

In the Matter of the Commissions of Inquiry Act

-and-

In the Matter of an Inquiry into the retirement of the former Commissioner of Police convened by a Commission issued by HM Government of Gibraltar on 4 February 2022 in Legal Notice No 34 of 2022 ("the Inquiry")

**AFFIDAVIT OF
ALBERT MENA**

I, Albert Anthony Mena, of [REDACTED] **MAKE OATH** and say as follows:

1. I am, and was at the times material to the matters under inquiry in this Inquiry, the Financial Secretary of Her Majesty's Government of Gibraltar, a statutory Office to which I was appointed in September 2014. I am due to stand down from this Office on 30th September 2022.
2. I am a Chartered Accountant and a Barrister at Law by qualifications. Immediately prior to my appointment as Financial Secretary on secondment, I was practising as a lawyer in Hassans International Law Firm, of which I remained a partner albeit an inactive one. As an inactive partner I have played no role in the day to day decisions of the firm, or in the decisions relating to investments acquired by the firm. Over the 8 year secondment I have only attended a handful of key partner meetings relating to the election of the management committee of the firm and the scope of their role, the appointment of new partners and the remuneration structure for the partners.

3. As Financial Secretary, I have a number of statutory roles and responsibilities, principally under the Public Finance (Control and Audit) Act. The Financial Secretary is the most senior official in Government in the area of control of public finances, including public revenue, expenditure and borrowing. The Financial Secretary is therefore responsible for preparing the Government's annual budgets of revenue and expenditure. These responsibilities extend to and include the payments aspects of public procurement contracts. Separately, the Constitution and other statute laws of Gibraltar provide for an Accountant General (who is primarily responsible for the accounting aspects of public finances and for ensuring that constitutional and statutory requirements in that respect are complied with) and a Principal Auditor (who audits the public accounts of Gibraltar, including compliance with legal requirements relating thereto).

4. I swear this affidavit in response to the request by Sir Charles Peter Lawford Openshaw DL, the Commissioner appointed to conduct this Inquiry, communicated to me by letter dated 10 August 2022 from the Solicitors to the Inquiry, Attias & Levy ("**the Inquiry's Letter**"), which requested me to prepare and produce:
 - (a) a statement under oath addressing the subject-matter of the Inquiry: namely, the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement, and particularly my knowledge of those reasons and circumstances, including addressing the following specific matters, to the extent that they are within my knowledge-
 - (i) My involvement in and knowledge of Operation Delhi, including but not limited to, the authorisation and holding back of payments in respect of the NSCIS platform, and my involvement in or knowledge of the company named 36 North Limited.
 - (ii) A meeting on 13 May 2019 attended by the Chief Minister, Fabian Picardo QC MP, the former Minister for Justice, Neil Costa, HM Attorney General for Gibraltar, Michael Llamas QC, the Chief Secretary, Darren Grech, the Director of Public Prosecutions,

Christian Rocca, the previous Commissioner of Police, Ian McGrail and me (“**the 13 May 2019 Meeting**”).

- (iii) In respect of operation Delhi, whether I attended any other meetings with Mr McGrail and/or any of the persons listed in 1(c) of the Inquiry’s Letter.
 - (b) I am also asked whether minutes or file notes were made by me and/or other attendees during any of the meetings or shortly thereafter and, if so, whether these were circulated, if which I am requested to provide copies.
5. I am also requested by the Inquiry’s Letter to provide any relevant documents and correspondence held by me, in my possession or control in relation to the matters listed above, including (but not limited to) electronic documents such as emails, word documents, PDFs, SMS, Whatsapp or other instant messages in native format with the original metadata preserved.
6. Insofar as the content of this affidavit is within my personal knowledge, it is true and, insofar as it is not, it is true to the best of my knowledge, information and belief, and the sources of such beliefs are identified herein as appropriate and relevant.
7. There is now produced and shown to me a bundle of documents marked **AM1**. References in this affidavit to documents in that bundle are to **AM1/x**, where x is the page number in the bundle.

