

COMMISSIONS OF INQUIRY ACT

RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

ISSUE OF COMMISSION

SWORN WITNESS STATEMENT
OF AURELIUS FALERO

I, **AURELIUS FALERO** of [REDACTED] retired Managing Director of Land Property Services Limited, former member of the Gibraltar Police Authority **MAKE OATH AND SAY AS FOLLOWS: -**

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

Gonçalves”), and that the Inquiry wishes to avoid the duplication of documents bundles. These documents are extracted from the GPA files and are held currently by TSN for ease of use. I have been shown the document exhibited by Mr Gonçalves at Appendix A of his Witness Statement dated 31st August 2022 (“J.G’s Appendix A”) and cross references are to the documents in J.G’s Appendix A as referred to by me.

3. The GPA was established in accordance with section 3(1) of the Police Act 2006. Section 4(1)(a) of the Police Act 2006 provides that its members shall be appointed by the Governor acting on the advice of the Public Service Commission. Pursuant to section 4(2), every member of the GPA, shall hold office for a term of three years and at the expiration of any such period or periods shall be eligible for reappointment. I was appointed in 2013 for the term of 3 years with effect from 20th March 2013 and upon expiry of that term was reappointed for a further term of 3 years ended on 19th March 2019.

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

5. I am aware that pursuant to the provisions of the Commissions of Inquiry Act 1888 (references to sections immediately below being to the foregoing act), that if summoned to appear in person before the Inquiry I must answer questions put to me by the Commissioner and produce all books, papers and writings required by the summons with the following provisos:
- 5.1. no statement by me in answer to any question put to me in the Inquiry shall be admissible in evidence in any proceedings whether civil or criminal except in cases of indictment for perjury committed in such answers (section 8(2)); *and*
- 5.2. such evidence which I may give in the Inquiry shall not directly and/or indirectly render me liable to any civil proceedings or criminal prosecution although subject to the qualification that I shall not be excused from answering any question put to me in the Inquiry on the ground of any privilege, or in accordance with the privilege against self-incrimination. (Section 10).
6. Since the publication of the Legal Notice, I, and other former members and current members of the GPA have been asked by Solicitors to the Inquiry, Attias & Levy (the "Solicitors to the Inquiry") ,by letter dated 23rd September 2022 (the "23rd September 2022 Letter"), to provide a statement under oath addressing the subject matter of the Inquiry which fall within the Terms of Reference and various specific matters which are listed at numbered paragraphs 1 to 3 of that letter. Additionally, Solicitors to the Inquiry, by that letter, have requested that I produce 'any documents (including but not limited to electronic documents such as emails, word documents, PDFs and SMS,

Whatsapp or other instant messages) in [my] possession or control relevant to the subject-matter of the Inquiry'. It is also noted that any electronic documents are to be provided in their native format with the original metadata preserved. After reviewing the GPA records at the TSN office and J.G's Appendix A I have identified and referred to those documents which fall within the scope of the request but for the reasons stated at paragraph 2 hereof I do not produce them, I am of course willing to do so if requested by the Commissioner. I did not keep any records relating to my activities as GPA member and such documents as I refer to herein, I have obtained from the records of the GPA held at the office of TSN with the permission of the GPA's current Chairman Dr Joey Britto. I would state that I have not found any material document other than those referred to herein.

7. I can only depose to those matters which I have direct knowledge of during my tenure as member of the GPA namely between 20th March 2013 and 19th March 2019. This wholly predates the events leading to Mr McGrail's retirement in June 2020. I therefore have no direct knowledge of the reasons and circumstances leading to Mr McGrail's retirement.

8. At the time of making this statement I do not know what other deponents may have said about the matters about which I have been asked in the 23rd September 2022 Letter as TSN have not shown me the statements of any other deponent pending clearance to do so .

9. I would like to provide the Inquiry with a little of my personal and professional background. This is as follows:

9.1. I was born in Gibraltar in 1952 and attended secondary education at the Gibraltar Grammar School and at the College of Further Education. In June 1979 I graduated in London with a degree in Building Surveying issued by the Council for National Academic Awards, having completed a three year course in Thames Polytechnic. I joined the Gibraltar Government Service in 1971 in the Public Works Department as a trainee construction technician and transferred to the Crown Lands Department in 1981 to the post of Building Control officer. I was promoted to Deputy Director of Crown lands in 1982, and in 1986 was promoted to Director of Crown Lands by the Public Service Commission.

