it stuck in my mind that he said to me that they had bought a book on setting up your own company, etc., using Bland's credit card on Amazon, and he thought this was just unfair and improper. ... I could understand how James felt, I also thought it was a bit petulant and petty, but I could see that ... this was not being resolved ... So things are starting to become sticky at this time."*

When asked whether, in the circumstances, that was the moment where he should extricate himself as someone who had a financial and personal interest in the situation, he said: *"Well, they were only sticky in the context of how to do it. ... I felt that it was very much in everybody's interest because of the nature of this platform that I should continue being involved in this respect. This was not a dispute yet which ... had got to the stage of it becoming impossible or difficult or requiring me to band the table and make a decision"*.

He disagreed that it might be prudent to let someone who did not have those connections to deal with the stickiness, because he did not think at that stage there was anything which required a decision which could have been dealt with by anything else, given his direct relationship with James Gaggero (**Transcript Day 16 p130.14**). He did not believe that he was entertaining JL and 36 North with the communications in a way that would not be open to the ordinary citizen, emphasising that his telephone number was "no secret" and his email address was public (**Transcript Day 16 p134.8**).

296. On 11 September 2018, JL sent the CM a WhatsApp message stating: *"I assume the Gaggero issue is more complicated since I see you are reluctant to discuss it"*, to which the CM responded *"No, just in the thick of the biggest issue in Europe right now."* JL responded *"Good luck, happy to help in anything you need however small"*, and the CM replied *"PG we are getting there, C"* [**B1204**]. JL said in oral evidence that he had since learned that the CM was talking to Mr Gaggero and at one stage, whether before or after this stage he agreed that Bland should be the person to have the NSCIS contract, and the CM was displaying a reluctance to discuss the matter with JL (**Transcript Day 8 p125.5**).

297. JL's evidence to the RGP was that he had no knowledge or reason to suspect any tampering with and/or sabotage of the NSCIS platform, nor would he countenance such behaviour, and he first became aware of the allegation when Mr Perez and Mr Cornelio were arrested [B3258]. In questioning he corrected that position, referring to the message from Mr Cornelio to him about Blands bringing in a forensic expert prior to Mr Cornelio's arrest, but said that he "*certainly*" did not believe that Mr Cornelio's conduct was to sabotage rather than Maintain NSCIS (Transcript Day 8 p126.20).
298. In oral evidence JL stated that the problems that Blands were experiencing in providing the service was bad for Gibraltar, and that he thought it could be a possibility for 36 North, but it did not exercise his mind hugely. He was not indifferent to whether 36 North got the contract, but "*when I saw the friction I felt it was best to step aside and let the two parties work together*" (Transcript Day 16 p219.17).
299. On 27 September 2018 the CM and Mr Gaggero met and Mr Gaggero's evidence is that he asked everyone to leave the office and informed the CM that JL was involved with 36 North, and that once the case against 36 North had been commenced by Bland the matter would be out of his hands, to which the CM replied that if that happened it was improper for him to interfere (Gaggero 1 para 75) [A1374]. The CM confirmed that he very probably said that to Mr Gaggero, because if that happened then "*it would be in dispute territory*", but that no such case had been commenced yet (Transcript Day 16 p136.19). When asked whether he made Mr Gaggero aware of his own stake in 36 North, the CM said that he believed Mr Gaggero was aware of it (Transcript Day 16 p137.2).
300. On 4 October 2018, the CM instructed that Blands should retain full control of the NSCIS system [B1123]. The CM's evidence is that this was on the basis of information from Mr Gaggero that Mr Cornelio "*might have sought to sabotage the operation of the system for short periods in order to demonstrate that Bland Ltd were unable to properly operate it*" [B1124]. The CM said that he did not explore the veracity of Mr Gaggero's allegations at the time, but he did not feel that he had the ability for No 6 Convent Place to investigate it, and that he would not go anywhere near the transfer of the platform to 36 North if there was a risk to the security of Gibraltar (Transcript Day 16 p138.21). When asked whether he had no option at that point but to order that the contract remain with Bland at that point, the CM said that he believed he did have other options, but he did not want to risk

security, and there was an assurance from Bland that they could make the system stable **(Transcript Day 16 p139.23)**.

301. On 2 May 2019, JL informed the CM by WhatsApp message that Mr Cornelio had sent a letter before action and received a response from Sir Peter Caruana on behalf of Bland, with no accusations made against Mr Cornelio. The CM responded saying that it may require some quiet diplomacy “*of the sort only you are good at...*”, and asked what Mr Cornelio was suing on, to which JL replied that it was over work which Mr Gaggero had told him to do after he left. The CM responded “*That may help push the thing over the edge. Albert M is helping with the management of that.*” JL then suggested sending the exchange of letters “*to your gmail*”, to which the CM replied “*Yes pls*” **[C7022]**<sup>16</sup>. In questioning the CM denied that there was any dispute about “*the core issue*”, as opposed to over the wages, which he said were “*two fundamentally different issues*”. He added that by this stage he had already made the decision that 36 North should not have the contract for the management of the NSCIS **(Transcript Day 16 p111.18)**. As to what he meant by “*That may help push the thing over the edge*”, the CM said “*His claim, I suppose, because if he had asked him to do things after he left, it seems to me it is a pretty clear case for wages to be paid or an amount to be paid in respect of work done if you are no longer receiving a salary*” **(Transcript Day 16 p113.12)**. He said that by that point the contract “*wasn’t going anywhere*” because of the issues that Mr Gaggero had raised about potential sabotage, given that the system dealt with Gibraltar’s national security and the CM was not going to take any risk **(Transcript Day 16 p113.18)**. As to why JL offered to send letters to his personal address, the CM said “*I was I think away or he was away at the time. So accessibility of messages, etc ... I have looked overnight to see whether I can find that email. I cannot find that email on my Gmail*” **(Transcript Day 16 p114.21)**. When pressed as to why JL saw it appropriate to send it to his personal email address rather than his Chief Minister email address, the CM said “*to tell you the truth, it is of no interest to my official inboxes*”, and it was “*a bit of tittle-tattle*” **(Transcript Day 16 p115.11)**.

## Key documents in relation to Issue 5

*National Decision Model*

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<sup>16</sup> These WhatsApp exchanges were only disclosed by Peter Caruana & Co to the Inquiry on Saturday 4 May 2024, two days before the CM attended the Inquiry for questioning. Peter Caruana & Co clarified that this was due to their oversight and not the CM’s.

302. PR prepared a National Decision Model (“**NDM**”) Assessment regarding “*the involvement of [James] Levy in 36 North*” [B3452]. This document is not dated, but PR sent it to IM on 25 February 2020 (Richardson 3 para 13 [A1427]).

- a. The NDM summarised the evidence as follows:
  - i. An examination of the messages between Cornelio, Perez and Sanchez has shown that each had been communicating with JL about the NSCIS platform.
  - ii. Evidence of communication from Sanchez to JL has shown that a civil servant was passing on confidential information to him about NSCIS and offering him ‘good proposals for investment’.
  - iii. Evidence of communication from Cornelio/Perez to JL suggests that JL is in a position of influence with the CM and he is often requested to arrange meetings, or disclose or find out what is being decided with regard to 36 North’s bid to take over the NSCIS platform.
  - iv. *“There is a significant amount of evidence that suggests that JL was acting unethically in his dealings regarding the NSCIS platform. The question is whether this unethical behaviour is dishonest and crosses the line into the realms of criminality.”*
- b. The basis put forward by the NDM for suspecting JL of the offence was that he and others dishonestly sought to secure the transfer of the NSCIS maintenance contract to 36 North and thereby benefit financially. The grounds for dishonesty were:
  - i. He was receiving business proposals and information directly from a civil servant.
  - ii. He was aware that business initiated by Bland was being taken by 36 North.
  - iii. He was aware that Cornelio continued to access the NSCIS after he had terminated his consultancy.
  - iv. He was aware that Cornelio had accessed the NSCIS and performed a full review despite not being contracted to maintain it.
  - v. He contacted and facilitated access to the CM with a view to discussing 36 North and the NSCIS platform.
  - vi. In October 2018 he spoke to Cornelio about Bland engaging a forensic team to investigate whether Cornelio had tampered with the system (and

it was therefore reasonable to suspect that Cornelio had informed him that he had been sabotaging the system), and yet he continued to support Cornelio and 36 North and did not distance himself.

- c. The NDM concluded that the RGP *“have reasonable grounds to suspect that an offence of conspiracy to defraud has been committed”*. It stated: *“we have reasonable grounds to suspect that JL has dishonestly used his influence with the CM, CS and possibly AM (the FS) to induce the relevant persons to transfer the maintenance contract of the NSCIS platform from Blands to 36N, a company in which he holds a 10.56% personal stake.”*
- d. By contrast, the NDM concluded that there was no evidence that the CM (or the Financial Secretary, Albert Mena) were aware that Cornelio had compromised the operation of the NSCIS by sabotage.
- e. As to evidence gathering, the NDM stated that:
  - i. It was necessary to obtain further evidence by interviewing JL under caution. It would not be necessary to arrest JL if he consented to a voluntary attendance police interview, but in the absence of such consent *“an arrest would have to be made to secure his attendance...”*.
  - ii. It was also necessary to obtain further evidence by seizing JL’s digital devices. This would be by search warrant in advance of approaching JL for interview. *“The examination of any content seized from JL may be complicated by claims of legal privilege. In that event the material will be reviewed by a lawyer first using keyword searches provided. We do not however believe that JL maintained a lawyer client relationship with any other person linked to this investigation and his dealings with them appear to be restricted to a business relationship”*. The warrant should be restricted to mobile devices only, as that was the predominant means of communication. Further, *“given the political sensitivities and potential reluctance for a JP issue (sic.) a warrant for Hassan Law practice the warrant should be requested from the Chief Justice.”*
  - iii. Officers should wear body worn cameras during the investigation, as it was *“expected that any allegation of impropriety or illegality will be vigorously attacked by Hassans”*, and also *“to avoid any misconstruing on the actual words said during the police intervention”* at Hassans.

303. A number of witnesses addressed the NDM in oral evidence:

- a. PR said that he chose to draft the NDM because he was advised to do so by Supt Yeats (**Transcript Day 4 p27.14**). He considered, with the benefit of hindsight, that the grounds for suspicion identified in the NDM were sufficient, but that the basis put forward was “*not as comprehensive as it could have been*”, and could have made reference to the exchanges between some of the suspects and JL (**Transcript Day 4 p28.19**). He stated that he decided to adopt a different approach to JL and not arrest him because the intervention was some time after three initial arrests, and therefore the same danger of not attending, conferring or loss of evidence did not apply. He maintained, however, that JL had been in contact with others, and he did consider that there was a risk of JL destroying evidence (**Transcript Day 4 p29.6**). His recollection was that he had discussed with the DPP the need to appoint a lawyer to review items seized from JL for privileged material, and they had agreed that they would ask JL to choose a lawyer, whether from Gibraltar or abroad, to do that exercise (**Transcript Day 4 p30.13**). He had planned for the search warrant application to be made to the Chief Justice, and did not know why ultimately the application was made to the Stipendiary Magistrate (**Transcript Day 4 p31.3**). He confirmed that he did not send the NDM to the CM, the AG, NP or JB, and as far as he was aware they did not have access to the Information, PR’s note of his meeting with the DPP where the DPP advised on JL’s status as a suspect, the Magistrate’s ruling, nor did they have access to the underlying evidence (**Transcript Day 4 p179.11**). He also stated that IM did not assist in drafting the NDM (**Transcript Day 4 p183.25**).
- b. MW said that the use of the NDM was well established for police officers in the UK, and he had used one before, but was unable to say how much it was used in the RGP (**Transcript Day 5 p136.13**). He explained that the NDM assessment arose from a list of texts, together with questions, that he had sent to PR, and that PR had written most of it, but MW wrote the section on conspiracy to defraud [B3454]. He believed that PR wrote the section recommending that the warrant be sought from the Chief Justice, but said there may have been discussion leading up to it (**Transcript Day 5 p140.12**). His understanding of the reference to “*political sensitivities was that it related to Hassans law firm and the connection in terms of politics*”, and he later expanded “*clearly there’s connections to the Chief Minister as well as other individuals in Government as well, who either*

*worked for Hassans or are on sabbatical from Hassans” (Transcript Day 5 p 174.1, 223.15).* He said that the NDM’s expectation that “*any allegation of impropriety or illegality will be vigorously attacked using Hassans’ considerable legal resources*” in fact subsequently materialised (Transcript Day 5 p174.13).

- c. IM said that he read the NDM on a Sunday, and read it in sufficient detail knowing the sensitivities of it (Transcript Day 6 p165.5). He did not have any involvement in drafting it (Transcript Day 8 p23.7). He agreed to the proposal to proceed by way of search warrant on the basis of it (Transcript Day 6 p166.2). He agreed that there were sufficient grounds to suspect JL of involvement in a conspiracy to defraud on the basis of what was set out in the NDM (Transcript Day 6 p167.22). His understanding of the NDM’s reference to political sensitivities was “*The very apparent link between Hassans, the Chief Minister and other members of government*” (Transcript Day 7 p71.20). He agreed that an attack from Hassans was envisaged, “*but not to the extremes that...*” (Transcript Day 6 p72.20).
- d. The DPP said he received both the NDM and the Charging Report by email on 1 April 2020 (Transcript Day 9 p28.15).

#### *Charging Report*

- 304. On 19 March 2020, MW sent an “*extended summary of evidence in respect of Operation Delhi*” to PR and DC Clarke (“**the Charging Report**”), stating “*it is intended that this document should be sent to the DPP in order to obtain legal advice on charging*”. PR stated that MW prepared this at his request (Richardson 3 para 18 [A1428]). PR requested that MW make certain amendments, which he did and recirculated on 24 March 2020 [B3274]. The Charging Report [B3614] was addressed to IM and ‘FAO’ PR, IM was not included in the email chain between MW and PR.
- 305. The Charging Report identified 76 possible charges. In relation to JL and Perez, there was a single joint charge of Conspiracy to Defraud (whereas in relation to Cornelio and Sanchez, computer misuse offences were also identified). The Report contained the following statements about JL:
  - a. JL was involved in the planning by Cornelio and Perez to dishonestly appropriate the NSCIS maintenance contract from Bland Ltd [B3629].

- b. JL assisted Cornelio and Perez to apply pressure to HMGoG with the intention that the NSCIS maintenance contract would be transferred to 36 North (in which JL held a 10% beneficial interest) [B3629].
- c. Under the heading ‘Knowledge of Computer Misuse Offences – Levy’, the Report stated that *“the evidence indicates that Levy discussed the forensic team with Cornelio and that he had given him advice about the situation”* [B3630]. The Report referred to two pieces of evidence, which were the extent of the evidence pointing to JL’s knowledge of the alleged sabotage:
  - i. *“On the 19th October 2018 Cornelio wrote to Levy saying, “Morning James. Very confidential. Note Gaggero has brought in a forensic team of six to look at anything John and I may have done to tamper with the system etc. Gaggero is going all out it seems.”*
  - ii. *“In a text to Perez the same day Cornelio stated that he had spoken to Levy and was told not to worry.”*
- d. By 2019, Levy was in no doubt that Cornelio and 36 North had not been contracted to maintain the NSCIS platform. Despite this fact, he did not question Cornelio accessing the system in April 2019. The Report referred to two pieces of evidence:
  - i. *“On the 11th April 2019 Cornelio wrote to Levy, ‘I am preparing a report for Caine/Albert Mena with regards to the failures of the National Security platform of which* [Redaction pursuant to Restriction Notice]  
 [Redaction pursuant to Restriction Notice]  
 [Redaction pursuant to Restriction Notice] *Lesley is preparing a legal letter for your review in an attempt to speed up the process. This is ok?’ ... He went on to say, ‘We are going to have a field day on the national security report..just wait until you see it. For now I am reviewing every single module 1 by 1.* [Redaction pursuant to Restriction Notice]  
 [Redaction pursuant to Restriction Notice] *”* [B3630]
  - ii. *“On the 23rd April 2019 [Cornelio] wrote to Levy, ‘Note I provided Albert Mena with a report on the National Security system. Has he made any comment to you about this? The report would have been delivered to him via Caine.’”* [B3630]

306. The Charging Report requested that advice be sought from the DPP *“as to what charges should be preferred”* [B3612]. The Report concluded by requesting advice *“as to whether, based on the above evidence, there are reasonable grounds to suspect that Levy has*

*committed: (a) the offence of conspiracy to defraud; and/or (b) any other criminal offences*". It added that: "*In the event that there are reasonable grounds to suspect Levy has committed any offence, the police will consider whether it is necessary to conduct further investigations in the form of search warrants / interview under caution.*" [B3666].

307. In questioning;

- a. PR stated that although the document was entitled "Re: *Charging Advice*", it was not being used for that purpose at the time; he had asked MW to produce a summary of the evidence for the DPP, and MW had relied on a document that he had been preparing as the investigation had unfolded (**Transcript Day 4 p43.5**). He did not know whether IM was shown the Charging Report, but that it would not have been normal practice to show it to him (**Transcript Day 4 p40.17**). He said that it was typical practice to seek advice from the DPP as to what charges should be preferred, and that there would have to be at some point a decision about which of the 76 possible charges would ultimately result in a charge (**Transcript Day 4 p42.1**). He agreed with MW there was sufficient evidence of JL's knowledge of the computer misuse offences to form "*a reasonable ground of suspicion*", and "*those questions would have to be developed further in interview*" (**Transcript Day 4 p43.15**). His explanation of the evidence of JL's knowledge of sabotage was that Mr Cornelio was telling JL that he had found out about Mr Gaggero instructing a forensic team of digital investigators to interrogate the NSCIS and see whether Mr Cornelio had tampered with the system (**Transcript Day 4 p44.14**). He also referred to a message showing that Mr Cornelio was accessing the NSCIS platform at a time when he had been expressly prohibited from doing so by the CM via a message through his personal secretary Mr Canessa, and said that JL must have known that Mr Cornelio was no longer entitled to access the system, because there were communications between them about getting the platform back (**Transcript Day 4 p46.17**). He confirmed that the Charging Report was not seeking the DPP's advice at that stage as to whether a search warrant could and should be obtained – the DPP's advice was only sought as to whether there were reasonable grounds to suspect JL of committing an offence, and if so the RGP would take any action they considered appropriate (**Transcript Day 4 p47.13; 49.20**). However, with the benefit of hindsight, he thought that the RGP may have

benefited from independent legal advice as to the decision whether to proceed with a search warrant (**Transcript Day 4 p51.9**).

- b. MW said he did not send the Charging Report to IM, and did not know whether IM had seen it before it was sent to the DPP (**Transcript Day 5 p151.3**), but he later said that there was a single meeting where they went through what he believed was an iteration of the Charging Report in IM's office with a number of other individuals where they gave an update on the progress of the investigation (**Transcript Day 6 p114.10**). He said his role was to identify each instance of a possible offence, and then he would put that before the OCPL or the DPP, for them to make a determination of the number of charges they felt was justified or should be put before a jury (**Transcript Day 5 p151.13**). It was drafted in order to support the information that had been provided in the NDM and give the full picture of what was happening to the DPP (**Transcript Day 5 p161.11**). He explained that the texts between Mr Cornelio and JL suggested that Mr Cornelio had become aware of Mr Gaggero bringing in a forensic team to analyse the NSCIS platform, that he was concerned about it, and that the first person he wrote to was JL, who would only be able to tell him not to worry if Mr Cornelio had told him everything he had done (**Transcript Day 5 p153.3**). By the time that Mr Cornelio sent messages to JL about preparing a report on NSCIS, the CM had given explicit instructions that Mr Cornelio should no longer access the platform, and Mr Levy was aware of that based on texts from Mr Cornelio to Mr Levy about getting the platform back (**Transcript Day 5 p157.3**). He later agreed that the messages he was referring to were at paragraphs 76, 77 and 79 of the charging advice [**B3623**] (although it should be noted that in those messages Mr Cornelio referred to getting "*the contracts*", "*my contracts*" and "*national security contract*" back). They were not seeking the DPP's advice as to whether a search warrant could and should be obtained (**Transcript Day 5 p159.17**). He believed that he might have benefitted from legal advice at that stage as to whether it was necessary to use search warrants or interview under caution (**Transcript Day 5 p159.19**).
- c. IM was not sure whether the Charging Report had been shared with him, but would have expected to see an email if it had been and there was none (**Transcript Day 6 p168.22**). He later said he had no involvement whatsoever in the drafting of the charging advice (**Transcript Day 8 p23.11**). He said that he would not dispute Supt Wyan's evidence about the meeting in his office to go through the Charging

Report, but he could not recall the finer detail of it (**Transcript Day 6 p169.20**). When shown a record of a meeting in his office in DS Clark's day book for 23 April 2020 [**B3855**] showing references which matched up with a draft of the Charging Report he said he may have been briefed on the investigation, but could not remember being briefed specifically on the charges or discussing the contents (**Transcript Day 8 p105.1**).

- d. DS Clarke said that IM, RU, PR and DI Wyan were present at the meeting on 23 April 2020 referred to in his day book [**B3855**], and he recalled that it was "*rather unusual*" for him to be asked by the actual Commissioner to discuss the case: "*Mr McGrail basically had read through the document and had given him advice or his opinion, as shown in the paragraph numbers and the comments, of what he thought should be included or should not be included, etc. For example, the first comment being dishonesty, how he had shown his dishonesty, and civil wrongs, to expand on the civil wrongs, just by way of example*" (**Transcript Day 8 p7.20**). He said he had assisted DI Wyan in the drafting of the Charging Report (**Transcript Day 9 p40.6**).

308. On 1 April 2020, PR sent the charging report to the DPP seeking his advice on whether the proposed charges were warranted by the evidence, whether there was a reasonable prospect of conviction, and whether it was in the public interest to proceed. PR also sought legal advice as to whether there were reasonable grounds to suspect that JL had committed the offences alleged against him [**B3610**]. When asked whether those were questions on which he would typically seek advice from the DPP, PR said it depended on the case, but in his view it was appropriate to consult the DPP given the implications of the actions which the RGP was about to embark on (**Transcript Day 4 p52.21**).

#### *The Options Report*

309. On 22 April 2020, MW sent a report to IM and PR regarding options for the interview of JL ("**the Options Report**") [**B3278**], which concluded that the RGP should approach JL at his work after COVID-19 restrictions were relaxed or lifted. The Inquiry is not aware of evidence that this document was sent to the DPP. As regarding whether to ask Mr Levy to attend voluntarily and provide his devices or to obtain a search warrant, the report stated:
  - a. "*Mr Levy could be requested to attend the police station. In doing so, he could be asked to bring any devices for analysis and to submit to an interview. However,*

*this would notify Mr Levy of our intentions and would thereby risk the loss of evidence. This would be contrary to the way we have dealt with the other suspects, although we could argue that given the amount of time, he will be well aware of the arrests and of the police investigation.”*

- b. *“Given that we suspect that an offence may have been committed, and in order to prevent loss / destruction of evidence, we would ideally secure the evidence in situ, and without giving Mr Levy prior notice of our intent.”*
- c. *“On arrival at the premises, we would therefore seek, in the first instance, to be granted access to the relevant devices without the use of the warrant. A warrant would only require execution where co-operation was not offered.”*

310. In oral evidence:

- a. PR said that he imagined that he had discussed the Options Report with MW (**Transcript Day 4 p86.24**). He confirmed that he agreed with DI Wyan’s assessment that a search warrant was appropriate, and that they would seek JL’s cooperation to hand over the items voluntarily, in which case there would be no need to execute the search warrant (**Transcript Day 4 p87.13**). He did not agree with the suggestion in the document that JL could be requested to attend the police station because given the passage of time he would have been well aware of the arrests and of the police investigation. He did not know why that counterargument had not been included in the Information laid before the Stipendiary Magistrate (**Transcript Day 4 p89.2**).
- b. Supt Wyan did not believe he sent the Options Report to IM or the DPP (**Transcript Day 5 p174.16**). He explained that his belief that notifying JL of the RGP’s intentions would risk loss of evidence was based on the suspected dishonesty, which was an element of the offence of conspiracy to defraud, which meant that he would be less likely to hand over his devices (**Transcript Day 5 p172.4**). He did not believe he ever discussed the counterargument that JL was well aware of the arrests and of the police investigation with PR or IM, and did not know why it was not included in the Information, and believed that the points made in paragraphs 28 and 29 of his witness statement [A1043] should have featured in the Information (**Transcript Day 5 p176.16**).
- c. IM said he had no involvement in the drafting of the Options Report (**Transcript Day 8 p23.13**).

*The Information and application for the warrant*

311. On 6 May 2020, DC Paul Clarke applied for the warrants from the Stipendiary Magistrate (not the Chief Justice, as PR had canvassed in the NDM). PR and DI Goldwin also attended the hearing (Clarke 1 para 4 [A1057]). DC Paul Clarke attended Court again on 7 May 2020 to amend the material sought in the warrants (Clarke 1 para 5 [A1057]). The Information supplied in support of the application ("**the Information**") was "*predominantly taken directly from the charging advice report provided to the DPP on the 1<sup>st</sup> April 2020*" (Wyan 3 para 11 [A1040]). DC Clarke stated that he read the Information in its entirety to the Magistrate (it ran to 38 pages), and that the application took about two hours (Clarke 1 para 8, 10 [A1040]). The Information concluded:

*"The above paragraphs demonstrate Levy was involved in the plan to remove the NSCIS contract from Bland at an early stage;*

*a. Messages between Levy and Sanchez show communication discussing moving the contract away from Bland in early 2018. (Paras 45 to 47)*

*b. Levy was instrumental in the creation of 36 North. Firstly, by being owning 32% of shares of Astelon Ltd, who in turn own 33% of shares of 36 North. (Paras 31 to 32) On behalf of Hassans, he injected a large sum of money into 36 North.*

*c. He was using his influence with the Chief Minister to the advantage of 36 North.*

*d. He was regularly contacting both Cornelio and Perez in relation to 36 North whilst they were still employed by Blands and following their resignations. (Paras 61 to 89).*

*e. Communications show he was aware of the Computer Misuse Offences committed by Cornelio. (Paras 99 to 100)."*

312. In questioning:

- a. PR stated that he and MW decided to proceed with a warrant because they feared that there was a reasonable chance of losing evidence if they proceeded on notice (**Transcript Day 4 p90.21**). Although he did not recall seeing and approving the application, one of the documents that he had requested disclosure of had his handwritten notes on it querying certain things, and therefore it was fair to say that he approved the application "*but probably had not had much time to consider it*

*before we went to court*” (**Transcript Day 4 p97.8**). He said it was not RGP practice at the time to seek Crown Counsel advice on the draft Information, and he was not aware of the Information being sent to the DPP prior to the application being made (**Transcript Day 4 p99.22**). He said that in retrospect perhaps the Information did not go into enough detail in demonstrating that JL was involved in the plan to remove the NSCIS contract from Bland (**Transcript Day 4 p100.10**). He said that based on their knowledge he and his team had reasonable grounds to suspect that JL know about the alleged sabotage, *“but it may not be reflected in the that information”* (**Transcript Day 4 p103.7**). He did not believe that the material sought was privileged because JL was a suspect in his own right and was not advising the 36 North suspects in a lawyer/client relationship (**Transcript Day 4 p104.1**). When asked whether he thought that the drafter of the Information could have benefited from legal advice he replied: *“Without any doubt at all”* (**Transcript Day 4 p108.3**). As to the basis for fearing that JL would destroy evidence, he referred to the seriousness of the offence being investigated, the fact that JL was a senior lawyer, and the fact that Mr Sanchez had deleted communications before the RGP arrested him (**Transcript Day 4 p108.18**). He also later agreed that two of the suspects had deleted their email accounts, and his recollection was that one of the deleted emails that had been recovered was the email that indicated that JL was involved (**Transcript Day 4 p212.14**). He later said: *“I think we took the view that, once bitten twice shy, if we don’t take these devices immediately there is a risk that those will also be deleted”* (**Transcript Day 5 p81.5**) He accepted that none of those matters were reflected in the paragraph of the Information dealing with the fear of destruction of evidence, which he put down to a lack of legal advice, but was not aware whether that paragraph had been obtained from a template (**Transcript Day 4 p112.8**). When asked why the DPP’s expressed preference for a production order was not referred to in the Information, he said that the DPP had said that he understood why the RGP would choose to elect a search warrant and that he would back them whichever decision they chose to take, and that it would be defensible in a judicial review (**Transcript Day 4 p113.13**). He also said that it was possible that the DPP’s preference was discussed at the hearing, but he did not have a record of the hearing, and did not remember any questions at all (**Transcript Day 4 p115.4, 120.4**). He said that if the RGP had sought a production order the application would have had to be on

notice, which meant that JL “*would have known what it is that we were looking for before we went to try and seize it*” (**Transcript Day 4 p213.7**). He stated that IM did not assist in drafting the Information (**Transcript Day 4 p184.3**) (cf DS Clarke’s evidence on this point).

- b. MW corrected his witness statement by stating that he did not believe he had drafted any of the application, and it was DS Clarke who drafted it – he had only advised on how to start the process, but did not draft or review the document (**Transcript Day 5 p181.1**). He said he had drafted a template by adapting a UK police force template from around 2012 to local legislation, and believed that DS Clarke had based his application on that template (**Transcript Day 5 p182.3**). He said there was no intention to seek privileged material, although there was an expectation that it may be present, but he believed the Criminal Procedure and Evidence Act 2011 permitted privileged material to be seized if it formed part of or was connected with the material sought, so it was lawful to search JL’s devices if the material of interest was not privileged (**Transcript Day 5 p186.8**). He considered that the Information would have benefited from defining the material sought more narrowly, to only capture documents relating to the investigation and which were not privileged (**Transcript Day 5 p187.1**). He “*absolutely*” thought in retrospect that the drafter could have benefited from legal advice (**Transcript Day 5 p187.11**). He also agreed that he would have gone into greater detail as to the basis for asserting that other methods of obtaining the material were bound to fail (**Transcript Day 5 p187.15**). He did not know why the DPP’s preference for a production order was not included in the Information (**Transcript Day 5 p188.9**).
- c. IM said he had no involvement in the drafting of the Information (**Transcript Day 8 p23.19**).
- d. JL’s response to the Information’s allegation that Mr Cornelio and Mr Perez expected him to use his relationship with the CM to open the door to the CM and land the contract was that Mr Cornelio was asking whether there was any way that the contract could be put to tender, “*which is what should have been one and should still be done, but it’s a matter for the Government not for me*” (**Transcript Day 8 p133.2**). Adding to his written evidence [A1511], he described PR and Supt Wyan’s evidence that they feared that he would destroy evidence as “*entirely baseless*” (**Transcript Day 8 p146.17**).

- e. DS Clarke said he had drafted an information for a search warrant before the one in relation to JL, but could not recall a schedule 1 search warrant, “*and definitely not to this detail and this complexity*” (Transcript Day 9 p9.2). He said he sought advice from DI Goldwin on the drafting (Transcript Day 9 p9.2), and DI Goldwin had advised him to go to the Magistrates Court (Transcript Day 9 p30.6). He did not seek IM’s input, but sent it to DI Wyan, who he did not believe had read it because he was off sick, and to PR, who approved it (Transcript Day 9 p10.9). When asked whether the Information and statement were based on a template prepared by DI Wyan, he said “*The information, no. And the statement being a template, yes and no.*” (Transcript Day 9 p11.10). He had not been given any training on how to use the templates for applications, and believed that he could have benefited from legal advice in drafting the wording used in within the warrant, although he pointed out that it was approved by DI Goldwin, PR and the Stipendiary Magistrate (Transcript Day 9 p11.22). He said the Information “*gave full disclosure of what happened, the other arrests of the subjects, the background, people involved, and in my thoughts at the time it met the duty of candour, it gave as full disclosure as I possibly could and as I possibly considered necessary at that point*” (Transcript Day 9 p14.1). When referred to a document created by him named “*Levy warrant notes*” [D2900] he explained that it was a document created purely for himself with regards to drafting the warrant and preparing for the hearing (Transcript Day 9 p14.8). He explained that a reference to the DPP, IM and PR recommending “*the course of action*” [D2905] was a reference to the treatment of JL as a suspect, rather than seeking a search warrant against him (Transcript Day 9 p15.2). He understood that the material sought was not privileged because JL was not acting as a lawyer in relation to 36 North, even though his devices would contain legally privileged material, and it was lawful to search JL’s devices if the material of interest was not privileged under Section 29(4) the Criminal Procedure and Evidence Act 2011 (Transcript Day 9 p20.9). He said he had not considered defining the material sought more narrowly to only capture documents relating to the investigation and which were not privileged, as the wording was defined by PR, the SIO of the investigation, and was what he wanted (Transcript Day 9 p21.25). As to the basis for believing that a production order was bound to fail, he said that JL would be on notice and therefore know exactly what the RGP were looking for, and his reputation was on the line, so he

feared that JL “*would not hand over willy-nilly evidence upon notice*” (**Transcript Day 9 p24.15**). He denied that the wording of paragraph 324 of the Information (other than the introductory wording) came from a template, but recognised that it did not deal with the particular circumstances of the case, and with the benefit of hindsight he would have gone into far more detail (**Transcript Day 9 p25.4**). He said that he had considered as a counterargument that JL was a senior lawyer, but at the same time there was extensive evidence for him to believe that JL had committed a serious criminal offence based solely around dishonesty (**Transcript Day 9 p27.3**).

- f. LB said that he only got to see the Information a few days later, but it was evident on the face of the warrant that it was “*fundamentally wrong because ... the alleged basis, that it was impracticable to communicate with the suspect or obtain information from him. It was completely irrational. There was no reason to state that and there was certainly no evidence to support it, and the same applies to the risk of destruction. Then looking at the application, of course, there was just a mere statement of fear, or because he was a suspect, ergo there was a risk of destruction, which was a complete non sequitur and nothing to support those bare allegations*” (**Transcript Day 9 p104.17**). When discussing his conversations with the CM about the warrant, he made the following points: “*...where was the risk of destruction? Where was substantiation in the application of that risk? Where was the alleged inability or impracticability of contacting the person who held the information. So, there were lots of parts of the application for the warrant which were woefully defective, in my respectful view. Leaving aside the question of full and frank disclosure, but that’s a different matter.*” (**Transcript Day 9 p104.5**). He later added: “*The warrant itself obviously we had from day one and he didn’t really need to go to the schedule one to basically conclude that the warrant was grossly insufficient, because all that added was the evidence of the lack of substantiation of the allegations that it was impracticable to communicate with the person holding the information and then the risk or the fear of destruction and then, as I mentioned this morning, that non sequitur of “he’s a suspect; ergo there’s a risk”*” (**Transcript Day 9 p125.1**). He said he did not feel that he shared information on the redacted version of the Information that was disclosed to Hassans with the CM, and he had not provided the CM with documents

(**Transcript Day 9 p105.24**), and he did not receive the Information until 27 May 2020 (**Transcript Day 9 p123.9**).

313. The Stipendiary Magistrate granted the warrants [**B3602**]. A written record of his reasons was made later on 13 May 2020 [**C6728**]. The reasons are very brief, but make the following points:

- a. *“I was satisfied that the evidence presented disclosed sufficient grounds on which the warrants could be issued. The evidence pointed to the existence of a conspiracy involving Mr Levy as a participant.”*
- b. *“... Issuing the warrants was justified in order to obtain and preserve existence necessary for the police investigation. The evidence showed incomplete exchanges between Mr Levy and his alleged co-conspirators currently under investigation.”*

314. DS Clarke gave oral evidence that the hearing took place in the Stipendiary Magistrate’s chambers, it was not recorded, and reading out the application took up pretty much all of the 2 hours. The Magistrate asked him to a couple of questions to clarify the evidence that he had read out, and there were no questions outside of the information or the grounds for the search warrant, nor any about the procedure being proposed, so he did not record any in his notebook. He ultimately accepted, although he was reluctant to say it for certain, that the questions probably amounted to a matter of seconds. The Magistrate did not ask any questions about the suggestion that JL could destroy evidence, nor about why a search warrant had been preferred over a production order (**Transcript Day 9 p31.7 – 38.3**). No other officers said anything at all to the Magistrate during the proceedings (**Transcript Day 9 p47.11**).

315. Neither the Information nor reasons for granting the Warrant articulated specific reasons for why the RGP applied for a search warrant instead of a production order in this case. The justification given by DC Clarke in the Information for the assertion that a Production order may seriously prejudice the investigation was as follows [**B3245**]:

*“In the circumstances it is highly likely that they would destroy, alter, deface or conceal the material sought because it is evidence sought by the [Officer in Charge] which may prove their involvement in the offence.”*

## Relevant facts

316. The relevant facts below are structured under two headings:
- a. The interaction between the RGP and the DPP/AG/CM (which is relevant to sub-issues 5.1 and 5.2); and
  - b. The interaction between the AG/DPP/CM and JL/LB (which is relevant to sub-issue 5.3).

### The interaction between the RGP and the DPP/AG/CM

317. The allegation made by the CM and the AG reflected in sub-issue 5.1 was that IM lied to them in their meeting of 12 May 2020 by:
- a. stating that he had taken the advice of the AG as to whether to obtain a search warrant in relation to JL; and
  - b. stating that he had sought the advice of the DPP on whether to obtain a search warrant or a production order in relation to JL, and that the advice of the DPP was that they should proceed by way of search warrant.
318. The CM stated in questioning that: *“If Ian McGrail had not lied to me, if he had simply said this was the decision that the police took, that this it is the decision the police are entitled to take and he stood by it, then that would have been it on that day, full stop. But that’s not what he did, he lied to me”* (**Transcript Day 17 p167.15**).

*13 May 2019 – 7 April 2020*

319. On 13 May 2019, a meeting took place between IM, PR, the CM, the DPP and Messrs Costa, Mena and Grech. There is some uncertainty over whether the AG also attended this meeting: although he gave evidence about it in Llamas 1 para 17-19 [**A274**], there is a text message exchange which suggests he was in London that day [**A1434**], and he produced an invoice from a travel agent confirming he travelled to London on 11 May (**Transcript Day 11 p150.17**). PR suggested that the AG may have joined by telephone (**Transcript Day 4 p20.4**). The meeting was at the request of IM, who asked to provide a briefing on an *“important and sensitive matter”* [**A188**].
320. There are no minutes of this meeting, but accounts are given by the various attendees:
- a. PR notes in his Day Book (**“the Delhi Day Book”**) that IM outlined the evidence against Sanchez, who was to be recalled from the UK, where he was on business.

The notes add “*CM – Govt should be complainant – will need to speak to Snr Partner at Hassans*” [C1735]. This is presumably a reference to JL. PR has confirmed in his evidence that the CM said that the RGP would need to speak to the Senior Partner at Hassans, not that the CM would (Richardson 3 para 60 [A1435]). The CM agreed with this (Picardo 3 para 3 [A232]). However, the DPP could not recall this comment, or any link of Hassans being mentioned in that meeting (Transcript Day 10 p14.21, 15.16). PR recalled preparing a briefing note for IM which referred to JL, but could not remember if IM read out that section of the note to the meeting (Transcript Day 4 p23.8).

- b. The Chief Minister does not give a detailed account of the meeting, but stated that he “*made clear*” that the Government would be the complainant if there was evidence of corruption in respect of a government officer or office (Picardo 1 para 32 [A188]). The CM also stated that during this meeting, he stated that he had dealings with 36N and that the RGP were aware of these dealings from Mr Gaggero (Transcript Day 16 p159.17).
- c. IM stated that he informed the meeting that JL as a “*person of interest*” (Transcript Day 8 p45.1). According to IM, IM was not aware of the CM’s involvement in 36N at that time (Transcript Day 8 p35.3). He said that if he had known all of these facts, it would have made him “*rethink*” what information he imparted to the CM if anything (Transcript Day 8 p38.9).

The AG’s account of that meeting (Llamas 1 paras 17-19 [A274]) was that IM explained “*very serious failures had occurred with regard to the operation and management of the NSCIS platform which directly impacted the national security of Gibraltar*”. The AG stated that IM referred to Hassans’ shares in ‘36 North Limited’, the company involved, and that JL was mentioned in communications with the three suspects and was potentially a person of interest to the investigation. IM agreed with this account (Transcript Day 8 p42.9). However, this account must be queried in light of the context above that the AG may not have attended this meeting. The AG stated that the DPP must have informed him about the meeting after it took place, and so this paragraph must be his memory of a briefing from the DPP (Transcript Day 12 p64.12).

