

COMMISSIONS OF INQUIRY ACT

RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

ISSUE OF COMMISSION

**CLOSING SUBMISSIONS BY COUNSEL FOR THE GIBRALTAR
POLICE AUTHORITY**

Preliminary

1. The position adopted by the GPA in this Inquiry is one of total frankness and openness in order that it may so assist the Inquiry in successfully discharging its duties under the Terms of Reference. The GPA has readily and unreservedly acknowledged serious mistakes made by it and has given evidence so that its conduct may be considered by the Inquiry in its proper context. The mistakes made by the GPA related to its application of Section 34 of the Police Act 2006 (“the Act”) and the events which occurred during the short period between 12 May 2020 and 5 June 2020. Insofar as this issue is concerned the evidence contained in the Sworn Witness Statements submitted by members of the GPA and the statements made in our Opening Submissions remain largely unchanged and unchallenged following oral evidence heard by the Inquiry. Accordingly, a number of the statements made in our Opening Submissions are reproduced in these Closing Submissions.

2. Where the GPA disputes evidence or rejects criticisms which have arisen in the course of the Inquiry it does so robustly. Issues which fall into this category are the criticisms about the lack of independence of the GPA made by counsel for the RGP in the course of his opening statement to the Inquiry and by Mr Pyle about the processes followed by the GPA for the appointment of Mr McGrail as Commissioner of Police and the investigation of the Airport Incident. There is also conflict of evidence between Mr Pyle and Mr John Goncalves (“Mr Goncalves”) as to whether Mr Pyle told Mr Goncalves before the selection process started that he would not support Mr McGrail and whether Mr Goncalves had asked the GPA to ignore Mr Yome’s recommendation as to his successor because there was history between Mr Yome and Mr McGrail. There is also the disputed evidence as to whether Mr Pyle stated to Mr E Lavarello, as deposed to by Mr Lavarello, that that he would not support either candidate. Whilst these items of conflicting evidence touch on peripheral issues the Inquiry may consider whether or not material inferences may be drawn from them.

Independence of the GPA

3. Before turning to the Terms of Reference of this Inquiry and to the specific issues that arise from it, it is necessary to address the unfair criticism made by the Counsel for the RGP in his opening statement to the Inquiry that the GPA lacked independence, “*was proxified*” were his words. He compared the GPA to a cross breeding between Monty Python, Blackadder and Yes Minister producing a Baldrick like result. He also criticised Dr Britto,

misconceivedly, in our submission, for meeting the Chief Minister and the Interim Governor on 18th May 2020. He held out that meeting as evidence that the GPA's independence had been violated by the Chief Minister and the Interim Governor both of whom he accused of having behaved improperly.

4. The harshness and mocking tone of the criticism by Counsel for the RGP was surprising given that it is inconsistent with the sentiment of what the present Commissioner, Mr Ullger, said in evidence about his relationship with Dr Britto. Mr Ullger said as follows:

"I have a very good working relationship with Mr Joey Britto. We have always – I have always reached out to him when I have needed to discuss with him matters or critical incidents or resourcing issues. Very supportive." **[Transcript Day 13, Pages 157-158].**

Further, it is submitted that such broad criticism is shallow, unfounded and made in total disregard of the factual context of this matter. We would invite the Inquiry to take into account the following points.

Composition and Resources of the GPA

5. The GPA consists of public spirited citizens of Gibraltar who give up their time generously and do not receive any remuneration. The Chairman spends on average 30 hours per week on GPA work. None of the members

of the GPA undergo any training or induction before taking up their appointments. Their supporting staff consists merely of two part time clerks. They have an annual budget of £1,000 for legal expenses and if they require independent legal advice they have to ask government for funding. This is generally given. It is in this working environment and circumstance that the GPA have to discharge wideranging and complex responsibilities and duties under Section 5 of the Act which provides as follows:

“5. The responsibilities and power of the Authority are as follows –

- (a) to secure the maintenance of an efficient and effective police force for Gibraltar within the financial resources available to it and on a value for money basis;*
- (b) to ensure high standards of integrity, probity and independence of policing in Gibraltar;*
- (c) to provide information on police issues to the community;*
- (d) to establish, operate and supervise the process for investigating complaints against police officers under this Act;*
- (e) to provide a mechanism for enhances police accountability through a process of consultation with the community;*
- (f) to ensure value for money in policing;*
- (g) to draw up and publish an Annual Policing Plan and an Annual report, in accordance with sections 8 and 10 respectively;*
- (h) to submit to the Minister for public finance, in accordance with the form procedures and timetables established by the government*

generally in relation to the preparation of its budget, an annual budget bid for the Force;

(i) to hold the Commissioner to account for matters which are the responsibility of the Authority.”

6. The GPA has other important functions and powers e.g. regarding the preparation of an Annual Policing Plan (Section 8 of the Act) for the handling of police complaints (Section 16 of the Act) and the issue of Guidance (Section 23 of the Act).

Meeting with Chief Minister and Interim Governor on 18 May 2020

7. Criticism of Dr Britto for attending this meeting and holding it out, without more, as an infringement by the Chief Minister and Interim Governor is manifestly misconceived. Both the Chief Minister and the Governor have independent powers under the Act.
8. The Governor has overall ultimate responsibility for the integrity, probity and independence of policing in Gibraltar and policing aspects of national security including internal security (Section 11 of the Act). Furthermore the Governor has powers to hold the GPA to account and to call for and hold meetings with the Chairman to discuss matters under his responsibility or in respect of which he has powers under the Act (Section 12). Under Section 13 of the Act the Governor has powers exercisable by him where the Authority has failed to discharge or perform a responsibility under the Act.

