

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

**RESPONSE TO HASSANS DOCUMENT DATED 21st JUNE 2024
ON BEHALF OF IAN MCGRAIL,
FORMER COMMISSIONER OF THE ROYAL GIBRALTAR POLICE**

A. Introduction and summary

1. These submissions respond to the document “*served on behalf of the Hassans witnesses for the Chairman’s consideration*” (**‘the Hassans Document’**) dated 21st June 2024, and STI’s invitation in his letter dated 25th June for the Core Participants to respond by 15th July 2024.
2. In summary, the Hassans Document is an affront to the Inquiry process. Neither Mr Levy nor Mr Baglietto is a Core Participant (**‘CP’**). They say they chose not to apply to be CPs, despite knowing that they could have. They now attempt to short-circuit the Inquiry’s procedure by making a 39-page submission at the last possible moment, one working day before the final oral hearing, and conveniently too late for any of the other CPs to respond properly at that hearing. Having chosen not to apply for CP status, and in any event made these submissions almost at the end of the Inquiry process, there is no good reason why they should be permitted to make such broad, substantive submissions at this late stage.
3. The Hassans Document exists outside the procedures which the Inquiry has painstakingly and publicly developed over the past two years. We agree that the “*task of witnesses is to provide evidence; not comment*” (para. 12 of the Hassans Document). The document was not invited, and has not been permitted by any of the directions made by the Chairman. The document contains (a) detailed commentary on issues which the Inquiry will not determine, (b) novel points about issues which have been extensively ventilated in the past two years, (c) points which are in reality attempts to patch up the Hassans witness evidence, and (d) attacks on witnesses including Mr McGrail which have come after the oral hearings so cannot be put to those witnesses as fairness requires.

4. If the Hassans Document is admitted, this will also be unfair to other witnesses who are not CPs but have been criticised during the oral hearings. They may consider that they should be given an opportunity to make submissions but (as far as we are aware) do not know that the Hassans witnesses have made submissions. This would apply, for example, to Mr Rocca KC and Mr Devincenzi. Indeed, Mr Rocca is criticised in the Hassans Document itself.
5. Accordingly, we submit that the correct approach would be to give the Hassans Document no weight.
6. This would not conflict with natural justice. Mr Levy and Mr Baglietto have both been given the opportunity to express their views in their witness statements and in oral evidence, and have taken that opportunity. If the Chairman is minded to criticise the Hassans witnesses in his final report, they will be given an opportunity, in accordance with the principle of natural justice, to make submissions in response before the report is published, and the Chairman will take account of those submissions before making any criticisms.
7. If, contrary to these submissions, the Chairman decides to afford weight to the Hassans Document, we make some brief, category-based responses, but for reasons of proportionality do not respond to each and every point. We also request that the Inquiry does not publish the Hassans Document for reasons set out below.

B. Affront to the Inquiry's processes

8. The Hassans Document is an affront to the Inquiry's processes and therefore should be given no weight.
9. **First**, the Hassans witnesses had the opportunity to apply for CP status but did not do so. To permit them to make written submissions at this stage, in effect after all of the evidence and hearings, would seriously undermine the Inquiry's processes.
10. It is an affront to the Inquiry process to file 39 pages/17,300 words of submissions at the very last moment, one working day before the final submissions hearing, and therefore too late for any other CP to engage meaningfully with those submissions at the final oral hearing. Hassans will have been well-advised throughout, are well-resourced and well-experienced in civil procedure. This therefore raises the inference that the lateness of the

submissions is tactical, designed to make the maximum impact without the attendant scrutiny which all of the other CPs have been subjected to, and which the Inquiry has greatly benefited from.

11. The Inquiry's CP policy was published on 22nd September 2022 (updated on 22nd May 2023 and 22 April 2024). It set out the procedure, in common with all modern public inquiries, for designating CP status to those who have a significant interest in the subject matter of the Inquiry. The policy provided a deadline for applications for this status of 7th October 2022 and a procedure for applying. It stated at para. 3 that Core Participants would enjoy, amongst other things, "*participatory rights in the Inquiry*" including having the "*opportunity to make opening and closing statements at the main Inquiry hearing*". The obvious corollary is that non-CPs would not enjoy those privileges.
12. The Hassans witnesses must have been legally advised since the inception of this Inquiry. They must have been aware that Mr Levy and Mr Baglietto in particular, and Hassans in general, were likely to have a significant interest in the subject matter of the Inquiry. Indeed, it is accepted in the Hassans Document at para. 2 that

"[The Hassans witnesses] could have made an application to become [CPs], to join in making opening statements before hearing evidence, in asking questions to put criticism to others, or in seeking to influence the direction of the Inquiry one way or another."

