INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

Ruling on application to reconvene the hearings

Introduction

1. The main hearing of the Inquiry finished on 9 May 2024, after 19 days of submissions and evidence. The closing oral submissions were made over two days on 25 and 26 June. At my request, Counsel to the Inquiry have very helpfully drafted a Chronology (annexed to this Ruling) which sets out the further disclosures made by the RGP in September, on 21 November, and even as late as 20 December. The Inquiry invited submissions from Core Participants on this disclosure, which were due to be filed in November.

2. By letter dated 13 November, Peter Caruana & Co, on behalf of the Government Parties stated they were '*deeply concerned*' at the late disclosures by the RGP and asked for a short extension of time in which to consider their response.

3. By letter dated 25 November, they submitted that they did not consider that *'the opportunity to make further written submissions is sufficient to ensure open justice and fairness to the Government Parties in the face of this non-spontaneous and so very late disclosure of plainly highly relevant material'.* Accordingly, they applied *'for an order that the written submissions should be made orally at a reconvened, live-broadcast oral hearing of the Inquiry; and the oral evidence hearings should be re-opened to recall Mr McGrail and Mr Ullger and thus allow them to be cross-examined by CTI and other CPs about the substantive content of these WhatsApp messages, and their failure, in the case of the RGP to disclose them sooner and, in the case of Mr McGrail, to disclose them at all, as Mr McGrail has had the opportunity to do and has done of Mr Picardo and others*'. In that letter, they then set out their detailed reasons for their application, which I shall examine.

4. Also on 25 November, the Government Parties served upon the Inquiry a different document entitled '*Written Submissions*' consisting of a detailed analysis, extending to 26 pages, of some of the points that they would make upon the disclosed material, if I was to grant the application. They asked that the Inquiry did not in the meantime circulate these submissions to others, which I have not done. However, in my opinion,

as a number of respondents (and in particular Mr Gibbs KC on behalf of Mr Richardson) have pointed out, in making the decision whether to reconvene, I cannot properly act upon submissions to which the other Core Participants have not had the opportunity to respond. Therefore, I have not had regard to anything in these Written Submissions when deciding whether to reconvene.

5. On 10 January 2025, after further evidence from the RGP had been served by the Inquiry and disclosed to CPs, the Government Parties confirmed that they wished to proceed with their application and '*by reason of the additional new disclosures, to expand it to include the cross-examination of Mr Yeats (in relation to his 5th witness statement) and of Mr Richardson (in relation to his 4th witness statement)*'.

6. The former Delhi Defendants support the application by their submission dated 17 January (with its helpful Annex). The application is resisted by Charles Gomez & Co on behalf of Mr McGrail in their letter of 17 January and by counsel on behalf of Mr Richardson, Patrick Gibbs KC and Ms Mariel Irvine (Mr Richardson's English solicitor) in their submissions dated 15 January. The RGP, in submissions through Ellul & Cruz dated 17 January, remain neutral but express some concerns about reconvening the hearing.

7. The Government Parties have now responded to these submissions by the other parties, by a further letter dated 28 January.

The criteria to apply

8. As to the relevant criteria to apply, I broadly accept the 'principles' as set out by Charles Gomez & Co in their letter, which I slightly re-formulate as follows. In accordance with the Inquiries Act 2024, s.17(3), I must act with fairness and I must avoid any unnecessary cost (whether to public funds or to witnesses or others). I must act proportionately. I must proceed expeditiously and avoid any unnecessary delays. I also accept that, pursuant to section 7 of the Gibraltar Constitution and Article 8 of the ECHR, I must protect individuals' rights to respect for their family and private lives.

9. I do not accept that the concept of 'finality' is applicable, which – as usually understood – creates a presumption against disturbing a decision or verdict which has not been overturned by a timely appeal. This concept does not apply here since the Report has not been completed, let alone delivered or published. In any event, it is common for inquiries to hold more than one evidence-gathering hearing.

10. These general principles are easy to state; it is more difficult to apply them so as to strike a balance between competing considerations.

The delay in disclosure and the remaining gaps

Introduction

11. I will deal first by examining the delays in the disclosure made by the RGP, and by Mr McGrail, Mr Ullger and by Mr Richardson personally.

