

COMMISSIONS OF INQUIRY ACT

RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

ISSUE OF COMMISSION

**SWORN WITNESS STATEMENT
OF ERNEST GOMEZ**

I, ERNEST GOMEZ of [REDACTED] retired Chief
Secretary, member of the Gibraltar Police Authority **MAKE OATH AND SAY AS
FOLLOWS: -**

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

and are held currently by TSN for ease of use. I have been shown the documents exhibited by Dr Britto at Appendix B of his Witness Statement dated 13th May 2022 ("J.B's Appendix B") and 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.B's Appendix B and J.G's Appendix A respectively, as referred to by me.

3. The GPA was established in accordance with section 3(1) of the Police Act 2006. Section 4(1)(a) of the Police Act 2006 provides that its members shall be appointed by the Governor acting on the advice of the Public Service Commission. Pursuant to section 4(2), every member of the GPA, shall hold office for a term of three years and at the expiration of any such period or periods shall be eligible for reappointment. I was appointed on 23rd January, 2014 and renewed for further terms of three years with effect from 23rd January 2017, and 23rd January 2020. I continue to be a serving member of the GPA.
4. I have been advised by TSN that pursuant to Legal Notice LN.2022/034 (the "Legal Notice"), the Governor of Gibraltar, Vice Admiral Sir David Steel KBE, DL, on behalf of the Government of Gibraltar, at the request of the Chief Minister, has formally issued a notice of a commission appointing Sir Charles Peter Lawford Openshaw, DL, (formerly, a judge of the High Court of England and Wales, Queen's Bench Division), as Commissioner (the "Commissioner") to inquire, as he shall in his absolute discretion consider appropriate, into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police ("Mr McGrail") in June 2020 by taking early retirement (the "Terms of Reference"). I have been further advised by TSN of my duty to assist the Commissioner as may be required.

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

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

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

6. Since the publication of the Legal Notice, I, and other former members and current members of the GPA have been asked by Solicitors to the Inquiry, Attias & Levy (the "Solicitors to the Inquiry"), by letter dated 23rd September 2022 (the "23rd September 2022 Letter"), to provide a statement under oath addressing the subject matter of the Inquiry which falls within the Terms of Reference and various specific matters which are listed at numbered paragraphs 1 to 3 of that letter. Additionally, Solicitors to the Inquiry, by that letter, have requested that I produce 'any documents (including but not limited to electronic documents such as emails, word documents, PDFs and SMS, Whatsapp or other instant messages) in [my] possession or control relevant to the subject-matter of the Inquiry'. It is also noted that any electronic documents are to be

provided in their native format with the original metadata preserved. After reviewing the GPA records at the TSN office, J.B's Appendix B 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.

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

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

9. I depose to matters relating to my knowledge of the reasons and circumstances under the section dealing with the Section 34 process at paragraphs 37 to 50 hereof.

THE AIRPORT INCIDENT

10. 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 11 to 22 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.

11. 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. I was not present at that meeting but read minutes shortly afterwards.

12. 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.

13. On 15th May 2017, a meeting was held to further consider the Chief Minister's request to Mr Gonçalves. I was present at that meeting. 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.

14. 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.

15. 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 draft of that letter was circulated to all members of the GPA and approved by us. A copy of that letter is listed as document no. 4 of J.G's Appendix A.

16. 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.

17. On 17th August 2017, the Commissioner of Police wrote to Mr Gonçalves attaching the documents referred to in the preceding paragraph. These documents were circulated electronically to members of the GPA in advance of the next meeting. 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.

18. 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. Regrettably, I cannot recall the date of that meeting or whether minutes were kept. If they were, I have not seen them.

19. 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.

20. 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.

21. The GPA duly met on 31st August 2017, with the RGP officers referred to at paragraph 18 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.

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22. On 5th September 2017, Mr Gonçalves wrote to the Chief Minister communicating the conclusions of the GPA. A draft of that letter was circulated electronically for approval by members of the GPA. Mr Stephen Reyes proposed an amendment which was not accepted by the rest of us. We approved the letter. I can confirm that its contents accurately reflect the conclusions reached by the GPA. A copy of the contents of that letter was reproduced in the email that the Secretary of the GPA, Elka Hanglin, addressed to Giselle Corby and myself dated 06 December 2017. A copy of that email is document no. 12 of J.G's Appendix A.

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

23. 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

24. 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, Falero, 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, although I was still not a member of the GPA at the time and was therefore not involved in that process. The process is well documented and I make this witness statement following the sequencing which appears from the record.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. On Thursday 30th November 2017 the candidates were interviewed in depth by a panel, consisting of Mr Gonçalves, Rev Patron, Mr Pyle and me. 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.

34. 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 was felt that both candidates were suitable but by a majority of 7-2 it was considered that Supt McGrail was the stronger of the two. The two dissenting members were Mr Nick Pyle and Mr Danino. I voted for Mr McGrail. I thought that he had performed better than Mr Ullger in his presentation and interview. I also thought that he was the more mature candidate and would be better placed to deal with the difficulties which existed within the RGP at the time. I was sure that Mr Ullger would in due course become Commissioner. 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 and Overseas Territories. 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.

35. 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

36. 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.