And at para. 77:

"With so much of McGrail's case about the circumstances of his resignation tied into the criminal investigation there was always a risk that Levy, his representatives, and their close relationships with the CM might be blamed for more than they deserved and so it came to pass, especially in the Opening Submissions" (emphases added)

13. A number of Hassans' partners (particularly Mr Levy, Mr Picardo and Mr Baglietto, and to a lesser extent Mr Moshe Levy and Mr Mena) played a central role in the factual background to this Inquiry, and this will have been known to them from the start of the Inquiry process.

14. One of the themes of the Hassans Document is that since the Inquiry would not be “*a quasi-criminal trial of the Op Delhi allegations*” (para. 2) there was no need for the Hassans witnesses to apply for CP status. However, the point which the submissions gloss over is that Mr Levy and Mr Baglietto played an important role in the events after the search warrant, which led to Mr McGrail’s early retirement. This is because they appear to have been in regular discussions with Mr Picardo, a co-Hassans partner on sabbatical, about his plan to remove Mr McGrail, and also discussions about imposing severe disciplinary sanctions on Mr Richardson, by text message, telephone call and face-to-face meetings.
15. There is no evidence that anyone on the Hassans side discouraged Mr Picardo from extensively discussing removing Mr McGrail or disciplining Mr Richardson with them. There is no evidence of Mr Levy or anyone else warning Mr Picardo that discussing the removal of the RGP Commissioner, and the disciplining of the Chief Investigative Officer, might cross the “*red lines*” which Mr Levy described in his evidence as being “*careful not to ask for any information which is not publicly available*”.¹ It might reasonably be inferred that the Hassans witnesses were encouraging, and were encouraged by, discussions about Mr McGrail’s removal and the disciplining of Mr Richardson, which they may have thought aligned with the efforts to undermine the police interest in Mr Levy.
16. The Hassans witnesses must have known about their involvement from the outset, even if the Inquiry itself only learned of it much later on. Despite Mr Baglietto’s and Mr Levy’s stated lapses in memory, it must have been apparent to them when the Inquiry began its work in 2022 that they were involved in discussions during May 2020 about Mr McGrail’s removal from office, and that their involvement was bound to be relevant to “*the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020*” (to this extent the submissions about the list of issues at paras. 3-5 of the Hassans Document are a red herring – had Mr McGrail been aware of the extent of their involvement, i.e. had they volunteered it at an early stage, he would undoubtedly have applied for this to be included in the list of issues).
17. It is unclear why Mr Levy did not refer to any discussions, calls, meetings or text messages with the Chief Minister in his first witness statement dated 31st October 2022,

¹ [Day 8, p.129, line 16]

despite being explicitly asked to account for “*any subsequent [to the execution of the search warrant] discussions, correspondence, submissions, evidence or complaints*”, and presumably being asked by the Inquiry to account for interactions with Mr Picardo himself. It is also unclear why Mr Levy did not volunteer this information in his second affidavit either. The fact that the Hassans witnesses did not volunteer any of this information until much later in the Inquiry process, just weeks before the final hearings, or even at the hearings, triggered by Mr Picardo’s (very late) disclosure of messages between himself and Mr Baglietto/Mr Llamas, is a matter upon which the Chairman would be entitled to draw inferences. Further, we remind the Inquiry of:

- (a) the fact that Mr Baglietto has not disclosed any of his relevant WhatsApp messages or emails;
- (b) Mr Baglietto’s evidence that he deleted his WhatsApp messages after the Inquiry was announced (he says the two facts are unrelated, but as the Head of Litigation at Hassans this might reasonably be questioned)²;
- (c) the fact that between all of the senior Hassans partners who have given evidence to this Inquiry, only one set of notes for a relevant meeting has been disclosed (that between Mr Baglietto and the DPP on 27th May 2020, disclosed after his and the DPP’s oral evidence);
- (d) the fact that Mr Levy has not disclosed any relevant WhatsApp messages between him and Mr Picardo, or (as far as we are aware) between him and Mr Llamas;
- (e) The fact that Mr Levy did not at any time volunteer any information about his interactions with the Chief Minister; and
- (f) the fact that Mr Picardo has still not disclosed any relevant WhatsApp messages between him and Mr Levy, despite having located relevant messages between him and every other significant witness.

18. This lack of openness cannot be a justification for Mr Levy and Mr Baglietto deciding at the last moment that they should play a greater role in the Inquiry processes after all, having – it might be inferred for the reasons set out above – not volunteered the full detail of their involvement in the hope that the Inquiry would not alight upon it.

