

# **INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE**

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## **CLOSING SUBMISSIONS ON BEHALF OF IAN MCGRAIL, FORMER COMMISSIONER OF THE ROYAL GIBRALTAR POLICE**

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### **INTRODUCTION**

1. Ian McGrail is an honest man who devoted 35 years of his life to public service as a police officer. After reaching the pinnacle of the Royal Gibraltar Police, as its Commissioner, he was, in June 2020, forced to retire two years early after being hounded from office.
2. The circumstances which led to Ian McGrail's ousting were triggered by the attempt by the RGP, on 12<sup>th</sup> May 2020, to execute search warrants against James Levy KC, a powerful member of the Gibraltar establishment. From the moment he found out about the warrants, and whilst attempts were being made to execute them, the Chief Minister, Fabian Picardo KC, whilst in constant secret discussion the suspect Mr Levy, his lawyer Mr Baglietto and his son Moshe Levy, did everything within, and sometimes without, his power to stop the warrants being executed, prevent Mr Levy being investigated by the RGP, corrupt the justice process and to oust Ian McGrail from office.
3. In these efforts, Mr Picardo was variously aided by the Attorney General, Michael Llamas KC, the Chair of the Gibraltar Police Authority, Dr. Joey Britto and the Interim Governor, Nick Pyle. Separately and collectively, these individuals were supposed to be the institutional guardrails which prevented events such as this happening, and each in their own way failed to do so. The guardrails were left broken, as ultimately was Ian McGrail, who was treated disgracefully by senior lawyers and officials. The 'process' he

was subjected to was both a shambles and a sham, and ultimately a travesty of justice which caused him to be constructively dismissed.

4. It is striking that at the oral hearings, witness after witness expressed their discomfort and shock at the way the Chief Minister behaved, albeit in most cases for the first time in four years. The Attorney General agreed the meeting of 12<sup>th</sup> May when Mr Picardo angrily berated Mr McGrail, and he watched on discomfited without intervening, should not have happened. The former Solicitor General said that the Chief Minister should not have been within 100 miles of the Op Delhi issues. The former Interim Governor agreed that the process which led to Ian McGrail leaving office was abject and a breach of natural justice. In the end, the only witness left defending Fabian Picardo's actions on and after 12<sup>th</sup> May was Fabian Picardo.
5. The Government of Gibraltar, and the Chief Minister, have shown no insight into or remorse for what went wrong and no appreciation of the boundaries and red lines which are supposed to exist according to Gibraltar's Constitution. In the words of their lawyer in his opening statement "*when a political power to which you are accountable expressed loss of confidence in you, you go*". The Chief Minister still believes it is his right to intervene in police investigations, even when the suspect is his close friend and business partner, if to do so would protect the "jurisdiction"; in other words, he believes he has licence to intervene in police operations whenever they involve important people. The Chief Minister also says he believes he can share information about the Director of Public Prosecution's advice on a criminal investigation with the criminal suspect, and anyone he likes, including "*Mr Smith on Main Street*", a proposition so absurd from a Kings Counsel that it must be a self-justificatory lie. Plainly, the Chief Minister has learned nothing about the red lines he failed to respect, the guardrails are still as weak as they were in May 2020, and there is nothing to prevent similar travesties occurring again.
6. In the four years which have followed the events of May and June 2020, the hounding of Ian McGrail has continued in similar fashion, with hostile witnesses being induced with public funds to give evidence against him, orchestrated by the Chief Minister and Hassans, and defamatory articles published in a publication owned by the Chief Minister and Hassans. Gibraltar's government has even changed the law to overturn decisions of the Chairman which it appointed.
7. Ian McGrail called for this Inquiry. He sees it as an opportunity to expose the truth of what happened in the 28 days between 12<sup>th</sup> May 2020, when attempts were made to execute the warrants against Mr Levy, and 6<sup>th</sup> June 2020, when Mr McGrail communicated his decision to retire. To achieve some kind of justice. But it is also an opportunity to ensure that no other public official is subjected to such appalling treatment

again, by strengthening the guardrails which so spectacularly failed to protect Ian McGrail. We hope that the Chairman grasps this opportunity, which is unlikely to arise again, both for Gibraltar and for the rule of law, by making appropriate recommendations. We respectfully propose four areas for recommendations in a separate document which should be read alongside these submissions.

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Key:

[1/1/1]	Transcript, Day 1, Page 1, Line 1
[A1] / [B1] / [C1]	Hearing bundles
HMGoG	His Majesty's Government of Gibraltar
GPA	Gibraltar Police Authority
MOD	Ministry of Defence
RGP	Royal Gibraltar Police

8. Following the main hearing, a number of new documents have been disclosed and press articles making false allegations against Mr McGrail relating to the Inquiry have been published in a publication which is owned by Mr Picardo. Mr McGrail intends to file a short supplementary affidavit to address these points in and may update these written submissions prior to the closing submissions hearing.

**SUBMISSIONS**

**A. The starting point: Ian McGrail's exceptional RGP record, and the contrast with the image painted of him after 12th May 2020**

9. The starting point is that Mr McGrail's 35-year service in the RGP was exceptional. He had a distinguished and decorated career, unblemished by any disciplinary or other sanctions against him.<sup>1</sup> He was popular with colleagues and had excellent working relationships with the leading members of the Gibraltar community, including Mr Picardo, Mr Llamas, Mr Rocca and Mr Pyle.
10. He was seen by those who worked with him for years as an honest police officer with high levels of integrity and ethics, and had good working relationships with senior figures.<sup>2</sup> For example, witnesses gave the following evidence:
- 10.1. Mr Llamas: "*At the personal level, us working together [...] I consider that I enjoyed – we enjoyed – an excellent working relationship*".<sup>3</sup>
- 10.2. Mr Richardson: "*Q. In your experience of Mr McGrail, was he in your view an honest police officer? A. Yes. Q. And in your experience of Mr McGrail, in your view, is he a man of integrity? A. Yes.*"<sup>4</sup>

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<sup>1</sup> Mr McGrail Opening paras. 77.1.-77.3

<sup>2</sup> Yome 15<sup>th</sup> November 2017 report on Mr McGrail: **[B2174]**: "*Mr McGrail always acts with integrity and has very high ethical standards and values. He leads by example in everything he does*"

<sup>3</sup> **[12/55/1]**

<sup>4</sup> **[4/232/2]**

- 10.3. Mr Rocca: “Q. *And what kind of working relationship did you have with [Mr McGrail]? A. Very good. Q. And what was your view of his qualities as a police officer? A. He was to my knowledge a very good police officer*”.<sup>5</sup>
- 10.4. John Field: “Q. *In your dealings with Mr McGrail, did you find him to be an honest officer? A. Without a doubt.*”<sup>6</sup>
- 10.5. Richard Ullger “Q. *During the time that Mr McGrail was Commissioner of Police how would you describe his relationship with the senior management team? A. A very good working relationship. Q. How would you describe Mr McGrail's policing style? [...] A very professional individual, a very hard working individual, an individual who always had fighting crime at the centre of everything he did. And his leadership style – [...] he had a very good, strong, ethical leadership.*”<sup>7</sup>
- 10.6. John Goncalves: “Q. *How would you describe your relationship with Mr McGrail during your three months of overlap? A. My relationship with Mr McGrail has always been a very good one.*”<sup>8</sup>
11. This is important background because it contrasts starkly with the skewed and inaccurate caricature of ‘Ian McGrail’ which was presented from 12<sup>th</sup> May 2020 onwards, particularly by Mr Picardo and Mr Llamas. They have attempted, for self-serving reasons, to paint Mr McGrail as a dishonest and incompetent police officer. For reasons which are set out below, these allegations are false and the balance of evidence does not support them. In any event, if it was in any way close to the truth, if Mr McGrail was dishonest about important issues or evasive with his superiors, or a “*bull in a China shop*” as Mr Llamas claimed for the first time in his oral evidence, then there would have been evidence of these characteristics prior to 12<sup>th</sup> May 2020. His professional record, and the balance of evidence to this Inquiry, demonstrates the opposite to be the case.

**B. Operation Delhi and the James Levy warrant are central to this Inquiry**

12. As we said in our oral opening submissions, it is unhelpful and distracting to divide the issues in the Inquiry into silos. The central issue is the warrants against Mr Levy which were taken out and then attempted to be executed on 12<sup>th</sup> May 2020. It is clear that the warrants are the central issue because if there had been no attempt to execute them, none

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<sup>5</sup> [10/196/7]

<sup>6</sup> [13/4/20]

<sup>7</sup> [13/79/24]

<sup>8</sup> [14/152/20]

of the events which the Inquiry has focussed its attention on would have happened, and Ian McGrail would not have retired.

13. But for the events of 12<sup>th</sup> May 2020, the evidence strongly suggests Mr McGrail would have still been in post until his scheduled retirement in 2022. Instead, after Mr McGrail texted Mr Picardo to tell him that the warrants were being executed against Mr Levy at Hassans, all hell broke loose. Within 28 days Mr McGrail was out of a job. During those 28 days, the warrants – and the treatment of Mr Levy as a suspect in the Op Delhi investigation – were at the centre of everything. Mr Picardo himself admitted that after 12<sup>th</sup> May, “[a]ll things in the RGP became my priority”.<sup>9</sup>
14. In our oral opening, we posed the question: why did Mr Picardo so fiercely advocate for Mr McGrail’s removal? The answer which has emerged from the evidence is clear. In the 28 days between 12<sup>th</sup> May 2020 and 6<sup>th</sup> June, Mr Picardo exercised his power and influence to protect Mr Levy, his close friend and mentor, and Hassans, his firm, from being exposed by the Op Delhi investigation, whilst being in regular secret communications with Mr Levy, his son and his lawyer, including passing on sensitive inside information he had discovered from the Attorney General, offering ideas and information for Hassans to use in its efforts against the RGP, and even discussing in detail the mechanisms to have Mr McGrail removed with Mr Levy and his lawyer. Meanwhile, Mr Llamas worked subtly over a course of three meetings to convince the RGP to back off from Mr Levy and his phone.
15. Mr McGrail’s career was collateral damage.

### C. The Lead Up to 12<sup>th</sup> May 2020

#### (i) *Op Delhi was a growing concern because of this high-profile people it could drag in*

16. In the lead up to 12<sup>th</sup> May 2020, The Op Delhi investigation was already becoming a matter of serious concern to Mr Picardo, Mr Llamas and Mr Rocca, as to which high-up members of the Gibraltar community it would drag in, and the damage it could do to the reputation of Gibraltar.<sup>10</sup>
17. In the months prior to 12<sup>th</sup> May 2020, Mr Llamas raised Op Delhi on a number of occasions with Mr McGrail:<sup>11</sup>

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<sup>9</sup> [16/183/15]

<sup>10</sup> [C3312]: Mr Rocca email to Mr Llamas 4.4.20: “This is something we are going to have to discuss soon because it does have serious implications in terms of people who might be dragged in”. “Sure, Christian, Whenever you want.”

<sup>11</sup> [Mr McGrail1/12-17; A4-A5]

- 17.1. These conversations are recalled by Mr McGrail<sup>12</sup> and recorded in his note to self of 12<sup>th</sup> May 2020<sup>13</sup>;
- 17.2. There is not a true conflict of evidence between Mr McGrail and Mr Llamas about the occasional conversations which took place between them about Op Delhi prior to and on 7<sup>th</sup> April 2020. Mr Llamas appears to admit that he may have asked for occasional updates on Op Delhi, which he described as “*at most it was a light touch*”.<sup>14</sup> And in his second affidavit he does not explicitly deny Mr McGrail’s account, though he does not agree with some of Mr McGrail’s interpretations of what was said<sup>15</sup>.
- 17.3. During those conversations, as recalled by Mr McGrail and referred to in his 12<sup>th</sup> May email to self, Mr Llamas:
- 17.3.1. Expressed concern about how chaotic and messy the matter was for HMGoG and the potential embarrassment to the administration;
- 17.3.2. Said that he is aware of the potential conflict and/or embarrassing situation involving Mr Picardo and the Financial Secretary, Albert Mena, (and all other partners of Hassans) being shareholders in the company that is part owner of 36 North and who it is alleged would have benefited from the fraud, and said that this was a concern to him from a position of safeguarding the interests and reputation of the Chief Minister and the Government’s Financial Secretary, both of whom were shareholders in 36 North (as were the other Hassans partners)<sup>16</sup>
- 17.3.3. Asked whether Caine Sanchez could be dealt with internally through the Civil Service disciplinary route – he does not deny he made a comment like this, but does not accept Mr McGrail’s and Mr Richardson’s interpretation of it;

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<sup>12</sup> [Mr McGrail1/12-17; A4-A5]

<sup>13</sup> [B74]

<sup>14</sup> [11/157/18]

<sup>15</sup> Mr Llamas’s claim that 7 April 2020 was the “*first time I met with Mr McGrail or the RGP about the Criminal Investigation other than the 13 May 2019 meeting*”<sup>15</sup> [Mr Llamas1/28; A277] and that after 13 May 2019 he had no “*substantial, meaningful contact with Mr McGrail (let alone meetings)*”<sup>15</sup> [Mr Llamas2/4; A299] are carefully worded and do not deny Mr McGrail’s account. He says that “*the impression he tries to give in these paragraphs that I was regularly enquiring and discussing with him as to how the investigation was proceeding as from 13 May 2019 is simply untrue*”<sup>15</sup> though he cannot “*rule out the possibility that, perhaps on the margins of a meeting on a different matter, the subject of Op Delhi may have been mentioned by him or by me and there may have been the most superficial, brief and perfunctory exchange between us on that subject*” [Mr Llamas2/7; A299]

<sup>16</sup> [B79]: See Mr McGrail’s 12<sup>th</sup> May 2020 note to self

- 17.3.4. Advised that the investigation should not progress until the ownership issue could be clarified (this occurred at the 7<sup>th</sup> April 2020 meeting – see below);
- 17.3.5. Advised at some stage that he would be stepping back from discussing the Investigation as he was now advising HMGoG on the intellectual property rights relating to the NSCIS platform – he does not deny this;
- 17.3.6. Inquired at one point about the “*hypothetical situation*” where HMGoG were owners of and consented to the hacking / sabotage taking place. He does not deny this.<sup>17</sup>

**(ii) *There was no agreement on 7<sup>th</sup> April 2020 between Mr McGrail and Mr Llamas about not progressing Op Delhi without first consulting Mr Llamas***

18. Mr Llamas’s assertion<sup>18</sup> that Mr McGrail committed that he would revert to Mr Llamas before taking any further action in the case, at a meeting on 7<sup>th</sup> April 2020, is wrong and contradicted or unsupported by his own oral evidence, as well as that of everyone else who was in the meeting. Mr Llamas also knew by June 2020 that Mr DeVincenzi did not agree that there was a clear agreement:

- 18.1. On 6<sup>th</sup> April 2020, the DPP requested to meet Mr Llamas about Op Delhi because of the “*serious implications in terms of people who might be dragged in*”.<sup>19</sup>
- 18.2. Mr Llamas took it upon himself to meet with Mr McGrail and Mr Richardson about the case the following day, without the DPP present, despite his lack of criminal law expertise or knowledge about Op Delhi;
- 18.3. Mr Llamas’s description in oral evidence of the purpose of the meeting is bizarre and plainly inappropriate. He recalls giving Mr McGrail a warning (“*Ian, be careful. Take tremendous care with this investigation*”<sup>20</sup>), but (he claims) not in his capacity as Attorney General (“*I don’t think I was even speaking to him as Attorney General and Commissioner of Police*”<sup>21</sup>; “*I wasn’t giving him legal advice*”, it was “*friendly advice*”<sup>22</sup>, it was “*private advice to be careful*”<sup>23</sup>).
- 18.4. Mr Llamas’s focus appeared to have been not on the risks arising directly from the criminal investigation (which he was not in any event briefed on), but on the

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<sup>17</sup> [Mr McGrail1/12-17; A4-A5]; [Mr Llamas2/15; A302]

<sup>18</sup> [Mr Llamas1/32; A278]

<sup>19</sup> [C3312]: Mr Rocca email to Mr Llamas 4.4.20

<sup>20</sup> [11/47/13]

<sup>21</sup> [11/189/24]

<sup>22</sup> [12/118/6]

<sup>23</sup> [12/119/12]



reputational risks to Gibraltar during the treaty negotiations with Spain<sup>24</sup>, which should not have been any matter of concern for the RGP in progressing a criminal investigation, and should not have been a matter which the AG (whether or not he considered he was acting as AG) should have raised with the Commissioner of the RGP.

- 18.5. In oral evidence, Mr Llamas resiled from the claim, made in his 5<sup>th</sup> June 2020 letter to the GPA and his Inquiry evidence, that it was “*clear beyond peradventure*” that Mr McGrail agreed the RGP would take no further steps in the investigation. Instead, he said that it was clear from the “*context of the meeting*”<sup>25</sup> and was more of an “*implication*”.<sup>26</sup> He also accepted that he did not understand at the time that a search warrant was an operational matter for the police and that if he intended to ask the RGP not to apply for a search warrant this was something very unusual.<sup>27</sup>
- 18.6. Mr Llamas accepted that he could not say whether on reflection there was a “*misunderstanding*” about what was agreed on 7<sup>th</sup> April.<sup>28</sup> Even leaving aside the contrast with his repeated statements that it was “*clear beyond peradventure*”, it is significant that Mr Llamas supported the removal of Mr McGrail on the basis that he had been misled by him – for example, by permitting Mr Picardo to brief the GPA that Mr Llamas felt he had been misled by Mr McGrail.<sup>29</sup> Plainly, he at least exaggerated the position and also potentially himself misled Mr Picardo about the “*agreement*”.
- 18.7. The claim that there was an “*agreement*” is also unsupported by any other witnesses, including Mr Richardson and Mr DeVincenzi who were present at the

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<sup>24</sup> [11/194/17] “I tell him, “Just be careful. Be careful, especially at this moment of time when we are in the process of negotiating a vital treaty for our homeland, just be really careful.”

<sup>25</sup> [11/195/19]

<sup>26</sup> [11/196/3]; [12/125/6]

<sup>27</sup> [11/197/3]

<sup>28</sup> [11/202/17]

<sup>29</sup> [B1365] In the 22<sup>nd</sup> May letter from the GPA, which the Chief Minister edited, it says “*the Attorney General has expressed the same feelings*”, i.e. that his dealings with Mr McGrail had left him with a sense he was lacking in both probity and integrity

meeting<sup>30</sup>. It is also not reflected in the letter Mr McGrail sent to Albert Mena the next day (8<sup>th</sup> April 2020)<sup>31</sup>

- 18.8. Mr Llamas knew by 3<sup>rd</sup> June 2020, before he sent the 5<sup>th</sup> June 2020 letter to the GPA, that Mr DeVincenzi did not support his interpretation of what happened at the meeting. In the note which Mr Llamas sent to his lawyers in preparation for the 5<sup>th</sup> June letter, Mr DeVincenzi commented: “*Suggestion: “I appreciate that the CoP and the [Detective Sergeant – i.e. Mr Richardson] may have thought that the understanding we reached was limited to the exercise regarding the rationalisation of the charges against the individuals who were the principal subject of our discussion. However, even if this was the case, it was implicit that no action on the case more broadly would take place without my being informed.”*”
- 18.9. In any event, it would have been illogical for Mr McGrail to agree to such a request<sup>32</sup>; and would not have been an appropriate request by Mr Llamas given (a) his constitutional role and (b) the multiple conflicts of interest Mr Picardo, who Mr Llamas was the principal legal adviser to, had in the investigation;
19. It is not clear why Mr Llamas presented what he now accepts was no more than an “*implication*” as being “*clear beyond peradventure*”. Potential explanations are:
  - 19.1. He wanted / was pressured to support Mr Picardo in his (successful) attempts to label Mr McGrail as dishonest;
  - 19.2. He had failed in the task he had been given by Mr Picardo to prevent the Op Delhi investigation from reaching the higher echelons; and/or
  - 19.3. He had failed in the task he set himself to protect what he calls “*Gibraltar PLC*”

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<sup>30</sup> [Mr DeVincenzi1/11; A1300]: “*The Attorney General inquired about the significant number of charges, and expressed concern that these should probably be rationalised, noting that this was a matter for the police to consider and decide (or words to that effect). It was also mentioned during the meeting that Mr James Levy was being investigated. The Attorney General asked Mr McGrail to keep him informed until they could next meet.*”; Paul Richardson 3/71-73 [A1437]: “*do not recall any agreement being reached that the RGP would not take any further action until we had clarified the question of ownership and rationalised the number of charges. Furthermore, I do not remember agreeing that nothing would happen until we met again*”. He says that if such an agreement had been reached he would have taken various steps including making a record, discussed with Mr McGrail, discussed with MW, discussed with DPP and not proceeded to obtain a search warrant, but he did none of those things.

<sup>31</sup> [Mr LlamasL1/38; B1900]

<sup>32</sup> [A14]

**(iii) On 8<sup>th</sup> April 2020, the DPP advised that Mr Levy should be treated as a suspect and was briefed on the plan to execute a warrant**

20. It is important background that the DPP was asked for and provided supportive advice on the treatment of Mr Levy as a suspect. He was also briefed on the plan to obtain a search warrant, which he also commented on:

20.1. On 1<sup>st</sup> March 2020, Mr McGrail requested that Mr Richardson “*consult with the DPP to ensure our intended activity is legally supported*”<sup>33</sup>. The terms of Mr McGrail’s request are important. Mr McGrail, in common with the other police officers, did not expect the DPP to advise on the operational decision to execute a search warrant, but did not set this out in his email save for stating that the “*tactical detail... will be subject of further consideration, mainly to safeguard operational security*”. It is notable that the terms of Mr McGrail’s request resembles what he recalls telling Mr Picardo and Mr Llamas in the meeting of 12<sup>th</sup> May 2020, as recorded in his email to self on the same day, that “*all the grounds [sic] to deal with Mr Levy had been consulted with DPP*”.<sup>34</sup>

20.2. It is also notable that in his oral evidence Mr McGrail said that it was not the practice of the RGP to ask the consent of the DPP for an operational decision, i.e. obtaining a search warrant, however he expected for the team to “*run it past*” the DPP.<sup>35</sup> Mr McGrail is not a lawyer (unlike the Chief Minister and Attorney General) and it is clear when he refers to having “*consulted*” the DPP, he does not mean “*seek advice*”. This increases the chances of a misunderstanding, especially given that Mr McGrail was not the investigating officer nor was he given any forewarning of the meeting, or the chance to prepare for it.

20.3. Mr Rocca was asked by Mr Richardson for advice on whether Mr Levy could reasonably be treated as a suspect, and Mr Richardson enclosed a National Decision Model (‘NDM’) assessment for Mr Rocca’s review<sup>36</sup>;

20.4. Mr Rocca was not asked to advise on the operational steps which were due to be taken against Mr Levy however the NDM assessment also made reference to the

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<sup>33</sup> [B3272]

<sup>34</sup> [B76]

<sup>35</sup> [6/168/4]

<sup>36</sup> [B3610] “*What we are seeking is your advice on whether the charges that we propose are warranted by the evidence, whether there is a reasonable prospect of conviction and (given the inherent political nature of this investigation) that it is in the public interest to proceed. In addition, and in respect of James Levy, we are seeking legal advice as to whether there are reasonable grounds to suspect that he has committed the offence as alleged.*”

intention to obtain a search warrant in relation to Mr Levy<sup>37</sup> and set out the plan and rationale for doing so.

- 20.5. At a meeting on 8<sup>th</sup> April 2020, Mr Rocca advised the Op Delhi investigating officers that Mr Levy could be treated as a suspect.<sup>38</sup>
- 20.6. Mr Rocca advised that he was “*comfortable to run the case on the basis of the summary of evidence provided*”, that there were “[n]o grounds at this stage for him to pull any prosecution but mentioned that the AG would be speaking to the COP” and that there were “*reasonable grounds*” to question Mr Levy under caution and “*if we need to pull in Mr Levy then so be it*”.<sup>39</sup>
- 20.7. Mr Rocca told the Op Delhi investigative officers that whether or not to obtain a search warrant was an operational decision for the police, and that although he would have opted for a production order rather than a warrant, he said that whatever they chose he would back.<sup>40</sup>
- 20.8. Mr McGrail had requested that the DPP was consulted and was aware in general terms that the DPP had “*advised the team accordingly*”, though he was not present at the 8<sup>th</sup> April meeting.<sup>41</sup>
- 20.9. After 12<sup>th</sup> May, Mr Rocca repeatedly confirmed to the RGP that he considered the warrant had been lawfully obtained:
- 20.10. Mr Rocca accepted at the meeting on 13<sup>th</sup> May 2020, that the decision to apply for a warrant was an operational matter for the police.<sup>42</sup>
- 20.11. Mr Rocca called Mr Richardson to confirm that he would be more than happy to defend the warrant, it was lawful and Mr Llamas agreed.

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<sup>37</sup>[B3456] “The seizure of the digital devices referred to in paragraph 25b should be by search warrant obtained in advance of approaching Mr Levy for interview.” (§31) “In the event that there are reasonable grounds to suspect Levy has committed any offence, the police will consider whether it is necessary to conduct further investigations in the form of search warrants / interview under caution” (§339) [B3666]

<sup>38</sup> [B3681]

<sup>39</sup> [B3681]; Also see [B3198]: Richardson’s note: “He agreed that Mr Levy should be treated as a suspect as there were questions which needed to be answered. He should be interviewed.”

<sup>40</sup> [Mr Richardson3/41; A1432]: “At the time of the Application we did not know of any concerns on the part of either the DPP or AG. At the end of a video conference call on 8 April 2020, I remember the DPP confirming that he understood our rationale for preferring a warrant to a production order. This was an operational decision for the police. Although he would have opted for a production order rather than a warrant, whatever we chose he would back us. At that point the choice between a warrant and a production order was secondary to the DPP agreeing that Mr Levy should be treated as a suspect, and I did not note this exchange.”

<sup>41</sup> [B80]: Mr McGrail notes to self, 12<sup>th</sup> May 2020

<sup>42</sup> Page 6, H Mr McGrail 5B [B173]

20.12. Mr Rocca confirmed in an email on 16<sup>th</sup> May 2020 that whilst it was an operational matter for the police, there was nothing he could see in the documentation which suggested it was unlawful<sup>43</sup>

20.13. Mr Rocca stated at a meeting with MW on 29<sup>th</sup> May 2020 that he believed the warrant had been lawfully obtained and he would “*protect if challenged*”<sup>44</sup>

**(iv) It was appropriate for the RGP to treat Mr Levy as a suspect**

21. There was, in at least the two or so months prior to 12<sup>th</sup> May 2020, sufficient evidence to treat Mr Levy as a suspect<sup>45</sup> as part of a legitimate and serious criminal investigation into the hacking and sabotage of the NSCIS system<sup>46</sup>.

21.1. The detailed evidence relating to the contacts between Mr Levy and the alleged co-conspirators is summarised in Mr McGrail Opening at para. 86 and is not repeated here.

22. On 8<sup>th</sup> April 2020 the DPP advised that it was appropriate to treat Mr Levy as a suspect.<sup>47</sup> Therefore, as well as there being sufficient evidence (objectively), for Mr Levy to be treated as a suspect, it was plainly reasonable and proper for the RGP investigating officers to treat Mr Levy as a suspect having obtained advice from the DPP.

23. Although Mr Levy was ultimately not charged, Mr Richardson’s and MW’s view was that this should not be seen as a vindication of his innocence, as set out in their email exchange of 28<sup>th</sup> October 2020<sup>48</sup>. They considered that “*the investigation [...] may have resulted in a different outcome had the warrant been executed and Levy interviewed under caution.*” This is important because of the successful efforts to water down the investigation of Mr Levy which followed the attempt to execute the 12<sup>th</sup> May warrants.