9. The Government's Responsibilities and Powers are set out in sections 14 and 15 of the Act. It is noteworthy that the Chief Minister too may hold the Authority to account for the cost effectiveness and efficiency of the RGP (Section 15 (1) (b)) and call for and hold meetings with the Chairman to discuss matters under Government's responsibilities or in respect of which it has powers under the Act (Section 15(1) (d)).
10. In the circumstances, it is clearly misconceived for Counsel for the RGP to submit that (a) for Dr Britto to meet the Chief Minister and Interim Governor; and (b) for the Chief Minister and Interim Governor to raise their respective concerns with Dr Britto was, without more, improper and a violation of the GPA's independence. On the contrary, it would have been a default on the part of Dr Britto if he had refused to attend the meeting on the 18 May 2020. It is also pertinent that, as the oral evidence has shown, Dr Britto had no advance notice whatsoever of what was going to be raised at the meeting of 18 May 2020. If the Chief Minister and Interim Governor had proper motives for calling Dr Britto to a meeting on 18 May 2020 – something which is for the Inquiry to determine – then they were within their rights to do so. If, and only if, on the other hand, they had improper motives then they would have abused their statutory powers and exercised them unlawfully. In either case, given Dr Britto's lack of knowledge about the purpose of the meeting, it was wholly proper for him to have attended the meeting. Further, in the circumstances, such attendance is in no way supportive of the criticism that the GPA had abdicated its independence and allowed itself to be proxified.

Acceptance of Interim Governor's and Chief Minister's reasons for inviting Mr McGrail to retire

11. Dr Britto has readily accepted in evidence that the GPA did not carry out an independent inquiry into the reasons alleged by the Interim Governor and Chief Minister for inviting Mr McGrail to retire. However, the failure to investigate independently certain facts does not automatically translate into the GPA not being independent generally. Indeed, the GPA displayed its independence when, upon being advised that it had erred in its application of the section 34 process, it not only withdrew its invitation to Mr McGrail to retire but also told the Interim Governor that as then constituted it could not consider the matter afresh.

12. No general criticism has been made of the GPA or Dr Britto in the course of the Inquiry. It seems that the GPA, apart from its slip on this serious and complex issue, discharges its many duties satisfactorily.

Section 34 Process

13. Very importantly, the GPA has powers under Section 34 of the Act to call upon the Commissioner of Police to retire. This is a function which, if it is to be discharged properly, requires delicate and expert handling as complex issues of private and public law are likely to arise. Whilst Section 34 of the Act sets out the basic sequence of the process there are no detailed provisions as to the procedure to be followed. Contrast this with, e.g. the

procedures laid down in the Police (Discipline) Regulations 1991. Section 34 of the Act has never been applied before and it was into this uncharted territory that the GPA found itself plunged in May 2020, with an air of crisis, a short deadline and no independent legal advice.

I turn to the specific issues.

Terms of Reference of the Inquiry

14. Pursuant to Legal Notice 2022/034 [B2052] the Commissioner is required to inquire into the reasons and circumstances leading to Mr McGrail ceasing to be the Commissioner of Police in June 2020 by taking early retirement.

15. On one view, the simple questions to be determined by the Inquiry are:
 - (a) whether the Chief Minister and the Interim Governor wanted to end the appointment of the Commissioner of Police out of desire to protect Mr James Levy from the Operation Delhi investigation and/or out of displeasure that he should have been investigated in the first place and a search warrant obtained against him (if this were to be the finding of the Inquiry, the evidence is clear that the GPA was not a knowing participant) or, whether the real reasons were those invoked by the Chief Minister and Mr Pyle at the meeting with Dr Britto on 18 May 2020 as supplemented subsequently during the course of this Inquiry; and

(b) in what way, if at all, did the conduct of the GPA, the Chief Minister and Interim Governor impact upon the Commissioner of Police and whether the conduct of any one or more of them effectively brought about his “constructive dismissal”.

16. The GPA’s direct involvement in the events after 12 May 2020 started on 15 May 2020 when Dr Britto was invited to a meeting with the Commissioner of Police and ended with Charles Gomez & Company’s email of 5 June 2020 to James Neish K.C. This will be addressed below.

17. The Chairman has identified ten issues, the facts of which he shall investigate to the extent that he considers appropriate to address the matter under inquiry and, the extent, if any, that they constituted a reason or circumstance leading to Mr McGrail ceasing to be Commissioner of Police. The GPA can make a substantive evidential contribution only in respect of issues 1, 6, 8, 9 and 10. As stated in our Opening Submissions much of the relevant evidence on these issues insofar as it touches the GPA is set out in the Undisputed Facts and is otherwise a matter of record in the Sworn Witness Statements filed by past and present members of the GPA. However, oral evidence has been given which adds, or puts in perspective, the evidence before the Inquiry but which generally supports the written evidence before it by past and present GPA members.

Issue 1.1 The Airport Incident

18. The GPA repeats its Opening Submissions on this Issue:

- (i) The GPA only became involved in this matter after the event when the then Chairman, Mr Goncalves, was asked by the Chief Minister on 9 May 2017 to inquire into an incident which had occurred at the airfield on 8 February, 2017. The GPA conducted an investigation under section 19 of the Act as it considered that it did not have authority to involve the Ministry of Defence in its investigation.

- (ii) The GPA's involvement is set out in detail at paragraphs 11 to 23 of the First Sworn Witness Statement of Mr Goncalves dated 31 August 2022 **[A338-A340]** and does not bear repeating here. However, it must be highlit that the GPA's findings were made after consideration of;
 - (a) a report submitted by Superintendent McGrail **[B2121-B2134]**;
 - (b) a joint legal opinion by Lord Pannick KC and Emily Neill of Blackstone Chambers dated 28 February 2017 **[B2136-B2146]**;

- (c) a letter from Rear Admiral A.D. Radakin, Chief of Staff, Joint Forces Command dated 8 March 2017 **[B2149-B2151]**; and
 - (d) the account given to it on 31 August 2017 by the then Commissioner of Police, Mr E Yome, Superintendents McGrail and Ullger and Inspector Tunbridge.