19. **Second**, the Hassans witnesses have benefitted from not having to make submissions previously. Other CPs have had to ‘show their hand’ from the outset, and explain the positions they have taken in relation to key issues by way of representations at

² [Day 9/p186/line 10 onwards]

preliminary hearings, and in opening and closing submissions. The only exception to this is the Gibraltar Police Federation, which has made no submissions despite its CP status, and which we note is also represented by Hassans. The upshot has been that the witnesses associated with CPs, and the witnesses who are themselves CPs, have been questioned at the oral hearings extensively on the positions taken on their behalf by their legal representatives. This could only occur because those positions were known in advance. Where there has been a discrepancy between submissions and oral evidence, the other CPs have had an opportunity to put these to the witnesses. Moreover, the CPs have had regular opportunities to respond to other submissions, both in writing and orally, by way of the opening and closing submissions process. To allow the Hassans witnesses to make in effect closing submissions would be to allow them to obtain a key benefit of being CPs without the attendant responsibilities.

20. **Third**, natural justice will not be undermined by refusing to consider the Hassans Document. The Maxwellisation process, by which the Hassans witnesses are entitled to respond to any criticisms the Chairman intends to make of them in the final report, is the “*right to reply in some fashion*” which the Hassans document seeks for reasons of natural justice at para. 6. This is additional to Mr Levy and Mr Baglietto’s right to reply to the criticisms made of them in their written and oral evidence, which was supplemented by a further statement by the Hassans IT staff. We would of course have no objection to the Hassans witnesses making any relevant submissions if the Chairman intends to criticise them. However, it is an affront to the Inquiry’s process for the Hassans Document to be given any weight at this late stage.
21. **Fourth**, a final source of unfairness would result if the Hassans Document is admitted is that other witnesses who are not CPs, but who have been criticised during the hearings, would rightly feel aggrieved if they were not given the same opportunity to make submissions. For example, Mr Rocca and Mr Devincenzi would potentially be in this position.

C. The submissions relate to peripheral or irrelevant issues, or should have been made prior to the evidence, or are attempts to patch up the witness evidence

22. If, contrary to the above, the Chairman decides to afford weight to the Hassans Document, we make some brief, category-based responses, but for reasons of proportionality do not respond in any detail.
23. Paras. 24 to 28 relate to the designation of Mr Levy as a suspect. The Inquiry will not make any findings on this issue, which is not part of the Issues List, and would potentially fall foul of s.4(1) of the Inquiries Act 2024.
24. Paras. 29 to 43 relate to the legal advice given or not given by the DPP. These issues have been well-ventilated in the written and oral evidence. A number of the paragraphs attack the DPP's conclusion that Mr Levy could be treated as a suspect (e.g. para. 36: "*quite the opposite should be concluded from those passages, namely, a confidentially communicated fear of being wrongly accused as part of a commercial dispute*") and therefore amount to a submission that the DPP gave the wrong advice, made without the DPP having the opportunity to respond (he is not even a CP and we assume has not been sent the Hassans Document). However, the more serious problem with the submissions is that they introduce a controversial theory of what amounted to "*advice*" which, because it has been presented after the evidence has been heard, cannot be put to witnesses (including the DPP) or challenged. This highlights the danger of accepting substantive submissions from witnesses after the Inquiry process has almost concluded.
25. Paras. 44 to 61 are the submissions which might have been made had the warrant been challenged by judicial review. They invite the Inquiry to make findings that the warrant was "*deeply flawed in both substance and in form*" and that the "*overall outcome was unlawful*". The Chairman has, appropriately, indicated that he will not do this. It would be outside of his terms of reference, and also potentially fall foul of s.4(1) of the Inquiries Act 2024, which prohibits the Inquiry from determining any person's civil or criminal liability. It was open to Hassans to apply for CP status, and thereafter make these submissions at the point when the Chairman was deciding the issue. It would be wholly unfair and irregular to redetermine the issue at this late stage, or to expect the CPs to respond to what are in effect Judicial Review submissions four years too late.

