

INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

Final Report by the Chairman of the Inquiry
Sir Peter Openshaw, DL.
6 November 2025

In accordance with Legal Notice 2022/034 dated 4 February 2022, this is my Report into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement.



Sir Peter Openshaw, DL

6 November 2025

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His Majesty's Government of Gibraltar, The Hon. Fabian Picardo KC MP, Chief Minister, Nicholas Pyle OBE, then Interim Governor of Gibraltar, Michael Llamas CMG KC, Attorney General for Gibraltar

Sir Peter Caruana KCMG KC, Peter Caruana & Co

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KEY INDIVIDUALS AND ORGANISATIONS

Albert Mena	Financial Secretary
Cathal Yeats	Former Assistant Commissioner, Royal Gibraltar Police (2020 – 2025)
Christian Rocca KC	Director of Public Prosecutions
Christopher Collins	Squadron Leader, Royal Air Force
Darren Grech	Former Chief Secretary (2018 – 2024)
Vice Admiral Sir David Steel, KBE, DL	Former Governor (2020 – 2024)
Edgar Lavarello	Member, Gibraltar Police Association
Lt-Gen Edward Davis CB, CBE, KStJ	Former Governor (2016 – 2020)
Edward Yome	Former Commissioner, Royal Gibraltar Police (2012 – 2018)
Fabian Picardo KC	Chief Minister
Henry Bautista	Former Chairman, Gibraltar Police Federation (2016 – 2019)
Ian McGrail	Former Commissioner, Royal Gibraltar Police (2018 – May 2020)
James Gaggero	Chairman, Bland Group
James Levy CBE KC	Partner of Hassans International Law Firm
Joey Britto	Former Chairman, Gibraltar Police Association (2018 – 2024)
John Field	Former Detective Superintendent, Royal Gibraltar Police

John Gonçalves	Former Chairman, Gibraltar Police Association (2013 – 2018)
John Perez	Former Operation Delhi Defendant
Leif Simpson	Former Secretary, Gibraltar Police Federation
Lewis Baglietto KC	Partner of Hassans International Law Firm
Lloyd DeVincenzi	Former Senior Advisory Counsel (2015 – 2021); and Solicitor General (2021 – 2022)
Mark Wyan	Superintendent, Royal Gibraltar Police
Maurice Morello	Former Chairman, Gibraltar Police Federation (2019 – 2023)
Michael Llamas KC	Attorney-General
Commodore Michael Walliker CBE	Former Commander of British Forces Gibraltar (2016 – 2018)
Moshe Levy	Partner of Hassans International Law Firm
Nicholas Pyle OBE	Former Deputy Governor (2016 – 2022); Interim Governor at the time of Mr McGrail's retirement
Paul Clarke	Detective Sergeant, Royal Gibraltar Police
Paul Richardson	Retired Superintendent, Royal Gibraltar Police
Richard Ullger	Former Commissioner of Police (May 2020 – 2025)
Samantha Sacramento	Former Minister of Justice (2019 – 2023)

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Former Operation Delhi Defendant and
Principal Secretary to the Deputy Chief
Minister

Thomas Cornelio

Former Operation Delhi Defendant

ACRONYMS AND ABBREVIATIONS USED IN THE REPORT

36N	36 North Limited
AG	Attorney-General
Bland	Bland Group
CBF	Commander of British Forces Gibraltar
DPP	Director of Public Prosecutions
FCDO	Foreign, Commonwealth and Development Office (UK)
GC	Guardia Civil
GPA	Gibraltar Police Authority
GPF	Gibraltar Police Federation
HMGOG	His Majesty's Government of Gibraltar
HMICFRS/HMIC	His Majesty's Inspectorate of Constabulary and Fire & Rescue Services
JPSU	Joint Provost and Security Unit
MoD	UK Ministry of Defence
NDM	National Decision Model
NSCIS	National Security Centralised Intelligence System
OCPL	Office of Criminal Prosecutions & Litigation
RGP	Royal Gibraltar Police
SIO	Senior Investigating Officer

EXECUTIVE SUMMARY

- 0.1 With the assistance of the Inquiry Team, which I gratefully acknowledge, I have prepared this Executive Summary to assist the public to understand some of the evidence given, some of my findings and some of my recommendations. The Executive Summary is just that; obviously, within the space available, I have not been able to refer to all the evidence given, nor to every document filed, nor to every finding of fact that I have made, still less to include every submission made by or on behalf of the parties, or others. As a result, the full Report is the only authoritative document rather than this Summary.

INTRODUCTION

- 0.2 Mr Ian McGrail retired as the Commissioner of Police on 9 June 2020. The sequence of events which led to him doing so, and the reasons why he retired, gave rise to widespread public concern.
- 0.3 Pursuant to Legal Notice 2022/034 dated 4 February 2022, the Governor (His Excellency Vice Admiral Sir David Steel KBE, DL) appointed me as Commissioner, under the Commissions of Inquiry Act 1888, ‘*to inquire as [I] shall in [my] absolute discretion consider appropriate, into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement*’. These are the Inquiry’s ‘Terms of Reference’.

LIST OF ISSUES

- 0.4 It was necessary for the Inquiry to define the issues to be examined to the extent that I considered necessary and appropriate to fulfil the Terms of Reference. After various drafts and refinements, the List of Issues was as follows:

In relation to each of the issues listed in paragraphs 1-10 below:

A. What were the relevant facts (which the Commissioner will seek to ascertain only to the extent that he considers necessary and appropriate to address the matter under inquiry)?

B. To what extent, if at all, did the issue constitute a reason or circumstance leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking an early retirement (either because they led to a loss of confidence in Mr McGrail or for some other reason)?

*1. The actions of the Royal Gibraltar Police (**'RGP'**) on:*

1.1. 8 February 2017 in obstructing an aircraft at Gibraltar airport to remove an employee of the UK Ministry of Defence who had previously been arrested by the UK Service Police;

*1.2. 1 March 2017 in arresting three senior Ministry of Defence members of staff and seizing and removing service personnel equipment from HM Naval Base and an officer's home (collectively with 1.1, **'the Airport Incident'**).*

*2. The RGP's investigation into an assault on a helicopter pilot and crew member in Gibraltar in March 2017 (**'the Assault Investigation'**).*

*3. The collision at sea on 8 March 2020 outside British Gibraltar Territorial Waters involving an RGP vessel and resulting in two deaths (**'the Incident at Sea'**), and the RGP's subsequent handling of it. In particular:*

3.1 Did faults or failings in the operational instructions or procedures of the RGP cause or contribute to the collision at sea, and, if so, was Mr McGrail as Commissioner of Police responsible or accountable for those faults or failings?

3.2 Was information as to the location of the Incident at Sea communicated by Mr McGrail and/or the RGP to Chief Minister Fabian Picardo, the Attorney-General Michael Llamas and the then-Interim Governor Nicholas Pyle in a timely and transparent fashion?

3.3 Was information about the legal claims arising from the Incident at Sea communicated by Mr McGrail and/or the RGP to Mr Pyle, Mr Picardo and Mr Llamas in a timely and transparent fashion?

*4. The findings of the Report by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services into the RGP dated 9 April 2020 ('the **HMIC Report**'), and/or Mr McGrail's response in addressing the findings of the previous report by HMIC published in 2016.*

*5. The investigation into the alleged hacking and/or sabotage of the National Security Centralised Intelligence System and alleged conspiracy to defraud ('the **Conspiracy Investigation**'), and the RGP's handling of the same, including but not limited to the RGP's stated intention to execute search warrants as part of that investigation on 12 May 2020 ('the **Search Warrants**'). In particular:*

*5.1. Did Mr McGrail seek or receive advice from the Director of Public Prosecutions ('**DPP**') or Mr Llamas regarding the search warrants, and did Mr McGrail accurately communicate any advice from the DPP or Mr Llamas on the Search Warrants (or lack thereof) to Mr Picardo and/or Mr Llamas?*

5.2. Was the RGP's intention to execute the search warrants on 12 May 2020 contrary to an agreement or understanding with Mr Llamas and/or the DPP?

5.3. Did the Mr Llamas and/or Mr Picardo place any or any inappropriate pressure on Mr McGrail regarding the investigation or otherwise interfere with the investigation, and in particular the RGP's intention to execute the Search Warrants?

*6. The complaint(s), if any, made by the Gibraltar Police Federation ('the **Federation**') and/or its members to the Gibraltar Police Authority about Mr McGrail (including as to the difficult relationship between Mr McGrail and the Federation), and any allegations of bullying or intimidation by Mr*

*McGrail discussed by the Gibraltar Police Authority (**‘the Federation Complaints’**).*

*7. The RGP’s involvement in and/or handling of the Alcaidesa claims (**‘the Alcaidesa Claims’**).*

*8. The letter dated 29 May 2020 sent by Mr McGrail’s lawyers Charles Gomez and Co to the Gibraltar Police Authority (**‘the 29 May Letter’**).*

*9. Mr Pyle’s stated intention as to his powers under section 13 of the Police Act. This will include consideration of the relevance (if any) of Sir David Steel’s imminent commencement as Governor, and particularly the date on which [Mr Pyle] learned of the date on which that was expected to occur (**‘the Section 13 Issue’**).*

*10. The Gibraltar Police Authority’s process and decision in purported compliance with Section 34 of the Police Act, and subsequent withdrawal of that decision (**‘the GPA Process’**).*

- 0.5 The Report (and this Summary) is structured chronologically, which means that I have not addressed the issues in order the order that they are set out above.

EVIDENCE AND INQUIRY PROCESS

- 0.6 The Inquiry received some 114 affidavits from 73 different witnesses, and over 34,000 pages of documents. In so far as these are relevant (and not subject to redaction) each has been uploaded onto the Inquiry’s website. I selected 17 witnesses to give oral evidence at the Main Inquiry Hearing, which took place over 19 days from 8 April to 9 May 2024. Prior to this, the Inquiry also conducted five Preliminary Hearings on various topics, the agendas for which remain on the Inquiry’s website.
- 0.7 Following an application by the Government Parties in November 2024, I also directed that the Inquiry be reconvened for a further short hearing to consider

various WhatsApp messages that the RGP had disclosed after the Main Inquiry Hearing. This took place on 9 – 11 April 2025. The evidence considered at that hearing is addressed in Annex 1 of the Report.