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<sup>43</sup> [Mr Richardson3/43; A1432] “There is a record of a call I received from the DPP when he confirmed that he would be more than happy to defend the warrant. It was lawful and he said the AG agreed. The note is contained in Mr Richardson

34, one of two timelines I created when Mr McGrail was under pressure to retire.”; [B4411]: Email to Paul Richardson cc’ing Mr McGrail “I will not comment on operational matters which are matters solely for the RGP. There is nothing that I can see in the document at this stage and given the knowledge that I have at stage which would impact any potential JR as to the lawfulness of the search warrant”

<sup>44</sup> [B3138]

<sup>45</sup> The application for a search warrant is at [MW/20; B3208]

<sup>46</sup> [B3630] NDM report

<sup>47</sup> [B3681]

<sup>48</sup> [B3445]

(v) *It was reasonable for the RGP to apply for a search warrant in respect of Mr Levy, notwithstanding any procedural defects*

24. If the search warrant had been challenged in judicial review, the Supreme Court may have found it contained procedural defects<sup>49</sup>. This Inquiry is not a judicial review and has sensibly said that it will refrain on reaching such detailed conclusions on the warrant. Nonetheless it was reasonable for the investigating officers (Mr Richardson and MW) to apply for a search warrant as opposed to a production order:

24.1. The RGP's justification is objectively reasonable<sup>50</sup>

24.2. The DPP had advised on 8<sup>th</sup> April 2020 that it was reasonable to treat Mr Levy as a suspect;

24.3. Caine Sanchez appeared to have deleted relevant messages on his phone after being notified that he was to be arrested;

24.4. Some of the messages which Caine Sanchez deleted were between him and Mr Levy;

24.5. The mere fact that time had passed since the original arrests did not preclude applying for a warrant;

24.6. The mere fact that Mr Levy is a lawyer does not preclude a warrant;

24.7. The warrant was granted by the Stipendiary Magistrate after a 1-2 hour hearing. That decision was never challenged by judicial review or withdrawn;

24.8. Although a number of witnesses, most notably Mr Picardo and Mr Llamas, claimed that Mr Levy would have cooperated fully with a production order given his high standing as a lawyer and in the community, it is at least of note that Mr Levy has failed to provide this Inquiry with any of the messages between him and Mr Picardo, or with any of the Delhi suspects, despite being required by the Inquiry to do so.

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<sup>49</sup> e.g. for the reasons highlighted in CTI's opening submissions at para. 81

<sup>50</sup> **[Mr Richardson2/17; A1290]**: Mr Richardson: "*I decided to apply for a search warrant rather than a production order for access to Mr Levy's mobile devices because the application for a search warrant would be determined without notice. An application for a production order would have been determined on notice, giving rise to a risk that Mr Levy might be forewarned.*"

**D. The red lines which should have prevented Mr Picardo intervening in Op Delhi**

**(vi) *Mr Picardo should not have involved himself at all in the investigation of James Levy***

25. The evidence before this Inquiry shows without any doubt that Mr Picardo intervened in the Op Delhi investigation. There are multiple reasons why he should not have. They are, in summary, (a) the Chief Minister had, and has, no power or function over police operations, (b) there are good constitutional reasons why this is so and why more generally politicians should not involve themselves in police investigations, (c) Mr Picardo had a triple conflict of interest in relation to this investigation:

26. (a) No power or function: Mr Picardo, as Chief Minister, had no power or function to intervene in police operations. The Police Act only gives the Chief Minister powers over the funding of the RGP (section 14), to require factual or assessment reports from the RGP (s.15(a)), to hold the RGP to account for cost effectiveness and efficiency within its allocated budget (s.15(b)), to hold it to account for parts of the Annual Policing Plan which do not relate to national security (s.15(c)) and to hold meetings with the Commissioner to discuss matters under the Government's responsibility.

27. Mr Picardo should not, as Chief Minister, have intervened in an RGP investigation due to the clear statutory separation of functions between his office and the police.<sup>51</sup>

27.1. That there should be such a separation was confirmed by the DPP, the AG and the former Solicitor General in oral evidence to the Inquiry:

27.1.1. Mr Rocca said that if he was contacted by the Chief Minister and asked any information about an ongoing inquiry, he would likely, depending on what it was, *"refuse to speak to him about it, and I think he would have known that as well"*.<sup>52</sup> And, in relation to Op Delhi, *"definitely not because the ultimate beneficial ownership of [36] North"*.<sup>53</sup>

27.1.2. Mr DeVincenzi, the former Solicitor General, said that Mr Picardo *"should probably be running 100 miles in the other direction from this matter"*.<sup>54</sup>

27.1.3. Mr Llamas agreed with Mr DeVincenzi's analysis.<sup>55</sup>

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<sup>51</sup> See Mr McGrail Opening paras. 36-56

<sup>52</sup> [10/82/6]

<sup>53</sup> [10/82/22]

<sup>54</sup> [11/83/1]

<sup>55</sup> [12/177/4]

28. (b) Mr Picardo's triple conflict of interest: Mr Picardo had deep personal and financial connections to the Op Delhi investigation, and it was therefore not just inadvisable but also improper for him to interfere in the investigation in any way:
- 28.1. Mr Levy, a suspect, was Mr Picardo's close business partner, personal friend of and mentor to Mr Picardo<sup>56</sup>;
- 28.2. Mr Picardo was concerned about the RGP having access to details of dealings between him and Mr Levy which would be on Mr Levy's devices.<sup>57</sup>
- 28.3. Mr Picardo, through his partnership at Hassans, had a financial interest in the success of 36 North, the company at the centre of the investigation, because (all of the following factors applied on 12<sup>th</sup> May 2020 and until Mr McGrail retired):
- 28.3.1. Mr Picardo beneficially owned a part of 36 North through his partnership in Hassans<sup>58</sup> whose subsidiary company Astelon owned 33% of 36 North;
- 28.3.2. Hassans was owed a substantial amount of money (£476,000<sup>59</sup>) by 36 North;
- 28.3.3. The success of 36 North relied directly on obtaining the NSCIS contract as proved by the projected cash flow document which showed the NSCIS as 36 North's primary source of projected income<sup>60</sup> even when 36 North had still not obtained the maintenance contract;
- 28.3.4. If the business failed, Hassans was committed to employ the three Op Delhi defendants as consultants or in some other post with £300,000 p/a salaries<sup>61</sup> therefore increasing the direct financial risk to Hassans and its partners if 36 North did not secure the NSCIS contract.

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<sup>56</sup> **Mr Picardo1/38: Mr Picardo statement §38 [330] [A190]** *"life-long relationship between my family and [Levy's uncle]... "I consider Mr Levy to be a mentor in my previous legal practice, a supporter in my current political career and a close personal friend"*; **Mr Picardo1/47 [B1115]** *"As a result of this deep relationship, I am regularly in contact with Mr Levy QC on matters related to politics and to his attraction to Gibraltar of persons who would establish themselves or their businesses here and on personal matters as a close friend"*

<sup>57</sup> **Mr Picardo1/45 [A192]** *"I told Mr McGrail that there would be myriad, unrelated, conversations between Mr Levy and me, for example, on matters outside the RGP's interest, but which would be private"*.

<sup>58</sup> See company structure diagram at **[B5187]**

<sup>59</sup> **[Mr Levy Exh1/7; B5234]**: *"The total loan, which stands at £476.000, is to be repaid at the end of August 2020"*

<sup>60</sup> **[JG Exh 1/30; B5161]**: The cash flow shows NSCIS as bringing in £62,519 pcm for 2018-2019 out of a total projected income of £103,094 pcm with a total expenditure per month of £61,950, therefore the business would lose money without the NSCIS contract

<sup>61</sup> **[B5282]**: Draft Letter from Mr Levy to JP and TC, 24.4.28: *"in the event the Company ceases trading within a period {the "Relevant Period"} of 3 years commencing on today's date, Hassans would by mutual agreement*



28.3.5. Mr Picardo was himself a person of interest or at the very least a potential witness in the investigation:

- (a) having been in close contact with John Perez and Tommy Cornelio prior to them leaving Bland and before they set up 36 North<sup>62</sup>,
- (b) texting three founders to wish them luck the evening before they resigned<sup>63</sup>, and been directly involved in the decisions taken relating to the operation of NSCIS<sup>64</sup>;
- (c) making clear to Mr Levy, a month after the 36 North founders left Bland, that he would support the 36 North founders against issues which were arising with Bland.<sup>65</sup>
- (d) Mr Picardo knew that TC retained access to NSCIS after 30<sup>th</sup> August 2018 despite Bland being told nobody else would have access, and may have authorised this directly, which may therefore have facilitated the conspiracy to undermine NSCIS (whether Mr Picardo knew this is how the access would be used or not)<sup>66</sup>.

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*between us take you onto our staff as full time consultants for the balance of the Relevant Period in each case at an annual consultancy fee of £300,000 gross or offer you a suitable alternative post.”; [B5350] Mr Levy appears to have authorised JP and TC being taken onto Hassans staff on 8<sup>th</sup> November 2018 due to a “material adverse change” but then this is reversed on 21<sup>st</sup> November 2018 [B5357]*

<sup>62</sup> [JP1/23; A1236]: *“From the beginning, I ensured that HMGoG was aware of our plans... On 30 January 2018, I met the CM, The Honourable Fabian Picardo KC and told him about our plans; he was encouraging and supportive and asked that I let him know before we tendered our resignations. I also informed the I also informed the Financial Secretary, Albert Mena.”*; JP/41 [A1239] *“From January to October 2018, the CM was periodically updated as to progress with 36N, either by me directly, or through James Levy CBE KC, or by CS*

<sup>63</sup> [TC1/25] [A1264] CM was kept “up to date” and texted them the evening before they resigned; [A1236-7] John Perez informed CM that they were resigning “tomorrow” on 8 July 2018 [27] – “All is in place” – Mr Picardo replied “Good luck for tomorrow my friend”

<sup>64</sup> [Perez 1/71; A1249]: *“the CM’s involvement in the events of the summer of 2018 was critical.”*

<sup>65</sup> [C7020] Mr Picardo to Mr Levy on 9<sup>th</sup> August 2018: *“honestly. Leave it with me. Do you imagine I would ever be on Gaggero’s side?”*; and *“I want to support John and the programmer Guy. I think Gaggero is riding their backs, as usual!”*

<sup>66</sup> [TC1/35] [A1266] *“The CM, through James Levy CBE KC and CS, was also aware that I continued maintaining the platforms”*; Mr Picardo’s affidavit as part of the Op Delhi investigation, 25.6.21 [Mr Picardo1/41 C6255]: Mr Picardo says I “do not believe” I ever gave any “express” authority for Tommy Cornelio (TC) to access the NCIS platform after he terminated his consultancy period with Bland Ltd, Says he was asked by Perez whether CM would support him and TC setting themselves up on their own – said he “was supportive of them setting themselves up on their own but that in doing so they should regularise their position with Mr Gaggero”, Says *“I had conversations”* with Perez and Levy about Hassans investing in 36 North – was *“asked by Mr Levy QC whether or not I would object to this”*; [B3267] Mr Levy text message to CM 30.8.18 (which seems to be the cut off date after which Bland aren’t monitoring the system any more?): *“You should know that I have spoken to Tommy and despite his letter to James G he will continue ensuring that the system is kept going until a solution is found acceptable the government”*, [Mr Picardo1/52 C6264] *“No express*

- 28.4. Mr Picardo as Chief Minister had an interest in the outcome of the investigation because one issue to be resolved was the ownership of the NSCIS system, which was disputed between Bland and the Government;
29. Mr Picardo’s encouragement of and support for the 36 North founders was itself deeply inappropriate – he knew that for 36 North to succeed (success which would enrich him and his Hassans partners), 36 North would have to take the NSCIS maintenance contract from Bland, a decision which ultimately would rest with him in his capacity as Chief Minister:
- 29.1. Mr Picardo’s oral evidence that once he had decided that the maintenance contract should remain with Bland, he no longer had an interest in 36 North, is wrong in fact. He retained a beneficial stake in the company, as did the other Hassans partners and Mr Levy;
- 29.2. Mr Picardo’s oral evidence that he did not have an “*interest*” in 36 North as it was negligible to him is an evasion. He retained a financial interest which was certainly not *de minimis*, even notwithstanding that Mr Picardo’s evidence that he has become “*wealthier than I ever wanted to be as a result of honestly discharging my profession as a lawyer and the distinction of being Chief Minister*”.<sup>67</sup> If Mr Picardo’s position is that he is so wealthy that a stake in a technology company no longer represents an “*interest*” for him, this is self-evidently wrong and undermines the entire concept of conflict of interest in the public sector.
30. Mr Picardo should have recused himself from decisions relating to NSCIS, the contract for its maintenance and the criminal investigation relating to it:
- 30.1. The Ministerial Code states that ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.<sup>68</sup>

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*authority was given by me, at least that I can recall or that I can find recorded in writing, for Mr Cornelio to access the NSCIS platform at any time after the termination of his arrangement for access with or through Bland Ltd. I do not believe that any other communication from me can be considered to be ostensible authority from me for anyone to access the system, although I am unable to comment on whether a communication from me could legitimately be interpreted in a manner that could be considered to convey such ostensible or implied authority.”*

<sup>67</sup> [17/141/1]

<sup>68</sup> “7.1 Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.”; “7.7 Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision they should be guided

- 30.2. Throughout 2018 and 2019, Mr Picardo continued to make decisions related to the NSCIS contract whilst also, privately, remaining in contact with Mr Levy about 36 North<sup>69</sup>;
- 30.2.1. On at least one occasion Mr Picardo used his personal email address when Mr Levy asked Mr Picardo about a draft email on 29<sup>th</sup> August 2018 from TC to JG regarding him no longer maintaining NSCIS platform.<sup>70</sup>
- 30.3. Mr Picardo on occasions admitted that he had a conflict of interest, relating to the criminal investigation, but did not take any action to mitigate it:
- 30.3.1. Mr Picardo told James Gaggero that if Bland made a criminal complaint, it would be improper for him to interfere.<sup>71</sup>
- 30.3.2. Mr Picardo texted Mr McGrail on 12<sup>th</sup> May 2020, after Mr McGrail had informed him that the RGP were executing a search warrant against Mr Levy, saying that “[g]iven my close personal relationship with Mr Levy, I won't comment further.”<sup>72</sup>

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*by the advice given to them by the Chief Secretary. Ministers' decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation.”*

<sup>69</sup> [HJMr Llamas1; B5242]: “I was aware that the NSCIS platform was one in which the GoG had a direct interest, as owners of it, and I therefore discussed the Blands/36N issues with the Chief Minister on a few occasions”

<sup>70</sup> [Mr Levy Exh 2; B5318]: Email from Mr Levy to Mr Picardo’s personal email address, 30<sup>th</sup> August 2018, 12:01: “Tommy wants to send this – I have asked him to wait. What do you think”; [Mr Levy Exh 1; B5242]: “in August 2018, I forwarded to the Chief Minister an email containing a draft email prepared by TC addressed to JG regarding the termination of the NSCIS maintenance service that TC had been providing after his departure from Blands [...] The Chief Minister informed me that he had discussed this matter with JG also on a number of occasions and had tried to promote a settlement between him, JP and TC of the commercial dispute that was emerging between them. It was clear that JG was very concerned at losing his 2 key employees on whom he depended to enable Blands to continue to meet its contractual obligations. [...] . In those conversations I suggested that the Chief Minister should continue to encourage JP, TC and JG to find a way to work together amicably in the interests of maintaining the NSCIS platform for the benefit of GoG as I had been informed that Blands did not have the expertise or capability to maintain it. I mentioned to the Chief Minister, and separately to JP and TC, that Hassans would be willing to give up all its shareholding in 36N if that would help reach an agreement between JP, TC and JG.”

<sup>71</sup> JG/75 [A1374]: I then asked [Mr Picardo] if I could speak to him in private as everyone left his office. I advise him that it had become clear to me that James Levy KC was involved with 36 North. told him that once a case against 36 North had been commenced by Bland the matter would be out of my hands. He stated that if this occurred it would be improper for him to interfere.”

<sup>72</sup> [A191]: “I think that is a bad decision. A search warrant should only have been sought if you believed that the person in question was not going to cooperate and will try to destroy evidence. If, as you say, you are hoping for cooperation, especially in a case involving a senior Silk and head of Gibraltar's largest legal firm, you should, in my view, first have sought to contact that person and obtain cooperation. Given my close personal relationship with Mr Levy, I won't comment further.”

31. Mr Picardo’s failure to act on his conflict of interest was improper, a view which appears to have been shared by at least one Government official, the Senior Advisory Counsel, later Solicitor General<sup>73</sup>. It was also grossly contrary to the Ministerial Code.

***(vii) Mr Picardo breached the boundaries which are supposed to prevent politicians interfering with police investigations***

32. Mr Picardo raised a number of justifications as to why he felt it was appropriate to intervene in the Op Delhi investigation, even notwithstanding that his close friend and business partner was a suspect. These justifications are self-serving and unprincipled.

33. Mr Picardo believed, and apparently still believes, that if a police investigation raised a “*jurisdictional*” issue then he was entitled as Chief Minister to intervene. He said in oral evidence:

33.1. It was appropriate to give his view on the warrant because “*there was a jurisdictional risk as a result of the execution of that search warrant. Gibraltar’s reputation was in play*”.<sup>74</sup>

33.2. He was entitled to share his view as to the law of Gibraltar with any third party that he considered appropriate, including a criminal suspect’s lawyer, “*given [his] jurisdictional concerns about the effect of the search warrant*”.<sup>75</sup>

33.3. In relation to a Gibraltar law firm which recently went into liquidation and the partners convicted of criminal (clearly a reference to Marrache & Co), he said “*this has played out in the international press*” and “*These things are relevant [...] to Gibraltar’s reputation as a jurisdiction, and my key equity in this matter is the protection of Gibraltar and its reputation*”<sup>76</sup> It is plain in this statement that Mr Picardo’s major concern was the not the criminal conduct of lawyers but the damage that its exposure would have on the reputation of Gibraltar.

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<sup>73</sup> Mr DeVincenzi; [A1302-A1303] “*deeply concerned about the implications of this information if true, given that the Chief Minister and others in the political and administrative spheres of Government were themselves partners of Hassans.*” (21) “*I recall mentioning to the Attorney General that, in the context of this nexus, it would be especially important to be alive to the possibility that those with an interest in the outcome of the NSCIS matter could seek to influence the investigative or legal process, either directly or indirectly. I was especially anxious that concern for the good reputation of the jurisdiction and its offices and institutions not be exploited by anyone with an incentive to conflate Gibraltar’s interests with their own. I particularly recall mentioning the importance of not regarding Gibraltar as a ‘PLC’ but as a community whose values transcend corporate ones, even if it was important not to be naïve about the need to safeguard Gibraltar’s economic well-being and international standing*” (22)

<sup>74</sup> [16/166/18]

<sup>75</sup> [16/260/22]

<sup>76</sup> [16/194/3]

- 33.4. As to whether he could intervene in respect of the senior partner of the firm where Mr Picardo was a partner, Hassans, Mr Picardo said “*It is not possible for me to delegate to another the protection that I would have afforded to senior partners and lawyers of other firms to deploy in respect of James Levy. It had to be me*”.<sup>77</sup>
- 33.5. Mr Picardo was motivated to protect Mr Levy because he was “*Gibraltar’s biggest rainmaker*” and “*one of the greatest sources of business for the financial centre*”<sup>78</sup>;
- 33.6. Mr Picardo also did not consider that intervening in a police investigation where the suspect was a friend necessarily crossed a red line, because of how small Gibraltar is.<sup>79</sup>
- 33.7. Mr Picardo admits he was motivated to prevent the RGP examining Mr Levy’s phone because it contained the information of Mr Levy’s many international, very high net worth clients, who were “*without the protection of a production order*”.<sup>80</sup> This disregards that the RGP would have safeguarded any legally privileged material by following approved practices with the appointment of an independent lawyer who would have sifted out any legally privileged material. But more simply, it is not the Chief Minister’s role to shield Mr Levy’s and Hassans’ high net-worth clients from a police investigation.
34. Mr Picardo’s apparent belief that he is entitled to involve himself in any police investigation raising “*jurisdictional*” issues, i.e. relating to the reputation of Gibraltar (referred to below as his ‘**Jurisdiction Excuse**’), is really an attempt to give himself licence to circumvent constitutional red lines in one particular investigation which related to his close friend and business partner, Mr Levy:
- 34.1. Mr Picardo’s major concern was to protect Mr Levy and Hassans from a criminal investigation. His references to protecting Gibraltar as a “*jurisdiction*” are just a way of saying that protecting Mr Levy, Hassans and his own position equates to protecting Gibraltar.
- 34.2. Equating the personal interests of powerful individuals in a jurisdiction with the interests of the jurisdiction itself is a recipe for corruption. This is because any action to protect those individuals can be justified as protecting ‘the jurisdiction’.

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<sup>77</sup> [16/195/9]

<sup>78</sup> [16/300/23]

<sup>79</sup> [16/92/1] “*In the circumstances in which one deals with friends, there may be certain red lines that one needs to observe, but in Gibraltar, as you will know, we very often deal with friends when we are dealing professionally, not least in this room, I may hasten to add.*”

<sup>80</sup> [16/302/4]

The ends will always justify the means, and the individuals will always be protected.

- 34.2.1. Amongst the senior government and law officials, only Mr DeVincenzi seems to have grasped this at the time: he says he was “*especially anxious that concern for the good reputation of the jurisdiction and its offices and institutions could not be exploited by anyone with an incentive to conflate Gibraltar’s interests with their own*”.<sup>81</sup>
- 34.3. Mr Picardo plainly believes that what is bad for Mr Levy and Hassans is bad for Gibraltar. He sees his job as prevent bad things happening to Gibraltar, and therefore his duty is to prevent bad things happening to Mr Levy and Hassans. Mr Picardo is unable to separate his, Mr Levy’s and Hassans’ interests from those of Gibraltar. Indeed, he did not at any point in his evidence attempt to do so.
- 34.4. Mr Picardo’s Jurisdiction Excuse is self-serving, perhaps even invented for this Inquiry to justify his actions relating to Mr Levy, and takes no account, and indeed ignores, the fact that Gibraltar’s Constitution, in common with liberal democracies worldwide, gives politicians in general, and the Chief Minister in particular, no role in operational policing;
- 34.5. Mr Picardo’s Jurisdiction Excuse is obviously open to abuse because it dissolves the constitutional separation of powers between the Governor (who has ultimate responsibility for the RGP), the Chief Minister (who has no role in operational policing) and the GPA (which exists to protect the operational independence of the RGP);
- 34.6. Mr Picardo’s stated belief that he could intervene in an operational police matter even when the suspect was the senior partner of his own law firm, Hassans, and a close friend, because he could not delegate the “*protection*” is again self-serving and an attempted justification for removing the red lines in the Constitution and Ministerial Code (relating to conflicts of interest) which exist for good reasons. It also demonstrates his complete failure to separate out his own private interests, the interests of Hassans, the interests of Mr Levy and the interests of Gibraltar;
- 34.7. Mr Picardo plainly believed that prominent members of the Gibraltar community such as Mr Levy should be treated differently – in effect more leniently – than non-prominent members of the community.

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<sup>81</sup> [A/1302] para. 22

- 34.8. It is important that Mr Picardo intervened in the investigation of Mr Levy without knowing what evidence the police had of any criminal offences he may have committed. This demonstrates that Mr Picardo’s primary concern was protecting Mr Levy from the RGP investigation, regardless of any evidence held against him, or whether he had in fact committed a criminal offence.
- 34.9. Moshe Levy recalled that Mr Picardo commented at a meeting with him and Mr Baglietto “*if the RGP could treat a leading silk in this way, how had they been treating less prominent members of the general population*”<sup>82</sup>. In oral evidence, Mr Picardo said that this “*rings a bell with me*” and this was “*definitely the thing I was saying to Lewis and to others*”<sup>83</sup>. The clear implication is that Mr Picardo expected a leading silk to have been treated differently – and indeed more leniently – than members of the general population.
- 34.10. Mr Picardo attempted to justify his obviously inappropriate intervention in Mr Levy’s case by citing a supposed wider principle which is not supported by evidence that Mr Picardo has acted similarly in the case of any other individual who has been under RGP investigation.
- 34.11. In oral evidence, Mr Picardo made a number of references to Mr McGrail informing him of the RGP’s intentions to execute a search warrant on another lawyer.<sup>84</sup> This is a false analogy and simply proves the point that the situation involving Mr Levy was unique. Mr McGrail’s evidence is that he approached Mr Picardo for support relating to the creating of a multi-agency team to deal with the investigation of a large money laundering operation which included a lawyer as one of the suspects involved.<sup>85</sup> Mr McGrail wrote to Mr Picardo as well as various other politicians and officials including Mr Llamas, the then MoJ, the Financial Secretary, the Collector of Customs and others informing of “*a complex money laundering investigation involving criminality of a cross-border nature*”.<sup>86</sup>

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<sup>82</sup> Mr Llamas statement, para. 9a [REF]

<sup>83</sup> [16/251/14]

<sup>84</sup> E.g. [16/168/19]

<sup>85</sup> [165] para. 10

<sup>86</sup> [B1060]; see also Mr McGrail’s oral evidence at [6/218/24]

***(viii) Mr Picardo knew Mr Levy could be a suspect prior to 12<sup>th</sup> May 2020***

35. Mr Picardo accepted in oral evidence that if he had been told Mr Levy was a suspect, “*it might have made my intervention inappropriate*”.<sup>87</sup> This is as close as he came in this Inquiry to admitting any of his actions might have been inappropriate.
36. Mr Picardo knew Mr Levy was a ‘person of interest’ to the investigation from a year before the search warrant was executed, and was in regular communication with him about this. He also must have been aware that Mr Levy was potentially suspected of a crime or crimes:
- 36.1. Mr Picardo knew about Mr Levy being a person of interest from 13<sup>th</sup> May 2019 when he was informed of this at a meeting.<sup>88</sup> “*Person of interest*” was not defined consistently by the RGP, as was clear from the oral evidence, however as Mr Picardo accepted it could mean “*neither fish nor foul, neither suspect nor witness*”<sup>89</sup> – in other words, it meant that it was possible that Mr Levy was implicated. This possibility should have caused Mr Picardo at the least to exercise caution as to not interfering or being seen to have interfered with the investigation.
37. In any event, Mr Picardo is likely to have been aware that Mr Levy thought he was suspected of a crime prior to 12<sup>th</sup> May 2020:
- 37.1. Mr Picardo had been in touch with Mr Levy about the fact that he was a person of interest on a “*very large number of occasions*” prior to 12<sup>th</sup> May 2020<sup>90</sup>. Mr Picardo told him that he “*was sure the investigation would exonerate him*”.
- 37.2. The fact that Mr Picardo saw it as necessary to assure Mr Levy that he would be exonerated raises the strong inference that Mr Levy and/or Mr Picardo believed he was being accused of a crime or crimes, and told Mr Picardo the same.

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<sup>87</sup> D16/207/20

<sup>88</sup> [Mr Llamas1/16-18; A274-A275] Mr Llamas: “[at the meeting of 11<sup>th</sup> May 2019, which Mr Picardo attended] Mr McGrail confirmed that the law firm “Hassans”, the partners of which include the Chief Minister, held shares in that company. He also said that Mr James Levy CBE QC, the senior partner of Hassans, was mentioned in communications with the three suspects and that he was potentially a person of interest to the investigation.”; also confirmed by Mr McGrail in [Mr McGrail1/18; A5]

<sup>89</sup> [17/80/1]

<sup>90</sup> [Mr Picardo3/5; A233]: “I recall that I discussed with Mr James Levy KC on a very large number of occasions the fact that the RGP had suggested that he might be a person of interest in the investigation. He raised this with me constantly when I spoke to him on other matters. I consistently replied to him that I was sure that the investigation would exonerate him given that, from what I knew of him, I was sure that he would not have acted in a manner which was contrary to law.”