THE SECTION 34 PROCESS

37. On the 21st May 2020, an emergency meeting (the "Emergency Meeting") of the GPA was held to consider the matters raised by the Chief Minister and the Interim Governor at a meeting which they had held with Dr Britto on 18th May 2020. Five members of the GPA attended. I was among them. As section 6(1) of the Act, requires a quorum of six members and only five were in attendance, the non-attending members were consulted by telephone, I believe by the Chairman himself, on the same day shortly after the Emergency Meeting ended. They all agreed with the decision taken and the reasons therefor. A minute of the meeting, as required by section 6(4) of the Act was not made contemporaneously as members of the GPA felt that their secretary might be compromised as she was a personal friend of Mr McGrail's secretary. A minute was made retrospectively on the advice of TSN. This minute was circulated to all members of GPA and approved by them. A copy of this minute is document no. 4 of J.B's Appendix B

38. During the Emergency Meeting, Dr Britto informed the other members of the contents of the Informal Note of his meeting with the Interim Governor and Chief Minister on 18th May 2020 and explained that the Interim Governor and the Chief Minister had stated that they had lost all confidence in Mr McGrail. I also attached importance to

the incident at sea which resulted in the loss of life of two Spanish nationals and Mr McGrail's apparent failure to identify the exact location of the incident. I was particularly concerned and would have been interested in learning Mr McGrail's version of events regarding the apparent lack of reliable information in this respect afforded to the Convent as alleged by Mr Pyle and the potential risk of a diplomatic row as a result of this. I did not consider that the police report on its own would justify inviting Mr McGrail to retire although the report clearly raised matters which needed to be addressed.

39. The members of GPA present unanimously decided following consideration of the matters raised by the Chief Minister and the Interim Governor and their consequent loss of confidence in Mr McGrail, that the GPA should invite Mr McGrail to retire subject to him being afforded an opportunity to make representations before the GPA. I wish to emphasise at this point the unfortunate circumstance that during that meeting it did not occur to any member present to consult the wording of the Act and instead it was generally assumed that Mr McGrail was indeed being offered a viable choice between accepting the offer to retire in view of the untenable position of the loss of confidence in him or of engaging with the GPA to offer his own version of events for the GPA to then decide on the direction to follow. I considered that the loss of confidence rendered untenable Mr McGrail's position as Commissioner but I was convinced - and indeed believe the rest of the members of the GPA to have also been convinced - that we would be afforded the opportunity to learn Mr McGrail's version of events before we were due to take a decision on whether to accept the allegations against him leading to the loss of confidence in him. It did not cross the minds of the GPA members at that point that the process we had adopted of inviting Mr McGrail to

retire whilst at the same time inviting him to present us with his version of events was a fundamentally flawed one.

40. I can confirm that the deliberations and agreed course of conduct of the GPA are evidenced by the minutes of the Emergency Meeting referred to at paragraph 37 hereof.

41. I was informed by Dr Britto and verily believe to be true that on 22nd May 2020 he met Mr McGrail (the "22nd May 2020 Meeting") and handed him a letter (the "First Letter") inviting him to retire. A copy of the First Letter is document no. 5 of J.B's Appendix B. Mr McGrail challenged the contents of the First Letter and requested him to substantiate the reasons for the invitation to retire and that in response to that request made, Dr Britto set out the reasons for the GPA's invitation to retire in a further letter dated 22nd May 2020 (the "Second Letter"). A copy of the Second Letter is document no. 6 of J.B's Appendix B. A copy of that email is document no. 7 of J.B's Appendix B. I did not see these letters contemporaneously but did so shortly afterwards. I endorse their contents.

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

43. I would state that Operation Delhi did not figure at all in the deliberations of the GPA.

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

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

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

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

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

MEETINGS

51. 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 KC MP, the Chief Minister
- (ii) Mr Albert Mena, Financial Secretary
- (iii) The Hon Neil Costa, former Minister for Justice
- (iv) Dr Joseph Garcia, Deputy Chief Minister
- (v) Mr Darren Grech, Chief Secretary
- (vi) Mr Michael Llamas KC, Attorney General
- (vii) Mr Christian Rocca KC, Director of Public Prosecutions

- (viii) Mr Nicholas Pyle, Deputy Governor, other than in his capacity as member of the GPA
- (ix) Lt. General Ed Davis, former Governor of Gibraltar
- (x) The Magistrates' Court (either the Clerk or Deputy Clerk to the Magistrates' Court, the Stipendiary Magistrate or the Justices of the Peace)
- (xi) Mr Lloyd DeVincenzi, Solicitor General
- (xii) Dr Joseph Britto, incumbent Chairman of the Gibraltar Police Authority
- (xiii) Mr Edward Yome, former Commissioner of Police
- (xiv) Deputy Commissioner Richard Mifsud
- (xv) Mr Richard Ullger, incumbent Commissioner of Police save as referred to in paragraph 21, 32 and 33 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 21, 32 and 33 hereof.

SWORN by the above-named Deponent

at

Suite 7, Hadfield House, Library St, GX11 1AA

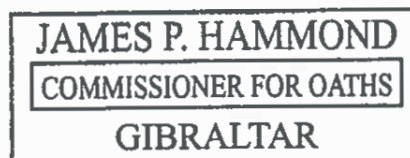
Gibraltar this 18 day of October 2022

Personal Data

Before me

Personal Data

Commissioner for Oaths



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