12. By way of background to this section, I refer to Mr McGrail's further witness statement (**McGrail 9 [E257]**), dated 2 December 2024, when he explained his use of mobile phones prior to his retirement. This is helpfully summarised at paragraph 22 of the Chronology, which is to this effect:

(a) There are three mobile telephone numbers which Mr McGrail used during the relevant period:

(i) In 2006, Mr McGrail was assigned the mobile number ending in *4000 by the RGP. The RGP paid the bill for this number, but his device was privately owned. He used this number for both work and personal purposes.

(ii) However, during the Covid crisis, the RGP adopted a policy to separate the use of phones for official and personal purposes; accordingly, Mr McGrail was assigned a new Samsung work phone. Mr McGrail could not remember the number for the Samsung phone, but the Inquiry understands that it ended in *9010. Thereafter, he transferred his personal *4000 number to his personal Gibtelecom account and assumed responsibility for billing, which is why the Chronology refers to this (the *4000 phone) as Mr McGrail's 'personal phone'. He says that he then began to "*wind down*" use of the *4000 number for official purposes. However, he said that he continued to use that number for official communications "*because* [he] *was not proficient with the use of the Samsung device*" and accordingly his use of the Samsung phone "*was limited*". Mr McGrail left the Samsung work phone with the RGP upon his retirement.

(iii) Mr McGrail also purchased an additional personal phone number (ending *8000) in late May 2020, and states that he did not use that number for any RGP business.

(b) When preparing his evidence to the Inquiry, Mr McGrail said his "*focus was set on covering all the aspects required as per the List of Issues. I did not look into or rely on any exchanges of messages between Mr Richardson and/or Mr Ullger and myself because as my evidence evolved there seemed to me to be no relevance or requirement for me to do so.*" Therefore, he says he "*did not export the chat logs of my exchanges with Mr Richardson and Mr Ullger … because they did not feature in my mind as relevant at the time*." He apologises in McGrail 9for what he called his "*inadvertent omission*".

The gaps in disclosure

13. I turn to the gaps in disclosure, which are set out in the Chronology at paragraph 29 but I consider it to be convenient to summarise them here. It appears that Mr McGrail and Mr Richardson used their personal phones (ending *4000 and *9135 respectively) as the primary means of communication between them on work related matters. But the disclosed exchanges between these phones leaves a gap between 30 April and 22 June 2020, during which no messages have been disclosed, which dates I consider to span a large part of the critical period with which the Inquiry is concerned. In particular, Mr Richardson gave evidence that he sent a message to Mr McGrail telling him that he had arrived at Hassans offices on the morning of 12 May 2020, with the search warrant. Mr McGrail gave evidence that he received that message; indeed, he said that he had a "*vivid recollection*" of 12 May 2020, including that Mr Richardson had messaged him; he suggested that this may have been between their work phones. I have no doubt that such a message was sent. However, no message from 12 May 2020 between Mr McGrail and Mr Richardson has been found on any of their devices, nor on the image taken of Mr McGrail's personal phone by SIO McVea in 2023 and, as a result, none has been disclosed. In my judgment, the absence of this message and the other messages between 30 April and 22 June, requires an explanation and needs to be challenged in a public hearing.

14. Furthermore, it would seem that the work phones used by Mr McGrail and Mr Richardson (*9010 for Mr McGrail and *9004 for Mr Richardson) before their retirement were 'wiped' by the RGP when they handed them in on their retirement (apparently pursuant to the RGP Mobile Devices Policy, paragraph 3.3, which I consider later). No record of the messages on the phones was preserved, and the devices used have not been found. As a result, the Inquiry does not have any messages between

Mr McGrail's work (Samsung *9010) phone and: (i) Mr Richardson's personal phone (*9135); (ii) Mr Richardson's work phone (*9004); (iii) Mr Ullger's personal phone (*5000); (iv) Mr Ullger's work phone (if he had one); (v) Mr Yeats's personal phone (*6000); and (vi) Mr Yeats's work phone (if he had one). Furthermore, the Inquiry does not have any messages from Mr Richardson's work phone.

15. The Inquiry does not have any messages between Mr McGrail's personal phone (*4000) and: (i) Mr Richardson's work phone (*9004); (ii) Mr Ullger's work phone (if he had one); and (iii) Mr Yeats's work phone (if he had one).