My knowledge of and involvement in the reasons and circumstances leading to Mr McGrail ceasing to be Commissioner of Police

8. I played no role in, and have no knowledge or information about the reasons or circumstances leading to the retirement of Mr McGrail as Commissioner of Police.
9. However, I did play a role in relation to his pension, although I had no knowledge nor was I consulted about the agreed terms of the retirement of Mr McGrail. As Financial Secretary my office received Mr McGrail’s pension file on Friday 26 June 2020, in the afternoon. The file was processed by me on Monday 29 June 2020. This is the first time I saw his retirement terms. I reviewed these terms and approved the

gratuity and pension, in the same way as I do for all other retirees eligible to pensions under the Pensions Act. The process involves a retiree's file being circulated and approved by various individuals who compute the pension. It is then signed off by and on behalf of the Principal Auditor, prior to passing the file to me for my approval. The final step in the process involves the approval by the Chief Secretary, which follows mine.

10. The only difference in this approach with Mr McGrail's file was that the file contained a note from HR explaining that they agreed that Mr McGrail be eligible for full entitlement, despite not attaining the age of 55. That email had been signed by the Chief Secretary on the 26 June 2020. This indicated to me that the terms of his retirement had been agreed. I played no part in determining these. The other difference relates to the treatment of his gratuity, which I explain below, for which I signed an email which was placed on the file making reference to this email on the sign-off blue cover sheet of the file.
11. Prior to his retirement on 29 November 2019 Mr McGrail contacted me by WhatsApp to ask whether a loan could be arranged to purchase his property at Electra Flats. A government owned company that advances loans to Civil Servants exists to assist those who are unable to obtain facilities in the open market. In terms of repayment, he proposed this to be secured on his commutation when he eventually retired which he then anticipated as 1 May 2022. I was travelling at the time and agreed to look into this on my return.
12. In early January 2020 my department engaged with Mr McGrail to provide him with various options for such a facility. I would not have done so without discussing the matter with the Chief Minister, who was keen we should find a way to assist Mr McGrail within the standard parameters.
13. On 7 January 2020, after a number of loan options were provided to Mr McGrail, he declined these, instead suggesting an alternative which involved a rental arrangement of sorts. Since this alternative did not involve a financial arrangement, I referred the matter to the Deputy Chief Minister who is responsible for lands and Land Property Services. I did this with Mr McGrail's full consent and at his request.

14. I state all of this as after his retirement on 1 July 2020 I was involved in correspondence between Land Property Services, Treasury and the Chief Secretary to arrange for part of Mr McGrail's commutation to be applied to settle the purchase of his property. This explains the aforementioned email on the file which split the gratuity to pay for his property. The above explains the full extent to which I was aware of his retirement terms.

My involvement in and knowledge of Operation Delhi, including but not limited to, the authorisation and holding back of payments in respect of the NSCIS platform, and my involvement in or knowledge of the company named 36 North Limited.

15. I believe that this issue conflates three separate matters, with which I will deal separately, namely, my involvement in and knowledge of (i) Operation Delhi and (ii) the authorisation and holding back of payments in respect of the NSCIS platform and (iii) the company named 36 North Limited.

My involvement in and knowledge of Operation Delhi

16. Operation Delhi was the Royal Gibraltar Police ("RGP") codename for a criminal investigation into the alleged (i) hacking of the Government's NSCIS security platform and (ii) conspiracy to fraudulently divert a government contract for the operation of the NSCIS platform from Bland Limited (the complainant to the RGP) to 36 North Limited ("the Criminal Investigation" or "Operation Delhi").
17. My knowledge of the Criminal Investigation begun with receipt by me of an email dated 11 May 2019 from Mr McGrail to various addressees (including me) requesting the 13 May 2019 Meeting about which I am asked in the Inquiry's Letter. There is now produced and shown to me commencing at AM1/1-4 a copy of that email chain. This was the first time I became formally aware that this investigation was called Operation Delhi. As I explained in my police witness statement referred to below, I had previously attended various meetings with the complainant, Bland Limited, whereby I was aware that a complaint was going to be made to the RGP. Given this I had understood that once the matter was referred to the RGP it would be investigated.