- 0.8 In finalising this Report, the Inquiry has developed a warning letter procedure, known as ‘Maxwellisation’. Warning letters were sent to any person whose interests (personal or professional) may, in my reasonable assessment, be adversely affected by any criticism (express or implied) in the Report. After receiving responses to those letters, I made changes that I deemed to be appropriate.

THE AIRPORT INCIDENT (ISSUE 1)

WHY WAS THIS ON THE LIST OF ISSUES?

- 0.9 On 14 May 2020 at 09.49, Mr Picardo sent a WhatsApp message to Mr Pyle, stating:

“I am starting to have huge concerns about the senior management of the RGP. I will alert you to a particular matter when we meet, but in terms of the last few months alone: (i) this case of deaths occasioned outside of BGTW (the statute gives them to status as police officer); (ii) the HMIC inspection issues; (iii) the Federation bullying allegations; (iv) the runway incident, where we had to go into bat for them despite all aspects having clearly been mishandled by the RGP (and parts of the MOD also); and (v) the continuing saga of the Alcaidesa claims...”

- 0.10 The Airport Incident was also a matter mentioned by Mr Pyle in his first witness statement as contributing to his ‘progressive’ loss of confidence in Mr McGrail (Pyle 1 para 13.2 [A240]).

KEY FACTS AND FINDINGS

- 0.11 In early 2017, Leicestershire Police had reasonable grounds to suspect that a serving member of the British Forces stationed in Gibraltar (**‘the serviceman’**) was in possession of indecent images of children on his IT devices. On 3 February 2017, officers of the Joint Provost and Security Unit of the MoD (**‘the JPSU’**) arrested the serviceman in Gibraltar and seized his IT devices. The JPSU officers refused to hand over the devices which they had seized from the serviceman to the RGP [C147].
- 0.12 On 8 February 2017, Mr Yome (then Commissioner of Police) received information that the serviceman and his IT devices would be removed from Gibraltar on a military aircraft (Yome 1 para 20 [A1344]). Mr Yome ordered RGP officers to drive police vehicles onto the runway, so as to prevent the aircraft from taking off, which they then did (Yome 1 para 24 [A1345]).
- 0.13 Following this confrontation, Commissioner Yome instructed Mr McGrail to *‘conduct a thorough investigation into the actions of the senior MoD officers’* (Yome 1 para 28 [A1346]). After securing evidence via search warrants, Mr McGrail advised Mr Yome that, in his opinion, there was sufficient evidence to arrest three senior officers with obstructing the police in the execution of their duties and attempting to pervert the course of justice.
- 0.14 On 1 March 2017, the RGP arrested Colonel Frank Green, Wing Commander Liz Hutchison (the Station Commander at the Airport) and Provost Marshall Chris Collins, in what Mr McGrail described as a *‘simultaneous strike’*. The officers were ultimately not charged.
- 0.15 On 9 May 2017, Mr Picardo requested the GPA to inquire into the Airport Incident. (Gonçalves 1 para 11 [A338]). On 5 September 2017, Mr Gonçalves (then Chairman of the GPA) wrote to Mr Picardo communicating that the RGP’s actions on the runway were *‘considered, deliberated, entirely proportional and highly commendable’* [B2157-8]. The GPA were not asked to consider the later arrests,

and (on legal advice) they did not seek statements from anyone within the Armed Forces.

- 0.16 It is not within my Terms of Reference to decide whether the confrontation at the airport on 8 February 2017, and the subsequent arrests, or the inquiry by the GPA could – and should – have been handled rather differently by the RGP, the MoD, or the GPA, and I deliberately avoid so doing.
- 0.17 At the time, Mr Picardo expressed his strong approval and encouragement of much of the conduct of the RGP, not only at the airport on 8 February but also for the subsequent arrests. By contrast, Mr Picardo gave evidence to the Inquiry that ‘*massive damage*’ had been done to Gibraltar’s relationship with the MoD as a result of the arrests in the aftermath of the Airport Incident [T/16/4.15].
- 0.18 I do not doubt that the Government of the UK, and indeed its people, regard Gibraltar with affection, but the hard political fact is that, as Mr Picardo put it in the course of his evidence [T/16/5.7], the UK’s essential interest in Gibraltar is as a military asset, available for use if and when the need – often unpredictable and unpredicted – arises. Arresting senior officers of the Armed Forces, in a manner which they perceived to be unnecessary and humiliating, caused massive damage to the relationship with the UK and its Armed Forces, which took a long time and much patient diplomacy, to repair.
- 0.19 It was clear to me that Mr Pyle has always taken a very dim view of the actions of the RGP and of Mr McGrail in particular. The part which Mr Pyle believed that Mr McGrail had played in the Airport Incident coloured his opinion of Mr McGrail’s competence and judgment and was one of the reasons which contributed to his loss of confidence in Mr McGrail at the time of his retirement in June 2020.

THE ASSAULT INVESTIGATION (ISSUE 2)

WHY WAS THIS ON THE LIST OF ISSUES?

- 0.20 Mr Pyle made no complaint about the Assault Investigation until after he swore his First Affidavit on 12 May 2022, fully two years after Mr McGrail's retirement. He gave these details (Pyle 1 para 22 [A248]):

'In March 2017, during a stop-over in Gibraltar, a helicopter and another member of the crew were assaulted in a bar in Gibraltar, the pilot so severely that his cheek or jawbone was fractured which prevented him from flying. Despite witnesses, and I believe CCTV, charges were never pressed. It took the RGP several weeks to state that the forensic evidence they had collected was not conclusive. The widely held belief in MoD circles is that the RGP did not investigate the crime correctly to protect those involved in the attack.'

- 0.21 Mr Picardo does not claim that the Assault Investigation was one of his reasons for losing confidence in Mr McGrail.

KEY FACTS AND FINDINGS

- 0.22 F and J (the '**complainants**') were members of the Royal Navy serving as helicopter crew as their ship, HMS Monmouth, stopped over in Gibraltar. On 10 May 2017, they were assaulted and suffered injuries outside a bar off Casemates Square. J suffered a broken bone to his face.
- 0.23 At the material time, Mr McGrail was the Superintendent in Charge of the Crime and Protective Services Division. Following an investigation, PC Figueras submitted a written report [C352] concluding there was no evidence to prove that any of the suspects were involved in this assault and *'the likelihood of any conviction against [the four suspects] is non-existent'* [C368]. There is no evidence that Mr McGrail played any part in deciding that the evidence was insufficient, or that he was even asked to approve or ratify that decision.

- 0.24 I consider that this investigation by the RGP was highly competent, thorough and professional. The conclusions of the officer in the case seem to me to have been soundly based upon the evidence and they were, in my opinion, obviously correct. I reject the suggestion that there was some failure or misconduct in the investigation, or that it was not properly pursued by the RGP.
- 0.25 If, as I think, the alleged failure to investigate the assault on the helicopter pilot coloured Mr Pyle's view of Mr McGrail, it should not have done; he was relying on mere rumour that the RGP '*did not investigate the crime correctly to protect those involved in the attack*' (Pyle 1 para 22 [A248]); this rumour was – in my opinion – quite unfounded.

THE ALCAIDESA CLAIMS (ISSUE 7)

WHY IS THIS ON THE LIST OF ISSUES?

- 0.26 In Mr Picardo's WhatsApp message to Mr Pyle on 14 May 2020, he referred to the '*continuing saga of the Alcaidesa claims*' [B1439] as one of the factors that contributed to his growing concerns about and loss of confidence in the Senior Management of the RGP. He has not maintained any criticism of Mr McGrail personally arising from the Alcaidesa incident. His position appeared to be attributing some undefined responsibility to Mr McGrail on account of his superintendence of the force at the time [T/16/313.17].

KEY FACTS AND FINDINGS

- 0.27 On two occasions in early August 2010, officers from the RGP entered a flat in Alcaidesa accompanied by the owner, and with his knowledge and consent, but without the knowledge or consent of the tenant, and without any warrant granted in Spain. On the second occasion, they removed some property, which they believed to have been either unlawfully possessed by the tenant or to be of evidential value to an ongoing investigation. They then took that property back to Gibraltar. Their actions were unlawful in Spain and resulted in public and political criticism. In November 2018, five individuals, including two serving RGP officers

and an ex-police officer, admitted crimes of trespass of a household and (in the case of the ex-officer) theft before a Magistrate in a Spanish court, and were sentenced to fines [C1591].

- 0.28 At the time, Mr McGrail was a Chief Inspector; it was long before he was appointed Commissioner of Police. Mr McGrail had no involvement whatsoever in the incident. He did not authorise the visits to Spain. He did not visit the flat. He did not later ratify the visits. He was not one of the officers under investigation for disciplinary offences arising out of the incident; indeed, his only involvement in the affair was to interview under caution some of those suspected of such offences.
- 0.29 Neither I nor the Inquiry Team have seen, nor has any Core Participant produced, any evidence of any ‘*claims*’, in the civil sense, relating to the Alcaidesa incident.
- 0.30 I conclude that no possible criticism could properly be made of Mr McGrail personally arising out of the ‘Alcaidesa Claims’. I do not think that issue this played any part in Mr Picardo losing confidence in Mr McGrail, which led to his retirement.

THE APPOINTMENT OF MR MCGRIL AS COMMISSIONER OF POLICE

- 0.31 This is not a matter on the List of Issues but provides important background to later events.
- 0.32 In October 2017, the GPA invited applications for appointment of the new Commissioner. The two applicants were Mr McGrail and Supt Richard Ullger. The GPA delegated the decision to a subcommittee, which included Mr Pyle. By a majority of 7-2, the GPA recommended Mr McGrail for the appointment; Mr Pyle and another dissented.
- 0.33 I accept the submissions on behalf of the GPA that the process was ‘*transparent, thorough and fair*’. Accordingly, I reject Mr Pyle’s criticisms of the recruitment process. I find no procedural fault or flaw with the appointment process.

