

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

**RESPONSE TO HASSANS DOCUMENT DATED 8th OCTOBER 2024
ON BEHALF OF IAN MCGRAIL,
FORMER COMMISSIONER OF THE ROYAL GIBRALTAR POLICE**

A. Introduction

1. These submissions respond to the document “*Supplementary Observations on Behalf of the Hassans Witnesses in Response to the Objections to their Submission for the Chairman’s Consideration*” (‘**Hassans Reply**’) dated 8th October 2024, and Solicitor to the Inquiry’s invitation.

B. Submissions

2. These submissions should be read together with the more detailed reply submissions dated 15th July 2024 (‘**McGrail 1st Reply**’), which are not repeated. The Hassans Reply does not raise any major new points, so McGrail 1st Reply is in essence the answer to it.
3. This Inquiry, like all public inquiries, has a set procedure. That procedure is contained in written policies, which were developed with the assistance of detailed written and oral submissions at a series of preliminary hearings.
4. There are good reasons for this. A set procedure allows for orderly progress. It means that each participant in the Inquiry knows where they stand. It means that every participant is treated equally according to their formal status.
5. A clear example is the Core Participants policy, which grants “*participatory rights in the Inquiry*” including the opportunity to ask questions of witnesses at the oral hearings and having the opportunity to make opening and closing statements at the main Inquiry hearing. The opening and closing statements have been published on the Inquiry website, along with the written statements of witnesses. There is no other procedure available to participants in the Inquiry which allows for opening and closing statements to be made. Most witnesses to the Inquiry are not Core Participants. Accordingly, they have not been

given permission to make oral submissions at hearings, or make written submissions, and they have not done so.

6. Mr McGrail takes no issue with the Hassans witnesses, or any other witnesses, defending themselves and their reputations, through written and oral evidence, correspondence or published statements. The rules of natural justice must be complied with in letter and spirit. In this sense, there is a lot of agreement between these submissions and the Hassans Reply.
7. Rather, the concern is that the Hassans witnesses are attempting to circumvent the Inquiry's procedure, justified by an appeal to fairness, whereas the outcome is to achieve the opposite. What they are ultimately asking for in the 60+ pages of submissions is to be given special status, not afforded to or offered to anyone else who has been involved in the Inquiry. This is not required by the principles of natural justice, does not accord with procedure, and is neither fair nor equitable to others.
8. Natural justice requires that the Inquiry put any proposed criticisms to the Hassans witnesses, and any other individuals, permit them a reasonable opportunity to respond, and take that response into account when finalising the report. As far as we are aware, this is what the Inquiry intends to do through the Maxwellisation process.
9. Without repeating in any detail the submissions made in McGrail 1st Reply, we make the following points:
 - (i) The relevance of the failure to apply for CP status
10. Hassans and the Hassans witnesses, including Mr Levy and Mr Baglietto, decided not to apply for Core Participant status.
11. They had multiple opportunities to do so, including when the Inquiry was announced, after the first preliminary hearing by which time (if it was not already obvious) it would have been obvious that the circumstances around the search warrant would be an important part of the Inquiry's investigation, at any of the subsequent preliminary hearings, when the Inquiry wrote to them on 21st December 2023 confirming that it could

not rule out criticisms being made against individuals (and presumably Mr Levy,) and in response to the *Salmon* (warning) letter of 4th March 2024¹.

12. Even today, despite requesting that 60+ pages of written submissions be considered by the Inquiry and published on the Inquiry website, Mr Levy et al have still not applied, out of time, for Core Participant status.
13. It must have been a tactical decision not to apply for CP status. There is no other plausible explanation for lawyers of Mr Levy's and Mr Baglietto's stature and experience of civil litigation, and knowledge of the Inquiry background (including Hassans previously acting for another CP - see below).
14. It is an attack on the procedure and good order of the Inquiry to seek special status now. It is also fundamentally unfair to the other non-CP witnesses who may be criticised, who are not even party to this discussion. The most obvious examples are Mr Rocca KC and Mr Devincenzi. They were significantly criticised in cross examination and by other witnesses (e.g. the Chief Minister's accusation in oral evidence that Mr Devincenzi had breached legal professional privilege in his own evidence²). Why should they, and any others who were not CPs but whose reputations may be impacted, not have the opportunity to make written submissions which are to be published on the Inquiry website?

(ii) No genuinely unanticipated criticisms

15. The criticisms put in the oral hearings cannot have come as a great surprise to Mr Levy and Mr Baglietto. For example, it is implausible that Mr Levy, a Kings Counsel and hugely experienced and successful lawyer, advised by other hugely experienced lawyers, would not have anticipated that his failure to disclose text messages between him and any other relevant individual would have been put to him in oral evidence.³
16. Moreover, until shortly before the final hearings, Hassans were representing a Core Participant, the Gibraltar Police Federation ('GPF'). The firm has therefore been deeply involved in the Inquiry process from the start, as has Mr Levy himself who appears to

¹ Hassans Reply §18

² Transcript, Day 16, p. 132, Lines 1-5

³ Hassans Reply §21

have been advising the GPF or at least has had regular, close contact with GPF individuals such as Mr Morello - see Mr Morello's oral evidence⁴:

Q. Without going into any detail as to advice or discussions you may have had, have you met with Mr James Levy KC since the Inquiry was announced?