**E. 12<sup>th</sup> May 2020: All hell breaks loose**

**(ix) *Mr Picardo knew Mr Levy was likely to be a suspect by the time he texted Mr McGrail at 12:34pm on 12<sup>th</sup> May***

38. By the time he called Mr McGrail into the meeting of 12<sup>th</sup> May 2020, Mr Picardo knew that Mr Levy was, or was likely to be, a suspect:

38.1. Mr Picardo claimed in oral evidence that on 12<sup>th</sup> May when he met Mr McGrail and Mr Llamas he was “*not labouring under the apprehension that I was intervening in respect of somebody who was a suspect*”<sup>91</sup>.

38.2. However, Mr Picardo also said in oral evidence that when he replied to Mr McGrail’s WhatsApp message informing him that the search warrant was being executed<sup>92</sup>, “*search warrants are not executed against people who are not suspects. By that stage I was starting to become concerned that he might be a suspect*”.<sup>93</sup>

38.3. Therefore, by his own admission, at the point when Mr McGrail informed Mr Picardo of the search warrant being executed, by text at 12:25pm, Mr Picardo was concerned that Mr Levy might be a suspect. This is also the only reasonable explanation for him replying at 12:34 “*[g]iven my close personal relationship with Mr Levy, I won’t comment further*”. If Mr Picardo did not believe Mr Levy was potentially a suspect, he would not have said this.

38.4. It was at this point, at the latest, that the ‘red line’ which precluded the Chief Minister becoming involved in the investigation should and would have been apparent to Mr Picardo. And it was at this point that he decided to cross it.

38.5. Moreover, Mr Levy called Mr Picardo when he was on his way to the Hassans office.<sup>94</sup> Mr Picardo recalled in oral evidence that in his conversation with Mr Levy on 12<sup>th</sup> May, Mr Levy said “*How can they believe that I would be involved in anything that's untoward?*”<sup>95</sup>

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<sup>91</sup> [16/207/22]

<sup>92</sup> [A191] “*Given my close personal relationship with Mr Levy, I won’t comment further*”

<sup>93</sup> [16/168/9]

<sup>94</sup> [8/157/6]

<sup>95</sup> [16/239/12]

**(x) *The 12<sup>th</sup> May meeting between Mr Picardo, Mr Llamas and Mr McGrail was an inappropriate interference with the RGP investigation***

39. It is important context to Mr Picardo's actions on 12<sup>th</sup> May that he was unconcerned by, or reckless as to, whether or not Mr Levy had committed a crime. He formed a concluded view on the propriety of the search warrant immediately upon hearing about it despite (a) having no expertise or experience in criminal law or police investigations, (b) not having seen the underlying evidence:

39.1. On 12<sup>th</sup> May, when Mr Picardo spoke to Mr Levy, he believes he perhaps said “*you’ve got to challenge this... It won’t stand... if you put this through the ringer you’ll be able to show that it’s been improperly obtained. I’m sure they will never be able to justify the suggestion that you would destroy evidence*”.<sup>96</sup>

39.2. Mr Picardo's concluded view on the propriety of the search warrant is no surprise because he had expressed his view on Mr Levy's innocence repeatedly to Mr Levy in the preceding months;

39.3. Mr Picardo did not at any point alter this view;

40. On 12<sup>th</sup> May 2020, after hearing about the search warrant against Mr Levy, Mr Picardo immediately and inappropriately interfered with the criminal investigation in a number of ways:

40.1. When Mr McGrail told Mr Picardo that a search warrant was to be executed against Mr Levy, Mr Picardo immediately texted Mr McGrail saying it was a “*bad decision*” but he would not “*comment further*” due to his friendship with Mr Levy.<sup>97</sup>

40.1.1. Even at that point, and despite his apparent acknowledgement of a conflict of interest, and being concerned that Mr Levy was a suspect, Mr Picardo expressed a clear negative opinion about the RGP's actions.

40.2. Following the text, Mr Picardo exploded in anger and called Mr McGrail to a meeting with Mr Llamas where he berated him not for lying to him but for the RGP's actions in executing a search warrant against Mr Levy. Mr McGrail

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<sup>96</sup> [16/240/4]

<sup>97</sup> [A191]: “*I think that is a bad decision. A search warrant should only have been sought if you believed that the person in question was not going to cooperate and will try destroy evidence. If, as you say, you are hoping for cooperation, especially in a case involving a senior Silk and head of Gibraltar's largest legal firm, you should, in my view, first have sought to contact that person and obtain cooperation. Given my close personal relationship with Mr Levy, I won't comment further.*”

describes Mr Picardo's "*flared nostrils, disjointed face*" and that he "*really let rip*"<sup>98</sup>

40.2.1. The impact of the Chief Minister's actions was so great that Mr McGrail is still feeling them today, as demonstrated by the emotion he showed when giving evidence about the meeting.<sup>99</sup>

40.3. Mr Picardo misrepresents the position when he says that he raised this matter with Mr McGrail "*after the event*"<sup>100</sup> – in fact, he raised it whilst the RGP were attempting to execute the search warrant:

40.3.1. Mr Picardo's oral evidence on this contradiction was nonsensical: he said that Mr McGrail "*was telling me he'd already executed the warrant*"<sup>101</sup>, whereas Mr McGrail's message said "*detectives are executing a search warrant at Hassans*" (emphasis added).

40.3.2. When challenged, Mr Picardo shifted his position to saying that "*the damage had been done because they were executing a search warrant in a law firm in Gibraltar, and that could lead to serious reputational damage for Gibraltar*".<sup>102</sup>

40.3.3. Later in oral evidence he reversed his position again, saying "*I approached this on the basis that the warrant had been executed*".<sup>103</sup>

40.3.4. By these incompatible statements, Mr Picardo unsuccessfully attempted to justify the clear assertion in his written evidence that his intervention was "*after the event*". It demonstrably was not, and he must have known it was not. This is self-serving and demonstrates Mr Picardo's tendency to misrepresent the position to justify his actions.

40.4. At the meeting on 12<sup>th</sup> May 2020, whilst the search warrant was being executed, Mr Picardo (supported by Mr Llamas) inappropriately and angrily<sup>104</sup> berated Mr

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<sup>98</sup> [6/196/15]

<sup>99</sup> [6/197/1]

<sup>100</sup> [Mr Picardo2/11.2; [A225]

<sup>101</sup> [16/181/13]

<sup>102</sup> [16/181/24]

<sup>103</sup> [16/198/20]

<sup>104</sup> Mr Picardo1/51 [A193] "*I was very angry about this turn of events and Mr McGrail's attitude in the meeting and used robust language throughout the meeting, very likely laced with expletives*"; Mr Pyle1/1 B1453, Mr Pyle email to FCDO: "*The CM was visibly angry during our meeting on Friday and is clearly worried at the political, financial and sovereignty damage the fatal collision incident could do to Gibraltar.*"; Mr Pyle1/7 [C4235] "*without doubt, the CM has the bit between his teeth and wants the Commissioner removed from his position as soon as possible*"

McGrail for the RGP's actions<sup>105</sup>. The following account, which is taken from Mr McGrail's evidence, has not been seriously disputed by Mr Picardo or Mr Llamas:

- 40.4.1. Mr Picardo expressed his anger and dissatisfaction at the fact that warrants had been executed against Mr Levy, who was a senior silk, an important Jewish communal figure, an officer of the court and the head of the biggest law firm in Gibraltar;
- 40.4.2. Mr Picardo told Mr McGrail he was managing the investigation "*very wrongly*";
- 40.4.3. Mr Picardo said that he hoped Mr McGrail was right and he was wrong as there would be "*consequences*" if he was found to be right;
- 40.4.4. Mr Picardo asked why the RGP were not focussing on Chris Miles, a barrister, rather than Mr Levy;
- 40.4.5. Mr Picardo expressed a critical view of the complainant in the case, James Gaggero, and said that the RGP was allowing itself to be used to pursue what was in essence a commercial dispute;
- 40.4.6. Mr Picardo expressed concern that the actions carried "*serious implications*" politically given that the Financial Secretary, himself and others all being partners of Hassans, and said that the VOX, the right-wing party in Spain, would likely capitalise on the issue;
- 40.4.7. Mr Llamas told Mr McGrail that he had "*betrayed*" him because the action carried out by the team had not been agreed by him;
- 40.4.8. Mr Llamas said words to the effect of "Ian, I liked you and how you worked, but as from today I cannot entertain you again"

41. Mr Picardo did not expressly instruct Mr McGrail to take any particular action relating to the search warrant, however the effect of the meeting was that he very plainly expressed what he considered the "right" approach to the Op Delhi investigation should be, and threatened "consequences" if the RGP continued with its current approach:

- 41.1. By forcefully expressing his view about an operational matter, and threatening consequences if he was proven right, and the RGP proven wrong, Mr Picardo crossed the red line into effectively instructing the police to take certain steps

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<sup>105</sup> [Mr McGrail Exh. 3; B74]: See Mr McGrail's notes of the same date, emailed to himself at 22:05 on 12<sup>th</sup> May 2020 and then, slightly amended, at 12:20 on 13<sup>th</sup> May 2020

within an investigation, a line which Mr Picardo accepted in oral evidence should “*absolutely not*” be crossed.<sup>106</sup>

- 41.2. It is no surprise that following this angry meeting, where Mr Picardo expressed his strong preference and threatened vague “*consequences*”, and his subsequent text messages to the AG suggesting methods by which the warrant could be undermined, the AG and DPP proceeded to attempt to limit the effect of the search warrant and the impact of the investigation on Mr Levy.
42. The Attorney General eventually accepted in oral evidence that Mr Picardo should not have commented further after replying to Mr McGrail’s text about the warrant on 12<sup>th</sup> May, and that the meeting should not have happened:
- 42.1. Mr Llamas agreed in evidence that on 12<sup>th</sup> May, at the point where Mr McGrail texted both he and Mr Picardo to inform them about the warrant against Mr Levy being executed, that at that point Mr Picardo “*simply could not*” comment further because of his personal connections to the investigation.<sup>107</sup>
- 42.2. In relation to the meeting on 12<sup>th</sup> May, Mr Llamas accepted “*maybe that was an exchange that should not have happened*”<sup>108</sup> and that night he felt “*very uncomfortable*” about it, albeit it was likely that he did nothing about it.<sup>109</sup>
- 42.3. Mr Llamas accepted that “*perhaps*” Mr Picardo should have stayed 100 miles away from the Mr Levy warrant.<sup>110</sup>
- 42.4. Mr Llamas accepted that that he failed to assist Mr Picardo in drawing the boundaries, the lines or even the red lines in relation to the Op Delhi investigation.<sup>111</sup>
- 42.5. Mr Llamas also failed to act on the prescient warnings by Mr DeVincenzi about him not succumbing to pressure from the Chief Minister (see paragraph 89 below).

**F. Mr McGrail did not mislead Mr Picardo or Mr Llamas at the 12<sup>th</sup> May 2020 meeting**

43. It is clear from the balance of evidence that during the course of an angry and fractious meeting (which Mr Picardo should not have called in the first place) Mr Picardo and Mr

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<sup>106</sup> [16/91/10]

<sup>107</sup> [12/176/19]

<sup>108</sup> [12/81/19]

<sup>109</sup> [12/83/21]

<sup>110</sup> [12/177/4]

<sup>111</sup> [12/177/12]

Llamas misinterpreted a comment by Mr McGrail to the effect that the DPP had been consulted on the grounds to deal with Mr Levy.

44. Mr McGrail may have said the investigating officers went to the “AG’s chambers” as this had been (until recently) the term commonly used to mean the DPP’s office.<sup>112</sup> It is absurd to suggest that lied about the Attorney General advising on the warrant *to the Attorney General*. The fact that Mr Picardo and Mr Llamas both now say that he did demonstrates the extent to which they are willing to exaggerate the ‘dishonesty’ of Mr McGrail.
45. Mr McGrail accurately told Mr Picardo and Mr Llamas that the DPP had been advising the investigating team throughout the course of the investigation, and that he was privy to the evidence involving Mr Levy and he agreed with his classification as a suspect.<sup>113</sup> Mr McGrail had requested that obtain the DPP’s advice on the plan to treat Mr Levy as a suspect, and thereafter take operational action against him, and had been informed by Mr Richardson that the DPP had given the “green light”.<sup>114</sup> The DPP had been told about the search warrant and had not raised any objection, certainly not to Mr McGrail’s knowledge. This is why he told Mr Picardo and Mr Llamas that the grounds to deal with Mr Levy had been consulted with the DPP. That was exactly what he understood to be the position.
46. This was wrongly interpreted by Mr Picardo and Mr Llamas as Mr McGrail saying that the DPP had advised explicitly on the search warrant. This is supported by the balance of evidence:
  - 46.1. There are two pieces of relevant documentary evidence from the same day as the 12<sup>th</sup> May meeting, both of which support Mr McGrail’s recollection.
    - 46.1.1. Mr McGrail’s email to self, sent on the same day, hours after the meeting, and prior to him knowing that Mr Picardo was accusing him of having lied, includes that Mr McGrail told Mr Picardo and Mr Llamas that “all *the grounds [sic] to deal with Mr Levy had been consulted with DPP.*<sup>115</sup>
    - 46.1.2. Mr Llamas’s text message to Mr Picardo on 12<sup>th</sup> May 2020 at 15:43 in which he states, “*he certainly gave us the impression that [the search warrant] decision was sanctioned by DPP*” (emphasis added).<sup>116</sup>

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<sup>112</sup> [Mr McGrail3/115; A166]

<sup>113</sup> [Mr McGrail3/117; A166]

<sup>114</sup> [6/174/7]

<sup>115</sup> [B76]

<sup>116</sup> [B1417]

- 46.2. By contrast, the first time that the allegation that Mr McGrail said “*that he had obtained and executed the search warrant against Mr Levy in reliance of legal advice from the Director of Public Prosecutions who had confirmed that it was appropriate to seek such a warrant and proceed in that way*” is in Mr Picardo’s letter to the GPA of 5<sup>th</sup> June, sent 24 days after the 12<sup>th</sup> May meeting. This letter was a response to the letter of Gomez & Co. of 29<sup>th</sup> May 2020 which alleged that Mr Picardo’s real reason (referred to in the letter as ‘the Vanishing Reason’) for wanting to oust Mr McGrail was the warrant against Mr Levy. It was only after this allegation was made that Mr Picardo raised the “lie” in writing for the first time.
- 46.3. Mr Picardo had multiple opportunities before 5<sup>th</sup> June 2020 to set out the detail of the allegation that Mr McGrail had misled him, in documents he either wrote or assisted in writing. If the “*lie*” was as explicit as Mr Picardo now claims it to be, and was the true, central reason for ousting Mr McGrail, Mr Picardo would surely have included it in **(a)** the lengthy text message to Mr Pyle on 14<sup>th</sup> May setting out the reasons why he was “*starting to lose confidence*”<sup>117</sup>, **(b)** his detailed note to Mr Pyle of the issues as he saw them under s.34 of the Police Act in an email of 17<sup>th</sup> May<sup>118</sup>, **(c)** his detailed note of his and Mr Pyle’s meeting with Dr Britto which took place on 18<sup>th</sup> May<sup>119</sup> (which, although based on Mr Picardo’s email of 17<sup>th</sup> May, removes the explicit reference to the “*James Levy QC warrants*”)<sup>120</sup>, and **(d)** in the 22<sup>nd</sup> May GPA letter which Mr Picardo extensively edited<sup>121</sup>. The “lie” and Op Delhi were not mentioned in any of these documents.
- 46.4. The clear inference is that Mr Picardo knew he could not include the real reason for Mr McGrail being ousted, which was that the RGP had attempted to execute a search warrant against Mr Levy, in the written record, because it was an invalid and inappropriate reason.
- 46.5. Mr Picardo’s explanations in oral evidence for not including the “lie” or mention of Op Delhi in the contemporaneous documents are implausible and/or absurd:

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<sup>117</sup> [B1417]

<sup>118</sup> [C3949] – see item 4, re “integrity”: “*I have shared with you also the reasons this week why I have lost confidence in the probity and integrity of the Commissioner himself (re James Levy QC warrants)*”

<sup>119</sup> [B1360]

<sup>120</sup> Compare [C3949] “*I have shared with you also the reasons this week why I have lost confidence in the probity and integrity of the Commissioner himself (re James Levy QC warrants)*” with [B1360] “*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.*”

<sup>121</sup> [B1366]

- 46.5.1. Mr Picardo’s explanation, in oral evidence, of why he did not refer to the specifics of the Mr Levy warrant in his text to Mr Pyle on 14<sup>th</sup> May, that “*it’s already a fairly lengthy message, and typing these things with two thumbs takes time*”<sup>122</sup> is implausible; the message contained detail about all of the other issues which Mr Picardo raised, and he has repeatedly stated that the 12<sup>th</sup> May meeting was the most important to him;
- 46.5.2. The note Mr Picardo drafted of the 18<sup>th</sup> May meeting between him, Mr Pyle and Dr Britto refers to “*another event occurring last week which had left him also in a situation where the Commissioner had expressly misled him*”.<sup>123</sup> There is no mention of the warrant, Mr Levy, the DPP’s advice or any particulars. Mr Picardo describes this as an “*allusion*” to the events of 12<sup>th</sup> May, however if it is then it would be impossible for Dr Britto and the GPA to know this from the text.<sup>124</sup>
- 46.5.3. Mr Picardo’s claim in oral evidence that he did not have the time to include the detail of Op Delhi in the note<sup>125</sup>, despite it being five pages in length and around 2,000 words long, and referring to other matters – which were of far less concern to him – in substantial detail. If “*the lie*” was the key reason why he had lost confidence in Mr McGrail, the claim that it was not set out in the five-page note which he himself drafted because he did not have time to do so is implausible to the point of being absurd.
- 46.5.4. Mr Picardo’s explanation for not referring to the search warrant or the events of 12<sup>th</sup> May in the GPA’s detailed letter of 22<sup>nd</sup> May was that he did not “*think Mr McGrail needed the position of 12 May to be made clearer*” as he was “*fully aware of that*”<sup>126</sup> and that the warrant was “*vox populi in Gibraltar*”<sup>127</sup> and therefore did not need to be referred to. Again, this is implausible to the point of being absurd. Of all of the issues referred to in the letter, Op Delhi was the only one where there is no evidence of press or other public knowledge relating to it.
- 46.6. Mr Picardo is an experienced lawyer and King’s Counsel; by far the most likely explanation as to why he would not include the detail of the Mr Levy warrant and

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<sup>122</sup> [19/310/6]

<sup>123</sup> C3991

<sup>124</sup> [17/30/7]

<sup>125</sup> [17/9/5]

<sup>126</sup> [17/32/22]

<sup>127</sup> [17/33/9]



the “lie” is that he chose not to do so. The question for the Inquiry is why Mr Picardo chose not to include the “*vanishing reason*” until Mr McGrail raised it explicitly through his lawyer in the 29<sup>th</sup> May letter.

46.7. We submit the two most likely reasons were that (a) he knew that his intervention in respect of the Mr Levy warrant was improper and therefore sought to exclude it from the written record, and (b) it was only after he (apparently) discovered from Mr Llamas that the DPP had not strongly advised, or advised at all, against the warrant that he needed to concoct a story to justify Mr McGrail’s ousting, which was by stage already well in progress.

46.8. When Mr Llamas wrote to the GPA on 5<sup>th</sup> June he stated that “*I never said that the COP lied to me*”<sup>128</sup>, and did not refer to the so-called “*lie*”. This raises an inference that Mr Llamas did not agree, at that stage, with Mr Picardo that Mr McGrail had clearly lied to them at the meeting – it was, after all, only his “*impression*” on 12<sup>th</sup> May, and when he asked Mr McGrail about it at the meeting of the 13<sup>th</sup> May, he said it was Mr Picardo, not he, who thought he had been lied to. It was only over two years later, in his first affidavit to this inquiry dated 24<sup>th</sup> June 2022, that Mr Llamas first said anywhere (on record at least) that Mr McGrail “*lied*” to him by telling him and Mr Picardo that the DPP had advised to go ahead with the warrant.<sup>129</sup>

46.9. The AG’s wording in his 5<sup>th</sup> June letter is: “*Mr McGrail then said that he had been taking advice from the DPP and that the DPP had advised him that the RGP should proceed by way of search warrant*”. This is materially the same to that in the Chief Minister’s 5<sup>th</sup> June letter, and also makes the same error as Mr Picardo does in that letter of claiming that Mr McGrail said on 12<sup>th</sup> May that he had sought advice from the DPP and he had obtained that advice – an error which Mr Picardo attributed in oral evidence to “*personification*”<sup>130</sup>. It is curious that both Mr Llamas and Mr Picardo make the same error, despite claiming they did not coordinate their responses.

46.10. Additionally:

46.10.1. Mr Picardo and Mr Llamas had little knowledge and no expertise on criminal procedure Mr Llamas accepted on 15<sup>th</sup> May 2020 that he was

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<sup>128</sup> C4732

<sup>129</sup> “*Mr McGrail then said that he had been taking advice from the DPP and that the DPP had advised him that the RGP should proceed by way of search warrant. The Chief Minister and I told Mr McGrail that we found it very difficult to believe that he could have received such advice from the DPP*”

<sup>130</sup> [17/198/2]

*“learning criminal procedure on the hoof”*<sup>131</sup> and was *“not knowledgeable enough to speak on the criminal procedure”*<sup>132</sup>. Mr Picardo and Mr Llamas would not have known that it was not the DPP’s role to advise directly on the search warrant as this was an operational matter for the RGP, and so misinterpreted Mr McGrail’s statement;

46.10.2. Mr Picardo was so angry and emotional that it is unsurprising he misunderstood what Mr McGrail told him. Indeed, Mr Picardo accepted in oral evidence (in the context of Mr Levy’s extraordinary and unfounded accusation against Mr Richardson) that when someone is very emotionally affected they might make allegations which turn out to be spurious” and that *“you do not judge them and their record with you or anything else based on what happens in that period of heightened emotions”*<sup>133</sup>. He did not, of course, apply this principle to his angry meeting with Mr McGrail on 12<sup>th</sup> May;

46.10.3. Mr Picardo called Mr McGrail into the meeting with no forewarning, gave him no opportunity to prepare and did not invite the investigating officers. The meeting was angry and fractious, and it was the investigative team, not Mr McGrail, who had been advised by the DPP, and it is therefore no surprise if Mr McGrail’s words were open to misinterpretation by those who had little experience of the progress of a criminal investigation, or the DPP’s role in such an investigation.

46.11. Mr Picardo’s credibility has been seriously undermined by his evidence to this Inquiry, as highlighted at various points in these submissions:

46.11.1. That he privately met and colluded with Mr Levy and his team whilst Mr Levy was suspect of a criminal offence;

46.11.2. The fact that he shared confidential inside information about (what he thought was) the DPP’s advice with the subject of the advice;

46.11.3. His claim to have believed he could share the summary of the DPP’s advice with the criminal suspect and anyone else he liked;

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<sup>131</sup> [B272]

<sup>132</sup> [B292]

<sup>133</sup> [17/93/4]

- 46.11.4. His failure to correct the record with either Mr Pyle or Hassans when he found out that the DPP had not strongly advised against the warrant;
- 46.11.5. His failure to include any detail relating to the warrants against Mr Levy in the various documents he authored or edited between 12<sup>th</sup> May and 5<sup>th</sup> June, and the ridiculous implausible he provided for that failure;
- 46.11.6. His clear willingness to circumvent the universally accepted principles of public office and conflict of interest principles in order to protect Mr Levy and Hassans;
- 46.12. Mr Llamas’s credibility has been seriously undermined by his evidence to this Inquiry, as highlighted at various points in these submissions:
- 46.12.1. Mr Llamas said in oral evidence that he realised the error re the DPP’s advice on the 13<sup>th</sup> May.<sup>134</sup> He claims to have corrected the error with the Chief Minister<sup>135</sup> but there is no contemporaneous evidence that he did so. He did not mention the error, or refer to let alone explain the text message, in either of his Inquiry affidavits. He did not correct the error with Hassans, even though he saw it repeated in the 15<sup>th</sup> May 2020 Hassans letter to the RGP, and told the RGP he assumed it came from the Chief Minister (which he must have known because he claimed to have realised it was an error on the 13<sup>th</sup>, and will have known only he and Mr Picardo knew about it).
- 46.12.2. It is not credible to state, as both Mr Llamas<sup>136</sup> and Mr Picardo<sup>137</sup> did in oral evidence, that the error made no difference.
- 46.12.3. Mr Llamas gave oral evidence to this Inquiry that the decision not to ask Mr Levy to give an interview under caution was “*reached by consensus*”, claiming (inaccurately) “*I think the idea originates from Mr Richardson*”.<sup>138</sup> However, in the note which he sent to his lawyers on 3<sup>rd</sup> June 2020, recently disclosed, he states that “[t]he only issue which DPP and I have persuaded the CoP to do is to “*park*” the interview under caution of Mr Levy and instead accept a written statement from him.” The contrast is important, as it demonstrates what

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<sup>134</sup> [11/243/23]

<sup>135</sup> [11/244/7]

<sup>136</sup> [11/220/20]

<sup>137</sup> 16/210/24 ?

<sup>138</sup> [12/149/14]

Mr Llamas thought, at the time, he and the DPP had achieved at the meeting of 15<sup>th</sup> May.

46.12.4. Mr Llamas has repeatedly stated, in his 5<sup>th</sup> June 2020 letter<sup>139</sup> and in his first Inquiry affidavit, that it was a “*clear understanding*” with Mr McGrail and “*clear beyond peradventure*” that “*nothing would happen until we met again*” in relation to Op Delhi. However, in oral evidence he accepted this was, in fact, an “*implication*”, which was exactly what he was told at the time was Mr DeVincenzi’s recollection of the meeting (see paragraph 18.8 above).

46.12.5. In his 5<sup>th</sup> June 2020 letter to the GPA<sup>140</sup>, Mr Llamas claimed that he had discussed the planned warrant against Mr Levy at his meeting with Mr McGrail on 7<sup>th</sup> April 2020 and told Mr McGrail not to proceed with “*any further action*” without his agreement. However, in oral evidence he said that the search warrant was not in his mind or his concern on 7<sup>th</sup> April 2020.<sup>141</sup> He also accepted in oral evidence that what he now says was a mistake bolstered his argument that he had clearly agreed with Mr McGrail not to take any steps including the execution of the warrant.<sup>142</sup>

46.12.6. Mr Llamas misled (by omission) Mr McGrail and the others present at the meeting on 15<sup>th</sup> May 2020 when he did not reveal that he had spoken to Mr Baglietto despite the topic being explicitly raised.

46.13. These factors further support the conclusion that during an angry and fractious meeting, Mr Picardo and Mr Llamas misunderstood what Mr McGrail was telling them.

**(xi) *The DPP did not strongly advise against obtaining a search warrant against Mr Levy***

47. One of the key reasons Mr Picardo cited to Mr Pyle for losing confidence in Mr McGrail was that he “*went against the advice of the DPP*”<sup>143</sup>, which was also cited to the RGP in Hassans’ letter of 15<sup>th</sup> May 2020. This was untrue, and the fact that it was untrue was known to both Mr Picardo and Mr Llamas within days of the mistake being made. That the mistake was never corrected has important implications.