- 321. There is a dispute as to the contact between the AG and IM after that meeting, until the events of April 2020:

- a. The AG's evidence was that after this meeting, he did not have further "*substantial meaningful*" contact with IM about Operation Delhi until 12 May 2020. He denies the "*impression*" that he said is created by IM's evidence (specifically McGrail 1 paras 12 to 27 [A4-8]) that they were in regular contact about Operation Delhi (Llamas 2 para 4 [A299]). He had no recollection of a discussion about Operation Delhi before or after a meeting on the Incident at Sea on 22 March 2020 (Transcript Day 11 p155.8). He denied enquiring or asking for briefings about Operation Delhi (Transcript Day 11 p158.8).
- b. IM gave evidence on the nature of these meetings in multiple locations:
  - i. IM's witness statement stated that he provided "*briefings*" to the AG, albeit only "*on a few occasions when [the AG] brought it up and ... off the back of other subject matters that [IM] had met the AG on*", and "*held conversations with the AG on some concerns*" (McGrail 1 para 12 [A4], para 19 [A6]). In questioning, IM clarified that he met the AG on "*numerous*" occasions on other issues (not Delhi-specific), and at the end of the meeting he would say "*Ian, how's this going?*" (Transcript Day 6 p136.1).
  - ii. In his email to self on 12 May 2020, IM stated that "*for quite some time I have been meeting with HMGAG Mr Llamas at his request to discuss matters relating to this investigation. Mr Llamas has a view that Caine Sanchez should be dealt with internally via civil service disciplinary mechanisms. To this date however the AG has not seen the evidence... At most of these meetings with the AG, particularly the latter ones, I have been accompanied by Superintendent Richardson...*" [B74].
  - iii. The Gomez & Co letter of 29 May 2020 stated: "*For many months, the AG has been trying (unsuccessfully, we might add) to persuade Mr McGrail to change his and the RGP's approach to the investigation, which would lead to it either being dropped entirely or certain suspects not being prosecuted.*" [C4490]
- c. As to the content of their conversations, IM's evidence and the AG's response was that:
  - i. The AG raised whether Caine Sanchez could be dealt with internally via the Civil Disciplinary route (McGrail 1 para 15 [A5]). The AG accepted that he did ask about Caine Sanchez on 7 April 2020, but "*all I was doing was*

*enquiring how the criminal procedure and the disciplinary procedure were going to run in parallel... At no moment in time ... was I seeking to protect Mr Sanchez*” (**Transcript Day 11 p159.25**). He denied suggesting the disciplinary route should run in lieu of criminal proceedings (**Transcript Day 11 p160.22**).

- ii. The AG advised that the investigation should not progress until the ownership issue was clarified (**Transcript Day 6 p138.21, 140.22**). Similarly, in his email to self of 12 May 2020, IM stated that: *“At a meeting in the office of the AG, with the DPP present, the AG was suggesting that I stopped the investigation from progressing on the basis that the ownership of the platform had not been established”* [B74]. However, IM could not put a date on this meeting, but it was before 7 April 2020 (**Transcript Day 8 p73.1**). He suggested that it might have been on the back of an Operation Kram meeting where the DPP was present (**Transcript Day 6 p187.6**).
- iii. The AG raised a hypothetical situation *“enquiring about what the RGP’s position would be in terms of pursuing the investigation were it to be assumed that HMGoG were the defined owners of the platform...”* (McGrail 1 para 17 [A5]). The AG accepted that he raised this hypothetical situation, but explained that he was trying to make IM understand that if ownership was held by HMGoG this would impact on at least some of the charges (**Transcript Day 11 p164.12**).
- iv. IM raised his concerns about the link between 36N and the CM (and other Government Ministers). According to IM *“he acknowledged that he also had similar concerns and discretely advised me that he would be addressing these in due course”* (McGrail 1 para 19 [A6]). In questioning, IM also suggested that he raised with the AG a concern about the CM’s own involvement in 36N, but did not know when he had done so (**Transcript Day 8 p29.6**). The AG agreed that IM raised concerns about the link between the investigation and the CM on 7 April 2020, but *“I did not particularly engage with them. My focus of the meeting was exclusively the matters that Mr Rocca had brought to my attention the day before”* (**Transcript Day 11 p166.14**).

- v. The AG advised IM that he would be taking a step back from the criminal investigation as he was now advising HMGoG on intellectual property rights of NSCIS (McGrail 1 para 24 [A7]). The AG did not remember saying this, but thought that he may well have because he “*did not get involved in criminal investigations*” (Transcript Day 11 p170.1).
  - vi. The AG “*was keen to be told of the evidence the RGP was uncovering*” (McGrail 5 para 122 [A167-8]). IM stated that he did not share evidence about the case with the AG (Transcript Day 6 p143.13). IM stated that his conversations with the AG did not initially raise alarm bells, but that changed with time (Transcript Day 6 p148.21).
- d. PR expressed the view that if IM had met the AG on Operation Delhi, he would have expected to have been present (Transcript Day 4 p54.17). He was referred to IM’s email to self (which noted that he had been accompanied by PR to “*most of these meetings*” [B74]), but PR was not aware of any meetings other than 13, 15, 20 May and 7 April 2020. PR elaborated that he did not remember going to any other meetings with IM and the AG other than meetings about Operation Florence (the Iranian oil tanker), which was before Operation Delhi (Transcript Day 4 p192.20).
  - e. MW was also not aware of any meetings (Transcript Day 5 p115.19).
322. On 4 September 2019, MW, DC Clarke and Mr Finlayson met with the DPP for legal advice. MW and DC Clarke made notes [C2616, C2617-8]. According to MW’s notes, which are more comprehensive, they discussed whether the investigation revealed evidence of a conspiracy to defraud and debated whether “*the agreement to take the NSCIS contract from Bland amounted to a conspiracy to defraud*” or whether it was “*simply a commercial dispute and a civil action is appropriate*”. There is no reference to a case or evidence against JL.
323. On 13 January 2020, MW conducted a review of the 51 identified offences (Wyan 1 para 51 [A1036]). His note recorded that “*51 offences identified. To be selected based on advice of the DPP*” [B3716].
324. On 17 January 2020, the DPP, MW and DC Clarke met to discuss the “*formulation of charges*” [B3196]. DC Clarke adds that “*during the meeting the summary of evidence was discussed*” (Clarke 1 para 29 [A614]). The DPP does not provide detailed evidence on his meetings with the RGP during this period, but stated that he “*was subsequently involved*

*in various meetings, both in person and on the telephone, with the Royal Gibraltar Police for the purpose of providing charging advice” (Rocca 1 para 5 [A1295-6]).*

325. On 21 January 2020, there was an internal RGP meeting on Operation Delhi, attended by PR, MW, CI Field and DC Clarke. MW’s notes record: “*Charges – over 50 possible charges identified (predominantly computer misuse). To be refined down*” [B3717]. PR did not recall when the RGP decided to undertake this exercise (**Transcript Day 4 p26.24**).

326. On 1 March 2020, IM emailed PR stating that on the basis of the information in NDM Assessment, he supported in principle the suggested course of action. However, he added that “*the tactical detail ... will be subject of further consideration*”. IM requested that “[g]iven the complex nature of this investigation and the reputational risks at stake I would ask that you consult with the DPP to ensure our intended activity is legally supported” [B3272]. PR replied “*will raise with DPP this week*” [B3272]. As to the contents of this email:

a. PR gave evidence that he sent the NDM to IM because “*it is proper that the Commissioner of Police had been briefed on that; he may have had alternative views*” (**Transcript Day 4 p31.21**). He understood IM’s phrase “*tactical detail*” to mean keeping the operation as confidential as possible until entering the premises; and “*intended activity*” as “*to obtain a search warrant and seize evidence*”. However, he did not understand this as meaning that he needed to seek advice from the DPP on the decision to seek a warrant. PR explained: “*I think he was saying: speak to the DPP and seek his advice on whether he can draw the same conclusions as you have, that Mr Levy is a suspect, and let him know that our intended course of action is to obtain a search warrant*” (**Transcript Day 4 p33.12**).

b. MW did not recall being copied in to this email (**Transcript Day 5 p142.12**), and stated that other than this email he was not aware of IM being asked about whether to proceed by warrant (**Transcript Day 5 p147.23**).

c. IM confirmed that by agreeing with the “*intended course of action*”, he was agreeing with the proposal to go by way of warrant (**Transcript Day 6 p166.1**). IM stated that he was asking PR to consult with the DPP “*package-wise, that we were on solid footing with regards to addressing Mr Levy, and that includes everything that was referred to in the NDM*”. IM distinguished between asking the DPP for advice and “*running it past him*” (**Transcript Day 6 p166.12**).

327. On 3 March 2020 there was a meeting between the DPP, PR and MW.

- a. MW's notes of the meeting [B3197] record that: "*Advice requested on whether his involvement amounts to a criminal offence. Full report drafted by Supt Richardson*". MW suggests that the reference to "*the full report*" is the NDM assessment (Wyan 3 para 43 [A1046]). However, PR stated that he did not think the NDM was provided to the DPP before the meeting (**Transcript Day 4 p38.2**) and the DPP agreed (**Transcript Day 10 p22.11**). However, MW thought that PR went through the NDM Report during the meeting (**Transcript Day 5 p150.21**).
- b. PR stated that at this meeting the DPP "*had not seen the considerable amount of evidence that implicated JL. Even though the investigation was not yet completed, I offered to provide him with a summary of the evidence that had been collected thus far...*" (Richardson 3 para 15 [A1427]). PR stated that although the DPP had not seen all of the evidence, they spoke to the DPP because IM had asked them to (**Transcript Day 4 p35.4**). The DPP agreed that he had not seen all of the evidence against JL, but was being asked to give a preliminary view on whether there was mileage in progressing (**Transcript Day 10 p22.23**).
- c. MW's note does not record whether advice was given (as opposed to requested) on JL. However, MW's evidence was that he recalls the DPP disagreed with the RGP's position that JL was suspected of having committed a criminal offence, and the DPP regarded JL's actions as "*sharp business practice*" (Wyan 1 para 44 [A1046], see also Richardson 3 para 14 [A1427]). MW stated that "*it was a comment but there was no force behind the comment, there was certainly no legal analysis*" (**Transcript Day 5 p148.20**).
- d. The DPP agreed that he and Crown Counsel Mark Zammitt gave advice at the meeting that JL's actions were "*sharp business practice*" (**Transcript Day 10 p21.11, 24.14**). The DPP explained "*we had no evidence to suggest [JL] had been involved or had knowledge of the computer hacking or improper conduct that had been alleged*" (**Transcript Day 10 p25.12**).
- e. PR stated that after receiving this advice, his priority was getting a report to the DPP so that "*hopefully he could draw the same conclusion we did.*" (**Transcript Day 4 p39.12**). MW added that: "*it was agreed that we would go away and prepare a full report setting out the evidence in support of our assertions*" (Wyan 1 para 44 [A1046]).
- f. PR stated that the meeting was long (over 2 hours) (Richardson 3 para 14 [A1427]).

- g. The DPP did not make a note of the meeting (**Transcript Day 10 p27.6**).
328. As outlined above, the Charging Report was prepared by MW in March 2020 [**B3612**]. PR does not believe that the Charging Report was sent to IM and explained that it was addressed to the Commissioner of Police as this was a convention for how the RGP addressed correspondence (**Transcript Day 4 p41.7**). MW stated he did not send it on to IM (**Transcript Day 5 p151.6**).
329. On 1 April 2020, PR sent the Charging Report and NDM Assessment to the DPP [**B3610**]. The DPP stated this was the first time he had seen these documents (**Transcript Day 10 p28.23**), contrary to MW's suggestion that PR went through the NDM in their meeting on 3 March (**Transcript Day 5 p150.21**).
330. PR explained in his covering letter that at the meeting on 3 March 2020, "*differing views*" had been expressed as to the "*criminality identified*", particularly with regard to the conspiracy to defraud offences; therefore a full Charging Report had been prepared. PR wrote that he was seeking the DPP's "*advice on whether the charges that we propose are warranted by the evidence, whether there is a reasonable prospect of conviction, and (given the inherent political nature of this investigation) that it is in the public interest to proceed. In addition, and in respect of James Levy, we are seeking legal advice as to whether there are reasonable grounds to suspect that he has committed the offence as alleged.*" [**B3610**]. It is worth recalling that the NDM added: "*In the event that there are reasonable grounds to suspect Levy has committed any offence, the police will consider whether it is necessary to conduct further investigations in the form of search warrants / interview under caution*" [**B3666**]. However, PR neither the NDM nor PR's email did not specifically seek advice on this point. The DPP agreed that the RGP was reserving to itself the decision on whether to seek a search warrant, as "*we would not normally interfere in an operational decision as to how they would seize material on the ground*" (**Transcript Day 10 p32.21**). PR confirmed that the RGP was not seeking advice on its intended action, but had pointed out what its intended action was (**Transcript Day 4 p53.11**). PR explained that it was RGP practice for applications for warrants to be made by police, and the DPP's view was that the warrant was an operational matter (**Transcript Day 4 p48.21**).

331. Prior to 1 April 2020, the DPP stated that he had “*very light conversations*” with the AG about Operation Delhi. He described these as part of more general meetings, rather than an agreement to meet and discuss Operation Delhi (**Transcript Day 10 p198.9**).
332. On 6 April 2020, a lawyer for one of the Former Op Delhi Defendants sent an email making submissions about the decision to extend bail to several RGP officers, the DPP and AG [**C3313**]. The AG replied to the DPP at 11:33 stating “*C, I’m not sighted on this*”. According to the AG, this email then triggered a further exchange with the DPP (**Transcript Day 11 p173.21**). At 13:06, the DPP replied to the AG: : “*This is something we are going to have to discuss soon because it does have very serious implications in terms of people that might get dragged in*” [**C3312**]. The DPP explained that he was referring to “*a whole litany of persons*” – Mr Sanchez, Mr Perez, Mr Gaggero, JL, and the Head of Borders and Coastguards (**Transcript Day 10 p34.21**). However he was not referring to the CM here: “*I don’t think I’d made the link...*” (**Transcript Day 10 p36.2**).
333. The AG replied “*Sure, Christian. Whenever you want.*” [**C3312**].
334. The DPP stated that he had a phone call with the AG to discuss the email, but that he did not remember whether he told the AG that JL was a suspect (**Transcript Day 10 p204.10**). The AG referred to a discussion with the DPP in “*early April*”, which is reasonable to assume followed from that email (Llamas 1 para 21 [**A275**]). The AG stated that this call gave him “*cause for great concern*” because “*the DPP very rarely seeks to discuss criminal cases with me and typically acts completely independently from me*” (Llamas 1 para 21 [**A275**]). The AG stated that:
- a. The DPP confirmed to him that Hassans held shares in the rival company, JL was potentially a person of interest, that a senior civil servant was one of the suspects, that the CEO Of the Borders and Coastguard Agency may also have been implicated, and that the ownership of the NSCIS was contested (Llamas 1 para 22 [**A276**]). The AG stated that this raised matters which were of considerable public importance and also had the potential to cause serious reputational damage to Gibraltar (at a time of negotiations with the EU and Spain on vital matters), including the fact that there had been serious failures of the national security system and JL being a person of interest (Llamas 1 paras 22 and 24 [**A275-6**]).
  - b. “*The DPP told me that the excessive number of charges [76] seemed wholly inappropriate and that he was of the view that the charges needed to be*

*rationalised, ideally after dealing with the issue of ownership of the NSCIS platform which was still 'live' and needed to be dealt with. It seemed clear to both of us that the ownership of the platform was key to the viability of a number of the proposed charges, and that on one possible ownership outcome a number of the proposed charges would necessarily fall away.*" (Llamas 1 para 23 [A275]). The DPP confirmed that this was his view, and also stressed that the ownership issue was "very" important to the prosecution (**Transcript Day 10 p37.5, 39.25**). However, the DPP clarified that the charges being excessive related wholly to the computer misuse offences, and ownership was not key to the viability of the conspiracy charge against JL (as opposed to the computer misuse charges) (**Transcript Day 10 p41.5, 41.19**).

- c. The DPP's evidence was that the purpose of this meeting was to discuss the national security issues and the people involved, but not to alert him to the fact that the RGP intended to proceed by way of warrant (**Transcript Day 10 p158.16**).
- d. In questioning, the AG agreed that the DPP did not inform him that the RGP intended to seek search warrants against JL. CTI referred him to his letter to the GPA of 5 June 2020 [C4732], which stated that during the discussion "*the DPP explained to me ... that the RGP were thinking of issuing search warrants against James Levy QC. I was alarmed, both by the number of charges, which would be quite inappropriate in any prosecution, but also by the proposal to obtain and issue a search warrant against a senior lawyer without first seeking voluntary cooperation or voluntary production of evidence*" (**Transcript Day 11 p176.12**). The AG stated that he was surprised to read this, as his "*very clear recollection*" was that the meeting with the DPP was all about rationalisation of ownership (**Transcript Day 11 p178.19**). He later considered that the witness statement was more likely to be accurate than the letter, even though the letter was more contemporaneous (**Transcript Day 12 p111.19**).
- e. The AG stated that he did not apply his mind to the question of whether the number of charges was inappropriate, and simply followed the DPP's advice on this (**Transcript Day 11 p179.6**).
- f. The AG stated that despite the DPP's email, the "*people who might get dragged in*" were not discussed or the main thing discussed (**Transcript Day 12 p107.4**).
- g. The AG's written evidence was that he and DPP agreed to seek a meeting with IM about the quantity and rationalisation of charges (Llamas 1 para 27 [A277]). The

DPP did not recall reaching this agreement (**Transcript Day 10 p43.14**). The AG stated that he sought the meeting with IM rather than the DPP because of: (1) the complexity of the case; (2) the implications for Gibraltar's reputation with Spain; and (3) because AG and IM had a meeting scheduled about Operation Kram, and the AG took the opportunity of that (**Transcript Day 11 p183.1, 185.13**) (however, note the AG's evidence in in Llamas 2 para 61 [**A315**] that he did not recall a meeting about the incident at sea on 7 April 2020).

*7 April 2020 – 12 May 2020*

335. On 7 April 2020, there was a meeting between the IM, PR and Mr DeVincenzi (“**LDV**”) to discuss the rationalisation of charges. The DPP was on leave and so did not attend, and does not recall being aware of the meeting (**Transcript Day 10 p44.14**). LDV recalled MW also being present at the meeting (DeVincenzi 1 para 11 [**A1300**]), but MW confirmed he did not attend (**Transcript Day 5 p163.5**).
336. It is worth noting that PR initially believed that this meeting took place on 4 May 2020, but later accepted that it was far more likely to have happened on 7 April (**Transcript Day 4 p57.3**). He explained that his Daybook entry for 4 May [**C1788**] was prepared retrospectively after 12 May 2020, when he “*sat down and starting piecing together some notes that ... hadn't made it into my book*” (**Transcript Day 4 p58.10**). A second note by PR is at [**A1436**]. PR prepared this second note after the 13-20 May 2020 meetings, but stated at the time he prepared it he was not aware that there was a disagreement between the AG and IM about whether an agreement was reached at this meeting (**Transcript Day 4 p 62.13, 63.7**).
337. There are conflicting accounts of that meeting, in particular regarding the critical question as to whether an agreement was reached to rationalise the charges before proceeding.
- a. The AG's evidence was that:
    - i. JL was mentioned in passing by IM, who said that he hoped JL would assist the investigation, but there was no discussion about him (Llamas 2 para 16 [**A302**]). However, it is noted that in the AG's letter to the GPA [**C4732**], he explained about this meeting: “*We also discussed in the terms that I have described above, the proposal to obtain and execute a search warrant against Mr Levy...*”.

- ii. He and IM agreed that the investigation raised issues of serious concern, and he therefore advised IM that he considered it vital that the investigation should proceed and be conducted prudently and with tremendous care (Llamas 1 para 29 [A277]). In questioning, he elaborated on this and referred for the first time to concerns about IM's conduct during the airport incident, and the AG's concerns about "*his policing method and style*" (Transcript Day 12 p122.15).
- iii. He explained to IM that he was "*deeply concerned that the RGP were proceeding without first resolving the ownership dispute since it seemed ... that issue would likely have an impact on the proposed charges.*" Further, the AG told IM he was "*concerned about the proposed number of charges, 76, which seemed wholly excessive*" (Llamas 1 para 29 [A277]).
- iv. "*After a long, and from my recollection amicable discussion, we reached what, for me, was a very clear understanding between us, namely that the RGP would not take further action until they had (i) clarified the question of the ownership of the NSCIS platform (ii) rationalised the charges (which the DPP had told me was extremely possible to do), and (iii) whereupon Mr McGrail would meet with me and the DPP before taking any further steps. It was clear beyond peradventure that nothing, other than what we agreed to, would happen until we met again.*" (Llamas 1 para 32 [A278]) (underlining added).
- v. "*There was nothing in what I said, or in the manner in which I said it, that Mr McGrail, DS Richardson or anyone else in the RGP could reasonably or properly have interpreted as interference or pressure to stop the investigation or change its course or approach, other than entirely appropriate advice and assistance in the context of those specific issues. Nor did Mr McGrail suggest otherwise to me.*" (Llamas 1 para 33 [A278]).
- vi. The AG was "*only concerned about the ownership/rationalisation issues and it should have been abundantly clear to IM from that meeting how sensitive this investigation was... and that he would not take such draconian and disproportionate action as executing search warrants on James Levy without first having bottomed out the issue of ownership of the platform/rationalisation of the charges*" (Llamas 2 para 26 [A304-5]).

vii. CTI asked the AG to explain how the agreement was “*clear beyond peradventure*”. He stated: “*If I have called him in to tell him ‘Ilan, be careful, take tremendous care with this investigation’, that meant ... as a minimum ... ‘don’t take any radical steps, not any major steps in the investigation until you’ve done this’...*” (**Transcript Day 11 p191.10**). The AG stated that he thought the agreement was “*obvious from the context of the meeting ... we did not shake hands over it, we did not say ‘we’ve reached this agreement. Come back to me.’ No, but I thought the context of the meeting was one in which he would have understood that he would certainly speak to the DPP or me again if a radical, big step in the investigation was going to take place*” (**Transcript Day 11 p195.19**). He then accepted that it was more of an implication in terms of the agreement (**Transcript Day 11 p196.6**).

b. IM disputes an agreement on those terms.

- i. IM’s position can be summarised as accepting that he agreed to rationalise the charges, but denying that he agreed to do this before taking any further steps in the investigation (**Transcript Day 6 p180.15, 185.3**).
- ii. IM does not refer to the 7 April 2020 meeting by date, but stated that “*as the investigation was approaching its conclusion the AG advised that he would want to be consulted on the charges that we were considering to proffer*” (McGrail 1 para 21 [**A6**]).
- iii. IM stated that he agreed with the AG to consider sample charges, and that he asked the AG to explain his reasons for streamlining 80 charges to 25 or 17 (McGrail 1 para 21 [**A6**]).
- iv. IM stated that he considered this discussion to be premature, as “*the investigating team still had to interview JL. His interview could lead to more counts being added or clarify matters and therefore generate less counts. It was clear to me and the investigating team that charges could not be proffered until all enquires with suspects had been closed.*” (McGrail 1 para 22 [**A7**]).
- v. IM’s evidence is: “*that particular meeting ended with the AG asking us to revert to see him once we had listed all the charges that had been uncovered*” (McGrail 1 para 22 [**A7**]).

- vi. IM's recollection of this meeting is also recorded in the email that he sent to himself on 12 May 2020 at 22:05 [B75]. He referred to this meeting (although not by date), and stated: "*it was agreed that the team would produce a list of proposed charges so that the DPP/AG would consider. He (sic) asking whether from 80 charges these could be brought down to 17... I proposed his reasoning behind this but he did not elaborate...*"
- vii. IM further notes that the alleged "*directions*" from the AG were not provided in writing after the meeting (McGrail 5 para 126 [A168]).
- c. LDV state that the AG suggested IM rationalise the charges, but does not refer to a clear "*agreement*" to do so:
  - i. LDV stated that he had been asked to join the meeting at the last minute by the AG. He stated that it was unusual for him to be involved in a meeting about a criminal investigation, and he did not remember any other matters (**Transcript Day 11 p15.2**). He stated that he realised that the investigation would be very sensitive, and referred to the professional connections between JL and the CM (**Transcript Day 11 p19.20**).
  - ii. In his first affidavit, LDV stated that: "*the Attorney General inquired about the significant number of charges and expressed concern that these should probably be rationalised, noting that this was a matter for the police to consider and decide (or words to that effect). It was also mentioned during the meeting that Mr James Levy was being investigated. The Attorney General asked Mr McGrail to keep him informed until they could next meet*" (DeVincenzi 1 para 11 [A1300]). LDV explained in questioning that he understood this to mean IM would update the AG, "*nothing necessarily more than that*" (**Transcript Day 11 p17.7**).
  - iii. The Inquiry Team asked LDV to provide further particulars of this conversation, which he did by way of a second affidavit, where he stated: "*the Attorney General initially raised a concern that the list of charges might be excessive because it was premised on the Bland Group's ownership of the NSCIS platform, which the Attorney General considered, at minimum, an unresolved question. I believe the Attorney General also told Mr McGrail that the number of charges seemed him on an administrative or common sense or practical level, or words to that effect. These were two reasons which, from recollection, led the Attorney*

*General's suggestion that the RGP should consider rationalising the number of charges. ... My impression is that Mr McGrail and Mr Richardson were open to undertaking this exercise, if not wholly convinced it was necessary, and said they would report back to the Attorney General and DPP.*" (DeVincenzi 2 para 4 [A1304]). LDV explained that *"they accepted it was something they could look at and perhaps do better at"* (**Transcript Day 11 p23.1**).

- iv. LDV added that he did not recall the AG and IM agreeing not to take any steps until he next met with the AG, but rather *"to update him, to keep him informed. The language may have been wide enough to accommodate that, but I don't recall it being that specific"* (**Transcript Day 11 p19.1**).
  - v. LDV stated that he discussed the number of charges with the AG after the meeting, and he did not recall thinking during that discussion that the AG was under the impression that no steps were being taken in the investigation at the time (**Transcript Day 11 p26.12**). During that discussion, he stated that the AG described the RGP as *"payasos"* (clowns) (**Transcript Day 11 p26.24**). The AG did not remember this, but in any event apologised (**Transcript Day 12 p24.25**).
  - vi. LDV stated that he was not surprised that the RGP had sought to execute the warrant given what had been discussed, and he did not believe that IM had broken an agreement reached at this meeting by doing so (**Transcript Day 11 p39.7**).
- d. PR's (non-contemporaneous) note of this meeting states: *"AG asks that we rationalise the charges down from 70+ to whittle out those that depend on ownership and then we see what remains."* [A1436]. PR stated that he interpreted this as a suggestion rather than a direction from the AG (**Transcript Day 4 p64.3**). PR accepted that they agreed to rationalise the charges down (*"that was in our mind anyway"*): **Transcript Day 4 p66.13**. However, PR does not recall any agreement being reached that the RGP would not take any further action until the charges were rationalised: if such an agreement had been reached he would have made a record, discussed with IM and MW, discussed with DPP and not proceeded to obtain a warrant, which would have been *"unthinkable"* (Richardson 3 para 72 [A1437]). He explained: *"If the AG had advised the Commissioner of Police and/or a senior police officer not to do this, for that police*

*officer to have gone ahead and done it, it would have ended his career” (Transcript Day 4 p69.16).*

- e. PR added that during the meeting, the AG mentioned the possibility of considering Caine Sanchez under the Civil Service Disciplinary Code, which PR was “shocked” at (Transcript Day 4 p60.2). PR stated that he replied: “From what we understand, the man is corrupt” (Transcript Day 5 p10.7). The AG’s response to this is set out above.

338. In support of his account of the meeting and understanding of the agreement, the AG referred to a letter sent by IM to the Financial Secretary on 8 April 2020 which requested a witness statement from HMGoG on the issue of the ownership of the intellectual property of the NSCIS. The covering email stated: “please find attached a scanned copy of a letter regarding a key issue that remains pending in the investigation of the hacking of the NSCIS platform...” [B1899]. The letter referred to the issue of the ownership of the NSCIS, and stated: “the Director of Public Prosecutions has advised that the issue of ownership of the platform is integral to the prosecution of the case...” [B1901].

339. After the Hearing, the AG disclosed a copy of a timeline that he had prepared for his lawyers in June 2020 (over which he waived privilege). The AG described the meeting of 7 April 2020 and described the agreement as “a clear agreement” which was “beyond peradventure”. LDV commented on this paragraph with the “suggestion”: “I appreciate that the CoP and the DS may have thought that the understanding we reached was limited to the exercise regarding the rationalisation of the charges against the individuals who were the principal subject of our discussion.” This supports LDV’s evidence that there was no clear agreement, as he suggested there was room for interpretation. On the other hand, LDV’s comment also proposes the insertion of the following sentence: “However, even if this was the case, it was implicit that no action on the case more broadly would take place without my being informed.” That could be interpreted as either (a) LDV corroborating the AG’s alternative position that there was at least an implicit agreement during the meeting (which goes beyond what LDV said in evidence), or (b) LDV softening the AG’s own account and recollection of what occurred at the meeting. CTI suggest asking LDV to consider this document and clarify what he meant by that comment.

340. On 8 April 2020, the DPP met with PR and MW by video. Prior to this meeting, the DPP had read the Charging Report (**Transcript Day 10 p50.12**), but stating that he did not give the NDM much attention because he considered it to be an internal operational document (**Transcript Day 10 p154.12**). At this meeting, the DPP was asked to advise on whether JL should be treated as a suspect. The DPP stated that with hindsight this was quite a strange question to put to him as DPP (**Transcript Day 10 p60.11**).

a. PR's note of this meeting in the Delhi Day Book states [**C1783-4**]:

- i. *"No grounds at this stage to pull the prosecution"*.
- ii. *"AG wntd speak to COP RE public interest"*.
- iii. *"Conspiracy to defraud charges – there is sufficient evidence to lead a jury to a realistic prospect of conviction."* The DPP stated that this was a reference to the Former Op Delhi Defendants, and stated that in giving this advice he had considered that the maintenance contracted amounted to a proprietary interest capable of giving rise to the conspiracy (**Transcript Day 10 p54.19**). He stated that at the time, *"we were all convinced"* that conspiracy to defraud was a common law offence in Gibraltar (**Transcript Day 10 p55.11**). However, PR stated that this was a reference to the conspiracy to defraud charges which included an allegation against JL (**Transcript Day 4 p72.1**).
- iv. *"Re JL – Reasonable grounds to question. Would be a lingering doubt otherwise. Obligation to interview under caution"*. The DPP confirmed that he meant there would be a lingering doubt if the RGP did not question JL (**Transcript Day 10 p59.11**). He stated that it was not for him to *"approve"* whether JL was interviewed under caution (**Transcript Day 10 p66.6**).
- v. *"Need to drill down in the detail Re: ownership of the platform to determine what charges should go ahead. - ? need to revise to lower number (of charges)"*. The DPP considered that this note was fairly accurate (**Transcript Day 10 p62.10**).
- vi. *"Public Interest? not pulling – AG in full agreement... if we need to pull in Levy then so be it"*. The DPP explained that he had discussed this matter with the AG, and their view was that the public interest in the matter *"was so serious it needed to proceed at all costs ... Knowing who was involved, I might add. Names may come out at a later stage, fine. Political"*

*embarrassment wasn't a matter that I was concerned with or the AG was..." (Transcript Day 10 p62.22).*

- b. PR's note is consistent with MW's notes [B3199], which stated that "*Mr Levy was considered. DPP stated that there were still questions that he needed to answer. Interview under caution was appropriate*"; and that the DPP "*agreed that Mr Levy should be treated as a suspect as there were questions which needed to be answered. He should be interviewed.*" [B1398]. The DPP did not believe he used the word "*suspect*", but stated "*he's a person of interest who needs to answer questions, hence ergo, I suppose, that makes him a suspect*" (Transcript Day 10 p65.1).
- c. In his witness statement, PR adds additional evidence that at the end of this video call: "*the DPP confirmed that he understood our rationale for preferring a warrant to a production order. This was an operational decision for the police. Although he would have opted for a production order rather than a warrant, whatever we chose he would back us.*" This is not recorded in the Delhi Daybook or MW's notes. However, PR explains that this was because: "*At that point the choice between a warrant and a production order was secondary to the DPP agreeing that JL should be treated as a suspect, and I did not note this exchange.*" (Richardson 1 para 41 [A1432]), see also **Transcript Day 4 p75.15**. PR stated that this comment by the DPP "*made us think about it at that time, but our main consideration for choosing a warrant as opposed to a production order was that a production order in Gibraltar would have to be on notice*" (Transcript Day 4 p76.21). MW suggested that it may not have been recorded in a note because the comment "*was given no importance by the DPP himself*" (Transcript Day 5 p167.21).
- d. The DPP stated that he did not recall expressing a preference for a production order over a warrant at this meeting, but stated that PR could have asked him. However, he accepted (based on the transcript of the 15 May 2020 meeting below) that he must have expressed this preference to PR at some stage (**Transcript Day 10 p68.14, 269.10**). He did not recall expressing this view before the application was made to the Magistrate on 6 May, but said that he would have given this advice if asked (**Transcript Day 10 p71.20**). In any event, the DPP stated that he did not "*strongly advise against*" a warrant (**Transcript Day 10 p76.4**).
- e. MW gave evidence that: "*I recall, but am not certain, that prior to the application for the search warrant the DPP expressed the view that whilst he would have*

*applied for a production order rather than a search warrant that was an operational matter for the RGP. He further stated that if the use of a production order were to be challenged by judicial review he would defend the RGP's position and that, in his view, we would be successful"* (Wyan 3 para 31 [A1044]). He was not certain that the DPP expressed this view at the 8 April meeting (**Transcript Day 5 p166.17**). However, MW's evidence was that the DPP did not strongly advise against a warrant: *"I would put it no more than a comment, a remark, that he would have used a production order, but he described it as an operational matter"* (**Transcript Day 5 p208.6**).

341. The Inquiry received the following evidence on the updates that were provided to IM about the DPP's advice after 8 April:

- a. IM attested that: *"When they came back after I first asked them to confer with the DPP, they came back and basically it was 'Boss, we've got the green light' and that for me suggested that everything had been squared off. There was talk about the warrant."* IM stated that he was content to defend the warrant (**Transcript Day 6 p174.7**). CTI asked IM to elaborate on whether PR said the DPP would prefer a production order. IM replied: *"I can't put hand on heart and say that they did but its an inference that I draw, that there was – I know they talked about the word and that the warrant was not an unlawful approach and that he would resist any challenge to it"* (**Transcript Day 6 p176.12**). Like PR, he emphasised that the main emphasis of the brief was the classification of JL as a suspect (**Transcript Day 6 p177.10**).
- b. PR stated that he reported back to IM on the 8 April meeting, and he imagined that this corresponded with the contents of the briefing note. He could not be sure whether he reported the DPP's preference for a search warrant rather than a production order" (**Transcript Day 4 p82.3**).
- c. MW stated he did not brief IM (**Transcript Day 5 p169.8**).
- d. However, on 21 April 2020, PR sent a draft *"Commissioner's briefing note – DPP's Advice on OP Delhi"* to MW for factchecking [B3681]. This included a summary of the 8 April 2020 meeting. CTI do not know whether this note was ever sent to IM.

342. On 20 April 2020 there was a WhatsApp call between PR and the DPP to discuss the impact of COVID Regulations on the Magistrates' Court. This was probably on the back of

MW's Options Report referred to above. PR made notes in the Delhi Day Book [C1784], which state "*interview of JL needed*" and referred to "*US evidence delayed*". PR explained that this referred to the bail arrangements for the Former Op Delhi Defendants, and whether the RGP would be able to charge them whilst still waiting for JL to be processed (Transcript Day 4 p85.4).

343. On 30 April 2020, MW emailed PR stating that "*we are*" in the process of drafting warrants, a plan for the execution of the warrants and interview questions. In questioning, he clarified that he used the expression "*we*" but that DC Clarke was the person who did the drafting (Transcript Day 5 p181.10). He stated: "*we have no lawyer to review the privileged material – I would suggest that we contact the DPP to see whether instructing / contacting a local lawyer is a viable option*" [B3285]. On 4 May 2020, MW followed up with PR stating: "*with your permission I would like to write to the DPP and ask whether he would have an issue instructing a lawyer for privileged material*" [B3284]. The DPP stated that MW never contacted him on this issue (Transcript Day 10 p80.16). PR's recollection was that this would have been discussed and we agreed to consult with JL on his preference (for a local vs UK lawyer) (Transcript Day 4 p94.4).

344. On 5 May 2020, the AG and LDV discussed the NSCIS file (DeVincenzi 1 para 14 [A1300]). The Inquiry received the following evidence:

a. LDV stated that they discussed "*the constitutional role of Attorneys General in Gibraltar and the wider Commonwealth.*" Asked why, LDV stated: "*I had the sense that it was useful ... for the Attorney General to focus his mind um on his role, what it meant, the fact that um under Gibraltar's constitution his role isn't an expressly political role. I just had the sense that at this stage it was important for him to, as it were, focus on his role as Attorney General, which I'm sure he was, but I just thought it was useful to begin to have a conversation around drawing lines, different roles, my role, his role, who was advising whom. It was an intuitive sort of discussion...*" (Transcript Day 11 p28.11). He then added: "*I was aware that Mr Levy was in the mix. I thought it was possible, possible, that he might be importuned by Mr Levy, possibly by the Chief Minister. Um given what was at stake, potentially at stake, I don't want to cast aspersions, but I thought it was a possibility...*" (Transcript Day 11 p29.8).

b. LDV 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 (**Transcript Day 11 p30.5**). LDV gave evidence that: *“I thought it was possible that a similar scenario could play out. Things happen in complex democracies, lawyers come under immense pressure – that pressure need not be sinister but I thought it was important to look at what might be happening in the background, what might plausibly be happening in the background or could plausibly happen in the future and for him, if he needed it to gird his loins against any sort of importuning by anyone...”* (**Transcript Day 11 p30.21**).

- c. LDV stated that the AG was open to looking at and considering the Report, but he did not think the AG read it (**Transcript Day 11 p31.21**).

345. On 7 May 2020, there was a conference call between PR, IM and Mr Gaggero [**C1789**]. IM explained that it was necessary to keep Mr Gaggero informed as the complainant (**Transcript Day 6 p161.15**). PR’s Daybook entry recorded the following: *“V sensitive execution pending – not to be discussed by iPhone.”* The note also recorded: *“Grey man in joint meeting with COP – made him feel v uncomfortable of Gov involvement (grey man had approached him). Grey man feels let down and betrayed”* [**B1790**]. PR explained that Mr Gaggero referred to JL as the “grey man” because *“he was in the shadows and therefore not out in the light”*; his recollection was that Mr Gaggero was saying he had been cornered by JL and that JL had stated he had felt let down (**Transcript Day 4 p122.12, 123.12**).

12 May 2020

346. As explained above, RGP officers attended Hassans on 12 May 2020 after applying for and being granted the Search Warrants on 6 and 7 May 2020.

347. At 12:25 on 12 May 2020, IM messaged the CM stating: *“before you hear it from anyone else I want to inform you that detectives are executing a search warrant at Hassans for (JL) in relation to the case against Perez, Cornelio and Sanchez. Its been done in the most discreet of ways and we’re hoping there is cooperation”* [**A190**]. IM sent an identical message to the AG at 12:26, except addressed to “Michael” and ending with *“I have also*

- advised CM*” [A279]. IM explained that he informed the CM at the latest possible opportunity (Transcript Day 6 p191.1).
348. At 12:28, the AG replied: *“Ian, we had agreed that you would come to me with a rationalisation of the charges before doing anything?”*. IM replied at 12:29 stating: *“We agreed we’d do that when all the loose ends were tied up and this included the inquiries with JL.”* Also at 12:29, the AG messaged the CM stating: *“Are you free? 2 mins?”* [B1417]. The CM’s evidence was that he then spoke to the AG, but he does not remember if it was a phone call or face-to-face (Transcript Day 16 p164.15). The AG believes it must have been in person (Transcript Day 11 p203.23).
349. At 12:30, the AG then replied to IM: *“No. That was not what we agreed.”* [A280]. The AG said that this message *“took [him] by surprise as it was a clear violation of what Mr McGrail and I had agreed in our meeting of 7 April 2020”* (Llamas 2 para 38 [A280]). IM said that the AG’s messages *“completely misconstrued the situation”* (Transcript Day 6 p193.22).
350. At 12:30, the RGP arrived at Hassans and were shown to the Boardroom [B3497]. PR explained that he arranged entry through Javier Chincotta (a school friend of PR’s) (Transcript Day 4 p125.4). On arrival he told Mr Chincotta that they needed to speak to JL, that they had a search warrant, and that he would like JL to come to the boardroom (Transcript Day 4 p127.15).
351. The CM replied to IM at 12:34 stating: *“Ian, Thank you for the courtesy of this information. I think that is a bad decision. A search warrant should only have been sought ff you believed that the person in question was not going to cooperate and will try destroy evidence. If, as you say, you are hoping for cooperation, especially in a case involving a senior Silk and head of Gibraltar’s largest legal firm, you should, in my view, first have sought to contact that person and obtain cooperation. Given my close personal relationship with JL, I won’t comment further.”* [A191] The CM did not recall whether, when he sent this message, he had already spoken to the AG (Transcript Day 16 p165.6). He explained that he sent this message because there was a jurisdictional risk as a result of the execution of the search warrant; *“Gibraltar’s reputation was in play”* (Transcript Day 16 p166.12). He also stated that when he sent this message, he had *“no reason to believe the investigation was of Mr Levy”* [C4748]. The AG does not recall whether he was with the CM when the CM sent this message (Transcript Day 11 p205.21).