A. Mr Levy, um, we frequent or the GPF or the Chairman and Secretary frequent Hassans quite a bit. So Mr Charles Bonfante would have been a point of contact in Hassans and Mr Levy very possibly would have walked into some of the meetings and given advice to Mr Bonfante, yes.

Q. As your lawyer.

A. Yes.

17. It is therefore implausible to suggest, as the Hassans Reply does, that Mr Levy and Mr Baglietto have been so surprised by the content of the Inquiry that they only latterly realised that their interests needed to be represented. As stated in our original reply, it is clear that they have made a choice not to apply for CP status, and not to be represented at the hearings, which raises the inference that this late attempt to influence the Inquiry through detailed written submissions is tactical. This alone should militate against the Inquiry granting the significant exception to its own procedure which is being requested.

(iii) Implausible financial concern

18. It is implausible that the financial cost of being a Core Participant impacted on the Hassans decision not to apply to be one, as implied but not submitted at §24.3 of Hassans Reply. Hassans is a large, successful international law firm of which Mr Levy is the Senior Partner and Mr Baglietto is the Head of Litigation. This submission appears to have been made in the abstract, as it is not submitted in the Hassans Reply that financial cost was in fact a concern, nor could this realistically have been submitted.

(iv) Accessibility and dignity of publication

19. Given the desire for the Hassans witnesses to be permitted to publish their reply to allegations on the "*accessible and dignified*" Inquiry website, it remains a mystery why

⁴ Day 14, Page 35, Lines 1-13

they have not previously applied for Core Participant status, which would probably have been granted and have given them the opportunity to do as they wish.

20. It is somewhat ironic that the Hassans witnesses seek the ‘dignity’ of publishing their responses and legal submissions on the Inquiry’s website, when the *New People*, a publication which is owned by a Hassans partner, Mr Picardo, through a web of companies including one owned by Mr Levy, Mr Baglietto and other Hassans partners⁵, has subjected and continues to subject Mr McGrail and an array of other Inquiry witnesses to the indignity of scurrilous, defamatory attacks on a weekly basis. Aside from the irony, this does demonstrate the asymmetry between Hassans and Mr McGrail (amongst others), in terms of the resources and opportunities they respectively have to defend their reputations in public, and undermines the argument in Hassans Reply that use of the Inquiry website to publish their correspondence with the Inquiry is somehow a necessity to ensure fairness.

(v) In any event, fairness does not require an unlimited licence to make submissions

21. Even if the Hassans witnesses are right, and due to some allegations against them emerging late in the Inquiry process they are entitled for reasons of fairness to make submissions in response to those allegations in order to protect their reputations, this would only have a limited impact, which is to allow them to make submissions on the proper interpretation of the evidence vis-à-vis Mr Levy’s and Mr Baglietto’s conduct – for example relating to the missing text messages. It is surely not a licence to make wide-ranging legal submissions on the correct approach to the legality of the warrant.
22. The factual background to the warrant, and the approach the Inquiry should take to it, was plainly an issue which Mr Levy and Mr Baglietto knew would be important from the start of the process. None of the alleged issues of fairness caused by the later involvement of Mr Baglietto, or allegations made against Mr Levy and Mr Baglietto at the oral

⁵ ‘Hassans Group Holdings Limited’ is one of an array of companies which are part of the ownership structure of *The New People*. Evidence of the company structure has been provided to the Inquiry, but of course the Hassans partners will be aware of this fact, despite the assertion at §12 of Hassans Reply that this has “*never been put to any witness, or established by any evidence*”. Insofar as it is submitted at Hassans Reply §26.2 that “*it also wrong to suggest the Hassans Witnesses, or their firm, owns a newspaper; and if the Inquiry wish to be provided further evidence in relation to that matter it is open to it to ask*” – we propose that the Hassans are indeed asked to account for its partners’ appearance in the group of companies referred to above, whether they have any involvement in its editorial, and why they have involved themselves at all in a publication which regularly prints hostile and untrue stories about Inquiry witnesses.

hearings, has any impact on the warrant issue, which was known by everyone from the start.

23. The proper approach of this Inquiry towards the legality of the warrant is therefore well beyond a submission which is required for fairness, even taking the Hassans submissions at their highest – it is paradigmatically a submission which is too late. It should have been made at a much earlier stage, accompanied by an application for CP status. This is because if the Hassans witnesses are right, and contrary to the approach taken by the Inquiry to date there should be a wide-ranging, Judicial Review-style investigation into the objective lawfulness of the warrant, then this would have impacted on the witnesses called and the questions asked of them. The Inquiry should therefore resist any temptation to retrofit its list of issues (which were the subject of detailed submissions from the CPs) and general approach to the warrant, especially under the spurious justification of natural justice.

C. Conclusion

24. Mr McGrail takes no issue with the Hassans witnesses defending themselves by written and oral evidence, applying for CP status or doing anything within the boundaries of the Inquiry's procedure, including responding in detail to any criticisms as part of the Maxwellisation process, or indeed by way of (non-defamatory) public statements.
25. However, he does take issue with them being granted a special status, outside of the Inquiry's procedures, allowing them to make detailed and wide-ranging written submissions after CPs made their own closing submissions, submissions which go well beyond the stated justification of fairness and being subjected to late allegations, and to have those submissions published on the Inquiry website. This special status would be unique to Mr Levy and Mr Baglietto, and has not been offered to any other non-CP witnesses. That would be neither reasonable nor fair.

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