16. Mr Ullger could not locate any of his messages (on his personal *5000 phone) with Mr McGrail and was, therefore, unable to disclose these to the Inquiry. Mr Yeats said that Mr Ullger could not do so '*For reasons that he does not understand but suspects that is as a result of purchasing a new phone in June 2020*' (Mr Ullger has also lost messages with other persons unrelated to the Inquiry). However, Mr Ullger arranged, with Mr McGrail's consent, for the messages between Mr McGrail and Mr Ullger to be retrieved from the image of Mr McGrail's phone taken by SIO McVea and disclosed in that format.

17. Some of these gaps, at least on work phones handed in upon retirement may be explained by the RGP Mobile Devices Policy, which provides that: "*when an officer or support staff member moves from his relevant post, the officer/support staff member will with the assistance of the RGP IT technician ensure that his/her work issued mobile device is wiped of all personal data and is handed over to the person taking over their role.*" Mr Yeats explained that: "*no images of devices are taken, and no messages are retained*" (Yeats 5, para 16). I would invite representations on whether this is an appropriate policy, which might conflict with other regulatory requirements to keep such a record, and even if it does not, it may not be best practice.

18. It is perhaps worth noting in passing that although the Mobile Devices Policy (at paragraph 4.2 and 5.1) prohibits personal communication on work devices, there is no corresponding prohibition of communicating work related messages (many of which of which might be sensitive, confidential, or even classified) on personal devices. Core Participants, including the RGP, might wish to comment and reflect on this state of affairs, which might be considered to be unsatisfactory, particularly if officers had access to a work device of their own. (I observe that the HMIC Report (at page 13

[B1562]) made a similar point when it noted that officers were using their personal devices to devices to examine offenders' telephones, which it commented was not good practice. Incidentally, this was a point that Mr Picardo referred Mr Llamas to in his message of 17 May [B1418].)

19. Mr Yeats has had overall supervision of the disclosure process and is therefore the best person to give an explanation for the alleged delays and failures in the process.

20. The former Delhi Defendants make the point that I should consider these alleged delays and failures in disclosure in the light of other possible irregularities, namely, the failure of the RGP to find Mr McGrail's daybooks (apart from three pages), or the email that Mr McGrail sent to himself on his laptop, or his desktop. (In any event, Mr McGrail's laptop was only located after the Main Inquiry Hearing.) Furthermore, Mr McGrail retained an external hard drive but he later returned it. In the course of his evidence, Mr McGrail admitted that he had also destroyed some hard copy documents, although he claims this was directed by the RGP, because they had copies of the same documents.

21. In all the circumstances, including those referred to in the last paragraph, I am reluctant to accept some of these explanations given at face value. I refer here to (a) Mr McGrail's explanation that he continued to use his personal phone (*4000) *"because [he] was not proficient with the use of the Samsung device"*; (b) Mr Ullger's explanation for having no record of his personal phone (*4000) that: '*For reasons that he does not understand but suspects that is as a result of purchasing a new phone in June 2020*'; and (c) Mr McGrail's assertion, relied on by the RGP, that these failures were due to an '*inadvertent omission*'. It is claimed on his behalf that his explanation for these omissions were '*reasonable*'.

22. These explanations might be correct, but I need to hear live evidence to decide the facts; issues of fact cannot always be decided on paper. In my judgment, the evidence on this issue is controversial and needs to be given in public at an oral hearing so that it can be challenged by examination rather than being simply uploaded to the Inquiry website where it will remain untested; only in that way will I maintain public confidence in the Inquiry process.

Possible deletions in the disclosed messages and the need for further investigation

23. The recent disclosures have also identified a number of possible deletions, which will need to be investigated. These are set out at paragraph 29 of the Chronology, which I summarise.

24. The WhatsApp messages between Mr McGrail's personal phone and Mr Richardson's personal phone [E832] were recovered from the image taken of Mr McGrail's phone by SIO McVea (Yeats 5, para 24). The cover page for the "Extraction Report" states"*615 (88 deleted)*".

25. The WhatsApp messages between Mr McGrail's personal phone and Mr Ullger's personal phone [E328] were also recovered from the same source. Although the cover page for the "*Extraction Report*" does not mention any deletions, at various points the extract records that some messages, eight in all, were "*deleted by the sender*" or are replaced with the wording: "*you deleted this message*".