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<sup>139</sup> [C4733]

<sup>140</sup> [C4732] “*We also discussed in the terms that I have described above, the proposal to obtain and execute a search warrant against Mr Levy.*”

<sup>141</sup> [11/197/16]

<sup>142</sup> [12/112/2]

<sup>143</sup> [Mr Pyle1/26.6; A256]

48. Mr Rocca did not ‘strongly advise’, nor advise at all, against the RGP against obtaining a warrant.<sup>144</sup>
- 48.1. The false information originated from a text message Mr Llamas sent to Mr Picardo on 12<sup>th</sup> May 2020 at 15:41: “*Spoken to DPP. He is categorical that whilst he told RGP that an interview with Mr Levy would likely be necessary, he strongly advised against a search warrant.*”<sup>145</sup>
- 48.2. Mr Llamas admitted in oral evidence that he had “*got confused*” about what he reported to Mr Picardo on 12<sup>th</sup> May and this is not what the DPP told him.<sup>146</sup>
49. Mr Llamas’s error, and the failure to correct it, has implications in relation to what Mr McGrail is likely to have said about the DPP’s advice on 12<sup>th</sup> May:
- 49.1. Mr Picardo did not put what he now claims to have happened in writing until 5<sup>th</sup> June, almost 4 weeks later.<sup>147</sup>
- 49.2. In the interim, the AG had wrongly reported to the Chief Minister that the DPP had advised against the warrant (the implication being that the RGP had proceeded against the advice of the DPP).
- 49.3. The error founded the allegation of dishonesty (because at the least Mr McGrail had culpably omitted to tell Mr Picardo and Mr Llamas at the 12<sup>th</sup> May meeting), and of reckless and possibly improper conduct of the RGP, who had apparently gone against the advice of the DPP on an important and highly sensitive matter: a warrant against one of Gibraltar’s most senior lawyers.
- 49.4. It was, therefore, a serious error. In oral evidence, Mr Picardo accepted that “*if they had acted contrary to advice of course it would be worse*”<sup>148</sup>, though he flip-flopped as to whether the area was material. He also suggested that “*advised against*” and the “*absence of advice*” are just a “*form of words*”<sup>149</sup>. This is an obviously absurd proposition which Mr Picardo must know is untrue.

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<sup>144</sup> Paul Richardson 3; [Mr Rocca1/12] [A1297]: DPP believed that a production order would have been the “*more suitable and appropriate*” way to proceed but that “*these were operational matters for the RGP and the RGP’s position would be defensible if those actions were subjected to a judicial review*”;

<sup>145</sup> [B1417]

<sup>146</sup> [11/215/24]

<sup>147</sup> [C4734] “*the COP stated to me in explicit terms ... that he had obtained and executed the search warrant against Mr Levy in reliance of legal advice from the Director of Public Prosecutions who had confirmed that it was appropriate to seek such a warrant and proceed in that way*”

<sup>148</sup> 16/212/3

<sup>149</sup> [16/209/15]

- 49.5. Mr Picardo accepted in evidence that he would have known about the error within a maximum of 48 hours of 12<sup>th</sup> May.<sup>150</sup> The AG agreed the error would have been realised quickly<sup>151</sup>.
- 49.6. It is clear, however, that Mr Picardo had (a) on 15<sup>th</sup> May told Mr Pyle that Mr McGrail had “*gone against*” the advice of the DPP, and (b) by 15<sup>th</sup> May had also told this to one or both of Mr Baglietto and Mr Levy, with the result that Hassans included this in their letter of the same date.
- 49.7. In relation to Mr Pyle, this mistake formed part of the basis of his decision-making up to and including when Mr McGrail retired. He agreed in oral evidence that the error caused a fundamental flaw in the reasoning<sup>152</sup> and a serious flaw in the process leading to Mr McGrail’s retirement.<sup>153</sup>
- 49.8. As to Hassans, at no point was the allegation that the RGP had gone against the advice of the DPP withdrawn. There is no evidence that either Mr Picardo or Mr Llamas (the other person who knew about the error) at any point corrected the mistake with Hassans.
- 49.9. The timeline demonstrates that Mr Picardo is likely to have chosen not to correct the serious error, either with Hassans (e.g. Mr Baglietto/Mr Levy/Mr Llamas, with whom he was in regular contact), or with Mr Pyle, despite knowing it had been made:
- 49.9.1. He had a clear motive for not doing so: the allegations that Mr McGrail had gone against the strong advice of the DPP, and that Mr McGrail had failed to tell Mr Picardo and Mr Llamas this, were serious and were likely to influence the Governor to take action against Mr McGrail (he accepted it was serious).
- 49.9.2. Moreover, by not correcting the error with Hassans, this meant that the serious allegation made by Hassans on behalf of Mr Levy that the RGP had gone against the advice of the RGP remained live, to the benefit of Mr Levy.
- 49.9.3. It was dishonest for Mr Picardo not to correct the error, and misleading of both him and Mr Llamas not to refer to the error in their Inquiry affidavits.

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<sup>150</sup> [16/213/15] “*It was closer to the time. I think it was still in the 24/48 hours after that original meeting*”

<sup>151</sup> REF

<sup>152</sup> [16/201/11]

<sup>153</sup> [16/203/23]

49.10. A second implication is that it damages the credibility of what Mr Picardo eventually referred to as “*the lie*”, an allegation which was not put in writing until weeks later.

**(xii) Mr Picardo’s ‘belief’ that he could share the DPP’s advice with anyone he wanted is improper and absurd**

50. Mr Picardo repeatedly stated in oral evidence that he considered he could share any information he was given by the Attorney General, Mr McGrail or the RGP with Mr Levy and his lawyer, and anybody else he chose:

50.1. He did not consider any of the information he was provided by Mr McGrail or the Attorney General to be confidential<sup>154</sup>;

50.2. It was “*very likely*” he told both Hassans and Mr Levy “*as soon as I was told myself*” that (as he had been wrongly told by Mr Llamas) the DPP had advised the Commissioner against the making of the search warrant applications.<sup>155</sup>

50.3. Mr Picardo justified telling Mr Levy about (what he thought was) the DPP’s advice on the basis that (a) it was not sensitive information, (b) the defendant is entitled to know everything there is against him, (c) the RGP had gone outside their circle of privilege<sup>156</sup> and (d) the principle of “*open justice*” applied to the information.<sup>157</sup>

50.4. Mr Picardo also stated that he “*probably told everyone who talked to me about this one*”<sup>158</sup> and that “*I believe that I was able to share that information widely and I shared it widely*”<sup>159</sup> including to “*all and sundry*”<sup>160</sup>

51. Mr Picardo’s explanation of why he shared what he thought was the DPP’s advice to the RGP with Mr Levy, the criminal suspect, and his lawyer, demonstrates that Mr Picardo does not understand, or is wilfully blind to, the core responsibilities of public office:

51.1. As a lawyer with 30 years’ experience, a King’s Counsel and Chief Minister with (at the time) almost a decade of experience (his political career being twice as long), Mr Picardo must have understood that when the Attorney General shared

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<sup>154</sup> [16/243/14]: “*was I made privy to confidential information given to me on the basis that it was confidential information that I could not share with James Levy? The answer to all of those questions is: no.*”

<sup>155</sup> [16/263/20]

<sup>156</sup> [16/264/18] “*The defendant is entitled to know everything there is against him and if somebody has advised that something should not be proceeded with, shouldn’t it eventually be told to the defendant as unused material*”

<sup>157</sup> [16/267/17]

<sup>158</sup> [16/263/24]

<sup>159</sup> [16/266/22]

<sup>160</sup> [16/270/16]

a summary of the DPP's advice about a suspect in a live criminal investigation, he did so on a confidential basis;

- 51.2. Nobody else agreed with Mr Picardo's theory. The Attorney General agreed in oral evidence that it would not be proper for a suspect to be informed as to the DPP's advice on executive action to be taken against him.<sup>161</sup> The DPP stated that it would have been improper for him to divulge that information as a prosecutor to Mr Baglietto at that stage;<sup>162</sup>
- 51.3. Mr Picardo's claim that he believed he was entitled to share what he believed was the DPP's advice with the criminal suspect is highly implausible;
- 51.4. Mr Picardo's claim that he believed he was entitled to share what he thought was the DPP's advice with "*Mr Smith down Main Street*"<sup>163</sup>, i.e. whomever he pleased, is even more implausible and patently ridiculous;
- 51.5. Mr Picardo only admitted that it was he who shared what he thought was the DPP's advice after it became clear late in the Inquiry proceedings that it must have been he or Mr Llamas who shared the advice with Hassans, because only he and Mr Llamas were operating under the false impression that the DPP had advised against the warrant;
- 51.6. Mr Picardo's explanation that he felt entitled to share the advice with anyone because it was not confidential, and that in Gibraltar, unlike the UK, "*we believe that documents should be public as soon as possible*"<sup>164</sup> is therefore a self-serving, late and implausible excuse for conduct he must have known at the time was improper.
- 51.7. The Inquiry may consider that Mr Picardo's oral evidence to the Inquiry, that he believes he can share the DPP's advice with anyone, is so absurd that it is likely to be a lie, concocted in an attempt to justify improper conduct which could also reasonably be interpreted as perverting the course of justice.

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<sup>161</sup> [12/8/10]

<sup>162</sup> [10/118/2]

<sup>163</sup> [17/148/21]

<sup>164</sup> [17/299/14]



**G. Mr Picardo, Mr Llamas and Mr Rocca inappropriately intervened in the investigation of Mr Levy after 12<sup>th</sup> May**

***(xiii) The Chief Minister's inappropriate interventions***

52. Mr Picardo subsequently used his power and influence to (i) limit the exposure of Mr Picardo and Mr Levy to, and generally intervene in, the Op Delhi investigation, and (ii) remove Mr McGrail from post, supported by Mr Llamas. This included:

52.1. Mr Picardo and Mr Llamas exchanged messages about various options to use the AG's powers under the Constitution to discontinue the prosecution or take over the search warrant from the police.<sup>165</sup>

52.1.1. It was clear from these messages that Mr Picardo wanted the warrant to be undermined, overturned or for the Attorney General to take control of it from the RGP. It was also clear that the AG was not objecting to, and was positively engaging with, Mr Picardo's suggestions.

52.1.2. Mr Llamas accepted in oral evidence that by this point, on 17<sup>th</sup> May 2020, he "*perhaps*" should have told Mr Picardo he could not discuss the criminal investigation because Mr Picardo had a direct personal interest in the investigation.<sup>166</sup>

52.2. It stands to reason that Mr Picardo and Mr Llamas were, during this period, discussing the meetings and communications with Mr McGrail, Mr Richardson and Mr Rocca. The aims of these meetings were to limit Mr Levy's exposure to the SW and ensure his electronic devices were returned without being examined. Given how closely Mr Picardo and Mr Llamas worked, and the free exchange of text messages relating to the warrant, it is implausible that they were not discussing these meetings and coordinating their approach.

52.3. Mr Picardo said in oral evidence that he did not direct Mr Llamas as to his conduct at the meetings with Mr Llamas and the RGP as he "*wouldn't dare*".<sup>167</sup> However, it will have been obvious to Mr Llamas, from the meeting on 12<sup>th</sup> May and the

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<sup>165</sup> Lloyd DeVincenzi/19: shortly after the 13 May 2020 meeting with Mr McGrail and Mr Llamas, Mr Llamas "*raising briefly with me the applicable legal test or threshold for a nolle prosequi. The conversation was of an academic nature, and to the best of my recollection it was against the background of protecting the jurisdiction and the office of Chief Minister.*"; [Mr Picardo3/2; B1418]: In a text message on 18<sup>th</sup> May 2020 at 00:36, Mr Picardo refers Mr Llamas to s.59(2)(b) of the Gibraltar Constitution that the AG has power "*to take over and continue any such criminal proceedings that may have been instituted by any other person or authority*" – Mr Picardo proposes that a search warrant is a "*proceeding*"

<sup>166</sup> [12/88/13]

<sup>167</sup> [16/252/12]

messages (and presumably calls) which followed, what Mr Picardo's views and preferences were in relation to the warrant in particular and the investigation of Mr Levy more generally, and Mr Llamas is likely to have acted accordingly;

52.4. At the very least Mr Picardo's actions, and the ensuing fate of Mr McGrail, sent a clear message to the investigating officers that further action against Mr Levy would be punished;

52.5. Mr Picardo was in very regular communications and meetings variously with (a) Mr Levy<sup>168</sup>, (b) Mr Levy's son Moshe, who he appears to have met on 14<sup>th</sup> May 2020<sup>169</sup> shortly prior to first contacting Mr Pyle about him "*losing confidence*", and (c) Mr Levy's lawyer Mr Baglietto, including meeting with Mr Levy and Mr Baglietto at Mr Picardo's residence where they discussed the RGP's actions relating to Mr Levy and the mechanisms for removing Mr McGrail. In Mr Picardo's communications with Mr Baglietto and Mr Levy he:

52.5.1. offered advice on how to take action directly against Mr McGrail including proposing disciplinary sanctions to Mr Baglietto<sup>170</sup>, and sharing with Mr Baglietto "*views as to the mechanisms to see Mr McGrail removed and the consequences thereof*"<sup>171</sup>;

(a) In oral evidence, Mr Picardo (for the first time) claimed that the text about disciplinary sanctions related to Mr Richardson, who he said Mr Levy alleged was "*acting out of bad faith and because he had secured future employment with Bland Limited*"<sup>172</sup>, an allegation which Mr Picardo claimed was "*nonsensical*" and "*fanciful*". However, this explanation is implausible because (a) if Mr Picardo considered the allegation against Mr Richardson to be nonsensical, he would not have proposed disciplinary sanctions to Mr Baglietto relating to it, and (b) the explanation was not provided in any of Mr Picardo's witness statements, but by contrast he accepted he discussed the Mr Baglietto "*views as to the mechanisms to see Mr McGrail removed and the*

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<sup>168</sup> [Mr Picardo3/11; A234] Mr Picardo had "*frequent conversations with Mr Levy KC about the search warrants*"

<sup>169</sup> [16/250/6]: Mr Picardo gave oral evidence that "*it is very likely that that meeting might have happened on 14 May*"

<sup>170</sup> [Mr Picardo3; B1422]: Text from Mr Picardo to Mr Baglietto, 14<sup>th</sup> May 2020, 16:45: "*Dismissal with total loss or reduction of Pension Benefits forfeiture of Pension Benefits will be used as a disciplinary measure only in cases where the Police Officer is convicted of treason or some other offence which is gravely injurious to the State or is liable to lead to serious loss of confidence in the Police Force.*"

<sup>171</sup> [Mr Picardo4/14; A1448]

<sup>172</sup> [16/255/15]

*consequences thereof*<sup>173</sup>, (c) Mr Baglietto did not provide this explanation in his own evidence, and Mr Levy did not mention it either, (d) Mr Picardo’s lawyer did not ask Mr Levy or Mr Baglietto about this claim.

(b) The Inquiry may consider whether this allegation against Mr Richardson is in fact a smoke screen to draw attention away from the fact that Mr Picardo was sharing ideas for punishing Mr McGrail with Mr Levy’s lawyer.

52.5.2. Mr Picardo offered advice to Mr Baglietto on how secure the return of Mr Levy’s property from the RGP by threatened/actual litigation, including “*at length how best he should raise these issues in his representations of [Mr Levy]*” and “*whether [Mr Levy] should be advised to judicially review the RGP’s actions in this respect*”<sup>174</sup>;

52.5.3. Mr Picardo provided inside information which he had obtained in his communications with Mr Llamas, informing Mr Baglietto or Mr Levy (inaccurately, it turned out – see paragraph 48 above) that the DPP advised against the making of the search warrant applications.<sup>175</sup>

52.6. Despite being in regular communication with Mr Levy and Mr Baglietto, and offering Mr Baglietto advice on arguments to use with the RGP against the warrant, Mr Picardo said in written evidence none of his communications with Mr Levy “*in any way amounted to be encouraging, supporting or otherwise promoting Mr Levy’s claims*”<sup>176</sup>. This is clearly wrong, as was the statement he made to Parliament that he had “*never put pressure on any police officer to do his job in a particular way or another*” and that he himself had “*not raised with the Commissioner any operational issue*”.<sup>177</sup>

52.7. All of the communications between Mr Picardo and Mr Levy and his legal team were improper.

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<sup>173</sup> [Mr Picardo4/14; A1448]

<sup>174</sup> [Mr Picardo4/13; A1448]

<sup>175</sup> As communicated in the letter from Hassans on 15<sup>th</sup> May 2020 – see [B5419]. It is accepted that this leak of information could have also been provided by Mr Llamas to Hassans

<sup>176</sup> [Mr Picardo2/10; A224]

<sup>177</sup> 27<sup>th</sup> July 2020, Hansard 1512-1523

***(xiv) The Attorney General's inappropriate interventions***

53. Mr Llamas inappropriately was in contact with Mr Levy and Mr Baglietto on the day of the search warrant and after that:

53.1. Mr Llamas spoke to Mr Levy on the day of the warrant.<sup>178</sup>

53.2. On 13<sup>th</sup> May 2020, Mr Llamas replied to Mr Levy texting him “*I feel I have been hung out to dry. Certainly not by you*” with “*don't worry*”<sup>179</sup>, therefore raising the strong inference that he intended to intervene to protect Mr Levy, which is what then occurred;

53.3. On 12<sup>th</sup> May, Mr Llamas spoke to Mr Baglietto, Mr Levy's lawyer.<sup>180</sup>

53.4. Mr Llamas should not have met with Mr Baglietto alone and without taking notes. Mr Baglietto is his “*very good friend*”<sup>181</sup>. He was the suspect's lawyer and the investigation was ongoing at the time. The Commissioner of Police had said it would be inappropriate, and Mr Llamas had no knowledge or experience of criminal proceedings to counter Mr McGrail's concern. He did not ask the DPP for advice.

53.5. Mr Llamas justified privately meeting with Mr Baglietto, even after the Commissioner of Police said it would be inappropriate, by saying it was “*crisis management*”.<sup>182</sup> It is plain from the comments he made about the purpose of the 7<sup>th</sup> April meeting (see paragraph 18.3 above) that the crisis he was referring to was that senior members of the Gibraltar community were being investigated for criminal offences, and the reputation of Gibraltar (as he saw it) was at stake by the investigation of Mr Levy.

54. It was inappropriate for Mr Llamas (and Mr Picardo and Mr Rocca) to meet and speak privately with a suspect's lawyer, without taking notes and only partially reporting what was said at the meetings to the RGP.

54.1. Mr DeVincenzi, the Former Solicitor General, in his oral evidence said that “*it just didn't seem quite right to me that they were meeting with him in private*”.<sup>183</sup> When he found out about the nexus in terms of Hassans and the political and

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<sup>178</sup> [Mr Llamas1/48; A282]; [Mr Levy1/11];

<sup>179</sup> [Mr Llamas1/68; A289]

<sup>180</sup> [Mr Llamas2/28; A305]; Mr Llamas accepts that it is “*possible I may have spoken to Lewis Baglietto KC on 12 May 2020*” to “*take a call from him saying how aggrieved James Levy was*”

<sup>181</sup> [12/2/6]

<sup>182</sup> [11/224/19]

<sup>183</sup> [11/55/18]

administrative spheres of government he said that it "*vindicated my hunches that this was a very delicate matter [...] to draw lines around*".<sup>184</sup>

**(xv) The DPP's inappropriate interventions**

55. On 27<sup>th</sup> May, Mr Rocca had two teleconferences with Mr Baglietto and (according to Mr Baglietto's note<sup>185</sup>) made a number of statements which are plainly inappropriate from the DPP<sup>186</sup>:

55.1. Mr Rocca suggested answers which Mr Levy could give in interview with the RGP;

55.2. Mr Baglietto appears to have shown Mr Rocca Mr Levy's draft statement and Mr Rocca advised on the same;

55.3. Mr Rocca told Mr Baglietto that he did not think there was enough evidence at the moment to "*go to jury*";

55.4. Mr Rocca shared his view that it was necessary to "*tick box and pursue line of enquiry as otherwise risked abuse arguments*".

**(xvi) The meetings of 13<sup>th</sup>, 15<sup>th</sup> and 20<sup>th</sup> May, taken together, were a successful attempt by Mr Llamas and Mr Rocca to coax the RGP into not treating Mr Levy as a suspect, and to prevent Mr Picardo being implicated**

55.5. The 13<sup>th</sup> May 2020 meeting:

55.5.1. At the 13<sup>th</sup> May meeting, Mr Llamas's focus was ascertaining the extent to which Mr Picardo was implicated in Op Delhi, and made clear that he would "*fight until I die*" for the "*reputation of the Chief Minister*"<sup>187</sup>:

- (a) It is for the Inquiry to decide whether Mr Llamas really meant the "*office of the Chief Minister*" as opposed to Mr Picardo, as he now claims. The Inquiry may consider that the deference that Mr Llamas exhibited towards Mr Picardo in relation to these events

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<sup>184</sup> [11/62/13]

<sup>185</sup> Mr Baglietto/2; [REF]

<sup>186</sup> Reference pending

<sup>187</sup> [B126]: In the Meeting of 13<sup>th</sup> May 2020 Mr Llamas said "*My concern here, is the reputation of this jurisdiction and that passes to the reputation of our Chief Minister. Especially in this moment in time. And for that I shall fight until I die*".

suggests that his loyalties towards the individual may at the least be indistinguishable from his loyalties to the office.

- (b) Mr Llamas asked about the RGP's interest in Mr Levy's communications with the Chief Minister<sup>188</sup>
- (c) Mr Llamas also appeared to agree that if Mr Picardo was implicated, he would get out what was described in the meeting as his "*magic wand*", i.e. his discretion not to proceed with any prosecution (not, as Mr Llamas<sup>189</sup> and Mr Picardo claimed in oral evidence, referring to the *nolle prosequi*, as this would not have been available until a charge was laid – see below).<sup>190</sup>
- (d) Mr Llamas confirmed that "Point 9 here" is the "*only reason why I am involved in this*". This is likely to relate to the 9<sup>th</sup> "topic area" which the "*voluntary attendance for police interview under caution*" letter to Mr Levy referred to, being "*Communication with the Chief Minister in relation to any of the above*".<sup>191</sup> Mr Llamas said in oral evidence that "*I just wanted the reference to the title, Chief Minister, to disappear*".<sup>192</sup> The RGP subsequently agreed to remove the reference to the Chief Minister and sent a revised version of the letter.
- (e) Mr Llamas commenting on how damaging it would be if Mr Levy's contact with Mr Picardo came out, and said that whilst "*just maybe, maybe complete unjustified*", the "*perception*" would be very damaging and "*what I wanted to avert, from the beginning*" which is the "*reason why I asked you to rationalise the ground and then to assume that ownership is with the Government*".<sup>193</sup>
- (f) Mr Llamas responded to Mr McGrail saying Mr Llamas was in a "*compromised position*" by saying "I know what you mean, but you can be sure that Fabian I will... defend to the death... if

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<sup>188</sup> [B119]

<sup>189</sup> [11/249/4]

<sup>190</sup> [B126]

<sup>191</sup> [B5392]

<sup>192</sup> [12/193/1]

<sup>193</sup> [B127]

tomorrow you come and tell me, look what we've found, I will break into tears... I will protect them".<sup>194</sup>

- (g) Mr Llamas said "*there can be no office, more symbolic of the jurisdiction than that of the Chief Minister, I will defend it*".<sup>195</sup>

55.5.2. Mr Llamas claim that Mr McGrail referred to a *nolle prosequi* "*four times*" in the meeting of 13<sup>th</sup> May is wrong:

- (a) In response to Mr Llamas saying that he would "*fight until I die*" for the reputation of the jurisdiction and that of the Chief Minister, Mr McGrail says that "*you*" have the "*magic wand*", to which Mr Llamas responds "*if it's the case, I would ask you to get it out as soon as possible*". Mr McGrail here is referring to the DPP's discretion to advise against further investigation and that he would not proceed with any prosecution. That is clear from the comments which follow (see next subparagraph) and also Mr Llamas's reference to "*you*" not "*I*", which logically must be a reference to the DPP. This is therefore not a reference to the *nolle prosequi*.
- (b) Mr McGrail said<sup>196</sup> "*we as the investigators, we are doing a job, we produce the evidence, we've consulted with the DPP... the DPP sees that there is a case to be put to... trial... I cannot pull it, you can. You can, Michael*". Mr Llamas responds "*it hasn't got to get to that Ian*". Mr McGrail responds "*well then, then who stops it, I cannot stop it... I cannot say there is no offence... I would not raise any objections if this is pulled, but... the RGP cannot pull it. And if there are legal routes to pull it, those, I'm asking why not*". Logically, given the stage of the investigation of Mr Levy, this is a reference to the AG's discretion to tell the RGP that he will not proceed with a prosecution even before charges are proffered. This not a reference to a *nolle prosequi*, as Mr McGrail made clear in his oral evidence<sup>197</sup>.
- (c) Mr McGrail said that if the DPP said that he did not want to run with the investigation of Mr Levy, and he provided that advice in

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<sup>194</sup> [B229]

<sup>195</sup> [B229]

<sup>196</sup> [B180]

<sup>197</sup> [6/247/3]

writing “*that would be the end of the matter for me*”.<sup>198</sup> This is not a reference to a *nolle prosequi*.

- (d) The DPP responds that “*Michael can’t enter a nolle*”. Mr Llamas responds “*Hombre, it’s something that I’d rather not do*” but if there was a prosecution of the CM on flimsy grounds he would stop it. This is the first reference to a *nolle prosequi* in the meeting and it is raised by the DPP.

#### 55.6. The 15<sup>th</sup> May 2020 meeting

55.6.1. At the meeting on 15<sup>th</sup> May, Mr Llamas and Mr Rocca’s focus was persuading the RGP to treat Mr Levy as a witness not a suspect:

- (a) Mr Llamas opened the meeting by proposing that the interview with Mr Levy still went ahead but “*not have it under caution*”.<sup>199</sup> He accepted in oral evidence that it was he who made this suggestion first<sup>200</sup>, not Mr Richardson as he was attempting to suggest, and that he was advocating for this position<sup>201</sup>.
- (b) Mr Llamas and Mr Rocca argued for Mr Levy not being treated as a suspect, and not being interviewed under caution, despite the deep reservations expressed by the Officer in Charge, Mr Richardson<sup>202</sup>, and Mr McGrail.
- (c) When Mr McGrail raised concerns that Mr Levy was being treated differently to others, and that Mr McGrail was being “sold out”, Mr Llamas responded that “*what’s creating the bad atmosphere, well bad is an understatement, what’s creating the tension here is the concept of Jaime being suspect and therefore being interviewed under caution*”. He later referred to “*this damned, suspect, caution thing*”.<sup>203</sup>
- (d) When MW raised a concern that by treating Mr Levy more leniently than the other suspects, this may undermine an eventual

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<sup>198</sup> B222

<sup>199</sup> [B271]

<sup>200</sup> [12/152/1]

<sup>201</sup> [12/153/6]

<sup>202</sup> E.g. [B273-B274]

<sup>203</sup> [B290]



prosecution against the others, Mr Llamas dismissed those concerns.<sup>204</sup>

- (e) Mr Llamas agreed to speak to Mr Baglietto to say that Mr Levy could give a statement, but his status was still to be determined.
- (f) Plainly, Mr Llamas and Mr Rocca had discussed this approach following Mr Llamas's meeting with Mr Baglietto, and the approach they advocated to the RGP was significantly in favour of the suspect, Mr Levy. In oral evidence, Mr Llamas justified this as part of "*crisis management*"<sup>205</sup> but in reality the crisis that he was facing was Mr Levy being investigated as a suspect, and his plan for solving it was to prevent Mr Levy being treated as a suspect.