- (iii) The GPA came to the firm conclusion that the action of and 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 the actions of certain MOD personnel 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 MOD so that lessons might be learnt from the incident (paragraph 22 of Mr Goncalves' First Sworn Witness Statement of 31 August 2022 **[A340]**).

- (iv) The GPA recommended that an independent inquiry be held. This was in line with what Mr N. Pyle had indicated was envisaged by the Governor (see paragraph 14 of Mr Goncalves' First Sworn

Witness Statement dated 31 August 2022 **[A339]**). In the event, the recommended inquiry was not held.

19. The comments of the Chief Minister (in an email to the then Commissioner of Police Mr Yome, Mr McGrail, Mr Ullger and others dated the 8 February 2017 **[C142]** and also in an email to the then Commissioner of Police Mr Yome and the Attorney General dated 3 March 2017 **[C207]**) and the letter of thanks from the Governor (**[C293]**) can be construed as satisfaction with performance of the RGP and, by implication, vindication that the GPA came to the correct conclusion.
20. Mr Nick Pyle has stated in paragraph 21.7 of his First Affidavit dated 12 May 2022 **[A247]** that he raised his concerns at the RGP's behaviour on numerous occasions with the GPA, the Governor, the Chief Minister and the Foreign and Commonwealth Office. He criticised the behaviour of the RGP and complained that the GPA review which exonerated the RGP followed a methodology which in his view was severely flawed. Mr Goncalves robustly responded to this at paragraph 9 of his Second Sworn Witness Statement dated 6 July 2023 **[A347-A349]**.
21. The criticism by Mr Pyle of the GPA's handling of the matter coming nearly seven years after the process without any criticism having been raised by him previously, at GPA meetings or otherwise, has naturally raised eyebrows amongst GPA members involved. The following points should be taken into account in assessing whether there is any substance in Mr Pyle's criticism:

- (i) It was decided at a meeting of the GPA held on 15 May 2017, that the GPA would carry out a process under Section 19 (2) of the Act. This provides as follows:

“It shall also be the duty of the Commissioner -

(a) To provide the Authority with all such other information and documents specified or described in a notification given by the Authority to the Commissioner; and

(b) To produce or deliver up to the Authority all such evidence and other things so specified or described, as appear to the Authority to be required by it for the purposes of the carrying out of any of its functions”.

The purposes in this case being to inquire into the Airport Incident. Mr Pyle was present at that meeting and did not object to that process being followed nor did he suggest that notwithstanding the GPA’s lack of jurisdiction to involve third parties the MOD should be invited to participate voluntarily in the process. In any event, such participation would not have been necessary if an independent, wider inquiry, which the Governor had wanted and the GPA had in fact recommended had been held.

- (ii) Furthermore Mr Pyle accepted in evidence **[Transcript Day 19, Pages 17 – 19]** that he had read the report submitted by Superintendent McGrail as well as the covering letter to the same from

Commissioner Yome and at the time had no reason, other than what he was hearing from the MOD, to question anything in the covering letter or report. My Pyle also confirmed that he did not object to anything contained within those documents.

- (iii) Mr Pyle does not recall that he was present at the meeting on 31 August 2017 when the then Commissioner E Yome, Superintendents McGrail and Ullger and Inspector Tunbridge gave evidence to the GPA and said he does not believe he was part of the deliberations when the decision was taken and which resulted in the GPA sending a letter to the Chief Minister, but that it is possible he saw the draft before it went out but does not remember **[Transcript Day 18, Pages 37-39]**. The evidence is that no member of the GPA recalls Mr Pyle having raised with the GPA any reservations about the process either contemporaneously or at any time thereafter nor is there any such reservation recorded anywhere whether in minutes, emails, letters etc. It would be reasonably expected of a senior civil servant and diplomat to insist that any material, dissent, opinion or reservations on his part, especially on a delicate matter like this, be duly documented and placed on record.

22. Mr Pyle has criticised the process as being a one-sided review. However, the only party that appears to be one sided is Mr Pyle himself who has openly sided with MOD officials on the basis, admitted by him in oral evidence, of things said to him informally by MOD officials without asking

the RGP for their side of the story and without throwing this into the melting pot, disregarding the allegedly shocking behaviour of some MOD officials including the attempted avoidance of the execution of a search warrant issued by the Supreme Court.

23. It is up to the Inquiry to decide whether any conclusion is to be drawn from Mr Pyle's seven-year delay and timing in raising his disputed criticism of the GPA's handling of the process. The GPA does not consider that it is within its remit to make submission on the point other than to highlight the facts.
24. The GPA submits that it followed the investigation process through section 19 (2) of the Act in a meticulous way and that its conclusion and recommendations were entirely rational.

Issue 1.2 – The Arrest of MOD Personnel and removal of Service Personnel Equipment

25. The GPA's involvement in this matter was limited. On or about 19 August 2019 a complaint was made by two MOD employees, none of whom was one of the Senior MOD officers arrested by the RGP and given formal warnings, to the Police Complaints Board ("**PCB**"), alleging that Mr McGrail had acted outside the remit of a search warrant served on the Joint Provost and Security Unit in relation to the Airport Incident. The PCB's investigation revealed that Mr McGrail had not been involved in the execution of the warrant nor had he been involved in the search of the premises. His

involvement had been limited to applying for a warrant. The PCB found that Mr McGrail had not abused his authority (see paragraph 10 of the First Sworn Witness Statement of Mr Francis Carreras dated 18 October 2022 **[A515]** and paragraphs 3 to 5 inclusive of Mr Francis Carreras' Second Sworn Witness Statement dated 9 March 2023 **[A522-A524]**). This was communicated to the GPA whose members included the Chief Secretary of HMGOG, Mr Darren Grech and the then Deputy Governor, Mr Nick Pyle. On the 7/8 July the MOD personnel asked that the GPA review the decision of the PCB. The GPA concluded that the request to the GPA to review the decision 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. This was communicated to Miss Claire Bell by the secretary of the GPA by email dated 2 September 2020 (see document no. 17 pages 87 to 90 of exhibit FC1 **[B5993-B5996]**).

