

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

**SUBMISSIONS ON BEHALF OF IAN MCGRAIL,
FORMER COMMISSIONER OF THE ROYAL GIBRALTAR POLICE
FOR THE RESUMED ORAL HEARING, 9-11th APRIL 2025**

References to “IM” are to Ian McGrail’s affidavits, e.g. IM1 §1 = para. 1 of his first Affidavit*
References to [A, B* etc.] are to page numbers in the hearing bundles*
References to [1/1/1] are to Main Inquiry Hearing Transcript, Day 1, Page 1, Line 1

A. INTRODUCTION

1. These submissions are made on behalf of Ian McGrail pursuant to the Chairman’s Ruling dated 10th February 2025 (**‘Ruling’**), which requested “*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*”. An email from the Solicitor to the Inquiry (**‘STI’**) dated 7th March 2025 communicated a message from the Chairman that “*he intends to focus on the disclosure issues identified in his recent Ruling, and he encourages Core Participants to do the same when drafting their written submissions*”. These submissions, accordingly, focus to a large extent on the disclosure issues, and make some brief points on the substance of the recently disclosed messages, in addition to the first statement of Samantha Sacramento.
2. In summary, Mr McGrail and his legal team have responded extensively and proactively to disclosure requests from the Inquiry throughout its work, even whilst he has been under very significant pressure as a result of events outside of his control, and whilst the Inquiry was facing its own difficulties such as the replacement of the original STI. He has apologised for not disclosing messages between him and Mr Ullger and between him and Mr Richardson prior to his mobile devices being seized by the RGP on 23rd March 2023, over a year before the Main Inquiry Hearing, and has made clear that this was an inadvertent oversight. He has provided full explanations as to various questions which the Inquiry has posed in relation to other disclosure issues. He is willing and able to provide any clarification required at the upcoming resumed oral hearing.

B. SUBMISSIONS ON THE DISCLOSURE ISSUES

3. The following issues relating to Mr McGrail are identified in the Ruling and are addressed below (paragraph references in the subparagraphs below are to the Ruling):

3.1. Mr McGrail’s explanation as to why he continued to use his personal phone (number ending *4000) after being provided a Samsung work phone in at some point in early 2020 (§21(s));

3.2. The absence of the 12th May 2020 message between Mr McGrail and Mr Richardson and of “*other messages between 30 April and 22 June*” (§13);

3.3. Mr McGrail’s explanation as to why he did not provide the messages between him and Commissioner Ullger or between him and Mr Richardson prior to his mobile devices being seized by the RGP in March 2023 (§21);

3.4. The alleged “*deletions*” of messages or message threads (§§21-27);

3.5. The wider context of the failure of the RGP to find Mr McGrail’s day books (apart from three pages), the email Mr McGrail “*sent to himself on his laptop, or his desktop*”, and the retention then destruction of hard copy documents by Mr McGrail (§20) (it is unclear whether this issue will be addressed at the hearing);

3.6. Whether the RGP’s policy of wiping all personal data from a mobile phone when an officer moves from their relevant post is appropriate and/or lawful and/or good practice (§17).

(i) Mr McGrail’s explanation as to why he continued to use his personal phone (number ending *4000) after being provided a Samsung work phone in at some point in early 2020

4. The background to this issue is as follows, as recalled by Mr McGrail and set out at §§2-8 of IM9 [E257] and supplemented in IM10:

4.1. Mr McGrail was assigned a phone number ending with ‘4000’ (*4000) by the RGP in 2006, when he was promoted to the rank of Chief Inspector. The RGP paid the bill for the phone number and Mr McGrail used the sim card in his own

handsets, which he upgraded a few times. He used the *4000 number for both personal and professional purposes.¹

- 4.2. A new RGP “Mobile Device Policy” (**‘RGP Policy’**) appeared to have been approved on 30 October 2019 [E319]. As the Chairman points out in the Ruling at §18, the RGP Policy prohibits personal communication on work devices but there is no corresponding prohibition of communicating work related messages on personal devices – see §§4.2 and 5.1 of the RGP Policy. The earlier Force Orders appear to take a stricter line on the use of personal devices.
- 4.3. In September or October 2019, the RGP states that it provided officers with new “*official*” ‘phones [E944], including providing Mr McGrail with a new Samsung device. Mr McGrail has previously said that he thought this was in early 2020, however having seen the RGP evidence served on 12th March 2025, he accepts that the devices appear to have been provided a few months earlier (IM10). In his previous evidence, he could not recall the exact number and said it is possible it ended with ‘199’. The number in fact ended *9010 – see [E273] at §6.
- 4.4. Because he had previously heavily relied on the *4000 number for personal use, he had this number transferred to his personal Gibtelecom account and assumed personal responsibility for the billing.
- 4.5. Mr McGrail began to wind down the use of *4000 for official purpose. Because he was not proficient with the use of the Samsung device, the transition was slower than it might have been and he continued to use the *4000 number for RGP communications, mainly with senior officials such as His Excellency the Governor, the Chief Minister, the Minister of Justice and the Attorney General.
- 4.6. He tried to develop his proficiency with the Samsung *9010 device and did receive emails and text messages from colleagues on it.
- 4.7. When he retired on 9th June 2020, Mr McGrail left the *9010 device with the RGP and did not retain any data pertaining to this phone. He is not aware whether the number and/or device was reassigned or not. It now appears that the device was