26. The cover page for the "*Extraction Report*" of the WhatsApp messages between Mr Richardson's personal phone and Supt Wyan's personal phone states"*306 (13 deleted)*".

27. There may be an innocent explanation for these deletions, but Mr McGrail, Mr Ullger, Mr Richardson and Mr Yeats (who supervised the disclosure process) should give that explanation in public, so that it can be challenged in public. Since disclosing a copy of this Ruling in draft to Core Participants, the RGP informed the Inquiry that it intends to file evidence that (1) the "*deletions*" refer to WhatsApp chats, not messages; and (2) there is currently no evidence that any messages between Mr McGrail and Mr Richardson, or Mr Wyan and Mr Richardson were deleted in the relevant period (1 January – 30 June 2020). When the RGP files this evidence, it can be considered at the hearing.

The SMT Group Chat WhatsApp

28. The Government Parties have pointed out in their recent submission that, despite requests by the Inquiry Team to do so, the RGP has not disclosed any messages from the SMT Group Chat WhatsApp. I need not now say anything further on this point, except that the Inquiry Team is pursuing the matter and will keep the Core Participants informed of any developments.

The arguments in favour of reconvening

29. The Government Parties argue that one of the dominant themes presented by counsel representing Mr McGrail, throughout the Inquiry, was his repeated criticism of Mr Picardo, and also Mr Levy, arising from what he claimed to be their delay in the disclosure of certain WhatsApp messages, and for what he contended to be the non-disclosure of other messages, which he argued must have passed between them. He argued that I could – and indeed should – draw an adverse inference against them from these failures. I do not criticise Mr Wagner for making these points, which I consider were arguable on the evidence as presented. However, having said that, I do not intend here to give any indication of whether I accept – or reject – his arguments, with which I will deal in the final Report.

30. The Government Parties further argue that: *"This criticism was persistently and publicly levelled with the obvious intention of casting suspicions and aspersions on and inviting the opprobrium of the Chief Minister (and others for that matter) in the minds both of the Commissioner and public opinion*". I do not think that is an accurate characterisation of the measured challenges made of his evidence by Counsel to the Inquiry, but everyone following the proceedings will have understood that Counsel on behalf of Mr McGrail repeatedly claimed that Mr Picardo, and Mr Levy also, were reluctant to disclose some messages and had failed to disclose others, and that they did so deliberately, intending to suppress the truth and to mislead the Inquiry. Again, I make quite clear that by summarising his case in this way, I do not intend here to give any indication of whether I accept – or reject – his arguments, with which I will deal in the final Report.

31. The Government Parties claim that, by emphasising what Mr Wagner alleged to be the failure by others to disclose relevant communications and other evidence, Mr McGrail was implicitly asserting that he himself had done so. I think it is at least arguable that he was, by necessary implication, saying that Mr McGrail, had faithfully fulfilled his duty in disclosing what was required of him, and so he was entitled roundly to criticise Mr Picardo and Mr Levy for not doing so. That, it is argued by the Government Parties, was his approach through the hearing; now to deny them the opportunity of challenging Mr McGrail, Mr Ullger and Mr Richardson in a public hearing for their alleged failures and omissions is, they claim, to be the application of *'double standards'*, and therefore unfair.

32. That, they argue, was also the position adopted by Mr Gibbs KC on behalf of Mr Richardson, for example in his forceful examination of Mr Levy. The former Delhi Defendants give the reference to this in the transcript [T/8/193.1 - 204.18]. They suggest, although not quite in these terms, that a series of skilfully and tightly drafted questions, delivered with studied scepticism, gradually dissected Mr Levy, thereby exposing him to public opprobrium (to adopt the word used by the Government Parties).

33. Mr Cruz, on behalf of the RGP, joined in this line of attack when he questioned Mr Baglietto [T/9/205.6 – 206.12]. I observe that the senior RGP officers, who were present throughout the hearings, heard the attack on Mr Picardo or Mr Levy, and yet the position in relation to their own disclosure has only become clear after the hearing. Had everyone been aware of the full position, the Government Parties would have been able to counter with similar force by pointing out the alleged failures and omissions on the part of the RGP and its officers.

34. Mr McGrail has – very properly – always argued for 'open justice'. At GBC's request, that the main hearing was recorded, then live-streamed, and later with a 'catch-up' facility, so that anyone who wished to do so could watch the recording at any time. The proceedings were watched with a lively interest by many Gibraltarians.