18. I attended the 13 May 2019 Meeting. We were asked to treat the meeting as highly confidential and not to take notes of the meeting. The purpose of the meeting appeared to me to be to inform the attendees of the RGP's suspicion that Mr Caine Sanchez, a senior civil servant may have committed criminal offences in relation to the NSCIS platform, and of the RGP's intention to arrest him in that connection. Mr Caine Sanchez was at the time away from Gibraltar on Government business. At the meeting it was determined that he should be asked by Government to return to Gibraltar, with no explanation to be provided as to the reasons for that request. The approach being to arrest him on arrival. I was not involved in this request, which I believe was subsequently dealt with by the Chief Secretary.
19. I also recall being told for the first time by Mr McGrail that the report that Mr Caine Sanchez had produced for me on the 16 April 2019, as explained in my police witness statement referred to below, had not been produced by Mr Caine Sanchez, as he asserted in his email. I was informed it had been produced by Mr Tommy Cornelio who had been given access to the NSCIS system by Mr Caine Sanchez. Mr McGrail advised the meeting that he had seen certain messages between both of them explaining how such a report, [REDACTED] would persuade me to review downwards or halt the payments being made to Bland/OSG. It was then evident to me that my immediate misgivings of that report and the subsequent attempt by Mr Sanchez on 6 May 2019 to have me reconsider these payments, were well founded. Details of all of this is disclosed in my police witness statement which I refer to below.
20. On 3 July 2019, I received an email from DC 130 Paul Clarke of the RGP, inviting me to make a statement in relation to Caine Sanchez and in particular an email exchange between Mr Sanchez and me regarding NSCIS on 16 April 2019. We had an exchange of emails to arrange a meeting for that purpose, which culminated in DC Clarke's email dated 4 July 2019 to me confirming a meeting between us on 16 July 2019. There is now produced and shown to me commencing at AM1/5-7 a copy of that email chain.
21. On 19 July 2019 I met with DI Mark Wyan and DC Paul Clarke of the RGP, in my office, at which they took notes of a discussion by us for a draft statement by me reference Mr Caine Sanchez and in particular our email exchange of 16 April 2019. They asked me to provide a witness statement, which I agreed to do.

22. I provided the RGP with the initial draft of my witness statement by email on 17 October 2019.
23. By email dated 22 October 2019, DI Wyan thanked me for my draft statement, confirmed that he had reviewed it and attached a slightly amended version for my consideration. The amendments related to administrative matters. He also requested that I consider the matter of “the asserted ownership of the NSCIS platform by HMGOG”, and suggested that I may “wish to add a brief sentence to paragraph 5 explaining that ownership is disputed”. I declined to do so for the reasons set out in my email dated 25 October 2019 to DI Wyan. There is now produced and shown to me commencing at **AM1/8-10** a copy of that email chain.
24. I made my signed witness statement to the RGP on 24 October 2019, a copy of which is now produced and shown to me at **AM1/11-29**.
25. By letter dated 8 April 2020 to me, (then) COP Ian McGrail sought a definitive response for the Government in relation to its position on the question of ownership of the NSCIS platform, which he said was an important outstanding matter in the Criminal Investigation. A copy of this letter is now produced and shown to me at **AM1/30-31**.
26. I responded by letter also dated 8 April 2020 saying that I remained of the view that it was not appropriate for me to make a statement on that subject. The approach to this response was discussed with the Attorney General and the Chief Secretary. I had understood that the Chief Secretary would have provided an earlier response on this issue as the relevant competent officer within the Government for these matters. Given he had not done so it was agreed that the Chief Secretary would issue a supplementary witness statement asserting Government’s view on ownership. My letter limited itself to explaining why this had not happened earlier and did not therefore address the issue of ownership. A copy of this letter is now produced and shown to me commencing at **AM1/32**. I was therefore aware that the Chief Secretary was to subsequently make a witness statement to the RGP on the subject of the ownership of the NSCIS platform. I was also aware of the contents of that supplementary witness statement, the draft of which I commented upon. I also confirmed to the Chief Secretary and the Attorney General that its contents were

consistent with my understanding of Government's position. Now produced and shown to me commencing at **AM1/33-40** is a copy of an email exchange between the Attorney General, the Chief Secretary and myself commencing on 26 April 2020 and ending with my email dated 27 April 2020.