¹ IM9 §§2-3

wiped by the RGP – the important point is that Mr McGrail has had no access to this device or its data for almost five years, i.e. from 9th June 2020 onwards.

5. Therefore, in short, Mr McGrail only had use of the *9010 device for a few months prior to his unexpected early retirement. As he explains in IM9, he did not fully transition to the *9010 device for professional use by the time he retired, because he was not yet familiar with the Samsung (Android) operating system. It was not only Mr McGrail who found it difficult to transition to the Samsung devices – so did the other RGP senior officers, to the extent that five months after Mr McGrail retired, in November 2020, Commissioner Ullger, Superintendent Richardson and ACOP Yeats swapped their Samsung devices for Apple devices. An email stated this was due to the “*user interface*” [E956].: CY6 §12 [E877].
 6. The Chairman has stated that he is “*reluctant*” to accept Mr McGrail’s explanations in relation to this and other issues at “*face value*”. If the implication is that Mr McGrail’s evidence cannot be trusted for credibility reasons, we submit this is unfair, given Mr McGrail’s consistent cooperation with and assistance to the Inquiry. It may be that the Chairman’s comments merely suggest a general reluctance to accept explanations relating to controversial issues without the opportunity to explore the same in oral evidence. Whichever is correct, we appreciate that the Chairman wishes to hear the explanation directly, and Mr McGrail is willing and ready to answer any further questions about this in his oral evidence at the resumed hearing.
- (ii) The absence of the 12th May 2020 message between Mr McGrail and Mr Richardson and of “*other messages between 30 April and 22 June*”**
7. Mr McGrail recalls receiving a message from Mr Richardson on 12th May 2020 as he was “*about to execute the warrants*”. This was first referred to in IM1 (dated 20th June 2022) at §29 [A9]. The Chairman has said that he has “*no doubt 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*” (Ruling §13).
 8. The message does not appear in the recovered messages from Mr McGrail’s personal *400 number. Nor does it appear in the messages disclosed by Mr Richardson from his personal phone (Ruling §13).

9. The simplest and most likely explanation is that the message is likely to have been between Mr McGrail and Mr Richardson's work 'phones, for the following reasons:

9.1. The message is unlikely to have been between Mr McGrail's personal *4000 phone and Mr Richardson's person or work phones because (a) the messages from the *4000 have been extracted by the RGP and are available to the Inquiry, (b) no such message appears in that extraction (there are in fact no messages between Mr McGrail's *4000 'phone and the other officers' work 'phones), and (c) the RGP has confirmed (in DC Garcia's statement at §15 and §17 [E1069]) that no messages were deleted in the WhatsApp chat between Mr McGrail's *4000 number and Mr Richardson between 1st January and 30th June 2020².

9.2. As Mr McGrail states at §15 of IM9:

The mention of the message I received from Mr Richardson in McGrail 1 para 29 was included in my affidavit from my vivid recollection of what happened on 12th May 2020. I did not have then and still do not have now any data to support this recollection. I can only deduce that Mr Richardson may have sent this message from his Samsung device (the number of which I certainly do not recall) to 5****1 as otherwise the message in question would have appeared in the chats stored in *4000.

10. As to why no messages have been disclosed between 30th April and 22nd June 2020 between Mr McGrail and Mr Richardson, again the simplest and probably correct explanation is that any messages exchanged (if there were any such messages beyond the one on 12th May) were between their work 'phones, which were subsequently wiped by the RGP, meaning the messages are no longer available. Mr McGrail has not had access to any of these messages from 9th June 2020 when he retired and handed in the *9010 'phone, so has not at any time been a position to disclose them.