35. The Government Parties claim that the failure of disclosure by Mr McGrail and the RGP resulted in a procedural unfairness in that they could not counter-attack at the time by pointing out the equal – or even greater – failures of disclosure by the RGP and by Mr McGrail. Therefore, they argue that the general principle of 'fairness' requires that I reconvene the Inquiry hearing.

The arguments against reconvening

General considerations

36. In considering whether to reconvene to deal with these points, of course, I have in mind what has already occurred. The following points are forcefully made in the submissions by Charles Gomez & Co on behalf of Mr McGrail at paragraph 3 of their letter of 17 January. The Inquiry held five preliminary hearings, some of which lasted two days. The main hearing lasted 19 days, spanning five weeks, with final oral hearings lasting two further days. They argue that the Core Participants have had ample opportunity to make submissions to identify the Issues which I had to decide. The Government Parties and Mr McGrail were each allowed three hours for both their opening and closing oral

submissions, and each submitted extensive written opening and closing submissions. Mr McGrail gave evidence for fully two and half days. Having regard to the conflicts of evidence, and even after a challenging and probing examination by Mr Santos, Counsel to the Inquiry, which lasted more than a day, I permitted Sir Peter Caruana to examine him further. All the other critical witnesses, including Mr Picardo KC, Mr Levy KC, Mr Richardson, Mr Ullger, Mr Rocca KC, Mr Llamas KC, Mr Baglietto KC and Mr Pyle, gave evidence.

37. I accept that I kept a tight rein on the time allowed, but I was attempting to limit the costs. I set a timetable: we started on time, and we finished on time. It is argued on behalf of Mr McGrail that every witness was given a fair chance to have their say and every Core Participant was given a fair chance to challenge that, either by submitting questions to Counsel to the Inquiry to put on their behalf or to do so themselves.

38. However, as the Government Parties point out in their reply, self-evidently the parties could only deal with what had been disclosed; they could not deal with – still less challenge – what had not been disclosed.

39. It is argued against them that the Government Parties could have identified and challenged the failures of disclosure at time of the original hearings. I do not accept that. The RGP had submitted in their Opening Submissions that they had given *"comprehensive disclosure*" and neither Mr McGrail, nor Mr Ullger nor Mr Richardson, nor anyone else, sought to disabuse them. They all proceeded on the basis that they had made a full disclosure. I think that Inquiry, and the Government Parties – and the public for that matter – were entitled to proceed on that basis. It is frankly unattractive now to argue that although they did not disclose their shortcomings at the time, the Government Parties should have worked it out for themselves. In my opinion, the Government Parties could not have made these points at the time; and this is not a reason to refuse the application to reconvene.

Costs

40. Section 17(3) of the Inquiries Act 2024, as considered in paragraph 8 above, casts upon me an important statutory duty to avoid unnecessary costs. It will cost a great deal of money to reconvene the hearings: the Garrison Library hearing room will need to be re-established; the recording and transcribing equipment will need to be re-installed, and the relevant staff re-engaged; the extensive – and necessarily expensive – legal

teams will need to be paid again for preparation for the hearing and for attendance over three days and many will need to be flown out and accommodated in Gibraltar, as indeed will I. I have asked the Secretary to the Inquiry to work out with the Solicitor to the Inquiry, what the cost of a three-day hearing would be; their best estimate is just under £270,000 (but it should be noted that neither the Secretary nor the Solicitor to the Inquiry have any oversight of the costs of the lawyers engaged by the Government parties, the RGP, the GPA or Mr Richardson, so this is very much an estimate on their part).

41. It might be said that since the Government Parties have applied for the hearing, and since the primary cost will fall upon them, it is for them to decide how to spend public money. But not all the parties are publicly funded, and even those who are, will have budgets carefully to manage. Furthermore, I think that my obligation to avoid unnecessary costs extends to safeguarding the interests of the taxpayers in Gibraltar and it is not a sufficient answer to say that if the Government are willing to pay, they should be permitted to do so. However, for reasons which I have set out, I am persuaded that the benefits which would accrue from reconvening the hearing justify the costs.