- 0.34 During the recruitment process, Mr Pyle did not raise either the Airport Incident or the investigation into the assault on the helicopter pilot. In my opinion, it was inappropriate, and even unfair, for Mr Pyle to have allowed these matters to be referred to at the time of Mr McGrail's retirement, without him making clear that he had not raised them at the time of his appointment.

THE FEDERATION BULLYING ALLEGATIONS (ISSUE 6)

WHY IS THIS ON THE LIST OF ISSUES?

- 0.35 In his WhatsApp message to Mr Pyle on 14 May 2020, Mr Picardo also referred to the '*Federation bullying issues*'.
- 0.36 In his written evidence, Mr Pyle made three points on this topic (at Pyle 1 para 23 [A248-9]): (1) that Mr McGrail's management style had '*... resulted in a fractured, almost hostile relationship*' between him and the GPF; (2) that the resulting tensions between the RGP leadership and the GPF had '*culminated in formal complaints from the Federation to the GPA about Mr McGrail*', and that the GPA had regularly spoken at its meetings about the allegations of '*bullying and intimidation*' by Mr McGrail; and (3) that he had '*often heard numerous anecdotal stories of bad practice and behaviours by the RGP*'. These were not things on which he felt it was possible to act, but '*contributed to [his] growing sense of unease*'.

KEY FACTS AND FINDINGS

- 0.37 Everyone who provided statements to the Inquiry on this topic said that the relationship between the GPF and Mr McGrail was very difficult, even antagonistic. But none of these statements, nor the WhatsApps disclosed after the Main Hearing, refer directly to any allegations of bullying of members of the GPF by Mr McGrail.
- 0.38 The former Chairman of the GPF, Mr Morello, gave evidence that he attended a meeting at the GPA offices sometime in February 2020 (Morello 1 para 146 [A1225]). He said that he asked them how he could make a complaint of bullying

against the Commissioner, and gave *‘a summary of events that had transpired since being elected as Convenor and the issues raised in our Staff surveys’* (Morello 1 paras 145-8 [A1225-6]).

- 0.39 No single member of the GPA remembers any such complaint being made; indeed, each one specifically disavows being aware of any complaints of bullying. There is no reference in the GPA minutes to Mr Morello having made any such any such complaint. However, I conclude from emails and from timesheet entries disclosed by Mr Edgar Lavarello that there was an unofficial meeting of the GPA and GPF on 31 January. Mr Morello’s evidence that he made a complaint to the GPA has therefore been confirmed. However, I accept that no one at the GPA thought that what Mr Morello said did constitute an official complaint, which no doubt explains why it was not minuted as such and why no action was taken upon it.
- 0.40 I accept that there was plainly a difficult and fractious relationship between Mr McGrail and the GPF. I also accept that the GPA, Mr Pyle and Mr Picardo were all well aware of that. I accept therefore that, regardless of whether *‘formal complaints’* were made to the GPA or by the GPA, this was clearly something which was on Mr Pyle’s mind.

THE JOB OFFERS

- 0.41 Hassans submitted 19 witness statements by present or former RGP officers to the Inquiry. The statements were submitted on behalf of each individual witness, not the GPF as an organisation. Most of these statements did not refer to bullying at all but made allegations of all manner of other misconduct, some of which alleged the commission of criminal offences, by many different RGP officers and former officers, including by Mr McGrail. In a closed ruling, on 1 March 2024, I held that all but three of the 19 statements were not relevant to the reasons and circumstances of Mr McGrail’s retirement. Those three statements I held to be relevant only in part.

- 0.42 Mr McGrail strongly denies all the allegations made against him by these 19 witnesses; he claims that all were offered employment or other inducements, rewards or incentives to give false evidence against him. The answer by the Government Parties to Mr McGrail's allegations is that the witnesses were, in effect 'whistle-blowers' giving alleging misconduct against past or present officers of the RGP, and they were entitled to protection from victimisation within the RGP.
- 0.43 At the Third Preliminary Hearing, Mr McGrail submitted that the Inquiry should investigate these so-called '*Job Offers*'. In order to maintain the integrity of the Inquiry, and to be seen to be doing so, and to retain public confidence in the Inquiry's hearings and findings, I decided that the Inquiry itself should make some investigation into the circumstances in which these statements came to be made.
- 0.44 At the Main Inquiry Hearing, Mr Morello gave evidence as to the procedure for providing 'letters of assurance' to witnesses [T/14/50.19]. I set out his evidence below (although I make clear that I am not making any findings as to whether this was the procedure that was adopted, or whether any such procedure was lawful).
- a. There would first be a meeting between the relevant RGP officer, Mr Morello and Mr Michael Crome, a senior officer within HMGOG. At that meeting, the officer would be assured that they would be provided with whistleblower protection if they agreed to provide evidence to the Inquiry. The officer would verbally explain their evidence.
 - b. Following the meeting, a witness statement would be drafted and signed by the officer.
 - c. After that, the officer would receive a letter of assurance. Two letters of assurance which were adduced in evidence were signed by Mr Picardo personally.
- 0.45 SIO John McVea conducted a criminal investigation into the '*Job Offers*'. His recommendation was that the available evidence did not meet the threshold for

prosecution for the criminal offence of misconduct in a public office. His investigation, and his conclusion, were validated by an independent officer at the UK's National Crime Agency, who described his investigation as *'thorough'*. His conclusion was confirmed by the advice of King's Counsel in London. The RGP have therefore given notice that their investigation has ended.

- 0.46 In my judgement, by making our inquiries, the integrity of the Inquiry process was preserved. I do not think that any further investigation by the Inquiry Team will bear on the circumstances of Mr McGrail's retirement, and any such further investigation will therefore be beyond my Terms of Reference.

THE INCIDENT AT SEA (ISSUE 3)

WHY WAS THIS ON THE LIST OF ISSUES?

- 0.47 Mr Pyle said in his witness statement (Pyle 1, para 25.1 [A251]) that:

'Without doubt, the most serious incident, that was the tipping point from my "growing concerns" changing to recognising that things could not go on as they were, and that change was needed, arose in relation to this incident, which set in motion a chain of events that led me to lose confidence in the abilities of the Commissioner to effectively lead his police force and indeed lead me to lose confidence in his probity.'

- 0.48 Mr Picardo also cited the Incident at Sea in his WhatsApp message to Mr Pyle on 14 May 2020 (see above).
- 0.49 The Incident at Sea gave rise to three complaints against Mr McGrail: (i) that he *'misled'* Mr Pyle, or at least that he did not give him timely and accurate information as to whether the incident had occurred in Spanish waters; (ii) that, as Commissioner of the RGP, he should be held accountable for the actions of his officers; and (iii) that he had failed to provide timely information about the civil claims which arose from the Incident to Mr Picardo.

LOCATION OF THE INCIDENT

- 0.50 In the early hours of 8 March 2020, the crew of an RGP launch left British Gibraltar Territorial Waters ('**BGTW**'), entered Spanish territorial waters, then chased a suspect Rigid Hull Inflatable Boat ('**RHIB**') at high speed for eight minutes. The RGP launch collided with the suspect RHIB, killing two members of its crew and injuring the other two and severely damaging both vessels.
- 0.51 After the RGP had declared this to be a critical incident, one of the identified '*fast track actions*' was the '*Need to determine location of incident ASAP*' [B1276]. I readily accept that Mr McGrail knew from the outset the importance of finding out where the collision had occurred.
- 0.52 At 09.35, an officer of the Guardia Civil called DI Chipolina (an RGP officer) and told him that, according to their radar, '*the coordinates of the collision were 36 09N 5 12W which was approximately 6.54 miles east of Santa Barbara Beach. GC stated this data was subject to confirmation by technical extraction...*' [B1319]. I observe that a position six and a half miles east of Santa Barbara (a beach in La Linea) was way outside BGTW, which extend for only three nautical miles from the Gibraltar coast.
- 0.53 At 09.49, Mr McGrail sent a WhatsApp message to Mr Picardo, stating: '*CM - the information suggests that the collision took place outside BGTW – approx 6NM east of the runway/Santa Barbara Beach*' [C6699]. He did not copy this message to Mr Pyle or send him an equivalent message. I think that even at this early hour on the morning of 8 March, it was quite clear that the collision had occurred way outside BGTW.
- 0.54 Mr Pyle attended New Mole House that afternoon and met with Mr McGrail. At that time, Mr McGrail may not have been sure of the exact position of the incident but the best information available to him was that:

- a. the Spanish authorities had provided provisional co-ordinates of the collision, which were some six and a half nautical miles off the Santa Barbara Beach;
- b. this position had been plotted on a map; and
- c. it was – to use Mr McGrail’s words in oral evidence [T/6/30.17] – ‘*highly probable*’ that the collision happened in Spanish waters but the chase may have started in BGTW, but he needed confirmation.

I therefore conclude that Mr McGrail did not provide Mr Pyle with the best available information in their meeting that day.

- 0.55 That evening (8 March), Mr Pyle and Mr Llamas had dinner together. I have no doubt that Mr Llamas told Mr Pyle that it was virtually certain – or at least highly likely – that the collision had happened in Spanish waters.
- 0.56 At 12.10 on 9 March, Mr McGrail met Mr Llamas and Mr Pyle; Mr Richardson was also present. There is disagreement as to what was said at this meeting. However, later that day Mr Pyle sent a further email to the FCDO [C3278] stating that: ‘*the exact location has still to be determined*’ (my emphasis). He did not mention that the Spanish authorities had provided co-ordinates, which were subject to confirmation, or that those co-ordinates made it highly probable that the collision had occurred in Spanish waters, which surely he would have done if Mr McGrail had said so.
- 0.57 On 11 March at 19:07, Mr McGrail replied to an email from Mr Pyle stating: ‘... we are getting there on establishing exact co-ordinates of where collision took place. ... It is, highly probable it did occur out BGTW.’ Plainly, to my mind, Mr McGrail is giving new or fresh information, which he had not given to Mr Pyle before.
- 0.58 Having reviewed the contemporaneous evidence, I think that the inevitable and only inference is that Mr McGrail did not tell Mr Pyle on 8 or 9 March that he had received unconfirmed co-ordinates of the collision from the Spanish authorities,

that these were six and a half nautical miles off Santa Barbara Beach, and that it was highly likely that it occurred outside BGTW and inside Spanish waters. He did not, therefore, give him the best available information. I conclude that he did not properly discharge the duty which he owed to Mr Pyle, as Interim Governor, to keep him properly informed of matters falling within his responsibility. I am satisfied that, as Mr Pyle maintains, and as the Government Parties argue, that this seriously damaged the trust and confidence that Mr Pyle had in Mr McGrail.