55.6.2. It is important that Mr Richardson, MW and Mr DeVincenzi, who all attended the meetings and have no reason to exaggerate or dissemble, all felt something was wrong about how the investigation was being approached by the AG and/or DPP:

- (a) Mr Richardson sensed that something was "*seriously wrong*" with what was happening<sup>206</sup>,
- (b) MW described feeling "*influence*" at work in the room<sup>207</sup>, and
- (c) Mr DeVincenzi describes a sense of disquiet about the whole file from the beginning, saying "*I wasn't sure that the Attorney General was drawing a line around his own role*".<sup>208</sup>
- (d) Mr McGrail's impression, having also attended the 12<sup>th</sup> May meeting, was that "*the AG was not being impartial... He was trying to sidetrack the process*"<sup>209</sup>, the AG was "*sat in Mr Levy's corner*"<sup>210</sup> and that the "*DPP had softened, or was softened*"<sup>211</sup>

#### 55.7. The 20<sup>th</sup> May 2020 meeting

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<sup>204</sup> [B278] –  
<sup>205</sup> [11/267/2]  
<sup>206</sup> [4/247/4]  
<sup>207</sup> [5/211/19]  
<sup>208</sup> [11/48/24]  
<sup>209</sup> [7/16/18]  
<sup>210</sup> [7/30/10]  
<sup>211</sup> [7/21/11]

55.7.1. At the meeting on 20<sup>th</sup> May 2020<sup>212</sup>:

- (a) It became clear that conversation Mr Llamas had with Mr Baglietto had given Mr Baglietto the impression that Mr Levy was no longer to be treated as a suspect.<sup>213</sup>
- (b) Mr Llamas stated that he had given “advice” to Mr Baglietto, that it had “*taken [Mr Rocca] and me quite a bit of persuasion of the RGP to go down this path, let’s leave it, let’s go down this process of written statement*”<sup>214</sup>

***(xvii) Mr Picardo, Mr Llamas and Mr Rocca’s interventions had the desired effect***

56. The RGP decided not to execute the search warrant, to allow Mr Levy to obtain the return of his phone without it being examined, and to give a statement rather than being interviewed under caution, perhaps the first time the RGP had permitted this.<sup>215</sup>

56.1. That he was treated more leniently was accepted by a number of witnesses, for example:

56.1.1. the DPP stated in oral evidence: “*he was certainly treated differently. There can be no doubt about that, for whatever reason, be it because it was privileged material, be it because it was James Levy, be it because of any perception of public or printed interference or whatever, but it started on the basis of being treated differently and that created a problem*”.<sup>216</sup>

56.1.2. Mr Llamas accepted in oral evidence that he gave Mr Levy “*special treatment*”.<sup>217</sup>

57. Mr McGrail correctly sensed that the RGP were not being supported by the statutory office holders.<sup>218</sup>

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<sup>212</sup> See the translated transcript at [B321]

<sup>213</sup> [B322]

<sup>214</sup> [B326]

<sup>215</sup> [Mr Richardson1/5; A1288] Mr Richardson: “*As far as I am aware, this was the first time we had allowed a suspect [Mr Levy] to provide a statement before interview. The statement was generally obtained after the interview when a suspect had refused to answer questions.*”

<sup>216</sup> [10/113/1]

<sup>217</sup> [12/194/7]

<sup>218</sup> [7/15/18] Mr McGrail said in oral evidence that “*I would have expected a more robust approach legal support wise for the RGP*”; [7/73/7] asked “*whether... the resources and support from the DPP, the legal resources to face the inevitable consequences of a Hassans attack, whether they were adequate... A: I would describe it as a lack of appetite*”; [7/171/11] “*obviously the AG was there with a very, very acute interest*”

## H. The Ousting of Ian McGrail

### *(xviii) Mr Picardo's campaign to oust Mr McGrail was motivated by retribution for the RGP executing the search warrant against Mr Levy*

58. Mr Picardo has, to this Inquiry, justified the ousting of Mr McGrail on the grounds that he had been lied to by Mr McGrail. The reality is that Mr McGrail was ousted as retribution for the RGP attempting to execute a search warrant against Mr Levy, and to discourage the RGP from continuing down this road which (Mr Picardo thought) would endanger the reputation of Gibraltar and damage Mr Levy, Hassans and Mr Picardo. This is clear from the balance of evidence for the following reasons:

58.1. For the reasons set out at above at paragraph 46 above, Mr Picardo's allegation of being lied to was either a misunderstanding or an invention used to cover up the real reason for Mr McGrail being ousted;

58.2. Even if Mr Picardo did believe that he had been misled:

58.2.1. this was in the context of a meeting he should never have called and his angry berating of the Commissioner of Police which should never have happened; and

58.2.2. he was angry and emotional before the alleged "lie". This was his reaction to the warrant against Mr Levy, not to being misled. In the ensuing days, he went to great efforts to assist Hassans and Mr Levy in undermining the warrant and securing the return of Mr Levy's phone, whilst at the same time taking steps to oust the Commissioner of Police. Mr Picardo was simply incapable of separating out his motivations.

58.2.3. Indeed, this is one of the reasons why conflict of interest policies exist – public officials should not be intervening in situations involving their close friends because they risk not being able to deal with the situation objectively.

### *(xix) Mr Picardo persuaded Mr Pyle to join forces with him to oust Mr McGrail*

59. Mr Picardo messaged Mr Pyle on 14<sup>th</sup> May 2020 to say he was "*starting to lose confidence*", and raising a range of issues "*in terms of the past few months alone*". He did not mention Op Delhi, the warrants or Mr Levy, but obliquely said "*I will alert to a particular matter when we meet*".<sup>219</sup>

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<sup>219</sup> [B1417]

60. It was this message which triggered the actions which would ultimately lead to Mr McGrail retiring on 6<sup>th</sup> June.
61. There is no evidence that Mr Pyle was considering taking any action to remove Mr McGrail from post prior to the 14<sup>th</sup> May text message.
62. Following the 14<sup>th</sup> May text message, Mr Picardo was in regular communications with Mr Pyle to encourage him to join forces to oust Mr McGrail, first via the GPA and then directly using the powers purportedly held by Mr Pyle as Acting Governor:
  - 62.1. Mr Picardo manipulated Mr Pyle by promising him (a promise that he later rescinded) that the next RGP commissioner would be recruited from outside Gibraltar, knowing this was a longstanding strategic priority for Mr Pyle<sup>220</sup>;
  - 62.2. Mr Picardo manipulated Mr Pyle by exploiting what he knew was Mr Pyle's longstanding grievance over the RGP's handling of the Airport Incident, and pretending to also have concerns over this, despite there being no record or evidence prior to 14<sup>th</sup> May 2020 of Mr Picardo expressing anything but the strongest of support for the RGP's actions and criticism of the Ministry of Defence's actions<sup>221</sup>. This is another example of Mr Picardo's willingness to say whatever he needs to say, to his personal advantage.
  - 62.3. Mr Picardo took advantage of Mr Pyle's prejudiced view towards Mr McGrail in particular and the RGP in general, amply demonstrated by Mr Pyle's oral evidence: for example, his assumption, before knowing anything about the incident, that the RGP officers involved in the incident at sea were "*hav[ing] some fun, Miami Vice style*".<sup>222</sup>
  - 62.4. Mr Picardo falsely claimed that Mr McGrail had lied to him about obtaining the DPP's advice, and that Mr McGrail had gone against the advice of the DPP and AG, and failed to correct this error (see paragraph 49 above).

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<sup>220</sup>**Mr Picardo1/69: [A200]** "CM: *"if we are going to do this, do we very discretely at your end, line someone up. We cannot have it headless"*

**Mr Picardo1/143 [C3953]** : Mr Picardo text to Mr Pyle: *"The first thing I want to avoid is any suggestion that this issue is somehow a product of a by-gone colonialism returning in disguise. It clearly is not and we must not allow any suggestion of that by acting other than very closely together, and being seen to act closely together"*

<sup>221</sup> **[B947]**: Mr Picardo email to Edward Yome, then-Commissioner of Police, 3<sup>rd</sup> March 2017: *"My impression and clear understanding is that MoD have now fully understood the position and the nonsense and bravado being displayed by fools such as those you refer to below in fact illustrates why and how we have found ourselves in this unnecessarily unpleasant situation... I can tell you one thing Eddie: Gibraltar, it's Chief Minister, it's Government and its people are proud of their police and the SMT, Commissioner and their Attorney General. The UK as a whole, conversely, has been embarrassed by its senior ranks on the Rock, as can be seen by the reports in the newspapers of the actions taken here."*

<sup>222</sup> **[18/78/8]**

**(xx) Mr Pyle would not have acted against Mr McGrail without Mr Picardo's prompting**

63. By 12<sup>th</sup> May 2020, Mr Pyle was pre-disposed against Mr McGrail, but had no intention to remove him from post:

63.1. Mr Pyle seems to have harboured a longstanding and ill-founded grievance against Mr McGrail because of his involvement with the Airport Incident:

63.1.1. Mr Pyle may have wrongly thought that Mr McGrail was Commissioner at the time<sup>223</sup>;

63.2. In 2018, as a member of the GPA, Mr Pyle objected to Mr McGrail's application to be Commissioner and voted against his application, albeit not mentioning at any time the Airport Incident<sup>224</sup>;

63.3. Mr Pyle had a longstanding strategic priority to recruit an RGP Commissioner from outside of Gibraltar.<sup>225</sup>

64. Mr Pyle did not raise any concerns about Mr McGrail with the GPA or otherwise before 14<sup>th</sup> May 2020:

64.1. Mr Pyle was not overly concerned about the HMICFRS report – certainly not enough to “lose confidence” in Mr McGrail; his email to Mr Picardo on 30<sup>th</sup> April

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<sup>223</sup> [Mr Pyle1/21.1; A245]: “My concerns over the leadership and management of the RGP, and over the behaviour and judgment of Mr McGrail as its Commissioner of Police, started with what I call the Airfield Incident which happened on 8 February 2017, five months after my arrival in Gibraltar.”

<sup>224</sup> John Goncalves, former GPA Chair [JG1/25; A341]: “the Deputy Governor, Mr Nick Pyle, who was a member of the GPA at the time, commented at a meeting of the GPA that he felt that applications to fill the vacancy of Commissioner of Police should not be limited to officers from the RGP but should be opened to police officers in the UK. That view received no support from any of the other members of the GPA”; Edgar Lavarello 34 [A431]: “At some point Mr Pyle said he would not support either candidate which could only mean that he wanted the new Commissioner to be appointed from outside the RGP”. [para 34] [Mr Picardo1/67; B1439] Mr Pyle text to Mr Picardo 14.5.20 “Agree. As we thought at the time, wrong appointment”;

<sup>225</sup> [Mr Pyle2/25; A266] “I was surprised that there were only two candidates and expressed the view that policing in Gibraltar may have benefitted from a wider field of candidates, including external candidates” [Lavarello 34; A431]: “At some point Mr Pyle said he would not support either candidate which could only mean that he wanted the new Commissioner to be appointed from outside the RGP”; Albert Danino [A370]; contrast [Mr Pyle2/25; A266]: “I nevertheless marked both Mr McGrail and Richard Ullger (“RU”) as suitable and credible candidates for the post”; “The two dissenting members were Mr Pyle and me [...] 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.” [para 27]; repeated by Aurelius Falero [A386]; John Goncalves, former GPA Chair [JG1/25; A341]: “the Deputy Governor, Mr Nick Pyle, who was a member of the GPA at the time, commented at a meeting of the GPA that he felt that applications to fill the vacancy of Commissioner of Police should not be limited to officers from the RGP but should be opened to police officers in the UK. That view received no support from any of the other members of the GPA”.

2020<sup>226</sup> said that the report was “*not as bad as the headline suggests*” and the leadership of the RGP “*needs to be both more strategic and directive*”.

64.2. It is implausible that Mr Pyle would have shifted from being so unmoved by his concerns that he did not mention them to the GPA (despite being a member) or to Mr McGrail, and cannot point to any pre-12<sup>th</sup> May documentary evidence of such “*concerns*”, to being so concerned that he had lost confidence entirely by 14<sup>th</sup> May 2020. Neither does Mr Pyle provide any evidence of having raised his concerns with his superiors in London or indeed with his predecessor Lt. General Ed Davis.

64.3. The only new factor was Mr Picardo’s report on the “*high profile investigation*”, which Mr Pyle knew almost nothing about

64.3.1. Mr Picardo seems to have carefully limited the information Mr Pyle was provided with.<sup>227</sup>

64.3.2. Mr Pyle failed in his responsibility carefully to investigate Mr Picardo’s allegations rather than accepting them without reservation (see below).

64.4. Mr Pyle was not intending to do anything about his ‘concerns’ re Mr McGrail but saw an opportunity and a mutual interest when Mr Picardo approached him.

***(xxi) Mr Pyle’s concerns were vague and ill-formed, and he failed to properly investigate them before taking action, causing a clear breach of natural justice***

65. Mr Pyle’s concerns on and around 14<sup>th</sup> May 2020 were vague and ill-formed.<sup>228</sup>

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<sup>226</sup> [Mr Pyle Exh. 1/63 B1511] 30.4.20 – email to Mr Picardo: “*Having studied the report, I find it to be quite damning and it will need careful handling. [...] But I don’t think the issue is as bad as the headline suggests and believe it is an issue of culture and leadership more than anything else. Most of the issues should be relatively easy to fix though it will take a collective effort, driven bottom up from within the RGP as much as from its leadership which needs to be both more strategic and directive. Quite simply, as I see it, the RGP needs to “modernise” in all senses of the word [...] “the\_RGP as much as from its leadership which needs to be both more strategic and directive. Quite simply, as I see it, the RGP needs to “modernise” in all senses of the word [...] Given your pre-occupations, I’m happy to discuss how best to take this forward with the Chair of the GPA and perhaps the Chief Secretary, in the first instance. My initial thought is to suggest the Commissioner makes the report public at the same time he publishes his roadmap on the way forward. So being proactive rather than reactive.*”; [Mr Pyle2/10; A260]: “*I decided to leave the issue of reacting to the HMIC Report in the first instance to the GPA.*”

<sup>227</sup> Mr Pyle1/27.1; WSB/A257: “*I had no prior knowledge about the criminal investigation referred to in Mr Gomez’s letter of 29 May until the Chief Minister briefed me in headline fashion about it at our meeting on 15 May. I was not aware of any of the detail of the case save that the Deputy Chief Minister’s former PS was implicated in it. I did not know that the investigation was known as Operation Delhi until March of 2022.*”

<sup>228</sup> Mr Pyle1/23.4; A249: Mr Pyle refers in his statement to “*numerous anecdotal stories of bad practice and behaviours by the RGP*” including “*numerous stories of the RGP turning a blind eye with [sic] crimes*

- 65.1. Mr Pyle’s concern in relation to the Incident at Sea appears to have been *ex-post facto* and is premised on a misunderstanding:
- 65.1.1. Mr Pyle reached the damning conclusion that Mr McGrail misled him in relation to the Incident at Sea (see the detailed analysis at paragraph 80 below) without (a) carrying out a sufficiently careful analysis of the communications Mr McGrail had sent to him and others at the relevant time, or (b) asking Mr McGrail to account for his communications.
  - 65.1.2. Mr Pyle communicated his damning conclusion to the GPA, and based his threat to force Mr McGrail to retire, without having carried out basic and necessary investigative steps;
  - 65.1.3. Had Mr Pyle carried out basic investigative steps, he would have understood that Mr McGrail had not “misled” him, but instead he rushed to force Mr McGrail out of his post.
- 65.2. A number of the issues which Mr Pyle cited as reasons for his “*progressive*” loss of confidence<sup>229</sup>, such as the Airfield Incident, the Helicopter Pilot Assault and “*rumours*” and anecdotes of “*bad practice and behaviours*” by the RGP were vague or ill-formed:
- 65.2.1. Mr Pyle referred oral evidence to these issues being raised with him on the golf course and from his friend Commander Walliker, and he had “*no reason to doubt*” the information<sup>230</sup>, though he did nothing to verify it before taking it into account in his “*progressive*” loss of confidence.<sup>231</sup>
  - 65.2.2. Mr Pyle had a responsibility to fully investigate these matters before taking them into consideration in support of forcing Mr McGrail to leave his position;
  - 65.2.3. This highlights Mr Pyle’s general failure to appreciate that the GPA was the appropriate body to investigate such serious allegations, and in any event Mr Pyle failed to subject them to any scrutiny whatsoever;

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committed by people they knew” but these were “*rumours and anecdotal*” and “*were not things on which I felt it was possible to act*”, nonetheless they “*contributed to my growing sense of unease*”

<sup>229</sup> [Mr Pyle/1 paras. 20-22; A245]

<sup>230</sup> [19/208/23]

<sup>231</sup> [19/209/10]

65.2.4. Mr Pyle did not attempt to seek further information from Mr McGrail, or even ask Mr McGrail's view, on his concerns;

65.2.5. For example, Mr Pyle claims to have been concerned by the RGP's relationship with the GPF, but did not even seek Mr McGrail's account of this, let alone refer it to the proper authorities i.e. the GPA.

***(xxii) Mr Pyle failed to discharge his constitutional responsibilities by not protecting the independence of the RGP***

66. As Interim Governor, Mr Pyle had "*ultimate responsibility*" under s. 11 of the Police Act for "*the integrity, probity and independence of policing in Gibraltar*". He failed to discharge that responsibility:

66.1. When Mr Picardo met with Mr Pyle on 15<sup>th</sup> May 2020 and was "*visibly angry*" and had the "*bit between his teeth*" relating to an ongoing criminal investigation and a search warrant against Mr Levy<sup>232</sup>;

66.2. Mr Pyle had a responsibility to tread very carefully, and ensure that Mr Picardo was not attempting to influence a police investigation for private and/or financial and/or political reasons;

66.3. Mr Pyle was in dereliction of his duties by making no effort to enquire further into the "*serious error of judgment*", why Mr Picardo was so interested – and concerned, indeed angry – about the investigation. Instead, Mr Pyle and Mr Picardo agreed to "*be completely as one on this*".<sup>233</sup>

66.4. Mr Pyle's failure to discharge his duty under s.11 of the Police Act was made worse by the fact that he knew from the outset that the warrant was against Mr Picardo's personal friend and business partner, Mr Levy;

66.5. Mr Pyle was too trusting of, and/or allowed himself to be manipulated by, Mr Picardo who offered what he knew to be Mr Pyle's longstanding aim, that the RGP Commissioner would be appointed from abroad. Once Mr McGrail had left his post, Mr Picardo reneged on this offer<sup>234</sup>;

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<sup>232</sup> [Mr Pyle1/26.6; A256]: "*The Chief Minister then outlined his belief that Mr McGrail had made a serious error of judgement with regard to the execution of a search warrant against James Levy, gone against the advice of the DPP and AG, and misled the Chief Minister about that. This was in relation to an ongoing criminal investigation.*"

<sup>233</sup> [B1777]

<sup>234</sup> [B1843]: "*The CM has backtracked slightly on the suggestion we parachute someone in. Acting Commissioner Richard Ullger has proposed he remains on top and help is sent in below him*"



- 66.6. Mr Pyle knew (a) Mr Picardo was angry<sup>235</sup>, (b) Mr Picardo was attempting to exercise a competence which was usually reserved to the Governor<sup>236</sup>, but balanced that against the possibility of achieving his long term aims so went along with Mr Picardo’s plan;
- 66.7. Mr Pyle accepted in oral evidence that despite not knowing whether the allegations that Mr McGrail was making in the 29<sup>th</sup> May letter from his lawyer were true, he did nothing to investigate them.<sup>237</sup>
- 66.8. The proper course of action for any concerns within Gibraltar’s constitutional structure would have been to raise with the Commissioner in the first instance for his response, and if notwithstanding his response, the concerns remained refer them to the GPA to be independently investigated, with a view to deciding whether to exercise its powers under s.34<sup>238</sup>

**I. The Gibraltar Police Authority process was fundamentally flawed and grossly unfair**

*(xxiii) The careful constitutional balance, which was not respected*

67. The Constitution and Police Act together set up a careful balance between the functions of the Crown (represented by the Governor), the Executive, the Police and the Gibraltar Police Authority.<sup>239</sup>
- 67.1. The GPA<sup>240</sup>:
- 67.1.1. must be scrupulously independent from the Executive and the Governor;
- 67.1.2. must not be directed by either the Governor or the Chief Minister;

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<sup>235</sup> Mr Pyle email to FCDO, 21 May 2020 “*The CM was visibly angry during our meeting on Friday and is clearly worried at the political, financial and sovereignty damage the fatal collision incident could do to Gibraltar... Without doubt, the CM has the bit between his teeth and wants the Commissioner removed from his position as soon as possible*” [Mr Pyle2/32; B1777-8];

<sup>236</sup> [Mr Pyle2/39; B1784] “*It’s the James Levy angle as well that is interesting. I’m also a touch nervous given that the CM has firmly taken the lead on a competence that is more towards us than them. But we’ve agreed this approach which on balance is right. It also raises issues about the GPA who should have been monitoring the CoP. But I can’t see it ending well for anyone.*”

<sup>237</sup> [19/181/7]

<sup>238</sup> See “*I’m happy to discuss how best to take this forward with the Chair of the GPA and perhaps the Chief Secretary, in the first instance*” – ref above

<sup>239</sup> See Legal Background above

<sup>240</sup> See paragraphs 57-66 above

67.1.3. is responsible for complaints about Police performance, and has the legal powers, subject-matter expertise and institutional competence to investigate such complaints:

(a) When investigating a complaint, the GPA seeks out representations and evidence and reaches a reasoned conclusion;

67.1.4. is responsible for monitoring the performance of, and holding to account, the RGP Commissioner.

67.1.5. must contain and manifest an appropriate degree of independence<sup>241</sup>

68. At no stage prior to Mr Picardo and Mr Pyle approaching Dr Britto on 18<sup>th</sup> May 2020 did the GPA have any concerns about Mr McGrail.<sup>242</sup>

***(xxiv) Mr Pyle and Mr Picardo circumvented the section 34 process, and the GPA allowed them to do so***

69. Mr Picardo and Mr Pyle circumvented the required process under s.34 of the Police Act 2006:

69.1. Mr Picardo and Mr Pyle presented Dr Britto with a *fait accompli*, by claiming that certain issues had caused them to “lose confidence” in the RGP Commissioner.

69.2. Mr Picardo and Mr Pyle did not refer the matter to the full GPA, but instead chose to “discreetly bring Joey Britto into our thinking”<sup>243</sup>: It is no surprise that Mr Pyle and Mr Picardo sought to do so before the full GPA was informed. It was clear from the balance of evidence that due to his aversion to conflict, as well as his unwavering trust in and unquestioning reverence of the Governor and Chief Minister, Dr Britto was never realistically going to act independently from them and in fact acted as their subservient agent:

69.3. Dr Britto said in oral evidence that “*I started in 1983 working for Government and for me whatever the Chief Minister says, how can I not trust? Or the Governor, both of them, how can I not trust them? But that's me.*”<sup>244</sup> He also said that:

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<sup>241</sup> PA s.16(1)(c)

<sup>242</sup> [B355]: Transcript of 22<sup>nd</sup> May 2020 meeting between Mr McGrail and Dr Britto: Mr McGrail “*But what is the position of the Authority? Is the Authority accepting that? Have you had any concerns about me?*” Dr Britto: “*No, no wait, we would have told you*”

<sup>243</sup> B1441

<sup>244</sup> [15/216/13]

- (a) when he sent the 22<sup>nd</sup> May letter, which Mr Picardo had edited “*trusting basically, without actually going into it*”<sup>245</sup>; he was not even sure he understood everything in the letter before he sent it<sup>246</sup>; he took comfort in the fact that the Chief Minister was a lawyer.<sup>247</sup>
- (b) he did not ask how Mr Pyle and Mr Picardo had reached a firm conclusion about blame for the Incident at Sea because he “*trusted them*”<sup>248</sup>;
- (c) he “*trusted both*” to have done a detailed review of the evidence to understand whether Mr McGrail had been dishonest<sup>249</sup>;
- (d) when Mr McGrail raised serious allegations of corruption against Mr Picardo he felt “*scepticism*” because he “*trusted the office of the Chief Minister and the office of the Governor*”<sup>250</sup>;
- (e) it “*did not dawn*” on him to ask for context of the criminal investigation because he “*trusted the office of the Chief Minister*”<sup>251</sup>

69.4. Dr Britto’s implicit trust and subservience was incompatible with his responsibility as GPA Chair to act independently than the, and –most importantly – to protect the independence of the RGP from political interference.

69.5. Mr Picardo’s and Mr Pyle’s approach did not follow, and indeed circumvented, the requirements of section 34 of the Police Act:

69.5.1. If the Chief Minister and Governor could effectively force the GPA to require the Commissioner to retire, (a) the section 34 process which requires consultation and agreement from the Governor and Chief Minister after investigating the relevant issue including seeking representations from the Commissioner would be turned back to front, and (b) the Governor’s powers under section 13 of the Police Act would be redundant.

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<sup>245</sup> [15/121/1]

<sup>246</sup> [15/235/4]

<sup>247</sup> [15/231/8]

<sup>248</sup> [15/199/5]

<sup>249</sup> [15/202/19]

<sup>250</sup> [15/211/4]

<sup>251</sup> [15/216/12]

- 69.6. Dr Britto accepted in his meeting with Mr McGrail on 22<sup>nd</sup> May 2020 that “*it's been done the wrong way round, in other words, they told us we are going to trigger this.*”<sup>252</sup>
- 69.7. There is no power in the Constitution or Police Act for the Governor and/or Chief Minister to force the Commissioner to retire if they “*lose confidence*”. However, it is clear that the Government’s position is that this does not matter. As Sir Peter Caruana KC said in his opening submissions, the Government’s position is that “*when a political power to which you are accountable expresses loss of confidence in you, you go*”.<sup>253</sup>
- 69.8. The Chief Minister has no legal function as regards the Commissioner of the RGP. This is for good reason, as it is clearly intended to protect the independence of the RGP from political influence.
- 69.9. The Chief Minister has no power to force the Commissioner to retire, and plays no more than a consultative role if the GPA is deciding whether to exercise its s.34 power;
70. Mr Pyle and Mr Picardo placed enormous and intolerable pressure on Mr McGrail which caused a breach of natural justice:
- 70.1. Mr Pyle and Mr Picardo, on 19<sup>th</sup> May, decided together to make the onerous request for information under section 15 of the Police Act using the news of potential claims against the RGP relating to the incident at sea as a “*peg*” or “*trigger*”.<sup>254</sup>
- 70.2. Mr Picardo set the deadline for Mr McGrail’s response to the section 15 report at seven days, deciding to do so within three minutes of proposing to Dr Britto that the GPA provide Mr McGrail the same seven days to respond to the 22<sup>nd</sup> May letter.<sup>255</sup>
- 70.3. Mr Picardo’s response, on 21<sup>st</sup> May, to Mr McGrail’s reasonable request for counsel representation for the RGP, in the proposed (not issued) claims relating to the Incident at Sea, was overblown and unjustified<sup>256</sup>.
- 70.3.1. Mr Picardo already knew about the legal claims and had discussed with Mr Pyle the possibility of making the section 15 request prior to

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<sup>252</sup> [EB/5]

<sup>253</sup> [3/183/14]

<sup>254</sup> [B1441]

<sup>255</sup> [B1437]; [A205]

<sup>256</sup> Mr Picardo1/183, [B1251]

receiving the forwarded email on 20<sup>th</sup> May.<sup>257</sup> His apparent shock in his email response therefore appears to have been manufactured.

70.3.2. This raises the inference that Mr Picardo was searching for further reasons to “lose confidence” in Mr McGrail and place him under additional pressure.