Issue 2 – Assault on the Helicopter Pilot (“the Assault Investigation”)

26. The GPA had no knowledge of this incident which played no part in any of its deliberations. The Chairman has made a ruling on this issue. The GPA has nothing further to say on this matter.

Issue 3 – Incident at Sea

27. The GPA's involvement in this issue was limited to:

(i) Dr Britto being informed by telephone by Mr McGrail on a date which he cannot recall that there had been an incident at sea which may have happened outside British Gibraltar Territorial Waters (see paragraph 11 of Dr Britto's First Sworn Witness Statement dated 13 May 2022 [A322]). It would appear that this was done on 8 March 2020 from paragraph 52 vii of Mr McGrail's Third Affidavit dated 4 October 2022 [A69]. It appears from paragraph 63 of the Third Affidavit of Mr McGrail dated 4 October 2022 [A73] that Dr Britto told him on Whatsapp "*not asking any questions of you in view that it is under investigation and for Coroner to determine. Just like to say that it is unfortunate, to say the least!*". Dr Britto did not have a recollection of this at the time he made his Sworn Witness Statement. On 9 March 2020 there was an exchange of Whatsapp messages between Mr McGrail and Dr Britto in which Dr Britto expressed the view that the investigation into the incident at sea was best outsourced as neither the GPA nor the PCB had the necessary expertise to deal with an incident of this nature (see paragraphs 70 to 71 of Mr McGrail's Third Affidavit dated 4 October 2022 [A76-A77] and Exhibit 16 thereto [B576-B578]). Dr Britto together with Mr Francis Carreras was briefed personally on 11 March 2020 by Mr McGrail (see paragraph 80 of Mr McGrail's Third Affidavit dated 4 October 2022 [A79]). Dr Britto was also a member of a Whatsapp Group named 'Maritime Incident' comprising of the Chief Minister, Dr Britto, Commissioner of Police, Mr Francis Carreras and the Chief

Secretary. The GPA played no investigative or executive role in this matter; and

- (ii) the Incident at Sea being invoked by the Interim Governor and the Chief Minister at their meeting with Dr Britto on 18 May 2020 as one of the two reasons, as well as the Chief Minister's unspecified remark that Mr McGrail had misled him, for their loss of confidence in Mr McGrail as Commissioner of Police.

28. The relevance of the Incident at Sea to this Inquiry as far as the GPA's involvement is concerned is that it did not inquire independently into the incident and took at face value what the Interim Governor and Chief Minister had told Dr Britto at the meeting on 18 May 2020. This was a matter which coloured the GPA's decision to invite Mr McGrail to retire although the reason behind the decision was the expressed loss of confidence by the Interim Governor and the Chief Minister in Mr McGrail.

Issue 4 – the Findings of the HMIC Report

29. The GPA was obviously aware of the HMIC Report and that it was critical of the RGP on a number of issues. However, until the report was raised with Dr Britto on 18 May 2020 by the Interim Governor and the Chief Minister, Dr Britto was not aware that the findings were viewed with such seriousness by the Interim Governor and the Chief Minister as to warrant Mr McGrail ceasing to be Commissioner of Police. In fact the GPA's view

[Transcript Day 15, Page 205, Line 5], in common with that of the Minister for Justice and Mr Pyle, was that the matters criticised in the report were fixable. This is evidenced by the following:

- (i) an email dated 30 April 2020 **[C3344]** from Mr Pyle to the Chief Minister, in which he described the HMIC report as “damning” and needing “careful handling”, but also stated that he did not think the issue was as bad as the headline suggested and he believed the issue to be one of culture and leadership more than anything else. Mr Pyle considered the issues raised in the HMIC Report to be relatively easy to fix with a collective effort and, put simply, he considered that the RGP needed to modernise;
- (ii) during Mr Pyle’s oral evidence to the Inquiry in reply to CTI on the HMIC Report he said:

“...the HMIC report on its own wouldn’t have caused a loss of confidence and, as I said in one of my emails, a lot of the issues, and I know I was, you know, probably a bit more reactive with my first email expressing that I didn’t think it should be published, a lot of what was here should have been, could be, was hopefully, quite easy to put right.” **[Transcript Day 18, Page 132, Lines 16-24];**

(iii) the Chief Minister's oral evidence to the Inquiry [**Transcript Day 16, Page 79, Line 24 and Page 80, Line 14**] where we note that the Minister for Justice at the time considered the findings of the HMIC Report to be "manageable".

30. Indeed, it is apparent from the Sworn Witness Statements of members of the GPA that in considering whether to exercise their powers under section 34 of the Act, the basis of their decision was the loss of confidence by the Interim Governor and the Chief Minister. Of the two reasons invoked by the Interim Governor and the Chief Minister for their loss of confidence, the GPA considered that the HMIC Report was the less serious of the two.
31. The impact and importance of the HMIC Report contrasted as less concerning to the GPA than the Incident at Sea, which had involved loss of life, had occurred outside British Gibraltar Territorial Waters, could potentially affect Gibraltar's relations with Spain and had led to a claim for damages by the families of the deceased crew members. The GPA accordingly considered this to be the more serious of the two (see paragraph 4 of the minutes of the GPA meeting held on the 21 May 2020 - Document No.4 of Appendix B to Dr Britto's Sworn Witness Statements [**B1973**]) although it must be repeated that the reason for the GPA's decision to invite Mr McGrail to retire was the expressed loss of confidence in him by the Interim Governor and Chief Minister.