9.2. In 1990 following the introduction of Government Policy on privatisation of service departments I, together with my predecessor and other senior members founded Land Property Services Limited ("LPS"). I was appointed Managing Director. We contracted work for the Government by way of a collective 15 year contract involving the management of Land and Property, the Rating System and the Property Register. This contract was extended for a further 15 years with effect from 2005.

9.3. In 2007 I retired from the post of Managing Director following implementation of our succession policy and thereafter remained advising LPS and Government on a full-time consultancy basis. I subsequently retired altogether from LPS in 2012 and was at the time a Fellow Member of the Royal Institution of Chartered Surveyors.

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

10. For the reasons stated at paragraph 7, I have no knowledge of the reasons and circumstances leading to Mr McGrail's retirement and had no involvement in that matter. The only personal knowledge which I have is what I may have gathered from reports in the local news media.

THE AIRPORT INCIDENT

11. I would say that my recollection of the GPA's consideration of this matter was vague and I needed to refresh my memory by reading the various documents in order to make this witness statement. Having refreshed my memory I am now clear as to the events in question and their sequence. I set this out at paragraphs 12 to 23 hereof. What I have had a clear recollection throughout is the conclusion reached by the GPA that the RGP had acted correctly in this matter and that it was the MOD which had exceeded its powers. The conclusion was as set out in Mr Gonçalves' letter to the Chief Minister dated 5th September 2017 reproduced in the email to the Chief Minister dated 6th December 2017. This is document 12 of J.G's Appendix. That conclusion has been clear in my mind throughout. Indeed, after reading the joint opinion of Lord Pannick KC and Email Neill dated 28th February 2017 (document no.8 of J.G's Appendix A) and Rear Admiral A.D. Radakin's letter of 8th march 2017 (Document no.9 of J.G's Appendix A) there could be little doubt in my mind as to which party was in the wrong.

12. On 11th May 2017, under "Any Other Business" Mr Gonçalves informed the GPA of a meeting which he had held with the Chief Minister on 9th May 2017. The GPA agreed to ask the Commissioner of Police (then Mr Edward Yome) whether the investigation into the alleged offences by the RAF serviceman had been concluded and, if so, request the file on the investigation. The Commissioner of Police would also be informed that the GPA intended to interview the police officers who were directly involved in the incident.
13. A copy of the minutes of the meeting of the GPA held on 11th May 2017, referred to in the preceding paragraph hereof is listed as document no. 2 of J G's Appendix A.
14. On 15th May 2017, a meeting was held to further consider the Chief Minister's request to Mr Gonçalves. It was agreed that as the GPA had no authority to involve the Ministry of Defence ("MOD") it should proceed under the provisions of Section 19 of the Police Act in order to submit a report to him. During the course of the meeting Mr Nick Pyle reported on a conversation which he had held with the Governor Lt Gen Edward Davis CB CBE KStJ, who envisaged that the GPA would recommend that an independent inquiry be held.
15. A copy of the minutes of the meeting of the GPA held on 15th May 2017, referred to in the preceding paragraph is listed as document no. 3 of J.G's Appendix A.
16. On 16th May 2017 ,Mr Gonçalves wrote to the Chief Minister informing him of the decision by the GPA on how it proposed to proceed in this matter. A copy of that letter is listed as document no. 4 of J.G's Appendix A.

17. By letter dated 8th August 2017, the Commissioner for Police indicated that he would have a package ready which would show how the incident unfolded, the decisions taken on the day and the actions thereafter. A copy of that letter is document no. 5 of J.G's Appendix A.

18. On 17th August 2017, the Commissioner of Police wrote to Mr Gonçalves attaching the documents referred to in the preceding paragraph. A copy of that letter is document no. 6 of J.G's Appendix A. The three documents were:

- (i) A report submitted by Superintendent McGrail. This is document no. 7 of J.G's Appendix A.
- (ii) Joint legal opinion by Lord Pannick QC and Emily Neill of Blackstone Chambers, Temple, London dated 28th February 2017. A summary of the opinion is set out in paragraph 35 thereof. This is document no. 8 of J.G's Appendix A.
- (iii) Letter from Rear Admiral A.D. Radakin, Chief of Staff, Joint Services Command, Northwood Headquarters dated 8th March 2017. The letter is self-explanatory and is document no. 9 of J.G's Appendix A.