(iii) Mr McGrail's explanation as to why he did not provide the messages between him and Commissioner Ullger or between him and Mr Richardson prior to his mobile devices being taken by the RGP in March 2023

² "From those 615 WhatsApp chats, one of those chat is a chat between Mr Ian McGrail and Mr Paul Richardson. This chat contains 153 messages. The first one was sent on 30/07/2016. I have filtered this chat between the data parameters provided to me, them being all messages between 01/01/20 to 30/06/20. This returned 30 messages. There are deleted recovered messages within this chat but none between the data parameters provided."

11. This was an inadvertent oversight for which Mr McGrail has apologised. In IM9 at §§12-17 [E259-260], he says:

12. At the time of preparing my evidence for the Inquiry my focus was set on covering all the aspects required as per the List of Issues. I did not look in to 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.

13. Evidently, the relevance of these messages became apparent during the oral hearings, and I fully appreciate STI's interest as to why I did not disclose these exchanges. I did not export the chat logs from either of them (SIO McVea's forensic examination will confirm this). The fact that I did not export the chat logs of my exchanges with Mr Richardson and Mr Ullger is because that they did not feature in my mind as relevant at the time. This was an inadvertent omission on my part for which I apologise.

14. However, I am glad that the said chat logs have been extracted by SIO McVea and I understand have been made available to the Inquiry. If they have not, I allow the RGP permission to disclose these.

12. If the Chairman is for any reason sceptical about this explanation, we highlight the following factors which support it:

13. First, Mr McGrail did not refer to or rely on any communications between Mr Richardson and Mr Ullger in any of his first four affidavits, the fourth being dated 15th February 2023, i.e. shortly before he lost access to his messages due to the RGP arrest, except for the single message between him and Mr Richardson on 12th May, which he has not had access to at any point after he retired and lost access to his work mobile. He did not export his WhatsApp chats with either individual prior to his mobile devices being taken by the RGP on 23rd March 2023 (IM9 §13 [E260]). This supports his assertion that he did not consider the messages at the time when he was preparing his initial affidavits i.e. prior to his mobile devices being seized.

14. Second, Mr McGrail has provided extensive disclosure to the Inquiry, including hundreds if not thousands of WhatsApp messages between him and relevant individuals. He is the common link between all the issues in the Inquiry (by definition, since all of the issues are said to pertain in some way to his departure from the RGP) and therefore the burden upon him of providing full explanations in respect of each issue has been very considerable. He and his legal team have answered every request made as quickly and

fully as they could, including the provision of ten affidavits running to hundreds of pages and many more hundreds of pages of disclosure. This is essential context to any consideration of whether Mr McGrail is somehow culpable for not disclosing the messages between him and Mr Richardson and Mr Ullger prior to March 2023.

15. In this regard, the implication at §31 of the Ruling, that it was somehow disingenuous for Mr McGrail’s counsel to criticise other CPs at the Main Inquiry Hearing for failing to disclose certain messages is misplaced. It was Mr McGrail’s view that he had “*faithfully fulfilled his duty in disclosing what was required of him*” at the time of the hearing. It has later come to light that certain messages (a small proportion of the overall body of message which Mr McGrail disclosed prior to the hearing) are to an extent relevant and could have been disclosed earlier, however this was not deliberate – it was the consequence of participating in a highly complex inquiry in which certain documents have seemed more relevant as matters have progressed, and the fact that Mr McGrail lost access to those messages over a year before the Main Inquiry Hearing.
16. This is hardly unique to Mr McGrail – all of the main witnesses to the Inquiry have made disclosure after their oral evidence was complete, and a number of witnesses (notably Mr Picardo) disclosed the bulk of their WhatsApp messages far later than Mr McGrail did, in fact shortly before the Main Inquiry Hearing.
17. Moreover, not a single CP, no CTI or STI, requested the messages between Mr McGrail and Mr Ullger during the 5-week hearing, and no questions were asked about those messages during the very extensive questioning of Mr McGrail or of Mr Ullger. This demonstrates that it was not only Mr McGrail who did not consider the messages to be likely to be important or relevant.
18. Second, Mr McGrail and his legal team have often been at the forefront of ensuring that the Inquiry obtains as full a record of the relevant evidence as possible, with the correct procedures in place. For example:
 - 18.1. Prior to the First Preliminary Hearing on 22nd June 2022, Mr McGrail’s counsel highlighted in written submissions that the Inquiry had requested disclosure before producing an information management policy which would comply with the Gibraltar GDPR, and a redactions policy (amongst other things). It was proposed that these policies were produced before documents were received.

These proposals were taken up by the Inquiry and the policies were produced (1PH Transcript 30/8).