- 0.59 However, I do not know why Mr McGrail did not provide the best available information to Mr Pyle, and I am unable to find that he was dishonest or sought deliberately to mislead Mr Pyle.

THE CIVIL CLAIMS

- 0.60 On 14 May 2020, Mr Fischel of Verralls sent a letter to Mr McGrail, stating that he was instructed on behalf of one of the injured RHIB crew members to pursue a claim for damages for his injuries [C3762]. Mr McGrail delegated this matter to Mr Yeats, who then liaised with Mr Llamas and Mr Rocca.
- 0.61 Mr Picardo expected that claims would be coming, and he knew by 14 May 2020 that claims had been filed. On Mr McGrail's specific directions, Mr Yeats kept Mr Rocca and Mr Llamas informed of the progress of the claims. Mr Llamas had also undertaken to Mr McGrail to keep Mr Picardo updated on the matter. I do not think it was necessary for Mr McGrail personally to have notified Mr Picardo. In the circumstances, I think that Mr Picardo was kept informed in a timely and transparent fashion and I do not think that Mr McGrail was in breach of any duty or obligation.

THE SECTION 15 REPORT

- 0.62 Pursuant to section 15 of the Police Act, the Chief Minister may '*require factual or assessment reports from the Force or the Authority on any policing matter*' within 7 days. Following these exchanges, on 21 May 2020, Mr Picardo wrote to Mr McGrail requiring a report under section 15 [B1249, B1257].

- 0.63 In my opinion, Mr Picardo had many legitimate concerns arising out of the conduct of the RGP and the crew, which were not in any sense imagined or contrived. It was entirely reasonable for him to ask for the Report. He did not ask for the Report out of improper motives. He could perhaps have given Mr McGrail a longer time in which to report, but the Report was filed in time, so no harm resulted.

MR MCGRAIL'S 'ACCOUNTABILITY'

- 0.64 It is a matter of the greatest concern that the crew of the RGP launch left BGTW and entered Spanish waters before even starting the chase of the RHIB, which ended with the deaths of two of crew of the RHIB. But leaving BGTW was contrary to the very clear and well-known instructions and Standard Operating Procedures. The Inquiry received no direct evidence to suggest that it was a common practice for RGP launches to leave BGTW; still less that Mr McGrail believed – or had any reason to believe – that it was.
- 0.65 I am also quite unable to find that switching off AIS was a common practice; still less that Mr McGrail believed – or had any reason to believe – that it was.
- 0.66 I am not satisfied that Mr McGrail, as the Commissioner of Police, should be accountable if the Incident at Sea resulted from aberrant officers acting quite contrary to the Operating Procedures, unpredictably, on their own, without the knowledge, acquiescence or ratification of supervising or managing officers. In my opinion, none of the allegations made, or implied, against Mr McGrail withstand detailed analysis and I am not satisfied that any of them are established.

THE HMIC REPORT (ISSUE 4)

WHY WAS THIS ON THE LIST OF ISSUES?

- 0.67 Mr Picardo's WhatsApp message to Mr Pyle on 14 May 2020 referred to '*the HMIC inspection issues*' [B1439]. However, the Government Parties have made very clear in their closing submissions that the 2020 HMIC Report was only a contributing factor to what they say was the '*accumulating loss of confidence*' by

both Mr Pyle and Mr Picardo; both say *‘that, by itself, it would not have resulted in a loss of confidence in Mr McGrail such as to seek his removal from office’*.

KEY FACTS AND FINDINGS

- 0.68 From time to time, the RGP voluntarily requests Her Majesty’s Inspectorate of Constabulary and Fire and Rescue Service (**‘HMIC’**) to conduct formal inspections of the force and to report their findings. HMIC issued such a Report in 2016, before Mr McGrail became the Commissioner of Police. In 2019, Mr McGrail requested HMIC to conduct another inspection. Although the 2016 Report was largely favourable to the RGP, the 2020 Report made a number of criticisms.
- 0.69 The Report concluded that overall, the RGP *‘offers a good level of service. But there are areas where it could improve...’*, and *‘we expected to see that rather more had been achieved when we revisited in 2019’* [B1556]. In six out of the seven areas of improvement identified in the 2016 Report, only one (area 2, ‘counting policy’) had been implemented. The Report set out ten *‘New Recommendations’* for the senior leadership of the RGP to implement [B1586]. The Report also identified nine *‘New Areas for Improvement’* [B1584].
- 0.70 The Report found the RGP was not doing enough to counter the risk of corruption [B1578]. This was specifically noted by Mr Picardo and Mr Pyle as a reason contributing to their losing confidence in Mr McGrail [B58], [B353], [C3991].
- 0.71 The 2020 Report was very critical of the RGP. I do not think that the comments that it was *‘shocking’*, *‘quite damning’* or even *‘very damning’* were at all misplaced. I think that Mr McGrail was fortunate that no calls were made for his removal at that time. However, that did not happen and although everyone realised that the criticisms made in the Report were serious, in the month or so after it was issued Mr Pyle, Mr Picardo, Dr Britto, the members of the GPA, the Minister of Justice and indeed Mr McGrail himself, all thought that, if they worked together collaboratively, all the failings identified could be remedied and all the suggestions for improvements could be implemented.

0.72 There is no evidence that either at the date of publication of the Report, nor for the month or so afterwards, that either Mr Picardo or Mr Pyle suggested that the criticisms in the Report would require Mr McGrail to retire. Nor do I think that, during that time, either of them ever contemplated that he should be compelled to do so. Neither Mr Picardo nor Mr Pyle communicated any concerns about the 2020 Report to Mr McGrail himself until Mr Picardo did so by his amendments to the second GPA letter of 22 May 2020 [C4282].

OPERATION DELHI - THE CONSPIRACY INVESTIGATION (ISSUE 5)

BACKGROUND

0.73 Bland Ltd (**'Bland'**) developed and managed the National Security Centralised Intelligence System (**'NSCIS'**), which was a platform designed to monitor and control Gibraltar's borders, by a variety of different techniques. The Government paid Bland for this service. Mr Thomas Cornelio and Mr John Perez worked for Bland. They realised that there was a commercial opportunity for them, if they could persuade the Government to transfer the management and development of NSCIS from Bland to a company which they would set up and control themselves. They needed advice and investment in order to set up the company, and approached Mr Levy at Hassans. Mr Levy assessed the risks with two other partners before deciding to invest in the new company, which was to become 36 North [T/8/209.1]. By May 2020, the company was owned one third by Mr Cornelio, one third by Mr Perez and the remaining third by the partners in Hassans. This resulted in Mr Levy owning 10.56% of 36 North, and Mr Picardo, owning just under 1% (being 2.94% of Hassans' third) with other equity partners in Hassans also having similar interests.

0.74 Both Mr Levy and Mr Picardo gave evidence that Mr Picardo played no part in setting up 36 North [T/8/118.24, T/16/96.14], which I accept. But the parties to the NSCIS contract were the Government and Bland, and the contract could not be transferred from Bland to 36 North without the Government's agreement. Mr Wagner argues on behalf of Mr McGrail that this presented Mr Picardo with a

serious conflict between his private and commercial interests, on the one hand, and his duties and obligations as Chief Minister, on the other (McGrail Closing, paras 29-30). This, Mr Wagner contends is a clear and obvious breach of the Ministerial Code.

- 0.75 Mr Picardo responds that the dispute between Bland and 36 North did not arise until much later. As soon as he realised that Bland and 36 North were no longer in agreement, and the contract could not be transferred by agreement, he decided that the contract should stay with Bland, thereby (he argues) ensuring that he made no financial gain and never faced a conflict of interests. I do not think that it is relevant to the reasons or circumstances of Mr McGrail's retirement for me to pass judgment upon whether Mr Picardo was in breach of the Ministerial Codes or the Nolan Principles, or whether his conduct was improper or inappropriate *at that time*.

OPERATION DELHI

- 0.76 Mr Gaggero, the Chairman of Bland, alleged that there had been hacking or 'sabotage' of NSCIS by Mr Cornelio with Mr Perez's knowledge. He alleged that Mr Cornelio intended to cause serious failings to the system, with resulting damage to the security of Gibraltar. He said that they hoped to demonstrate that Bland were not able properly or efficiently to manage the system, thereby making it more likely that the Government would transfer the system to their company 36 North, who they claimed would be able to deliver a more efficient system, more cheaply.
- 0.77 Mr McGrail opened a criminal investigation into this allegation. He appointed Mr Richardson to be the Senior Investigating Officer. The day-to-day conduct of the investigation was managed by the Officer in Charge; since May 2019, this role was taken Supt Wyan. On the evidence which I have heard, I am satisfied that Mr McGrail was in no sense driving the investigation.
- 0.78 On 10 May 2019, the RGP arrested Thomas Cornelio, John Perez and Eddie Asquez and seized their electronic devices (Perez 1 para 44 [A1239]). Caine Sanchez was

also arrested on 14 May 2019, but he had deleted – or ‘wiped’ – the exchanges which he had with the other former Delhi Defendants and with Mr Levy from his devices [T/4/109.9]. The examination of the seized electronic devices revealed communications between them and Mr Levy, which eventually led Mr Richardson to suspect Mr Levy to be guilty of a conspiracy to defraud.