352. The CM's evidence was that *"Just after sending my response, I was informed that Mr McGrail was actually, at that moment, in No 6 Convent Place on an unrelated matter. I therefore asked that he should come up to my office to see me, which he did"* (Picardo 1 para 41 [A191]). The CM explained that he asked for IM to be *"got on the phone for me, and I was then told that he was in No 6 and did I want him to come up"* (Transcript Day 16 174.22). He explained that even though he said he would not comment further, he saw fit to call IM as he wanted more information (Transcript Day 16 p175.19), and then the meeting was spontaneous when he learned IM was in the building (Transcript Day 17 p73.20). IM agreed that he was *"called out from the meeting I was in and requested to go to see the CM and AG"* (McGrail 1 para 32 [A9]). According to IM, this happened *"maybe ten minutes"* after he sent the message to the CM, which would place the start time around 12:40 (Transcript Day 6 p202). The CM also thought that the meeting started before 13:00 (Transcript Day 16 p176.4).

353. IM stated that the CM and AG entered the Cabinet Room together from the CM's office (McGrail 1 para 32 [A9]). In questioning, IM elaborated that *"there was a lot of emotion, there was a lot of anger. The Chief Minister's steamed into that room with – I've never seen him before like that: flared nostrils, disjointed face, and really let rip."* (Transcript Day 6 p196.12). IM attested that *"the CM was the principal berater and to a lesser extent Mr Llamas"* (Transcript Day 6 p228.12), and that the AG did not intervene to stop the CM from berating (Transcript Day 7 p98.18). In response to this allegation:

- a. The CM denied that he berated IM, but stated *"I think I made my strength of feeling very clear..."* (Transcript Day 16 p177.13).
- b. The AG thought that *"berating is putting it too far. It was a difficult exchange. It was uncomfortable. The Chief Minister was angry..."* (Transcript Day 11 p209.3). He agreed that he did not intervene to stop the CM, but added that IM was not keeping quiet (Transcript Day 11 p210.6). He denied that he was part of the berating, and said he hardly spoke (Transcript Day 11 p210.15). However, he stated that *"I did feel very uncomfortable about [it] that night"* (Transcript Day 12 p83.21).

354. The content of this meeting is the subject-matter of one of the most important factual disputes of the Inquiry.

355. The CM's evidence was that:

- a. He started by asking “*what on earth ... had happened that you have decided to go by way of search warrant against James Levy?*” (**Transcript Day 17 p178.22**).
- b. The CM “*made clear, in firm and forthright language ... that I considered the RGP had not acted properly in the execution of a search warrant in respect of a senior lawyer like Mr Levy*”, and said that he was not making the point because he was close to JL, as he would make the same point about other senior lawyers (Picardo 1 para 44 [**A191**]).
- c. The CM told IM “*that the communications devices of senior lawyers were likely to include legally privileged material...*” (Picardo 1 para 45 [**A192**]).
- d. The CM “*was both angry and seriously concerned about the effect of the RGP’s actions*”, including financial consequences from claims for damages for breaches of privacy and confidentiality (Picardo 1 para 47 [**A192**]).
- e. The CM told IM that he knew from his experience as a young barrister that “*Justices of the Peace routinely granted warrants based on the information laid before them, relying on the RGP’s submissions, without careful legal analysis*” (Picardo 1 para 48 [**A193**]). In questioning the CM confirmed that he had not seen the evidence against JL prior to 12 May 2020 (**Transcript Day 17 p65.6**).
- f. “*Mr McGrail then retorted that he had taken the advice of the Attorney General on this matter. Mr Llamas, who was in the room with us throughout, stated that this was not true. Mr McGrail then insisted that he had sought the advice of the Director of Public Prosecutions on whether to obtain a search warrant or a production order for Mr Levy. Mr McGrail then specifically told me that the advice of the DPP was that they should proceed by way of search warrant. The Attorney General said he did not believe that the DPP had given such advice. I responded by saying that I too did not believe that would have been the advice of the DPP (with whom I have never discussed the matter), but that if that was the advice of the DPP, then I would have to disagree with the DPP also.*” (Picardo 1 para 49 [**A193**]) (underlining added). In questioning, the CM confirmed that IM specifically used the word warrant (not intervention). According to the CM, IM did not state (1) that the DPP had advised on whether to treat JL as a suspect, as this “*would have stuck out like a sore thumb*” (**Transcript Day 16 p206.13**); (2) that “*the DPP has been advising throughout*” (**Transcript Day 16 p209.13**); or (3) that all the grounds to deal with JL had been consulted with the DPP (**Transcript Day 17 p189.18**).

- g. The AG made the point that IM had indeed sought his advice, and that IM had agreed there would be no further action without speaking further (Picardo 1 para 50 [A193]).
- h. After the meeting, the CM asked the AG to confirm whether or not the DPP had agreed that a search warrant was the correct manner for the RGP to obtain relevant evidence. The AG confirmed to the CM that the DPP had not advised the RGP to proceed in this way (Picardo 1 para 54 [A194]). The CM denied threatening IM (**Transcript Day 16 p186.7**). He stated that by referring to “consequences” he meant there would be consequences for the RGP in the sense of being exposed to a claim for damages (Picardo 2 para 13 [A226]).

356. The AG’s evidence is largely consistent with the CM’s. He stated:

- a. The CM informed IM that “*the RGP’s decision to execute the search warrants on Mr Levy was wholly inappropriate and ill-advised*”, and the CM could not understand why the RGP had not approached JL in a less invasive way on the basis of a Production Order. The CM said that he was not reacting in this manner because of his “*strong ties*” to JL, but that he would have reacted in the same manner to search warrants executed against any senior lawyer (Llamas 1 para 40 [A280]).
- b. The CM informed IM that the search warrants were likely to contain legally privileged material, and that the Government may face damages claims for breach of privacy (Llamas 1 para 41 [A281]).
- c. IM defended his decision on two grounds: (1) that the warrants had been granted by a judge, and (2) “*that he had been taking advice from [the AG] and intimated that I had approved the course of action the RGP had taken*”. The AG stated: “*This was totally untrue and I said so. I could not believe he said that...*” (Llamas 1 para 43 [A281]).
- d. IM then stated that “*he had been taking advice from the DPP and that the DPP had advised him that the RGP should proceed by way of a search warrant.*” (Llamas 1 para 44 [A281]). The AG stated in questioning that IM specifically referred to the warrant, not “*intervention*” or whether to treat JL as a suspect (**Transcript Day 11 p214.10**).
- e. The AG “*referred to the understanding that Mr McGrail and I had reached in our meeting of 7 April 2020 that he would take no further action until the charges were*

*rationalised. I told Mr McGrail that there had been a breach of trust between us since he had acted in complete disregard to what we agreed” (Llamas 1 para 45 [A281-2]).*

- f. After the meeting, the AG confirmed the position with the DPP and passed this information on to the CM.
- g. The AG denies that he “berated” IM, and stated that IM used this as an excuse to secretly record subsequent meetings (Llamas 2 para 45 [A310]).

357. IM’s recollection of the meeting is recorded in an email that he sent to himself that night at 22:05 [B74], which is largely replicated at paras 32 – 35 of McGrail 1 [A11]. The email recorded the following:

- a. The CM stated: *“What are you doing Ian, this is a complete blunder. Why go with a warrant? Do you suspect Jaime has committed a crime? Look Jaime can be many things and he has been in messes before but he is not a criminal. He is a senior Silk, head of the Jewish community, helps out the RGP if needed, he is the head of the biggest law firm and he has a very good reputation as a lawyer. Are you suggesting that Jaime would destroy or dispose of evidence? You know Gibraltar, this will get out and you are managing this investigating very very wrongly. Why didn’t you ask him to give you what you needed?”*
- b. IM replied that the team wanted devices *“which we knew JL would not hand over unless compelled to do so with a warrant”*. IM stated: *“I felt the CM was questioning an operational decision on a live matter and this was not appropriate.”*
- c. The CM stated that he hoped IM was right *“as there would be consequences if [the CM] was found out to be right, in that we had not conducted ourselves properly on this matter”*. IM stated in evidence that he *“took this as a sort of threat from the CM”* (McGrail 1 para 34 [A11]). In questioning, IM elaborated, with considerable emotion, that he thought this meant *“That my head was on the line”* (**Transcript Day 6 p196.20**).
- d. The CM stated that he would be calling in the *“Senior Command Team”* to address the RGP *“on how inept we were at investigating white collar crime”*.
- e. IM advised: *“that the warrant had been signed by a judge who was satisfied that this was the likely method we had to resort to in order to recover the material which could hold evidence and that all the grounds (sic) to deal with JL had been*

*consulted with DPP.*” (Emphasis added) In questioning, IM could not recall if these were the exact words he had used, but said “*All I can say is that I told him: ‘Look, I am not shrugging responsibility here but the team has been consulting with the DPP on this.’*” (Transcript Day 6 p199.1). IM said that this was not a reference to the warrant, but the general issue of how Mr Levy had been addressed. IM accepted that he did not make it clear that the DPP had not advised on the warrant (Transcript Day 6 p200.10).

- f. The CM “*dismissed this*” and said it was easy to get a warrant.
- g. There was a “*heated debate on whether the actions of the team were proper or note ... I stated that it would be left to a court to decide who was right or wrong.*”
- h. IM concluded in his email that: “*... the AG has no operational remit and his address to me in this regard is wholly improper... I felt totally cornered having to explain a tactical decision on a live criminal investigation. ... My hypothesis is that the AG himself is under some form of pressure to ensure that the investigation is terminated and the intervention of JL has shown him up for not having achieved the stopping of the investigation. ...*”

358. IM adds the following detail in his witness statements about the meeting:

- a. IM was “*struggling to understand how the CM was seemingly aware of parts of the evidence gathered in Op Delhi*”, which had only been shared with the investigating team and the DPP (McGrail 1 para 34 [A11]). In questioning, IM elaborated that CM said “*You’ve got what you need from the others*” (ie, their phones)” (Transcript Day 6 p212.17).
- b. The CM made a “*passing but seemingly unconnected comment that he had earlier that morning been speaking to JL about the reopening of the places of worship*” (McGrail 1 para 34 [A11]). This is not mentioned in the version of IM’s note sent on 12 May [B74], but is in the covering email of the corrected version that he sent himself the following morning [B78].
- c. IM “*could not understand how the officer of the court status that the CM was relying on could actually override and take precedence over the status of ‘suspect’*” (McGrail 1 para 36 [A11]).
- d. The CM was critical that Mr Gaggero was “*using the RGP, and that the RGP was knowingly allowing itself to be used to pursue what in essence was a commercial dispute*” (McGrail 1 para 38 [A11]).

- e. The CM stated that *“the actions carried out by the team bore serious consequences – he referred to the Financial Secretary, another minister, a member of the opposition and himself as all being partners in Hassans”*. The CM stated that Mr Rosety (a Spanish Parliamentarian) would *“capitalise on information about this investigation”* in connection with the Incident at Sea (McGrail 1 para 41 [A11]).
- f. The AG stated that IM *“had betrayed him because the action carried out by the team was not what had been agreed with him”* (McGrail 1 para 43 [A11]).
- g. *“What I was referring to was the status of ‘suspect’ for JL had been the suspect of consultation and agreement with the DPP who had advised the team generally on the investigation throughout.”* (McGrail 3 para 147(iii)(e) [A119]).
- h. IM does not recall whether he said he obtained advice from the AG, but it is *“quite possible”* that he mentioned the AG, and explains that this is because *“historically in the RGP, the prosecutor’s office has been known as the AG’s Chambers”* (McGrail 5 paras 114-5 [A165]). PR also gave evidence that the *“AG’s chambers from a police perspective was where the Crown counsels lived...”* and this phrase lived beyond when the DPP took over amongst older officers (**Transcript Day 4 p225.7**). However, the CM stated that IM referred to the AG and gesticulated towards him (**Transcript Day 16 p206.2**). The AG also did not recall a reference to the AG’s Chambers, and stated *“he referred to me or else I would not have intervened”* (**Transcript Day 11 p212.16**).
- i. IM did not say that the DPP had advised on the warrant – *“what I said was that the DPP had been advising the investigating team throughout the course of the investigation ... and that he was privy to the evidence involving Mr Levy and that he agreed with this classification as a suspect”* He adds that: *“It was my understanding via Superintendent Richardson that even though the DPP did not advise on the warrant, he told the investigating officers that he would defend any potential challenge if any arose from the RGP’s actions”* (McGrail 5 para 117 [A166]).  
 IM stated that he *“took [the CM and AG’s] rebuke to be an inappropriate interference with the operational independence of the Police, designed to cause me to halt the actions of Superintendent Richardson and his team”* (McGrail 5 para 119 [A167]).

359. While this meeting was occurring (the AG believed that it lasted about 20 minutes (Llamas 1 para 40 [A280])), the RGP officers were still at Hassans. IM stated “*by applying the pressure that they did, with the threat included, I took it to mean that I should call back the officers of Hassans, that I should stop the activity...*” (Transcript Day 7 p160.20). IM stated that the CM and AG must have known that the search warrant was being executed during the meeting, as “*it was only a matter of minutes between me notifying and the berating commencing*” (Transcript Day 7 p161.6). However, the CM stated that he did not think this was “*an operational matter*” (ie, that it was continuing), as IM told him the RGP had already executed the warrant; so “*the horse had bolted*” (Transcript Day 16 p181.13).
360. At 12:46, PR and MW discussed with Javier Chincotta “*reasons for visit including reason / search warrants / intent to interview*” [B3497]. At 12:50, Mr Chincotta called JL, and PR spoke to him over the phone. MW’s note recorded: “*JL upset. States there will be repercussions. PR says that he needs to follow up inquiry. JL says he will call back.*”
361. At 12:57, the AG missed a call from JL [A282].
362. At around 13:05, JL called back PR and agreed to come in to Hassans and explain his position [B3497, C1794]. PR’s note recorded the conversation: “*offered to ask family to exercise – no I have no secrets from my family. Will come to office and may be what I say will avoid need to search. PIN – will give PIN.*”
363. At 13:07, the AG missed another call from JL. However according to the AG, he did speak to JL either later that day or the following day and JL “*complained to me about the way he had been treated by the RGP.. I listened to what he had to say and told him that the DPP was handling this matter and that he should speak to him, which believe he did*” (Llamas 1 para 48 [A282]).
364. JL then walked from his home to Hassans. He gave evidence that on this walk, he telephoned some of his children, two friends who were barristers in England and the CM. As to the latter call, the Inquiry received the following evidence:
- a. JL stated that they spoke for two minutes in which JL said “*I’m on my way to the office to deal with a warrant*” (Day 8 p157,6). JL stated that he was ringing the CM as a friend (Transcript Day 8 p158.5). JL stated that he did not ask the CM to do

anything, and that there was nothing he could have done (**Transcript Day 8 p225.24, 226.20**).

- b. JL recalled that the CM expressed consternation in relation to the warrant (**Transcript Day 8 p159.9**).
- c. If this call took place, JL must have initiated it as the CM has given evidence that Gibtelecom confirmed there were no outgoing calls by the CM between 12:20 – 13:00 that day (Picardo 3 para 17 [**A235**]). This is possibly the call that the CM mentioned in Picardo 3 para 12 [**A235**]: *“I recall (because the date is noteworthy by virtue of these events) that I spoke to Mr Levy on the telephone on the 12th of May. I do not recall the time at which I spoke to him. I expressed to Mr Levy my consternation at how the Police had acted in executing a Search Warrant at his home.”*
- d. The CM did not recall whether he spoke to JL before or after speaking to IM (**Transcript Day 16 p237.25**). However, his recollection of the call was that JL was *“a combination of incensed and depressed about what was happening”*, and he was close to despondent (**Transcript Day 16 p239.7**).

365. JL then arrived at the Hassans boardroom. JL stated that before the RGP started the bodyworn cameras (which PR/MW had taken on the advice of IM), PR informed him that *“advice had been obtained at the highest level, which I understood to be the Director of Public Prosecutions”* [**B5229**], (**Transcript Day 8 p144.21, Day 5 p70.23**). MW did not recall anything of this nature being said to JL (**Transcript Day 5 p190.5**). PR also did not recall informing JL of advice at the highest level, but gave evidence of a conversation with Javier Chincotta in the lift where he said *“We have taken advice at a high level”* about the intervention (**Transcript Day 4 p133.5**). JL stated that this was not the conversation he was referring to (**Transcript Day 8 p143.23**).

366. What PR had told JL about the DPP’s advice was the subject of correspondence in the coming days:

- a. On 14 May 2020 [**C3722**], IM wrote to Hassans that: *“Although the DPP has been consulted on various non-operational issues concerning this investigation including the status of various parties he has not provided advice on the application of a search warrant which remains an operational matter”*.
- b. On 15 May 2020 [**C3802**], Hassans wrote to the AG that: *“There can be little surprise that, as we believe is the case, the DPP advised the Commissioner*

*against the making of these application*". Hassans also referred to *"the threat of the warrants and the clear misrepresentation that the warrants had been applied for on the advice of the DPP"*. In questioning, the CM stated that it was *"very likely"* that he referred this to Hassans (JL), and indeed *"to all and sundry"* (**Transcript Day 16 p263.20, 270.16**). The CM denied that it was implicit in the exchange he had with IM that this information was confidential (**Transcript Day 16 p265.15**). The CM maintained that he was free to share the information (see exchange at **Transcript Day 17 p298.11**).

- c. On 20 May 2020, in a letter from Hassans to IM, Hassans stated that *"I also note from your letter that the DPP's advice was not sought on the application for search warrants. This was contrary to what Mr Levy was led to believe by Detective Superintendent Richardson, and contrary to what we understand was the position."* **[B5444]**.

367. At 13:30, the body worn camera footage starts with JL in the boardroom at Hassans **[B3463]**. PR gave evidence that during the course of this conversation he received a call from IM which he left the office to take: *"Mr McGrail had said that he had the dressing down of his career by a Chief Minister and wanted me to come back to brief him..."* (**Transcript Day 5 p11.24**). The bodyworn footage captures that PR received a phone call and that he left the room briefly to take it, but not its contents or the identity of the caller **[B3479-80]**. PR mentioned this call for the first time during questioning, and added that he left Hassans before he had finished the search because of this call (**Transcript Day 5 p13.15**).

368. At 13:49, the AG messaged the DPP asking him to come to see him; the DPP agreed to attend in 20 minutes **[C6854]**. The DPP did not recall attending the AG's office, but agreed that it looked like he did (**Transcript Day 10 p84.9**). The DPP gave evidence that on a telephone call he informed the AG: *"that my advice had not been sought and that it was unlikely that they would ever do so in such circumstances as these were operational matters for the RGP"* (**Rocca para 13 A1297**). The DPP stated that he did not tell the AG he had expressed a preference for a production order, or that JL should be interested under caution (**Transcript Day 10 p86.10, p174.8**). The AG stated that he asked the DPP whether he advised the RGP should proceed by warrant, and he said no: *"he answered that specific question with a 'no'"* (**Transcript Day 11 p215.17**). He later agreed that *"what he said ... was that he had not advised on a warrant"* (**Transcript Day 11 p216.20**).

369. At 13:50, MW's note records that JL was allowed to leave the Boardroom so that he could consider whether to voluntarily hand over the items. He recorded that this was allowed as a "courtesy" [B3498]. PR's note records that at 13:56, JL and Mr Chincotta left the Boardroom "to consult privately before deciding whether to challenge SW" [C1794]. PR adds that JL consulted with a silk from the UK (Transcript Day 5 p101.16).
370. At 14:30, IM messaged JB stating "Joey – sorry for the bother. But I urgently need to speak to you face to face." JB did not reply to that message [C6561]. IM explained that he requested to meet JB, because he "needed to inform someone independent and in authority of the concerns [he] held about the inappropriate interference with a live criminal investigation" (McGrail 1 para 48 [A15]). IM does not recall what date this took place, but as this meeting is referenced in IM's email to himself of 12 May 2020 [B76], it appears it took place in IM's office that afternoon. JB denies this: his evidence was that he only heard about Operation Delhi at his meeting with IM on 15 May 2020 (Britto 1 para 10 [A321]). In questioning, he accepted "there's a remote chance it was on the 12<sup>th</sup>, but my records show that it was on the 15<sup>th</sup>..." (Transcript Day 15 p65.12). JB's evidence on the meeting of 15 May 2020 is addressed in Issues 8-10 below.
371. IM stated that he also gathered and briefed the Senior Command Team, but does not recall if PR was there (Transcript Day 6 p209.9). This is also referenced in his email to self on 12 May [B74]. PR said he was not at this briefing, as he was still at Hassans (Transcript Day 4 p157.12).
372. At 14:50, PR and JL attended JL's home, so that PR could also search it [B3498]. JL's evidence was that he took PR into his study and offered to open his locked drawer, but that PR said he did not need it (Transcript Day 8 p149.18). JL also gave evidence that earlier in the day, JL offered to show PR his two cupboards in his office at Hassans, and PR had declined ((Transcript Day 8 p149.13). The bodyworn camera recording [B3476] records that JL offered to "show you my office" but qualified "let me show one of you"; PR then volunteered "I'm happy to go". JL stated that "I didn't object to anybody coming, I just said I preferred one coming, but not that I objected to two coming" (Transcript Day 8 p162.7, but cf p152.10). Notably, there is no bodyworn camera footage of the search of JL's office or home; PR stated "I suppose that's not my fault... I probably didn't even realise until afterwards..." (Transcript Day 4 p131.12).

373. At 15:43, the AG reported back to the CM after speaking with the DPP [B1417]:
- a. The AG wrote: *“Spoken to the DPP. He is categorical that whilst he told RGP that an interview with JL would likely be necessary, he strongly advised against a search warrant.”*
  - b. The CM replied (in Spanish): *“Well then he has lied to us both.”*
  - c. The AG replied: *“Exactly he certainly gave us the impression that sw decision was sanctioned by DPP.”* *“CoP has since called DPP. Trying to cover his back with him.”* *“I’ve told DPP not to say or do anything without speaking to me first.”*
  - d. The CM replied: *“Incredible. There is some game afoot here...”*
374. The Inquiry received the following evidence on this exchange:
- a. As outlined above, the DPP denied that he told the AG he strongly advised against a warrant: **Transcript Day 10 p89.10**).
  - b. In questioning, the AG accepted that his message did not accurately convey what the DPP had said to him, and he *“got confused”*, perhaps if the DPP had mentioned his own preference for a production order (**Transcript Day 11 p216.10**).
  - c. The CM accepted that advising against versus not advising were two different things, but maintained that this did *“not vitiate the lie told by IM”* and that *“what I was told was very specific by Ian McGrail and neither of those get him off the hook of the lie that he told me”* (**Transcript Day 16 p211.3**). He did not recall when the AG corrected the position with him, but said it must have been in the course of the following day or later that day (*“fairly soon”*) (**Transcript Day 17 p213.4**). The CM stated that he shared the mistaken position with others, but that he corrected it (**Transcript Day 17 p205.18**). In respect of NP, this is addressed in Issues 8-10 below.
  - d. The CM also accepted that the AG’s text *“he gave us the impression”* was *“maybe”* different to saying that IM expressly said the warrant was sanctioned by the DPP, but explained that *“that’s probably just Michael’s shorthand 2 hours later. I remember distinctly what Ian McGrail said to me. I don’t think I will ever forget that meeting.”* (**Transcript Day 16 p214.7**).

375. The RGP's searches ended at 17:00 [B3498]. During the course of the search, JL handed over an iPad, and later in the day he handed over an iPhone after it had been backed up [B3434]. JL disagreed with PR's claim that "*it took nine hours of persuading*" JL to hand over the devices with a warrant, but could not remember how long it took him to hand the devices over (Transcript Day 8 p151.2). He added that it took time for one of the Heads of the Hassans IT Department to come to his office and mirror his phone, and it took time for the RGP to find a technician (Transcript Day 8 p160.1). MW's note records: "*Agreements that IT would run keyword searches on their system in order to extract relevant emails and documents from their systems. This was to run overnight due to the amount of emails.*" [B3134]
376. From 18:33, IM and the AG exchanged WhatsApp messages [A282].
- a. IM asked for a meeting, stating "*Michael – we are both disappointed but I just can't leave the matter as it is. I'd like to meet face to face. We have to work together & your wrong impressions about me need clearing up*".
  - b. The AG replied that it would not be constructive to meet, adding: "*For me it was abundantly clear what we had agreed and there is therefore very little to discuss about that. All I have tried to do is to help you in all of this and to protect Gibraltar plc which is what I have spent all my life doing. I feel very, very let down. A serious breach of trust has occurred.*"
  - c. IM replied: "*I respect your view not to meet but totally refute any breach of trust. We'll agree to disagree.*"
377. At 22:05, IM sent himself an email containing an account of his meeting with the CM and AG [B74]. He gave evidence that he typed this note out on his RGP desktop after briefing the Command Team, and when he got home emailed them to himself (possibly after adding more to the notes) (Transcript Day 6 p194.4). The RGP have not been able to locate this desktop file, but CTI understand that this search is ongoing. IM therefore estimated that he prepared this note at 14:00 or 15:00 (Transcript Day 6 p194.13).
378. At 23:03, the AG received an email from LB (on behalf of JL). JL stated that LB was acting on his behalf, but he had not instructed LB to contact the AG (Transcript Day 8 p172.13).
379. By way of background on LB's involvement, LB's evidence was that he was not involved in the setting up of 36N and prior to 12 May was only vaguely aware that Hassans had

invested in a security company (**Transcript Day 9 p52.17**). LB stated that at the time the Former Operation Delhi Defendants were arrested, he “*must have come to realise that this concerned the security company that we were somehow invested in*”, but that he did not raise any concerns about Hassans’ investment (**Transcript Day 9 p54.14, 56.5**). LB stated that he (along with Charles Bonfante) was instructed by JL on the afternoon of 12 May 2020 to represent his interests in the Operation Delhi investigation (**Transcript Day 9, p57.7**). As to this instruction:

- a. LB gave evidence that he did not “*pause*” before agreeing to represent JL: “*My instinct was to try and sort this out as soon as possible, by which I mean trying to put – trying to rectify what seemed to us to be a gross injustice ...*” (**Transcript Day 9 p58.1**).
- b. JL also engaged specialist counsel in the UK, which LB described as “*detached support*” (**Transcript Day 9 p59.13**).
- c. JL stated that he did not consider whether LB might be conflicted because he too owned a stake in Astelon (**Transcript Day 8 p164.6**). He did not see the relevance of the fact that LB was also a shareholder, because by that time 36 North didn’t have any contract following the CM’s decision to give it to another party (**Transcript Day 8 p234.22**).
- d. JL stated that he does not recall receiving updates from LB on his interactions with the AG/DPP, stating “*I wasn’t in a frame of mind to deal with it*” (**Transcript Day 8 p165.14**).

380. LB’s email was addressed to the AG in his “*capacity as guardian of the public interest*” and sought his “*urgent intervention with a view to ensuring that all the seized material is returned forthwith*” [**B1902**]. The email stated:

- a. “*I am extremely concerned by the apparent gross abuse of power...*”
- b. “*It directly impugned Mr Levy’s reputation and dignity as an officer of the court, the senior partner in Gibraltar’s largest law firm and a highly respected member of the local community.*”
- c. “*It is not even clear that a production order under section 13 could have been properly obtained...*”
- d. “*Mr Levy and my firm are, in addition, highly aggrieved at the fact that the RGP have taken Mr Levy’s tablet and mobile telephone, which, as you will appreciate,*

*contain a vast amount of privileged and irrelevant information ... legal professional privilege is sacrosanct.”*

381. During questioning, LB stated that he did not disclose the invitation for JL to attend a voluntary interview under caution to any third party (noting that the document included the disclaimer: *“This is an ongoing police investigation and the information provided herein must not be disclosed to any third party without authority of the Royal Gibraltar Police”* [C3523]) – see **Transcript Day 9 p67.8**. However, he clarified in his second witness statement (filed after he gave evidence) that he did in fact send this document to the AG as an attachment to the 23:03 email (**Baglietto 2 para 5**). LB surmised that this was to demonstrate the point in his email to the AG that although *“they left with [JL] a copy of a proforma relating to section 21 warrants of arrest, it is plain that the warrant which they claim to have had must have been a Section 12 warrant”* (**Baglietto 2 para 6**). However, he attested that he did not discuss the substance of the allegations contained in this document with the AG (**Baglietto 2 para 8**). JL stated that he did not disclose this document to the CM or AG (or anyone other than his lawyers) (**Transcript Day 8 p153.11**).

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382. The AG forwarded the email to IM seeking a meeting between IM, LB and the AG [**B3293**]. A meeting was initially arranged for 10:00 on 13 May 2020 [**C3667**], but IM later withdrew from this meeting [**C3663**], stating in an email on 13 May 2020 at 11:27: *“it would not be appropriate for the Commissioner of Police and the Attorney General to meet with counsel representing a person under investigation to discuss matters concerning a live investigation and which may be subject to a legal challenge as a later date ... I am working to provide a substantive response and would ask for your patience whilst I prepare this: I aim to revert to you by close of play today if not earlier.”* [**C3664**] The AG replied to IM stating *“I can formulate my own view on what is, or is not, appropriate”*. They agreed to meet at 15:00 with the DPP [**C3663**]. The AG stated that IM’s comments did not make him pause as to whether it was appropriate to meet LB, as *“it was crisis management at that stage”* (**Transcript Day 11 p224.19**). He was later questioned on what *“crisis”* he was referring to and appeared to suggest it was the very serious allegations made against the RGP and PR in the Hassans letter; he then stated that crisis could be the wrong word, but there was a situation that needed to be managed (**Transcript Day 12 p99.1**).

383. At 12:20, IM sent a further email to himself correcting typos from the previous evening [C3658].
384. At 12:32, LB sent a letter to the Magistrate’s Court [B3291, B5403] seeking copies of the application, notes of hearing and ruling. The letter alleged that: “*the search warrant raises huge questions of abuse of law / misfeasance in public office which is extremely worrying*”.
385. At 14:14, IM sent his promised substantive response to the AG [B1907], which defended the RGP’s actions in executing the warrants. In this email:
- a. IM stated that the reasons for obtaining a search warrant rather than a production order were that: (1) search warrants were used for other suspects in the case; (2) there was a need to seize JL’s devices at the time, not ask for them to be handed over on request; (3) production orders are obtained by inter-partes applications which would involve disclosing details of the investigation to an interested party.
  - b. The warrant followed the correct process where a substantial affidavit was produced and examined by the Magistrate over a period of 90 minutes having been provided a copy in advance.
386. On 13 May 2020 at 15:00, a meeting took place between the AG, DPP, LDV, IM and PR. PR took notes of this meeting [C1795], and the AG (Llamas 1 para 52 [A283]) and IM (McGrail 1 para 58 [A17]) has given evidence about what was said. However, the better source of what occurred is the audio file, which IM secretly recorded (the transcript is at [B108]). IM gave evidence that he secretly recorded the meetings because “*everything that I did on that day was influenced by the berating ... I felt vulnerable, extremely worried. There was also litigation threats from Hassans, and well suggested criminal offences of misfeasance in public offence on the part of my officers...*” (Transcript Day 6 p238.1). He did not give consideration to whether the recording was lawful, for example under data protection law (Transcript Day 6 p240.6; see also the questioning from Transcript Day 7 p85.11).
387. At that meeting:
- a. The AG asked IM why he applied for a search warrant; IM replied that they did not expect JL to hand over the data willingly [B109]. The AG stated that he would not have supported a search warrant, and stated: “*Christian has not advised that you,*

*should, should do that, and therefore you have taken that decision on your own as is your right to do” [B110].*

- b. The AG stated that: *“I repeat my position, from which I would never budge because I am 200% certain of what we discussed here, in this room, that day. You, both left this room with an agreement that you were going to rationalise the grounds and that you would come. Nothing else would happen, and that once you had rationalised the grounds reduce the 76 charges to whatever you reduced it. ...” [B109]*
- c. The AG stated that: *“nobody in this room has em... questions your, your ethics...” [B111]*
- d. The DPP stated that he had *“no doubt of the integrity of the investigation... it’s been done properly and what [PR] and I agreed at a very early stage was a result of how the investigation was conducted, Jaime was a legitimate source of enquiry”*. IM interjected: *“As a suspect.”*. The DPP replied: *“I and Michael knows that. As a suspect, I mean he needed to be asked questions to clarify certain issues of the conspiracy... I’ve always made it clear to you and [PR], I don’t get involved in operational matters. My view was that the warrant should come, if at all, post to interview.” [B112]*
- e. The DPP stated: *“It’s your call, that Michael may have handled it differently, it’s your call” [B115].*
- f. The AG stated: *“you have rightly... sought our legal advice on this matter” [B118].* In questioning, PR clarified that he had only sought the DPP’s advice, not the AG’s **(Transcript Day 5 p29.23)**.
- g. The DPP stated that he had not seen the warrant or the Information **[B118]**.
- h. Referring to the letter inviting JL to a voluntary interview **[B5391]**, the AG asked *“do you realise how damaging if this came out? The reference to the Chief Minister...”*, and added *“that is the reason why I asked you to rationalise the ground ... so that, if you did proceed you were doing in a completely secure basis” [B127].*
- i. PR stated that the application in the Magistrates’ Court had lasted *“one and a three quarter hours”*, and that *“the Magistrate ... agreed with that assessment as well as the clerk” [B136].*
- j. The AG stated that he would rather not enter a nolle prosequi, but that *“if ... I feel that a prosecution exposes the Chief minister ... on grounds which are flimsy, I’ll stop it” [B158].*

- k. The AG stated that the CM was adamant that IM “*said yesterday, to both of us, you were acting on ad... on the search warrant, on advice of the DPP*”. IM replied: “*on advance for the investigation all along.*” The AG stated: “*well, he says, and you’ve confirmed now that such advice does not exist*” [B161]. IM added: “*he has been advising the team...*” [B161].
- l. When pushed, IM said: “*I can’t remember my words Michael, what I remember saying is that ... this matter had been dealt with in consultation in the DPP. That is what I’ve said, and I’m referring to an investigation...*” [B161].
- m. The AG stated “*My concern here is the reputation of this jurisdiction and that passes to the reputation of our Chief Minister. Especially in this moment in time. And for that I shall fight until I die*” [B188]. In questioning, the AG stated that this was a reference to the “*office of the Chief Minister*” (a phrase which he used later in the meeting, below) (Transcript Day 11 p239.4). The DPP said in oral evidence that “*it was a strange thing to say*” but it did not cause him any concern: “*he expressed that view quite passionately is my recollection but I didn’t think, “Oh, goodness, he would never prosecute a sitting Chief Minister or would do anything untoward.” That wasn’t my immediate reaction. I mean, it wasn’t something I expected him to say but I respect that he said it.*” (Transcript Day 10 p224.9).
- n. IM replied: “*the thing is you have the magic wand here. You have it.*” [B188]. The AG stated that IM had already mentioned a discontinuance, and he and the DPP were completely surprised by this as “*it was nothing that was on my mind at the time*” (Transcript Day 11 p238.8). The DPP said in oral evidence that he found that “*a very strange comment to make*”. When asked whether it was a reaction out of the blue to that strange comment by the AG, the DPP said: “*Yes, but it also makes you wonder who knew here tapes were running and who knew tapes weren’t running.*” (the Transcript records this answer as inaudible, but CTI have transcribed it from the recorded stream of the hearing: Day 10 PM session at 1hr 24mins).
- o. At one point the AG asked: “*...from Jaime Levy’s point of view, what is the best outcome if doing the interview on the Monday ... and what’s the best result then? That the ... police officer who interviews you comes back and says ... that he can convince you on Monday that he’s got nothing to do here?*” [B198-9] (IM described this in evidence as the AG asking him “*what JL should say to achieve the best*

*outcome for himself*” (McGrail 1 58.22 [A19]), but that does not appear to be reflected in the transcript.

- p. In response to IM stating that the AG was in an awkward position, the AG stated (in Spanish) *“Fabian I will defend to the death ... The office of the Chief Minister, be it Fabian Picardo, be it Keith Azzopardi, be it Caruana or Hassans... I will protect them ... I’ve spent my whole life, defending this jurisdiction and promoting this jurisdiction ... But that protection of the jurisdiction, there can be no office, more symbolic of the jurisdiction than that of the Chief Minister, I will defend it”* [B229]. In questioning, the AG stated that the reference to *“office of the Chief Minister”* was not an attempt to qualify his earlier remark where he referred to the CM directly (Transcript Day 11 p241.9). He stated *“my intention all along here is to protect the office of the Chief Minister from exposure on flimsy grounds”* (Transcript Day 11 p242.5). It was not his position that the AG should defend the CM to the death in any circumstances ((Transcript Day 11 p246.9).
- q. The AG stated (in Spanish): *“I will try to calm things down which in all honesty will be difficult, and I cannot control Hassans...”* [B229].
- r. The AG stated (in Spanish) to IM that: *“I will eventually accept that there was a misunderstanding between us”*. The Inquiry received the following evidence on the *“misunderstanding”*:
- i. IM’s evidence was that: *“the AG said that he would put the issue to have been a misunderstanding. I was happy that a line was being drawn under the matter so far as the AG and I were concerned”* (McGrail 3 para 147(ii)(b) [A116]).
  - ii. The AG stated that this is a mischaracterisation and that he and IM *“effectively agreed to disagree”* about the issue of their understanding, *“in order to work with him in view of the crisis that the search warrants had unleashed.”* The AG added that: *“that does not mean that it was not abundantly clear to me what we had agreed between us, and that he had done something completely contrary to our agreement”* (Llamas 2 para 51.2 [A312-3]).
  - iii. The CM suggests that there was no room for a misunderstanding: *“He most certainly told us both that the DPP had advised him that a search warrant could and should be used against Mr Levy. In fact, this was central to my loss of confidence in Mr McGrail. I consider that Mr McGrail is now*

*seeking to wriggle off the hook of his lie by suggesting it was a 'misunderstanding'. There is no room for misunderstanding as Mr McGrail clearly told me in the presence of Mr Llamas that the search warrant for Mr Levy had been issued on the advice of the DPP. He is changing his version only now that he has seen that the OPP does not make out the lie he told me.*" (Picardo 2 para 15 [A227])

- s. The AG and IM stayed behind after the meeting. During that discussion, the AG stated *"the Chief Minister is adamant that you said yesterday, to both of us, that you were acting on ... on the search warrant, on advice of the DPP."* During the exchange, IM said: *"I can't remember the words Michael, what I remember saying is that I've said it is this, I don't need to shrug responsibilities but this matter has been dealt with in consultation with the DPP"* [225]. When asked *"do you agree that, on the very day after your meeting with the CM, you could not remember the words you had used"*, IM agreed (**Transcript Day 7 p149.9**).
- t. The AG told IM that he would try to *"calm things down which in all honesty will be difficult, and I cannot control Hassans. I will try to control things here..."* [B229].

388. IM gave evidence in his witness statement (McGrail 1 para 58.15 [A19]) that *"I stated I needed to refer up to the Governor and the GPA the fact that a criminal complaint had been made against me by Hassans. The AG told me that for the moment I should not be doing anything."* The transcript does not capture this, and CTI cannot hear a reference to the Governor or GPA in the audio file (which is muffled in this section). However, IM explained that when he stated in the recording that he was *"duty bound to refer the fact that there is a criminal investigation made against us"*, he was pointing in the direction of the Convent (ie, the Governor's office) (**Transcript Day 6 p251.20**). The DPP, AG and Mr DeVincenzi do not recall this (**Transcript Day 10 p99.3, Day 11 p43.16, p230.7**). However, IM accepted that he did not think he referred to the GPA (**Transcript Day 6 p252.18**). The AG explained that he thought the allegations against PR were *"a bit too strong ... and I was confident that between the DPP and I we would be able to refute them"* (**Transcript Day 11 p230.12**).