70.3.3. Mr Llamas, in oral evidence, justified not giving notice of the potential claims on 22<sup>nd</sup> April by saying “I don’t think I did then because there was still nothing. The claims had not been filed”.<sup>258</sup> He clearly applied a different standard to Mr McGrail who, by that time, could do nothing right (and everything wrong) in Mr Picardo and Mr Llamas’s eyes.

70.4. The (likely deliberate) effect of these actions placed intolerable pressure on Mr McGrail. In his oral evidence he said he felt like it was a “pack of wolves hounding me”.<sup>259</sup> Mr McGrail’s mindset in the days before he resigned is well described in the recording which Mr Richardson made of Mr McGrail’s call with Mr Llamas on 22<sup>nd</sup> May 2020, on the day he received the decision of the GPA:

*“Michael, I don’t know what to do, I’m, I’m at a loss, I have been attacked. My options are: either think about Gibraltar or save my skin, and think about Gibraltar or create a constitutional crisis. That’s where I am Michael.... that’s where I am, what do I do now? Either I keep quiet and I leave and that is it, and this won’t change because those I leave behind think the same about it, if I were the only one, if I, if I, those behind me are all with the same mindset about this investigation, it’s not that we, it’s not just me. Therefore, I don’t know how this is going to be fixed. I’ll leave, I’ll leave or I stir things up, and we all stand to lose, me and Gibraltar. They’ve jumped the gun here with this, (eh?) very precipitated. Because what I’d like to do is clear this up for everyone’s benefit and I am being pinned against the wall.”*<sup>260</sup>

71. Dr Britto and the GPA should not have permitted Mr Picardo to play such a central role in the process, and by doing so undermined the statutory requirement that the GPA must contain and manifest an appropriate degree of independence, in particular:

71.1. Directing the sequencing and content of the process (which in any event was seriously flawed), and

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<sup>257</sup> He found this out on 14<sup>th</sup> May at the latest [16/65/18]

<sup>258</sup> [11/143/12]

<sup>259</sup> [7/53/22]

<sup>260</sup> [C6952]

- 71.2. drafting substantial sections of the 22<sup>nd</sup> May 2020 letter to Mr McGrail<sup>261</sup>
- 71.3. Dr Britto failed to appreciate that the involvement of Mr Levy, Hassans, and the Mr Picardo in Op Delhi (which he had been informed of when Mr McGrail briefed him on 12<sup>th</sup> and 15<sup>th</sup> May 2020 –, or at the latest at the 22<sup>nd</sup> May 2020 meeting he had with Mr McGrail<sup>262</sup>) meant that Mr Picardo had an irresolvable conflict of interest in intervening in the investigation as Chief Minister.
- 71.3.1. Had Dr Britto properly grappled with this this, he would not have allowed Mr Picardo to be so central to the s.34 process (which in any event was inappropriate because of the statutory division of responsibilities).
- 71.3.2. Instead, Dr Britto ignored or minimised the importance of Op Delhi to the sequence of events.<sup>263</sup>
- 71.4. The GPA inappropriately allowed Darren Grech, the then-Chief Secretary, to attend the key meeting relating to the exercise of the s.34 power, as being a member of the government, he was conflicted, and had already expressed a concluded view (albeit this was only known to him and Mr Picardo).<sup>264</sup>
- 71.4.1. Mr Grech, who Mr Picardo in his oral evidence referred to as “my appointee on the GPA”<sup>265</sup> notwithstanding that Mr Grech had a duty to act as an independent GPA member, had already expressed a clear and concluded view and had been in conversation with Mr Picardo about the issue, who had sought out his support at the GPA – he should have recused himself.<sup>266</sup>

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<sup>261</sup> [Mr Picardo1/294; B1362] original version, [Mr Picardo1/296; B1364] version amended by CM

<sup>262</sup> [B361 - B362]: Mr McGrail said “*This has all been triggered off from the impromptu meeting that I was called to in the chief ministers chamber with the AG. That is where it all stems from. There's no doubt at all, at all, at all that that is where this is stemming from. The fact that he has not been in agreement with the way we have been handling the case of the involving Jaime Levy. I was threatened there and then, and I was told that he was going to call up, In other words there was like, total interference with the operational running. That is against the law itself.*” [EB/363]: “*Because the chief minister is suspected of a crime*”.

<sup>263</sup> [B366] Dr Britto’s response was “*The Governor seemed to be in the know because, because at the meeting they were talking about the way that you handled because, because they mentioned the AG had lost faith in you so, so, so they had that conversation. As they were not talking to me I didn't take note of what they said*”

<sup>264</sup> DG appears to have attended: see [D2484]

<sup>265</sup> [16/320/19]

<sup>266</sup> Mr Picardo3 [B1426]:

“20/05/2020, 16:45 - Fabian Picardo: Darren, when Joey speaks tomorrow at the GPA, he is going to explain my views on a sensitive subject. Your support for me on this is key. I have grave, grave concerns.

20/05/2020, 16:46 - Darren Grech: I know and they are my concerns too for a whole range of reasons. [thumbs up emoji] You have this support.

20/05/2020, 16:47 - Fabian Picardo: [thumbs up emoji]

21/05/2020, 12:28 - Darren Grech: Made my position very clear this morning: HIS position untenable with the massive loss of confidence all over. Here if you need me [...]

***(xxv) The 22<sup>nd</sup> May letters did not follow the required statutory process***

72. Neither of the letters sent to Mr McGrail on 22<sup>nd</sup> May 2020 satisfied the requirements of s.34 which mandated that the Authority shall “*give the Commissioner an opportunity to make representations and shall consider any representations that he makes*”:

72.1. The letter said “*we are calling upon you to retire... but before doing so we are giving you an opportunity... to make representations*”<sup>267</sup>. Therefore, the GPA was already calling upon Mr McGrail to retire before seeking representations;<sup>268</sup>

72.2. This does not follow the sequencing required by s.34(1) which is that the GPA must (in this order): (1) seek representations from the Commissioner, (2) consider representations, (3) consult with Governor and Chief Minister, (4) obtain agreement from either of them, (5) call upon the Commissioner to retire.

72.3. Some GPA members have expressed their concern that they thought Mr McGrail would be given an opportunity to respond to the allegations<sup>269</sup>. In oral evidence, Mr Lavarello said that “*if we had known the facts that we know now, perhaps the board would have reached a different decision*”<sup>270</sup>, and that he would have “*suggested caution to reaching any decision on the facts which were, let’s say, a little bit greyer and not so black and white as they had originally been presented*”.<sup>271</sup>

72.4. Dr Britto was under the misapprehension that Mr McGrail would have a choice of whether to retire once the GPA invited him to do so:

72.4.1. At the 22<sup>nd</sup> May 2020 meeting, he said to Mr McGrail, in response to Mr McGrail asking what effect the letter would have, “*No, no, no, you’re not suspended or anything. You now have to, it’s an invitation,*

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<sup>267</sup> **Mr Picardo1/298; B1366**

<sup>268</sup> This is also supported by the letter Dr Britto sent to Mr Pyle on 5<sup>th</sup> June 2020 [**Mr Pyle1/40, B1487**]: “*Pursuant to this decision on 22<sup>nd</sup> May 2020 I on behalf of the Authority invited the Commissioner to retire. I did this at a meeting with him held on 22<sup>nd</sup> May 2020 at the Commissioner’s office followed up by two letters to him that same day... I also invited him to make representations which we would consider before making the final decision*”.

<sup>269</sup> Ernest Gomez [**A401**]: “*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 would state that Operation Delhi did not figure at all in the deliberations of the GPA”

<sup>270</sup> [**14/234/9**]

<sup>271</sup> [**14/248/7**]

*it's an invitation. I think the other way would be, you would lose your job if the Governor [...]"*<sup>272</sup>;

72.4.2. Section 34(3) of the Police Act states: “*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*”, therefore retirement is mandatory once the GPA calls upon the Commissioner to retire per Section 34(1);

72.4.3. This misunderstanding of the statutory scheme appears to have led to Dr Britto taking two steps at the same time ((a) calling on the Commissioner to retire and (b) seeking representations) which were required to be sequential and in the reverse order.

73. Separately, and cumulatively, these actions fatally undermined the statutory process, and led to a breach of natural justice.

**J. Ian McGrail did not mislead Nick Pyle or Fabian Picardo about the Incident at Sea**

74. The Incident at Sea played a central role in the reasoning Mr Pyle gave, from 14<sup>th</sup> May 2020 onwards, for seeking to oust the Commissioner of Police.

74.1. Mr Pyle describes it as the “*the most serious incident*”, and the “*tipping point*” which “*set in motion a chain of events that led me to lose confidence in the abilities of the Commissioner to effectively lead his police force, and indeed caused me to lose confidence in his probity*”.<sup>273</sup>

75. Mr Pyle’s major concern appears to have been what he considered to be his “*strong sense and suspicion*” that Mr McGrail was “*deliberately withholding from him important information about the nature of his understanding of the location of this incident*”.<sup>274</sup>

76. It is important background that neither Mr Pyle or Mr Picardo raised any concerns about Mr McGrail’s communications relating to the Incident at Sea, which occurred on 8<sup>th</sup> March 2020, until over two months’ later, from 14<sup>th</sup> May 2020:

76.1. There is no evidence from prior to 14<sup>th</sup> May 2020 that either Mr Picardo or Mr Pyle were concerned by the information provided by Mr McGrail;

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<sup>272</sup> [B356]

<sup>273</sup> Pyle 1/25 [A251]

<sup>274</sup> [A253]



- 76.2. Mr Pyle did not refer his apparent concerns about Mr McGrail’s information sharing, which he later considered to be a failure of the utmost seriousness, to his superiors at the FCDO in London, with whom he was in regular, detailed communication, or to the GPA, despite his close connections with the Authority;
- 76.3. Mr Pyle did not ask Mr McGrail to explain the position, or address his concerns, prior to deciding Mr McGrail should leave his post.
- 76.4. Mr Picardo similarly expressed no significant concern about the incident until 14<sup>th</sup> May 2020. On 12<sup>th</sup> March 2020, he said that the location of the incident “helps us in a way”<sup>275</sup>;
- 76.5. Mr Llamas says that the Chief Minister’s concerns were to ensure good and transparent communications with Spain and protect the RGP officers as best we could from having to face court action in Spain, and he cannot recall the Chief Minister expressing any view on the possible civil action before the Gibraltar Courts.<sup>276</sup>
77. Mr McGrail’s position has consistently been that he had practically provided Mr Llamas and Mr Pyle with the same briefing and it was very clear to him from early on that Mr Pyle knew that the collision had most likely occurred in Spanish waters because both had been together the pre-incident night (i.e. the 8<sup>th</sup>) and it was clear they had been working together on the issue.<sup>277</sup>
78. Mr McGrail was also under the reasonable and accurate impression that Mr Llamas would feed information upwards. Mr McGrail reasonably assumed that Mr Llamas<sup>278</sup> would keep Mr Pyle fully informed. This assumption was correct. It is artificial and unfair to accuse Mr McGrail of being dishonest by not directly informing Mr Pyle of information which he knew that Mr Llamas had already told him.

***(xxvi) Mr McGrail did his utmost to keep the key individuals informed in the first hours and days after the Incident at Sea***

79. The investigation into the Incident at Sea was highly complex and sensitive (on human, legal and political levels), and Mr McGrail did his utmost to keep key individuals updated almost in real time, based on incomplete and rapidly developing information, in the midst of a fast-moving and challenging crisis:

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<sup>275</sup> [A159]

<sup>276</sup> [Mr Llamas2/59; A315]

<sup>277</sup> [A74]

<sup>278</sup> [C5064] see email Mr Pyle to Mr McGrail 8.6.20 “to be clear, the AG is my Hon Legal Advisor so yes it is he who a Governor would take legal advice from”

- 79.1. On 8<sup>th</sup> April, as Mr McGrail said in oral evidence, the incident was “*very dynamic and fast pacing... in the very early stages... the dust hasn’t settled, everything was fast actions, fast briefings*”.<sup>279</sup>
- 79.2. The incident was extremely serious on multiple levels. As Mr McGrail said in oral evidence: “*Not only was I dealing with the loss of life (which was extremely regrettable), the shock that that had caused amongst our - the service, and no doubt the families and the community. I was also dealing with the potential of serious public disorder, given that only a few months earlier there had been a similar incident involving a HM Customs vessel, with a - another smuggling vessel and where there had been one fatality. And the wake of that brought was serious public disorder in the streets.*”<sup>280</sup>
- 79.3. The information Mr McGrail received was inconclusive and in the first days after the incident, and regularly changed;<sup>281</sup>
- 79.4. Given the sensitivity, Mr McGrail was appropriately careful not to provide conclusive information prior to it being verified;
- 79.5. Mr McGrail was under no duty to provide all unverified information to the Governor and was never asked to do so.
80. Mr Pyle was in any event provided key information within hours of it being available to the RGP. There is no evidence that Mr McGrail was “*evasive*” or deliberately withheld information, as is the allegation made by Mr Pyle, and the stated reason for his loss of confidence:
- 80.1. If Mr Pyle was not provided all of the unverified information available to the RGP, at the time it was available, for example being shown, on 8<sup>th</sup> March, the map of the suspected coordinates of the collision, this was at worst an oversight, which had no significant effect, and certainly not a reason to dismiss the Commissioner of Police:
- 80.2. On 8<sup>th</sup> April, the day of the incident:

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<sup>279</sup> [6/15/1]

<sup>280</sup> [6/35/22]

<sup>281</sup> [John Field 1/38; A801] John Field says was briefed at 0940 8 March 2020 on the day of the incident in relation to the coordinates, recalls briefing Mr McGrail, Richardson, and the AG concerning the “*suspected exact coordinates*” : “*I remember a discussion taking place and being asked if the chase had been plotted/ recorded as the coordinates were well out of BGTW, I was unable to answer this. Considering that the initial report was that PMB had been involved in a chase out at sea, approximately 3miles off Europa Point, at that moment in time, it was a safe assumption that the chase/ part of it, had occurred in our jurisdiction*”

- 80.2.1. At the meeting at around midday, the coordinates of the collision are likely to have been discussed by Mr Field, in a meeting which Mr Llamas attended. Mr Llamas recalls that Mr McGrail was “*keen to get confirmation*” of the coordinates which had come from the Guardia Civil.<sup>282</sup> Mr McGrail said in oral evidence that “*There was no certainty, ... we were not able to commit to that and I wanted to work on that confirmation and best information, best evidence. I was expectant that the data that would confirm all these things that we were enquiring about would be available to us from our own assets, the maritime assets I mean, and/or port authority or Windmill Hill Signal Station.*”<sup>283</sup>
- 80.2.2. In in relation to the draft text which Mr Llamas did not in fact send to Mr Picardo, he stated in oral evidence that he was going to text that the incident had taken place opposite the runway because “*it wasn't very clear at that time. I mean, it was in that area.*”<sup>284</sup>
- 80.2.3. Mr Pyle attended New Mole House not long afterwards, as is evidenced by the fact that he recalls Mr Field was still in the room. It would have been bizarre for the RGP to deliberately share different information with him than they had with Mr Llamas. There was no reason to do so.
- 80.3. Despite claiming not to have been kept up to date, Mr Pyle was keeping the FCDO informed of relevant and up to date information including that the “*incident*” (meaning collision) may have taken place as many as six nautical miles from BGTW:
- 80.3.1. He emailed the FCDO on 9<sup>th</sup> March 2020 at 07:57, stating: “*There may be complications around yesterday's incident in that it might have happened as much as six miles inside Spanish waters.*”<sup>285</sup>
- 80.3.2. Mr Llamas accepted that it was “*completely inconceivable*” that he would not have told Mr Pyle this on the evening of 8<sup>th</sup> March, the very day of the incident, when they had dinner together.<sup>286</sup>
- 80.3.3. On 9<sup>th</sup> March, in the morning, Mr Pyle emailed Mr McGrail to say: “*I was with the AG last night and we wondered whether it would be worth having an update at some stage later this morning.*”

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<sup>282</sup> [11/109/6]

<sup>283</sup> [6/17/9]

<sup>284</sup> [11/112/18]

<sup>285</sup> [B1748]

<sup>286</sup> [11/118/4]

80.3.4. At the meeting on 9<sup>th</sup> March, at 12:10, Mr Pyle and Mr Llamas were brought up to date with the present working theory, which was part of the incident was in BGTW and part was not. The coordinates of the collision are likely to have been discussed, as

- (a) Paul Richardson’s notes show that Mr Pyle was in the meeting where “*exact coordinates of collision still not determined*” but “*element of chase within BGTW*” which concurs with email Mr Pyle sent to London on 9<sup>th</sup> March 2020 16:42.<sup>287</sup>
- (b) Mr Llamas recalls that “*Mr McGrail still the following day he was very keen in getting the exact coordinates.*” Plainly, this was the context of the discussion, and the GC coordinates must have been part of that discussion.<sup>288</sup>
- (c) Mr Llamas confirmed in oral evidence that 11<sup>th</sup> March was not the first time that Mr McGrail had informed Mr Pyle that the collision was likely to have taken place outside BGTW because “*it was discussed at the meeting of the 9<sup>th</sup> where I was present*”<sup>289</sup>.
- (d) Mr Pyle accepted in oral evidence that he would have raised the ‘6 nautical miles’ point at the 9<sup>th</sup> May meeting, and gave the following evidence:

*Q On 9 March [...] you were briefed again in person and you now accept that the coordinates of the collision must have been discussed, certainly at a high level?*

*A. Yes.*

*THE CHAIRMAN: (To the witness): If that is right, you would surely have asked what the coordinates were?*

*A. I think by that time, because I was aware that the collision, incident, the collision, had happened inside Spanish waters, which was*

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<sup>287</sup> [EB/1590]: “The AG said it was clear, with entry at some point of the vessel into BGTW”

<sup>288</sup> [11/127/6]

<sup>289</sup> [11/134/23]

*my subsequent point, I didn't need to know the exact coordinates. I just needed confirmation, you know, that it had happened inside Spanish waters*

- (e) Mr Pyle accepts that he did not raise the “*six nautical miles*” point at the meeting of 9<sup>th</sup> March, and “*should have been more forceful and directive and more open with Mr McGrail*” and “*with hindsight... I wished I had approached the meeting differently*”.<sup>290</sup> He accepted that if he had raised what he knew with Mr McGrail, he would have been able to provide Mr Pyle with better information.<sup>291</sup> But, in any event, his interest was “*not in the exact location*” but “*inside or outside*”, which is in significant contrast to his apparent anger at not being told about the 6 nautical miles.<sup>292</sup>
- (f) On 12<sup>th</sup> May at 08:49, Mr Pyle reported to the FCDO by email, copying Mr Llamas, that he “*asked the Commissioner of Police yesterday if he could, 3 days on, confirm the location of the collision, as per the meeting Michael and I had with him on Monday*” (emphasis added).<sup>293</sup> “*Monday*” was 9<sup>th</sup> March. The inference is that the non-exact coordinates were discussed at the meeting on 9<sup>th</sup> March, and that Mr Pyle was waiting for confirmation – which also accords with Mr Richardson’s note.
- (g) Mr McGrail accurately responded to Mr Pyle’s message on 12<sup>th</sup> that “*it is highly probable it [i.e. the collision] was outside BGTW*”. It was only on 12<sup>th</sup> March that he reasonably felt able to confirm (to the extent of high probability) the coordinates of the collision.

80.3.5. Mr Pyle accepted in oral evidence that (a) his impression of the RGP officers who were investigating the incident was that they were very professional about it<sup>294</sup>; (b) he did not tell Mr McGrail that his primary concern was where the collision occurred, (c) he did not tell Mr McGrail that he wanted all information even that which was not

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<sup>290</sup> [18/91/3]

<sup>291</sup> [18/92/1]

<sup>292</sup> [18/92/7]

<sup>293</sup> [C3306]

<sup>294</sup> [19/89/20]

verified<sup>295</sup>; (d) the RGP's reasonable concern was where the entire incident, i.e. the chase and collision, took place, as if none of it took place in BGTW they would have no jurisdiction to detain suspects (two were being detained) or investigate at all<sup>296</sup>, and (e) he did not explicitly ask Mr McGrail to confirm the location of the collision until his text message of 12<sup>th</sup> March<sup>297</sup>.

80.3.6. It became plain during the oral evidence, and Mr Pyle now accepts, that he and Mr McGrail were working from a different understanding of what was meant by "*incident*". Mr McGrail meant the chase and the collision, whereas Mr Pyle meant the collision. This has important implications:

- (a) The only time, contemporaneously (although after Mr McGrail had communicated his intention to retire), that Mr Pyle in any way particularised his concern over Mr McGrail's communications was in his letter dated 3<sup>rd</sup> June<sup>298</sup>, in which he said: "*I know that then when the CoP was telling me that it was not clear where the incident had occurred, he was informing the Chief Minister the incident had indeed occurred outside of BGTW*".
- (b) Mr Pyle accepted in oral evidence that the text message he was referring to<sup>299</sup>, from Mr McGrail to Mr Picardo, in fact said that "*the information suggests that the collision took place outside BGTW*" (emphasis added).
- (c) Mr Pyle accepted that when Mr McGrail told him that the incident was part in and part out of BGTW, that was accurate according to what the RGP knew at the time.
- (d) Mr Pyle also accepted that he may have misunderstood that Mr McGrail was telling him the collision may have occurred inside or outside of BGTW.<sup>300</sup>
- (e) Mr Pyle accordingly accepted that it may have been a misunderstanding, and accepted in oral evidence "*I didn't know*

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<sup>295</sup> [19/89/25]

<sup>296</sup> [19/87/12]

<sup>297</sup> [19/124/6]

<sup>298</sup> [B4676]

<sup>299</sup> [B1345]

<sup>300</sup> [19/97/8]; [19/98/15]

*whether the lack of full disclosure was deliberate or an oversight”.*<sup>301</sup>

- (f) He accepted that his oral evidence was the first time in four years that he had accepted anywhere that it could have been in fact an oversight rather than deliberate.<sup>302</sup>
- (g) He accepted that there was not, on analysis, solid evidence of Mr McGrail being evasive.<sup>303</sup>

80.4. Mr Pyle also conflated confirmation of the coordinates with speculation about the coordinates.<sup>304</sup> Due to conflicting evidence which was available to him, Mr McGrail felt unable to confirm coordinates of the collision until 12 March. It was reasonable for Mr McGrail to say that he could not confirm the location of the collision until 12<sup>th</sup> March based on the information he had available to him, which was the unverified coordinates from the Guardia Civil. Mr Llamas confirmed in his oral evidence that Mr McGrail was seeking “*absolute confirmation*” of the coordinates.<sup>305</sup>

80.5. The worst that can be said that Mr McGrail was being particularly cautious – based on his three and a half decades of policing experience – not to confirm information before he had sufficient information to do so. As he said in oral evidence: “*If I correlate with any other major incidents, you don't want to be announcing mass casualties when there are not, you don't want to provide inaccurate information that could cause knock-on effects.*”<sup>306</sup>. There is no evidence even by inference that he was being deliberately evasive, choosing to withhold information for any reason, or in some way failing his duties to share information timeously. Indeed, if he had confirmed information prematurely, and it turned out to have been inaccurate, he would have rightly been criticised for having done so.

80.6. Mr Pyle accepts that he never alighted upon any possible motive for Mr McGrail to have been evasive about the location of the collision.<sup>307</sup> Indeed, it would be

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<sup>301</sup> [19/115/22]

<sup>302</sup> [19/117/22]

<sup>303</sup> [19/120/17]

<sup>304</sup> [Mr Pyle1/19.1; A264] “*As the evidence shows, I asked Mr McGrail directly on numerous occasions if he was able to confirm whether the incident had taken place in Spanish waters. On 11 March 2020 - three days after the incident - he was still telling that he was “getting there”. The simple fact is that I repeatedly asked Mr McGrail a simple and direct question to which he did not reply candidly with the best information available to him. He withheld highly relevant information from me*”

<sup>305</sup> [11/134/12]

<sup>306</sup> [6/18/7]

<sup>307</sup> [19/125/14]

illogical and implausible for Mr McGrail to have deliberately kept information from Mr Pyle whilst at the same time sharing the same information with Mr Pyle's legal advisor. Mr McGrail in fact wanted to impart as accurate and validated information as possible<sup>308</sup>.

- 80.7. Mr Pyle claims that Mr McGrail caused him to report to London “*on the basis of*” erroneous information<sup>309</sup>, but he does not say that Mr McGrail caused him to provide erroneous information. This is because Mr Pyle was, in fact, reporting accurately on the basis of information which was available at the relevant time, having heard the same from Mr Llamas.
- 80.8. If either Mr Llamas or Mr Pyle had felt they were being misled or misinformed at the time, they would surely have expressed those concerns at the time. Plainly, they did not have those concerns. Indeed, it was not until 14<sup>th</sup> May, over two months' later, that Mr Pyle first expressed to anyone his concern that Mr McGrail had been evasive, likely encouraged by Mr Picardo's and Mr Llamas's (equally spurious) allegations of Mr McGrail lying, and influenced by his pre-existing prejudices.
- 80.9. Although he claims to have done a thorough review of the relevant messages, Mr Pyle accepted in oral evidence that he had already made up his mind on Mr McGrail being evasive before he received a copy of the s.15 report setting out the relevant communications.<sup>310</sup>
81. Accordingly, the concern that Mr Pyle expressed about Mr McGrail being “*evasive*”, and his apparent outrage at being given different information to the Chief Minister, was either based on a misunderstanding, appears to have been founded on an unseemly rush to pass judgement on Mr McGrail, egged on by the Chief Minister's own serious allegations of Mr McGrail's apparent dishonesty.
82. Mr Pyle also accepted that he never adequately particularised the serious allegations of dishonesty he made against Mr McGrail, and which he used to justify removing Mr McGrail from office. He accepted that this was a breach of natural justice<sup>311</sup> and the process was not fit for purpose<sup>312</sup>. This is important as it demonstrates that even if Mr Pyle honestly believed Mr McGrail had been evasive, how reckless he was to use that as

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<sup>308</sup> See [Mr McGrail3/147; A114-5]:

<sup>309</sup> [Mr Pyle1/25.8(iv); A254]

<sup>310</sup> [19/127/22] and [19/129/12]: “*A. I can see the point but I still believe that at the time, on the evidence I had and nothing subsequently would change my mind that there were elements of Mr McGrail withholding information for whatever reason.*”

<sup>311</sup> [19/133/7]

<sup>312</sup> [19/136/13]



justification for removing him from office, how grossly unfair and in breach of natural justice.

***(xxvii) It was unfair and premature to reach any conclusions as to Mr McGrail's responsibility or otherwise for the Incident at Sea***

83. It was unfair and premature to reach any conclusions as to Mr McGrail's responsibility or otherwise for the Incident at Sea given that Mr McGrail had commissioned an independent investigation into the incident and that investigation had not reported as at the time Mr Pyle and Mr Picardo 'lost confidence' in him.

84. At the time when Mr Pyle and Mr Picardo decided that the Incident at Sea was sufficiently serious to result in their 'loss of confidence' in Mr McGrail, they did not have access to the Metropolitan Police's independent findings and organisational learning report into the incident.<sup>313</sup>

84.1. Mr McGrail was therefore blamed for an incident, to the extent that he was forced to step down as Commissioner, which he had no direct involvement.

85. In any event, Mr McGrail's probity and integrity were such a central focus of Mr Pyle's concerns about the Incident at Sea, had Mr Pyle not had those concerns, it is implausible that he would have acted so swiftly, i.e. before the independent report, to remove Mr McGrail from post based on the incident alone, which Mr McGrail had no direct involvement in and (it later became clear) was in large part directly caused by the misconduct of individuals rather than systemic factors. There is clear evidence both from the documentation (such as the second 22<sup>nd</sup> May GPA letter) and from witnesses that the allegation of dishonesty was central to the loss of confidence (e.g. Dr Britto: "*what convinced us was the gravity of the incident at sea, but also the allegation that Mr McGrail had been keeping certain information away from the Governor*"<sup>314</sup>).