- 18.2. On 6th July 2022, Mr McGrail’s lawyers proactively wrote to the Inquiry proposing that evidence be sought from a number of witnesses. Included in this request was “[t]he following police officers who had an involvement in the matters before the Inquiry”: Richard Ullger (“who was involved or otherwise had knowledge of all of the issues that the Inquiry is being referred to including the so called “Airfield Incident””) and Paul Richardson (“who led on Operation Delhi and also had involvement in Operation Kram and was present at a number of key meetings which are referred to in the witness statements”). In the same letter, Mr McGrail’s lawyers highlighted that:

Generally, we note that the witnesses have not disclosed text message exchanges or emails in their original form, or a copy of their original form. Insofar as they are referred to, they are quoted in witness statements or very occasionally (generally in the form of police exhibits) provided in copy form. Given the importance of the issue, it stands to reason that there is a very significant amount of relevant messages and emails regarding Mr McGrail which have not been disclosed.

- 18.3. Additionally, Mr McGrail requested that messages and other communications between Government and GPA witnesses be obtained (these were extensively particularised, as at that stage very few messages had been disclosed by anyone apart from Mr McGrail), and that the Inquiry require that the RGP disclose “a copy all of Mr. McGrail’s relevant electronic and hard copy communications and data during his time at the Royal Gibraltar Police”.
- 18.4. It would seem that as a result of Mr McGrail’s lawyers’ letter of 6th July 2022, the Inquiry wrote to Mr McGrail on 18th July 2022, and we assume other witnesses, requesting that “all of the WhatsApp conversations referred to above and/or in your client’s affidavit be provided to us” by way of an export or screenshots, and “native electronic versions of all documents”.
- 18.5. Mr McGrail’s legal team then made a number of further, repeated requests that WhatsApp messages be disclosed between relevant witnesses. In a letter to STI dated 6th October 2023, Mr McGrail’s team requested “original copies of text message exchanges” between Fabian Picardo KC, Nick Pyle, Michael Llamas

KC, Joey Britto and James Levy KC. In a letter of 10th January 2024 to STI, Mr McGrail's lawyers highlighted that he still awaited disclosure of documents which had been requested from the RGP, and said that *"In our letter dated 6th October 2023, at Item (ii), we highlighted that there were still some significant documents which we assume exist but which have not been disclosed, in particular original copies of private message exchanges between various witnesses: [...]. We understood that the Inquiry was conducting a review in respect of this disclosure. Please can you share the outcome of this review, and the extent to which additional disclosure of private messages is expected? We are concerned that we raised this issue over three months ago and no update has been provided."* Mr McGrail's legal team chased this request up a number of other times, in correspondence which STI will have access to.

- 18.6. Mr McGrail also continued to seek to assist the Inquiry in obtaining relevant evidence including from the RGP, and between RGP officers. For example, it was he who requested (by way of the Inquiry's Order dated 21st June 2023, which was based on his requests) that the RGP disclose (a) *"WhatsApp conversations of the "SMT" chat group between July 2015 to 9 June 2020, if those conversations were conducted on RGP devices"*, (b) *"the investigation file(s) on the Airfield incident"* to include *"WhatsApp chat logs received by the SMT, if any of those conversations were conducted on RGP devices"*. The request concluded: *"We respectfully request that if the Inquiry has not yet requested the 'raw' text message exchanges then it does so or that these documents are disclosed I the Inquiry explain why the messages have not yet been provided or disclosed"*.
19. It would have been illogical for Mr McGrail, as early as 6th July 2022, to have requested that the Inquiry obtain evidence from Mr Ullger and Mr Richardson, as well requesting that the Inquiry obtain text messages and emails from all witnesses in their native form, and continued to make regular requests in the same vein, and at the same time decide not to disclose relevant WhatsApp exchanges between himself and Mr Ullger and Mr Richardson. It would have been self-defeating, as the messages would (we would have assumed) been obtained from Mr Ullger and Mr Richardson in any event, not least from Mr McGrail's own efforts in encouraging the Inquiry to obtain this very evidence.