389. The AG has provided the following comments on this meeting:

- a. It became clear to the AG as a result of this meeting that IM *"considered that he was immune to having his actions disapproved of or criticised and that he equated*

*both to improper interference with the conduct of a criminal investigation and a violation of police independence” (Llamas 1 para 59 [A285]).*

- b. The AG accepts that he expressed concerns about protecting the CM, but stated *“it is untrue that I could possibly have given Mr McGrail the impression that it was, or even may be, my primary concern”*. The AG notes that the CM was not under investigation and there was no evidence of wrongdoing on his part (Llamas 1 para 64 [A286]).
- c. In his second statement, the AG clarifies that he was referring to the importance of the Office of the Chief Minister to the reputation of Gibraltar, not the person. He stated *“it was the Office that I would protect, and then only from allegations on ‘flimsy’ grounds”* (Llamas 2 para 33 [A306]).
- d. The AG stated that his references to protecting the jurisdiction referred to *“the way Spain plays out its claim to the Sovereignty of Gibraltar”* and his experience that Spain *“has historically and persistently exploited any opportunity that she can to criticise and bring international opprobrium to bear on Gibraltar”* (Llamas 1 para 64.4 [A287]).
- e. The AG accepts that he used *“over-expressive and emotional language”*, which he stated he regrets in hindsight (Llamas 1 para 64.8 [A288]).
- f. The AG stated that whilst he expressed his disagreement and criticism of the decision at this meeting, he *“still proceeded on the basis that the interview under caution of Mr Levy would go ahead as the RGP wanted”* (Llamas 1 para 80.5 [A293]).
- g. The key matter to emerge from the meeting was the 7-day moratorium on not accessing JL’s devices. He stated that this was first proposed by the DPP **(Transcript Day 12 p227.18)**.

390. It is noteworthy that during the course of the 13 May 2020 meeting [B193]:

- a. A letter was received from LB addressed to PR (copying the AG) [B131]. which asked for the immediate return of JL’s devices (which JL had handed over voluntarily) [B5400]; and
- b. LB called the AG and asked him to read the letter that he had just sent [B193] **(Transcript Day 12 p2.24)**.

391. After the meeting, PR and IM drove back to New Mole House. IM continued to record their conversation in the car [C6928]. This was not included in the transcript prepared by IM (Transcript Day 6 p234.20), but was transcribed by Caruana & Co. That transcript records:
- a. IM: *“The AG now in talking to me quietly wanted to clarify that he says that I said at yesterday’s meeting that the DPP had advised on the warrant.”*
  - b. PR: *“No, the DPP hasn’t advised on the warrant.”*
  - c. IM: *“And I said no, I didn’t mean that ....”* [...]
  - d. IM: *“ ...This is not a question of shrugging responsibility we have actually been engaged with the DPP and I have his advice on the question of having to do these err interventions um now he has taken that as in the DPP advising that on the warrant...”* [...]
  - e. PR: *“He didn’t agree with that course of action but said it’s a decision for us and I said we will agree to disagree on that I am not a lawyer and he is not a policeman...”*
392. Sometime after the meeting, PR learned that IM had recorded it. He believed that he learned *“some time after the first meeting, and probably by the second meeting [ie 15 May 2020]. I may have just presumed that he would be recording it because he’d told me he had recorded the first one.”* (Transcript Day 4 p139.17) He said that by the 20 May 2020, he would *“definitely”* have known that IM was recording (Transcript Day 4 p151.17).
393. At 22:54, LDV messaged the AG floating the idea of working a deferred prosecution agreement into the Criminal Procedure and Evidence Act. He stated *“It wouldn’t necessarily be useable in the present situation (essentially its for businesses) but it could be in a future example of corporate economic crime. US, UK and Canada use them. Takes heat off unfair collateral damages to corporations where only a few individuals might have committed wrongdoing and means you as AG would have a more subtle and proportionate tool than the nuclear nollis (sic).”* [C6806]. He added: *“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”*. As to these messages:

- a. LDV explained that he said “*especially after today*” because he “*saw things heating up*” and had a “*sense of disquiet about the whole file*” (**Transcript Day 11 p47.22, 48.24**).
- b. He qualified that he did not think the AG would use the nolle, but “*it just seemed like something that could be very controversial if wrongly applied...*” (**Transcript Day 11 p49.10**).
- c. LDV stated that “*I had this sort of building concern overtime that notions were being planted in his head that maybe he needed to push back on*” (**Transcript Day 11 p53.17**). He gave the example that “*I thought Michael might be adopting views, for example, on ownership of NSCIS, which weren’t his own but he might not have thought through thoroughly*” ((**Transcript Day 11 p53.6**). LDV explained that the AG was “*very sure that ownership was with Government. I didn’t know how he could have come to that conclusion... I thought that it was interesting that the CM has that view, that Michael has that view, maybe the CM has mentioned to Michael and Michael has simply accepted...*” (**Transcript Day 11 p74.16**). He said that he never saw any evidence that the AG analysed the position and reached a considered view, as the ownership issue dropped away (**Transcript Day 11 p78.11**).
- d. The AG stated that this message from LDV was unsolicited (**Transcript Day 11 p250.9**).

394. LDV gave evidence that “shortly” after the 13 May 2020 meeting, the AG raised with him “*the applicable legal test or threshold for a nolle prosequi ... to the best of my recollection it was against the background of protecting the jurisdiction and office of Chief Minister*” (DeVincenzi 1 para 19 [**A729**]). He said that this was within a few days of the meeting (**Transcript Day 11 p44.8**). The AG did not recall this, but thought that LDV was probably correct (**Transcript Day 11 p249.4**). He stated that he was not considering a nolle at this date (**Transcript Day 11 p239.24**).

395. On 14 May 2020 at 09:27, IM circulated to PR and MW a “*revised pre-interview disclosure*” document for JL’s interview (although the document itself retained its original date of 12 May 2020) [**B3300**]. Notably, this removed the reference in point 9 to the CM, which now read “*communication with any other person in relation to any of the above*” [**B3302, cf**

- B5392**]. PR stated that this document was amended at the insistence of the AG (**Transcript Day 5 p88.25**).
396. At 10:03, IM responded to LB's letter of 13 May 2020 and provided copies of the warrants **[B3303]**.
397. At 17:28, the DPP messaged the AG stating: "*Hi M, I have been thinking about the current case and have a few ideas to discuss with you*" **[C6854]**. They agreed to meet at the AG's office the following day.
398. On 15 May 2020, at 09:39, LB sent a further letter to the Magistrate's Court requesting application documents. He copied the AG and PR **[B3326, B3327]**. At 11:15, LB then sent a further letter to the AG (copying IM) setting out "*reasons why there are very good grounds for believing that the warrants were improperly procured*" **[B5419; B3306]**. It accused the RGP of a "*gross abuse of execute power*" **[B5428]**.
399. At around 16:30, the DPP and AG met in advance of their meeting with the RGP at 17:00. The DPP gave evidence that he met the AG for approximately 30 minutes beforehand to discuss (**Transcript Day 10 p101.3**). He stated that he raised with the AG "*the different ways of dealing with Mr Levy, both in relation to the documentation and the interview*" (**Transcript Day 10 p102.19**). The AG thought that the DPP had come to him with options that could be considered going forward, but could not remember if one of those ideas was that JL should be allowed to give an interview but not under caution (**Transcript Day 11 p265.7**). However, the AG said that it was not LB who had made this proposal (**Transcript Day 11 p267.16**).
400. At 17:00, a meeting took place between the AG, DPP, IM, PR and MW to discuss the letter from Hassans **[B270; B3320]**. LDV is also listed on the transcript as having attended, but he had no recollection of the meeting (**Transcript Day 11 p 57.2**), and PR did not recall him being there (**Transcript Day 4 p144.11**).
401. PR **[C1798]** and MW **[B3190]** took notes of this meeting. The AG also provides details of this meeting (Llamas 1 para 69 **[A290]**). IM also gives evidence on this meeting (McGrail 1 para 59 **[A22]**). However, the best source of what occurred is again the audio file, which IM secretly recorded (the transcript is at **[B236]**).

- a. The AG stated that “*we’re heading towards a major collision here*” and stated “*we just wanted to discuss ... whether there are things we can do, where you can achieve what you want to achieve whilst avoiding a collision*” [B236].
- b. IM confirmed that the RGP needed to carry on with the interview of JL. The AG stated “*what we think would be helpful for the management of the whole thing is, if that interview would still go ahead ... not have it under caution*” [B237]. PR objected on the basis this would not comply with codes of practice, PR had already cautioned JL at Hassans, and the RGP had filed documents with court saying they had reasonable cause to suspect [B237]. In evidence, PR explained his view that “*there wouldn’t be any value in an interview not under caution. If somebody is suspected of committing a crime we have an obligation to caution that person before putting questions to them*” (Transcript Day 4 p146.3). The DPP accepted that this was a change from the basis of the 13 May 2020 meeting, which was that the interview was going to be under caution (Transcript Day 10 p107.14). The DPP also accepted that this was delving into an operational decision, but emphasised that the AG stated “*these are matters entirely for you*” (Transcript Day 10 p192.16).
- c. The DPP then proposed that the RGP seek a voluntary statement not under caution from JL, as a witness.
- d. The DPP stated “*we’re led to believe that if we go under caution he’s not gonna say a word*” [B238]. In questioning, the DPP stated he thought that the AG had told him this, but that it was not “*rocket science*” that JL was going to give a no-comment interview (Transcript Day 10 p115.1). The AG stated that on either 14 or 15 May, LB had told him that JL was going to give a no comment interview (Transcript Day 11 p267.5).
- e. PR then suggested: “*I’ve had a thought, if that’s the case get him to submit his version of events, don’t come in for interview under caution...*” [B239]. PR exemplified that they would then see how the statement matched with the evidence, and decide whether they need to put it to JL in interview [B241]. IM stated he understood the suggestion that JL be treated as a witness to have come from the law officers, not PR (Transcript Day 7 p79.1).
- f. Referring to Hassans letter of 15 May 2020 (see below), PR stated: “*there’s even a suggestion here that you advised us not to obtain a warrant*”. The DPP replied “*I read that*”. PR replied: “*We didn’t say that. We didn’t agree with that. Now where*

*has that come from? Who has told...*” [B242]. The AG interjected “*that’s an assumption that they’re making*” [B243]. The DPP said: “*it kind of possibly suggests that I’ve spoken to Louis (sic.) Baglietto, which I haven’t*”. The AG then stated “*it must come from the conversation with Ian and the Chief Minister*” [B243]. In questioning, the DPP explained that he did not want any suggestion that he had disclosed information to LB, and he thought that it would have been improper to divulge this information as a prosecutor to LB at that stage (**Transcript Day 10 p118.2**). The DPP was not aware of the AG sharing this information with Hassans (**Transcript Day 10 p118.17**).

- g. The DPP stated that “*if there is a sniff of unlawful evidence, of Richardson being a bit naughty and misleading the misrepresenting the position, whether it’s true or not, that the DPP approved the search warrant or whatever, I don’t want that to stick... I don’t want it to taint our prosecution*” [B244].
- h. MW raised concerns that the Op Delhi suspects would complain that JL had been treated differently and shown preference [B244].
- i. The AG stated that the DPP did not think that the warrant was justified [B246]. PR stated “*I understand that’s what [the DPP] thought and I respect that position*”. The DPP interjected that he thought the warrant would probably stand legal challenge: “*I would have done it a different way, but I think lawfully you can justify that*” [B247].
- j. The DPP and IM discussed interviewing JL under caution at Hassans, rather than at the police station [B252]. The AG interjected that this would not work, as “*the issue here is the caution*” [B253].
- k. PR agreed that if JL provided a voluntary statement “*of his own free will*” by Sunday 17 or Monday 18 May 2020, the RGP could delay carrying out the interview until they considered the content [B259].
- l. The DPP stated: “*We’re all on the same side here. We’re all trying to protect injustice, balance getting Cornelio, keeping the police force healthy and not coming into disputes.*” [B261]
- m. The AG stated that: “*I will call Lewis Baglietto, okay?*” [B264]. He then added: “*Can I pick up the phone and tell Lewis Baglietto, mira Lewis, I have met with the Commissioner and the team, you can send a witness statement to the RGP...*” [B264]. The Government parties argue that these passages (and a further passage

in the 20 May 2020 meeting below) show the AG's transparency of his communications with LB (**Transcript Day 10 p237.6**).

n. The DPP further stated: "*I understand the problem. We're trying to come up with a solution. Jaime attends without us... without you having to arrest him.*" [**B285**]

402. About this meeting, PR comments that: "*The solution arrived at was for Mr Levy to provide a statement that covered a list of issues. ... As far as I am aware, this was the first time we had allowed a suspect to provide a statement before interview*" (Richardson 1 para 15(b) [**A1288**]). He explained that this unusual course was adopted as "*the advice ... that we were being given was that if we tried to force the issue with Mr Levy we would not have got anything at all*", and this was a case involving other people and a serious matter involving national security (**Transcript Day 4 p148.12**). MW added that he was not happy with the scenario because it took the RGP away from established procedures, and he was not aware of this arrangement being offered to other suspects (**Transcript Day 5 p200.19**). IM added that: "*big chunks of the meeting were dedicated to Mr Richardson's concerns and my concerns about the allegations that Hassans were making in terms of criminal liability... that worried the team and significantly worried me certainly... and so, um, it seems that sort of bartering begins. This is a point where we are at the market and we think, you know, it's trying to get the best outcomes, as a result of those threats*" (**Transcript Day 7 p20.6**). IM later elaborated that there was an element of "*massaging*" in the second meeting, and by the third meeting he had "*relented and reluctantly consented*" (**Transcript Day 7 p171.1**).

403. On the evening of 15 May 2020, the AG met with LB and confirmed that JL could provide a voluntary statement, as set out in more detail under issue 5.3 below.

404. On 17 May 2020 at 14:51, LB emailed the AG (copied to IM) stating that: "*further to your confirmation that the Commissioner would be content with a written statement from Mr Levy in lieu of proceeding with the RGP's proposed interview, I confirm that Mr Levy will give a written statement ... In the circumstances, Mr Levy will therefore not be attending the interview tomorrow*" [**C3938**]. IM forwarded this email to PR and MW [**C3941**]. MW raised concerns that "*we have to be careful that this agreement is not manipulated... whether he will be accepted as a witness will have to be determined on its merits once we have had time to consider the statement... We do not want it to suggest that he is a*

witness already” [B3345]. PR raised these concerns with the DPP [C3944], who responded (having consulted with the AG) that “*there is nothing in the emails to suggest that the RGP will not, if it sees fit at a subsequent date, interview Mr Levy and that that option remains on the table...*” [C3943].

405. On 18 May 2020, the interview of JL under caution did not proceed as scheduled at 10:00. At 10:52, LB emailed IM referring to “*Mr Levy’s witness statement*” and asking whether he should liaise with PR [B5439]. The AG gave evidence that this did not reflect what he told Hassans, which was that the RGP would accept a “*written statement*” (Transcript Day 12 p15.23). The AG explained his understanding in questioning was that what emerged from the 15 May meeting was that JL would provide a written statement without affecting his status as a suspect, which was the “*first step to try to elicit evidence from Mr Levy without prejudice to other lines of enquiries that the RGP may wish to seek thereafter*” (Transcript Day 12 p230.20).
406. At 12:03, IM replied to LB confirming that JL should provide a written statement by 26 May, according to the scope of the pre-interview disclosure document. He added: “*Once we receive the statement, we would then reconsider whether we would require further particulars or the need to interview Mr Levy. As we have repeatedly said we are keeping an open mind...*” [C3998].
407. On 20 May 2020, Hassans sent a further letter to IM [B5443] asking him to reconsider his position on providing the application documents. The letter acknowledged “*your confirmation that Mr Levy is to provide a written statement*”, but seeking confirmation that “*he will not be interviewed under caution at a later stage*” [B5445].
408. The AG, the DPP, IM, PR and MW met to discuss this letter. Again, IM secretly recorded this meeting, which is at [B308].
- a. The AG stated that “*all I’ve told [Hassans] ... Ian has agreed, the RGP has agreed, to try a written statement*”. PR stated that Hassans had “*turned that on its head*” and were now saying that “*the Attorney General has informed me that you have agreed to treat him as a witness*” [B308-9].
  - b. IM stated, in relation to the procedure that had been agreed for JL, “*we’ve bent over, which we would not have normally done...*” [B309]

- c. PR reiterated that “*the DPP didn’t advise*” (on the warrant). The DPP added: “*these are not matters for the DPP, these are matters for the RGP and their operational functions...*” [B311].
- d. The AG stated that he had spoken to LB, who “*welcome[d] this written statement*”. The AG added that: “*I have told him ... it’s taken Christian and me quite a bit of persuasion to get the RGP to go down this path...*” [B311-2].
- e. The AG stated that “*I’ve told Lewis que Christian and I are talking to [the RGP], of course they know*” [B316].
- f. It was agreed to allow JL 7 days to provide a written voluntary statement [B317].

409. As to whether there was any pressure or influence applied to the RGP at the three meetings (13, 15 and 20 May 2020):

- a. IM considered that the AG was attempting to influence or pressure him not to interview JL under caution (**Transcript Day 7 p22.21**). He added that he thought the DPP was flexible to the AG’s position (**Transcript Day 7 p174.10**).
- b. The AG denied that he was seeking to influence or interference in the investigation (**Transcript Day 11 p228.13**). He denied pressuring the RGP and stated “*this was a collegiate exercise between all of us*” (**Transcript Day 11 p271.1**).
- c. The DPP’s view was that “*the meetings were just a general discussion amongst five senior law enforcement people... about what to do next. ... I think there was an attempt to diffuse an unfortunate situation, really. I think it was no more than that*” (**Transcript Day 10 p94.3**). The DPP denied that he was a mouthpiece for the AG using his knowledge of criminal law (**Transcript Day 10 p95.9**). He considered that the RGP were at liberty to disagree with proposals from the AG/DPP (**Transcript Day 10 p119.15, 121.3**).
- d. PR gave evidence that “*we started off with one position and at the end of those three meetings we ended up being at some variance to that.*” He considered that the RGP had been “*moved*”, principally by the AG (**Transcript Day 5 p26.18**).
- e. MW stated that he was not sure he felt pressure, but “*I went into the meeting [on 15 May] being very certain about the manner in which we were to conduct the interviews and we left the meeting with a different way of dealing with the matter.*” (**Transcript Day 5 p203.14**). He added “*I didn’t feel pressure, but I would describe influence...*” (**Transcript Day 5 p211.19**).

- f. The CM noted that he might have been aware that the meetings were happening, but did not know any of the details (**Transcript Day 17 p280.15**).

*9 June 2020 – Present*

410. On 2 June 2020, Charles Bonfante (then junior counsel for JL) emailed PR noting his “helpful indication that there is no evidence to suggest that Mr Levy was involved in any planning of the alleged sabotage to the NSCIS platform” [**C4686**]. That same day, LB attended the DPP’s office to view unredacted portions of the Information document (**LB1, p1**).
411. In mid-July 2020, LDV assisted the Chief Secretary Mr Grech to draft a formal complaint on behalf of the Government regarding the NSCIS breach, in response to a request from Commissioner Ullger. That letter was signed on 14 August 2020 (DeVincenzi 1 para 23 [**A1303**]). LDV attested that he was later called into the AG’s office, where the CM was on speakerphone, and asked if he had advised the Chief Secretary to make a complaint. He believed that this exchange was closer to 12 October (when LDV had an exchange of emails with the Chief Secretary about a request to the DPP to see evidence against Mr Sanchez) than 14 August (**Transcript Day 11 p68.8**). LDV stated that “*I wasn’t rebuked but it was clear to me that it wasn’t necessarily a welcome answer*”, and the Government later reconsidered its position (**Transcript Day 11 p69.6**). LDV then withdrew from advising on the file as he was not clear on his brief (**Transcript Day 11 p69.21**).
412. The CM gave evidence that: “*When I became aware of the fact that the Government was being referred to as a complainant, I sought that the Chief Secretary should provide me with the details of the evidence available to support the complaint. The Chief Secretary referred me to the assertions made to him by the Commissioner, but he was unable to provide me with any detail of any evidence in support of the complaint. I consider this to be unsatisfactory and not a basis on which the Government can agree that it should be a complainant in this matter against any of the Defendants. The Cabinet considered this matter and agreed that I should clarify that any complaint advanced is therefore not advanced on behalf of the Government but on behalf of the Chief Secretary. I further understand that the Chief Secretary of his own motion and without any further referral or discussion with me, has since withdrawn his own complaint.*” [**B1125**] The CM elaborated in questioning: “*when it comes to something quite so consequential as an allegation of corruption by a senior civil servant in Government, why should we simply accept that the*

*RGP say that there is evidence of that...*” (**Transcript Day 16 p156.1**). However, it must be noted that MW’s evidence was that the DPP, not the RGP, made the decision not to share the evidence with the Government (Wyan 2 para 33 [**A1034**]). The CM stated that he did not see the relevance of his involvement in 36N, in his involvement in the decision about the Government’s status as a complainant (**Transcript Day 16 p307.19**).

413. On 28 October 2020 MW emailed LB confirming that JL was no longer a suspect in the matter [**C5177**].

414. On 8 March 2021 [**C5871**], the DPP sent an email to the AG explaining “*matters that have been highlighted expressly or implicitly*” by defence counsel in Operation Delhi. He stated that his view was that it was in the public interest for the matter to proceed, and he wanted to appraise the Attorney General (**Transcript Day 10 p125.23**). The email referred to:

- a. The fact that the RGP was awaiting a witness statement from the CM: “*his evidence is very important in relation to the conspiracy charge...*”; and “*the clear indication from the defence is they will be asking the CM to give live evidence at trial*”, and the Crown would have to call the CM if the defendants did not.
- b. The defence had “*made it clear they will be seeking orders for disclosure of government/CM’s communications etc...*”
- c. However, the DPP noted that “*there is nothing in the communications that I have seen in relation to the CM or FS [Financial Secretary] that concern me.*”

415. IM asserts that it was the concerns raised by the DPP in his email of 8 March 2021, and a desire to protect the CM, rather than any other genuine public interest concerns, which gave rise to the AG’s discontinuance of the prosecution. The AG confirmed on oath that those reasons had “*absolutely nothing to do – for the reasons for my nolle*” (**Transcript Day 12 p24.5**). He confirmed that the reason for the nolle were matters brought to his attention in an email from the DPP on 7 May 2021, which attached reports from his Crown Counsel (**Transcript Day 12 p24.15**).

416. On the same day, a meeting took place between MW and Mr Cornelio at New Mole House (Cornelio 1 para 46 [**A1268**]). Mr Cornelio stated that they discussed the criminal proceedings, not under caution, and that he “*aired various grievances with the RGP’s handling of the investigation*”. Mr Cornelio stated that MW said “*I have my superiors and I do not necessarily agree with all the decisions which have been taken... He also*

*expressed the hope that he could sit down with us after all this was over so he could explain matters.”* MW recalled this meeting, which was to provide him with replacement copies of illegible documents. MW did not recall saying he disagreed with his superiors, but did recall suggesting they should sit down: *“I wanted to explain to him that we had, at every possible stage, taken advice on the legality of our actions...”* (**Transcript Day 5 p217.20**). MW recalled that his only disagreement with PR was whether the Former Op Delhi Defendants should have remained on bail (**Transcript Day 5 p219.22**).

417. On 21 January 2022, the AG discontinued the proceedings against Messrs Cornelio, Perez and Sanchez under section 59(2)(c) of the Gibraltar Constitution Order 2006, citing the public interest. He stated that although he had been advised by the DPP that there was enough evidence for there to be a realistic prospect of conviction at trial, there were matters in the wider interest that required him to discontinue the proceedings. The DPP gave evidence that the reasons for the nolle was not related to the issues being investigated by this Inquiry (**Transcript Day 10 p257.21**).

418. In a Ruling dated 9 November 2024, the Chairman held that:

- a. The discontinuance was effected by the AG pursuant to s59(2) of the Constitution.
- b. The reasons for the discontinuance could not at that stage be discarded as irrelevant to the Inquiry, and therefore it may within the Inquiry’s Terms of Reference for the AG to be asked what his reasons were.
- c. The AG could be asked what his reasons were, but could not be compelled to give an answer.
- d. The Chairman could, if appropriate, draw inferences (adverse or otherwise) from a refusal to answer.

#### **Communications between the AG/CM/DPP and JL/LB**

419. The CM’s evidence on this matter has been given through a number of affidavits:

- a. Picardo 1: The CM records that IM first briefed him about Operation Delhi on 11 May 2019 (Picardo 1 para 30 [**A188**]). He further stated that he became aware *“from Mr Levy himself”* that he was one of the persons who was *“of interest”* to investigators (Picardo 1 paras 38-9 [**A190**]), but does not record when or how JL informed him (he said in Picardo 2 para 14.2 [**A226**] that he believes it was long

after 11 May 2019). He provides no further detail about communications between him and JL.

- b. Picardo 2: In response to IM's evidence (McGrail 3 para 137 [**A100**]) that he knew the CM was in contact with JL while Hassans were threatening litigation, the CM stated (Picardo 2 para 10 [**A224**]):
  - i. That appears to be an insinuation that he was "*in cahoots*" with JL and in relation to the threat by JL to litigate against IM in relation to the warrant issue.
  - ii. That he had communications with JL "*about these claims*", but none of them in any way amounted to "*encouraging, supporting or otherwise promoting*" JL's claims, although he did think it was right for JL to challenge the issue of the warrant.
- c. Picardo 3: In response to a specific request by the Inquiry, the CM provided the following additional detail about his contact with JL (Picardo 3 paras 5-17 [**233-4**]):
  - i. He discussed with JL the fact that the RGP had suggested that he might be a person of interest in the investigation "*on a very large number of occasions*", and consistently replied to him that "*I was sure that the investigation would exonerate him given that, from what I knew of him, I was sure that he would not have acted in a manner which was contrary to law*". The CM elaborated on this in questioning that JL raised the matter as he thought the investigation was unfair and motivated by a competitor, but that he did not ask the CM for help (**Transcript Day 16 p143.18**). The CM said that the conversations concerned the police wanting to talk to JL, and "*I don't think the conversations were about [the] investigation*" (**Transcript Day 17 p85.9**). Therefore, his evidence was that he knew that JL "*had a search warrant executed in respect of him and that there were questions that he had to answer*" (**Transcript Day 17 p168.1**).
  - ii. There are no notes of those discussions, because the issue was raised with him more often than not "*during informal telephone conversations*".
  - iii. He also "*frequently discussed*" with JL the issue of the search warrants, and these conversations were "*mostly telephonic*", but there were "*no meetings in my office such as may have resulted in a note of it*".
  - iv. He spoke to JL on the telephone (possibly landline) on 12 May 2020, but does not recall at what time. He expressed his "*consternation*" at the

RGP's actions. They also spoke about access to places of worship in the context of lock-down.

- v. These conversations were “*entirely proper, natural and appropriate, not least given my very close friendship and relationship with him*”, and his office “*does not disqualify me from doing so, still less does it require me to engage in an unnatural omission to do so to avoid the speculative and reckless suspicions of Mr McGrail or anyone else*”.
- d. Picardo 4: In response to a further request by the Inquiry with reference to WhatsApp messages between him and LB, the CM confirmed, for the first time, that his discussions with LB and JL went beyond the search warrants and criminal investigation, and also addressed the CM's loss of confidence in IM, and even (at least with LB) the mechanisms to see IM removed. The CM provided the following evidence (Picardo 4 paras 8-18 [A1447-1448]):
- i. He met with LB on a number of occasions during that period, but could not recall the detail of what was discussed.
  - ii. He shared with LB (“*one of his closest personal friends*”) his outrage at the RGP's obtaining of a search warrant, which he considered had been obtained improperly instead of a production order and further expressed the view that the use of the search warrant was a breach of JL's and his clients' human rights.
  - iii. He spoke to LB repeatedly about how let down he felt by IM and that he would never be able to trust him again as he had lied to him about the advice relating to the search warrant.
  - iv. LB and the CM discussed “*at length*” how best he should raise these issues in his representation of JL, including whether JL should be advised to judicially review the RGP's actions.
  - v. He believes that he would have shared with LB also “*the fact that I was very open with the Gibraltar Police Authority and the then Governor that Mr McGrail no longer enjoyed my confidence and my views as to the mechanisms to see Mr McGrail removed and the consequences thereof*”. In questioning, he explained that he shared this fact widely not just with JL (**Transcript Day 16 p277.25**).
  - vi. He recalls seeing JL at the time on one occasion, accompanied by LB, at the CM's home. JL was “*both incensed but also deeply embarrassed by*

the events”. They discussed “*how legally improper*” the RGP’s actions had been, “*how outraged I was by the fact that I believed that Mr McGrail had lied to me*” and “*my subsequent complete loss of confidence in him*”.

- vii. The key issue in the meeting was that JL wanted to offer his resignation as Chairperson of Gibraltar Community Care Trust, which the CM did not consider to be necessary. This meeting was the meeting on 17 May 2020, addressed in detail below.

420. In oral evidence the CM initially stated that paragraph 11 of Picardo 3 [A234] (“*My frequent conversations with Mr Levy KC about the search warrants were mostly telephonic ... There is no breakdown of the number or dates or time of these conversations, as there were and still are many of them. There were no meetings in my office such as may have resulted in a note of it.*”) did set out that meetings happened, and the meeting “*fits within exactly what paragraph 11 sets out*”, and that the paragraph “*did not exclude events like it*” (Transcript Day 16 p233.21). The CM later stated that he did not refer to his meeting with JL on 17 May 2020 until Picardo 4, as this was “*not a meeting about Mr McGrail*” (Transcript Day 16 p274.11), although he later accepted that there were references to IM in the meeting (Transcript Day 16 p275.17). He then later stated in questioning that he did not recall this meeting when drafting his statement, and added “*If I had to recall every time I have spoken to James Levy, met James Levy and in particular met him on a Sunday, ... I would spend the rest of my days and not be finished by the time I died at 120*” (Transcript Day 17 p147.14).

421. JL’s evidence was that:

- a. At the time he voiced “*on a single occasion*” his objection to the AG at having been, in his view, very improperly and unfairly treated (Levy 1 para 11 [A1354]).
- b. He recalled discussing his status as a person of interest to the RGP with the CM once or twice, but not on numerous occasions (Transcript Day 8 p140.1). He also did not recall the actual phrase “*person of interest*” (Transcript Day 8 p141.5).
- c. He denies ever discussing IM’s position as CoP and the decision to invite him to retire with the CM, AG, or Mr Baglietto between 12 May and 9 June 2020 (Transcript Day 8 p184.6). . He denied seeking to remove IM from his post and was not involved in the process (Levy 2 para 9.8 [A1516]). He added that he was not aware that the CM had lost confidence in IM and was implementing the s34

process, and did not have any knowledge of the CM's concerns about IM **(Transcript Day 8 p185.16)**.

- d. He did not communicate with the CM at the time that the RGP officers were at his office (Levy 2 para 9.6 **[A1515]**).
- e. He said that LB communicated with the AG as his legal representative, which was "*unquestionably perfectly legitimate and proper*" (Levy 2 para 9.1 **[A1512]**).

422. LB's evidence on his interaction with the CM was as follows:

- a. While he notes the CM's evidence and the WhatsApps disclosed by the CM which show that they had conversations around the relevant time, he has no recollection of the contents of any discussions with the CM on the subject of the warrants (Baglietto 1 para 4.2 **[A1520]**). In questioning, he elaborated that he did not recall how much detail he gave the CM about the basis put forward by the RGP for the warrant, but "*I dare say it would have been quite high level and quite obvious*" **(Transcript Day 9 p104.1)**. He did not think that he had disclosed the Information to the CM, when he eventually received it **(Transcript Day 9 p106.2)**. LB thought it was "*perfectly plausible*" that the CM "*gave me a piece of his mind about being let down by Mr McGrail*", but he did not recall specific meetings or conversations **(Transcript Day 9 p108.1)**. However, he did recall discussing the issue of judicial review with the CM **(Transcript Day 9 p108.8)**
- b. He acknowledged that the WhatsApp messages of 16 and 17 May 2020 suggested that he arranged to meet the CM on Sunday afternoon, sometime after 14:03, but he has no recollection or record of that meeting. He also notes that the WhatsApp messages suggest that he spoke to the CM on this date, but has no recollection of that conversation (Baglietto 1 para 10 **[A1525]**).
- c. He said he does not recall ever discussing IM's position as CoP or the decision to invite him to retire with the CM, the AG, the DPP, JB or any other member of HMGoG, and acknowledges that he was not advising JL or anyone else on that matter (Baglietto para 4.9 **[A1523]**). However, LB stated that it was "*very possible that [the CM] did tell me what he had told the GPA and the Governor and what he thought the way of dealing with it was*" **(Transcript Day 9 p109.14)**. LB did not think the CM would have gone into particular detail, but stated "*he would have just been venting it*" **(Transcript Day 9 p110.19)**.
- d. Specifically in relation to the CM, he could not recall discussing the matter and neither the WhatsApp messages between the CM and him in May 2020 nor the

CM's own evidence on the matter have served to refresh his memory (Baglietto 1 para 4.10 [A1523]).

423. LB's evidence on his interaction with the AG was as follows:

- a. He does recall having several conversations with the AG in relation to JL's objection to the legal validity of the warrants and the question of whether the RGP would accept a voluntary statement from JL (Baglietto 1 para 4.2 [A1520]).
- b. It is likely that he would have called on 12 May 2020 to initially protest and express concerns, as well as to say that Hassans would be writing to him, and possibly seeking a meeting with the AG and IM (Baglietto 1 para 4.2 [A1520]). In questioning, LB stated that his recourse was to the AG rather than the RGP directly as Hassans has "*serious misgivings as to the [RGP's] conduct*" and "*my recourse is therefore to the AG as the Crown's most senior legal adviser and it was also regarding the public interest*" (Transcript Day 9 p62.6).
- c. He acknowledges that the records show that he called the AG on 13 May 2020 in relation to the meeting he was seeking (Baglietto 1 para 4.2 [A1520]). He also notes that the WhatsApp messages suggest that he spoke to the CM on this date, but has no recollection of that conversation (Baglietto 1 para 7 [A1524]).
- d. He also has a note in his diary for 14 May 2020 with the initials "MML" which may have been a reminder to speak or meet with him, but he does not recall if that happened (Baglietto 1 para 4.2 [A1521]). He also notes the WhatsApp messages with the CM on this day, which he believes related to the letter sent to the AG on the following day (Baglietto 1 para 7 [A1524]).
- e. He recalls that he spoke to the AG on 15 May 2020 when the AG confirmed that the RGP were prepared to accept a voluntary statement from JL in lieu of the interview under caution scheduled for 18 May 2020 (Baglietto 1 para 4.3 [A1521]).
- f. He does not recall the contents of any other oral communications with the AG regarding the warrants, although he notes that the AG said he would be calling him after a meeting on 20 May 2020 He also notes that the WhatsApp messages suggest that he spoke to the CM on this date, but has no recollection of that conversation (Baglietto 1 para 4.4 [A1521]).

424. The AG's evidence was that it is possible that he may have spoken to LB on 12 May 2020, but that would have been to take a call from LB saying how aggrieved JL was, and that a letter/email was coming, and no more than that (Llamas 2 para 28 [A305]).
425. The documentary evidence obtained by the Inquiry provides further evidence as to these communications.
426. The original message from IM to the CM notifying him of the intended execution of the search warrants was sent on 12 May 2020 at 12:25 [C6702].
427. At 12:57 and 13:07 the AG received two missed calls from JL. The AG's evidence was that he did speak to JL, either later that day or the following day, and that, whilst being respectful, JL complained to the AG about the way he had been treated. The AG's evidence was that he told JL that the DPP was handling the matter and that he should speak to him, which the AG believes JL did (Llamas 1 para 48 [A282]).
428. At 23:03 LB sent an email to AG (in his capacity as guardian of the public interest) raising concerns about "*a serious abuse of law and power*" and seeking the AG's intervention, as well as a meeting [C3520]. This email is summarised in detail above. The AG replied at 23:16 confirming that he had suggested a meeting with IM [C3525].
429. On the afternoon of 13 May 2020 LB sent the CM two WhatsApp messages asking to speak (at 12:36 and 15:50), and it appears that they spoke at around 16:00 [B1422]. The CM stated that they probably discussed "*the disgraceful way in which the police had abused their powers in seeking to obtain a search warrant when a production order should have been pursued, which was my view.*" (Transcript Day 16 p246.25). He added that he would have spoken to LB a "*myriad*" of times (Transcript Day 17 p155.5). He agreed with the suggestion that during this time he proposed a number of ideas to LB about points that could be made against the warrant (Transcript Day 17 p156.5). He could not recall whether in these myriad conversations, LB mentioned to the CM that JL was a suspect (Transcript Day 17 p169.4).
430. At 15:32, LB also asked to call the AG, and there were further missed calls at 18:39 and 18:48 [C6883]. LB could not remember whether he managed to speak to the AG that day

(**Transcript Day 9 p63.19**). He also did not recall being aware that this meeting was taking place (**Transcript Day 9 p65.4**). However, it is noted that the transcript of the meeting between the AG, IM, the DPP and PR on 13 May 2020, the AG stated “*Lewis Baglietto has been called, because he has been sent a copy and he, he was made aware of this meeting*” [**B193**]. The AG stated that it was highly likely that after the missed calls, the AG called LB back (**Transcript Day 12 p3.22**). AG said that he and LB must have agreed to meet on the following day, as LB would not have turned up unannounced (**Transcript Day 12 p189.2**). The AG was referred to the paragraph of his witness statement which suggested “*While it is possible that I may have spoken to Lewis Baglietto on 12 May, it would have been to take a call from him saying how aggrieved James Levy was and that the letter or email (subsequently that evening) was coming. I was certainly not ‘talking to Mr Baglietto’ other than to that extent*” (Llamas 2 para 28 [**A305**]). The AG maintained that this was accurate as regards 12 May 2020 (**Transcript Day 12 p92.21**).

431. At 20:57, JL sent the AG a WhatsApp message saying “*On the other matter I feel I’ve been hung out to dry. Certainly not by you.*” The AG responded a minute later saying “*Don’t worry*” (Llamas 1 para 68 [**A289**]). JL explained that this meant he thought the police had acted wrongly, and that he had an expectation of being dealt with fairly by the police (**Transcript Day 8 p246.8**). The AG stated that he did not know why JL was suggesting he had been hung out to dry (**Transcript Day 11 p260.12**). The AG explained that he sent this message at the end of a long day, when “*the last thing I was going to do was engage. So I said ‘Don’t worry’ and the conversation ended and I succeeded in doing that...*” (**Transcript Day 11 p261.1**). He added: “*I was in fact lying to Mr Levy because in that day’s meeting the outcome was that we were going to rebuff the letters that we were receiving from Hassans and that the investigation was continuing. So there was everything for him to be worried about...*” (**Transcript Day 11 p262.8**). The AG stated that the phone call on either 12 or 13 May and the message were his only direct communications with JL during this period (**Transcript Day 11 p262.17**).

432. On 14 May 2020 at 12:31, LDV messaged the AG stating: “*Lewis and another gent here to see you.*” At 12:45 he added: “*Moshe Levy is the other gentleman*” [**C6806**]. Moshe Levy (JL’s son) does not recall this meeting taking place, and attested that he could not find any record of this meeting (**Moshe Levy 1 para 7**). As to this meeting:

- a. LB did not recall this meeting, but noted that it was consistent with the initials in his diary, mentioned above (**Transcript Day 9 p68.9**). LB did not have any notes of this meeting (**Transcript Day 9 p71.17**).
- b. The AG was “*virtually certain*” that this meeting did not occur and did not recall meeting with Moshe Levy at all (**Transcript Day 12 p5.18**). He also gave evidence that he was picking up his son at the time. He disclosed a message exchange with his son where at 12:53 he messaged “*Ready*” and at 13:08 “*on my way*”.<sup>17</sup>
- c. LDV did not join this meeting, but said that he was not comfortable with it: “*it just didn’t seem quite right to me that they were meeting him in private*” (**Transcript Day 11 p55.18**).

433. However, Moshe Levy did recall meeting the CM and LB at No 6 Convent Place, he believed between 12-14 May 2020 (**Moshe Levy 1 para 8**). He gave evidence that at this meeting, the CM commented that “*if the RGP could treat a leading silk in this way, how had they been treating less prominent members of the population*”, and “*this was not the only issue he had with McGrail*” (**Moshe Levy 1 para 9**). The CM did not recall this meeting but said that Moshe Levy’s memory was probably better than his (**Transcript Day 16 p246.23**). He stated that the words “*treating less prominent members of the general population*” rang a bell and that was “*definitely the thing I was saying to Lewis and others*” (**Transcript Day 16 p251.17**).

434. At 16:55 the CM sent LB a WhatsApp message quoting Schedule 2 Para 8 to the Police (Discipline) Regulations 1991, which referred to a disciplinary penalty of dismissal with loss or reduction of Pension Benefits, which is to be used only “*where the Police Officer is convicted of treason or some other offence which is gravely injurious to the State or is liable to lead to serious loss of confidence in the Police Force*” [**B1422**]. LB replied at 18:23 stating “*Many thanks.*” This is the most serious of disciplinary penalties provided for by Schedule 2, although the Police (Discipline Regulations) 1991 do not apply to the Commissioner of Police (r2)<sup>18</sup>. It is not clear how these messages could relate to the search warrant, and they appear to relate more to potential action against IM (which the CM acknowledges having discussed with LB). The Inquiry received the following evidence:

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<sup>17</sup> New disclosure, not in Inquiry Bundle.