**K. The Attorney General failed to act independently of the Chief Minister, and advise him to maintain proper boundaries**

86. Mr Llamas failed to maintain the constitutionally required<sup>315</sup> separation between the Attorney General and Chief Minister:

86.1. Mr Llamas agreed in oral evidence with the DPP's evidence that if the Chief Minister had asked to speak about a criminal investigation, he would refuse<sup>316</sup>,

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<sup>313</sup> [Smith 1/16; A1052]

<sup>314</sup> [15/198/13]

<sup>315</sup> Section 59 (5) of the Constitution: "*In the exercise of the powers conferred on him by this section the Attorney General shall not be subject to the direction or control of any other person or authority.*"

<sup>316</sup> [12/71/8]

and if the Chief Minister asked to speak to him about Op Delhi, he would refuse.<sup>317</sup> Mr Llamas did not follow this approach.

86.2. Mr Llamas allowed himself to be influenced by Mr Picardo in relation to Op Delhi, and lost his perspective as the Government's and the Crown's principal legal advisor in Gibraltar, acting more as the Chief Minister's and 'Gibraltar PLC's' protector than as an independent legal advisor:

86.3. At no point did Mr Llamas advise Mr Picardo as to the proper boundaries and red lines he should be observing relating to Op Delhi;

87. Mr Llamas should have recused himself from advising on or being involved in any way with the Op Delhi investigation because he was advising the Government on the ownership issue:

87.1. At the 7<sup>th</sup> April 2020 meeting with Mr McGrail, Mr Llamas said he would step back from discussing the criminal investigation as he was advising HMGoG on the intellectual property rights of the NSCIS platform. In oral evidence he accepted that he "*may well*" have said this.<sup>318</sup>

87.2. Despite this, from 12<sup>th</sup> May onwards Mr Llamas became deeply involved in the criminal investigation.<sup>319</sup> He claimed that this was because "*Mr McGrail himself asked to meet me and I don't blame him for doing so*"<sup>320</sup>, however this is not the case. Mr McGrail responded to a request on 13<sup>th</sup> May by Mr Llamas that Mr McGrail and he meet with Mr Baglietto by stating that it would not be appropriate for the Commissioner and Attorney General to meet with counsel representing a person under investigation, but it would be "*appropriate for you and I to meet and discuss the preparation of legal arguments to defend any possible legal challenge*".<sup>321</sup> Mr Llamas then replied saying "*yes we should meet.. let me know at what time*". This does not amount as Mr McGrail asking to meet Mr Llamas, as it was Mr Llamas who first proposed he attended a meeting with the Commissioner and Mr Baglietto, and Mr McGrail only said that it would be appropriate for them to meet (in contrast to the inappropriateness of them both meeting with Mr Levy's lawyer).

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<sup>317</sup> [12/71/15]

<sup>318</sup> [11/169/22]

<sup>319</sup> [Mr Llamas2/21; A303]: "*I do not recall having said, as asserted by Mr McGrail, that I "would be taking a step back from discussing the criminal investigation as {1} was now advising HMGoG on the intellectual property rights of the NSCJS platform case and it was not compatible to advise on both matters." But if I did say this, it was at the meeting on 7 April 2020*"

<sup>320</sup> [11/170/4]

<sup>321</sup> [C3663]

87.3. Mr Llamas accepted to Mr Pyle that there could be a “*perception of a conflict*” but did not act on that conflict.<sup>322</sup>

87.4. Mr Llamas exploited the “*advice*” he was giving to the RGP to promote the Government’s position that it owned the NSCIS platform. For example, at the 7<sup>th</sup> April meeting, he (in his own words) asked that the RGP “*assume that ownership is with the Government. So that if you did proceed you were doing in a completely secure basis*”.<sup>323</sup> This is the issue upon which Mr DeVincenzi was concerned Mr Llamas was not acting with sufficient independence.

88. Mr Llamas’s key motivations were (a) protecting Mr Levy from Op Delhi, (b) protecting “*Gibraltar PLC*”<sup>324</sup>, (c) protecting the Government’s position as to ownership of the platform, and (d) protecting Mr Picardo and/or the office of the Chief Minister and/or Mr Levy.

***(xxviii) Lloyd DeVincenzi tried to raise the alarm***

89. Mr DeVincenzi was a more junior law officer than the AG and DPP, but was the only law officer who seemed to have a proper understanding of the importance of remaining independence from the politicians and powerful figures in the Gibraltar community:

89.1. To his credit, Mr DeVincenzi repeatedly attempted to remind Mr Llamas of the importance of acting independently from government and the Chief Minister. For example, his reference in a text message exchange with Mr Llamas on 13<sup>th</sup> May 2020<sup>325</sup>, to the Canadian case where the Prime Minister of Canada was found to have used his position to seek to influence the decision of the Attorney General relating to a criminal prosecution<sup>326</sup>. Unfortunately, his prescient warnings fell on deaf ears.

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<sup>322</sup> [B1814] Email from Mr Pyle 5<sup>th</sup> June 2020: “*the AG accepted that there could be the perception of a conflict between his role as our HLA and his involvement in proceedings*”

<sup>323</sup> [B180] Transcript of 13<sup>th</sup> May meeting

<sup>324</sup> Lloyd DeVincenzi 1/19 [A1302]: shortly after the 13 May 2020 meeting with Mr McGrail and Mr Llamas, Mr Llamas “*raising briefly with me the applicable legal test or threshold for a nolle prosequi. The conversation was of an academic nature, and to the best of my recollection it was against the background of protecting the jurisdiction and the office of Chief Minister.*”; A1302-3]; Mr DeVincenzi1/22: “*I recall mentioning to the Attorney General that, in the context of this nexus, it would be especially important to be alive to the possibility that those with an interest in the outcome of the NSCIS matter could seek to influence the investigative or legal process, either directly or indirectly. I was especially anxious that concern for the good reputation of the jurisdiction and its offices and institutions not be exploited by anyone with an incentive to conflate Gibraltar's interests with their own. I particularly recall mentioning the importance of not regarding Gibraltar as a 'PLC' but as a community whose values transcend corporate ones, even if it was important not to be naïve about the need to safeguard Gibraltar's economic well-being and international standing*”

<sup>325</sup> [C6806]

<sup>326</sup> <https://ciiec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/TrudeauIIReport-RapportTrudeauII.aspx>

89.2. Mr DeVincenzi said in oral evidence, in relation to the advice he was giving in relation to who owned the NSCIS platform, that he had a “*building concern over time that notions were being planted in [Mr Llamas’s] head that maybe he needed to push back on*”.<sup>327</sup>

89.3. Mr DeVincenzi’s actions contrast sharply with those of Mr Llamas and Mr Rocca, who failed to push back against Mr Picardo’s attempts to influence the Op Delhi investigation, and in particular the investigation of Mr Levy. Indeed, Mr Llamas and Mr Rocca were themselves deeply involved in the successful attempts to persuade the RGP not to interview Mr Levy under caution and not examine his phone.

**L. The “process” which followed the GPA withdrawing its decision was grossly unfair and a breach of natural justice**

90. The Chief Minister, Attorney General and Interim Governor all made serious allegations against the Commissioner of Police but gave him no opportunity to respond to them:

90.1. Mr Picardo’s allegation that Mr McGrail lied to him during the 12<sup>th</sup> May meeting was not particularised in the note he prepared for Dr Britto or the 22<sup>nd</sup> May letter from the GPA which he substantially edited (see above);

90.2. Mr Pyle’s allegation that Mr McGrail was “*evasive*” and lacked probity and integrity in respect of the incident at sea was not particularised in the note of the 18<sup>th</sup> May meeting (which Mr Picardo drafted and Mr Pyle reviewed) or the 22<sup>nd</sup> May letter from the GPA, which also stated that Mr Pyle “*feels that he has been misled*”<sup>328</sup>. The brief particulars of the allegation contained in the 3<sup>rd</sup> June 2020 letter were (a) insufficient, but (b) in any event too late because Mr McGrail had already indicated his intention to retire by the time the letter was handed to him on 8<sup>th</sup> June 2020:

90.2.1. Mr Pyle accepted in oral evidence that the failure to particularise the allegations of dishonesty in the note of the meeting with Dr Britto and the 22<sup>nd</sup> May letter was a breach of natural justice<sup>329</sup> and not fit for purpose.<sup>330</sup> He accepted that the 29<sup>th</sup> May 2020 letter from Mr McGrail’s lawyer could not have set out his response to the allegations because he did not know what the particulars were.<sup>331</sup>

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<sup>327</sup> [11/53/6]

<sup>328</sup> [B1365]

<sup>329</sup> [19/133/7]

<sup>330</sup> [19/136/24]

<sup>331</sup> [19/140/1]

90.3. Mr Llamas’s allegation, contained in the note of the 18<sup>th</sup> May meeting<sup>332</sup> and the 22<sup>nd</sup> May letter that Mr McGrail was lacking in both probity and integrity<sup>333</sup> was entirely unparticularised. The detail provided in his 5<sup>th</sup> June 2020 letter to the GPA, that the “*agreement*” was “*clear beyond peradventure*”, was too late because Mr McGrail had already indicated he was going to retire by the time he was handed that letter on 8<sup>th</sup> June 2020 (notwithstanding Mr Pyle’s mistaken memory that he handed the letters to Mr McGrail on 5<sup>th</sup> June).

**M. The HMICFRS Report (Issue 4)**<sup>334</sup>

91. Prior to the 12<sup>th</sup> May 2020 neither Mr Picardo nor Mr Pyle had raised any serious concerns about the Report which HMICFRS had sent to the GPA on the 9<sup>th</sup> April 2020 and which the GPA had shared with Mr Picardo, Mr Pyle and others.

92. There is no evidence that Mr Pyle or Mr Picardo considered the HMICFRS report justified removing Mr McGrail, and neither did the Justice Minister:

92.1. Mr Pyle’s reaction to the report on the 30<sup>th</sup> April was to say that it was “*quite damning*” but that it was “*not as bad as the headlines suggest*” and, further, that most of the issues should be relatively easy to fix<sup>335</sup>.

92.2. The Minister of Justice, Samantha Sacramento messaged Mr McGrail on 29<sup>th</sup> April 2020 to say “*The report is shocking reading on the face of it, but if you analyse it deeper It’s not that bad, and it’s [sic] has easy solutions. [...] it can all be fixed don’t worry*”<sup>336</sup>

92.3. In his written evidence, Mr Picardo said that the Report was not an issue which caused him to lose confidence in Mr McGrail.<sup>337</sup>

92.4. Mr Picardo said in oral evidence that he agreed with Mr Pyle on 30<sup>th</sup> April 2020 that there was a way forward and that Mr McGrail could continue to lead the RGP.<sup>338</sup>

93. The members of the GPA similarly did not view the Report in a negative light which would lead to a loss of confidence / requiring Mr McGrail to retire:

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<sup>332</sup> [B192]

<sup>333</sup> [B1366]

<sup>334</sup> [Mr McGrail1/72-77; A27-28] [Mr McGrail3/15-44 170h-170n; A54-65 A135-136] [Mr McGrail Responsive 1/92-106; A161-164]

<sup>335</sup> [B1511]

<sup>336</sup> [B499]

<sup>337</sup> [Picardo1/108; A216]

<sup>338</sup> [16/78/13]

- 93.1. Julio James Alcantara’s evidence is that “*I did not attach such importance to the issue of the implementation of the Police Inspectorate’s report as to require Mr McGrail to retire*”<sup>339</sup>;
- 93.2. Ernest Gomez’s evidence is that: “*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*”<sup>340</sup>;
- 93.3. Francis Carreras’ evidence is that “*Dr Britto made reference to the Incident at Sea and this was considered by the GPA members to be far more serious and it was felt that this was the major factor to be considered.*”<sup>341</sup>
94. It is striking that neither Mr Picardo nor Mr Pyle thought to inquire further from HMICFRS which, it is submitted would have been the appropriate reaction if either Mr Picardo or Mr Pyle had considered that the contents of the Report merited sanction or warning to be imposed on Mr McGrail. Neither did the GPA make this consideration of enquiring from HMICFRS.
95. In fact, the Report does not make any express criticism of Mr McGrail. On the other hand, the Report did contain suggestions that the work of the RGP was hampered by lack of resources<sup>342</sup>, deficiencies in legislation<sup>343</sup>, and failure to provide support for vulnerable offenders and victims<sup>344</sup>. Moreover, HMICFRS reported that the RGP “*should do further work on demand management, supported by the Government of Gibraltar, HM Governor and GPA*”<sup>345</sup>.
96. Funding issues were highlighted on page 5 of the Report<sup>346</sup>.
97. On a fair assessment of the Report, it could be said that the problems identified were institutional and implicated the Government and the Governor as much as the management of the RGP.
98. Mr Pyle and Mr Picardo’s mild reactions to the HMICFRS report as at 30<sup>th</sup> April are important, as the Inquiry will need to consider what changed after that which led, two weeks’ later, to both Mr Pyle and Mr Picardo saying they had lost confidence in Mr McGrail:

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<sup>339</sup> [Alcantara1/14; A357]

<sup>340</sup> [Gomez1/38; A401]

<sup>341</sup> [Carreras1/14; A517]

<sup>342</sup> [B1556]

<sup>343</sup> [B1565-6]

<sup>344</sup> [B1556]

<sup>345</sup> [B1569]

<sup>346</sup> [B1574]

- 98.1. For Mr Picardo, the 12<sup>th</sup> May search warrants and the issue that arose thereafter were clearly the thing that changed;
- 98.2. For Mr Pyle, he says that the Incident at Sea was the key issue. However, on 30<sup>th</sup> April, the Incident at Sea had happened almost two months' earlier. Despite this, there is no evidence he entertained (let alone expressed) the possibility of removing Mr McGrail.
- 98.3. Plainly, what changed for Mr Pyle by 14<sup>th</sup> May was Mr Picardo's intervention, and the influence of Mr Picardo claiming that Mr McGrail had lied to him and gone against the advice of the DPP.
- 98.4. Importantly, it appears that it was only after the discussions with Mr Picardo that Mr Pyle became concerned that he, too, had been "misled" by Mr McGrail, but in relation to the Incident at Sea. This is the only new factor.

**N. The Gibraltar Police Federation 'complaints' (Issue 6)<sup>347</sup>**

***(xxix) There were no formal complaints made by the GPF to the GPA***

99. There were no formal complaints made by the GPF to the GPA<sup>348</sup>
100. The lack of complaints undermines Mr Pyle's assertion, made in his witness statement to this Inquiry, that "*tensions between the RGP leadership and the Police Federation culminated in formal complaints from the Federation to the GPA about Mr McGrail.*"<sup>349</sup>
101. This further demonstrates the recklessness with which Mr Pyle raised serious allegations against Mr McGrail.

***(xxx) The GPF issue did not appear in the key contemporaneous documents so cannot have played any significant role in Mr Pyle or Mr Picardo's decisions***

102. Mr McGrail's relationship with the GPF cannot have had any significant bearing on the decisions of Mr Picardo and Mr Pyle as it was not included in:
- 102.1. the email correspondence between Mr Pyle and Mr Picardo on the evening of 17<sup>th</sup> May 2020 relating to the issues they were planning on raising with the GPA the following day<sup>350</sup>,

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<sup>347</sup> [Mr McGrail Responsive 1/130-164; A169-176]

<sup>348</sup> [Goncalves1/39; A343] [Alcantara1/13; A355] [Danino1/29; A371] [Falero1/39; A386] [Gomez1/36; A400] [Weisfogel1/39; A418] [Lavarello1/36; A432] [Patron1/35; A463] [Pizzarello1/27; A475] [Collado1/30; A498] [Figueras1/26; A509] [Carreras 1/21; A519]

<sup>349</sup> [A248]

<sup>350</sup> [B1211]

- 102.2. the detailed note of their meeting with Dr Britto on 18<sup>th</sup> May 2020<sup>351</sup>, or
- 102.3. the 22<sup>nd</sup> May 2020 letter which Dr Britto sent to Mr McGrail which Mr Picardo extensively edited.<sup>352</sup>
103. Had the issue been of any importance whatsoever it would have been referred to in these detailed accounts of Mr Picardo’s and Mr Pyle’s stated reasoning for ‘losing confidence’ in Mr McGrail.
- (xxxi) The relationship between the RGP and the GPF was strained – but Mr McGrail was not primarily to blame***
104. It is accepted by Mr McGrail that the relationship between the senior management of the RGP and the GPF was strained and difficult.
105. The tension between the RGP and GPF was caused at least in substantial part by the disrespectful and hostile behaviour by the GPF leadership<sup>353</sup>:
- 105.1. To that extent, the accounts given by Maurice Morello and Leif Simpson are inaccurate and one-sided.<sup>354</sup>
106. Following Mr McGrail’s departure, the GPF’s relationship with RU as Commissioner remained poor if not worsened. The strong inference is that Mr McGrail was not the cause of the problems.<sup>355</sup>
107. Mr McGrail did a lot of work to address allegations of bullying in the RGP<sup>356</sup>:
- 107.1. Notwithstanding this work, Mr McGrail was challenged disrespectfully and disruptively by Maurice Morello and Leif Simpson<sup>357</sup>.

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<sup>351</sup> [B1357]

<sup>352</sup> [B1364]

<sup>353</sup> [John Field 11; A796] There were “occasions when the GPF Chairman wrote to management and was out of order and disrespectful.” ; [RU1/15-16; A531]: “There in my view was very little respect offered to Mr McGrail in his tenure as Commissioner, with the Chairman constantly being disrespectful and challenging towards him.”

<sup>354</sup> See [Mr McGrail4/130-139; A169-170] responds broadly to Maurice Morello, then specifically at [Mr McGrail4/150-164; /A173-A176]

<sup>355</sup> [A603]: Email from RU, then Assistant Commissioner, to Maurice Morello, 29<sup>th</sup> August 2019: “First, let me express my disgust at the tone of your reply to me and one which I will be raising with the command. Your message to me is filled with little cooperation and signs of confrontation”

<sup>356</sup> [RU1/17; A531]: “Before continuing to discuss this fraught relationship created, I believe by M Morello, I think it is important that I detail some of the work Mr McGrail had commissioned in order to deal with allegations of bullying in the RGP. Subsequent to the GPF’s survey in late 2018, were the workforce and the GP brought bullying allegations against the fore, Mr McGrail sought to contextualise these allegations and deal with them accordingly”

<sup>357</sup> [RU1/18; A532]: “Notwithstanding all the good work Mr McGrail had steered to address



**O. The Airport Incident (Issue 1)**<sup>358</sup>

108. The Airport Incident cannot have had any significant bearing on the decisions of Mr Picardo and Mr Pyle as it was not included in:
- 108.1. the email correspondence between Mr Pyle and Mr Picardo on the evening of 17<sup>th</sup> May 2020 relating to the issues they were planning on raising with the GPA the following day<sup>359</sup>,
  - 108.2. the detailed note of their meeting with Dr Britto on 18<sup>th</sup> May 2020<sup>360</sup>, or
  - 108.3. the 22<sup>nd</sup> May 2020 letter which Dr Britto sent to Mr McGrail which Mr Picardo extensively edited.<sup>361</sup>
109. Mr McGrail was at all material times acting under the direction of the then-RGP Commissioner, Edward Yome.<sup>362</sup>
110. The MoD unambiguously accepted and apologised for its misunderstanding of its jurisdiction.<sup>363</sup>
111. The independent review of the RGP's conduct found that it acted impeccably during a highly sensitive and difficult incident.<sup>364</sup>
112. The Chief of Defence Staff wrote to the then-Commissioner of the RGP, Eddie Yome, apologising.

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*possible bullying and other areas of policing issues, he continued to be challenged disrespectfully by Mr Morello and also the GPF Secretary, Mr Leif Simpson, which resulted in discipline processes against them, because of their warranted positions as police officers in the RGP”.*

<sup>358</sup> [Mr McGrail Responsive 1/5-53; A143-A146]

<sup>359</sup> [B1211]

<sup>360</sup> [B1357]

<sup>361</sup> [B1364]

<sup>362</sup> [EY/25; A1346]: *“I wish to emphasise that police officers were deployed to the airport solely on my instructions”*

<sup>363</sup> [C260]: Letter from Rear Admiral A. D. Radakin, 8<sup>th</sup> March 2017: *“Joint Forces Command regrets the events that took place in Gibraltar on the 8th February. This includes the events at Gibraltar International Airport and the dispute as to jurisdiction that led to the confusion by British Forces Gibraltar over the appropriate handling of the individual suspected of downloading indecent material whilst in the United Kingdom; and the detailed management of this particular case. It was the view of Joint Forces Command that the case was to be subject to exclusive Service Police jurisdiction - which turned out not to be correct... I want to reassure you that subsequent additional advice, including at a senior legal level in the Ministry of Defence, recognises the legal primacy point in this case. Joint Forces Command now, therefore, fully understands and respects your legal primacy in this case as the law currently stands today”*

<sup>364</sup> [B2158]: Watterson Review outcome: *“The GPA has come to the firm conclusion that the actions of and the restraint shown by the relevant RGP officers during the Watterson Incident were considered, deliberated, entirely proportional and highly commendable. As such, we do not doubt the effectiveness and probity of the policing demonstrated by the RGP in respect of the Watterson Incident. We would take the liberty of adding, though it may not be our place to do so, that the actions of certain MOD personnel in respect of the Watterson Incident deserve censure and that you should consider whether a full inquiry ought to be undertaken by a body independent of the RGP and the MOD so that lessons may be learnt from this incident”*

113. The three officers who were arrested later apologised claiming that they had acted on UK legal advice.<sup>365</sup>
114. Mr McGrail's actions in relation to the Airport Incident were separately reviewed and he was independently and completely cleared of allegations of misconduct.<sup>366</sup>
115. In May 2020, Mr Pyle knew that (a) that the RGP's conduct had been independently reviewed and it had been exonerated from any wrongdoing, (b) that the MOD had apologised for his conduct and (c) that Mr McGrail had been cleared of any misconduct.
116. Mr Picardo had entirely backed the RGP at all material times and had been deeply critical of the MoD.<sup>367</sup>
- 116.1. There is no evidence that prior to 12 May 2020, Mr Picardo had criticised the RGP's conduct.
- 116.2. At the time of the Airport Incident, and afterwards up until 12<sup>th</sup> May 2020, Mr Picardo enthusiastically encouraged the RGP to take a hard line approach to the MoD:
- 116.2.1. In relation to the runway incident, Commissioner Yome reported to Mr McGrail in a WhatsApp message at the time that the CM "*wants us to go for the jugular*".<sup>368</sup>
- 116.2.2. He agreed he was likely to have referred to the three officers as "*fucking idiots*", as recalled by Mr McGrail.<sup>369</sup>
- 116.2.3. After the runway incident and after the arrests had been made, in an email to Commissioner Yome cc'ing the Attorney General, Mr Picardo referred to the MoD as "*fools*" and "*clowns*" and said that "*if it requires another turn of the screw [...] I will not hesitate to support you*".<sup>370</sup>

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<sup>365</sup> [EY/32; WSB/A1346]: "*In the days following the arrest of the three senior military officers the RGP received apologies from all three men [sic – one was a woman] who claimed that they had acted on UK legal advice*"

<sup>366</sup> The document recording the outcome of the complaints is at [B2708]

<sup>367</sup> [Walliker/6; A1386] "*During an interview with the Chief Minister a few days after the Incident, I was able to correct a couple of errors of fact in the RGP's report of the incident, but I could not alter his view that 'his' police force had behaved exceptionally well, at the operational level, but that MoD personnel had not. To his mind the RGP had saved the MoD from 'itself' and to my mind they had behaved disgracefully*"; *There has been considerable speculation as to why no Inquiry was ever conducted. My understanding from my chain of command was that the Chief Minister had argued for not having an Inquiry to save the "MoD's blushes."* [11]

<sup>368</sup> [C757]

<sup>369</sup> [16/12/11]

<sup>370</sup> [C207]

116.3. There is no evidence before the Inquiry of Mr Picardo criticising the RGP, or Mr McGrail, about the Airport Incident from the date of the Airport Incident in 2017 until Mr Picardo’s text message to Mr Pyle on 14<sup>th</sup> May 2020.

116.4. Mr Picardo’s criticism of the RGP and Mr McGrail’s conduct in the airport incident was self-serving and formed part of his successful attempt to manipulate/persuade Mr Pyle to remove Mr McGrail from post.

116.5. The fact that Mr Picardo appears to have completely reversed his position on the Airport Incident from 12<sup>th</sup> May 2020 onwards in his correspondence and discussions with Mr Pyle raises the strong inference that Mr Picardo is willing to bend the truth in order to achieve his immediate aims.

**P. Mr Pyle’s stated intention to use his powers under Section 13 of the Police Act (Issue 9)<sup>371</sup>**

117. When the GPA withdrew its decision under s.34 of the Police Act Mr Pyle decided that only section 13(1)(f) was available to him, i.e. to suspend from duty or call for the resignation of the Commissioner.<sup>372</sup>

118. At all relevant times Mr Pyle had been appointed as Governor under Section 22 of the Constitution.<sup>373</sup>

119. As at 5<sup>th</sup> June 2020, Mr Pyle was not able to exercise any functions of the office of Governor because of the operation of section 22(3) of the Constitution, which prohibits an individual who has been temporarily discharging the functions of Governor whilst the office of Governor was vacant to exercise any functions of the office “*after the Governor or some other person having a prior right to perform the functions of that office has notified him that he is about to assume [...] those functions.*”<sup>374</sup>

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<sup>371</sup> [Mr McGrail1/96-109; A40-45] [Mr McGrail2/14-15; A49] [Mr McGrail3/121-144; A94-108] [Mr McGrail Responsive 1 /172-175; A177-178]

<sup>372</sup> [B1811] “*things have taken a turn for the worse. The AG told me yesterday the Gibraltar Police Authority (GPA) meeting that was held last week to consider the position of the Commissioner of Police was not quorate. It’s deliberations are therefore null and void and the Chair of the GPA should therefore not have called for the Commissioner of Police to resign. The AG advised there is no point in looking to appoint new GPA members as they are chosen by the Public Services Commission from a list proposed by the CM and I. They are then appointed by the Governor. Any new GPA members would therefore likely be perceived as biased, not least by a court. This leaves Section 13(1)(f) of the Police Act as the only way forward to secure the resignation of the Commissioner should it be determined that this is the best way forward*”

<sup>373</sup> [A245]: “*During all this period of time, the Office of Governor was vacant following the end of the appointment of the previous Governor, Ed Davis, on 18 February 2020, since which date I had been appointed Governor under Section 22 of the Constitution, a position that I continued to hold until Sir David Steel, the current Governor, was sworn in on the 12 of June 2020.*”

<sup>374</sup> [B1812] Email from Mr Pyle: “*Apologies for the timeframe, but with a media storm brewing, I would like to resolve this as soon as possible and certainly before Sir David Steel arrives on Wednesday.*”

120. Mr Pyle was therefore acting unlawfully by continuing to purport to exercise the functions of Governor by threatening to use the s.13 power and therefore prompt Mr McGrail's early retirement.<sup>375</sup>
121. Mr Pyle may have been acting unlawfully throughout the relevant period, if he was informed of the imminent arrival of the new Governor prior to 14<sup>th</sup> May 2020.
122. Mr Pyle should have followed the advice he was given about the risk of using sections 13 and 34 in the way he intended to, and the advice that a negotiation should have taken place whilst the new governor arrived.<sup>376</sup>
123. Mr Pyle illegitimately threatened to use the Governor's powers which were not available to him in June 2020 because the new Governor was imminently to arrive;
- 123.1. Mr Pyle rushed to remove Mr McGrail before the new Governor arrived<sup>377</sup>,
- 123.2. Mr Pyle was convinced by Mr Picardo that Mr McGrail had to be removed "before he meets the Spanish on Tuesday" so that the government could be seen to be "taking decisive action"<sup>378</sup>. The implication is that Mr McGrail's removal was seen as a useful boost for the negotiations with Spain – this is not a legitimate reason to remove the Commissioner of Police. Mr Pyle later suggested to London that "the outcome also plays well into our ongoing negotiations with Spain".<sup>379</sup>

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<sup>375</sup> [B1822] Email from Mr Pyle, 7<sup>th</sup> June 2020: "The good news is confirmation that the CoP intends to retire and the issue now is how to achieve this. My instinct is to allow CoP time to work out a deal, but this then means Sir David will have arrived. What we don't want is CoP to withdraw his request and lobby Sir David to keep his position"; [B1832] Email, 7<sup>th</sup> June 2020 20:26: "I have asked the Commissioner to see me tomorrow at 10.00 when I will hand over copies of the letters the Attorney General, Chief Minister and I sent to the Chairman of the GPA setting out our position (we surmised that the Chairman did not forward these letters on to the Commissioner's lawyer). I will carefully get the message across that he either confirms in writing his request for early retirement with immediate effect with details to be confirmed, or I will use the powers available to me under Section 13.(1)(f). I will ask that he returns to the Convent at 16.00 to let me know his decision"

<sup>376</sup> [B1828] Email 7<sup>th</sup> June: "Although any exercise of the Governor's power under section 13(f) is distinct to the removal procedure under section 34(1) (where the GPA has to secure the Governor's or the Chief Minister's approval to call for the Commissioner to retire), the exercise of that power nevertheless risks being liable to challenge for the reasons set out in paragraph 47 of the Commissioner's lawyer's 29 May letter to the GPA, namely 'it is not a mechanism for the Governor to simply use when he disagrees with the Authority, or when he disagrees with an action by the Police Commissioner, and nor is it a power which should be pre-emptively threatened in order to lean on the Authority to trigger section 34. Although you have justifiable grounds on which to exercise your section 13(f) power, there remains a risk that it could be challenged by the Commissioner.'"