20. There is therefore no viable sinister explanation for Mr McGrail not providing the messages himself before 23rd March 2023. The only reason was inadvertence, for which he has apologised, and which should also be understood in the wider context of Mr McGrail's extensive cooperation with the Inquiry. The correspondence from 2022 to 2025 supports this.
21. The messages between him and Assistant Commissioner Yeats are not of sufficient relevance to have been required in any event.
22. Third, another important part of the chronology that on 6th November 2022, in the middle of the Inquiry's disclosure process, Mr McGrail reported to the Inquiry that its data systems appeared to have been breached. On 16th November 2022 the Inquiry informed the CPs of the suspected data breach, at which point the disclosure process was suspended. Attias & Levy were subsequently terminated as STI and, on 3rd February 2023, the (then) Commissioner informed the CPs that Charles Simpson of Triay had been appointed as the new STI. It was only a few weeks after this that the disclosure process resumed, in March 2023.
23. Fourth, on 23rd March 2023, over a year before the Main Inquiry Hearing, Mr McGrail was arrested by the RGP without warning and all of his mobile devices were seized. Although he was, a few months' later, released from arrest and his devices returned, he was no longer able to access any of his WhatsApp messages. As the Chairman will be aware, he was subsequently charged with a sexual offence, and acquitted after a trial in July 2023. This was in the wider context of Mr McGrail being informed by Mr Ullger, in Autumn 2022, that current and former RGP officers were being offered huge financial incentives to give hostile evidence against him, in respect of which he made a detailed witness statements to the RGP on 17th October and 29th December 2022. To say that his mind was also on other matters during this period would be an understatement.
24. Fifth, the Inquiry, not Mr McGrail or Mr Richardson, bears responsibility for the relevant messages between Mr McGrail and Mr Richardson not being available during their oral evidence at the Main Inquiry Hearing. The messages between Mr McGrail's *4000 'phone and Mr Richardson's 'phone were disclosed nine months before the Main Inquiry Hearing by Mr Richardson but the Inquiry did not provide them to the CPs until after Mr McGrail's and Mr Richardson's evidence. If it had done so, the CPs would have had the

opportunity to question them on the messages at that hearing. This “oversight” is addressed at §6 of the Annex to the Ruling.

25. None of this takes away from the fact that Mr McGrail has apologised for his inadvertence in not disclosing some messages of some relevance, but it demonstrates that during the relevant period Mr McGrail has been put under pressure which is unmatched compared to any other witness, whilst at the same time working closely and extensively with the Inquiry to ensure that any requests were complied with and that he would be able to access relevant documents held by the RGP. To find that Mr McGrail has, nonetheless, somehow not cooperated or failed to discharge his disclosure responsibilities would be hugely unfair.

(iv) The wider context of the failure of the RGP to find Mr McGrail’s day books (apart from three pages), the email Mr McGrail “sent to himself on his laptop, or his desktop”, and the retention then destruction of hard copy documents by Mr McGrail (§20);

26. It is unclear whether these issues will be addressed at the resumed hearing. They have been addressed in IM8 and the various RGP witness statements, and all of the issues were explored with witnesses in oral evidence at the Main Inquiry Hearing. The issues are not referred to in the Government Parties’ submissions seeking a re-opening of the oral hearings (only the Op Delhi Defendants raised these issues, and only by way of context). If the Inquiry does intend to touch on any of these issues, the following points are made:

26.1. Mr McGrail left his daybook in his office in a bag when he retired on 9th June 2020. He has no knowledge about what happened to it after this and did not have custody of it at any stage after 9th June 2020 (IM9 §§7-11) [E258]. It has been in the custody of the RGP’s since that date, as far as Mr McGrail is aware.

26.2. Mr McGrail left his laptop and desktop with the RGP when he retired on 9th June 2020 and has not had any further access to them since then (IM9 §5) [E257]. They have been in the custody of the RGP’s since that date, as far as Mr McGrail is aware.

26.3. Mr McGrail had no knowledge or control what happened to a “draft” of the 12th May 2020 email. However, the theory introduced by Sir Peter Caruana KC at the

Main Inquiry Hearing, that Mr McGrail may have somehow altered the date on the two emails, has been debunked by Detective Constable Garcia in his report dated 18th June 2024 [E48]. It is possible, as Mr McGrail suggests in IM10, that he saved the text in a draft email rather than a draft document.

26.4. After he retired on 9th June 2020, Mr McGrail retained some documents from the RGP in a hard-drive and paper copies of some of the same documents. He later returned the hard drive having disclosed all relevant documents to the Inquiry. He then destroyed the remaining paper copies in the knowledge and under the direction and request of the RGP. The details are in IM8 §§12-16 and at [E92] to [E106].

(v) Whether the RGP’s policy of wiping all personal data from a mobile phone when an officer moves from their relevant post is appropriate and/or lawful and/or good practice (§17)

27. Mr McGrail takes no position in relation to the policy itself and considers that it is a matter for the RGP. He would highlight, however, that:

27.1. This issues seems to be outside of the Inquiry’s remit and terms of reference, though the effect of the policy clearly has impacted on the documents available to it, and

27.2. If the Inquiry intends to reach findings in relation to the appropriateness of such a policy, it may also wish to consider by way of comparison and also substantively the Foreign, Commonwealth and Development Office policy referred to in Mr Pyle’s oral evidence, [18/12/9] and disclosed at the hearing, which he himself did not comply with by transcribing his messages before deleting them, as well as the apparent absence of any similar policy relating to HMGoG communications³, as referenced at §12 of RU5 (“*the RGP was and is still the only organisation in the public sector to have work phones and a policy in place to support this*”) [E871].