THE SEARCH WARRANT AGAINST MR LEVY

0.79 On 18 March 2020, Supt Wyan prepared the Charging Report [B3612], which was an ‘*extended summary of evidence in respect of Operation Delhi*’. The Charging Report made the following allegations against Mr Levy:

- a. That he was involved in the planning by Mr Cornelio and Mr Perez to dishonestly appropriate the NSCIS maintenance contract from Bland [B3629].
- b. That he assisted Mr Cornelio and Mr Perez to apply pressure to the Government with the intention that the NSCIS maintenance contract would be transferred to 36 North (in which Mr Levy held a 10% beneficial interest) [B3629].
- c. That ‘*The evidence indicates that Levy discussed the forensic team with Mr Cornelio and that he had given him advice about the situation*’ [B3630].

0.80 The Report focused on the two emails from which it suggested that Mr Levy’s knowledge of the alleged sabotage to NSCIS could be inferred [B3630]:

- a. ‘*On the 19th October 2018 Mr Cornelio wrote to Levy saying, “Morning James. Very confidential. Note Gaggero has brought in a forensic team of six to look at anything John and I may have done to tamper with the system etc. Gaggero is going all out it seems.”*’
- b. ‘*In a text to Perez the same day Mr Cornelio stated that he had spoken to Levy and was told not to worry.*’

- 0.81 The case against Mr Levy depends on the inferences to be drawn from his failure to respond to the information that Bland had appointed a forensic team to look at what Mr Cornelio and Perez *'may have done to tamper with the system'* at Bland. The case for the prosecution is that, if he did not know of the tampering, the information that Bland had appointed a forensic team would have rung loud alarm bells, and prompted anxious messages.
- 0.82 Mr Richardson suggested in the course of his evidence that the case against Mr Levy could have been put more comprehensively and with rather greater clarity by a lawyer experienced in such matters [T/4/28.19, 51.9, 108.6]. However, Mr Richardson took the view that there were reasonable grounds to suspect Mr Levy of conspiracy to defraud in good faith, and concluded that there were questions for Mr Levy to answer. (This is, of course, quite different from saying the grounds for suspicion were correct.)
- 0.83 Given the importance and complexity of the investigation Mr Rocca, or someone in the OCPL, should have provided a detailed written advice at this stage. The OCPL should have critically reviewed the material gathered by the RGP, and examined their reasoning, and not merely accepted it.

ALLEGED 'INTERFERENCE' BY MR LLAMAS

- 0.84 In a letter written on 29 May 2020 (after Mr McGrail had been invited to retire), Gomez & Co alleged that *'for many months', Mr Llamas 'has been trying (unsuccessfully, we might add) to persuade Mr. McGrail to change his and the RGP's approach to the investigation which would either lead to it being dropped entirely or [to] certain suspects not being prosecuted'* [C4490].
- 0.85 There is no contemporaneous record of any complaint by Mr McGrail of interference by Mr Llamas until immediately after his meeting with Mr Picardo on 12 May; I find this absence very striking. I simply do not accept that Mr Llamas tried to interfere with the investigation before the search warrant was granted, let alone that he did so improperly, as Mr McGrail has alleged. I do not think that Mr

McGrail was lying; I think that in the light of what happened later, he has persuaded himself that these exchanges took place.

- 0.86 On 7 April 2020, a meeting took place between Mr McGrail, Mr Richardson, Mr Llamas and Mr Lloyd DeVincenzi (Senior Advisory Counsel). Mr Llamas's evidence is that: *'we reached what, for me, was a very clear understanding between us, namely, that the RGP would not take further action until they had (i) clarified the question of the ownership of the NSCIS platform (ii) rationalised the charges (which the DPP had told me was extremely possible to do), and (iii) whereupon Mr McGrail would meet with me and the DPP before taking any further steps. It was clear beyond peradventure that nothing, other than what we agreed to, would happen until we met again.'* (Llamas 1 para 32 [A278]).
- 0.87 Of those present, only Mr Llamas alleges that they reached the '*understanding*' to which he refers. I simply do not accept that Mr McGrail gave such an undertaking as Mr Llamas asserts; indeed, I am sure that he did not. Mr Llamas may have thought that it was clear from what was said that the RGP would not take any further action without further consulting with him, but I think it was far from clear. He is either mistaken in his recollection or has simply misunderstood or misinterpreted what was said.

MR ROCCA'S ADVICE ON THE WARRANT AGAINST MR LEVY

- 0.88 On the following day, 8 April 2020, there was a video conference between Mr Richardson (accompanied by Supt Wyan), and Mr Rocca. Mr Richardson gave evidence that Mr Rocca said that although he would have preferred the police to apply for a production order, he understood the police '*rationale*' for preferring to apply for a search warrant, which was an operational decision for them. Mr Rocca said that he: *'definitely expressed the view that a production order would have been my preferred course of action'*, although he did not know if it was at the 8 April meeting or one of the three May meetings [T/10/71.8-12], but he thought that the position of the RGP, even if they sought a search warrant, was defensible [T/10/73.23]. Mr Rocca was very clear that he did not '*strongly advise against the*

search warrant’ [T/10/76.4], and I am sure he did not. Mr Richardson said that he reported back to Mr McGrail on the 8 April meeting. He could not be sure whether he reported Mr Rocca’s preference for a search warrant rather than a production order [T/4/82.3].

THE APPLICATION FOR THE WARRANT

- 0.89 Drafting the application for the warrant, and presenting it to the Court was delegated to DS Clarke, who based the Information on Supt Wyan’s Charging Advice. The critical allegation is at paragraph 219(e) which asserts that Mr Levy was aware of the computer misuse offences committed by Mr Cornelio. I am entirely satisfied that the application for the search warrant was made in good faith, DS Clarke genuinely believing the truth of the matters he asserted in the application.
- 0.90 Although Mr McGrail had not seen the application for the search warrant, nor was he familiar with its precise terms, he knew that it was to be made and approved of the application in principle.
- 0.91 The justification given by DS Clarke for applying for a search warrant was that ‘*the material sought is held by a subject in this case and it is feared that if notice was given ..., [he] would destroy, alter, deface or conceal the material sought*’. This was a bare assertion, without providing any explanation for that likelihood or belief. The Information did not identify the counter arguments that Mr Levy had known of the investigation for months, and if he was minded to destroy or remove evidence of his dealings with them he could have done so already. Further, apart from a casual reference, the application does not pose the counter argument which might be presented by his good character and standing in the legal profession, or in the community in Gibraltar.
- 0.92 My Commission does not require – and indeed does not permit – me to rule as to legality of the warrant, but I have found the facts, which might lead others to

consider that the application for the search warrant, as presented to the court, had some procedural flaws.

- 0.93 On 6 May 2020 the application was listed before the then Stipendiary Magistrate, Mr Pitto. DS Clarke gave evidence that the application took about two hours, but he also said that he read the Information in its entirety to the Magistrate (Clarke 1 para 10 [A1048]). Since it was 38 pages long, this can hardly have left any time left for the Magistrate to ask questions; indeed no one remembers any specific question that he asked at all. The written record of the Magistrate's reasons was not drafted until 13 May [C6728]. The reasons given are very brief; that is not in itself a fatal flaw, but it does not suggest that the Magistrate examined the grounds critically.

THE EXECUTION OF THE WARRANT AGAINST MR LEVY

- 0.94 On 12 May, Mr Richardson with Supt Wyan and other RGP officers went to Hassans offices with the warrant. At 12.25, Mr McGrail messaged Mr Picardo: *'before you hear it from anyone else I want to inform you that detectives are executing a search warrant at Hassans for (JL) in relation to the case against Perez, Cornelio and Sanchez. It's been done in the most discreet of ways and we're hoping there is co-operation'* [B1432].
- 0.95 Mr Levy told the Inquiry that, as he walked to his office to meet with the RGP, he called Mr Picardo *'as a friend'* [T/8/158.5]. Mr Picardo readily accepts that on that day, and indeed on many subsequent occasions, he discussed the issue of the search warrant with Mr Levy, and told him that he considered the police action to be unnecessary, inappropriate and indeed unlawful. Mr Levy also attempted to call Mr Llamas, who missed the calls.
- 0.96 I am satisfied that Mr Richardson told either Mr Levy or Mr Chincotta (the Managing Partners of Hassans) that the RGP were acting on advice taken at a *'high level'* or even at *'the highest level'*.

- 0.97 Mr Richardson and Supt Wyan cautioned Mr Levy (although they stated that it was not a police interview under caution), and read out a prepared summary of the facts alleged against him. Later at 14.50 [B3498], Mr Richardson went with Mr Levy to his home; he personally conducted what he called '*a rudimentary and cursory*' search of Mr Levy's work and home offices [B3446].
- 0.98 After consultation in private with Mr Chincotta, and after speaking to leading counsel in the UK, Mr Levy said that although he had been advised that the execution of a warrant was unlawful and an abuse of process, he had also been advised that the means to challenge it was by later legal action [B3486]. In the circumstances, he decided that he would surrender his devices, but he reserved his right to challenge the legality of the warrant later [B3486].
- 0.99 Whilst the police were still at his offices on the 12 May, Mr Levy also twice rang Mr Llamas (at 12.57 and 13.07), but those calls were unanswered (Llamas 1 para 48 [A282]). They did later speak on the telephone. In my opinion, Mr Levy made the call not '*as a senior member of the Bar*' in the course of his professional duty representing a client, but personally as a suspect against whom the courts in Gibraltar had issued a search warrant. In my opinion, Mr Llamas should have exercised extreme caution before responding to such a call and he should have realised that taking a call in these circumstances was unwise and liable to give rise to misinterpretation, as indeed it did.