<sup>377</sup> [B1832]: Email from Mr Pyle, 7<sup>th</sup> June 2020, 20:26: "I've just met with the AG and CM. We agreed that, on balance, we needed to protect Sir David and felt that should CoP still be in office after his swearing in, he would more likely than not retract his request to retire and appeal to Sir David, thus taking us back to square one."

<sup>378</sup> [B1832] Email, 7<sup>th</sup> June 2020, 20:26

<sup>379</sup> [B1839]

123.3. Mr Pyle refers to emphasising the “*strength of his feelings*” to the GPA which suggests he was not giving the GPA any room to make a different decision.<sup>380</sup>

123.4. Mr Pyle had no power under the Constitution to exercise the Governor’s functions from the moment he was notified of the imminent arrival of the new Governor.

**Q. The 29<sup>th</sup> May Letter (Issue 8)**<sup>381</sup>

124. The letter<sup>382</sup> should not have caused “*anger*”<sup>383</sup>, it should have prompted Mr Pyle to pause and consider his duties under s.11 of the Police Act to maintain the integrity and independence of the RGP.

125. The points made in the letter relating to flaws in the GPA process were vindicated when the GPA withdrew the call for Mr McGrail to retire, following legal advice, and due to its failure to afford Mr McGrail a reasonable opportunity to make representations and to give due consideration to those representations.<sup>384</sup>

***(xxxii) The 29<sup>th</sup> May 2020 letter should have prompted Mr Pyle to suspend his actions in relation to Mr McGrail***

126. The 29<sup>th</sup> May 2020 letter from Charles Gomez & Co. should have prompted Mr Pyle to pause and consider his duties under s.11 of the Police Act to maintain the integrity and independence of the RGP:

126.1. Mr Pyle only knew the “*headline*” details of the criminal investigation after Mr Picardo briefed him about it on 15<sup>th</sup> May<sup>385</sup>;

126.2. For some reason, perhaps embarrassment, Mr Pyle did not reveal to London until a day after his first email on the subject, that “*high profile figure*” was Mr Levy until around 15:21 on 22<sup>nd</sup> May<sup>386</sup>;

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<sup>380</sup> [Mr Pyle/14.3; WSB/A241]

<sup>381</sup> [Mr McGrail Responsive 1/168-171; A176-177]

<sup>382</sup> [B1367]

<sup>383</sup> [B1832]: Email from Mr Pyle 7<sup>th</sup> June 2020, 20:26: “*The CM, clearly angry at the email from Gomez to me,*”

<sup>384</sup> [A325]: Dr Britton, para. 30

<sup>385</sup> [Mr Pyle1/27.1; A257]: “*I had no prior knowledge about the criminal investigation referred to in Mr Gomez’s letter of 29 May until the Chief Minister briefed me in headline fashion about it at our meeting on 15 May. I was not aware of any of the detail of the case save that the Deputy Chief Minister’s former PS was implicated in it. I did not know that the investigation was known as Operation Delhi until March of 2022.*”

<sup>386</sup> [B1780]: Email from Mr Pyle to FCDO 22.5.20: “*The Commissioner believes this is in part driven by the ongoing investigation. The high-profile person referred to below is James Levy!*”

126.3. Mr Pyle was already nervous about the fact that Mr Picardo was exercising a competency which was in fact the Governor's<sup>387</sup>.

**R. The Assault Investigation (Issue 2)<sup>388</sup>**

127. The Assault Investigation cannot have had any significant bearing on the decisions of Mr Picardo and Mr Pyle as it was not included in:

127.1. the email correspondence between Mr Pyle and Mr Picardo on the evening of 17<sup>th</sup> May 2020 relating to the issues they were planning on raising with the GPA the following day<sup>389</sup>,

127.2. the detailed note of their meeting with Dr Britto on 18<sup>th</sup> May 2020<sup>390</sup>, or

127.3. the 22<sup>nd</sup> May 2020 letter which Dr Britto sent to Mr McGrail which Mr Picardo extensively edited.<sup>391</sup>

128. Had the issue been of any importance whatsoever it would have been referred to in these detailed accounts of Mr Picardo's and Mr Pyle's stated reasoning for 'losing confidence' in Mr McGrail.

129. In any event, had Mr Pyle (in his capacity as a member of the GPA or otherwise) carried out any due diligence he would have discovered that the investigation file shows that the RGP carried out a thorough and professional investigation into the incident.

130. The fact that Mr Pyle appears to have relied on an MoD rumour<sup>392</sup>, and done nothing to investigate whether it was true, to justify – in part – ending Mr McGrail's 35-year career demonstrates how sloppy and reckless his actions were.

**S. The Alcaidesa Claims (Issue 7)<sup>393</sup>**

131. The Alcaidesa Claims issue cannot have had any significant bearing on the decisions of Mr Picardo and Mr Pyle as it was not included in:

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<sup>387</sup> [B1784]; *"It's the James Levy angle as well that is interesting. I'm also a touch nervous given that the CM has firmly taken the lead on a competence that is more towards us than them. But we've agreed this approach which on balance is right. It also raises issues about the GPA who should have been monitoring the CoP. But I can't see it ending well for anyone."*

<sup>388</sup> [Mr McGrail Responsive 1/54-70; A156-158]

<sup>389</sup> [B1211]

<sup>390</sup> [B1357]

<sup>391</sup> [B1364]

<sup>392</sup> [A248]: Mr Pyle refers in his first statement to *"The widely held belief in MOD circles is that the RGP did not investigate the crime correctly to protect those involved in the attack."*

<sup>393</sup> [Mr McGrail Responsive/165-167; A176]

- 131.1. the email correspondence between Mr Pyle and Mr Picardo on the evening of 17<sup>th</sup> May 2020 relating to the issues they were planning on raising with the GPA the following day<sup>394</sup>,
  - 131.2. the detailed note of their meeting with Dr Britto on 18<sup>th</sup> May 2020<sup>395</sup>, or
  - 131.3. the 22<sup>nd</sup> May 2020 letter which Dr Britto sent to Mr McGrail which Mr Picardo extensively edited.<sup>396</sup>
132. In any event, the issue occurred eight years before Mr McGrail was appointed Commissioner and he had no involvement in the investigation, so insofar as it bore on Mr Picardo’s reasoning, it did so illegitimately.

**T. Mr McGrail’s decision to record meetings which took place after 12<sup>th</sup> May 2020**

133. Mr McGrail’s decision to covertly record four meetings which took place after 12<sup>th</sup> May 2020 has come under criticism particularly from the Government Parties during the Inquiry. Although it is not an issue in the Inquiry, since it has been raised as a means of criticising Mr McGrail, we address it briefly below.
134. Before 12<sup>th</sup> of May 2020, Mr McGrail’s relationship with Mr Picardo and Mr Llamas was good. A Civil Contingencies Emergency was declared in March 2020 which the RGP led in terms of enforcement. Mr McGrail worked closely with Mr Picardo, Mr Llamas, ministers and officials. He appeared in televised Covid briefings. He was well respected, and it will be recalled that Mr Llamas said that he had “*excellent working and personal relations with Mr McGrail*”<sup>397</sup>. Mr McGrail had previously been involved in the sanctions-busting “*Grace One*” super tanker arrest and Brexit discussions<sup>398</sup>.
135. On the 12<sup>th</sup> May, there was a sudden, radical, and wholly unexpected change in Mr Picardo’s and Mr Llamas’s behaviour towards Mr McGrail<sup>399</sup>. Mr Picardo’s fury is recorded in the evidence of Mr Picardo, Mr Llamas and Mr McGrail and was still in full flame when Mr Picardo saw Mr Pyle on 15<sup>th</sup> May 2020<sup>400</sup>. Mr Llamas was the only other witness to Mr Picardo’s initial eruption. It left him with a deep sense of discomfort, he said in oral evidence that he felt “*vulnerable, extremely worried*”<sup>401</sup>.

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<sup>394</sup> [B1211]

<sup>395</sup> [B1357]

<sup>396</sup> [B1364]

<sup>397</sup> [B1864]

<sup>398</sup> Mr McGrail 3<sup>rd</sup> Affidavit 10<sup>th</sup> April 2022 at paragraph 150 (c), (d) and (g) at A127).

<sup>399</sup> A193 and A280. 26/05/2022 Statement of Mr Picardo at paragraph 51 at A193 and 24/06/2022 Statement of Mr Llamas at paragraph 40 at A280) references to Mr Picardo’s explosion of rage).

<sup>400</sup> paragraph 26 of Mr Pyle’s statement at [A255].

<sup>401</sup> Mr Llamas’s response to Chairman’s questions Transcript [12/83/16]; McGrail evidence [6/238/10]

136. Mr Picardo’s exchanges with Mr Baglietto on the 12<sup>th</sup> and 17<sup>th</sup> May 2020<sup>402</sup> show that Mr Picardo’s anger quickly turned into action as he assertively joined in Mr Levy’s defence and with Mr Llamas on the 17<sup>th</sup> May 2020 to 20<sup>th</sup> May 2020<sup>403</sup>.
137. Mr McGrail has been described as having a robust personality and as a “*man of action*”, by Mr Llamas<sup>404</sup>, as an experienced policeman who had come up through the ranks, but his description of Mr Picardo’s paroxysm of rage (glowering, facial contortions, and aggressive tone)<sup>405</sup> caused him grave apprehension. Mr McGrail reported the incident to the RGP’s senior management team who were similarly disturbed<sup>406</sup>.
138. Mr Llamas’s response added to Mr McGrail’s fears. He said that he could no longer “*entertain*” (*sic*) Mr McGrail. His message was clearly that Mr McGrail could not expect any support from the Crown’s principal law officer in Gibraltar<sup>407</sup>.
139. As Mr McGrail<sup>408</sup> and Mr Richardson<sup>409</sup> said in evidence the behaviour of Mr Picardo and Mr Llamas brought into perspective (i) the bizarre suggestion made by Mr Llamas as to whether the Deputy Chief Minister’s Principal Secretary Caine Sanchez, who had been arrested for fraud in Op Delhi, could be dealt with via a disciplinary process and (ii) whether if there had been a sabotage the government as owner of the NSCIS could effectively acquiesce to the alleged hacking<sup>410</sup>.
140. [REDACTED]
141. [REDACTED] and the inappropriate emotion

<sup>402</sup> B1422 and B1423.

<sup>403</sup> B1418.

<sup>404</sup> Transcript Day 2 Inquiry Hearings in Page 121 lines 5 to 12.

<sup>405</sup> Transcript Day 6 page 196 at lines 12 to 16 & Inquiry Hearing Day 6 McGrail Evidence Day 1 – Page 214 at lines 9 to 17.

<sup>406</sup> Mr McGrail 1<sup>st</sup> Affidavit 20<sup>th</sup> June 2022 at A14, paragraph 47.

<sup>407</sup> Mr McGrail 1<sup>st</sup> Affidavit page 14 paragraph 43 at A14 and Exhibit Mr McGrail/3 email dated 12<sup>th</sup> May 2020 from Mr McGrail to himself at page 3, 2<sup>nd</sup> paragraph, at B76.

<sup>408</sup> Transcript Day 7 Mr McGrail Oral evidence page 133 lines 1 – 13.

<sup>409</sup> Transcript Day 4 page 10 lines 7 – 13 and page 60 lines 194 – 195.

<sup>410</sup> Transcript Day 5 Oral evidence of Mr McGrail at page 92, lines 23 – 25, page 93 lines 1 – 9 and page 122 lines 1 – 13.

<sup>411</sup> Mr McGrail 1<sup>st</sup> Affidavit, at A3, paragraph 10.



shown by Mr Llamas when expressing his devotion to Mr Picardo as the embodiment of “*Gibraltar PLC*” against foreign foes<sup>412</sup>.

142. The suspicions that Mr McGrail previously harboured about Mr Llamas’s behaviour, crystallised during the extremely disturbing scene at Mr Picardo’s “*Board Room*” on 12<sup>th</sup> May 2020. Mr Picardo, the close friend and professional / business partner of the suspect Mr Levy, had an active interest in 36 North<sup>413</sup> and his unhinged reaction (possibly motivated by fear) presented to Mr McGrail as a clear and present threat not just to him but to the investigation and the RGP as an independent police force<sup>414</sup>.
143. It was his precarious position in that hostile environment that moved Mr McGrail to conclude that he had no option but to gather evidence to protect himself and in the absence of internal supportive mechanisms, the recordings were necessary to ensure a full and accurate record<sup>415</sup>. Moreover, Mr McGrail was concerned that the RGP database (including everything to do with Operation Delhi) was hosted by the government’s Information Technology & Logistics Department (“ITMr DeVincenzi”) and therefore accessible from outside the RGP<sup>416</sup>.
144. Mr McGrail has only used the recordings for the purposes of this Inquiry. Their production in evidence has assisted in the Inquiry’s work and avoided potential conflicts of evidence with the attendant risks of injustice. It is notable that important aspects of the Inquiry where conversations were not recorded have led to difficulties<sup>417</sup>.
145. What transpired after the 12<sup>th</sup> of May 2020, shows that Mr McGrail’s intuition / instinct which led him to record conversations was dispiritingly accurate.
146. Thus even in relation to the initial explosion of anger, there was immediately a “*misunderstanding*” as to what the Mr Llamas told Mr Picardo that the DPP had advised,

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<sup>412</sup> [B126], see page 19 of the Transcript of the meeting of the 13<sup>th</sup> May 2020, third box from the end and paragraphs 18 and 22 of Lloyd DeVincenzi’s 1<sup>st</sup> Affidavit at [A1302] and [A1303].

<sup>413</sup> Mr McGrail’s emails to self, dated 12 & 13 May 2020 at B74 - B78; paras 37-38 of Mr Picardo’s First Affidavit at A190; Transcript Day 16, evidence of Fabian Picardo from page 96 onwards; Mr McGrail’s Second Affidavit, paras 5 & 12 at A47 & A49; Mr McGrail’s 2<sup>nd</sup> Responsive Affidavit (No.6) dated 22 March 2024 para 20-23 at A1453.

<sup>414</sup> See Mr McGrail’s Second Affidavit dated 26 September 2022 paras 4-5, at [A47].

<sup>415</sup> Ibid.

<sup>416</sup> This information will be contained in the upcoming further affidavit of Mr McGrail

<sup>417</sup> Transcript Day 10 - oral evidence of DPP pages 84 to 89 as to what Mr McGrail told Mr Picardo and Mr Llamas as to the DPP’s advice; Mr McGrail’s emails to self, dated 12 & 13 May 2020 at B74 - B78; Transcript Day 6 – oral evidence of Mr McGrail, page 196 to 200 of what Mr McGrail told Mr Pyle as to location re: Op Kram Inquiry; Transcript Day 6 – oral evidence of Mr McGrail lines 30 - 44, J. Britto’s failure to keep notes Inquiry Transcript Day 15 – oral evidence of Joseph Britto at pages 73,74,88,139 & 184, Baglietto’s failure to keep notes; Inquiry Transcript Day 9 – oral evidence of Lewis Baglietto at pages 71, 72, 73, 86, 144, 159, 158, 161, 162, 170, 175, 177, 194, and Mr Llamas’s failure to keep notes or WhatsApp messages, see Transcript Day 11 oral evidence of AG at pages 192 & 208.

and a further “*misunderstanding*” about what the DPP subsequently told Mr Llamas. The DPP had not strongly advised against a search warrant. But for the recordings other misunderstandings and misrepresentations would likely have found their way into the Inquiry record. This is particularly relevant given the lengths to which Mr Picardo and Mr Llamas went to publicly call Mr McGrail a liar and that in any other clash of evidence the Inquiry would have been faced with choosing as between Mr Picardo and Mr Llamas (both KCs holding high office) and Mr McGrail.

147. Mr McGrail’s case is not something that has developed over time. His lawyer’s letter of the 29<sup>th</sup> of May 2020 is early, almost contemporaneous evidence of Mr McGrail’s concerns in May 2020. He had good reason not to trust Mr Picardo or Mr Llamas<sup>418</sup>.
148. The extent of Mr Picardo’s impropriety, we now know, led to him not just falling full square behind the legal representation of the suspect Mr Levy, but extended to discussing with Lewis Baglietto what appears to have been the possibility not just of removing Mr McGrail from office but depriving the lead investigator Superintendent Richardson, another loyal Crown servant of his pension rights<sup>419</sup>.
149. To shore up his position, Mr Picardo rushed to recruit Mr Pyle to the assault on Mr McGrail and effectively manipulated the rest of the process by extracting from Mr Pyle a commitment that they should thenceforth work together “*as one*” and ensuring that the GPA was railroaded into the Section 34 process with the support of the CM’s representative in the GPA, Darren Grech.
150. The Crown Counsel, later Solicitor General, and since resigned from the government service Lloyd DeVincenzi was one of the very few witnesses who was close to the events and he testified to having major concerns about the way in which the Mr Picardo and Mr Llamas were behaving. His comments about Mr Picardo needing to go 100 miles away from the fray and suggestions that Mr Llamas did not seem to know that he should be acting in an independent capacity, further confirm the accuracy of Mr McGrail’s intuition / impressions on the 12<sup>th</sup> of May.
151. Since the Inquiry was called, there has been a shocking set of events which absent full clarifications add to the general sense that Mr McGrail has found himself in a hugely perilous position for having allowed the Op Delhi investigators to pursue their lines of inquiry:

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<sup>418</sup> Mr McGrail’s emails to self, dated 12 May 2020 at B74 - B78; Letter from Charles Gomez & Co to GPA dated 29<sup>th</sup> May 2020 at C4477 to C4504; Fabian Picardo WhatsApp exchanges with Mr Llamas/Mr Baglietto/DG as contained in Exhibit Mr Picardo/3 at B1417 - B1423 and B1426 - B1427.

<sup>419</sup> Exhibit Mr Picardo3 - Mr Picardo’s WhatsApp exchanges with Mr Baglietto at B1417 - B1423 and Transcript Day 4 - oral evidence of Paul Richardson at Page 230.

- 151.1. The witness inducement campaign.
- 151.2. Mr McGrail's arrest and later acquittal following a complaint made by one of the recipients of a whistleblower assurance.
- 151.3. The threat to Mr McGrail's physical safety which Commissioner Ullger mentioned in answer to Sir Peter Caruana's last question of him<sup>420</sup> It will be recalled that Mr Ullger told both the Governor and Mr McGrail of the whistleblowing and the apparent threat of physical harm in the context of the Inquiry.
- 151.4. The apparent loss of Mr McGrail's computer, laptop and day books left behind at the police station and the way in which this has been used by Mr Picardo's newspaper, the New People, to mount a hugely scurrilous and damaging campaign.
152. So whilst reasonable people may debate whether they themselves would have recorded meetings after the events of 12<sup>th</sup> May, and even Mr McGrail himself has said he is "*not proud that I did that*"<sup>421</sup>, Mr McGrail's decision to do so was reasonable in the extreme and unique circumstances he found himself in, motivated by suspicions which turned out to be well-founded. He has not used the recordings for any other purpose than this Inquiry. The Inquiry, and the public record, has undoubtedly benefited from them, and the transcripts generated by them.

#### **U. The Job Offers**

153. The Job Offers are of extreme concern to Mr McGrail, and pose a real risk to the integrity of the evidence being given in this Inquiry. The Job Offers may amount to inducements to give negative evidence against him and therefore an abuse of process and/or abuse of state power.
154. The recent arrests of three former RGP officers alleged to have fabricated evidence against Mr McGrail and perverted the course of justice further emphasise the seriousness of the issue and the extent to which it threatens the integrity of the Inquiry's proceedings.
155. The Inquiry has heard some, limited evidence about the Job Officers, particularly from Mr Ullger, Mr Picardo and Maurice Morello. It is regrettable that, as far as we are aware, all witnesses who have been asked for documentary evidence about the Job Offers have refused to provide it, including a key player in the scheme, the Chief Minister's former

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<sup>420</sup> Exhibit Mr Picardo3 - Mr Picardo's WhatsApp exchanges with Mr Baglietto at B1417 - B1423 and Transcript Day 4 - oral evidence of Paul Richardson at Page 230.

<sup>421</sup> [6/239/7]

aide, Michael Crome. This places both Mr McGrail and the Inquiry in something of an invidious position, though it is not our submission that the final report cannot be produced without obtaining further evidence. In the circumstances, we submit that the following conclusions may safely be reached by the Inquiry about the Job Offers, on the basis of the evidence available to the Inquiry:

- 155.1. A number of Job offers were made to serving and former RGP personnel who raised allegations against Ian McGrail and the RGP. What appears to have been the typical process for such offers being made is set out in the unsigned statement of Michael Crome dated 24<sup>th</sup> May 2023, produced as part of the criminal investigation of Mr McGrail and attested to by Mr Crome in oral evidence to Mr McGrail's trial.<sup>422</sup> One such offer, dated 9<sup>th</sup> February 2023, has been provided to the Inquiry.<sup>423</sup>
- 155.2. The Job Offers were made directly by Mr Picardo, a Core Participant in this Inquiry, with the assistance of the GPF and Michael Crome. In at least one case, Mr Morello edited the draft statement and the Chief Minister was sent it to approve the offer. The Chief Minister replied to that particular statement with enthusiasm in an email dated 22<sup>nd</sup> January 2023: *"This is chilling to the bone. Remarkable... it describes the McGrail we know we [sic] was a corrosive influence"*.
- 155.3. Individuals were offered a job in the civil service, with the offer including the level of compensation. At least one was offered another form of compensation, as Mr Morello described his own deal, a *"puffed up"* pension (in his case, meaning he would receive a pension as if he had worked 27 years instead of 24) – this is in effect a cash offer worth tens of thousands of pounds.<sup>424</sup>
- 155.4. A term of the offers was that they would crystallise if the individual's position *"became untenable"*.<sup>425</sup> However, it appears that the 22 or so individuals<sup>426</sup> who were made offers immediately left their positions or went on sick leave. There was no process in place to determine whether an officer's position became untenable.<sup>427</sup> Indeed, it appears that the individuals were given the jobs before their positions became untenable (notwithstanding the terms of the offers). Mr

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<sup>422</sup> [C6933]

<sup>423</sup> [C6932]

<sup>424</sup> [14/70/1]

<sup>425</sup> [C6932]

<sup>426</sup> [13/141/20]

<sup>427</sup> [13/150/2]

Picardo's oral evidence was that *"the way that I think I understood the provisions... was that you needed to act before positions became untenable"*.<sup>428</sup>

155.5. The Job Offers do not appear to have been made following an interview consideration of the individual's C.V. or a vacancy becoming available at the relevant public authority;

155.6. The Job Offers do not accord with any published policy;

155.7. The Job Offers are not sanctioned by any law. Although Mr Picardo justified the offers as protecting individuals from detriments *per* the Employment Act<sup>429</sup>, there is no law relating to whistle-blowers which authorises, let alone requires, that people making allegations are offered government jobs if their position becomes *"untenable"*. The Employment Act is far more limited, allowing individuals who have suffered detriments because of whistleblowing to claim compensation in the Employment Tribunal, but no more.

155.8. The Job Offers were highly inappropriate in the context of this Inquiry. There is no evidence before the Inquiry that individuals were directly encouraged to give negative evidence against Mr McGrail, but it is notable that:

155.8.1. Of the 19 statements which were ultimately provided to the Inquiry by Hassans by individuals who it appears were given Job Offers, all 19 statements were in some way critical of Mr McGrail. No similar offers were made to any witnesses who were not critical, let alone supportive, of Mr McGrail;

155.8.2. The Job Offers were coordinated by Core Participants and witnesses to this Inquiry who would benefit from Mr McGrail's credibility being undermined, particularly Mr Picardo (who authorised each offer and was sent the draft statements in advance) and Mr Levy (who appears to have played some role in advising Mr Morello and the GPF<sup>430</sup>).

155.8.3. The Job Offers ran the real risk of skewing the evidence to the Inquiry. There are multiple reasons why an individual might be tempted to give false/exaggerated evidence if they know that a civil service job will be offered without any need for an interview or C.V., effectively no

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<sup>428</sup> [17/42/22]

<sup>429</sup> [17/44/21]

<sup>430</sup> [14/80/6] Morello: "Mr Levy is part of Hassans and he has gone into meetings. I am not going to discuss what advice he gave Mr Bonfante or not"; [14/79/18]: "You called Mr Levy directly? Yes, how many times? I don't know. Was it more than once? It could have been. Did you discuss what we have been discussing now? No. So, it was completely unrelated to the Inquiry? No."

questions asked, and that although the agreement required their situation to become untenable, in practice this was not necessary. This applies *a fortiori* if individuals were offered, as Mr Morello was, early retirement (by 3 years) and a “*puffed up*” pension package. At the least this is highly inappropriate. All of the individuals would have known that Mr Picardo was involved, and the kind of evidence which would be helpful to him, and may have acted accordingly so as to secure the jobs and/or cash.

155.8.4. It is even more inappropriate for a Core Participant to the Inquiry, who has a direct interest in negative evidence being given against Mr McGrail, playing any role at all in the process, let alone signing his name on the agreements and reviewing draft evidence. This is, at best, further evidence of the Chief Minister’s absolute disregard for conflicts of interest, the red lines which apply to public officials, and the standards of public life.

#### **CONCLUSION**

156. We hope that these submissions are of assistance.

**CHARLES GOMEZ**

**NICHOLAS GOMEZ**

**DANIEL BENYUNES**

Charles A. Gomez & Co., Gibraltar

**ADAM WAGNER**

Doughty Street Chambers, London

7<sup>th</sup> June 2024