19. The GPA had a preliminary meeting to discuss the documents referred to in the preceding paragraph hereof and decided that it wanted to discuss the matter further with the Commissioner of Police, Superintendents McGrail and Ullger and Chief Inspector Tunbridge. Regretfully, I cannot recall the date of that meeting or whether minutes were kept. If they were, I have not seen them.

20. On 23rd August 2017, Mr Gonçalves wrote to the Commissioner of Police communicating the request of the GPA and fixing an appointment on 31st August 2017, at the GPA's office. A copy of that letter is document no .10 of J.G's Appendix A.

21. The GPA prepared a list of matters which it proposed to put at the meeting referred to in the preceding paragraph. A copy of this list is document no.11 of J.G's Appendix A .

22. The GPA duly met on 31st August 2017, with the RGP officers referred to at paragraph 17 hereof. Minutes of that meeting do not appear to have been made but if they were, they cannot be found. The GPA came to the firm conclusion that the action of and the restraint shown by the relevant RGP officers, during the airport incident were considered, deliberated, entirely proportional and highly commendable. As such the GPA did not doubt the effectiveness and probity of the policing demonstrated by the RGP in respect of the airport incident. The GPA also considered that the actions of certain MOD personnel in respect of this incident deserved censure and that the Chief Minister should consider whether a full inquiry ought to be undertaken by a body independent of the RGP and the MOD so that lessons might be learnt from the incident.
23. On 5th September 2017, Mr Gonçalves wrote to the Chief Minister communicating the conclusions of the GPA. Regrettably, a copy of that letter cannot now be found. However, its contents were reproduced in an email dated 6th December 2017, from the Secretary of the GPA to Ms Giselle Corby and Mr E Gomez, the Chief Secretary. A copy of that email is document no. 12 of J.G's Appendix A. On 4th May 2018, Ms Susan Martinez, Personal Secretary to the Chief Minister, acknowledged receipt of the letter from the GPA to him dated 5th September 2017. A copy of that letter of acknowledgment is document no. 13 of J.G's Appendix A.

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

24. I have no knowledge whatsoever of this matter. The first I learnt of it was when I read about it in the 23rd September 2022 Letter. This matter was never raised at any meeting of the GPA.

MR MCGRAIL'S APPOINTMENT AS COMMISSIONER OF POLICE

25. Since my appointment as a member of the GPA, I recall we worked closely with the senior members of the Royal Gibraltar Police on such matters as the selection of new recruits, with promotions within the force at all levels, with production of the Annual Policing Plan, and with the Annual Report setting out the extent to which the Annual Policing Plan had been fulfilled. These reports are presented annually to the Governor and to the Government and are tabled before Parliament and are then made public.

26. Most members of the GPA were therefore relatively familiar with the applicants for the post of Commissioner for Police following Mr. Edward Yome's retirement. Notwithstanding, a strict formal process was agreed. I have refreshed my memory from the documents which I have reviewed and can say that the process and sequence is as set out in the following paragraphs.

27. The process for appointing the new Commissioner of Police was agreed by all nine members of the GPA (the "Selection Process"). The GPA members at the time throughout the selection process, apart from me, were Mr Gonçalves, Mrs Hassan Weisfogel, Rev Patron and Messrs, Danino, Gomez, Lavarello, Nagrani and Pyle. The Selection Process was similar to that adopted at the time of the appointment of Mr McGrail's predecessor, Mr Edward Yome. All members of the GPA were present when the two candidates made their powerpoint presentations on 27th November 2017 and during their interviews on 30th November 2017.

28. An invitation for applications for the appointment as Commissioner of Police was issued by the GPA to the Commissioner of Police. A copy of this is listed as document no. 14 of J.G's Appendix A.
29. A timetable for the Selection Process was prepared by the GPA. A copy of this timetable is listed at document no. 15 of J.G's Appendix A.
30. A document setting out the criteria against which candidates for the post of Commissioner of Police would be considered was drawn up (the "Criteria"). A copy of the Criteria is listed as document no.16 of J.G's Appendix A.
31. By letter from the GPA to the Commissioner of Police dated 6th November 2017, Mr Gonçalves made certain requests in relation to the Selection Process. A copy of this letter is listed as document no.17 of J.G's Appendix A.
32. By separate letter dated 15th November 2017, the Commissioner of Police forwarded to the GPA bundles in respect of each applicant containing confidential written assessments on each candidate and senior command course reports. Copies of each letter and bundle are respectively documents listed as nos 18 & 19 of J.G's Appendix A.
33. Each applicant submitted an application docket, Superintendent McGrail's was dated 1st November 2017 and Superintendent Ullger's was dated 3rd November 2017 . Copies of the application dockets are listed respectively as documents nos 20 & 21 of J.G's Appendix A.