27. By email dated 17 August 2021, DCI Roy Perez of the RGP sought a meeting with me to "seek clarification on certain matters" that the RGP was then investigating. In my reply dated 18 August I agreed to make myself available to assist in any way I could and asked him to clarify the subject-matter of the investigation so that I could locate my relevant files ahead of our meeting. By email later on the 18th, he clarified that he wanted information on what would be the procedure when an invitation is submitted by GOG on expression of interests for contracting and whether it would be dealt with through the Government's procurement department or at departmental level. A copy of this exchange of emails is now produced and shown to me commencing at **AM1/41-44**. A meeting was arranged for and took place on 25th August 2021 in relation to this subject. This meeting focussed on the engagement by the Department of the Environment of 36 North Limited, as revealed in Parliament questions that were answered on 23 March 2021 and the processes generally taken by Government when engaging consultants.

Other matter related to the subject-matter of Operation Delhi

28. On the 19th July 2019 I received a WhatsApp message from Mr McGrail which did not relate to the Criminal Investigation as such. Mr McGrail was expressing surprise and wanting to bring to my attention, in case I was unaware, that despite an alleged associate (Mr Sanchez) being under interdiction from his civil service position, a fellow alleged conspirator, Mr Thomas Cornelio was doing some work for the Department of the Environment. I was unaware of this and responded to Mr McGrail a couple of minutes later. A copy of that exchange of WhatsApp messages is now produced and shown to me at **AM1/45-46**.
29. On that day I was in Parliament to support the Chief Minister, should he need my assistance, on a couple of bills relating to Gibraltar Residential Properties Limited. I discussed this message with him ahead of the Parliament session and he asked me to deal with it. He made it clear to me that he thought that this was inappropriate and that I should close it down. When the Parliament session concluded I took Minister

John Cortes to one side, as the Minister responsible for the Department of the Environment and discussed this matter with him. He shared the concern and asked that I take this matter up with his head of department Dr Liesl Mesilio.

30. On my return to the office I met with Stephen Warr a Senior Professional and Technology Officer in the Department of the Environment and Dr Liesl Mesilio joined on the telephone line. The purpose of the meeting was to explain why I did not consider it appropriate for Mr Tommy Cornelio to be granted access to the Department and its computers. I left them in no doubt that it was unacceptable for Government to have Mr Caine Sanchez interdicted whilst a fellow alleged conspirator was granted access to Government's offices and systems.
31. I followed that meeting up an email on 24th July 2019 to the Minister for the Environment, Dr John Cortes, expressing deep concern and consternation that his Department was allowing access to and receiving services from Mr Cornelio, one of the alleged conspirators. Dr Cortes replied by email on 25th July. A copy of that email, exchange, which was copied to the Chief Secretary, is now produced and shown to me at **AM1/47-48**. This prompted an exchange of emails between the Chief Secretary and Dr Cortes, a copy of which is now produced and shown to me at **AM1/49-52**.
32. Having provided the exchange I felt I had suitably and completely addressed the concerns that had been properly expressed to me by Mr McGrail.

My involvement in and knowledge of the authorisation and holding back of payments in respect of the NSCIS platform

33. As set out in para 7 of my witness statement to the RGP (at **AM1/12**), on the 17th December 2018 I attended a meeting with the Chief Minister, Fabian Picardo, his Private Secretary, Javier Redondo and the Chairman of Bland Limited, James Gaggero. Among the issues raised by Mr Gaggero was the fact that Bland had not been paid for some time. This was primarily the reason for my presence at the meeting. Mr Gaggero also complained that since two former employees of Bland (Mr John Perez and Mr Tommy Cornelio) had left Bland's employment the NSCIS system was being interfered with. He produced a PWC report which he contended confirmed that the system had been interfered with. We did not see the contents of

that report. After discussion he said he would report the matter to the RGP. He

[REDACTED]

34. Following this meeting, by emails dated 18 December 2018 and 30 January 2019, Mr Philip Navas of Bland Limited, sent me a list (with invoices attached) of Bland's unpaid invoices in respect of the period September 2018 to January 2019, including proposed discounts to be applied [REDACTED]

[REDACTED] A copy of these lists (and attached invoices) is now produced and shown to me commencing at **AM1/53-68**.