MR PICARDO'S REACTION

- 0.100 Even whilst the RGP officers were still at Hassans, with the search warrant, Mr Picardo summoned Mr McGrail to his offices and '*berated*' him – the word is entirely appropriate – in immoderate terms for the actions of the RGP. I accept that the Chief Minister is entitled to be critical, even highly critical, of the RGP's decisions, and even of their operational decisions. That is part of the democratic process. However, there is a point when criticism risks becoming interference; that point is easier to recognise than to define. In my opinion, this is the first point at which Mr Picardo plainly crossed that line. I reject Mr Picardo's defence of his

actions. I do not think that he was protecting the reputation of Gibraltar; I think it far more likely that he was moving to protect Mr Levy, his life-time friend and ‘mentor’ from the likely consequences of the warrant being executed or his phones being interrogated.

0.101 I find that the meeting on 12 May was a grossly improper attempt to interfere in a legitimate police investigation and operation. That Mr Picardo still seeks to defend his actions, that he thinks that he was within his rights, is not mitigation, indeed it makes it much worse. Despite this, I accept that however improper it was to summon Mr McGrail, and however improper it was to ‘berate’ him, neither action in fact interfered with the visit of the RGP to Hassans; they carried on precisely as had been planned. I conclude that there was no actual interference with the RGP’s actions on 12 May.

0.102 A particular conflict of evidence arising at this meeting is whether Mr McGrail lied to Mr Picardo about what the DPP had advised about the search warrant. Mr Picardo claimed that: *‘Mr McGrail then insisted that he had sought the advice of the Director of Public Prosecutions on whether to obtain a search warrant or a production order for Mr Levy. Mr McGrail then specifically told me that the advice of the DPP was that they should proceed by way of search warrant.’* Mr McGrail denied that he said that the DPP had advised that the application for the search warrant should be made.

0.103 I do not think it is now possible to determine the precise words that Mr McGrail used. Indeed, I would be speculating if I sought to do so. I am satisfied that Mr McGrail sought to justify the actions of the RGP by saying something about their engagement with the DPP; he might even have said in general terms that the RGP had been advised by the DPP, but I am not satisfied that he said in clear and unambiguous terms that the DPP had advised in favour of a search warrant; indeed, I am satisfied that he did not say that. I accept that what he said might have been unintentionally misleading but I am quite satisfied that he did not deliberately give an untrue version. He did not lie.

0.104 However, I also accept that Mr Picardo genuinely believed – and still believes – that Mr McGrail told him that the DPP had advised the RGP to apply for the search warrant and that he genuinely concluded that this was a deliberate lie, but he had misunderstood what Mr McGrail had said. It follows that his approach to Mr McGrail thereafter was in part based upon a misunderstanding. This was to have most regrettable consequences as this caused him to decide that Mr McGrail had to go, to which he turned his mind almost immediately.

0.105 At 15.41, Mr Llamas texted Mr Picardo: *‘Spoken to DPP. He is categorical that whilst he told RGP that an interview with JL would likely be necessary, he strongly advised against a search warrant.’* But, as I have already found, Mr Rocca had not *‘strongly advised against the warrant’*, nor had he said that he had. Mr Llamas had seriously misreported what he had been told by Mr Rocca. Mr Llamas’s error, and the failure to correct it, had serious implications. Mr Picardo told others that the DPP had advised against the warrant [T/17/205.18]; he certainly told Mr Baglietto and/or Mr Levy, and Mr Pyle.

0.106 In his evidence, Mr Picardo accepted that Mr Llamas had told him *‘during the course of the following day or later that day’* that he (Mr Llamas) had misquoted Mr Rocca [T/16/213.4-13]. Having been told of this mistake, Mr Picardo gave evidence that he *‘corrected it’* to those he had shared the mistake with [T/17/205.18]. I do not accept Mr Wagner’s submission that it was likely that Mr Picardo had deliberately failed to make this correction clear (McGrail Closing, para 49.9), but he certainly failed to do so effectively.

0.107 Mr Levy’s evidence was that he was unaware that he was a suspect until 12 May [T/8.134.23], and there is no evidence to the contrary. It must follow that Mr Picardo cannot have known that he was a suspect before 12 May.

DEALINGS BETWEEN MR LEVY, MR BAGLIETTO, MR PICARDO AND MR LLAMAS

0.108 Very late that evening, Mr Baglietto emailed a complaint to Mr Llamas [B1902]. I do not criticise Mr Baglietto for writing to the Attorney-General, but I observe that

the fact that Mr Baglietto was a professional colleague of Mr Llamas should have caused him to hesitate and reflect before appealing to him personally, which was likely to – and in fact did – give the appearance that this close circle of professional colleagues were seeking to sort this perceived problem out between themselves.

- 0.109 On the afternoon of 13 May, Mr Baglietto sent Mr Picardo two WhatsApp messages asking to speak (at 12.36 and 15.50); they seem to have spoken shortly afterwards [B1422]. Mr Llamas had already spoken to Mr Picardo, and given him confidential information in his capacity as Chief Minister about the warrant issued against Mr Levy, who was suspected of a very serious offence arising from serious failures of NSCIS. After he had received that confidential information, Mr Picardo should not have been speaking to the lawyer then representing Mr Levy in connection with that suspected offence. That Mr Baglietto and Mr Levy were both personal friends and fellow partners of Hassans makes it doubly objectionable that Mr Picardo revealed this information.
- 0.110 Later that evening (13 May, at 20.57, [C6901]), Mr Levy sent a WhatsApp message to Mr Llamas: *‘On the other matter I feel I’ve been hung out to dry.’* He then followed up with: *‘Certainly not by you’* [C6901]. Mr Llamas replied just one minute later (at 20.58): *‘Don’t worry’*. Mr Llamas himself now sees that in the context of the Inquiry, the reply might seem significant and even sinister [T/11/260.19] but, he suggests, this is reading much more into the exchange than he intended or is justified.
- 0.111 Mr Picardo gave evidence that he met with Mr Baglietto on a number of occasions during that period but could not recall the detail of what was discussed (Picardo 4 paras 8-18 [A1447-1448]). He said that he shared with Mr Baglietto, who was *‘one of [his] closest personal friends’*, his outrage at the RGP’s obtaining of a search warrant. He said that he discussed with Mr Baglietto *‘at length’*, how best he should raise these issues in his representation of Mr Levy. Mr Picardo said that he believed that he would have shared with Mr Baglietto also *‘the fact that I was very open with the Gibraltar Police Authority and the then Governor that Mr*

McGrail no longer enjoyed my confidence and my views as to the mechanisms to see Mr McGrail removed (Picardo 4 para 14 [A1448]). Mr Baglietto had no recollection of the contents of any discussions with Mr Picardo on the subject of the warrants (Baglietto 1 para 4.2 [A1520]). On the evidence presented to me, confirmed by my impression of him as a witness, I do not think that I can go beyond concluding that he has a poor memory of these particular events, and it would therefore be wrong to draw an adverse inference against him.

0.112 At 16.55 on 14 May Mr Picardo messaged Mr Baglietto: *‘The last limb refers: Dismissal with total loss or reduction of Pension Benefits forfeiture of pension benefits will be used as a disciplinary measure only in [cases] where the Police Officer is convicted of treason or some other offence which is gravely injurious to the State or is liable to lead to serious loss of confidence in the Police Force’* [B1422]. Mr Picardo was quoting from paragraph 8 of Schedule 2 of the Police (Discipline) Regulations 1991 which sets out the most severe disciplinary penalty available. Mr Picardo explained he was not here writing about removing Mr McGrail, he was referring to removing Mr Richardson [T/16/255.8]. I find this unconvincing. Even though now everyone including Mr Picardo agrees that the Regulations do not apply to the Commissioner [T/16/258.24], contrary to his evidence to the Inquiry I think it far more likely that he was referring to Mr McGrail. It shows that he firmly had Mr McGrail in his sights.

0.113 Later that evening, at 18.41 and 18.42, Mr Picardo messaged Mr Baglietto to tell him of another idea that had occurred to him: *‘Section 76 Police Act’; ‘Power to make orders with respect to property in possession of Police’* [B1422]. Plainly, Mr Picardo was suggesting that one possible way for Mr Baglietto to retrieve Mr Levy’s devices from the RGP would be to apply to the Magistrates’ Court under section 76 of the Police Act. Here the Chief Minister of Gibraltar is suggesting to the lawyer of a man who was then suspected of serious crime, involving the security systems protecting Gibraltar, how he might retrieve his client’s mobile from the police, so as to prevent the police from interrogating it, which they were very anxious to do.

Again, one only needs to set out this proposition to demonstrate its gross impropriety.

- 0.114 On 15 May at 11.15 Mr Baglietto sent a detailed letter to Mr Llamas requesting the return of Mr Levy's devices. He stated that *'there can be little surprise that, as we believe is the case, the DPP advised the Commissioner against the making of these applications'* [C3802]. If Mr Baglietto had not heard this from Mr Llamas, he must have heard it from Mr Picardo, as I am sure he did. To tell Mr Levy what he had been told by Mr Llamas about this advice given by the DPP was a grossly improper disclosure of confidential material, which he must have known, and intended, might assist his defence to the detriment of the prosecution.
- 0.115 The disclosed log of calls and messages between Mr Baglietto and Mr Picardo [B1422] shows that at 23.20 late on the evening of 16 May, Mr Baglietto messaged Mr Picardo asking if they could speak sometime the next morning [B1422]. After some further exchanges the following morning, they agreed to meet at Mr Picardo's private house.
- 0.116 Mr Picardo did not disclose the fact of this meeting until very shortly before the Inquiry's main hearing. Mr Picardo sought to justify this omission from his earlier statements by saying that the meeting on 17 May was about Mr Levy, and *'not a meeting about Mr McGrail'* [T/16/274.11]. He then later said that he did not recall this meeting when drafting his Third Affidavit. I find his explanation implausible. A personal meeting with two of his great friends (and two fellow partners of Hassans), Mr Levy and Mr Baglietto, at this time of Mr Levy's personal crisis, when Mr Picardo was already making moves against Mr McGrail, during the height of the Covid pandemic, would surely be highly memorable. I conclude that he deliberately did not disclose the fact of this meeting until his Third Affidavit (and even then he did not directly reference or give evidence about the meeting in the body of that Affidavit), because he knew that others would find it to be deeply inappropriate.