Delay

42. As to the duty to proceed expeditiously and to avoid any unnecessary delays, the Inquiry was commissioned in February 2022. As Charles Gomez & Co. rightly observe, it has already been subject to significant delays. The first was occasioned by a data breach at Attias & Levy (then the Solicitors to the Inquiry), which had to be investigated. Then the main hearing scheduled for the autumn of 2023, had to be postponed following the entirely proper application the RGP, at the request of SIO McVea, to allow them to investigate the alleged 'witness inducements' (sometimes called the 'Job Offers'). The result is that without fault, the Inquiry process has taken almost three years already.

43. If I was to order a reconvened hearing, that would take some months to arrange, and the Maxwellisation process and the eventual delivery of the Report, and its subsequent publication, will be further delayed. Whilst I accept that there is a strong public interest in delivering the report as soon as possible, speed is not the only consideration. It is important that the public can see that all those affected have had a proper chance to present the evidence on which they rely and to challenge the evidence which they do not accept. If I did not encourage and permit that, then the public would consider that the Inquiry process was unfair, and they would not have confidence in my findings. I

therefore order the reconvened hearings, notwithstanding the delay in producing the Report.

Mr McGrail's medical condition

44. Finally, I accept that I should take into account the emotional and psychological impact of requiring further oral evidence from Mr McGrail, thereby prolonging the Inquiry process, and his resultant stress. Accompanying their letter resisting the application to reconvene, Charles Gomez & Co have submitted to the Inquiry a recent medical report. by a Chartered Practitioner Psychologist. Charles Gomez & Co submit that the Inquiry process "*has … taken a particularly serious toll on Mr McGrail… His psychological well-being has deteriorated significantly and he is undertaking regular treatment*". I accept that submission. Having regard to paragraph 27 of the Documents Policy, and given the nature of his medical condition and the treatment which he is receiving, I consider it to be unnecessary for present purposes to disclose the report or to go into any further details about it. I have therefore ordered that the report should be withheld from wider dissemination and should not further be disclosed to CPs or uploaded on the Inquiry website.

45. I accept that Mr McGrail genuinely believes that he has been unfairly traduced by some elements of the local press. I accept that another hearing, and yet more delay in producing the Report, will be likely to cause him further stress and anxiety, and perhaps a deterioration in his mental state, but the report does not suggest that Mr McGrail is unable or unfit to give evidence. I accept that he was obviously under stress when he gave evidence at the main hearing, but he was able to cope then, and I see no reason why he cannot do so again. I could – and would if necessary - make such arrangements according to the Inquiry's Protocol for Vulnerable Witness, to assist him to give evidence, for example by providing breaks during the course of his evidence, or by limiting the time during which he is to give evidence, which would in any event be short.

46. I accept that Mr McGrail's medical condition is plainly a relevant consideration but, for the reasons I have just set out, I do not consider it to be a decisive factor against ordering the reconvening of the hearing (even when considered cumulatively with the other factors).

The recent disclosures by the RGP

47. I turn to considering the effect of the evidence that has recently been disclosed.

48. I have accepted the principle of 'proportionality'. In my opinion, this requires that I should reconvene the hearings only if I consider it to be necessary to resolve a core – or at least a really substantial – issue in the Inquiry, rather than merely to add some points of detail, which are not likely to affect my decision of fact on a core issue. Nor should I reconvene simply to allow a party to make, or to stress, a point or points which could – and should – have been made, or stressed, at the original hearing or which could properly be dealt with by further written submissions. Whilst always regarding the principle of fairness, I must strike a balance between such benefits that would flow from my granting a renewed oral hearing against the costs, the delay and other the other adverse consequences that would flow from my refusing it.

49. The drafting of the Report is at a very advanced stage and I have already prepared an extensive first draft; I am therefore in a very strong position to say whether any of the recently disclosed material is likely to add to or alter my findings of fact on a core issue.

The Incident at Sea

50. A few of the disclosed exchanges relate to the Incident at Sea, which occurred on 8 March 2020; I will need to incorporate some into the draft report, but none will affect my core findings of fact.

The HMIC Report

51. The Government Parties argue (in their Reply submissions) that a number of the exchanges between Mr McGrail and Mr Ullger can give rise to the suggestion that Mr McGrail realised that he had not made sufficient progress in the implementation of the HMIC Report recommendations and was encouraging Mr Ullger to make hurried changes to dispel criticism. But, in my opinion, these arguments were already clear from the evidence already adduced; the further material provides some further detail, but no more. These points can be made in written submissions. None will affect my core findings of fact. It is not necessary to reconvene the hearings to deal with this additional material.