35. I met on 6 February 2019 to discuss Bland's request for payment of outstanding invoices and [REDACTED] Following that meeting, by email dated 8 February 2019, Bland sent me a matrix table showing [REDACTED]

[REDACTED]

36. The steps that I took in relation to verifying Mr Sanchez's complaints about the NCSIS system's operation, and the approach that I decided upon in relation to the payment of Bland's invoices are set out in paragraphs 8 to 21 of my police witness statement dated 24 October 2019 (at **AM1/12-15**). I ratify and confirm, and adopt herein, the contents of that witness statement.

37. Following my assessment and conclusion that the deficiencies in the operation of the NSCIS did not warrant or justify the withholding of all payments from Bland, I assessed what I considered to be a fair and pragmatic (though in no way precise) percentage of each monthly invoice item that should be withheld [REDACTED]

[REDACTED] This resulted in my directing that payments should be made to Bland in the monthly sum of £50,000 against their monthly invoices in the sum of around £66,000. I came to this figure by ascribing a performance to each module for which a performance issue had been notified to me by the law enforcement end user. These percentages are annotated in my handwriting on the copy Bland global monthly invoice (with detailed breakdown) a copy of which is now produced and shown to me at **AM1/69**. The resulting figure was in fact rounded up by me in Bland's favour to £50,000 per month.

38. On 21 March 2019, on my instructions the Government made a “catch-up” payment to Bland covering the period September 2018 to March 2019 at the rate of £50,000 per month. The “catch-up” payment was initiated by Mr Caine Sanchez following our discussion on these issues as more particularly explained in my police witness statement referred to above.
39. From February 2019 onwards I had personally dealt with effecting all payments to Bland Limited on the above basis. Later, on 16 April 2019, Caine Sanchez emailed me again on the subject of payments to Bland. He said that he was not comfortable in proceeding with any further payments while deficiencies in the NSCIS system remained unresolved. He added a report purporting to show [REDACTED]. [REDACTED]. After satisfying myself that this report was not adequate I continued to direct that payments in the sum of £50,000 monthly be made.
40. During the period commencing in around March 2020 and November 2020, I was involved in negotiations with Bland to extend the NSCIS contract to include additional facilities and capabilities. These were successfully concluded on 24 November 2020 after neutral language that protected both parties’ position had been included in the contract on the subject of ownership of the NSCIS platform, the dispute about which between Bland and the Government was then, and still remains, unresolved.
41. In February 2021, following resolution by Bland of all outstanding deficiencies in the operation of the NSCIS platform, I reached agreement with Bland in relation to the reduced interim monthly payments of £50,000 being paid against monthly invoices of around £66,000. The settlement took account of outages suffered by certain system modules and the time taken to resolve these. The agreement also formalised the amounts payable going forward.
42. In late July 2020 I passed responsibility for processing the payments (at the time relating to the April 2020 payment) to the Office of the Chief Secretary where it remained until just after the dispute with Bland about deficiencies and withheld part-payments was settled in February 2021. As the new financial year was commencing on 1 April 2021, a suitable controlling officer was identified in Mr Ivor Lopez and he took over the responsibility from that date onwards. The appointment of Mr Lopez

as the point of contact was something I discussed and agreed with Mr Nicholas Gaggero. I recall they identified him as an appropriate contact.

43. There is now produced and shown to me:
- (i) Commencing at **AM1/70**, my exchanges of emails with Bland between 5 March 2019 and 18 February 2021 in relation to the withholding of payments on account of deficiencies in the NSCIS system and the settlement of that dispute; and
 - (ii) Commencing at **AM1/102**, my exchange of emails on 4th November 2019 with the Chief Minister's private secretaries on the subject of withholding payment of a part of the invoices.

My involvement in and knowledge of the company called 36 North Limited.