Issue 5 – Alleged Sabotage of NCIS (“the Conspiracy Investigation”)

32. This was not a factor which was taken into account by the GPA in its decision to invite Mr McGrail to retire as Commissioner of Police. In fact, the GPA as a whole does not appear to have had any knowledge of Operation Delhi until it was mentioned by Dr Britto at the GPA meeting of 21 May 2020. There is in fact difference of recollections of different GPA members as to the extent that it was mentioned and indeed whether it was mentioned at all (for example see paragraph 18 of Sworn Witness Statement of Claire Pizzarello dated 20 October 2022 [A472-A473] who has no recollection of Operation Delhi being mentioned and paragraph 14 of the First Sworn Witness Statement of Mr Francis Carreras dated 18 October 2022 [A516-A517] who recalls it being mentioned).
33. Dr Britto deposed at paragraph 10 of his First Sworn Witness Statement dated 13 May 2022 [A321-A322] that when he met Mr McGrail on 15 May 2020 he told Dr Britto of an investigation called “Operation Delhi”, that Mr James Levy QC was a suspect in connection with the investigation and that his mobile phone was in his safe. Dr Britto further deposed that Mr McGrail had told him that the Chief Minister was not happy with him and that he was due to have a further meeting with the Attorney General. Dr Britto found this unusual but thought nothing further about it and hoped that the matter would resolve itself. Mr McGrail stated in evidence that he had briefed Dr Britto, implying that Dr Britto had received a fuller account than Dr Britto

had admitted to. However, Dr Britto nonetheless maintains that the extent of what he was told by Mr McGrail was limited to what he has deposed to.

34. The informal record of the meeting between the Interim Governor, Chief Minister and Dr Britto states at paragraph 4(c) page 4 (see Document No.3 of Appendix B to Dr Britto's Sworn Witness Statements **[B1970]**) that the Chief Minister "*also shared 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*". This would presumably have been a reference to Operation Delhi but was not something to which Dr Britto or the GPA gave any significance. Operation Delhi was not expressly raised, much less was Dr Britto alerted at the meeting to anything that was going on in the background in relation to Operation Delhi. We would refer to Dr Britto's evidence to the Inquiry on this point **[Transcript Day 15, Pages 74-77]**.

35. In the circumstances, it is clear that the GPA had very little information about Operation Delhi and that this played no part in its decision to invite Mr McGrail to retire. Dr Britto said in evidence that he had not joined the dots between Operation Delhi and the request by the Interim Governor and the Chief Minister that the GPA commence the Section 34 process. It is therefore a matter for speculation whether such knowledge might have alerted the GPA to be more circumspect about taking the Interim Governor and the Chief Minister at their word on the reasons why they wanted Mr McGrail to retire and making a quick decision to invite Mr McGrail to retire.

Issue 6 – Complaints made by the GPF to the GPA (“the Federation Complaints”)

36. The evidence of past and present members of the GPA is that they did not receive any complaints against Mr McGrail (see for example paragraph 39 of Mr Goncalves’ First Sworn Witness Statement dated 31 August 2022 **[A343]** or paragraph 21 of the First Sworn Witness Statement of Mr Francis Carreras dated 18 October 2022 **[A519]**). Mr Pyle has contradicted this in his written evidence to the Inquiry and said that the resulting tensions between the RGP leadership and the Federation culminated in formal complaints from the Federation to the GPA about Mr McGrail. He also stated that the GPA regularly spoke at its meetings about allegations of bullying and intimidation by Mr McGrail. Having been questioned on this by CTI at the Inquiry however, Mr Pyle qualified this and said that 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, Page 58, Lines 8-11]**. Mr Pyle’s written evidence that formal complaints had been filed does not accord with the evidence of the other GPA members, or indeed of Mr Morello, and there is no documentary evidence to support Mr Pyle’s assertion in this regard. As a member of the GPA, Mr Pyle would be expected to know what the position was. Again it is a matter for the Inquiry to determine what inferences, if any, ought to be drawn from Mr Pyle’s evidence and its timing.

37. Dr Britto has deposed that no formal meetings were held between the GPA and GPF whilst Mr McGrail was Commissioner. He acknowledges that the relationship between Mr McGrail and the leadership of the GPF was fractious and deposes on the reasons for this at paragraph 2 of his Second Sworn Witness Statement dated 29 June 2023 [A328-A329] and paragraph 8 of his Fourth Sworn Witness Statement dated 12 March 2024 [A1443].
38. Mr Morello appears to acknowledge at paragraphs 147-148 of his Witness Statement dated 4 November 2022 [A1225-A1226] that no formal complaint was made to the GPA because there was no process which would allow him to do so. Mr Morello stated:

*“147. The room was silent and I can recall Mr Britto saying words to the effect **“no please, no, that’s all we need now”**. Again, I repeated the same **“how do I file a complaint against the Commissioner of Police?”**. I paused for a few seconds and said **“you can’t, there is no recourse.”** I informed persons present that the point I was trying to make was that there were no processes to make complaints against the Commissioner or Assistant Commissioner such as were in place in the UK. Both these individuals expressly fall outside the remit of the Police (Discipline) Regulations 1991. Consequently, conduct which falls short of criminal offences but which would constitute disciplinary offences for any other member of the force would not be so for the Commissioner and Assistant Commissioner.*

148. I followed this up by saying that if there had been a process for doing so, this would have been done....”

39. Additionally, Mr Morello agreed during his oral evidence to the Inquiry that in the absence of a procedure under the Police Act enabling a complaint to be made against the Commissioner of Police, it would have been impossible for him to have made a formal complaint [**Transcript Day 14, Page 54, Lines 9-20**]. Mr Morello was thereafter quite contradictory in his oral evidence as he went on to state that a formal complaint was made by him but there was no process to be able to carry it out.
40. In response to surveys conducted by the GPF some respondents complained about bullying within the RGP. This was discussed between Dr Britto and Mr Morello but Dr Britto does not recall when or where. Dr Britto suggested to Mr Morello that he should produce a draft bullying policy based on the Dignity at Work model. To Dr Britto’s knowledge this was not done (see paragraph 8 of Dr Britto’s Fourth Sworn Witness Statement dated 12 March 2024 [**A1443**]). In the circumstances, the issues between Mr McGrail and the GPF appeared to Dr Britto to be a conflict and contest as to authority and perspectives as to how the force should be run. This was against the background of an unfriendly relationship between Mr McGrail and Mr Morello. However, no formal complaints were made by the GPF to the GPA nor did the GPF attend any formal meetings with the GPA whilst Mr McGrail was Commissioner. Dr Britto was not judgmental about Mr McGrail or Mr Morello. It appears from the evidence, that an informal

meeting was held at the end of January 2020, which may be the meeting referred to by Mr Leif Simpson in his witness statement.