The dealings with the GPF

52. There are some messages discussing the dealings with Mr Morello and the GPF, many of which reflect the low opinion which Mr McGrail and Mr Ullger had of them, but that

was very clear from the evidence already adduced. Some of this new material might usefully be added to my draft report, but all the relevant points can be made in written submissions. None will affect my core findings of fact. It is not necessary to reconvene the hearings to deal with this additional material.

The meetings of 13, 15 and 20 May

53. One of the important issues for me to decide is whether the meetings between the RGP, the Attorney General and the DPP on 13, 15 and 20 May 2020 were, as the Government Parties contend, *"collaborative and consensual*" or, as Mr McGrail contends, an "*improper interference*" in a live criminal investigation.

54. Mr McGrail covertly recorded these meetings, so there is an accurate and full record of what was said. I accept that there is an exchange in the newly disclosed material (in which Mr McGrail described the meeting on 15 May as '*goodish'*) and another which might allow the Government Parties to further their argument that neither Mr Llamas nor the Mr Rocca interfered with, or restricted, the RGP's right to proceed as they thought fit and proper in the investigation of Operation Delhi, including their right to arrest Mr Levy.

55. But, in my judgment, these points can be made perfectly well by written submission. I may need to incorporate them into the Report, but the new material will not affect my core findings of fact. It is not necessary to reconvene the hearings to hear live evidence on these points.

The friendship between Mr McGrail and Mr Ullger

56. The recently disclosed exchanges between Mr McGrail and Mr Ullger show a much closer professional relationship and personal friendship – even closer than I had appreciated at the Main Hearing and which I accept I will have to consider when finalising my Report. But this point also can be developed perfectly well by written submissions. The newly disclosed material will not affect any of my findings of fact on any core issue and does not require a new hearing.

The reason why Mr McGrail retired

57. A point of arguably greater substance is that the Government Parties contend that the WhatsApp messages between Mr McGrail and Mr Ullger sustain important parts of their case to the effect that *"he knew and accepted that he had lost the confidence of key persons and authorities, namely the Governor, the Chief Minister and the Gibraltar*

Police Authority" and that "*at least by 29 May, [he had] resolved to retire and thereafter worked to ensure that he would be allowed to do so on the best financial terms, [and that] nothing that occurred after that date could have been the reason for him doing so*". They further argue that the messages correspondingly "*completely undermine[s], indeed contradict[s], the case advanced by Mr McGrail and the RGP*". In the process, they claim that Mr McGrail's credibility would be seriously undermined.

58. The Government Parties contend that the failure to disclose these documents before the main hearing has deprived them of the opportunity to examine Mr McGrail in relation to them, which they argue would have demonstrated that he had decided to retire at least by 29 May (when the 'Gomez letter' was sent) because he realised that he had lost the confidence of the Chief Minister and of the Interim Governor and thereby undermined his ' case theory' that he did not do so.

59. I do not doubt that, if this newly disclosed material had been disclosed beforehand, at least some of these passages would have been put to Mr McGrail with a view to pursue this argument. Of course, the more material, the stronger the point may become, but this argument can perfectly well be developed by written submissions. However, as I point out later, I may allow Counsel to the Inquiry to pursue this point when he comes to examine Mr McGrail at the reconvened hearing.

60. I also observe that there is no evidence in the new material of Mr Picardo or Mr Pyle giving notice to Mr McGrail (or to the GPA) of the reasons why they claimed to have lost confidence in him.

Conclusion on the recent disclosure

61. I accept that the new disclosures will require me to make some amendments to some parts of my draft Report but, in my judgment, either considered separately in isolation, or even when considered cumulatively with the other points, none will or are likely to affect the core findings that I will make in the Report once the draft is finalised. The recent disclosures, therefore, are not the reason why I shall order the reconvened hearing.

62. I will give the Core Participants a further opportunity to identify in writing the recently disclosed evidence which they wish to draw to my attention, and to make further comments upon it. I will consider later whether Counsel to the Inquiry might usefully explore some of these matters in the reconvened hearing, but – having regard to the

confines of time and the need to reduce costs – I may be reluctant to permit others to develop these points. I will however consider this further following due consideration of submissions from Core Participants on the recently disclosed evidence.