- 0.117 I comment that Mr Levy had not disclosed the fact of this meeting in any of his earlier statements either. I conclude that he also knew that it was entirely inappropriate that he was meeting Mr Picardo, in secret, to discuss the police investigation. Mr Baglietto was only lately required to make a statement, so he cannot be criticised for failing to mention this meeting beforehand. Although he had demonstrated a poor memory of other events, I find his total failure of recall of this event unconvincing; surely, he would remember a meeting with the Chief Minister, at his house, at such a critical time in the case against Mr Levy.
- 0.118 Mr Levy told the Inquiry that the main purpose of the meeting was for him to offer to resign from his position as the Chairman of the Community Care Trust [T/8/181.21]. I am satisfied that the real reason for the meeting was to discuss some aspect of the crisis which Mr Levy was then facing as a result of Operation Delhi, and that Mr Baglietto was there acting as Mr Levy's lawyer in the matter.
- 0.119 I therefore make these criticisms of both Mr Baglietto and Mr Levy. No proper safeguards were applied to the meeting of 17 May. I do not accept their suggested defence that they were following local culture and practice. Both are Leading Counsel, they should both have been alive to the danger that such a meeting, taking place in the Chief Minister's private house, without any note or record was – at the very least – likely to bear the appearance of old friends, at the very heart of power and influence in Gibraltar, seeking to affect the course of a police investigation so as to protect Mr Levy from the consequences of a warrant issued by the courts.
- 0.120 Later that night at 22.48, Mr Picardo sent a message to Mr Baglietto (at [B1418]) stating: *'That is page 13 of the HMIC report published last week. Look at the bit I have highlighted in red. Boom'*. He attached an extract from the HMIC report into the RGP; the passage as underlined in red reads: *'We found officers using their personal devices to examine offenders' telephones. This isn't good practice and doesn't meet best evidence standards.'* Mr Picardo, as Chief Minister, was again

canvassing ideas with the lawyer of a man suspected of serious crime as to how his interests could best be protected or advanced.

- 0.121 After midnight (now on 18 May), Mr Picardo came up with yet another idea [B1418]. At 00.36, he sent Mr Llamas an image of section 59 of the Gibraltar Constitution [C6763]. Mr Picardo accepted that one of the things he was doing was proposing to the Attorney-General that he exercise his constitutional power to take over and continue the search warrant proceedings against Mr Levy [T/16/297.21]. He then accepted that he was also suggesting Mr Llamas could ‘*potentially*’ discontinue the search warrant proceedings [T/16/298.15]. I am not called upon to determine whether section 59(2)(b) and (c) of the Constitution permits such a course in relation to a search warrant, but to my mind this is another grossly improper attempt by Mr Picardo to interfere in an active criminal investigation by the RGP, to protect his friend and mentor, James Levy.

THE THREE MEETINGS BETWEEN THE RGP, ATTORNEY-GENERAL AND DPP

- 0.122 Three meetings took place between the RGP, Mr Rocca and Mr Llamas on 13, 15 and 20 May 2020. Mr McGrail covertly recorded the meetings on his mobile telephone, without telling anyone that he was doing so. Sir Peter Caruana KC described the covert recording as unethical, improper, unprofessional and even reprehensible. Mr Llamas described them as a betrayal, unacceptable and unbecoming. I will leave it to others to come to their own conclusions whether it was, as the Government parties contend, unethical, or whether, as Mr McGrail contends, what he did was, if not strictly lawful, at least understandable in the circumstances. The meetings are summarised in great detail in the Report.
- 0.123 After the others had left the meeting on 13 May, Mr Llamas asked Mr McGrail to remain. Mr Llamas came out with an exaggerated sentiment about the office of the Chief Minister: ‘*Fabian, I will ... defend to the death. ...But that’s talking about Fabian Picardo. The office of Chief Minister, [whether it’s] Picardo, [whether it’s] Azzopardi, [whether it’s] Caruana or Hassan ... I will protect them. ... I have spent my whole life defending this jurisdiction and promoting this jurisdiction as a lot of*

us do ... and there can be no office, more symbolic of the jurisdiction than that of the Chief Minister, I will defend it.' I accept that all he meant was that he would protect the holder of the Office of Chief Minister and the Office itself from attack or embarrassment on '*flimsy*' or other unjustified grounds.

- 0.124 At the meeting on 15 May, everyone present agreed a compromise by which Mr Levy would not attend, as had been planned, on Monday 18 May to be interviewed as a suspect under caution, but that he would be given the opportunity to provide a written statement. He would remain a suspect, so his written statement would not be a '*witness statement*'. The RGP would then consider any explanation which he had given in that written statement; then, if they thought it appropriate to do so, he could still be required to attend for an interview under caution.
- 0.125 After the meeting had finished, Mr Ullger texted Mr McGrail to ask: '*How did it go?*'. Within a minute, Mr McGrail replied: '*All good'ish. Too much to explain by text. Chill out. We'll chat on Monday*' [E742-3]. To my mind, the reference to the meeting as having been '*goodish*', and the advice to Mr Ullger to '*chill out*' hardly suggests the Mr McGrail then believed that Mr Llamas or Mr Rocca were attempting to interfere with the RGP investigation, let alone that they were seeking to do so improperly.
- 0.126 I conclude from all the circumstances, including the recently disclosed WhatsApps, that Mr McGrail clearly understood that the course of action agreed at the meeting of 15 May left the RGP free to arrest and interview Mr Levy, if they considered it necessary to do so, but which Mr McGrail then was '*hoping*' would not be necessary. I think that the Government Parties are quite right to observe that this seriously undermines the submission made on behalf of Mr McGrail that Mr Llamas was at these meetings interfering – and improperly interfering at that – to protect Mr Levy.
- 0.127 On the morning of 20 May, there was a third meeting, which did not take matters very much further.

- 0.128 Mr McGrail's position is that over the course of the three meetings, Mr Llamas was attempting to influence or pressure him not to interview Mr Levy under caution [T/7/22.21]. Mr Llamas denied pressuring the RGP and stated: '*this was a collegiate exercise between all of us*' [T/11/271.1]. Mr Llamas said that his contacts with Mr Baglietto were agreed in the meetings with the RGP and it was '*very transparent*'.
- 0.129 The fact is that the RGP agreed to these proposals, which they were free to reject, if they chose to do so. The arrangement reached to avoid these perceived 'crises' may have been unprecedented, but it was not unlawful. The Attorney-General's skilled diplomacy in brokering an arrangement, which the RGP themselves voluntarily accepted, cannot in my opinion amount to an interference with the investigation, and it did not do so.
- 0.130 Mr DeVincenzi also attended the meeting on 13 May 2020, and had discussions with Mr Llamas in the aftermath about the role of the Attorney-General. I characterise his approach to these circumstances as being highly principled. He had well developed legal insights which even at the time detected the dangers ahead presented by these conflicts of interest and he had the courage, and good judgment, to warn Mr Llamas to be careful.

THE SEQUENCE OF EVENTS LEADING TO MR MCGRAIL'S RETIREMENT (ISSUES 8-10)

THE FIRST MOVES AGAINST MR MCGRAIL

- 0.131 On 15 May, Mr Picardo and Mr Pyle met to discuss the leadership of the RGP. A detailed account of that meeting is set out in the Report. They both concluded that the '*coming together of issues*' and different '*matters of importance*' had caused them both to lose confidence in Mr McGrail who, as head of the RGP, should be accountable for its failings (Pyle 1 para 26.7 [A256]; [T/18/152.21,164.9]).
- 0.132 I reject the suggestion that Mr Pyle was '*manipulated*' by Mr Picardo during these exchanges. Mr Pyle had legitimate and serious complaints that on 8 and 9 March

Mr McGrail did not provide the best available information to Mr Pyle about location in relation to the Incident at Sea. Furthermore, he had genuine concerns about Mr McGrail's leadership in relation to the Incident itself. Moreover, he was also entitled to bring to mind the shockingly bad HMIC Report. I think that he was quite entitled to take his time to think these matters through, before coming to the conclusion that the RGP needed new leadership. I have no doubt that this was a sincerely held view. I am prepared to go further; I think that it was an entirely reasonable conclusion to reach in the circumstances of the Incident at Sea and HMIC Report.

THE APPROACH TO THE GPA

0.133 A meeting between Mr Pyle, Mr Picardo and Dr Britto took place on the morning of 18 May at the Convent. The night before the meeting, Mr Pyle and Mr Picardo had exchanged emails about their concerns [C3953].

0.134 There were no contemporaneous minutes taken of that meeting, but Mr Picardo produced a note of the meeting two days later [B1436]. The note sought to identify the Commissioner's failings under the five criteria identified by section 34(1) of the Police Act, by which, after consultation with Mr Pyle and Mr Picardo and with the agreement of both of them, the GPA may call upon the Commissioner to retire, *'in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar'*. The note referred to the HMIC report and the Incident at Sea. It added: *"Both feel that their respective dealings with the Commissioner have left them with the sense that he is lacking in both probity and integrity in his dealings with them."* It also stated: *'Mr Picardo also shared another event occurring last week which had left him also in a situation where the Commissioner had expressly misled him and which left him unable to believe the Commissioner'*. He did not give any particulars whatsoever of that 'event' or the details of the way in which he had been *'misled'*; he did not mention Mr Levy by name, he did not mention the search warrant; he did not mention Hassans or Operation Delhi; nor, of course,

did he refer to his own financial interest in Hassans or to his close friendship with Mr Levy.

0.135 It seems to me that Mr Picardo deliberately told Dr Britto very little about his real complaint. By his cryptic reference to *‘another event occurring last week’*, Mr Picardo quite deliberately and cynically, did not spell out that his real grievance arose from the issue of the warrant against Mr Levy, including the alleged lie, and led the GPA to focus on a loss of confidence arising from the concerns of Mr Pyle about the Incident at Sea and, to a lesser extent, the HMIC Report. In this respect, I have no doubt that Mr Picardo deliberately underplayed his real grievance and thereby misled Dr Britto and the GPA.