44. I have never had any involvement in or knowledge of the affairs of 36 North Limited.
45. Save as stated in the next following paragraph, at all the material times in relation to my involvement in relation to the matters to which I depose above, I was not aware that I was, through my status as a partner (albeit a currently inactive one) in Hassans International Law Firm and that firm's investment in 36 North Limited through Astelon Limited, indirectly interested in 36 North Limited.
46. To the best of my current recollection, I believe that I became aware of Hassans' shareholder interest in 36 North Limited after the arrest of Mr Caine Sanchez. I certainly knew nothing about it when I intervened in the payments issue in 2019. I would therefore have been aware of it when I settled Bland's claim in respect of withheld payments in February 2021.

Meetings about Operation Delhi

47. I am asked whether I attended any other meetings in respect of operation Delhi with Mr McGrail and/or any of the persons listed in 1(c) of the Inquiry's Letter.
48. I can confirm that I have no record or recollection of having attended any meeting in respect of Operation Delhi with any of the following persons:

- (i) The Deputy Chief Minter, Dr Joseph Garcia
- (ii) Mr Nicholas Pyle
- (iii) Lt General Ed Davis
- (iv) Any magistrate, justice clerk or other staff member of the Magistrates Court
- (v) Mr Lloyd Devincenzi
- (vi) Dr Joseph Britto
- (vii) Mr Edward Yome
- (viii) Mr Richard Mifsud
- (ix) Mr Richard Ullger
- (x) Mr Maurice Morello, or any other member of the Gibraltar Police Federation
- (xi) Mr Paul Richardson
- (xii) Any member of the Foreign and Commonwealth Office
- (xiii) James Levy QC OBE, or any other director, partner, consultant associate or employee of Hassans International Law Firm
- (xiv) Any director or shareholder of 36 North Limited
- (xv) Any director of shareholder of Astelon Limited.

49. I have met and discussed with the Chief Minister in relation to the issue of the ownership of the NSCIS platform, when Bland raised this issue.

50. I met with all the participants in the 13 May 2019 Meeting, which included the Chief Minister, Fabian Picardo, Neil Costa, Darren Grech, the Attorney General, the DPP and the then Commissioner of Police, Ian McGrail.

51. I have also met and discussed with Darren Grech, the Chief Secretary, in relation to his supplementary witness statement relating to ownership over the NSCIS platform. I also discussed issues with him relating to payment in particular when he took over the responsibility for payments and when the dispute was settled.

52. I have also met with the Attorney General, Michael Llamas in relation to the issue of ownership of the NSCIS platform.

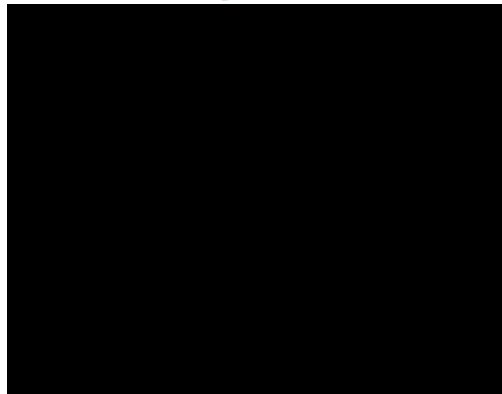
Other meeting related to NSCIS

53. As stated in para 33 above, on the 17th December 2018 I attended a meeting with the Chief Minister, Fabian Picardo and Mr James Gaggero.

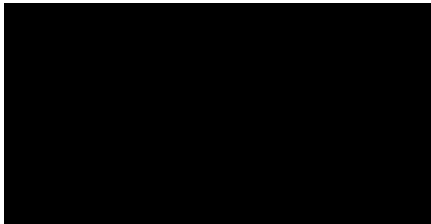
Notes of meetings

54. I do not in general make notes of meetings that I attend except when and to the extent that they are the subject of follow-up emails, when that is the case. I therefor do not have notes of any of the above meetings.

SWORN by the above-named deponent
at *Suite 933 Europort.*
Gibraltar
this *15th* day of September 2022



Before me,



Commissioner for Oaths

This Affidavit is filed by Messrs Peter Caruana & Co of Suite 933, Europort, Gibraltar, solicitors for Albert Mena.