The danger of disproportionate emphasis

63. Mr Gibbs has warned that to reconvene to hear these points '*would deflect and distract attention, from the core issues in the proceedings*' so as to bring '*a disproportionate focus, on a marginal afterthought*'. I am alert to this danger, but I will guard against it by managing the timetable at the hearing and making the purpose of the hearing clear to the public. I emphasise that whilst, in the course of this Ruling, I have identified some points that require explanation and challenge in a reconvened public hearing, I will consider them in the context of all the other material already provided to the Inquiry, and subject to the submissions which have already been made; the fact that I have reconvened the hearing to deal with these points, does not invest in them any special importance.

Other considerations

64. For the sake of completeness, I should add that I see no reason to re-open our investigation of the 'Jobs Offers', as the RGP tentatively suggest. The Inquiry's investigation into the '*Job Offers*' was being made only to protect the integrity of the Inquiry process, and to be seen to do so, and thereby to maintain public confidence in its findings: it was not an end in itself, because it did not bear directly upon the reasons and circumstances leading to Mr McGrail's retirement, nor is it one of the issues in the List of Issues upon which I am charged to report.

65. Nor am I persuaded that I should – at any rate at this stage - order Ms Samantha Sacramento, formerly the Minister of Justice, to attend to give evidence. The recently disclosed material may suggest that she might have relevant evidence to give about the circumstances of Mr McGrail's retirement. The Inquiry Team have asked her to provide a witness statement, which she is willing to do. Only as a formality, I have issued a notice under section 21 of the Inquiries Act. I will reconsider the position in the light of any statement that she gives, and in the light of any submissions from the Core Participants.

Conclusions on reconvening

66. For the reasons that I have set out above, I have come to the conclusion that:

(i) Having considered and weighed the downside of reconvening the hearings, being the further delay, the increased cost and added inconvenience and the possible adverse effects upon Mr McGrail, I have no doubt that fairness requires that it is necessary to reconvene a short hearing, in public, to allow Mr McGrail, Mr Ullger, Mr Richardson and Mr Yeats the opportunity to give their explanations for the alleged delays, failures and deletions, in public, at a live-streamed hearing and for their explanation to be challenged by Counsel to the Inquiry and probably by other Core Participants.

(ii) Mr Picardo and Mr Levy have been publicly challenged by Counsel to the Inquiry and on behalf of Mr McGrail, and others, for their alleged delays and failures of disclosure and I consider that fairness requires that these four witnesses (Mr McGrail, Mr Ullger, Mr Richardson and Mr Yeats) face the same public challenge.

(iii) I do not think that merely uploading the statements and submissions onto the Inquiry website achieves '*open justice*'.

(iv) A hearing to give, and to challenge, this evidence in public is the only way that I can properly find the facts.

(v) Furthermore, this is the only way to maintain public confidence in the Inquiry process and in its findings.

(vi) A reconvened hearing will also have the incidental advantage of giving the opportunity of examining, and commenting upon, some of the fresh evidence revealed by the RGP disclosures, on which Counsel to the Inquiry may need put some question; this will result in my giving further, more detailed and better sourced reasons for my findings of fact. I presently think that it will probably not be necessary or appropriate to allow anyone else to do so within the time allocated and to limit costs, but I will keep this under review.

67. The RGP has expressed concern at potential misreading of this Ruling, and I must stress that I have not made findings in this Ruling of misconduct or impropriety against the RGP or its officers, and this Ruling should not be reported as such. The same applies to Mr McGrail and Mr Richardson. The matters in this Ruling will need to be tested at the hearing and I will make findings upon them when I write the Report.

Consequential orders

68. After consultation with the Core Participants, and the Secretary to the Inquiry, I will ask the STI:

(i) To invite short written submissions on the alleged delays and gaps in the disclosures by the RGP and by their senior officers, and on the material recently disclosed;

(ii) To arrange a hearing of three days, to take place shortly, so as to avoid any further delay;

(iii) To consider who should be represented at the hearing at public expense;

(iv) To issue a timetable for a brief opening submission by Counsel to the Inquiry (but probably not by anyone else), for hearing the evidence on the first two days and for brief closing submissions by all Core Participants represented at the hearing on the third day.

Sir Peter Openshaw DL

10 February 2025