26. Paras. 62 to 70 relate to what is described as the “*entitlement to defend*”. Mr Levy plainly had an entitlement to defend himself in the criminal investigation. But the submissions on this present a slanted narrative of the actions taken by Mr Levy’s legal team on his behalf, claiming that the legal team “*focussed not at all on McGrail’s job*”, dismissing as irrelevant the “*informal conversations Levy and Baglietto might have had with the AG and CM to advance their case*”, and repeatedly emphasising the purported strength of the legal arguments made to the RGP. These are presumably all submissions made on instructions from Mr Levy (the client at the time) and Mr Baglietto (Mr Levy’s lawyer at the time). If either wishes now to explain the legal strategy pursued at the time, or waive privilege in relation to the legal strategy pursued, or patch up some of the lapses of memory in relation to some of the crucial conversations (where, indeed, Mr McGrail’s job appears to have been a significant focus), then this should be by way of further witness evidence, not submissions by a lawyer communicating this evidence dressed up as legal submissions.
27. Paragraphs 71 to 75 (“*the Mutual Dilemma*” and “*The Equivocation over Legal Advice*”) are submissions on issues which have already been heavily ventilated in submissions and evidence. It would be disproportionate to respond to them again and we submit they add nothing new.
28. Paragraphs 78 to 87 (“*No conflict of interest*”, “*no destruction of evidence*”, “*no benefit*”, “*no favours*”, “*no misconduct*”, “*no plotting*” and “*local context*”) amount to an attempt to patch up Mr Levy’s and Mr Baglietto’s written and oral evidence. If either wanted to provide further witness evidence, it would have been open for them to do so after the oral hearings as other witnesses have done (e.g. Mr Yeats, Mr Lavarello and Mr McGrail). The following passages, for example, cross over the line from submissions to evidence:

“From Levy’s perspective, the charge of capitalising upon a ‘conflict’ is the ultimate source of the erroneous suspicion. For he was told from the outset that there was no intellectual property in the platform and that the HMGoG was free to use whatever contractor it wished to maintain the service of the platform as there was no formal contract between HMGoG and Blands.” (78)

“Levy knew the proper boundaries with regards to 36 North and kept to the local customs of managing myriad proximate professional and personal ties” (79)

“From Levy’s perspective, this unfairness was compounded by the late disclosure of WhatsApp messages from the CM that make it plain that Levy, in his words, “knew his red lines”. (81: the transcript reference at footnote 176 is to the expression “red lines” but the rest of the paragraph appears to be new evidence about Mr Levy’s perspective).

“Through a subject matter access request to the RGP in May 2023, Hassans were disclosed a redacted email with the subject “Re: Levy Report”, which from Inquiry evidence must have been written in around October 2020 and refers to a period after the RGP had “returned the search warrant (unexecuted) to the Magistrates’ Court”. It then reads [...]” (82: we do not understand this SAR or the document to have been disclosed as part of the Hassans witness evidence, and the opportunity for this to be put to other witnesses has passed).

29. The entirety of paragraphs 86 and 87, about “*local context*”, is factual evidence masquerading as submissions.
30. Paragraph 88 makes serious and unwarranted allegations against Mr McGrail (“*because of his profile McGrail has been too ready to make assumptions about Levy’s role in his demise*” –though, somewhat in contradiction, “*those allegations have never been directly made*”), which reflect a number of other similar, unpleasant allegations in other parts of the Hassans Document which were not put to Mr McGrail in his oral evidence and now the opportunity has passed.

D. The Hassans Document should not be published

31. We request that, whether or not the Chairman decides to give weight to it, that the Hassans document is not published by the Inquiry as has been requested in the letter from Mr Baglietto.
32. The document is not evidence. It is not the submission of a CP. It is not part of any aspect of the Inquiry’s procedure. It has not been subjected to oral submissions in response. It was and remains open to Mr Levy and Mr Baglietto to provide further witness evidence

if they wish to do so. We see no reason why what is in effect a press release (*per* Mr Baglietto's letter: "*the mere making of [the allegations] in such a public arena has the invariable potential to impact on reputation*") should be published by the Inquiry on Hassans' behalf.

33. As we highlighted in closing submissions, Mr Levy, Mr Baglietto and Mr Picardo are part of the ownership structure of a newspaper in Gibraltar, *The New People*, which has been publishing a constant stream of articles strongly defending Mr Levy and Hassans and disparaging their detractors including Mr McGrail. Mr Picardo has been using the Government's website to publish disparaging comments about Mr McGrail. The Hassans partners are therefore already well-resourced to defend their reputations publicly and vociferous defences of their actions have appeared publicly. We see no reason why the Inquiry should provide Hassans special privileges by publishing this document, and especially whilst not offering the same opportunity to other non-CP witnesses.

E. Conclusion

34. For the above reasons, we submit that the Hassans Document should be given no weight, save if any of the submissions are relevantly made as part of any Maxwellisation process. The document should also not be published.

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Counsel for Ian McGrail

Doughty Street Chambers
15th July 2024