C. SUBMISSIONS ON THE SUBSTANCE OF THE MESSAGES

³ Indeed, we understand there is no such policy at four other law enforcement departments: Customs, the Gibraltar Financial Intelligence Unit which deals with money laundering and counter terrorism, the Attorney General’ Office which deals with hugely sensitive UK and foreign requests for information under mutual assistance protocols and the Office of Criminal Prosecutions and Litigation headed by the DPP

28. We do not address the messages in detail below as it is our understanding that the focus of the hearing will be on the disclosure issues. In summary, the messages relate to issues already heavily explored at the oral hearings, and do not cast them in a new light.
29. In relation to the five issues referred to at §§50-60 of the Ruling:

The Incident at Sea

30. The exchanges between John Field and Paul Richardson on 27th May 2020 at [E851] demonstrate that even almost three months after the Incident at Sea it was not possible for the officers to say with absolute certainty where the incident took place.

The HMIC Report

31. Mr McGrail was undoubtedly conscious that he was being criticised for the HMIC report, though he found it difficult to understand why it was suddenly so important to Mr Picardo, Mr Pyle and the GPA, when nobody had raised it as a matter of serious concern before 12th May 2020. This is already extensively in evidence. The newly disclosed exchanges do not alter the position. That he was encouraging Mr Ullger to focus RGP efforts on making progress with the recommendations⁴ is unsurprising, given that Dr Britto, the GPA Chair, had encouraged him to do so⁵, and that subsequently he had been (disingenuously⁶) told on 22nd May 2020, by way of the second GPA letter, that one of the two reasons for his ousting was the HMIC report, and was responding to this pressure.

The dealings with the GPF

32. We agree with the Chairman's analysis at §52 of the Ruling. The fact that Mr McGrail and Mr Ullger did not hold the GPF leaders in high regard was abundantly clear from the

⁴ e.g. texting RU on 1st June 2020 "*I would ask a big favour (& I know you are already working at it) but the more that is done on the HMIC recommendations within the next couple of weeks the better*" [E181]

⁵ See the WhatsApp message sent by Dr Britto to Mr McGrail: "[08/05/2020, 15:34:42] Joey Britto: *We just have to carry on and ensure that as many of the recs are addressed as possible in the time frame*" [C6569]

⁶ See McGrail Closing Submissions §92

previously available written and oral evidence. The newly disclosed exchanges do no more than support this.

The meetings of 13, 15 and 20 May

33. The meetings were recorded by Mr McGrail and the Inquiry has access to both recordings and transcripts. All of the key individuals in the meetings have given written and oral evidence about the meetings and their interpretation of them: see McGrail Closing Submissions §§55.5-57. Mr McGrail was attempting to navigate a highly complex and sensitive situation where he felt that the Op Delhi investigation was at risk of being entirely derailed by political interference. The fact that he referred to the 15th May 2020 meeting as “*All good’ish. Too much to explain by text*” [E158] does not alter the overall position.

The friendship between Mr McGrail and Mr Ullger

34. As Mr Ullger has highlighted in his Fifth Witness Statement, it was clear from the oral evidence he gave at the Main Inquiry Hearing that Mr McGrail and he were very close, and that they used to “*very, very good friends, probably best friends*” [13/79/12]. The newly disclosed exchanges support this but do not cast their relationship in a different light. They were clearly close, at the time, but – sadly – as a result of the events which led to Mr McGrail’s early departure from the RGP, and the subsequent treatment of Mr McGrail, they are no longer even friends. It might be said that the usefulness of the newly disclosed exchanges, which show a close and supportive personal and professional relationship in 2020, is to demonstrate how much Mr McGrail has lost as a result of his treatment.

The reason why Mr McGrail retired

35. This is the central issue in the Inquiry. It has been ventilated as much as any other, through written and oral submissions, and written and oral evidence. The newly disclosed messages do not put a different slant on the evidence which has been provided already.
36. There were already numerous messages, emails and other documents in evidence at the oral hearings which go to Mr McGrail’s decision-making process in the 28 days from 12th May 2020 to when he communicated his intention to retire on 8th June 2020. The chronology is addressed at length in the Government Parties’ written closing submissions

from §§28-39, which refer to documents which indicate that Mr McGrail was already considering retiring as early as 22nd May 2020 (e.g. the transcript of Mr McGrail’s part of a conversation with the Attorney General [C6952]). The fact that Mr McGrail was considering leaving his post due to the extreme pressure he was being put under is not and never has been disputed. The messages do not show that he had ‘resolved’ to retire any more than the extensive correspondence and messages which have already been disclosed. They show that he was agonising over what decision to take because he saw how difficult his position was becoming, and that he ultimately, but progressively, reached the decision to retire on 5th June 2020.