Issue 7 – RGP’s Involvement in the Alcaidesa Claims (“the Alcaidesa Claims”)

41. The GPA had no knowledge of this incident which played no part in any of its deliberations. The Commissioner has made a ruling on this issue. The GPA has nothing to say on this matter.

Issue 5, 8, 9 and 10 inclusive

42. These issues are conveniently addressed together. They cover largely the GPA’s involvement in the non-historic and more direct events which spanned the short period of time between 12 May 2020 and 5 June 2020.

43. On 12 May 2020, Mr McGrail asked Dr Britto to meet him. They met on 15 May 2020 when Mr McGrail told him of an investigation called “Operation Delhi”, that Mr James Levy QC was a suspect and that his mobile phone was in his safe. Dr Britto further deposed that Mr McGrail had told him that the Chief Minister was not happy with him and that he was due to have a further meeting with the Attorney General. Dr Britto found this unusual but thought nothing further about it and hoped that the matter would resolve itself. Mr McGrail stated in evidence that he had briefed Dr Britto, implying

that Dr Britto had received a fuller account. However Dr Britto maintains that the extent of his knowledge was as deposed by him.

44. The next event involving Dr Britto occurred on the 16 May 2020, when the Interim Governor invited him to a meeting with him and the Chief Minister on 18 May 2020. What is striking about this request is that despite having decided on 15 May or the 16 May at the latest to call Dr Britto to a meeting, no notice whatsoever was given to Dr Britto about what the meeting was about, despite knowing about Dr Britto's nervous disposition and that what the GPA was going to be asked to do was likely to cause shock and surprise. In fact, during his oral evidence, Mr Pyle conceded that with hindsight it would have been the fair thing to do to have told Dr Britto in advance what the meeting was about [**Transcript Day 19, Pages 27-28**].

45. Dr Britto attended the meeting with the Chief Minister and Interim Governor at The Convent on 18 May 2020. Evidence has been given by Dr Britto that the tone of the meeting was serious and that the Chief Minister and Interim Governor were both very forceful. The meeting was held in what can be described as a crisis like atmosphere and it appears that the aim was to terminate Mr McGrail's appointment before the new Governor arrived in Gibraltar to take up his office [**C4832**]. The Chief Minister and Interim Governor told Dr Britto that for different reasons they had both lost confidence in Mr McGrail as Commissioner. They both requested that the GPA should consider exercising its powers under Section 34 of the Act and invite the Commissioner to retire.

46. An informal note of that meeting was made by the Chief Minister which records among other things:

- i. “The Chief Minister said that the position was that BOTH the Governor and the Chief Minister had lost confidence in the Commissioner of Police” [B1967]; and
- ii. “BOTH in fact agree that the Commissioner should be invited to retire by the GPA” [B1971].

47. Dr Britto accepts that the informal note accurately records what was said at the meeting. He also said in oral evidence that the Chief Minister and Interim Governor had exchanges between them at the meeting to which he was not privy. It was also clear to Dr Britto that the Interim Governor and Chief Minister had indicated their advance consent should the GPA decide to invite Mr McGrail to retire.

48. Section 34 of the Act provides as follows:-

“(1) The Authority acting after consultation with the Governor and the Chief Minister and with the agreement of either of them, may call upon the Commissioner to retire, in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar.

- (2) Before seeking the approval of the Governor and the Chief Minister under subsection (1) the Authority shall give the Commissioner an opportunity to make representations and shall consider any representations that he makes.*
- (3) Where the Commissioner is called upon to retire under subsection (1), he shall retire on such date as the Authority may specify or on such earlier date as may be agreed upon between him and the Authority”*

49. An inquorate emergency meeting of the GPA was held on 21 May 2020. Section 6(1) of the Act requires a quorum of six members, being the Chairman and five other members. Minutes of that meeting were produced after the event [Document No.4 of Appendix B to Dr Britto’s Sworn Witness Statements **[B1973]**]. It is apparent from these minutes that:

- (i) the basis of the decision to invite Mr McGrail to retire was the loss of confidence in him by both the Interim Governor and Chief Minister, which would make it very difficult for him to continue working with them. This, in fact, may be construed as the only reason for the decision. Both Dr Britto and Mr Lavarello stated in evidence that this was the case and that still they could not see how, having lost, for whatever reason, the confidence of both the Interim Governor and the Chief Minister, Mr McGrail’s position could be tenable as the breakdown of the working relationship between Mr McGrail and the Interim Governor and/or the Chief Minister was bound to adversely affect the efficiency and the effectiveness of policing in Gibraltar;

- (ii) of the two stated underlying reasons, the Incident at Sea was the more influential factor in colouring the GPA's decision given the loss of life, its occurrence outside British Gibraltar Territorial Waters, its potential impact on Gibraltar / Spanish relations and civil claims by the families of the deceased crewmen. The GPA however relied on what it was told through Dr Britto by the Interim Governor and Chief Minister and did not make its own inquiries and reach its independent conclusion as to the truth or otherwise of what Dr Britto had been told; and
- (iii) the GPA was very aware of the prospective use of section 13 to bring about Mr McGrail's termination of employment if it did not invite Mr McGrail to retire and was concerned to make Mr McGrail's termination of employment as palatable as possible.