<sup>18</sup> [https://www.gibraltarlaws.gov.gi/uploads/legislations/police/1991s090/1991s090\(22-04-21\).pdf](https://www.gibraltarlaws.gov.gi/uploads/legislations/police/1991s090/1991s090(22-04-21).pdf)

- a. LB did not know why the CM had sent him this provision (**Transcript Day 9 p113.5**). LB stated that he did not think the CM was suggesting punishment against IM (as he would have raised s34 instead), but that he might have thought that this was relevant to punishment against other officers (**Transcript Day 9 p116.21**). The Chairman put to LB that the CM must have been referring to some previous exchange (due to the language “*the last limb refers*”). However, LB stated that he did not recall having any discussion with the CM about disciplinary proceedings against police officers. He did not discard the possibility that the CM mentioned it in a conversation, and that this message was a follow up (**Transcript Day 9 p115.2**).
- b. JL stated that he was not aware LB was having this conversation, and did not ask LB to raise this with the CM (**Transcript Day 8 p174.12**).
- c. The CM stated that he sent this provision because: “*This reference had absolutely nothing to do with Mr McGrail. This was all about James’s theory about Paul Richardson and what the remedy might be if there were any scintilla of truth to that...*”. He explained JL’s view at the time was that PR was acting out of bad faith, because he had secured future employment with Bland Limited under generous terms. (The CM stated that this view was “*non-sensical*” and there was nothing to support the suggestion.) (**Transcript Day 16 p255.8**). For completeness, it is noted that PR also denies receiving any kind of job offer from Mr Gaggero (Richardson 4 para 2).

435. At 18:42 the CM sent LB a WhatsApp message containing the wording of s76 PA 2006, which provides for a power for the Magistrates’ Court to make an order returning property which has come into possession of police under any statutory provision to its owner [B1422]. LB replied at 18:45 “*Thanks, we are drafting letter. Let me think about this provision but we prefer not to have to go to court but for CPO to return due to clear unlawfulness.*” The CM replied at 18:54 saying he understood. The Inquiry received the following evidence:

- a. LB understood this to be a proposal by the CM that he make an application. He could not remember whether the CM’s message came out of the blue (**Transcript Day 9 p119.1**). LB stated that he had no issue if the CM wanted to send him this (**Transcript Day 9 p120.13**).

- b. JL stated that he was not aware LB was having this conversation with the CM and does not know why it was raised (**Transcript Day 8 p175.15**).
  - c. The CM stated that this was a basic reference to the Police Act and very likely a proposal in relation to JL's phone (**Transcript Day 16 p260.8**). He did not consider that there was a conflict between referring this provision to Hassans and his role as Minister for Finance (**Transcript Day 16 p261.25**).
436. At 21:54 LB informed AG that Hassans were "*delayed with letter to you till morning*", to which the AG replied three minutes later, "*No problem*". LB believed that this was a reference to the Hassans letter of 15 May 2020 [**C3802**]. The AG stated that he had not discussed this letter with LB during that day (**Transcript Day 12 p7.16**). This letter set out the reasons why Hassans submitted "*there are very good grounds for believing that the warrants were improperly procured and wrongfully granted*", asserting that the warrants were likely to be declared unlawful through judicial review, and therefore JL's possessions should be returned to him [**C3802**]. The same letter asserted that the RGP had acted contrary to the advice of the DPP, referring to "*the clear misrepresentation that the warrants had been applied for on the advice of the DPP*" [**C3808**]. LB did not recall how he had learned about the DPP's advice on the warrant, but stated that the only people he was talking to or who might have been the source were JL, the CM or the AG (**Transcript Day 9 p76.11**). However, he then acknowledged JL's evidence that JL was not aware of the DPP's advice (**Transcript Day 9 p77.6**).
437. At 19:29, LB sent a message to the AG stating "*M, I was asked to come over to your office*". This was contained in an iMessage, which LB only disclosed to the Inquiry the day before he gave evidence (LB explained this on the basis that he very rarely uses SMS so it slipped his mind to check: **Transcript Day 9 p82.12**). The Inquiry received the following evidence:
- a. Moshe Levy was aware that LB was expecting to meet with the AG on the evening of 15 May 2020, but stated he (Moshe) did not attend due to Shabbat (**Moshe Levy 1 para 14**).
  - b. LB doubted that the person who "*asked*" LB to attend the AG's office was the CM (**Transcript Day 9 p85.7**).
  - c. The AG did not know who asked LB to attend and suggested it may have been his PA. He did not know if the CM would have asked him to attend (**Transcript Day 12 p9.8**).

- d. LB stated that the purpose of this meeting was for the AG to confirm that IM or the RGP “were happy to take a voluntary statement from Mr Levy in lieu of his having to attend New Mole House” (**Transcript Day 9 p85.23**). LB did not recall who came up with the idea of JL giving a voluntary statement, but thought it was “perfectly plausible” that Hassans would have proposed this to the AG (**Transcript Day 9 p79.11**). JL stated it was “certainly not” his idea (**Transcript Day 8 p169.17**), and that he had not instructed LB to say that he would “not say a word” if he was required to give an interview under caution (**Transcript Day 8 p171.4**). However, as outlined above, the AG stated that on either 14 or 15 May, LB had told him that JL was going to give a no comment interview (**Transcript Day 11 p267.5**).
438. On 16 May 2020 at 20:55, PR sent LB a document containing additional pre-interview disclosure [**B5429**]. He stated: “*This is not normal practice however as this is a very complex investigation and in order for you to properly advise your client we have drafted the attached additional pre-interview disclosure with a simplified time-line*”. LB believed that receipt of this document was why he then messaged the CM so late in the evening (**Transcript Day 9 p127.1**).
439. At 23:20, LB messaged CM: “*Bro. Sorry to disturb but Can we speak some time tomorrow morning?*” [**B1422**]. LB stated that he did not always call the CM “bro”, but there were times when he would “lapse into the vernacular” (**Transcript Day 9 p125.24**).
440. On the following morning, 17 May 2020, it appears that the CM and LB spoke over the phone at approximately 09:44 [**B1422**]. LB did not recall this conversation (**Transcript Day 9 p129.1**). Plans were made for a meeting between the CM, LB and JL at the CM’s residence at noon (“*12 noon he says*”), with the CM messaging LB to say “*Let me know when you are on your way up*” at 11:42 and then checking on their progress (“*Como vais?*” In English: “*How are you going?*”) at 12:09 [**B1423**]. At 14:03, LB then messaged stating “*Picking up now*” [**B1423**]. LB explained that the meeting with the CM must have been delayed because there was an ongoing conference with leading counsel in London (**Transcript Day 9 p130.22**). As to what was discussed:
- a. LB remembered driving JL to the meeting with the CM (**Transcript Day 9 p129.1**), and the fact that they were not there for very long (**Transcript Day 9 p142.12**). However, he could not recall the details or content of this meeting (see from (**Transcript Day 9 p132.22**)), for example whether the purpose of the meeting was

to discuss JL's role on the Community Care Trust (although he had a hazy recollection of JL's concern on this issue around that time). LB did not make notes of this meeting (**Transcript Day 9 144.12**).

- b. JL gave evidence that the main point of the meeting was to discuss whether JL should resign as chairman of Community Care Limited (**Transcript Day 8 p181.6**). He later added that they discussed "*police powers*" but not the warrant (**Transcript Day 8 p184.8**). He stated that he brought LB to the meeting "*to help me as a person. I was in a very bad state.*" (**Transcript Day 8 p249.12**)
- c. The CM denied that the true purpose of this meeting was to discuss the search warrants and the CM's loss of confidence (**Transcript Day 16 p281.25**).

441. CTI asked the CM to explain why this meeting of 17 May 2020 was not included in his third Witness Statement. The CM's response was that paragraph 11 [**A234**] did not exclude this meeting (**Transcript Day 16 p233.1**).

442. Later on 17 May 2020, at 14:51, LB wrote to AG (copied to IM): "*Further to your confirmation that the Commissioner would be content with a written statement from Mr Levy in lieu of proceeding with the RGP's proposed interview tomorrow, I confirm that Mr Levy will give a written statement*". The AG responded stating that LB's email was "*consistent with what I communicated to you on Friday afternoon*" [**C3938**]. LB stated that he must have sent this after dropping off JL after the meeting with the CM (**Transcript Day 9 p143.2**). However, the CM suggested that the timing of this email was "*off kilter somehow*", as he did not believe the meeting was so short that LB and JL reached his house by 14:15 and returned home to send this email by 14:51 (**Transcript Day 16 p290.10**).

443. At 22:48 the CM sent messages to both LB and the AG with an image containing page 13 of the HMIC report [**C6761**] accompanied by the message: "*That is page 13 of the HMIC report published last week. Look at the bit I have highlighted in red. Boom.*" The Inquiry received the following evidence on this message:

- a. LB stated he did not know why the CM had sent him this extract (**Transcript Day 9 p147.2**), and could not recall what his reference to JL being reassured by the meeting meant (Baglietto 1 para 12 [**A1526**]).
- b. JL stated that he saw this message for the first time during the Inquiry (**Transcript Day 8 p183.20**).

- c. The CM stated that he sent the message because it showed that the RGP's practices in relation to electronic communication did not meet the standard, and JL's devices were in the hands of the RGP (**Transcript Day 16 p292.12**). The CM did not consider that this was assisting Hassans with its intended claims, as he was referring to open and public sources of information (**Transcript Day 16 p294.8**).

444. The CM's conversation with LB continued over the next half hour:

- a. LB: "*Shocking but sadly doesn't come as a surprise! Thanks for your time today bro. I think it reassured him a lot!*" In questioning, LB confirmed that the "*him*" in this message was JL. LB could not remember how the meeting had been reassuring, but said if the CM had reassured JL that he hadn't lost confidence in him in relation to Community Care Trust, that would have been reassuring (**Transcript Day 9 p149.10**). JL agreed that he was assured as the CM "*obviously said to me: you shouldn't resign, I have confidence that that you have behaved properly...*" (**Transcript Day 8 p182.3**).
- b. CM: "*I think the above is of major to (sic.) the issues raised this week. It will be important/ Remember the HMIC report is public.*"
- c. LB: "*Yes, excellent. We can put it to good use for sure!*"
- d. CM: "*I have sent to JL. Let me know if he sees it.*"
- e. LB: "[Thumbs up emoji]"

445. In response to the extract of the HMIC Report, the AG replied at 23:39 "*Hardly encouraging. I understand that technical experts can say when a phone has been accessed or otherwise tampered with*" [**B1418**]. At 00:35 (ie, after midnight) the CM sent the AG an image of s59 of the Gibraltar Constitution and stated "*to discuss*" [**B1418**]. Their exchange continued as follows:

- a. AG: "*(2)(b)?*"
- b. CM: "*Exactly. In re a search warrant as a 'proceeding'*".
- c. AG: "*We need to check what 'such' means in that context.*"

446. The CM agreed that he was alerting the AG to the possibility that the AG exercise his constitutional power to take over and continue the search warrant proceedings against JL (**Transcript Day 16 p297.21**). He stated that it was referring to the search warrant proceedings, not the Delhi investigation. When asked whether he was suggesting that the

AG do so in order to then discontinue the proceedings under s59(2)(c), the CM said “*I am alerting Michael here to his power to potentially do that in the event that he considers it appropriate*” (**Transcript Day 16 p298.25**). The AG stated that this message was “*completely unsolicited*” and that he “*assumed that what he was, perhaps, suggesting is whether this power was available to me...*” (**Transcript Day 12 p19.1**). CTI asked the AG: “*What would be the purpose of taking over the proceedings if not to exercise the power at 59(2)(c)?*”; to which the AG replied “*absolutely*” (**Transcript Day 12 p21.6**).

447. On 20 May 2020 there were further missed calls between AG and LB, and AG requested that LB call him [**C6883**]. LB could not remember whether he spoke to the AG that day (**Transcript Day 9 p93.1**). The AG gave evidence that he “*almost certainly*” called LB after these missed calls to update him on the meeting (**Day 12 p13.8**).

448. At the meeting on 20 May 2020 between the AG, the DPP, IM, PR and MY, the AG stated: “*I’ve spoken to Lewis Baglietto as you know and err, my impression was, my impression is, that they welcome this written statement, but that there are, they consider there are issues that need to be dealt with, at the same time, like this in this letter. And my advice, if I can use the word advice, even though it is not advice, is, is what I have told him, is look, it’s taken Christian and me quite a bit of persuasion of the RGP to go down this path, let’s leave it, let’s go down this process of the written statement.*” [**C4071**] LB did not recall having a discussion with the AG of this nature (**Transcript Day 9 p93.20**).

449. On 27 May 2020, LB had a telephone conversation with the DPP. It is noted that LB did not refer to this meeting in his first statement or when giving oral evidence, but stated that he became aware of it when he found a handwritten note in a file on 2 May 2024 (**Levy 2 para 10**). LB stated it was likely that he called the DPP with queries about “*what further information the RGP was prepared to disclose to Mr Levy concerning the application for the warrant prior to him tendering his statement*” (**Levy 2 para 11**). In this handwritten note (**Exhibit LB2**), LB recorded that:

- a. The DPP “*agrees no risk of destruction/concealment.*”
- b. The DPP “*understands there are some q’s to be answered. He thinks J has clear answer; not involved in details of the (?) deals he’s asked to take part in.*”
- c. “*So what if friend of CM. Not a crime to talk to CM.*” CTI note it is not clear whether this is a note of something that the DPP said or LB, but the structure of the note suggests the DPP.

- d. The DPP “*said that he did not think enough evid[ence] on J at moment to go to jury. Still had to tick box and pursue line of enquiry as otherwise risked abuse arguments eg, why didn’t you pursue that line of enquiry.*”
- e. The DPP “*still thinks there are reasonable grounds to enquire – even though answers will negate this.*”
- f. The DPP said that “*S.O. in Chambers had found something in Archbold that said that sharp business practice may be sufficient.*”

450. It appears that on 27 May 2020, Hassans was provided with a redacted version of the RGP’s application for the warrant [C4614, which referred to “*the document which was provided to you on the 27<sup>th</sup> May 2020*]. On 29 May 2020, the DPP indicated that he was in the process of finalising a further version of this document which scaled back the redactions [C4614].

451. On 29 May 2020 at 12:21 LB messaged the AG to inform him that he had emailed him “*the article*”, and the AG later confirmed receipt [C6884], although no corresponding email appears to have been disclosed.

452. It is clear from the evidence, particularly that of the CM and the contemporaneous documents, that there was very regular communication between the CM and the AG on the one hand and LB (on behalf of JL) on the other. Much of those communications were unrecorded phone calls, and the witnesses’ evidence as to the contents of the calls is (to varying degrees) incomplete. The WhatsApp messages around those calls provide some indication as to the likely contents of those calls. However, it is beyond dispute that:

- a. JL felt extremely aggrieved by the RGP’s actions and immediately instructed LB to raise complaints with both the AG and the CM. He also did so directly himself.
- a. Conversations continued over the next few days, including an in-person meeting between the CM, LB and JL at the CM’s home on 17 May 2020.

453. Those conversations plainly referred to the search warrants, but also (at least between the CM and LB) extended to (i) potential claims by JL against the RGP, and (ii) potential disciplinary action against, or removal of, IM.

**Evidence on “appropriateness” of conduct and alleged conflicts**

454. Issue 5.3 requires the Inquiry to investigate whether the AG and/or CM placed “*any or any inappropriate pressure*” on IM or “*otherwise interfered in the investigation*”. The AG and CM were questioned on this at various points throughout the hearing, as well as the appropriateness of their conduct in the context of Operation Delhi more generally.
455. The AG gave the following evidence:
- a. When asked whether he considered it inappropriate to speak to JL about the warrants, the AG replied “*Not the type of conversation I had with him...*” (**Transcript Day 11 p259.17**).
  - a. When asked whether it was appropriate for the AG to say “*Don’t worry*” to the suspect in a live criminal investigation, he said “*All I was doing was ending a conversation or exchange before it started. In the context now of this Inquiry that looks very sinister and there is nothing to it. ...*” (**Transcript Day 11 p260.19**).
  - b. Referring to a comment made by IM in the 13 May 2020 meeting [**B228**], the AG was asked whether he was put in an “*awkward position*”. The AG said: “*All I was referring to there is that, look, this was an investigation where it involved Mr Levy who was close to Mr Picardo and there were lines of enquiries. That’s always going to be awkward. But it is awkward, irrespective of who is the Chief Minister. It is a person with whom I work very closely, and of course whoever is in the office, it would be equally awkward. That is all I was meaning...*” (**Transcript Day 11 p241.10**).
  - c. The AG did not have any concerns that the Government was seeking to influence him (**Transcript Day 11 p253.15**). Asked whether he was too close to the CM to be able to exercise independent judgment (on Operation Delhi), he stated “*I hardly spoke to the CM about this investigation during this period*” (**Transcript Day 11 p255.15**).
  - d. The AG did not consider that his actions amounted to an interference with the investigation or pressure on the RGP (**Transcript Day 11 p270.24, Day 12 p154.1**).
  - e. When asked whether it was appropriate to advise the RGP on the warrants whilst being in contact with LB, he stated: “*...my contacts with Mr Baglietto were agreed in the meetings with Mr McGrail and Mr Richardson. It was very transparent. ... It was part of my role to manage that...*”. He considered that he was fully transparent with the RGP as to what he was discussing with Hassans (**Transcript Day 12**

**p14.7**). He stated that he did not take advice from the DPP of the appropriateness of speaking to LB (**Transcript Day 12 p99.21**).

- f. The Chairman asked the AG whether it was part of his duty as AG to assist the CM to draw “red lines”. The AG answered: “*My involvement with him was largely on that day, in the investigation, on the 12<sup>th</sup>. That I did nothing – I didn’t think I could act on the spot on the 12<sup>th</sup>, because it was all happening very quickly. Whether I failed thereafter to do things, and say the things that you’re suggesting, yes, it’s something which I accept...*” (**Transcript Day 12 p177.12**).
- g. The AG was asked “*Is it your job, do you think, to stop a Chief Minister in your presence from being critical of police action in an investigation?*” He answered no. He was further asked “*In your opinion and to this day are you of the view that it was appropriate or inappropriate for you to have communicated in whatever way you did with Mr Baglietto?*” He replied “*I don’t think it was inappropriate and certainly not the type of communication that I was having...*”. He was then asked “*And do you have a view that lawyers’ suspects should not be allowed to communicate with the AG to make complaints about police behaviour in their investigation of them?*”. The AG replied “*It happens*” (the entire exchange is at **Transcript Day 12 p254.4 – 255.18**).
- h. The AG did not consider that there was any dispute between the CM and Government, or conflict between their interests. He stated that neither the CM nor Government sought his advice on 36 North. He was then asked “*So in your mind how does the question of your ability or inability to advise both conceivably arise?*” He replied “*I don’t, no.*” (**Transcript Day 12 p258.2**).

456. The CM gave the following evidence as to the appropriateness of his actions in the context of Operation Delhi:

- a. He said that he believed that he acted in accordance with those principles with the ministerial code at all times in relation to 36 North and Operation Delhi, and that he complied with the obligation in paragraph 7.7 of the code to scrupulously avoid any danger of any actual or perceived conflict of interest between his ministerial position and his private financial interests (**Transcript Day 16 p95.16**).
- b. When asked why he felt it was appropriate to give his view on the decision to conduct a search warrant on JL, the CM replied: “*Because Mr Levy, for the reason’s I’ve set out there, is Gibraltar’s most senior silk, I think at that time, and*

*the head of Gibraltar's largest law firm. And the consequences of carrying out a search warrant against such a person where (?) jurisdiction. In other words, there was a jurisdictional risk as a result of the execution of that search warrant. Gibraltar's reputation was in play. ... So, I was very concerned that that should be an issue that should not have been progressed in that way; in other words, seeking to obtain evidence from James Levy could have happened in a way that was less intrusive and did not expose the jurisdiction to reputational risk in the way that this did.” (Transcript Day 16 p166.9).*

- c. When asked whether in saying his message to IM of 12 May 2020 that he would not be commenting any further given his close personal relationship with JL, he was recognising that he himself did not consider it appropriate to comment on the warrant, he said: *“I was saying explicitly what I say in my message ... Because I wanted time to think about my reaction, and I had time to think my reaction – through my reaction, that’s why I wanted to see Ian McGrail, who I found out was in No 6. Otherwise I would have spoken to him on the phone.” (Transcript Day 16 p171.25).*
- d. When asked whether he was conflicted between his duties as CM and his duties as a friend, the CM said: *“I had other duties here too. I was also the senior representative of a party that we were told should be a complainant in these proceedings, and I felt that it was entirely inappropriate that things had progressed in the manner that they appear to have progressed. I’m entitled to have opinions even though I have different capacities.” (Transcript Day 16 p172.18).*
- e. When asked whether it occurred to him that a Chief Minister should not be expressing strong views on a live criminal investigation, the CM said: *“Well I’m surprised that point is being taken, given that when I was expressing strong views about the airfield incident the RGP were very happy to receive my strong views.” (Transcript Day 16 p174.8).*
- f. When asked why, after he said that he would not comment further, he nevertheless saw fit to call Mr McGrail and do just that, he said *“Because I wanted more information. Because this was jurisdictionally important: Gibraltar’s reputation was potentially going to be tarnished by this action, carried out in this way.” (Transcript Day 16 p175.14).*
- g. When asked whether it was really rather a matter for the magistrate whether a search warrant was appropriate as opposed to a production order, the CM stated:

*“Legally, it is only going to be the magistrate who’s going to make up his mind whether or not to sign the search warrant. That doesn’t mean I’m not entitled to my opinion in respect of that.” (Transcript Day 16 p182.20).*

- h. When asked why it was necessary for him to involve himself in the matter if it was open to Hassans to challenge the warrant and it was so clear that they would be successful in doing so, the CM stated: *“I’m not suggesting it was necessary. I’m just suggesting that I also had equities in this which are not the equities which are improper which you put to me about my involvement in 36 North, etc. I had equities which were proper and which I had to pursue as my obligation in defence of the probity of this jurisdiction and its reputation.” (Transcript Day 16 p184.5).*
- i. When asked whether, given his financial interests in Hassans, he believed that he managed to avoid a danger of actual or perceived conflict, the CM said: *“Entirely, because this was not in any way driven by my financial interest. You have to understand what I am saying about the nature of the effect of this. Whether it was, and I’m sorry to repeat the point, Sir Peter Caruana, Melo Triay, the head of any other one of the important chambers in Gibraltar, this was hugely consequential because of that, not because I am a partner on sabbatical in Hassans. That is not relevant to the issue. ... These things are relevant to Gibraltar’s .. reputation as a jurisdiction, and my key equity in this matter is the protection of Gibraltar and its reputation, despite that fact that I also happen to be a partner on sabbatical of Hassans and indeed that I might have had an interest, which is extinguished by the time this is happening, in 36 North. Those things mattered more to me.” (Transcript Day 16 p193.13).*
- j. When paragraph 6.6. of the code was put to him and the CM was asked why he did not seek to involve the Chief Secretary, the CM said *“I involved the Attorney General ... in the presence of the Commissioner and the Commissioner knew all of those connections to which you are referring. ... We uphold the same ethical standards but with a level of proximity which therefore necessarily by degree is different. So I didn’t need to specifically declare those things to Mr McGrail. Indeed, it’s given away by the fact that he wrote to me in his WhatsApps alluding to my relationship with Mr Levy. It wasn’t something that was in any way hidden.” (Transcript Day 16 p197.11).*
- k. When he was asked whether he had no concerns about contacting a suspect in a live criminal investigation, he said: *“In what capacity? As Chief Minister?”* CTI

replied “Well, think it is better if you tell the Inquiry in what capacity you contacted him?”. Then the CM stated: “But you have asked me the question about whether or not I have concerns. So, I mean I am very happy for you to break down the question if you like, or I will break it down.” CTI then asked: “Did you take your Chief Minister’s hat off in order to make that call?”, to which the CM replied: “I don’t think it is a hat that you can take on and off. You are a Chief Minister all of the time. You are a friend all of the time. You are a potential victim and complainant all of the time, until you are not. So, did any of those exclude me from speaking with James Levy, and was I made privy to confidential information that I could not share with James Levey? The answer to all of those questions is: no. You might say it is prudent or less prudent for an elective official to speak to an individual who might be the subject of a police investigation, and it might or might not have negative political consequences .... But it is certainly not improper, because the police ... is separate to the Government ... and it has no conflict in speaking to a person who may be the subject of prosecution or investigation.” **(Transcript Day 16 p242.19).**

- l. When asked whether he thought it was appropriate for the CM to be getting involved in police disciplinary matters, he said: “I wasn’t getting involved in a police disciplinary matter. ... No such disciplinary matter has been commenced because ... the circumstances which I thought were fanciful did not turn out to be true and I was correct to think that they were not true.” **(Transcript Day 16 p258.11).**
- m. When asked whether he, as CM, should be proposing legal claims against the police, he said: “This is not a legal claim against the police. This is a claim for the police to return that which they hold which belongs to you. ... An application, not a legal claim. ... I as Chief Minister am not the police; I am not the investigating authority and I am not the prosecuting authority and I think I am free to share my view as to the law of Gibraltar with any third party that I consider appropriate in particular given my jurisdictional concerns about the effect of the search warrant which I’ve already shared with you.” **(Transcript Day 16 p260.18).**
- n. When asked whether there was a conflict between you on the one hand proposing an application against the police, and on the other hand having to foot the bill of any such application as Minister of Finance, the CM said: “I don’t think I would describe that as a conflict. I would describe that as a tension but a tension that

*had been brought about by the Royal Gibraltar Police because of the manner in which they had acted.” (Transcript Day 16 p261.20).*

- o. When asked why he saw fit to share his complete loss of confidence in IM with JL, given that JL had no constitutional role in the process, the CM said: *“I shared it widely not just with Mr Levy who has no constitutional role but with many other people who I’d spoke to in the run up to that time” (Transcript Day 16 p277.21).*
- p. When asked whether the context of Gibraltar perhaps meant that one has to be a bit more careful and impose boundaries so that inopportune meetings do not result in inappropriate things being discussed, he said *“Well, you carry those boundaries with you and we didn’t discuss inappropriate things.” (Transcript Day 16 p284.20).*
- q. When asked whether he considered it appropriate for a CM to make proposals to an AG to take over, continue and discontinue proceedings under section 59 of the Constitution, the CM said: *“In the circumstances that appertained on that day, I obviously considered it appropriate for all the reasons I have already highlighted to you, which caused me great jurisdictional concern that I had. If I thought it was not appropriate but had wanted to do it, I would not have done it in writing in a way that was going to leave a trail. So, I thought it was entirely appropriate for me to do it. I didn’t expect that he would do it because I told him. I knew that he would read the section and make up his mind for himself, and I didn’t think it was inappropriate to raise such issues with him, given that I understood what the state of play was between him and Hassans and the police, etc., etc., and this was highlighting to him a power that exists in our Constitution. I mean, you could put it another way, couldn’t you? Is it inappropriate for the Chief Minister to refer the Attorney General to the powers that are set out in the Constitution?” (Transcript Day 16 p299.10).*
- r. When asked whether it was consistent with the provisions of the Ministerial Code the CM said: *“Yes, because I was acting selflessly, I was acting in the interests of Gibraltar. I wasn’t acting in the interests of a friend, I wasn’t acting in my business interests, I was acting in the interests of Gibraltar every time. That’s why I was expending quite so much time on these issues, because I believed genuinely that the interests of Gibraltar required me to act that way.” (Transcript Day 16 p301.9).*
- s. When asked whether from a perception perspective it was still compliant with the Ministerial Code, the CM said: *“I do”,* and referred to the fact that JL’s phone whit

all of this information was in the hands of the RGP, with the information of all of his international, very high net worth clients, and there was a HMIC report which said that the RGP used their own devices to search int devices confiscated under search warrants, which he saw as a jurisdictional concern (**Transcript Day 16 p301.24**).

## ISSUE 6 – THE FEDERATION COMPLAINTS

### The “fractured relationship” between IM and the GPF

457. There is no dispute that the relationship between IM and the GPF was difficult and contentious, including as to issues surrounding GPF elections, allowances for convenors and the independence of the GPF, and that both sides raised issues in relation to these matters from time to time with JB and the CM.
458. Indeed, all relevant CPs and witnesses positively aver that the relationship between IM and the GPF was fractious and/or difficult, none of which was challenged at the Main Inquiry Hearing:
- a. IM himself acknowledged that *“The relationship with the GPF association was regrettably a very difficult one, not because of my wishing it to be. It became evidence that certain factions within the GPF executive board disliked my management style and this caused strain to my relationship”* (McGrail 3 para 10 [A53]).
  - b. Sgt Maurice Morello, Chairman of the GPF from May 2019 to 2023, described the relationship as *“a very difficult one from the start”* (Morello 1 para 6 [A1194]).
    - a. Mr Morello’s evidence is supported in almost identical terms by Leif Simpson (Secretary of the Police Federation at the relevant time, and now Chairman) (Simpson 1 para 4 [A1467]) and Henry Bautista (Mr Morello’s predecessor as Chairman of the GPF (Bautista 1 para 16 [A1500])). In their affidavits provided to the Inquiry Maurice Morello, Leif Simpson and Henry Bautista gave detailed accounts of the many ongoing disputes between IM and the GPF.
    - c. The references by NP and the CM to the *“fractious, almost hostile”* and *“difficult”* relationship are set out in CTI’s Opening Submissions at para 114-116. The CM adds (Picardo 2 para 5.3 [A220]): *“I found IM to be virulently against the work of the GPF, even going as far as trying to persuade me to undo the establishment of the Federation because he considered that he could not work with them”*.
    - d. JB stated that he *“was aware that relations between Mr McGrail / Command on the one hand and Mr Morello/the GPF on the other were bad and that they had disputes”* (Britto 2 para 2 [A329]). At the Main Inquiry Hearing, JB gave evidence that the relationship between IM and the GPF was *“fractious, very difficult and ...*

*actually took me back to me school days – well my school teacher days when people just didn't get on, children just didn't get on*” (Transcript Day 15, 17.23).

- e. RU referred to the relationship between IM and the Chairman of the GPF, Maurice Morello, as “*extremely fraught*”, adding that they “*never met eye to eye*”, making day-to-day command business “*difficult*” (Ullger 1 para 14 [A530]).
- f. Assistant Commissioner Yeats described the relationship as “*difficult*” (Yeats 1 para 5 [A632]).
- g. Detective Superintendent Field referred to “*unhealthy tension*” between IM and the GPF (Field 1 para 11 [A796]). At the Main Inquiry Hearing, he added that there was tension between IM and the GPF management “*almost all the time*” (Transcript Day 13 p60.4).

459. There are many contemporaneous documents which demonstrate tension and disagreement between IM and the GPF. See, for example:

- a. An email from IM to JB dated 21 December 2018 complaining of the “*incessant path of destruction that the Gibraltar Police Federation [Henry Bautista et al] is set on*” [C1627].
- b. A WhatsApp exchange between IM and the CM on 11 July 2019 at 09:29 [C6686]:  
IM: “*Good morning CM – I would be extremely grateful for 5-10mins of your time to discuss what I foresee will become a very undesirable situation with regards to the relationship between the RGP and the Gib Police Federation Board. ... There is a clear pattern developing which is not heading in a good direction & which is why I feel it important that I explain how I am going to deal with the matter before it reaches you via the Fed Convenors themselves.*”
- c. A WhatsApp exchange between IM and the Chief Secretary, Darren Grech, on 11 November 2019 at 17:14 [6621-2]:  
IM: “*I have been told that the Police Federation are meeting with Crome... No doubt they are going to discuss the personal remuneration. I can't let them get their way – it's not good for the RGP and by default Gibraltar PLC...*”  
And subsequently: “*The Fed need stopping on their tracks ASAP.*”
- d. A WhatsApp exchange between IM and the CM from 28-30 January 2020 at 19:20 relating to an investigation into comments made by the GPF to the *Panorama* and proposed exclusion of GPF convenors from the disciplinary purview of the RGP [C6697-8].

- e. An email from Maurice Morello to JB on 22 June 2020 at 10:14 seeking to dissuade the GPA from appointing a Commissioner from the UK [C5002]:

*“It is no secret that we have had numerous issues with Mr McGrail due to his management style and the lack of respect which he demonstrated towards the Gibraltar Police Federation, and especially towards the Secretary, Leif Simpson and myself as Chairman. As a result, the relationship between Command and the Federation was strained at best, over these last two years.”*

460. IM’s response on these matters is provided in his most recent 6<sup>th</sup> Affidavit [A1458-1461], received by the Inquiry on Monday 25 March 2024 (an earlier version was received on Friday 22 March 2024 but then withdrawn due to it containing errors). It is not the role of this Inquiry to go into the detail of that evidence and those disputes, and in a Closed Ruling dated 1 March 2024 the Chairman held that most of the detail was irrelevant to the Inquiry’s work. It is clear, however, that there was confrontation on many fronts, with both sides blaming each other for the dispute.

461. Particular flashpoints between IM and the GPF were as follows:

- a. Surveys organised by the GPF in 2018 and August/September 2019, both of which had unfavourable results (see, e.g. McGrail 3 para 11 [A53] and Morello 1 paras 87-90, 93-94 and 99 [A1213-5]). The survey raised concerns about “*discontent amongst the rank and file with complaints of bullying*”, similar to criticism which had previously been made of the RGP in the *Panorama* newspaper (McGrail 3 para 16 [A54]). Sgt Morello alleged that IM “*failed to accept that bullying was happening under his watch*” and “*as a result it was never really addressed or appropriately tackled*”, and added: “*What he failed to see, or did not want to accept, was that bullying in the RGP stemmed from his authoritarian style of management, which filtered down to senior management and to other managers*”. Sgt Morello goes as far as saying that IM “*was himself the biggest problem and bully the RGP had*” (Morello 1 paras 93-4 [A1214]). In response to this, IM commissioned an independent consultancy firm (AAP Associates) to “*help us contextualise he survey results as they were very raw in substance and required analysis*” and provide assistance in addressing issues of concern arising from the survey, and affirms that a series of actions to work on the recommendations were put in action, and that he shared the results the GPF, the Governor and (he believes) the CM and Minister of Justice (McGrail 3 para 14 [A53-4]).

- b. Disciplinary proceedings against Sgt Morello and PC Simpson (McGrail 3 para 17 [A55], Morello 1 paras 121-140 [A1220-4]), on the basis that they had made adverse comments about the RGP's senior management to *Panorama* (something which the CM commented "*smacks of Zimbabwe*" [C6697]). Sgt Morello described this process as vexatious and intimidatory. On another occasion IM issued Sgt Morello with a written warning (Morello 1 paras 114-119 [A1219-20]).
- c. The structure and remuneration of the GPF, and whether it should act as a trade union. IM expressed his views on these matters very firmly, which the GPF in turn saw as interference in their business (McGrail 5 paras 133-8 [A169-70]). The CM stated that IM "*even went as far as trying to persuade me to undo the establishment of the Federation because he considered that he could not work with them*" (Picardo 2 para 5.3 [A220]). In early 2020 IM wrote to the Governor raising concerns about the GPF's structure, resulting in a "*firm*" exchange between the CM (who took exception to the letter) and IM, and a further letter from IM clarifying the position (McGrail 3 paras 18-20 [A55-6], Picardo 1 para 110 [A217]). IM accused the CM of impairing relations by leading both sides to believe he was on their side on this issue, and ultimately ratifying the GPF's pay conditions (McGrail 5 148-9 [A173]).

462. The issues arising from the poor relationship between RPG management and the GPF were "*one of the main precursors*" to IM seeking the HMIC report (McGrail 3 para 21 [A56]). However, at the Main Inquiry Hearing, IM clarified that the detail of the bullying allegations was addressed by the APP Report, but to complement the AAP Report he also commissioned the HMIC Report for a "*two-prong*" approach (**Transcript Day 6 p104.3**).

463. It is also notable that the relationship between RU and the GPF (whilst under the Chairmanship of Mr Morello) was also a difficult one. In an email dated 10 March 2023 to all police staff, RU stated: "*The Chairman of the Police Federation has chosen to write to you all and I don't intend to answer all of his negative misleading comments in his email to you but it is suffice to say that as much as I have tried to work with the Chairman and Secretary of your Federation to try and achieve better things for you all, it has been almost an impossible task and I can no longer work with them. I sincerely do apologise to you all because this is not my style and many of you know how I operate but, after much trying to*

*collaborate with them and avoiding confrontations, my back is broken...*<sup>19</sup> RU stated that since the change of Chairman, his relationship with the GPF has improved: “*we discuss and we disagree but we respect each other and we are already achieving a lot of good things for the organisation*” (**Transcript Day 13 p92.25**). Mr Morello called this evidence “*laughable*” and stated: “*I have information that Mr Ullger threatened to sue the new convenors if they released the survey with the comments unredacted*”. He accused RU of wanting the public to believe he got on better with the new Convenors to discredit Mr Morello and Mr Simpson (**Transcript Day 14 p28.24**).

### **Formal complaints to the GPA**

464. Prior to the Main Inquiry Hearing, there was a clear factual dispute as to whether any formal complaints were made by the GPF to the GPA about IM. On the one hand:

- a. NP’s evidence was that the GPF made “*formal complaints*” to the GPA (Pyle 1 para 23.2 [**A248**]).
- b. Mr Morello attested that in late January or February 2020, he spoke to JB by phone and asked to address the GPA Board, “*not only in relation to the ongoing internal investigation but the general relationship with the GPF/ Command and the authoritarian style of leadership*”. A meeting was held at the GPA offices with most of the GPA Board in attendance, and he says that he asked how to file a complaint of bullying against the Commissioner, to which JB replied “*no please, no, that’s all we need now*”, and Mr Morello then pointed out that, unlike in the UK, there was in fact no recourse. He then gave the Board a summary of events that had transpired since being elected as Convenor, at which point a Board member stated “*that is clearly bullying, and the problem clearly here is Mr McGrail*” (Morello 1 paras 145-8 [**A652-3**]). At the Main Inquiry Hearing, Mr Morello remained firm that a meeting of this nature had taken place. He added that most of the members of the GPA were there, including NP (**Transcript Day 14 p6.5, 11.10**), and therefore considered that the meeting he remembered was not the GPA meeting of 6 February 2020 [**B5881**], because NP was not present at that meeting (**Transcript Day 14 p10.15**). Mr Morello gave evidence that although the GPA was “*supportive*”, no action was taken as the GPA “*didn’t have the oomph to take on the organisation*” [the RGP].

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<sup>19</sup> This email was disclosed late to the Inquiry and is not in the Bundle.

- c. Mr Simpson gave an almost identical account in his written evidence, although he specified that the meeting took place on 31 January 2020 and that the Board Member who spoke was Frank Carreras (Simpson 1 paras 155-8 [A1493]).

465. On the other hand:

- a. Whilst JB accepted that the “*issues and disputes between Mr McGrail / Command on the one hand and Mr Morello / GPF on the other were occasionally raised with me by both sides*”, he was firm in written evidence that “*no formal complaint, oral or written, was ever made*”, clarifying that “*I regarded things said to me as matters in dispute rather than complaints*” (Britto 2 para 3 [A329-30]). He did not recall any meeting of the GPA attended by Mr Morello in January or February 2020 and stated there was no record of such meeting.
- b. Other members of the GPA all confirmed that they have no recollection or record of formal complaints against IM being made. See Gonçalves 1 para 39 [A343], Alcantara 1 para 13 [A355], Danino 1 para 29 [A371], Falero 1 para 24 [A382], Gomez 1 para [A400], Hassan-Weisfogel 1 para 39 [A418], Lavarello 1 para 50 [A437], Nagrani 1 para 39 [A451], Patron 1 para 36 [A463], Pizzarello 1 para 27 [A475], Reyes 1 para 27 [A485], Collado 1 para 30 [A498], Figueras 1 para 13 [A505], Carreras 1 para 21 [A519], Carreras 2 para 5(ii) [A524].
- c. IM stated that he was never informed by anyone at the GPA or anyone else that complaints of bullying had been made against him, they are not reflected in any GPA minutes, and all GPA members specifically disavow being aware of any complaints of bullying (McGrail 5 paras 141, 158 [A171, 174]). However, at the Main Inquiry Hearing he accepted that on occasions his difficult relationship with the GPF had been raised with the GPA: see eg [C1627] and [B5878] (**Transcript Day 7 p64.21**).
- d. RU confirmed that he was not aware of any formal allegations or complaints made by the GPF in respect of bullying or intimidation by IM (Ullger 1 para 12 [A530]). He did refer to the GPF’s survey in late 2018 which referred to “*bullying allegations*”, and supported IM’s evidence that independent consultants were instructed, with their recommendations leading to work by a working group created between members of the RGP Command Team and the GPF (Ullger 1 para 17 [A531]). He concluded that “*Certainly, Mr Morello constantly qualified Mr McGrail as a bully, but as explained he never made a formal complaint to me about it, nor did he*

*report it to me officially*” (Ullger 1 para 24 [A533]). At the Main Inquiry Hearing, CTI asked RU whether IM’s management style could have been interpreted by some as bullying, to which RU responded that *“what one individual might think is bullying another individual might just think it’s run of the mill order of the day”* (Transcript Day 13 para 88.12).