37. HM GoG’s ‘case theory’ has remained the same since the preliminary hearings: that Mr McGrail retired because he knew he had lost the confidence of key individuals. This has always been a highly technical submission. It ignores the real context of the events in the 28 days from 12th May to 8th June 2020. It is no more than a fig leaf, attempting to veil what is in reality a quite nakedly corrupt use of power behind innocent-sounding, bureaucratic language of “*confidence*”.
38. Without rehearsing the submissions which have already been made in detail, the simple point is that Mr McGrail did not retire because he had “*lost the confidence*” of the Chief Minister and Governor, he retired because the Chief Minister improperly intervened in a serious criminal investigation of his close friend Mr Levy, who was alleged, with others including a senior government official, to have conspired to disrupt one of Gibraltar’s key security systems for financial gain. Then – by manipulating the individuals and institutions which were supposed to but failed to safeguard the independence of the police – the Chief Minister, aided willingly and unwittingly by the other Government Parties, engineered a sham “process” which placed Mr McGrail under so much pressure that he felt he had no choice but to leave his post. This pressure built progressively but rapidly over 28 days, and came to a head when Mr Pyle told him that he intended to exercise his powers under the Police Act to force the issue. At no time before he informed HMGoG that he intended to retire did the Chief Minister or Mr Pyle inform Mr McGrail of the key reasons they now say caused them to “*lose confidence*” in him.⁷ Mr Picardo has never

⁷ See the message from Mr McGrail to Mr Ullger on 8th June 2020, after Mr McGrail had agreed to retire: “Got the letters with the allegations. Son unos embusteros increíbles [they are incredible liars]” [E202]

admitted what Mr McGrail has long suspected, and the evidence supports, were the true reasons he ousted Mr McGrail, which was to protect his close friend and ally James Levy.

39. It did not take Mr McGrail long to appreciate the seriousness of what was happening, and to comprehend that it might lead to him having to leave the RGP, essentially to avoid a constitutional crisis. This is not what he wanted but he quickly understood what was really happening behind the scenes, and the near-impossible position it put him and the RGP in. The messages do no more than confirm this.
40. They also do not contradict the evidence which is already available. For example, as early as 13th May 2020, in a conversation with the Attorney General which he recorded, he said

I think, because I am getting cornered, being accused of criminality and that I, you, all of you know it here, that it is not on. This is now, trying to, muscle me out of it. I may not even last in my post, but Ian McGrail has integrity, my integrity will not, my ethics are at this level and nobody will bring them down, nobody. If I have to go, I'll go, but I will leave with my head held up high. Ian McGrail or the team that have been dealing with it is not corrupt... I have to tell you, because I have to vent my frustration. Its, its, its, this is an affront, this is an affront, to, to, to the legal process.

41. Similarly, when again speaking to the Attorney General on 22nd May 2020, the day he received the decision of the GPA, he said:

Michael, I don't know what to do, I'm, I'm at a loss, I have been attacked. My options are: either think about Gibraltar or save my skin, and think about Gibraltar or create a constitutional crisis. That's where I am Michael.... that's where I am, what do I do now? Either I keep quiet and I leave and that is it. I'll leave, I'll leave or I stir things up, and we all stand to lose, me and Gibraltar. They've jumped the gun here with this, (eh?) very precipitated. Because what I'd like to do is clear this up for everyone's benefit and I am being pinned against the wall⁸

42. The fact that he made comments in text messages to Mr Ullger about "*Longing for the nightmare to end*: (24.5.20 [E166]), "*Wanting this over*" (28.5.20 [E171]) and "*All I want is a dignified exit and not a forced one*" (30.5.20 [E177]) demonstrates no more than that Mr McGrail wanted the extreme pressure he was under to abate. He accepted there was a real possibility he would have to leave his post but his actions in this period,

⁸ [C6952]

for example encouraging Mr Ullger to approach the Justice Minister Ms Sacramento to mediate with the Chief Minister, and through his lawyers in sending the 29th May letter which requested that the GPA process be quashed and a new lawful one put in place, shows that he was trying to resolve the situation so that the independence of the RGP, and the integrity of the Op Delhi investigation was protected, and he could remain in post.