50. The decision to invite Mr McGrail to retire (paragraph 5 of Document No.4 of Appendix B to Dr Britto's Sworn Witness Statements **[B1973]**) appears to have been understood in different ways by different members of the GPA.

This stated:

"... 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 GPA" .

For example Mr Francis Carreras at paragraph 15 of his First Sworn Witness Statement dated 18th October 2022 [A517] stated “*it was unanimously agreed that the GPA should consider [our emphasis] inviting Mr McGrail to retire but that he should first be allowed to make representations to the GPA*”. This, for example, was also the recollection of Mr Ernest Gomez (paragraph 39 of his Sworn Witness Statement dated 18 October 2022 [A401-A402]) and of Ms Nadine Collado (paragraph 16 of her Sworn Witness Statement dated 20 October 2022 [A493]). Mr Lavarello stated in oral evidence that Dr Britto stated in oral evidence that paragraph 14 of the Sworn Witness Statement of Mr J Alcantara dated 14 October 2022 reflects the unclear thoughts of the GPA which on the one hand gave Mr McGrail the opportunity to make representations but on the other hand could not see how he could remain in office [A356-A357]. The GPA had in fact set a date for a meeting to hear Mr McGrail’s representations. However, the decision conveyed to Mr McGrail was ambiguously and erroneously in terms of a final decision subject to reconsideration in the light of representations which he might make.

51. If the GPA had given Mr McGrail the opportunity to be heard before inviting him to retire the likelihood is that it would at least have been on further inquiry as to the Operation Delhi issues and whether it was a driving factor behind the Interim Governor’s and Chief Minister’s decision that Mr McGrail should retire. It must be pointed out that for the GPA to have embarked on an inquiry into the real reasons behind the Interim Governor’s and Chief Minister’s wish that McGrail be asked to retire would have entailed a

daunting exercise similar to this Inquiry in which it did not have the expertise, resources or statutory power possessed by this Inquiry.

52. By letter dated 22 May 2020, Mr McGrail was informed that the Authority felt it had no option but to exercise its powers under Section 34(1) of the Act. Somewhat confusingly, the letter invited Mr McGrail to retire in the interests of policing – which conveyed a final decision – but then invited him to make representations if he so wished within 7 days and to indicate if he needed more time **[B1975]**.

53. The above letter was handed to Mr McGrail personally by Dr Britto on 22 May 2020, at Mr McGrail's office. Mr McGrail secretly recorded that meeting. A transcript of that recording and its translation into English are at Exhibit 8A and 8B to the Second Affidavit of Mr McGrail **[B336-B367]**. These documents speak for themselves. However, the following points emerge:

- (i) Dr Britto felt extremely uncomfortable and found what he was doing was extremely unpalatable;
- (ii) Dr Britto conveyed the view that the GPA had no option but to invite Mr McGrail to retire given the loss of confidence in him by the Interim Governor and the Chief Minister. This asserts what has been stated as being the main reason for the GPA's decision;

- (iii) Dr Britto believed that if Mr McGrail did not retire the Interim Governor would exercise his powers under section 13 of the Act, and retirement was a more dignified way out;
- (iv) Dr Britto does not seem to have been clear on the position in that he was asserting that the letter was an invitation to retire and that Mr McGrail was not being forced to do so. This was not in fact the effect of the letter handed to Mr McGrail;
- (iv) Any representations made by Mr McGrail would be taken into account before a final decision was taken; and
- (v) Operation Delhi was not a factor in the GPA's decision.

54. The tone and contents of these transcripts show the unprecedented nature of the situation in which Dr Britto and the GPA found themselves in, the lack of clarity as to what the GPA was communicating to Mr McGrail, how ill-equipped the GPA was to deal with a situation of such gravity and complexity as it was being faced with, and the lack of legislative or other guidelines upon which the GPA could look to follow a proper process. What emerges with clarity is that the GPA considered it had no option but to invite Mr McGrail to retire given the loss of confidence in him by the Interim Governor and the Chief Minister, which rendered his position untenable. That view is probably still held by the GPA to this day, as stated in evidence by Mr Lavarello and Dr Britto **[Transcript Day 15, Pages 94-95, Lines 19-**

25 and 1] [Transcript Day 14, Page 227, Lines 19-25 and Pages 233-234, Lines 20-25 and 1-8].

55. At Mr McGrail's request Dr Britto sent him a second letter, dated 22 May 2020, setting out the reasons for the loss of confidence in him by the Interim Governor and the Chief Minister **[B1977-B1979]**. This letter had input from the Chief Minister at the request of Dr Britto, who wanted to ensure the accuracy of its contents.

56. The 22 May letter was replied to by Charles Gomez & Company by letter dated 29 May 2020 ("the **29 May Letter**"), setting out a very detailed exposition of Mr McGrail's case. This is at Document No.8 of Appendix B to Dr Britto's Sworn Witness Statements **[B1983-B2010]** and does not bear repeating. The salient points alleged fundamental unfairness and procedural flaws and abuse of process. It was also alleged that the real reason why the Interim Governor and the Chief Minister wanted to terminate Mr McGrail's appointment was his conduct of Operation Delhi.

57. Following receipt of the 29 May Letter the GPA obtained independent legal advice, following which it withdrew its invitation to Mr McGrail to retire. The withdrawal was expressed to be on procedural grounds. The substantive points were not addressed in reply. This was communicated to Charles Gomez & Company by letter dated 5 June 2020 [Document No.15 of Appendix B to Dr Britto's Sworn Witness Statements **[B2039]**]. It may be open to the Inquiry to find that the GPA's process was tainted with

substantive unfairness also. However the Inquiry may consider that given the GPA's withdrawal of its invitation to Mr McGrail to retire and evidence of the circumstances of and reasons for its decision, looking into this will not materially advance the Inquiry's objectives. What the GPA strongly denies is that Operation Delhi in any way influenced its decision to invite Mr McGrail to retire. This was confirmed by both Mr Lavarello and Dr Britto in their oral evidence. With hindsight, however, knowledge of Operation Delhi and the issues relative to Mr Levy might have alerted the GPA to be more circumspect before making a decision.