- e. AC Yeats confirmed that he was not aware of any allegations or complaints made by the GPF against IM in respect of bullying or intimidation (Yeats 1 para 4 [A632]).
- f. DS Field confirmed that he *“cannot recall being made aware or put on notice of any formal allegations or complaints made by the GPF in respect of bullying and/intimidation by Mr McGrail”* (Field 1 para 10 [A796]).
- g. Superintendent Wyan confirmed that he was not aware of any allegations of bullying and/or intimidation made against IM by the GPF (Wyan 1 para 4 [A1021]).

466. During the course of the Main Inquiry Hearing, Mr Lavarello (a member of the GPA) disclosed an email from Mr Britto to the members of the GPA dated 23 January 2020, regarding a meeting on 31 January 2020:

*“I’m meeting with Federation at GPA offices on Friday 31<sup>st</sup> January at 10.00am – should any of you be able to, you are most welcome to attend. Last time we met, it was must fruitful, if you recall and we were able to get a better ‘feel’ by meeting with them like this.”*

467. In a subsequent email also disclosed by Mr Lavarello, the meeting was rescheduled to 11:15am on 31 January 2020. Mr Lavarello’s timesheet for 31 January 2020 also records 2.5 hours for *“admin”* on that date, which may have been the code that he used to record GPA meetings at the time (Email from TSN to Triay 2 May 2024 22:12). These new items of evidence support a meeting having taken place on 31 January 2020, as Mr Simpson recalled (close to the date that Mr Morello recalled and on the precise day that Mr Simpson recalled). JB did not recall a meeting taking place on 31 January 2020, but accepted that it possibly did happen, albeit that *“there’s no minutes or anything because it was just almost like having coffee with them... it wasn’t a GPA meeting”* (Transcript Day 15 p24.15).

468. It appears that the division between JB and the GPF as to whether there were any complaints or meetings arises from the meaning that different witnesses attributed to the

terms “*complaint*” and “*meeting*”. JB explained that he understood “*formal complaint*” to mean “*a written complaint*”, whereas a mere “*complaint*” is “*some sort of grievance*” (**Transcript Day 15 p19.16**). By contrast, Mr Morello’s understanding was that his comments to the GPA (on 31 January 2020) did amount to a “*verbal complaint to the GPA*” (**Transcript Day 14 p25.3**). He accepted that the only documentary evidence of the GPF complaining to the GPA was copies of the GPF survey, which he states were provided to the GPA (**Transcript Day 14 p3.19**).

469. Further, both JB and Mr Lavarello distinguished between formal GPA meetings and other meetings between the GPA and GPF, such as “*coffee mornings*” (**Transcript Day 14 p215.17, 217.13**). JB’s previous position had been that the minutes for a GPA meeting on 6 February 2020 [**B5881**] incorrectly referred to a “*Meeting with GPA & CoP*”, as there had been no such meeting [**Britto 4 para 8 A870**]. At the Main Inquiry Hearing, CTI asked JB whether he wanted to revisit this evidence in light of the new email disclosure about the 31 January 2020 meeting. JB stated that “*I am not 100 per cent sure that my original take on that isn’t the correct one, but I am willing to accept that it could well be*” (**Transcript Day 15 p28.15**).

470. If a meeting did take place on 31 January 2020, only Mr Morello was able to provide a detailed description of its contents in oral evidence:

a. JB recalled an exchange with Mr Morello of the nature that Mr Morello described, but thought that this was at a coffee morning between the GPA and GPF, not a GPA meeting (**Transcript Day 15 p22.1**). He accepted that he did his best to provide a “*mediatory role*” between IM and the GPF (**Transcript Day 15 p29.12**). JB accepted that the GPA regularly spoke at its meetings about the issue of bullying within the RGP, he maintained that these discussions did not pertain to allegations of bullying by IM specifically (**Transcript Day 15 p32.10**). However, he later in questioning he stated “*I wouldn’t say regularly but it must have been discussed because we discussed everything that was out there in the community*” (referring to articles in Panorama) (**Transcript Day 15 p164.17**).

b. NP does not recall the meeting as described by Mr Morello (**Transcript Day 18 p62.23, 64.1**) and does not recall being present at any GPA meetings where the GPF made a complaint (**Transcript Day 18 p58.24**). This contrasts with his written evidence that the GPA “*regularly spoke at its meetings about the allegations of*

*bullying and intimidation by Mr McGrail*” (Pyle 1 para 23.2 [A248]). During oral evidence, NP’s position was more high level: he stated he was “*under the impression that the Federation were, or had complained or were looking to complain formally about Mr McGrail to the GPA*” (Transcript Day 18 p58.8).

- c. By contrast, Mr Lavarello did not recall a meeting of the type described by Mr Morello taking place (Transcript Day 14 p217.13).

471. In conclusion, there appears to be no dispute that Mr Morello, on behalf of the GPF, raised the issue of bullying with the GPA, whether or not this was at a formal meeting and whether or not it amounted to a formal complaint. There is some dispute as to whether NP was present on that particular occasion, but he was certainly aware of the allegation.

#### **Rumours of bad practice within the RGP**

472. It is impossible and impracticable (as well as outside its Terms of Reference) for the Inquiry to look into the “*numerous anecdotal stories of bad practice and behaviours by the RGP*” which NP referred to, and in any event NP confirmed that these were not things on which he felt it was possible to act, although they contributed to his “*growing sense of unease*” (Pyle 1 para 23.4 [A249]).

## ISSUE 7 - THE ALCAIDESA CLAIMS

473. The Alcaidesa Claims are mentioned in the WhatsApp sent by the CM to NP on 14 May 2020. The CM stated that he was “*starting to have concerns about the senior management of the RGP*” and was “*starting to lose confidence*”. The CM then listed five matters, including “*the continuing saga of the Alcaidesa claims*” (Picardo 1 para 67 [A198]). The CM does not elaborate on this matter in his evidence, and to date has not explained what the reference to “*claims*” is intended to refer to. The evidence also contains some passing references to the Alcaidesa claims in the context of discussions about the Incident at Sea (as both involved RGP officers operating outside of Gibraltar), but is not presented to be a “*reason*” in that context.
474. Ex-Chairman of the GPF Maurice Morello refers to the Alcaidesa incident in his evidence (Morello 1 paras 59 to 65 [A635-6]). He refers to *Panorama* newspaper articles on 25 and 27 June 2019 which put questions referring to the incident and two RGP officers being sentenced in a Spanish Criminal Court, and to the RGP’s reply that “*it is our understanding that there are no adverse records in respect of any RGP officers in Spain*”, a response which he describes as “*lying and intentionally misleading the public*”. He refers to similar responses being given to questions by GBC and *Gibraltar Chronicle*.
475. IM stated that: the “*Alcaidesa Claims*” are “*clearly irrelevant (or so tangential as to be effectively irrelevant) to FP and NP’s ‘loss of confidence’...*” (McGrail 5 para 165 [A176]).
476. The Inquiry team conducted a review of the evidence disclosed on this issue, in particular the RGP’s disclosure on the investigations into the incident (see in particular [C61]), and the subsequent RGP disciplinary process. Based on the documents available to the Inquiry, it appears clear and undisputed that:
- a. On two occasions in early August 2010, officers from the RGP entered a flat in Alcaidesa (Spain) without a warrant and removed property belonging to the tenant. Those actions were unlawful in Spain and resulted in public and political criticism.
  - b. IM was not one of the RGP officers involved, and the incident predated his appointment as Commissioner.
  - c. The incident was investigated by the RGP (including IM interviewing one of the officers involved), and culminated in a report by then Superintendent Jay Gomez

to then CoP Wink [C61], who recommended that seven officers be the subject of disciplinary proceedings for discreditable conduct.

- d. On 26 November 2018, five individuals, including two serving RGP officers, were sentenced in a Spanish Court [C1591].

477. The Main Inquiry Hearing did not lead to any further clarity as to what the “claims” referred to by the CM in his text message of 14 May 2020 referred to. The Inquiry Team is not aware of any “claims” (in the civil sense) brought against RGP officers, although there were criminal proceedings in Spain which appear to have ended in 2018. There was a WhatsApp exchange between IM and the AG between 5 and 25 October 2018 referring to the impending trial of the two RGP officers in Spain [C6587-6589].

478. On 26 June 2019 (the day between the two Panorama articles referred to by Mr Morello in his evidence), IM exchanged WhatsApp messages with the CM as follows [C6682]:

IM: *“Been chatting to Stuart Green [of the Government’s media office] ref Panorama questions you have received regarding the Alcaidesa incident & your understanding of it having been dealt a (sic.) civil matter? Could we have a quick chat about this. ...”*

CM: *“Hi Ian. Happy to talk. Give me 5 mins. I didn’t say it was a civil matter, I said it progressed as a private prosecution cos the victims insisted. But let’s bottom that out.”*

479. IM was not personally involved in the incident and was not one of the officers under investigation. His only role in the incident was as part of the Investigating Team appointed by the (then) Supt Gomez to investigate possible disciplinary action to be taken against RGP officers involved in the incident. At the Main Inquiry Hearing, IM explained that his then line manager Superintendent Jay Gomez “roped me in ... to carry out an investigation into the activities or the complaints or the concerns and I was part of that investigation team” (Transcript Day 7 p68.7). The CM clarified that his reference to the Alcaidesa Claims related to the RGP generally and Senior Management Team in particular. He was not able to say whether IM had been involved in the Alcaidesa Incident, but relied on the fact that IM was a Superintendent and part of the Senior Management Team at the time (Transcript Day 16 p313.17). IM’s team clarified that he was a Chief Inspector at the time of events.

## ISSUES 8 – 10: THE 29 MAY LETTER, GPA PROCESS & S.13 ISSUE

### IM's appointment as Commissioner of Police

480. The procedure for appointing the new Commissioner of Police in October to December 2017 was agreed by members of the GPA and was similar to that adopted at the time of the appointment of IM's predecessor. It consisted of written applications, an oral presentation and interview before a selected panel of members of GPA (Mr Gonçalves, Ernest Gomez, Reverend Fidel Patron and NP) whilst in the presence of all other members of the GPA.
481. In October 2017, Mr Gonçalves convened a meeting of the GPA to discuss and agree the appointment process (that is, before any applications had been made). Mr Gonçalves's evidence was that:
- a. After this meeting, NP told him that he "*would not support McGrail's application*" (Gonçalves 1 para 25 [A341]). He stated that NP moved or pulled him aside in the corridor of the GPA offices and quietly told him "*I cannot support McGrail*" (Transcript Day 14 p132.20). This was not in anyone else's presence (Transcript Day 14 p136.19). Mr Gonçalves said that NP did not explain why he would not support IM, and added "*I don't think I should be speculating, but he clearly didn't like him*" (Transcript Day 14 p136.9). Mr Gonçalves explained that although the applications had not yet been submitted, it was known to the GPA that only three candidates were likely to apply (IM, RU and Richard Mifsud) (Transcript Day 14 p180.10).
  - b. NP expressed the view that applications for the position of Commissioner of Police should not be limited to RGP officers but opened to officers in the UK, but that this received no support from any of the other members of the GPA (Goncalves 1 para 26 [A347]; see also Danino 1 para 27 [A370], Falero 1 para 37 [A386], Gomez 1 para 34 [A399], Hassan-Weisfogel 1 para 47 [A417], Lavarello 1 para 34 [A432], Nagrani 1 para 36 [A450], Patron 1 para 33 [A462]). Mr Gonçalves thought that there was sufficient competence and skill in Gibraltar, but qualified that "*I also mentioned that, if we found after the process that none of the candidates were competent, at the time we didn't know who the candidates were going to be, then I would support taking it further*" (Transcript Day 14 p134.12). Mr Lavarello also elaborated that he agreed with NP's point of view generally, but

because NP had mentioned it at the start of the application process, there was not sufficient time to open up to UK candidates (**Transcript Day 14 p205.4**).

482. NP denied stating that he would not support IM's application (**Transcript Day 18 p49.1**). He attested that whilst he made clear that he was surprised that there were only two candidates and expressed the view that a wider field would have been better for policing in Gibraltar, he marked both IM and RU as "*suitable and credible candidates for the post*" and "*within a point of each other*", and ultimately voted for RU. He further affirmed that having looked a little deeper he was swayed by Commissioner Yome's reports on the candidates, and agreed that RU had a more modern leadership and management approach (Pyle 2 paras 25 to 27 [**A266**]). Mr Gonçalves challenged this evidence, stating that NP could not have been surprised that there were only two candidates because at that stage, the GPA had not received the applications (**Transcript Day 14 p143.7**). Mr Lavarello did not recall NP making these comments during the meeting, but that there was a general consensus that both candidates performed very well (**Transcript Day 14 p208.2**).

483. NP also stated that rather than suggesting the field should be open to UK candidates, he suggested that the advert should be broadcast, as "*this may attract candidates – and I remember saying this clearly – from Australia, to Singapore, to South Africa, to Canada or to the Caribbean, the idea was to have a broad field*". NP stated that he suggested that weighting could be placed on candidates from Gibraltar (by which he presumably meant that the fact a candidate was from Gibraltar would count in their favour during the application) (**Transcript Day 18 p48.1**). He accepted that this proposal would generate "*strong views*" in Gibraltar (**Transcript Day 19 p193.19**).

#### *The application process*

484. IM applied for the position on 1 November 2017 [**C621**], and the only other applicant was RU (on 3 November 2017 [**C680**]). On 6 November 2017, the GPA sought from the departing Commissioner, Edward Yome, a confidential written assessment on each of the candidates [**C714**], and these were provided by Mr Yome on 15 November 2017 [**C715, 730**]. There was a pre-established list of criteria to judge the candidates [**B2167**], but Mr Gonçalves recognised that there was no pre-established scoring or rating system. He chose to rank each candidate out of ten for each criterion, but that was his personal system (**Transcript Day 14 p173.21**).

485. On 27 November 2017 the two candidates, namely IM and RU gave PowerPoint presentations to the GPA setting out their respective visions for the RGP in the next 5 years [C600]. This was followed by interviews on 30 November 2017. Mr Gonçalves explained that each of the panel members conducted an interview (a total of four interviews), which he described as a “*long grilling*” (Transcript Day 14 p130.15).
486. The GPA met on 5 December 2017 and deliberated on the different strengths of the candidates. Mr Gonçalves believes that these deliberations lasted “*the best part of an hour*” (Transcript Day 14 p171.3). The GPA has not produced minutes of this meeting. Mr Gonçalves could not say whether minutes had been taken, but thought it was more likely than not that minutes were taken (Transcript Day 14 p175.19, 177.4; Day 19 p56.11).
487. A majority of 7-2 considered that IM was “*the stronger of the two highly suitable candidates*” (NP and Mr Albert Danino voted for RU).
488. Edgar Lavarello’s evidence was that NP stated that he would not support *either* candidate (Lavarello 1 para 34 [A342]). He believes that NP made this comment at the 5 December meeting, but that NP did not necessarily make the comment to the entire GPA (Transcript Day 14 p208.19). Mr Lavarello said that NP did not explain why he made this comment, other than that he thought the RGP would benefit from a non-Gibraltar Commissioner (Transcript Day 14 p210.21). Mr Gonçalves did not recall NP saying he would not support either candidate (Transcript Day 14 p142.1). He recalled that all 9 members of the GPA “*agreed and said so, that both candidates were perfectly credible and competent to do the job*” (Transcript Day 14 p146.12). Mr Lavarello also agreed that “*the general consensus of everybody, including Mr Pyle, was that they were happy with what they had heard*” (Transcript Day 14 p209.10).
489. NP denied saying this to Mr Lavarello, stating that if he had said he would not support either candidate, he would have recused himself rather than participating in the process (Transcript Day 18 p51.10).
490. CTI asked Mr Gonçalves whether he raised with NP the “*apparent turnaround on his part*” (namely that “*he had indicated from the outset that he would not support Mr McGrail’s application, but nevertheless at the end of the process he recognised the suitability of both candidates...*”), and Mr Gonçalves answered that he had not as he did not think it

appropriate to refer to the man-to-man comment made at the process meeting (**Transcript Day 14 p148.20**). Similarly, CTI asked Mr Lavarello whether it was his evidence that NP said one thing to him (that he would not support either candidate) and another thing openly to the GPA (that he was happy with IM's appointment), which Mr Lavarello confirmed (**Transcript Day 14 p209.15**).

491. According to Mr Gonçalves, NP did not raise either the airport incident or assault on the helicopter pilot during the appointment process, and as to the latter this was not known to the GPA or discussed by them (**Transcript Day 14 p149.8**). IM added that the airport incident was not put to him "*in any way, shape or form*" during the application process, including during NP's questioning (**Transcript Day 8 p13.9**). NP accepted that he did not use his opportunity as a panel member to raise concerns on either of these issues (**Transcript Day 18 p54.5**). He suggested that "*I like to consider myself professional enough that I could park issues that were a year or so old and be objective*" (**Transcript Day 18 p50.7**), and added "*this was about the future of the RGP, not things that had happened before*" (**Transcript Day 18 p54.13**). The Chairman asked NP whether he thought it was fair to have referred to these matters in his evidence to the Inquiry, if he did not raise them during the recruitment process. NP stated that he took the point, but that if he had referred to matters without explaining them, he may have been asked to go into detail (**Transcript Day 18 p56.3**).

492. The GPA wrote to Lt Gen Davis advising that IM should be appointed as the new Commissioner of Police [**C746**]. On 13 December 2017, Lt Gen Davis wrote to the GPA informing the Authority that having consulted FP, IM was to be appointed as Commissioner of Police from 1 May 2018 for a four-year term of warrant [**C747**]. The letter stated "*on behalf of the Chief Minister and I, may I thank the GPA for its diligent work in the conduct for the selection process*" [**B2271**]. The letter requested that the GPA "*formally review progress against the objectives set out in Superintendent McGrail's vision statement and associated action plan at the mid-point of his tenure as Commissioner*" (i.e. April 2020). This request was communicated by Lt Gen Davis to IM in his letter of the same day informing IM of his "*well-deserved appointment*" and assured IM of "*my personal support*" [**C749**].

*NP's criticism of the appointment process*

493. An email from NP to the CM dated 15 May 2020 stated: “As we thought at the time, wrong appointment. Remind me to tell you about the recruitment process which was abject.”
- [A199] NP believed that Lt Gen Davis had told him that the CM also supported RU (Transcript Day 18 p53.25), and so he went into the GPA meeting knowing the preference of the Governor and CM (Transcript Day 19 p6.17). The CM also believed that he, NP and Lt Gen Davis had discussed IM’s appointment at the time. He stated:
- a. NP had told the CM that the appointment process “had been designed to avoid the views of the Governor’s representative on the GPA and the Chief Minister’s representative on the GPA being given at the beginning of the process but rather at the end once everyone had spoken so that our views did not carry as much weight as they might otherwise have carried” (Transcript Day 16 p321.15). In questioning, the CM accepted that he was not aware that the appointment process was agreed by all nine members of the GPA (Transcript Day 17 p48.10).
  - b. “Ed Davis and I were very, very surprised, we discussed at the time, that it was Ian McGrail who became Commissioner and not Richard Ullger. And subsequently when I discussed it with Nick Pyle it was clear that he was just as surprised.” According to the CM, each of him, NP and Lt Gen Davis believed that IM “should not be Commissioner of Police because he did not have the temperance to be Commissioner of Police and he was not the right candidate” (Transcript Day 16 p317.1).
  - c. Although RU was also involved in the airport incident, “you’re also looking at issues of temperament and temperance, and I think everyone believed Mr Ullger had a better temperance and temperament when it came to dealing with these issues” (Transcript Day 16 p318.17).
  - d. He would have communicated his views to the Chief Secretary, “who was my appointee on the GPA” (Transcript Day 16 p319.1), but not to Mr Gonçalves. However, the CM was aware that the Chief Secretary had voted in favour of IM’s appointment (Transcript Day 17 p50.20), and stated that the Chief Secretary had not asked the CM how he should vote (Transcript Day 17 p296.24). The CM recalled informing Mr Ernest Gomez (former Chief Secretary) that he should vote for whoever he wanted during the appointment process in 2011, where Commissioner Yome was ultimately appointed (Transcript Day 17 p50.20).
  - e. Despite his reservations, he was “ready to give Ian McGrail a crack of the whip” (Transcript Day 16 p321.4).

494. NP apologised for his use of the word “*abject*” and stated that on reflection he would probably say “*which had flaws*” or “*was suboptimal*” (**Transcript Day 18 p52.6**). For example, he said he would have expected a folder with an agreed scoring sheet with methodology for marking questions, rather than loose competencies. However, he accepted that he did not raise his concerns about the recruitment process with the GPA at the time (**Transcript Day 18 p52.19**). NP accepted that he agreed to the process before the candidates were interviewed, but suggested he was not fully aware of how the interview would proceed (**Transcript Day 19 p10.1**).
495. Mr Gonçalves disagreed with NP’s description of the process being “*abject*” and expressed surprise at it, averring that all members of the GPA, including NP, approved the process, and that NP had not raised with the GPA any criticism of the process (Gonçalves 2 para 6 [**A347**]). Mr Gonçalves stated that the process was “*as thorough and professional as it could be*” (**Transcript Day 14 p131.1**). Mr Lavarello agreed that the process was sufficiently thorough for a role as important as Commissioner of Police (**Transcript Day 14 p202.13**), and that all members of the GPA had the opportunity to ask as many questions as they wanted (**Transcript Day 14 p212.12**).
496. RU, who was the unsuccessful candidate, also expressed the view that the appointment process was “*very fair*” and “*rigid*” and was the process followed by the National Police Chiefs’ Council in the UK and the College of Policing (**Transcript Day 13 p13.5**). RU added that the two applicants had been subjected to the Strategic Command Course with the College of Policing in the UK, “*so we were both candidates ready for that position*” (**Transcript Day 13 p85.25**).

### **The events of May 2020**

497. On 14 May 2020, in the context of discussions about the civil claims arising from the Incident at Sea, the CM messaged NP at 09:49 stating [**A198**]):

*“I am starting to have huge concerns about the senior management of the RGP. I will alert you to a particular matter when we meet, but in terms of the last few months alone: (i) this case of deaths occasioned outside of BGTW (the statute gives them to status as police officer); (ii) the HMIC inspection issues; (iii) the Federation bullying allegations; (iv) the runway incident, where we had to go into*

*bat for them despite all aspects having clearly been mishandled by the RGP (and parts of the MOD also); and (v) the continuing saga of the Alcaidesa claims. I think I will be asking Ian McGrail to provide more detail and in writing as to what happened here and what they are going to do to engage with these claims before there is any requirement that they do so. I am starting to lose confidence here..."*

498. In relation to this message:

- a. The CM confirmed that the "*particular matter*" was a reference to the search warrant and the exchange between the CM and IM (**Transcript Day 16 p310.3**). CTI asked the CM to explain why he did not refer specifically to the warrant, the CM said "*it's already a fairly lengthy message and, you know, typing these things with two thumbs takes some time, and there was a lot to talk about in that respect ... I don't think I could have explained the loss of confidence I'd had in McGrail etc etc in a sentence as I have in respect of all the other issues*" (**Transcript Day 16 p310.4**).
- b. The CM denied that he raised the airport incident because he knew NP felt aggrieved by it. He stated: "*I still felt aggrieved about the incident...*" (**Transcript Day 16 p312.2**) – see Issue 1 above. NP stated that he had "*parked to one side for the interview process, because of the timing. But as my mind was looking to pull together the pieces of this unease I felt, it obviously came back into my mind*" (**Transcript Day 18 p151.14**).
- c. The CM also stated that he believed that the Alcaidesa claims had not been resolved (**Transcript Day 16 p312.12**) – see Issue 7 above. NP stated that he did not attach much weight to the Alcaidesa claims as he did not know the detail (**Transcript Day 18 p150.5**).
- d. CTI asked the CM why he stated that he was "*starting to lose confidence*", given that his witness statement (Picardo 1 para 55 [**A194**]) stated that he lost all confidence on 12 May 2020. The CM answered: "*I was deliberating about all of these things in my mind, and what I should do about them...*", and "*all of these things are happening at the same time*" (**Transcript Day 16 p314.22**).

499. NP responded at 09:58: "*Agree. As we thought at the time, wrong appointment. Remind me to tell you about the recruitment process which was abject...*" [**A199**]). They arranged to meet the following day (15 May 2020).

500. The CM also forwarded his message to the AG [B1417].
501. On the night of 14 May 2020, IM appeared on Viewpoint to discuss the HMIC Report, as explained in Issue 4 above.
502. In NP's witness statement, he also suggested that: "*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.*" (Pyle 1 para 26 [A255]). NP did not know whether this was a separate telephone call, or an erroneous reference to the WhatsApp message, but thought it was probably via the WhatsApp exchange (Transcript Day 18 p152.8). CTI asked NP how this "*remarkable coincidence*" arose given two months had passed since the incident at sea and a fortnight had passed since the HMIC Report. He stated: "*I think it was probably notice of the claims [concerning the Incident at Sea]. The Met inspection. And as I said, that sort of coming together of issues. And I think it was beginning to sharpen my mind as to what I saw as a way forward*" (Transcript Day 18 p152.21). However, NP accepted that he had not placed weight on the claims in his evidence, and stated "*I had the claims more linked to the incident at sea than a self-standing issue on their own*" (Transcript Day 18 p153.6).
503. On 15 May 2020 at 10:34, it appears that JB attended New Mole House for a meeting with IM [C6571]. According to JB, IM informed him about Operation Delhi, that JL was a suspect, and that he had JL's phone in a safe. JB stated that this was the first time he heard about Operation Delhi (Britto 1 para 10 [A321]). However, see the dispute in Issue 5 above as to whether a meeting also took place between them on 12 May 2020.
504. At 10:59, NP emailed FCDO colleagues stating: "*I am meeting the CM later today to discuss this and other issues relating to the behaviour of the RGP and in particular its leadership.*" [C3799]. As to the content of that meeting:
- a. The CM did not recall the meeting in detail, but stated: "*I do specifically recall, however, that I explained to the Governor, Nick Pyle, the issues of the execution of the search warrant in respect of Mr Levy and my views in respect thereof, which was central in my loss of confidence in Mr McGrail...*" (Picardo 1 para 68 [A199]). The CM stated that he told NP about his connection to Hassans and 36N ("*and*

*how irrelevant it was because I had resolved that matter a year and a half before”)* and NP knew about the CM’s connection to JL (**Transcript Day 16 p323.13**).

- b. NP’s account (Pyle1 para 26 [**A255-6**]) was that:
- i. The CM asked him “*to go first*”, and that he ran through his concerns as outlined in his evidence including the incident at sea, and that “*his behaviour and mannerism mirrored those that he had displayed during and after the airfield incident.*”
  - ii. NP was “*as close to anger as I have been*” and stated something like “*Now I’ve got that off my chest, what is on your mind?*”. In questioning, NP stated that there was an “*element of outpouring*” (**Transcript Day 18 p156.20**). NP thought that he was more angry than the CM in the meeting (**Transcript Day 18 p165.12**).
  - iii. The CM then “*outlined his belief that IM 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*”. NP stated that “*the detail the CM went into was more than just the headline, but I don’t think it was the full disclosure of everything that was going on around Operation Delhi*” (**Transcript Day 18 p158.4**). NP thought it was inconceivable that the CM didn’t spell out the lie, but could not remember the exact sequence or terminology (**Transcript Day 18 p159.10**). NP did not believe that the CM told him about his indirect beneficial interest in 36N or his communications with the directors (**Transcript Day 18 p161.17**).
  - iv. Following a long discussion about the leadership of the RGP, they concluded that they 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*”.
- c. The CM denied that he manipulated NP at the meeting: “*the Governor is not a stove that one loads with logs*” (**Transcript Day 17 p259.23**). He added that NP did not require any persuasion: “*not only was I what you might call colloquially pushing at an open door, this door swung open before I put my fingers on it*” (**Transcript Day 17 p21.24**). NP accepted this characterisation, “*although probably not to that degree*”, and stated that “*very little kept me awake but this issue, and that had been for quite a while*” (**Transcript Day 18 p148.24**).

- d. NP added that: *“I find it quite insulting, to a degree, that people could suggest with what I’ve done in my career and what I’ve achieved, and in some of the deeply challenging and complex issues I’ve been involved with (and I have to say this carefully: my work in Somalia springs to mind), that I could be manipulated and manoeuvred is quite insulting”* (Transcript Day 18 p164.23).
505. The CM stated that prior to this meeting NP had not told him that he was losing confidence in IM, but he had been *“less than complimentary”* about IM before that date (Transcript Day 17 p259.8). NP also stated that he had shared with the CM his *“firm belief that the RGP needed to modernise”* (Transcript Day 18 p149.12). NP also suggested that *“absolutely”* would have approached the CM if he had not approached NP (Transcript Day 18 p148.14, Day 19 p190.23). He stated that he was still getting his concerns together in his mind (Transcript Day 19 p192.6).
506. He also stated that prior to the meeting, he thought that he would have raised his concerns about IM on his weekly teleconferences with London (Transcript Day 18 p146.21).
507. Following that meeting, NP and the CM exchanged WhatsApp messages. NP stated that *“I don’t see any option re COP given the evidence”* [A200]. CTI asked whether he reached the view that there was no option independently; NP replied that the strength of the CM’s feelings *“confirmed where I was heading. It may have speeded it up”* (Transcript Day 18 p167.2).
508. The CM replied *“I think you have probably seen this coming before I have. To extent I allowed too much of the benefit of the doubt here and strained the most important relationship Gibraltar has (with the UK) in doing so. ... Again, we shall have to set out our thinking clearly and then I doubt anyone would see this cumulative record of behaviour as defensible. But loss of life really puts us now in different territory. I never would have thought I would be of this view ... but it feels like the RGP has gone backwards not forwards.”* [A200]. CTI put it to the CM that this message appeared to elevate the Incident at Sea as the major reason, and the CM responded that *“when you are looking at all the things that are relevant, even though one matters more to me in terms of direct confidence, but if they are relevant then the issue that relates to loss of life has to be at the top of the list”* (Transcript Day 16 p325.10). The CM and JB then agreed to meet with

JB on the morning of Monday 18 May, NP having stated: “Need to discretely bring Joey Britto into our thinking” [A200]. The CM also asked NP for an update on the Metropolitan Police Report into the Incident at Sea, but NP had no update to give [A201].

509. On 16 May 2020 at 11:47, the CM messaged NP: “My pillow always gives me the best advice: if we are going to do this, do we very discretely at your end, line someone up. We cannot have it headless”. NP replied: “Thinking about it quite a lot. Need to discretely bring Joey Britto into our thinking. I’m happy to do that Monday”. They agreed to arrange a meeting with JB [B1441].
510. At 14:07, NP emailed JB asking if he could attend a meeting with the CM on Monday at 09:30. JB responded that he could [C3937]. JB said that he had no sense of what this meeting would be about, and prior to this meeting the CM had not raised concerns with him about IM, and NP had only raised concerns about “modernising the police force and how old fashioned they were...” (Transcript Day 15 p70.4). NP stated that with hindsight it would have been helpful to give JB some details in advance (Transcript Day 18 p175.20, Day 19 p28.2). He also suggested that it would have been preferable to have a separate “scene setting type of meeting” with JB first to “remind himself of the various bits of the act” (Transcript Day 18 p192.22).
511. At 15:47, NP emailed an FCDO colleague in Miami stating: “Basically and on a cumulative basis. Both the Chief Minister and I have lost faith in the Commissioner of Police. All highly sensitive and only the AG knows.” [C3911]. However, it is worth noting the AG’s evidence that his recollection was that he was not aware of the CM and NP’s intention to speak to JB at that point (Transcript Day 12 p31.12). NP stated that he thought it was consistent to be lining up a replacement and asking IM for representations: “it would be remiss not to make such a contingency... it was not prejudging what the GPA was going to do. It was a contingency should they put into effect what the Chief Minister and I were hoping would have happened” (Transcript Day 18 p173.9). NP stated that he had not decided there was no prospect of IM continuing in the role at this stage, and one of the things keeping him awake at night was what happened if the GPA stated “we have heard IM’s representations and we think you have been so unfair we want to have a discussion as to an alternative way forward” (Transcript Day 18 p174.2).

512. Later that evening at 23:29, NP informed the colleague that he would send him the HMIC report on the following day [C3933].
513. On the evening of 17 May 2020, in advance of their scheduled meeting on 18 May 2022, NP and the CM exchanged emails.
- a. At 18:47, NP emailed the CM setting out his “*thoughts ahead of our meeting tomorrow*”. NP referred to ss13 and 34 of the Police Act, and stated “*so as I see it and to my untrained eye, it is for the GPA to take this forward in the first instance... I suggest we therefore say to [JB] tomorrow that we have lost confidence in the Commissioner, set out why, and task him to consider options as to the way forward.*” NP referred to the Metropolitan Police report into the incident at sea, and noted that it had not been finalised, and then provided thoughts on recruiting a replacement [C3947].
  - b. At 23:53, the CM replied with his views, encouraging NP that they should act “*very closely together*” [C3953]. He also attached a transcript of IM’s interview on Viewpoint on 14 May 2020 [B1216], but did not highlight any particular part of the interview in the email or during questioning in the Hearing (**Transcript Day 16 p331.19**). The CM set out his understanding of the Police Act provisions and suggested that at this stage the CM and NP should limit themselves to setting out their concerns to the GPA and seeking to understand the concerns of the GPA, and “*it will then be a matter for the GPA to decide how to act*”, before consulting both the CM and NP and seeking the agreement of one of them. The CM referred three times to the GPA’s obligation to seek representations from the Commissioner, stating that the GPA’s decision would be “*subject of course to substance of the representations the GPA may receive from the Commissioner which they – and if appropriate we – will have to fully consider and give due regard to*”. The CM gave his “*preliminary view*” on the five matters in s34(1) of the Police Act (efficiency, effectiveness, probity, integrity and independence of policing in Gibraltar), and in doing so referred to:
    - i. The HMIC Report, and in particular its references to efficiency, effectiveness and “*a failure to understand the potential for, let alone the actual instances of corruption*”.
    - ii. The “*reporting to us of the events at sea involving the death of two Spanish nationals*” as “*an area of huge concern*”.

iii. The “*James Levy KC warrants*”, which he identified as “*the reasons ... why I have lost confidence in the probity and integrity of the Commissioner himself*”, adding that “*I believe that view is also shared by the Attorney General*”. The CM wrote “*this is possibly the issue of deepest concern to me as it goes to the integrity and probity of a key individual in the maintenance and respect for the Rule of Law*”. He concluded on this issue: “*I can imagine no greater concern than this in the context of my ability to discharge my oath to the Crown and to the People as Chief Minister*”.

514. The CM’s evidence was that it was “*clear*” from that email that his “*concerns were caused principally from the issues arising in relation to the matter of the warrants obtained and executed in respect of Mr Levy, and that I had lost confidence in the probity and integrity of Mr McGrail*” (Picardo 1 para 73 [A202]).

515. The next morning (18 May 2020), NP replied at 08:40 stating that he agreed “*fully*” with the CM’s email, including his preliminary views on the five criteria “*and in particular on the issue of integrity*”. They both agreed that they should also seek the AG’s advice on the issue. Pausing to consider the role of the AG in the retirement, resignation or removal of IM, the AG’s position was that he had no Constitutional role or statutory role in the process. He stated that he had “*very, very little*” contact with the CM on the issue, and denied that he was acting as a soundboard to the CM (Transcript Day 12 p26.4). He added that “*my greatest involvement was in relation to the procedural errors. I was on the complete periphery of what was happening at the time*” (Transcript Day 12 p51.2).

516. On 18 May 2020 at 09:30, JB, NP and the CM met at the Convent.

a. The CM’s evidence was that:

i. JB was “*very concerned, but not surprised, when the Governor and I shared our concerns with him*” (Picardo 1 para 88 [A207]).

ii. JB “*was sharing with us also his impressions of IM and the relationship he felt IM had with his staff, with his officers, and even his relationship with the GPA*” (Transcript Day 17 p4.18). When CTI put it to the CM that JB said he had no concerns about IM, the CM stated that he remembered it differently: “*I remember the image very vividly*” (Transcript Day 17 p6.14).

- iii. He shared with JB how IM had misled him, and believed that he set out the detail about Operation Delhi, the search warrants and JL's involvement – although he could not say in what level of detail (**Transcript Day 17 p9.2, 272.9**). He believed that he was transparent with JB. Asked if he shared his personal connections with JB, he stated: *"I believe I did tell him about the issues relating to Op Delhi, but it depends what you call my personal connections..."* (**Transcript Day 17 p218.21**).
  - iv. *"I had neither the power to direct or instruct"* JB on what the GPA had to do (**Transcript Day 17 p268.21**).
- b. NP's evidence (Pyle 1 para 14 [**A240-1**]) was that:
- i. NP did not do most of the talking: the split was 50/50 or 45/55 between the CM and NP (**Transcript Day 18 p179.22**).
  - ii. *"At my request, the Chief Minister set out the issues of concern to both of us, namely the damning HMIC report ... the incident at sea involving a fatal collision ... the Police Federation allegations of bullying ... and the mishandling of a high-profile ongoing investigation"*. NP stated that he referred to the criminal investigation in a headline fashion and did not refer to his financial interest in 36N and his communications with the individuals (**Transcript Day 18 p179.7**).
  - iii. NP *"endorsed the CM's position"* that they had both lost confidence in IM, that *"there had to be accountability for the failings"*, and that *"the common thread through all the issues appeared to be a lack of adequate management and leadership"* and therefore IM had to be held accountable.
  - iv. He told JB that if the GPA determined that a call to retire was not appropriate, he would consider using the powers available to him under section 13(1)(f), and that as things stood he would need *"strong and persuasive arguments not to do so"*. In questioning, NP stated that JB would have been right to think he was very likely to use his powers, although he suggested that his *"mind was not closed"* (**Transcript Day 18 p184.13**). NP stated that he did not intend to suggest (as JB understood) that JB would not be doing his duty if he did not invite IM to retire. Rather, he *"was stressing ... that ... the GPA will come under intense scrutiny and therefore had to get it right in terms of process"* (**Transcript Day 18**

- p185.13**). NP denied that he raised s13 deliberately to get JB to agree to the s34 process (**Transcript Day 18 p186.7**). He also denied that the meeting with JB was a fait accompli (**Transcript Day 18 p189.20**).
- v. JB said that he took note and “*could see where we were coming from*”, and commented that IM “*would most likely fight this*”.
- c. JB’s evidence was that:
- i. The tone of the meeting was “*very serious*” but the CM and NP were not angry (**Transcript Day 15 p71.14**).
  - ii. NP did most of the talking and took the lead (**Transcript Day 15 p71.23**). Most of the conversation was about NP being “*very, very upset and annoyed*” about the Incident at Sea (**Transcript Day 15 p76.4**). (In contrast, the CM gave evidence that “*I took the lead in the meetings*” - **Transcript Day 17 p35.1**).
  - iii. JB was “*shocked, surprised, more or less I didn’t know what had hit me*” (**Transcript Day 15 p72.1**).
  - iv. “*The way I remember feeling was, ‘they’re giving me a choice but they’re not really’*” (**Transcript Day 15 p72.22**).
  - v. NP stated that “*I wouldn’t want to declare you in default but I will if I have to*” (**Transcript Day 15 p73.10**), which NP understood to mean “*If you don’t do your duty, then I will do mine*” (**Transcript Day 15 p82.1**). JB “*was left in no doubt that one way or another it could happen*” (**Transcript Day 15 p81.9**). JB therefore stated that “*I felt pressured – not necessarily because of being declared in default, but because of this thing about me not doing my duty properly*” (**Transcript Day 15 p83.1**). However, JB later agreed with the suggestion from Sir Peter Caruana that: “*in a sense it was the sense of occasion, the sense of deference, or perhaps even excessive deference to the office holders that you were being spoken to by rather than what they were saying to you*” (**Transcript Day 15 p149.11**).
  - vi. Prior to the meeting, JB had no knowledge of s34 (**Transcript Day 15 p82.17**). However, he did not think that he considered getting legal advice at this stage (**Transcript Day 15 p83.23**). He stated in retrospect, he would have benefitted from legal advice “*as soon as I got the call*” (**Transcript Day 15 p142.7**).