43. On 4th June 2020, he texted Mr Ullger to say he was “[k]eeping fingers crossed that some mediation starts soon between my lawyers and the other side” [E192]. It was only the following day, 5th June 2020, that he finally succumbed to the pressure and informed Mr Pyle of his intention to retire. Mr McGrail movingly refers to his thought process, and the intolerable pressure he was placed under, in his written evidence: see IM1 §§78 onwards, and especially §92 [A39], §100 [A42] and §101 [A42]; IM3 from §121 onwards [A94] and IM5 [142].
44. The precise reasons for his ultimate decision to retire, and whether there was unfairness and/or misconduct behind those reasons, will be a key matter for the Chairman to determine based on the evidence, and there is already ample evidence including oral evidence upon which His Lordship may reach that conclusion.

D. THE EVIDENCE OF SAMANTHA SACRAMENTO, FORMER MINISTER OF JUSTICE

45. We make the following submissions in relation to Ms Sacramento’s statement:
 - 45.1. Ms Sacramento says she was “*not consulted on nor did I form part of any decision making process that led to any of the decisions reached by the Chief Minister or the (Acting) Governor*” (§8). This appears to contradict the statement made by Mr Picardo in the letter he sent to the GPA on 5th June 2020, that “*it is not immediately clear to me how the COP can preside over the efficiency and effectiveness of the RGP in the light of the obvious breakdown of his relationship with each of the Governor, the Government (myself and all other members of my Cabinet), the Attorney General and the Director of Public Prosecutions that necessarily results from the contents of the [29th May 2020] Letter [from Charles Gomez & Co.]*” [C4745]. This was understood by Mr McGrail to mean that the entire Cabinet was against him, and would have been the clear implication to

those reading the letter. Ms Sacramento also confirms that she does not recollect reading the letter from Charles Gomez & Co. dated 29th May 2020.

- 45.2. She thought that the HMIC report was “*quite badly drafted*”, “*quite formulaic in its approach*” and “*it read as if those preparing the report used a matrix and explanations did not read as badly as the headlines*”. Importantly, she “*did not consider the problems posed were insurmountable*”, and upon meeting Mr McGrail and Dr Britto, she “*thought this was not a problem that was insurmountable*” and she made it very clear to Mr McGrail that he could “*count on my support in relation to the fixing of the issues*” (§§47-49). She subsequently communicated to Mr Picardo that the report was “*rubbish, that it was something we had to deal with and that I had to support the police in helping them resolve matters*” (§52).
- 45.3. It is notable in Mr Picardo’s oral evidence, he accepted that the “*police are a matter for the Governor and the Minister of Justice*” [16/79/1], and yet he seems to have disregarded the clear view of the then-Minister of Justice that the HMIC Report was not a problem that was insurmountable. It was only after 12th May, as Mr Picardo admitted, that “*all things in the RGP became my priority*” [16/83/15], undermining the constitutional separation which should have remained in place.
- 45.4. It is also important that despite being the key minister relating to the RGP, Mr Picardo did not consult Ms Sacramento about the HMIC report, the Incident at Sea or Op Delhi after 12th May 2020, when suddenly he took a strong interest in all of these matters and decided to oust the Commissioner of the RGP because of them.
- 45.5. The Chairman may wish to consider what explanation there could be for Mr Picardo’s sudden aversion, from 12th May 2020 onwards, to consult a senior colleague who previously he had taken advice from on important RGP matters, and why he appears to have wanted to give the (we now know, false) impression on 5th June that he had consulted his Cabinet colleagues in relation to Mr McGrail and that they agreed with his view.

E. CONCLUSION AND A PLEA FOR NO FURTHER DELAYS

46. It will, shortly after the hearing, have been five years since the relevant events occurred, when a police investigation which reached the highest echelons of Gibraltar's society, and which impacted on a crucial national security system, was stymied and then later discontinued. It will have been almost five years since Mr McGrail first called for this Inquiry. In the years that have followed, he has done everything he could to ensure that the inquiry proceeded, despite the numerous attempts at retribution against him which have been relentlessly pursued. He has been placed under enormous pressure which has hugely impacted on his personal welfare and mental health.
47. We accept and understand the Chairman's decision to reconvene the oral hearings. Nonetheless, it has caused a significant delay, to add to the previous delays caused by the data leak and sacking of the previous Inquiry Solicitor, and the police investigation into witness inducement. We therefore urge the Inquiry team to proceed as swiftly as possible, after the hearing is concluded, with the Maxwellisation process and finalisation of the report, for the good of Mr McGrail but also, even more importantly, of Gibraltar.

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NICHOLAS GOMEZ

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Doughty Street Chambers, London

18th March 2025