34. On 21st November 2017, Mr Gonçalves wrote to the Commissioner of Police replying to a number of points raised in his letter to him of 15th November 2017. A copy of that letter is listed as document no.22 of J.G's Appendix A.
35. On Monday 27th November 2017, the GPA heard each candidate deliver powerpoint presentations setting out their respective visions for the force within the next 5 years and the priorities that they would set. Following this they answered questions from the members of the GPA.
36. On Thursday 30th November 2017 the candidates were interviewed in depth by a panel, consisting of Mr Gonçalves, Mr Gomez, Rev Patron and Mr Pyle. We, the other members of the GPA, were present throughout. The candidates were probed, in particular, on issues of neighbourhood policing, Gibraltar Defence Police, the viability of working with the unsuccessful candidate, community engagement, preparation of case dockets, cybercrime, resources, partnerships, counter terrorism, management style, and major public events. I also recall that they were asked to state their understanding of the effectiveness of the force and what action plans they had in mind to make improvements should they be selected.
37. On Tuesday 5th December 2017 the GPA met to consider what advice should be given to HE the Governor. It deliberated at length on the different strengths of the candidates, taking into account all the information at its disposal, the performance of the candidates in delivering their written and oral presentations and their interviews. It felt that both candidates were suitable but by a majority of 7-2 considered that Supt McGrail was the stronger of the two. The two dissenting members were Mr Nick Pyle

and Mr Danino. At one point in the selection process, I cannot recall exactly when, Mr Pyle suggested that the post of Commissioner should be open to officers in the United Kingdom. This suggestion was not well received by the other members who dismissed it as we considered that this was unnecessary given that there were perfectly suitable candidates in Gibraltar.

38. Mr Gonçalves communicated the decision of the GPA to HE Governor who having consulted the Chief Minister endorsed the appointment of Mr McGrail as Commissioner.

FORMAL COMPLAINTS FOLLOWING MR MCGRAIL'S APPOINTMENT

39. I have not received nor heard any complaints in respect of the efficiency, effectiveness, probity, integrity or independence of Mr McGrail in the undertaking of his duties as Commissioner of Police.

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

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

MEETINGS

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

- (i) The Hon Fabian Picardo QC MP, the Chief Minister
- (ii) Mr Albert Mena, Financial Secretary
- (iii) The Hon Neil Costa, former Minister for Justice
- (iv) Dr Joseph Garcia, Deputy Chief Minister
- (v) Mr Darren Grech, Chief Secretary
- (vi) Mr Michael Llamas QC, Attorney General
- (vii) Mr Christian Rocca QC, Director of Public Prosecutions
- (viii) Mr Nicholas Pyle, Deputy Governor, other than in his capacity as member of the GPA
- (ix) Lt. General Ed Davis, former Governor of Gibraltar
- (x) The Magistrates' Court (either the Clerk or Deputy Clerk to the Magistrates' Court, the Stipendiary Magistrate or the Justices of the Peace)
- (xi) Mr Lloyd DeVincenzi, Solicitor General
- (xii) Dr Joseph Britto, incumbent Chairman of the Gibraltar Police Authority
- (xiii) Mr Edward Yome, former Commissioner of Police
- (xiv) Deputy Commissioner Richard Mifsud
- (xv) Mr Richard Ullger, incumbent Commissioner of Police save as referred to in paragraph 35 and 36 hereof.

- (xvi) Mr Maurice Morello, Chairman of the Gibraltar Police Federation, or any other member of the Gibraltar Police Federation
- (xvii) Mr Paul Richardson, former Superintendent
- (xviii) Superintendent Mark Wyan (formerly Detective Inspector)
- (xix) Mr Ian McGrail save as referred to in paragraph 35 and 36 hereof.

SWORN by the above-named Deponent

Suite 7 Hadfield House

at

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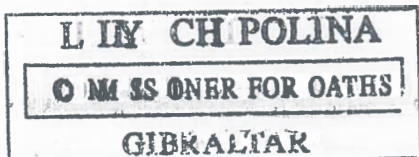
Gibraltar this 07 day of October 2022

**Personal
Data**

Before me

Personal Data

Commissioner for Oaths



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