- vii. JB could not recall any reference to Hassans or the warrant (**Transcript Day 15 p75.7**). He recalled that there may have been a reference to JL's phone (**Transcript Day 15 p77.9**). There was no reference to 36 North and "definitely" no reference the CM's own involvement (**Transcript Day 15 p78.19**). JB recalled the reference (as in the note) to the "*mishandling of a high-profile ongoing investigation*", but says that he was not given any details (**Transcript Day 15 p79.17**). JB did not ask the CM for details about the investigation during subsequent meetings and communications, and stated that this was because he trusted the CM (**Transcript Day 15 para 216.10**).
- viii. At some point, NP told JB that "*this had to happen before the new Governor came... I did feel pressured to do it*" (**Transcript Day 15 p122.7**). It is unclear whether this comment was made at this meeting, or subsequently.

517. From 11:37, JB exchanged WhatsApp messages with the CM, in which the CM offered to prepare a note of their meeting for the GPA [**A207**]. The CM produced this note on 20 May, which was headed as an "*Informal Record of Meeting with HE the Governor and the Chief Minister, Monday 18<sup>th</sup> May 2020*" [**C3988**]. The CM stated that he prepared this note based on his email to NP on 16 May 2020, which he used as an aide memoire in the meeting with JB (**Transcript Day 16 p334.6, Day 17 p7.21**). NP stated that the CM cleared this note with him before sending it to JB [**A242**], and he confirmed that it was an accurate record of the meeting (**Transcript Day 18 p190.21**). However, in questioning he later stated that the note did not reflect the full discussion with JB, and suggested there should have been a full note or even a transcript (**Transcript Day 19 p131.2, 132.20**).

518. The file note records:

- a. "*The purpose of the meeting was to express grave concerns about certain aspects of policing in Gibraltar which had come to a head in the week before.*"
- b. "*The first is the publication of the HMICFRS Report into the RGP. The second is the publication of the news of the filing of legal claims in Spain by the relatives of Spanish citizens killed in an incident at sea (which undoubtedly happened outside of BGTW).*"

- c. *“The GPA are therefore being invited by the Governor and the Chief Minister together to consider whether they believe that all OR any (note it is a disjunctive, not a conjunctive list) of the following 5 have been impacted.”*
- d. The CM referred to the HMIC Report, the Incident at Sea, and also *“another event occurring last week which had left him also in a situation where the Commissioner had expressly misled him and which left him unable to believe the Commissioner.”* As to this sentence:
  - i. The CM confirmed in questioning that *“another event”* was a reference to the meeting of 12 May 2020 with IM (**Transcript Day 17 p8.18**). NP confirmed that this was how this was expressed in the meeting, it was not referred to more expressly (**Transcript Day 18 p191.13**).
  - ii. NP agreed that the four lines of the file note were not sufficient for members of the GPA to make an informed decision on the matter, but stated that *“I am absolutely certain, the GPA would have asked for more information”* (**Transcript Day 18 p192.14**).
  - iii. The CM stated that he did not set out the detail of Operation Delhi in the note as *“I was needing to prepare the note and get it out to Dr Britto as soon as possible, I think at one stage he was pressing me for it ... I would have had to write a lot more...”*. CTI suggested that the CM still managed to produce a 5-page note, and the CM replied: *“Yes, well – it might have been six or eight, if I had been required to put more detail in it”* (**Transcript Day 17 p12.3**).
  - iv. CTI also asked whether the CM accepted that he included more specifics about the HMIC Report than the warrant; the CM replied *“the HMIC Report is a written document to which it is easy to cross refer. The other is something which I explain viva voce...”* (**Transcript Day 17 p12.5**).
- e. NP referred to the Incident at Sea (*“he had felt misled”*).
- f. *“It is now a matter for the GPA to decide how to act ... If the GPA decide to go down this road the first step is to allow the Commissioner to make representations, if he wishes, under s34(2). It will of course be necessary for the GPA to consider any representation that the Commissioner might make. Thereafter, if the GPA are of the view that the Commissioner should be invited to retire, then that is when they would need to consult BOTH of the Governor and Chief Minister and seek the agreement of ONE of them. ...”*

519. JB stated in his witness statement that the CM's informal note of the meeting accurately recorded what was said (Britto 1 para 12 [A322]). However, he qualified this evidence in questioning:
- a. JB could not recall (as recorded in the note) that *"the Chief Minister shared another event occurring last week, which had left him also in a situation where the Commissioner had expressly misled him"*. However, he later accepted that the CM/NP did say that IM had misled them both, and recalled something being mentioned about IM misleading the AG. (**Transcript Day 15 p75.21, 154.4, 212.10**).
  - b. JB also did not understand at the time (as is recorded in the note) that the issue of deepest concern for the CM was the 12 May meeting as it went to IM's *"integrity and probity"* (**Transcript Day 15 p77.14**).
520. At 10:55, JB emailed the members of the GPA seeking to arrange a meeting at 09:30 on Thursday (21 May 2020) [C4024]. At 13:44, JB emailed NP stating that he was *"trying to arrange urgent meeting of the GPA for this Thursday – can't do so immediately because of notice etc"* [C4025].
521. The AG's evidence was that he has no recollection of being part of discussions on IM's removal with the CM and NP between 15 and 18 May 2020, and believes that he was not (Llamas 1 para 43 [A310]).
522. On 19 May 2020, it was publicly announced in Gibraltar that Sir David Steel would be arriving in June (**Transcript Day 19 p187.23**).<sup>20</sup> NP emphasised in questioning that before the meeting with the CM on 15 May and JB on 18 May, he did not have that certainty (**Transcript Day 19 p188.23**).
523. On 20 May 2020, the CM messaged the Chief Secretary (Mr Grech): *"Darren, when Joey speaks tomorrow at the GPA, he is going to explain my views on a sensitive subject. Your support for me on this is key. I have grave, grave concerns."* Mr Grech replied: *"I know and they are my concerns too for a whole range of reasons. You have this support."* [B1426].

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<sup>20</sup> <https://www.gov.uk/government/news/change-of-governor-of-gibraltar-june-2020>. NP informed the CM of this press release via WhatsApp that morning: these messages were disclosed late to the Inquiry and do not appear in the Bundle.

JB stated that Mr Grech had not indicated he was in touch with the CM and had already agreed to support the complaint, and agreed that this was an interest Mr Grech should have declared (**Transcript Day 15 p258.17**). The CM disagreed that he was seeking to influence the actions of a GPA member (**Transcript Day 17 p21.11**).

524. The GPA meeting took place on 21 May 2020 at 9:30. NP did not attend. There were two procedural deficiencies with that meeting:

a. The meeting was inquorate. As specified by s6(1) of the Police Act, the quorum is six members comprising the Chairman and five other members. However, only JB and four other members were in attendance (Mr Darren Grech, Mr Ernest Gomez, Mr Frank Carreras and Ms Nadine Collado).

i. Ms Claire Pizzarello, another a member of the GPA, asked if she could attend by phone and JB declined, stating “*it may be best if you don’t participate*” [**C4023**]. JB explained that this was “*possibly because she was employed by Hassans and I didn’t want her involved in a possible conflict*” (**Transcript Day 15 p86.21**).

ii. JB stated that non-attending members were consulted by telephone afterwards, and they agreed with the decision taken and reasons for it (Britto 1 para 16 [**A323**]). In questioning, he clarified that he was informing these members of what happened rather than asking for their vote, but at this stage he realised that the meeting had not been quorate (**Transcript Day 15 p88.15**).

iii. JB admitted that the meeting being inquorate as “*the last thing on my mind*” (**Transcript Day 15 p85.11**).

b. There is no contemporaneous minute of the meeting, as required by s6(4) of the Police Act. JB explained that “*members of the GPA felt that their secretary might be compromised as she was a personal friend of Mr McGrail’s secretary*” (Britto 1 para 16 [**A323**]). JB stated that he was not thinking clearly, as on previous occasions other members of the GPA have taken notes (**Transcript Day 15 p88.5**). A retrospective note was subsequently prepared on legal advice [**C4141**].

525. Mr Lavarello gave evidence that:

a. He could not attend the meeting, but bumped into JB the following day and they spoke for perhaps two minutes. JB told him that the Governor and CM had both lost confidence in IM, but did not refer to Operation Delhi or an allegation that IM

had lied to the CM (**Transcript Day 14 p226.8**). Mr Lavarello considered that if Operation Delhi was one of the reasons for the CM losing confidence, it should have played a role in the GPA's deliberations (**Transcript Day 14 p227.2**), and also that if the GPA had known about the CM's connection to the Operation Delhi investigation "*that would have probably been even more reason to go running to a lawyer*" (**Transcript Day 14 p246.23**). He agreed that the GPA made a "*bad mistake made in good faith, without any knowledge of Operation Delhi or any of the underlying unpleasant undercurrents*" (**Transcript Day 14 p263.22**).

- b. Mr Lavarello stated that he did not consider asking JB to call a further GPA meeting, and his understanding was that IM had been informed of the CM/NP's views and asked to "*come and put his side of the story, as it were, to the board*" (**Transcript Day 14 p235.21**).
- c. Although he was not at the meeting, he agreed with the decision as he saw there was no option because the CM and Governor had lost confidence (**Transcript Day 14 p227.12, 2343.20**). For Mr Lavarello, this was a more important reason than the Incident at Sea, and he did not consider that the HMIC Report was a reason for asking IM to retire (**Transcript Day 14 p228.1, 229.1**). Mr Lavarello did not query at the time why the Incident at Sea was referred to, despite it happening in early March (**Transcript Day 14 p231.19**).
- d. If the GPA had known all the facts it did now, "*perhaps the board would have reached a different decision*" (**Transcript Day 14 p234.12**).

526. The non-contemporaneous note of the GPA meeting [**C4141**] recorded that:

- a. JB explained "*what had transpired at the meeting with the Governor*", explaining that NP and the CM, "*in no uncertain terms, had expressed that they had lost all confidence in the Commissioner*". He read the "*file note*" to all present. JB confirmed that this was a reference to the note prepared by the CM (above) (**Transcript Day 15 p90.5**).
- b. JB "*explained what had been discussed, including the fact that the Commissioner had claimed at a previous meeting, that 'they' were trying to interfere in an investigation in which, allegedly, a senior partner in a law firm was, allegedly, involved*".

- c. The Incident at Sea was the “*major factor*” in the GPA’s decision, and the GPA noted that this “*seemed to be far more serious in its repercussions, overall, than we had previously been alive to*”.
- d. They agreed that “*it would be more dignified for the Chair to seek a meeting with the Commissioner rather than summons him to GPA offices*”.
- e. It was further agreed that “*the Chair would also consult the members not present and if they were in agreement, GPA would proceed with Section 34*”.
- f. After discussion, it was felt that “*the best course of action would be to activate Section 34 of the Act and invite the Commissioner to retire but always affording him the opportunity to make representations to the GPA so we could arrive at a firm and final decision and able to make recommendations to Governor. The GPA felt that this recourse was better and gentler than the Governor potentially activating s.13 which allows him to seek his resignation.*”

527. JB’s evidence was not entirely clear as to what level of detail he was able to provide the GPA. For example, he said: “*I think I said that ... the Chief Minister is convinced that somehow Mr McGrail lied to him*”, but he was not sure what this lie was about. He “*possibly*” linked this to the same investigation IM complained about (**Transcript Day 15 p92.11**). In retrospect, he did not think it was sufficiently clear at the meeting that IM’s allegations, the allegation of misleading/lying and the involvement of JL all revolved around one thing – “*I didn’t join the dots*” (**Transcript Day 15 p94.7**).

528. As to the reasoning of the GPA:

- a. JB stated that: “*the main thing was that they [CM and NP] had both lost confidence in the Commissioner*” (**Transcript Day 15 p90.8**). JB accepted that this created a danger of effectively handing over the decision to the CM/NP, but said this was not apparent to him at the time (**Transcript Day 15 p95.9**). Mr Lavarello also accepted that the GPA was required to make a decision on IM’s retirement independently, but stated: “*I suspect in the back of our minds we were thinking: how could the Commissioner continue when he doesn’t have the support of the Governor or the Chief Minister?*” (**Transcript Day 14 p222.8**).
- b. JB also thought that “*Mr McGrail deserved the dignity of – if he did decide to leave, doing it on his own terms*” (**Transcript Day 15 p96.12**). He thought that at that

stage there was a prospect of the GPA changing its views once the GPA received his representations (**Transcript Day 15 p99.12**).

- c. Although the file note prepared by the CM (above) which JB read to the GPA meeting did not refer expressly to the issue of the search warrants, JB's evidence was that to the best of his recollection he "*did refer to Mr Levy QC by name*" (Britto 1 para 19 [**A323**]). However, JB added (Britto 1 para 25 [**A324**]): "*The decision by the GPA to exercise its powers under Section 34 of the Act was not based or influenced by Mr McGrail's conduct of the criminal inquiry in Operation Delhi, as alleged by Charles Gomez & Co in the 29th May 2020 Letter. The reasons for the GPA's decision were those set out at paragraph 18, in the minutes of the Emergency Meeting and in the Second Letter.*"
- d. The Incident at Sea was "*more serious*" than the GPA had been alive to because of NP's adamantness that IM was not transparent, as well as concerns about Gibraltar's reputation and treaty negotiations (**Transcript Day 15 p97.15**). The GPA had not discussed the Incident at Sea with IM previously as they were waiting for the investigation (presumably a reference to the Met Report) (**Transcript Day 15 p98.13**). JB accepted that the GPA did not try to investigate the incident, and that JB "*took his [NP's] word*" on this issue (**Transcript Day 15 p103.1, 200.11**). JB clarified that "*what convinced us was the gravity of the incident at sea, but also the allegation that Mr McGrail had been keeping certain information away from the Governor*" (**Transcript Day 15 p198.13**).
- e. Whilst the HMIC Report was "*quite bad*", the Incident at Sea was "*more important*" (**Transcript Day 15 p100.19**).
- f. JB agreed that whatever pressure he may have felt from the CM and NP, he did not transmit this to the other board members when they came to make the decision (**Transcript Day 15 p150.16**).

529. JB conceded that the GPA was not acting independently on this occasion, but asserted that "*we quickly regained our independence by refusing to continue with the process*" (**Transcript Day 15 p103.18**). By contrast, the CM stated that: "*we were sharing with him why we thought they should engage that level of scrutiny of the actions of the Commissioner, and invite him to explain, but they were perfectly free to do otherwise...*" (**Transcript Day 17 p19.2**). He added: "*we were communicating vehemently to the chairman of the GPA how we felt ... But their independence does not preclude us from*

*being forceful in the expression of our views as to how we feel about the Commissioner of Police” (Transcript Day 17 p20.1).*

530. NP did not remember how he learned of the result of the GPA meeting, but thought there was a letter or maybe a phone call from JB or the CM (Transcript Day 18 p194.4).

531. At 17:57, NP emailed FCDO colleagues with an update [C4234]. The email stated:

- a. Referring to his meeting with the CM and the subsequent meeting between JB, the CM and NP: *“the CM set out the issues of concern, namely the damning HMIC report, the fatal collision, Police Federation allegations of bullying, and the mishandling of a high-profile ongoing investigation in which the Commissioner apparently went against advice of the Attorney General and Director of Public Prosecutions”*. The file note prepared by the CM of this meeting [B1357-B1361] did not refer to the Federation allegations of bullying, nor did it expressly refer to the Commissioner going against the advice of the AG and DPP but it did refer to the CM’s belief from discussions with the AG that he felt that IM was lacking in probity and integrity, and also to the CM *“sharing”* about an event where *“the Commissioner had expressly misled him and which left him unable to believe the Commissioner.”* [C4145-6] The CM stated that by this point, the AG had corrected with him that he had misquoted the DPP’s position, and after a lengthy exchange of questions suggested that CTI put to NP why he had reported the misquoted position to the FCDO (Transcript Day 17 p13.15, 17.2), NP stated that his memory was that the CM said IM had gone against advice (as opposed to not seeking advice) (Transcript Day 18 p180.23). NP was asked whether anybody ever corrected to him that IM had not gone against the advice of the DPP; he replied *“not for some time”*, and that he could not remember anyone correcting him on it, but could not believe that they did not; he accepted that he had been taking into account a reason that was factually wrong (going against advice) (Transcript Day 19 p200.13, 201.6). The AG stated that by this stage he had corrected his mistake about the DPP’s advice (Transcript Day 12 p138.21).
- b. *“The CM concluded by stating 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. The CM reminded the Chair that should this not*

*happen, the Act gave the Governor powers to call for the resignation of the Commissioner.”*

- c. *"I endorsed the CM's position ... I said the collision incident alone raised grave concerns and has wide-reaching political, financial, reputational and sovereignty implications which may not go well for Gibraltar ... I said 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.”*
- d. *“I concluded by saying the powers I have under Section 13.(1)(f) only come into play “in default by the Authority” and as such, the GPA was under some scrutiny.”*
- e. *“The CM was visibly angry during our meeting on Friday and is clearly worried at the political, financial and sovereignty damage the fatal collision incident could do to Gibraltar. Invoking Governor's powers will not go down well and is likely to provoke backlash. The CM and I recognise the difficulties that lie ahead and have agreed we must be completely as one on this. The RGP, which has many decent and capable officers, is in need of fresh modern leadership and someone skilled in transformational change management. When discussing this the CM rather surprisingly said ‘we should look externally for a replacement’. I was shot down by the former GPA Chair when I recommended this in early 2018.”* In questioning, NP clarified that this was to fill a stop-gap on a short-term basis rather than have a substantive appointment as Commissioner with a four-year term (**Transcript Day 19 p197.6**). NP stated that he had discussed allowing external candidates with the Government before IM was appointed, and might also have discussed this with the CM, but that the CM had previously been against bringing in people from overseas (**Transcript Day 19 p195.14, 196.1**).
- f. *“Without doubt, the CM has the bit between his teeth and wants the Commissioner removed from his position as soon as possible.”*

532. Having asked to meet with the CM again at 16:00, JB later (at 18:26) asked via WhatsApp for clarification as to the sequencing of events (whether IM should first be invited to retire,

or be asked to give representations) [B1437]. JB acknowledged that the CM was “*the only lawyer I could ask – wrongly, I get it now*” (Transcript Day 15 p105.17). JB sent a draft letter to the CM for comments (the first of two letters that the GPA would send to IM), and the WhatsApp messages record that the CM responded by email [B1437], although the email itself has not been disclosed to the Inquiry. JB believed that the “media” in these messages were the files of the letter with edits (Transcript Day 15 p58.13). JB thought that he chose to provide 7 days for representations, but appeared to accept during questioning that this was the CM’s suggestion (Transcript Day 15 p233.7, 233.20). The CM denied that he suggested the same deadline for the representations from IM as he set for the section 15 report because he knew that it would put IM under immense pressure (Transcript Day 17 p233.8).

533. JB and IM agreed to meet in person the next day. There is disagreement as to who extended the invitation for this meeting. JB states that it was him (Britto 1 para 20 [A324]), whereas IM states that it was him (McGrail 1 78 [A28]). It appears from the WhatsApp exchange that IM raised it first but JB also intended to propose a meeting [C6571]. IM stated that he asked to meet JB as he was “*really feeling the heat*”, but he did not know that the GPA had already met at this stage (Transcript Day 7 p31.17).

534. On 22 May 2020, IM met with JB at 09:00. IM secretly recorded that meeting, the transcript of which is at [C4316] (it is available with translations at [B353]). IM states that he had not intended to record the meeting, but when he arrived to see JB “*face grey, serious like I’d never seen him before, that triggered something in my head: something is not right*” and he recorded the meeting to protect his interests (Transcript Day 7 p33.19).

535. Attention is drawn to the following:

- a. JB stated that the CM and NP “*lost complete confidence in your leadership and management of the RGP*”.
- b. JB referred to the Incident at Sea: “*the Incident at Sea is apparently very, very, very grave and what they explained is, nothing that you won’t know, that it put Gibraltar in a very bad position with Spain and with Britain...*”
- c. JB referred to the recommendations in the HMIC Report, including “*the issue of not being alive to corruption*”.
- d. JB stated that he was “*surprised*” and “*so [were] the Authority members*”.

- e. IM asked JB: *“But what is the position of the authority? Is the authority accepting that? Have you had any concerns about me?”*. JB replied: *“No, no wait, we would have told you.”*
- f. JB later stated *“from the Authority’s perspective, we haven’t taken a firm view”*.
- g. JB also acknowledged (referring to the s34 process): *“The thing is it has been done the wrong way round”*.
- h. IM asked about the effect of the letter. JB stated *“you’re not suspended or anything... it’s an invitation”*. JB later added *“it’s an invitation, you’re not being forced. It’s an invitation. I am presuming that they would then trigger the section 13, the Governor removes you, I am assuming, I haven’t been told that.”* During questioning, IM stated that *“it was not an invitation. I took it more like: you need to go, or else you’re going to get fired”* (**Transcript Day 7 p35.11**).
- i. JB stated *“It’s been done the wrong way round, in other words, they told us we are going to trigger this.”*
- j. JB stated that the GPA felt it had *“no option left”*, because the other option would be for the Governor to *“dis-appoint you ... and I think they want to avoid that, they want it to be your choice”*.
- k. IM raised the issue of the search warrants, stating: *“This has all been triggered off from the impromptu meeting that I was called to in the Chief Minister’s chamber with the AG. That is where it all stems from. There’s no doubt at all, at all, at all that CoP that is where this is stemming from. The fact that he has not been in agreement with the way we have been handling the case of the involving Jaime Levy. I was threatened there and then...”*. IM later added that: *“I am informed that he [the CM] was aware of all that is alleged... [against] Cornelio, John Perez”*. IM explained during questioning that he formed the view immediately that he had no doubt this stemmed from Operation Delhi, as *“right up until 12 May there had been no issues”*, and he had had a very good relationship with the AG and CM and a professional relationship with NP (**Transcript Day 7 p37.11**). JB suspected that this was the first time he learned of the CM’s role in the investigation, and the first time he had heard of Cornelio and Perez within the realms of this exchange (**Transcript Day 15 p113.1**).
- l. IM stated: *“My biggest call is: do I create a constitutional crisis? Because the Chief Minister is suspected of a crime...”* [**C3507**]. During questioning, CTI pointed out to IM that according to Superintendent Wyan, the CM was never a suspect. IM

accepted this but explained that the Chief Minister had questions to answer **(Transcript Day 7 p39.23, 40.22)**.

- m. Towards the end of the meeting, addressing the search warrant issue, JB stated that the allegation was that *“you had lied, you lied basically to the Chief Minister ... or omitted the truth ... or that you kept the truth from them”*. During questioning, IM stated that he did not know what lie JB was referring to, and that he had *“squared off”* the issue of the DPP’s advice with the AG **(Transcript Day 7 p41.19, 42.3)**. JB stated that he did not explain the lie as *“I don’t think I was sure myself and quite frankly I wanted to leave”* **(Transcript Day 15 p114.5)**. Although JB told IM in the meeting that he would find out more details on the lie, he accepted that he did not manage to find this out **(Transcript Day 15 p114.24)**.
- n. IM requested that NP and the CM’s reasons be put in writing, so that he could prepare a response. IM gave evidence that except for the two letters received from the GPA, JB never elaborated on the GPA’s reasons **(Transcript Day 7 p43.3)**.

536. During the course of the meeting, JB handed IM a letter **[C4315]**. The letter stated: *“the Authority invites you to retire, in the interests of policing in Gibraltar. Please note that Section 34(2) states that you shall have an opportunity to make representations before the Authority and that these shall, of course, be fully taken into consideration to allow the Governor, the Chief Minister and the Authority to express a firm and final view.”* This letter was not seen by some (or all) of the GPA members in advance of being given to IM: see the email from GPA member Nadine Collado dated 22 May at 17:01 **[C4370]**. Mr Lavarello confirmed that he had not seen the letter in advance **(Transcript Day 14 p236.16)**. As to the procedure outlined in this letter:

- a. JB accepted, in retrospect, that IM should have been asked for representations before the GPA asked him to retire, but stated *“when I gave him the letter and I had the long conversation with him, I was convinced that was what I was doing”* **(Transcript Day 15 p106.5)**.
- b. During questioning, the CM did not want to give an opinion on whether this letter was consistent with the scheme of s34, stating: *“I was being asked by the GPA here to assist them with their language of their letter and that’s how I did it. I wasn’t providing legal advice to the GPA”* **(Transcript Day 17 p24.19)**.
- c. By contrast, NP did not think that the letter was consistent with the order set out in s34 **(Transcript Day 18 p198.11)**. NP stated: *“I remember reading this and*

*thinking 'oh dear', because the authority – for me this was the start of a default because, with respect, it should not have invited the Commissioner of Police to retire until after they had heard his representations” (Transcript Day 18 p198.14).*

537. IM’s evidence was that following this meeting with JB:

- a. IM called in the RGP Command Team (RP, Yeats, Tunbridge and RU) for a briefing on the situation, during which Richardson contacted Sir Peter Caruana for legal advice, and that Richardson “*informed me and the others present that Sir Peter was conflicted and could not see me. That he had imparted to Supt Richardson that ‘the other side’ (which I took to be HMGoG) were getting increasingly nervous with how the investigation parameters were extending”* (McGrail 1 para 82 [A36]).
- b. IM received a call from the AG, who “*mentioned he was aware I had been served with a letter to retire, adding that it was to do with the HMICFRS report and the collision at sea”*. IM stated that he retorted it was all to do with the “*Op Delhi intervention and the posture adopted by the CM, he [the AG] did not deny this”* (McGrail 1 para 85 [A37]). PR recorded IM’s side of this conversation, the translated transcript of which is at **C6952**. At 10:48, the AG messaged the CM stating: “*Spoken to CoP. Call me when you can”* [B1419].

538. At 14:00, JB met with the CM [A210]. JB stated that at this meeting, he told the CM that he needed a lawyer. He believed that the AG had then contacted Mr Neish about providing representation (Transcript Day 15 p115.19). JB said that he did not ask the CM follow up questions about Operation Delhi, but did refer to the “*telephone in the safe”* (Transcript Day 15 p116.22).

539. After that meeting, JB sent the CM a draft version of a second letter to IM [C4310]. The CM made several amendments, which are highlighted in yellow [C4282]. NP believed that he saw the draft of the letter (Transcript Day 18 p 194.23). The version signed by JB is at [C4285], and appears to be identical to the CM’s draft. The Inquiry received the following evidence on these amendments:

- a. JB stated that he involved the CM in drafting as he “*wanted to make sure that I was conveying what both the Governor and the Chief Minister were telling me because I was at pains to tell Mr McGrail this is not the GPA, this is them losing confidence and these are the reasons.”* (Transcript Day 15 p117.7).

- b. Mr Lavarello stated that he was “*quite surprised*” to learn that the CM had input into the drafting of this letter, and stated that “*if it needed to be drafted by a lawyer, I would have expected us to have asked to have independent legal representation*” (**Transcript Day 14 p240.7**).
- c. In retrospect, JB agreed that involving the CM in the letter was not consistent with the GPA maintaining independence (**Transcript Day 15 p117.25**). However, at the time he did not have concerns about the CM’s changes (**Transcript Day 15 p121.22**). JB was asked whether he accepted that the amendments to the letter were not in his voice, he responded “*in as much as I wouldn’t have written it like that, possibly*” (**Transcript Day 15 p239.8**).
- d. The CM’s evidence was that the amendments were “*designed to ensure that Mr McGrail had greater information as to the reasons why the Governor and I had lost confidence in him*”, and added allusions to the views of the AG (Picardo 1 para 92 [A211]). The CM stated that “*we were putting as much information as possible into the communication that was to go to Mr McGrail, to give him the benefit of all that information so that he understood the case he had to meet*” (**Transcript Day 17 p27.10**). The CM stated that (at the time) he did not think he needed to spell out the complaint in relation to Operation Delhi rather than merely adding allusion to the AG’s views, as “*by this date, Mr McGrail certainly knew how I felt, and the allusion itself was enough for Mr McGrail to know what it was that I was referring to*” (**Transcript Day 17 p30.4**). He added: “*I don’t think that Mr McGrail himself needed the position of 12 May to be made clearer. He was fully aware of that.*” (**Transcript Day 17 p32.22**). He denied that he was being coy about 12 May in the letter (**Transcript Day 17 p33.22**).
- e. However, the CM considered that the amendments were consistent with the GPA’s independence as the GPA “*independently asked me to provide them with that additional material*” (**Transcript Day 17 p26.17**).

540. The second letter [C4285] analysed the five criteria in s34(1) of the Police Act in greater detail. The letter referred to the following matters:

- a. Efficiency – The HMIC Report, which it described as “*damning in respect of the efficiency of the RGP*”. The letter highlighted that under s33 of the Act it was IM who was responsible for the efficient administration of the RGP. The letter also highlighted that in his application for the role of the Commissioner IM stated that

he would immediately set up a working group to meet the 2015/6 HMIC Report recommendations by 1 March 2019, and yet the action points of that report had not been complied with, and new and more serious recommendations were made in the new report. The incident at sea was cited as a further evidence of inefficiency by the RGP acting beyond its remit and jurisdiction. The letter stated that the incident “*has resulted not just in a diplomatic complaint filed against the UK and Gibraltar, but also a vessel being out of action, and questions as to standard operating procedures...*”. The letter added that “*the Chief Minister has no confidence in his having been provided with the information expeditiously about this very serious incident*” and “*the Governor expressed the view that he feels he has been misled by you...*”. NP agreed that this did not set out any particulars of how IM was said to have misled him, and (if there was going to be no further particularisation) then more information should have been provided (**Transcript Day 19 p136.21**). He agreed with the suggestion that the letter was not fit for purpose (**Transcript Day 19 p137.1**).

- b. Effectiveness – This section referred to the RGP not having use of a vessel as a result of the incident at sea, meaning “*the RGP’s effectiveness as (sic.) sea was therefore severely impacted for some time*”. Effectiveness would also be seriously compromised given the increased legal workload created by the claims.
- c. Probity & Integrity – “*Both the Governor and Chief Minister felt that their dealings with you have left them with the sense that you are lacking in both probity and integrity – the maritime incident is one case in point. ...*” NP stated that for him personally there were no other cases in point (**Transcript Day 18 p197.4**). The letter also stated: “*the Authority is informed that the Attorney General has also expressed the same feelings*”. This reference to the AG was added by the CM, and was not in JB’s draft. This section concluded: “*The Governor and the Chief Minister expressed to the Authority that they consider that the Rule of Law in Gibraltar is compromised by the fact that they lack confidence in your probity and integrity*”.
- d. Independence - References was made to “*the parts of the report that deal with the potential for corruption, and, consequently, influence, which ... seems not to be completely understood in the RGP.*”

541. CTI notes that there was no express reference to Operation Delhi in this letter (nor in the CM’s text message to NP on 14 May 2020, the CM’s email to NP on 17 May 2020, the CM’s

Informal Note of the 18 May 2020 meeting or the GPA's first letter to IM). IM noted that "*what struck me, that the letters did not contain a reference to Delhi at all*" (**Transcript Day 7 p43.5**). JB could not answer why there was no reference to Operation Delhi, but said that there was at least an allusion to it (**Transcript Day 15 p123.24**). In any event, JB thought that the letter must have had enough detail for IM to know the criticism against him, as "*when we got the representations everything was covered*" (**Transcript Day 15 p125.1**). However, NP accepted that the Gomez & Co letter could not set out IM's response on the allegation that he had misled NP in the incident at sea, because IM did not know what the particulars were (**Transcript Day 19 p140.6**).

542. The AG recalled seeing the second letter before it went out (**Transcript Day 12 p129.4**), although it must be noted that the messages between the AG and CM on 21 May about reviewing a document [B1419] relate to the draft Section 15 Report Request at C6793, and not this letter. The AG stated that he consented to his name being used in this letter (**Transcript Day 12 p132.1**).

543. At 14:21, NP updated his FCDO colleagues by email [C4360], stating (among other things) that the CM had instructed Sir Peter Caruana KC, and "*the Commissioner believes that this is in part driven by the ongoing investigation. The high-profile person was James Levy!*". He concluded that "*There is no constitutional crisis as the CM and I are in full agreement, but news is likely to break and this will be a big story. A quick para to the Minister as discussed may therefore be appropriate.*" NP also suspected that he would have told the FCDO that JL was the suspect at one of their weekly meetings (**Transcript Day 19 p172.11**).

544. In a subsequent email to a single FCDO individual at 15:53, NP stated "*It's the James Levy angle as well that is interesting. I'm also a touch nervous given that the CM has firmly taken the lead on a competence that is more towards us than them. But we've agreed this approach which on balance is right. It also raises issues about the GPA who should have been monitoring the CoP. But I can't see it ending well for anyone*" [C4359]. NP stated that the CM had "*taken the lead*" through his subsequent engagement with Dr Britto and assisting with the correspondence, but noted that the CM did share and clear drafts with him. NP stated that he checked with London whether this was okay, because: "*I could see by the letter of the Act and the Constitution that it was possibly, you know, crossing a line.*"

(**Transcript Day 18 p169.11**). However NP thought that more often than not the split of roles was 50/50 (**Transcript Day 18 p170.18**).

545. At 16:06, JB sent an email to the members of the GPA updating them on his meeting with IM [**C4364**]. At 19:58, JB sent the second letter to IM [**C4376**]. He subsequently sent it to the GPA members at 20:06 [**C4377**]. JB's evidence was that he did not know the GPA meeting had been inquorate at this stage: he thought that getting the "okay" by telephone was sufficient (**Transcript Day 15 p89.15**).

546. On 29 May 2020, Charles Gomez, on behalf of IM, wrote to the GPA with representations relating to the flaws in the GPA process [**C4477**] ("**the 29 May Letter**"). JB copied this letter to the CM and NP "*given the nature of the allegations made*" (Britto 1 para 27 [**A324**]). JB confirmed that he did not ask Mr Gomez for permission to share the letter (**Transcript Day 15 p251.15**), but agreed with the suggestion that it would not have been possible for him to consider the merits of the allegations or reply to them without copying those individuals (**Transcript Day 15 p268.16**).

547. The 29 May Letter complained of a defective process and affirmed that the GPA should not exercise its s.34 power to remove IM from office. In doing so, the letter:

- a. Argued that JB's actions to date had been unlawful and that the process had been "*grossly procedurally unfair*", for example because JB had told IM that if he refused to comply with the invitation to retire then the Governor would use his powers under s.13(f) of the 2006 Act, and representations had not been sought under s34(2) before the s34(1) process was followed.
- b. Invited the GPA to obtain independent legal advice.
- c. Sought an assurance that JB would ensure that NP was not involved in the GPA's decision-making under section 34. At this juncture, it is noted that NP had emailed JB on 19 February 2020 (a day after assuming the role of interim Governor) stating: "*Why don't you send an email to all GPA members save me, stating that for as long as I am Governor, you intend to omit me from general GPA correspondence etc but that I have offered to continue to attend GPA meetings, recusing myself as necessary or at anyone's request*" [**C3066**]. NP was not present at the GPA meeting on 21 May 2020.
- d. Referred to the "*vanishing reason*" (the search warrant), which the letter asserted was relevant and raised in the meeting between JB and IM, but not cited in the

second letter of 22 May 2023. The letter stated that at the meeting of 12 May 2020, the CM and the AG had “*very severely criticised*” IM in an emotional manner for the search warrant, that the CM told IM that in his view he had handled the investigation “*very very wrongly*”, and that the AG stated that he had to that point approved of IM’s work but from that day he could not “*entertain*” IM again. The letter further alleged that at two subsequent meetings with the AG and the DPP, the AG had put pressure on IM to change the RGP’s investigative approach to the operation, and the AG appeared primarily concerned with protecting the CM and “*Gibraltar PLC*”. The letter referred to this as a “*grossly inappropriate*” interference with a live criminal investigation, trampling over the separation of powers, and added that the CM had a personal connection to the outcome of the investigation, which made his intervention even more inappropriate.

- e. The letter suggested that the Incident at Sea and HMIC Report were “*fig leaves for the real reason Mr McGrail is being pressured to retire*”, had been known to the CM, the Governor and the AG for months, and IM had received no criticism about his approach to them.
- f. As to the Incident at Sea, the letter responded to concerns raised as follows:
  - i. “*There is no explanation as to why it is suggested that the actions of individual officers reflect on Mr McGrail or are indicative of a systemic pattern of acting beyond the remit and jurisdiction of the RGP.*”
  - ii. “*The RGP’s Marine Section has resilience. It has other vessels and the fact that one of them has been out of service because of the collision has not hampered capabilities.*”
  - iii. In any event, “*it would be highly unfair and contrary to the principles of natural justice for the GPA to pre-emptively blame Mr McGrail for this incident, prior to a detailed consideration of the independent report from the Metropolitan Police.*”
  - iv. “*...the Section 15 reply (sent shortly before these submissions) comprehensively debunks the suggestion that there was inadequate communication.*”
  - v. “*In relation to the suggestion that Mr. McGrail has misled the Governor, this is not particularised; it is a vague slur, without explanation. We do not know what it refers to. If it relates to the incident taking place in Spanish*

*waters, it is not possible to follow the rationale. In any event, the Governor was promptly and fully briefed by Mr McGrail on that issue...”*

- g. As to the HMIC Report, the letter stated:
- i. *“Mr. McGrail had by that time [the October 2019 inspection] only been in post for a little over a year, and it is simply not credible to suggest that these flaws can and should be laid at his door.”*
  - ii. *“None of the conversations he has had around the report have reflected the 22<sup>nd</sup> May letter which again raises the strong inference that this issue is being used as a pretence”*
  - iii. *“Insofar as it is suggested that Mr. McGrail did not set up a working group, his response is that as a result of the unprecedented demand placed on the RGP during 2019, the RGP has been addressing the issues raised in the Report by merging them in daily work practices.”*
  - iv. *“...in order to reach such a conclusion it would be necessary for the GPA to carry out a full and fair review into Mr. McGrail 's record during his time in post.”*

548. IM has provided a further detailed rebuttal to the points raised in the GPA’s second of 22 May 2020 in his Third WS (para 146 [A108]). IM confirmed in questioning that as at 29 May 2020, his preference was to remain in post rather than retire (**Transcript Day 7 p43.25**).

549. During questioning, JB expressed the view that *“if everything, assuming everything in the letter is correct, then [IM] would be in the right”* (**Transcript Day 15 p249.8**). NP accepted that the allegations in the Gomez & Co letter were *“extremely serious allegations of political interference in an ongoing police investigation”* (**Transcript Day 19 p177.16**), but stated that he was satisfied that he could proceed with the process of removing IM without deciding whether the allegations were true (**Transcript Day 19 p1817**).

550. At 21:19 NP wrote to FCO colleagues to inform them of this development, and stated: *“Whilst I will of course consider his representations, it looks as if I will have to exercise my powers under the Police Act. ... Not unexpected but disappointing, not least as the letter calls into question my conduct and impartiality of which I am certain, as is the AG, that I have nothing to worry about.”* The email also stated that the CM and NP had agreed to meet early next week with the AG *“as our honorary legal advisor”* and the Chair of the GPA

[C4652]. NP stated that even though the GPA had not yet withdrawn the invitation to retire, “I could see where this was going. It doesn’t need a crystal ball” (Transcript Day 18 p200.2). As to his own conduct, NP stated that “I may not have got everything right”, but that “my conscience is clear” (Transcript Day 18 p200.10).

551. The AG gave evidence that he believes he discussed the 29 May letter with NP and the CM, and he thought that “it was the biggest flight of fancy I have ever read in my professional career” (Transcript Day 12 p35.1).

### The events of June 2020

552. On 1 June 2020, the GPA held a further meeting (this time quorate). The minute of the meeting [C4654] records that “the meeting was called by the Chair to discuss the letter received by Charles Gomez...”. The Committee unanimously decided to seek independent legal advice. The note stated that: “It was also agreed that, not only does the Authority categorically ... refute that the Chair introduced the issue of the investigation into his conversation with IM, but also that he should have subsequently opted to omit in his letter for the surreptitious reason alleged by IM’s lawyer. This is considered by the Authority to be a very serious allegation by the lawyer and a potential misrepresentation of what actually transpired.” It is not clear what the minutes mean by “introduced”.

- a. If all that is meant to address is that it was IM who first raised the matter, then that would be accurate (see [C4325]).
- b. However, the 29 May Letter does not suggest that JB “introduced” the issue, but instead states that: “The GPA Chair confirmed to Mr. McGrail at their meeting on 22nd May that his handling of the criminal investigation referred to above was spoken about at the Chair’s meeting with the Chief Minister and Governor and was one of the reasons they had ‘lost confidence’ in Mr. McGrail.” The contemporaneous documents clearly demonstrate that the criminal investigation was discussed by JB and IM at the meeting (see, for example, the transcript of the meeting at, where, in reply to IM raising the search warrant, JB accepted that there was reference to the AG also losing faith in IM and that: “*what was mentioned is the way you handled cases, que you had lied, you lied basically to the chief minister ... Or omitted the truth*” [C4330].