58. The GPA's withdrawal of its invitation to Mr McGrail to retire was communicated to the Interim Governor and Chief Minister on 5 June 2020 (Document Nos 17 and 18 of Appendix B to Dr Britto's Sworn Witness Statements **[B2044 and B2046]**).

59. Given the allegations in the 29 May Letter about Operation Delhi, Dr Britto copied this letter to the Interim Governor, Chief Minister and Attorney General. Their respective replies are at Documents Nos 12 to 14 inclusive of Appendix B to Dr Britto's Sworn Witness Statements **[B2018-B2037]**.

60. An email dated 5 June 2020 was sent from Charles Gomez & Company to Mr J Neish KC **[B2041]** stating, amongst other things;

"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” [our emphasis].

61. The GPA had no further active involvement in the events which led to Mr McGrail's retirement.

62. The question arises as to what impact, if any, the GPA's handling of the process was a reason and circumstance leading to Mr McGrail's decision to apply for retirement. The GPA's invitation to Mr McGrail to retire was one of no legal effect as it was withdrawn. However, it may well be that the invitation to retire made Mr McGrail see the writing on the wall especially as he was told by Dr Britto that the Interim Governor was prepared to exercise his powers under Section 13 of the Act. Mr McGrail's initial response as set out in the Charles Gomez & Company letter of 29th May 2020 to the GPA was that he wanted to remain in post. However, Mr McGrail within days changed his mind and by email dated 5 June 2020 of Charles Gomez & Company to James Neish K.C. stated :

“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” [our emphasis]

63. The GPA does not know what made Mr McGrail change his mind between 29 May 2020 and 5 June 2020 given that there had been no change in material circumstances.

Appointment of Commissioner of Police

64. The process followed is described at paragraphs 25 to 38 inclusive of the First Sworn Witness Statement of Mr John Goncalves dated 31 August 2022 [A341-A343]. The recommendations of the GPA to appoint Mr McGrail were accepted by the then Governor and the Chief Minister.
65. The decision of the GPA was a majority one of 7 – 2. Mr Albert Danino, one of the dissentients, has stated at paragraph 27 of his Sworn Witness Statement dated 4 October 2022 [A370] the reasons why he preferred Mr Ullger’s candidacy. The position of Mr Nick Pyle, the other dissentient, is set out at paragraph 26 of his Second Affidavit dated 4 July 2023 [A266].
66. An issue has arisen between Mr Pyle and other members of the GPA. Most members have deposed that Mr Pyle wanted to open the vacancy to officers of other jurisdictions (see for example paragraph 33 of the Sworn Witness Statement of Revd. Fidelio Patron dated 10 October 2022 [A462-A463]). Mr Goncalves has deposed that Mr Pyle said that he would not support Mr McGrail (paragraph 25 of Mr Goncalves’ First Sworn Witness Statement dated 31 August 2022 [A341]) and Mr Lavarello has deposed that Mr Pyle said he would not support either of the two candidates (paragraph 34 of Mr Lavarello’s Sworn Witness Statement dated 20 October 2022 [A431-A432]).
67. Mr Pyle has criticised the selection process as “*abject*” in a whatsapp message to the Chief Minister dated 14 May 2020 [A199/B1439]. In his

evidence he retracted the word “*abject*” but stated that it was “*suboptimal*” or “*had flaws*” [Transcript Day 18, Page 52, Lines 6-16]. In his whatsapp message to the Chief Minister, Mr Pyle also stated that as he and the Chief Minister had both thought at the time it was “*the wrong appointment*”. Mr Pyle’s latest stance is incomprehensible as:

- i. he was present at the meeting when the selection process was unanimously agreed;
- ii. the selection process followed that of Mr McGrail’s predecessor, Mr Edward Yome;
- iii. Mr Pyle was one of four panel members who interviewed the applicants;
- iv. Mr Ullger, the unsuccessful candidate, stated in evidence that the process was “*very fair and was a process that is followed by the National Police Chiefs Councils in the UK and the College of Policing*” [Transcript Day 13, Page 85, Lines 5-8]; and
- v. there was nothing to indicate to members of the GPA prior to disclosure in the course of the Inquiry Mr Pyle’s comments that he had any issue with the selection process.

68. In oral evidence Mr Pyle said that the process did not have a grading system for ranking candidates and this was one of the reasons he was not content with it. Even taking that at face value and at its maximum effect, it would not justify criticism of the process as suboptimal or flawed, much less his original description of it being “*abject*”.

69. Further, Mr Pyle’s statement to the Chief Minister that, as they both thought at the time, “*wrong appointment*” is not understood given that at paragraph 25 of his Second Witness Statement dated 4 July 2023 he says something diametrically opposed, namely that he had marked both candidates as “*suitable and credible*” [A266].
70. Mr Pyle also raised in evidence for the first time that the Chairman of the GPA at the time, Mr Goncalves, had directed the members during the Selection Process to disregard a written assessment prepared by the previous Commissioner of Police, Commissioner Yome, on Mr McGrail due to them having “*history*” [Transcript Day 19, Page 7, Lines 16-23]. Mr Goncalves refutes this evidence in his Third Sworn Witness Statement dated 21 May 2024.
71. This issue is not of direct relevance to the questions before the Inquiry but the Inquiry may wish to consider whether any and, if so what, inferences are to be drawn from Mr Pyle’s late evidence and its timing.

JAMES J NEISH KC

KELLY POWER

TSN

7 June 2024