- c. In the same exchange IM asked JB, when sending him the notes of the meeting, to “*please tell me; and if there’s reference to that case in question I think it needs, because that is key, that is key...*” [C4330].
553. On 2 June 2020, the CM sent a message to NP requesting a meeting at midday with JB and the AG [B1445]. JB could not recall this meeting, but suggested it may have been at this meeting where he requested legal representation. He did not recall meeting the AG personally (Transcript Day 15 p132.1). NP could not remember but was surprised if this meeting did not go ahead; he thought that it was probably about how to respond to the Gomez & Co letter (Transcript Day 18 p201.23).
554. On 3 June 2020, the GPA instructed James Neish KC of TSN to provide legal advice [C4674]. Mr Lavarello confirmed that this was the first stage in the s34 process that the GPA had sought legal advice, and agreed that in retrospect the GPA should have sought advice earlier (Transcript Day 14 p240.22), TSN provided advice that the GPA process was fundamentally flawed, because the GPA’s invitation to retire could only be made after affording IM reasonable opportunity to make representations and giving due consideration to those representations (Britto 1 para 30 [A325]). JB and two GPA members (Mr Frank Carreras and Mr Ernest Gomez) attended a meeting with TSN to discuss its advice. JB’s evidence was that it was agreed TSN would write to Gomez & Co withdrawing the invitation to retire and that the process was being abandoned, and that the GPA would inform the CM and NP (Britto 1 para 32 [A325]).
555. Each of NP [C4675], the CM [C4734] and the AG [C4730] responded to the GPA about the 29 May Letter – these are referred to as “*the three letters*”. The AG gave evidence that he did not review NP or the CM’s letter, but accepted that this was a “*coordinated response*” (Transcript Day 12 p45.24). NP also accepted this, and stated “*it is quite right that we should respond individually but discuss how we were going to do so*” (Transcript Day 18 p202.8).
556. NP was the first to send his letter on 3 June 2020. The CM and the AG’s letters to the GPA followed two days later on 5 June 2020 (see below). NP’s letter stated that:
- a. As to the issue of NP’s recusal from the GPA, “*all my communications with you since 19 February 2020 have been as Governor and NOT as a member of the GPA*”.

- b. His “*deep concerns with the COP’s leadership qualities have absolutely nothing to do with [the ongoing criminal investigation]*”. NP stated that he was first informed of the investigation by the CM on 15 May 2020 and further was clear that his “*lack of confidence in the CoP’s probity and integrity and my conviction that the rule of law is compromised by the fact I have lost confidence in him*” clearly arose before he was aware of the criminal investigation.
- c. His “*already existing concerns*” about IM were confirmed by the Incident at Sea (March 2020) and HMIC Report (published in May 2020). As to the former, IM was “*evasive in particular in relation to the critical issue of whether or not the incident had occurred within BGTW*”. As to the latter, he had written to the CM on 30 April 2020 after seeing a draft of the Report saying that he found it to be “*quite damning*” and had written to the GPA saying that he did not think it should be published.
- d. The suggestion that the two issues were “*fig leaves*” for the real reason for pressuring IM to retire was “*an outrageous accusation which I bitterly resent and strongly object to*”, which was “*clearly not borne out by the facts and chronology*”. It was also “*wholly inaccurate*” to say that he had been aware of the incident at sea and the HMIC Report “*for months*”.
- e. These two incidents “*occurred on the back of a growing unease that I had been feeling over the months, in particular with the numerous allegations of bullying and mismanagement that I had picked up on.*” He had also been “*gravely concerned*” by the potential for corruption identified in the HMIC Report, which remained unaddressed.
- f. The “*content, tone and style of the [29 May Letter] have done nothing but cement my lack of confidence in the CoP...*”.

557. On 4 June 2020, the CM forwarded to NP and the AG a report to the CM by (then) RU in relation to an accessory attached to the front of the RGP vessel involved in the collision at sea. In a response timed 11:38, NP stated: “*Tempted to suggest we go straight for 13.(1)(f)*”. The CM responded stating: “*I think we may have no alternative in the interest of the Rule of Law and the peace, order and good government of Gibraltar. I have growing and ever more serious concerns about this issue.*” NP responded proposing a meeting between him, the CM and the AG [C4715]. NP explained that it was not just the RGP vessel accessory but the whole email chain that he considered justified s13(1)(f) (**Transcript**

**Day 18 p205.24**). For example, the email chain included a link to a Spanish TV report which included a video of the chase [**C4718**].

558. At 17:30, the CM, AG and NP met at the CM's offices [**B1419**]. This meeting was not mentioned in the AG's witness statement. He did not recall what was discussed, but stated "*in view of the dates, I think we were aware of the procedural errors in the GPA decision making process*". He could not recall how he had become aware of these procedural errors, given the letter from the GPA did not arrive until 5 June, and said he had maybe discussed the matter with JB (**Transcript Day 12 p35.17**). The AG accepted by reference to NP's email the following day (see below) that there was a discussion of the GPA process and next steps (**Transcript Day 12 p36.22**). JB did not know how the AG was aware of these matters, and was not in communication with the AG except for when the AG asked for copies of what JB had sent (**Transcript Day 15 p135.17**). NP also did not know how the AG came to be aware of this information (**Transcript Day 18 p209.7**).

559. On 5 June 2020 at 09:25, NP wrote to the AG stating: "*I have reflected on the discussion we had yesterday afternoon on the issue of the Commissioner of Police. My preferred course of action, recognising the need to resolve this issue quickly not least in the light of media scrutiny, is that I take no action until I have seen the letters that the GPA Chair, the Chief Minister and yourself are writing to the GPA in response to the Gomez letter. This would allow me to reflect and consider all representations, including the Commissioner's via the Gomez letter, before speaking to the Commissioner.*" [**C4727**]

560. At 09:54, NP wrote to an FCDO colleague (forwarding the email shortly afterwards to the incoming Governor Sir David Steel) stating as follows [**C4728**]:

- a. "*Things had taken a turn for the worse*" as he had learned that the GPA meeting of 21 May 2020 was not quorate, and its deliberations were null and void.
- b. The AG had advised that "*there is no point in looking to appoint new GPA members*" as they would be likely perceived as bias due to the CM/NP's roles in the appointment process. (The AG stated that this accurately reflected his advice to NP on 4 June (**Transcript Day 12 p39.7**)).
- c. "*This leaves Section 13(1)(f) of the Police Act as the only way forward to secure the resignation of the Commissioner should it be determined that this is the best way forward.*"

- d. NP's proposed course of action was to see the responses to the 29 May Letter from the GPA, the CM and the AG, before summoning IM to see him. He stated that the AG agreed with this approach.
- e. "...with a media storm brewing, I would like to resolve this as soon as possible and certainly before Sir David Steel arrives on Wednesday." In questioning, NP did not think that there was a risk that the hurry to resolve matters before Sir David Steel arrived led him to take steps in June 2020 that he would not otherwise have taken: whether or not Sir David was arriving, he would have looked to conclude matters quickly (**Transcript Day 18 p211.13**).

561. Sir David Steel replied at 12:50 [**C4771**] stating: "*I discussed the whole issue with [name redacted] this morning as well as with [the Permanent Undersecretary]. Both think you are doing a cracking job in difficult circumstances. I just hope the actions you are taking will address this issue. Take good care and an extra pair of hands to help you are flying out next Wednesday!*". CTI put it to NP in questioning that this email demonstrated that Sir David Steel was willing to help address the issue on arrival, and it was not imperative for NP to have it resolved. NP disagreed and said he read the email differently (**Transcript Day 18 p218.7**). NP added that did not consider that he might have been prevented from exercising his s13 powers by s22(3) of the Constitution (as he knew Sir David Steel was arriving in Gibraltar), as "*I was and I now remain under the impression that one can only assume the role of Governor once one has taken the oath... It cannot be right that you cannot have – you cannot have a governor in situ who doesn't have authority to take actions...*" (**Transcript Day 18 p219.13**).

562. At some time between 09:54 and 15:09, NP received copies of the letters written by the CM and the AG to the GPA.

- a. The CM's letter [**C4734**] stated that:
  - i. IM's allegations were "*very serious and vile*", and "*completely untrue*". The nature and tone of the 29 May Letter "*increased and cemented*" his loss of confidence.
  - ii. He referred to the "*obvious breakdown of [IM's] relationship with each of the Governor, the Government (myself and all other members of my Cabinet), the Attorney General and the Director of Public Prosecutions.*" In questioning, the DPP stated that as at 5 June 2020, he had not

expressed the view that there had been a breakdown in relationship between him and IM (**Transcript Day 10 p221.18**).

- iii. He confirmed that NP *“was not at the material time even aware of the criminal investigation interference which is alleged to justify the COP’s allegations against him”*, and that he had made NP aware of the investigation *“at the same time as I referred the matter to you”*.
- iv. *“I have at no time or in any manner sought to interfere with the RGP’s conduct of the criminal investigation in question in any manner of (sic.) for any purpose...”*
- v. *“At no time have I sought to intervene in or interfere to prevent Mr Levy being investigated or to prevent a search warrant being obtained and executed against him at the offices of Hassans, facts I first learned about as they were already happening...”*
- vi. As IM had informed the CM that the warrants were *“in relation to the case against Perez, Cornelio and Sanchez”*, he *“had no reason to believe”* the investigation was of JL.
- vii. The CM was entitled to express his views in this manner, on matters of policing policy, and that did not constitute interfering with the investigation.
- viii. When he discovered that a civil servant was under investigation, the CM had directed the Chief Secretary that HMGOG should be a complainant to the police in the investigation.
- ix. The obtaining and execution of a search warrant was, in his opinion, *“of dubious legality, abusive, unprecedented in policing in Gibraltar, incompatible with public confidence in policing and the good name and reputation of Gibraltar as a business and finance centre”*. HMGOG would bear the financial consequences of the RGP being sued for unlawful actions.
- x. The CM had *“not lost confidence in [IM] because he obtained and executed a search warrant in circumstances in which it was appropriate to do so. ... The primary reason is that the COP clearly lied to me.”* the CM stated that *“the COP stated to me in explicit terms, in response to my concerns about the propriety of the warrant, that he had obtained and executed the search warrant against Mr Levy in reliance on legal advice*

*from the Director of Public Prosecutions who had confirmed that it was appropriate to seek such a warrant and proceed in that way. I have since determined that this categorical statement from the COP ... was wholly untrue.*” He added *“it is now clearly established that at no time did the COP or the RGP obtain legal advice from the DPP to that effect...”*. This was unacceptable and went to IM’s probity and integrity in his dealings with the CM, and the CM’s ability to have confidence in him.

- xi. The CM again referred to the flow of information during the Incident at Sea, *“an incident with extremely serious external political consequences and very material potential financial consequences to the Government”*, alleging that IM had failed to keep him *“timeously and spontaneously informed”*.
  - xii. He also referred to his *“deep concerns”* about the HMIC report.
  - xiii. *“It is in itself wholly improper that he should make such spurious and damaging allegations without evidence commensurate with their gravity (or indeed any evidence. This now goes to my further lack of confidence in the COP.”*
- b. The AG’s letter [C4730] (which was drafted by Caruana & Co on the basis of a timeline that the AG had provided: **Transcript Day 12 p1.16, 53.20**) stated:
- i. IM’s letter *“makes important and very serious allegations against me ... each of them is untrue and without merit or justification”*.
  - ii. *“I am not aware that the Chief Minister is a person in need of protection in the context of the criminal investigation in question.”*
  - iii. IM was not immune to having his actions strongly disapproved of or severely criticised, and yet had equated both to improper interference with an investigation and a violation of police independence. This showed a worrying lack of understanding and judgment on his part.
  - iv. The AG had *“never said that the COP lied to me”*. What he told IM was that he had *“incurred in a serious breach of my trust ... as a result of which I have lost confidence in him”*.
  - v. The AG had first been made aware of the criminal investigation in May 2019, when he became aware that JL was potentially a person of interest in the investigation, and yet had no further involvement until early April 2020, when contacted by the DPP.

- vi. After a discussion with the DPP in early April 2020 when he was informed of a list of 76 charges and the possibility of issuing search warrants against JL, the AG was alarmed “*both by the number of charges (which would be quite inappropriate in any prosecution) and also by the proposal to obtain and issue a search warrant against a senior lawyer without first seeking voluntary cooperation or voluntary production of evidence...*”. He noted that Mr Levy had been aware of the RGP’s interest in him for many months, and thus the risk of destruction of evidence did not merit search warrants.
- vii. “*I have a legitimate public interest role and function (indeed, a responsibility) in respect of both these matters*”. The AG stated that he asked to see the COP “*in relation to these two matters*”. (However, as discussed in Issue 5 above, it must be noted that the AG’s position was that despite this letter, his recollection was that this meeting with IM was about rationalisation, not the warrants against JL. The AG denied that this error in his letter would have influenced NP, as it was subsidiary to NP’s own loss of confidence in IM: **Transcript Day 12 p115.4**).
- viii. The outcome of a discussion between IM and the AG on 7 April 2019 (this is understood to be an error, and should be a reference to 7 April 2020), was that “*we reached a clear understanding that the RGP would not take any further action until they had considered my advice about the rationalisation of the charges, and then the COP would come back to see me again. It was clear beyond peradventure that nothing would happen until we met again.*” (original underlining)
- ix. “*I have never said anything to the COP which can be interpreted as anything other than advice and assistance, as has always been the practice. “The COP is of course free to take whatever action he considers lawful and appropriate regardless of any advice that I may give him on the matter ... What the COP cannot do, and also expect to retain my personal confidence, is to act contrary to an understanding reached between us, as he has done. This, and not my disapproval of his actions ..., is the reason for my loss of confidence in him”*”.
- x. “*I have made it explicitly clear to the COP throughout that the conduct of the investigation (including the seeking and execution of search warrants) are, whatever I may advise him, operational matters entirely for him.*”

xi. *“It is outrageously wrong and unfair for the COP to allege that I have (let alone that I have done so repeatedly over an extended period of time) and I am shocked and deeply resent that he has done so. This necessarily deepens my loss of confidence in him going forward.”* In his evidence, the AG paraphrases this sentence of the letter as follows: *“In my letter of 5 June I stated that the contents of the 29 May Letter had deepened ‘my loss of confidence in [Mr McGrail] going forward!’”* (Llamas 1 para 6(b)(iii) [A271]).

563. It appears that the GPA met on 5 June 2020 to discuss the legal advice received from TSN. At 13:41, the CM messaged the AG asking *“Any news from GPA?”*; the AG replied *“No”* and later *“They started meeting at midday”* [B1420]. The AG denied that he was *“keeping tabs”* on the GPA meeting (Transcript Day 12 p40.8).

564. Also on 5 June 2020 (presumably after the GPA meeting concluded), JB wrote to NP [C4743] and the CM [C4770] in identical terms stating it had received legal advice that:

- a. The process under s34 was fundamentally flawed and should be withdrawn.
- b. The complaints by the CM and NP *“remain live and should be determined”*.
- c. The GPA as constituted was vulnerable to challenge on the grounds of bias, and was therefore unable to process the complaints without being vulnerable to legal challenge, and therefore was not prepared to do so.

565. JB added that, despite Gomez & Co suggesting the GPA could remedy the situation by taking a fully independent decision, *“we felt that we were in no position to take any more decisions because of the flaws”* (Transcript Day 15 p138.8). CTI asked whether his understanding was that on sending this letter, he was effectively activating the s13 process. JB answered *“not really”*, and stated that *“I was thinking maybe they will abandon the process and rebuild the GPA and restart... if they wanted to ask us to step down we would all, well, I certainly would step down and they could reconstitute the GPA with other people”* (Transcript Day 15 p139.1).

566. NP stated that receiving this letter from the GPA *“made me pause and reflect that I had no option but to go to section f”* [s13(1)(f)] (Transcript Day 18 p 212.21). He did not ask the GPA what parts of the process were *“fundamentally flawed”*, but believed it was

because they weren't quorate. NP stated that he had looked into other options (ie, other than s13(1)(f)) but concluded that it was the only option available to him (**Transcript Day 18 p215.21**).

567. At 15:54, NP forwarded the letter he had received from JB to the AG [**C4796**] and sought advice as to how to proceed. The AG replied at 16:46 [**C4796**]. He advised that the option of appointing a newly constituted GPA was "*not available*", due to the risk of challenge on grounds of bias or apparent bias. He advised that due to the GPA's inability to perform its responsibility under section 34 of the Police Act, "*the current situation is one which falls within section 13 of the Police Act*", and that "*My advice is that, in the circumstances of this case, that power is available to you if you were to decide to avail yourself of it*". During questioning, the AG confirmed it remained his position that s13 was activated by the events (**Transcript Day 12 p42.21**). CTI asked the AG whether he considered advising NP to obtain independent advice, given the AG's own loss of confidence in the Commissioner. The AG responded that he knew NP was also getting advice from the FCDO, and in any event he considered that it was "*obvious*" that the GPA could not appoint new members because of a perception of bias (**Transcript Day 12 p43.8**).

568. NP stated that following receipt of JB's letter, he met with the CM and AG to "*discuss the situation, given that I did not expect to be in the position of having to consider actually using the Governor's powers under Section 13*" [**A243**]. The CM and AG both confirm that this meeting took place and related to the response to the GPA's letter (Picardo 1 para 99 [**A213**] and Llamas 1 para 6(b)(ii) [**A270**]). NP's evidence (Pyle 1 paras 16.3 and 16.4 [**A243**]) was that he met with the CM and AG on 5 June 2020 and:

- a. He told the CM and AG that he would speak to IM later in the day; he would tell IM that he would review papers over the weekend; and that he would "*leave Mr McGrail in no doubt that I would be prepared to use the powers invested in me as Governor*".
- b. He and the CM "*were keen that [NP] 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.*"
- c. However, NP states that he wanted to read the papers and consider any further representations by IM's re – "*I thought a pause to reflect was the right thing to do*".

569. NP again wrote to FCDO colleagues by email at 15:09 [C4782]. NP stated that:
- a. He had just spoken to the AG, and they had agreed to summon IM at 17:30 to inform him that he would consider the 29 May Letter, JB's letter and "*the three letters*" over the weekend before reaching a considered determination on Monday. He was due to meet the CM and AG at 5pm Gibraltar time, but told the AG that his "*strong preference was to create a gap for reasons we discussed*".
  - b. The CM was "*slightly worried*" that IM would use the weekend to seek an injunction, but NP did not think one could be obtained as "*I would not be disclosing my intent to the Commissioner and would merely be following the process as per the Police Act*". In questioning, NP explained that this was because he was 85-95% sure of his approach, but "*I just wanted to reflect and step back and use the pressure to make sure that what I was doing was correct*" (**Transcript Day 18 p221.17**).
  - c. The AG "*accepted that there could be the perception of a conflict between his role as our [Honorary Legal Advisor] and his involvement in proceedings*". NP explained that "*proceedings*" meant potential legal proceedings (which CTI understand to mean about IM's retirement), not anything to do with Operation Delhi (**Transcript Day 18 p223.56**).
  - d. NP's update was relayed to the Private Secretary to the Minister of State at the FCDO, Chris Heaton-Harris [A4804].
570. At 16:28, TSN (on behalf of the GPA) wrote to Gomez & Co acknowledging that "*procedural errors had been made*" and accordingly that the GPA was withdrawing the current process. In questioning, JB confirmed that this meant "*everything*" (lack of quorum, sequencing of events, failure to take notes) (**Transcript Day 15 p139.22**). However, the letter asserted that "*the complaints made against [IM] by the Governor and Chief Minister remain live and [the GPA] will consider how it will proceed in respect of them*". JB said that the GPA did not have any idea how it would deal with the complaints (**Transcript Day 15 p140.21**).
571. IM explains (McGrail 1 para 94 [A40]) that although he was "*somewhat relieved*" that the GPA had withdrawn the invitation for him to retire, the threat of NP exercising his powers under s13 still prevailed. He was "*extremely worried of the damage to my reputation if NP went down this route*", and "*did not have the full particulars*" as to why NP and the CM had

lost confidence in him. IM reiterated these points in his oral evidence (**Transcript Day 7 p45.23**).

572. Gomez & Co replied at 17:24, stating that “*We note that your client’s Chair now admits to having been informed by the Chief Minister and Attorney General that Mr. McGrail “lied” to them about a police investigation. We also note that your client (we assume deliberately) omitted this allegation, which was plainly central to the Chief Minister’s decision-making, from the second letter of 12 (sic.) May purportedly setting out the detail of the complaint against him. We suggest that the strong inference is that your client knew the matter was constitutionally improper and for that reason left it out.*”. The email further noted: “*we remain entirely unclear what your clients, the Authority, propose to do now*”, but then concluded as follows: “*In these circumstances, given how unfairly he has been treated and the improper pressure put upon him to alter the course of a live criminal investigation our client feels he must apply for early retirement from the Royal Gibraltar Police*” [**C4801**].
573. CTI asked IM what had changed between 29 May, where IM was advocating to remain in post, and 5 June, when he felt he must apply for early retirement. IM replied that: “*The pressure was relentless from Mr Pyle. I was getting texts, messages, emails late evening, which all suggested that he was going to invoke his powers. By that point my wellbeing was seriously affected.*” (**Transcript Day 7 p46.24**). IM explained that this “*threat*” emerged “*the minute Mr Britto communicated to me that that was the option, the nuclear option, as he explained it. That was alive from the minute I got the first letter*” (of 22 May 2020) (**Transcript Day 7 p50.11**).
574. NP and IM met in person sometime after the Gomez & Co email to TSN. The AG could not recall whether he knew they were meeting up (**Transcript Day 12 p46.5**).
575. IM took with him a copy of the email (McGrail 1 para 96 [**A40**]).
- a. IM did not record this meeting on the basis of conversations with his lawyers, and did not take notes (**Transcript Day 7 p51.17**). IM’s evidence about was that: [**A40**]
    - i. NP said he would be taking all correspondence away for the weekend to study, and invited IM to return on Monday 8 May “*with a view of invoking his powers under section 13*”. During questioning, IM instead phrased this as: “*I will be considering the invoking of section 13*”. However, IM

maintained that NP gave him the impression that he was going to use his powers (**Transcript Day 7 p52.23**).

- ii. IM told NP that he was being put through “*the most grossly unfair and unjust process*”, adding that even he was not privy to the allegations levelled at him.
- iii. IM informed NP that the 29 May Letter addressed the Incident at Sea and HMIC Report, but “*only skimmed the surface on the matter of the interference with the live criminal investigation...*”.
- iv. IM informed NP of the letter from the GPA withdrawing the GPA process, and gave NP a copy of Gomez & Co’s reply at 17:24.
- v. IM “*urged [NP] to consider deferring any decision until the arrival of the new Governor Sir David Steel... [NP] did not offer any comment to me on this.*”

b. NP’s evidence was that (Pyle 1 para 17 [**A244**]):

- i. NP said that he would review all the papers in his possession over the weekend, including a note given to him by IM (Gomez and Co’s email to TSN, the lawyers acting for the GPA), and would then like to see him on Monday, during which he would inform him of his decision as to the way forward.
- ii. NP said that whilst he had not made up his mind as to whether to use his powers, “*I would be prepared to do so*”. He denied that he said IM should return on Monday with a view of invoking his powers (**Transcript Day 18 p223.1**). He also denied that referring to s13 was a threat to IM to bring about his own retirement; and stated “*No, it was stating the reality of the issue*” (**Transcript Day 18 p224.14**).
- iii. When asked by NP, IM said that he did not know the reasons behind NP’s loss of confidence in him. NP stated that the reasons for his loss of confidence in IM were contained in the letter NP sent to the GPA on 3 June 2020 (which NP handed to him, together with the CM’s and the AG’s letters of 5 June 2020(Pyle 1 para 17.2 [**A244**])). However, NP accepted in questioning that he did not in fact provide the three letters to IM until Monday 8 June [**C4860**] (**Transcript Day 18 p226.6**), and said that he would have preferred to have given IM more notice of these letters (**Transcript Day 18 p227.9**). He stated that he thought it was a reasonable

assumption that the GPA would have provided the three letters to IM  
(**Transcript Day 19 p213.11**).

- iv. IM provided NP with a copy of the Gomez & Co email to the GPA at 17:24  
**[B2041]**.

576. On (Saturday) 6 June 2020 at 14:24, NP wrote to IM noting that the Gomez & Co email stated “*our client feels he must apply for early retirement from the Royal Gibraltar Police*”. NP asked IM to confirm by midday tomorrow “*whether that is indeed your decision, and, if so, whether you will be tendering your letter of resignation on Monday with immediate effect*” **[C4815]**. It should be noted that the letter referred to a letter of “*resignation*”, and not retirement, as IM had offered to the GPA. However, NP explained in questioning that this was an oversight (and apologised to IM) (**Transcript Day 18 p 228.6**). NP followed this up with an email to the AG and the CM stating “*Ball in CoP’s court*” **[C4819]**. The AG stated that he had not seen NP’s letter before he sent it to IM, and that “*at that stage I was quite removed from all this process as I know and I knew that Mr Pyle was discussing with legal advisers at the Foreign Office*” (**Transcript Day 12 p47.22**).

577. IM commented on this letter in his evidence (McGrail 1 paras 100-1 **[A42]**), stating that the reference to resignation caused him “*indescribable stress*” and “*enormous*” pressure, because he was being given hours to either remain in post and potentially be suspended or called to resign “*and lose all my pension rights and years of service*”, or apply for early retirement and possibly “*safeguard some of my interests*”. He assessed that his position was “*untenable but not for the reasons they claimed*”, and that “*I suppose by that point the loss of confidence was a mutual issue between them and I*”.

578. Gomez & Co responded on 7 June 2020 at 11:56 **[C4820]**, stating:

- a. They “*struggled to understand and are very concerned by the rush*”; “*there is no reason that we can see why the process which you appear to be preparing for, ie the exercise of your powers under Section 13 notice should be rushed, unless it is because you want to dispose of this very serious matter ... before the swearing in of Sir David Steel as Governor next Thursday*”.
- b. It would be unlawful for NP to exercise his s13 power, as it was only available if the GPA is in default of its duties, which it was not.
- c. NP should recuse himself from the matter, and wait for Sir David Steel to be sworn in three clear days later.

- d. *“Because of the immense pressure which has been placed on our client and his family, and the grave realisation that he can no longer count on the impartiality of the most senior members of Gibraltar’s Government, he have (sic) been left with no choice but to apply for early retirement – he will certainly not be resigning.”* This offer was *“subject to satisfactory terms being agreed in advance”*, including financial terms and the withdrawal of the *“vague”* allegations of impropriety against him.

579. At 12:29, the AG messaged the CM stating *“Nick will call you to arrange a time to meet”* [B1420].

580. At 12:35, NP wrote to the FCDO [C4825] stating that *“the good news is confirmation that the COP intends to retire and the issue is how to achieve this. My instinct is to allow the COP time to work out a deal, but this then means Sir David will have arrived. What we don’t want is COP to withdraw his request and lobby Sir David to keep his position.”* NP advised that he had just spoken to the AG and the CM and would be meeting them that evening to discuss options. NP explained in questioning that he wanted to give IM time to work out a deal (as to the terms and conditions of his retirement) as *“that’s just the right thing to do”* (Transcript Day 18 p228.21).

581. At 14:00, an FCDO legal adviser replied stating that they fully supported the approach. They stated: *“It’s unfortunate that this matter coincides with the new Governor’s arrival, but allowing time for the negotiations still leaves the new Governor with the option to use his power under section 13(f) in the event of a stalemate.”* [C4832] NP and the legal adviser arranged to have a call at 17:30 [C4837]. The FCDO legal adviser then sent an email at 17:08 (although the timestamp states 18:08 which is thought to reflect Gibraltar time, summarising a list of options in advance of NP’s meeting with the AG and the CM [C4837]. The adviser stated that:

- a. Although NP had justifiable grounds on which to exercise the s13(f) power, it was at risk of challenge by IM.
- b. IM intended to apply for retirement on terms addressed to the incoming Governor. The email stated: *“Although it is unfortunate that this matter coincides with the new Governor’s arrival, a negotiation about the Commissioner’s early retirement has the advantage that in the event of a stalemate the incoming Governor still has recourse to suspend the Commissioner pursuant to section 13(f) with a limited*

*risk of a challenge, given he has not been involved in this situation to date.*” The adviser stated that they shared NP’s view that early retirement was the preferred approach.

582. The CM, AG and NP met at some time in the afternoon. The AG attested that he could not recall what was discussed, as *“I was very distant from all this process and I just saw my role there really in relation to the procedural errors. I was not particularly engaged in what was happening at the time”* (**Transcript Day 12 p48.23**). This meeting was not mentioned in the AG’s witness statement: he stated that he had forgotten this meeting (**Transcript Day 12 p131.9**).

583. At 20:26, NP updated to the FCDO legal adviser on his meeting with the AG and the CM [C4845]. NP stated that:

- a. *“We agreed that, on balance, we needed to protect Sir David and felt that should CoP still be in office after his swearing in, he would more likely than not retract his request to retire and appeal to Sir David, thus taking us back to square one. The issue is also in the public domain with rumours and accusations beginning to circulate. We agreed we needed to stop this and the only way to do so to conclude proceedings before Sir David’s swearing in on Thursday.”* (Thus going against his initial instinct indicated at 11:35, namely to allow IM time to work out a deal.)
- b. NP had asked IM to see him tomorrow, and *“I will carefully get the message across that he either confirms in writing his request for early retirement with immediate effect with details to be confirmed, or I will use the powers available to me under Section 13.(1)(f).”*
- c. As to how the s13 powers would be invoked, NP wrote that: *“We agreed that, should I have to invoke my powers, I will suspend the Commissioner with immediate effect. I will not call for his resignation and suspension will allow the Commissioner to lobby Sir David but not take us back to square one.”*
- d. *“The CM, clearly angry at the email from Gomez to me, is keen that we have a clear way forward that results in the removal of the Commissioner before he meets the Spanish on Tuesday in Malaga at 10.00. In light of the case in Spain in relation to the RGP collision, and news of a criminal case here, he wants to tell JPMM in the margins that we are taking decisive action.”*
- e. *“I do remain slightly uncomfortable and hope the Commissioner sees sense...”*

584. At 20:29, NP wrote to IM reminding him of the request to meet at the Convent at 10:00 the next day [C4856]. IM's evidence was that he interpreted this as meaning that he was going to be suspended or called to resign (McGrail 1 para 103 [A43]). IM responded suggesting that Charles Gomez attend. NP replied stating that the purpose of the meeting was to hand IM the 'three letters', and they could then meet at 16:00 to discuss. NP stated that "*I would like both meetings to be just us please.*" [C4856]

585. On 8 June 2020, NP and IM met at 10:00.

- a. NP's evidence simply stated that at this meeting, IM "*confirmed his intention to retire subject to terms being agreed*", and that NP said the terms were a matter for the Chief Secretary but NP would pass the request to him (Pyle 1 para 18.1 [A244]).
- b. IM attested as follows (McGrail 1 para 105 [A43]):
  - i. NP started by saying he had taken serious offence to the letter from Gomez & Co to the GPA.
  - ii. "[NP] stated that he had concerns about the incident at sea and the HMICFRS report and that these overlapped with concerns of the CM, AG and GPA."
  - iii. NP provided IM with copies of "*the Three Letters*". "*NP was taken aback that I had not had notice of the particulars of the allegations against me which is why he thought it fair that I was provided with a copy of the letters.*" In questioning, NP agreed that this was the correct timeline (**Transcript Day 18 p234.11**).
  - iv. IM asked why he was not given these letters earlier, and said that he had requested the allegations which had triggered the s34 process from the GPA back on 22 May 2020, and that "*to me it all seemed to be a retrospective construction of the allegations*".
  - v. "*NP went on to say that because of my lawyer's communications, my opportunities had narrowed*".
  - vi. NP asked IM to return at 16:00. IM stated that he was unable to submit his request for retirement until the terms were sorted out, which NP said could be arranged at a later date (IM disagreed).

vii. IM “asked [NP] flat whether he wanted me “out” to which he said that he did.” NP stated in questioning that he recalled an exchange to that effect, but not in those terms (**Transcript Day 18 p234.17**).

586. IM’s evidence was that by then “*it dawned on me that my best option was to find the best way out before I was made to suffer even more. My mental health was very badly affected. I had completed 36 years of service and did not want to put in jeopardy my pension entitlements.*” (McGrail 1 para 108 [**A44**]).

587. At 16:00, IM returned to NP’s office and confirmed he would be seeking early retirement subject to certain personal terms, which were basically reimbursement of legal fees and for him to be “*as close to the situation I would have been in had I not been forced to retire*” (McGrail 1 para 108 [**A44**]). IM also handed NP a letter asking NP to explain what process IM was now facing, asking for IM to have seven days to consider and respond to the Three Letters, and asked to see all correspondence between NP and the GPA relating to him [**C4882**]. NP stated that IM was “*quite confident*” during this meeting and agreed with IM’s account of it (**Transcript Day 18 p235.20, 237.12**).

588. At 19:19, NP sent an update to the FCDO [**C4879**]. It recorded that:

- a. NP met with IM at 16:00, who agreed to retire so long as his financial terms were agreed.
- b. NP then went to see the Chief Secretary, AG and CM, and noted that “*whilst the AG and CM thought we should look to accommodate the Commissioner to some degree, the CM rejected all terms.*” In questioning, NP clarified that it may have been some of the terms of the degree, not an outright rejection of everything – but that there was some resistance from the CM (**Transcript Day 18 p238.18**).
- c. “*With the AG’s support, I subsequently advised the CM to try to accommodate the CM in some way*”, and the CM was now prepared to make the offer provided it could be cleared with the Auditor and had also determined a final offer amount.
- d. NP told the CM he would keep out of that debate in relation to the final offer amount but that if IM did not provide a letter in writing asking for early retirement, he would call him in tomorrow and suspend him.

589. Mr DeVincenzi expressed the view that the CM’s approach to IM’s pension was “*harsh*” (although this appears to have been based on a figure of £2500, which he later

acknowledged was the contribution towards IM's legal fees). He stated that he was "surprised by [the CM's] involvement" and "What I have a better recollection of is thinking that [the CM] should probably be running 100 miles in the other direction of this matter including himself and advising on the package" (Transcript Day 11 p59.25, 83.2, 100.20). He thought that the Chief Secretary or administrative arm of Government should have been calling the shots on this issue (Transcript Day 11 p84.21). However, the CM's evidence was that he did not get involved in the "pension side of things", except for a request that the pension be tax free which would have required the CM to get involved (Transcript Day 17 p39.17).

590. Over the course of the evening there was a series of messages between IM and NP in relation to financial terms which were being negotiated with the Chief Secretary, Mr Grech. Mr Grech requested that Mr DeVincenzi assist him in drawing up the retirement agreement (Transcript Day 11 p58.15). IM and Mr Grech exchanged emails and WhatsApp messages about IM's pension rights (see McGrail 3 paras 128 to 134 [A98-9]).
- a. IM initially sought payment of his salary until the end of his contract (April 2022) and his legal costs, but the Government deemed those terms unacceptable [C4874].
  - b. At 19:17, IM messaged NP stating "*with all the uncertainty [as to retirement terms] I am unable to sign my letter to you. ... I have to safeguard my terms 100% whatever they end up being but certainly agree them before signing the letter.*" [C4868]. That message was forwarded by NP by email to the CM, the AG and the Chief Secretary [C4880].
  - c. At 19:53, NP responded: "*Ian. Thanks for this. I'd be grateful therefore if you could see me at 09:00 tomorrow. Regards. Nick.*" [C4868]. IM's evidence was that he deduced that NP was going to invoke his s13 powers (McGrail 3 para 132 [A98]). NP stated that he wanted to see IM the next day "*to talk it through and see whether he had any room for movement*". NP said that he would have gone down the s13 route, "*but I was quite confident that he would confirm his wish to retire*" (Transcript Day 18 p240.20).
591. IM's retirement terms were ultimately agreed following an email from Mr Grech to IM at 21:16 [C4884]. These terms were: pension calculated at current salary with payments commencing on 1 July 2020, payment of untaken leave and time off in lieu, and a

contribution capped at £2,500 towards IM's legal fees (McGrail 3 para 134 [A99]). IM replied to Mr Grech confirming that he would hand his letter to NP "*first thing in the morning. I will have it hand delivered to him by 0830hrs*". IM then confirmed to NP that terms had been agreed at 21:34 [C4868-9]. NP then wrote to IM referring to their meeting, setting out a draft press release, and anticipating IM's letter confirming he had agreed terms with the Chief Secretary [C4866].

592. On 9 June 2020 at 08:13, IM sent a letter applying for early retirement on the terms that had been agreed the previous evening [C4890]. He stated if NP agreed, IM would relinquish command by 18:00 on the same day[C4889]. NP responded at 12:07 confirming those terms [C4897].

593. At 09:41 IM sent an email to all police and civilian staff at the RGP announcing his departure "*for the sake of my health and well-being*" [C4895].

594. At 12:41, NP sent a "Diplomatic Telegram" to the FCDO summarising the events [C4913]. It referred to the Incident at Sea, and stated that: "*This incident compounded existing concerns the Chief Minister and I had about the Commissioner. He has not acted on a 2016 HM Inspectorate of Constabulary report; there are Police Federation bullying allegations; and he went against the advice of the AG and DPP in an ongoing and high profile investigation.*" The reference to the criminal investigation here is slightly different to what had previously been alleged, in that it stated that IM "*went against*" DPP advice (as opposed to lying to the CM as to whether he had sought advice from the DPP). The email also noted that "*The GPA has however not covered itself in glory*", referring to the lack of a quorum, and being "*in default*". The letter also took "*positives*" from the difficult process, namely:

- a. It had "*demonstrated the strength of the HMG-GOG relationship*", And the CM and NP "*being as one throughout has averted what could have potentially resulted in a constitutional crisis*".
- b. "*The outcome also plays well into our ongoing negotiations with Spain*".
- c. "*...it has been concluded before the arrival tomorrow of Governor-Designate, Sir David Steel, who will be able to immediately set about the task, with the CM and GPA, of rebuilding the RGP*".

595. At 16:40, the CM sent the AG a screenshot of a tweet by Keith Azopardi [B1420, C6762] and the AG replied “so predictable”. Mr Azopardi had re-tweeted IM’s farewell message and stated: “*This raises serious questions that requires full answers. This was a man who clearly had zest, energy and desire to do his job. What has happened to make him go so early? In the interests of the standing of our institutions & democracy there needs to be answers one way or the other.*”
596. Sir David Steel was sworn in as Governor on 11 June 2020.
597. On 12 June 2020, NP wrote to the FCDO stating: “*The GPA met today and a briefed them on how we got to where we were. The CM has backtracked slightly on the suggestion we parachute someone in. Acting Commissioner Richard Ullger has proposed he remains on top and help is sent in below him.*” [B1843] NP stated that he was not disappointed by this, because his long-term aim of opening the process to external candidates has since been met (Transcript Day 19 p199.6).

### **NP’s independence**

598. At several points during the Hearing, NP was asked whether he considered that he acted independently and/or ensured that the GPA remained independent during the process. His answers were, at various points, as follows:
- a. NP was referred to his email to the FCDO on 29 May 2020 [C4652], which stated (referring to the Gomez & Co letter of 29 May 2020) “*Not unexpected but disappointing, not least as the letter calls into question my conduct and impartiality of which I am certain, as is the AG, that I have nothing to worry about.*” NP was asked whether he maintained that his conduct throughout the process was beyond reproach. NP stated: “*I may not have got everything right but I don’t think in terms of process I got much wrong and in terms of how I conduct myself, I think – my conscience is clear.*” (Transcript Day 18 p199.18).
  - b. NP was asked whether he could have done more to ensure that the GPA were left to carry out the section 34 process properly, fairly and independently. He responded: “*I think it was a safe assumption to make that the GPA didn’t need my reminders of how to do that from the Governor.*” (Transcript Day 18 p201.9).
  - c. NP was asked whether he thought that the expedited process went “*a long way to breach the rule of law and were you not one of its primary assailants?*” He replied: “*Absolutely not*” (Transcript Day 19 p67.5).

- d. NP was asked “*Did you discharge your responsibility under the Constitution to protect the independence of the RGP?*” He replied “*I think it is. I think it was for the GPA to take forward.*” (**Transcript Day 19 p174.6**).
- e. NP was asked in re-examination “*When you were asked today by my learned friend Mr Wagner why you acted as one with the CM, with the insinuation that by acting as one you failed to uphold the constitutional independence of the office of Governor, what role did you have to share, to act as one with the Chief Minister in the section 34 process? ... Did you have a role beyond the invitation to the GPA for it to consider exercising its powers?*”. NP replied “*No no*”. He was then asked “*So the acting as one was simply your coincidence of desire to see the removal of Mr McGrail if possible?*”; NP replied “*Correct*” (**Transcript Day 19 p265.24**).

**JULIAN SANTOS**

**HOPE WILLIAMS**

5RB

2 April 2024

Updated 7 April, 19 June and 25 June 2024