0.136 Although Dr Britto had been told in the written note that the decision should be taken by the GPA, that is not how Dr Britto perceived the position. He understood that he was in effect being told what to do. Dr Britto recalled Mr Pyle saying to him that he *‘wouldn’t want to declare you in default’* but he would if he had to [T/15/73.10], which he interpreted as meaning that *‘If you don’t do your duty, then I will do mine’* [T/15/82.1]. By character and personality, he was unable to resist what he felt to be the pressure being put upon him.

THE GPA’S PROCESS

0.137 An emergency meeting of the GPA was held on 21 May. Most unfortunately, there is no contemporaneous minute of the meeting, as required by section 6(4) of the Police Act. A further procedural failing was that the meeting was not quorate. The quorum was the Chair and five members (section 6(1) Police Act), but only four others attended.

0.138 As the witness statements from many members of the GPA make clear, in considering whether to exercise their powers under section 34 of the Police Act, their decision was largely based on the loss of confidence by the Governor and the Chief Minister. As it seems to me, it cannot be right that if the Chief Minister and the Governor merely claim and assert that they have *‘lost confidence’* in the

Commissioner, then the GPA must simply endorse that decision. The GPA surely cannot require the Commissioner's enforced retirement unless reasons for losing confidence are given and those reasons withstand examination or scrutiny.

0.139 I strongly agree with an answer by GPA member Mr Lavarello, who was not at the meeting, but agreed that if Operation Delhi was the reason for Mr Picardo losing confidence, it should have played a role in the GPA's deliberations [T/14/227.2].

0.140 Dr Britto conceded that the GPA was not acting independently as it considered these matters but claimed that '*we quickly regained our independence by refusing to continue with the process*' [T/15/103.18].

THE TWO LETTERS FROM THE GPA TO MR MCGRAIL

0.141 At 09.00 on the morning of 22 May, Mr McGrail met Dr Britto. There are no contemporaneous notes of this meeting, but Mr McGrail covertly recorded this meeting (McGrail 2 para 14 [A49]).

0.142 Dr Britto told Mr McGrail that he had been called to a meeting with Mr Pyle and Chief Minister, at which they told him that they had lost complete confidence in Mr McGrail's ability to lead and manage the RGP, and therefore they would be asking the GPA to invoke its power under section 34 of the Police Act requiring him to retire, subject to his right to make representations [B353]. Dr Britto referred only to the '*very grave*' Incident at Sea and HMIC report [B353]; he added – truthfully but significantly – that the GPA had not previously had any concerns about Mr McGrail [B355]. Mr McGrail told him that the whole process was triggered, not as Mr Picardo claimed by the Incident at Sea, still less by the HMIC report, but by what he claimed to be Mr Picardo's interference with the running of a police operation into the case involving Mr Levy [B361].

0.143 At the end of their exchange (at [B367]), Dr Britto said that he had been told that '*you had lied, you lied basically to the Chief Minister ... Or omitted the truth*', but he was not given any particulars of the lie. When – quite reasonably – Mr McGrail asked whether it was alleged that he had lied in connection with the Collision at

Sea or in the *'particular case'*, Dr Britto replied: *'In everything'*, thereby demonstrating that he had not understood from Mr Picardo the nature of his real complaint and grievance against Mr McGrail [T/15/114.24].

- 0.144 Dr Britto then handed Mr McGrail a pre-written letter ('the first letter') [C4315]. The letter afforded Mr McGrail seven working days to make representations. I observe that no one can make focussed representations unless they know precisely what is alleged against them. The letter makes quite clear that the GPA had already decided to exercise the power under section 34, before asking Mr McGrail for his representations. Such an approach is, to my mind, plainly unlawful, as they later realised themselves.
- 0.145 After that meeting, Dr Britto reported to Mr Picardo that Mr McGrail was *'asking for details in writing'* of the allegations against him [B1437]. Dr Britto sent Mr Picardo a draft version of a second letter to be sent to Mr McGrail [C4310], which Mr Picardo extensively amended [B1438]. Dr Britto sought to justify these later exchanges by saying that Mr Picardo was the only lawyer he could ask [T/15/105.17]. In my opinion, it was entirely inappropriate for him to ask Mr Picardo for advice but plainly it did not strike him as such at the time. On the other hand, Mr Picardo most certainly should have realised that this compromised – or at least was likely to have the appearance of having compromised – the independence of the GPA.
- 0.146 I comment that this 'second letter' only referred expressly to the Incident at Sea and the HMIC Report. The letter did not name Mr Levy; it did not refer to the grant of the search warrant, or to the visit to Hassans to execute the same or to *'the lie'* which Mr Picardo alleges that Mr McGrail told. In giving evidence, Mr McGrail noted that *'what struck [him was] that the letters did not contain a reference to Delhi at all'* [T/7/43.5]. In my judgement if, as Mr Picardo maintains, the dominant reason for his loss of confidence was the issues arising from Operation Delhi, including the alleged lie, I consider it be remarkable and indeed sinister that the letter does not name Mr Levy. The letter was intended to set out, in detail, the

reasons for asking the Commissioner of Police to retire, and yet it does not do so. The inevitable and irresistible conclusion is that Mr Picardo was using the processes of the GPA to bring about Mr McGrail's effective dismissal for reasons of his own, relating to the police investigation into Mr Levy, whilst managing the process so as to give the appearance that he was being asked to retire for other reasons, namely the Incident at Sea and the HMIC Report.

- 0.147 I accept that the Incident at Sea and the matters arising from the HMIC Report could have given rise to substantial complaints against Mr McGrail's leadership of the RGP, but that is not how matters proceeded and was something which was not properly formulated against Mr McGrail, and of which he was given no proper notice. In my opinion, the process by which Mr Picardo and Mr Pyle raised their complaints against Mr McGrail was unfair because they provided no proper particulars of what was alleged against him and such particulars as he was eventually given by the GPA omitted entirely Mr Picardo's real grievance.

THE GOMEZ & CO LETTER

- 0.148 Mr McGrail instructed lawyers, Charles Gomez & Co. By their letter of 29 May [C4477] to the GPA, Gomez & Co forcefully put Mr McGrail's case. The letter is summarised in detail in the Report. It submitted that in order to fulfil its constitutional duties, the GPA must make its decision independently from the Governor and Chief Minister and it must not be directed by them [C4478]. Gomez & Co submitted that the Incident at Sea and HMIC Report were just '*a pretence*' or '*fig leaves for the real reason Mr McGrail is being pressured to retire, i.e. his (proper and reasonable) handling of a live criminal investigation*' [C4583, C4586]. The letter argued that the only rational decision for the GPA to reach was to dismiss the request of Mr Pyle and Mr Picardo. It added that it would not be possible to reach a '*just result*' unless it was to allow Mr McGrail '*to remain in post*' [C4596].
- 0.149 It is said by the Government Parties that after this letter with its many allegations against Mr Picardo, Mr Llamas, Mr Pyle and the GPA, they believed that Mr

McGrail's position had become untenable. I do not accept this argument which, if correct, would entirely circumvent the section 34 process which requires three distinct steps, taken sequentially.

- a. The first is for the Chief Minister and/or the Governor properly to particularise their complaints.
- b. The second is for Mr McGrail to have the opportunity of making representations to answer the complaints against him.
- c. The third is for the GPA independently to consider whether they accept the grounds on which the Chief Minister and the Governor claim to have lost confidence in the Commissioner.

This procedure was not followed here.

0.150 In response to Gomez & Co's letter, Mr Pyle, Mr Picardo and Mr Llamas sent letters to the GPA on 3 June and 5 June [C4675, C4744, C4730]. Mr Llamas rebutted what he called the '*untrue and scurrilous allegations*' made in the letter. As I find, Mr Llamas played no part in the decision by Mr Pyle and Mr Picardo that they had lost confidence in Mr McGrail or in the invitation to the GPA to consider exercising its power under section 34. I reject entirely the suggestion that he was in some way involved in a corrupt conspiracy to remove Mr McGrail from office. I cannot put it plainer than that.

0.151 On 1 June, the GPA met and agreed to seek legal advice. Mr James Neish KC advised that, contrary to section 34(2) of the Police Act, the GPA had wrongly invited Mr McGrail to retire following an inquorate meeting before giving him a reasonable opportunity to make representations. He advised that, in the circumstances, their procedures were fundamentally flawed and that any future decision by the GPA constituted by the same members would be vulnerable to challenge on grounds of bias, so they should withdraw their invitation to Mr McGrail to retire and abandon the process. This advice was plainly correct, and no one has sought to disagree or argue otherwise.

0.152 That same day Dr Britto wrote to Mr Picardo [C4770] and Mr Pyle [C4743], on behalf of the GPA, acknowledging that their processes had been ‘*fundamentally flawed*’ and that they should withdraw the invitation to retire. After writing that letter, neither Dr Britto, nor any other member of GPA, had any further involvement in the events which led to Mr McGrail’s retirement or resignation.

0.153 I accept that Dr Britto and the members acted in good faith, without malice or hostility towards Mr McGrail, but the GPA did make ‘*serious mistakes*’, for which it cannot escape criticism. Dr Britto is a decent and honourable man. He seems to be universally respected. He gave entirely truthful evidence, so far as his memory of these events would allow. I have no doubt that during the sequence of events leading to Mr McGrail’s retirement, he did his best, but he struggled. I conclude that he found himself in an unforeseen but developing crisis, which presented him with problems with which he was ill-equipped to deal.

MR PYLE’S POWERS UNDER S13 OF THE POLICE ACT

0.154 After the GPA withdrew the section 34 process, Mr Pyle sought ‘*urgent advice on how to proceed*’ from Mr Llamas. He advised that, pursuant to section 13 of the Police Act, a series of powers are exercisable by the Governor where the GPA has failed to discharge or perform a responsibility imposed on it. Mr Llamas advised that the powers under section 13(1)(f) of the Police Act ‘*to suspend from duty or call for the resignation of the Commissioner*’ were available to Mr Pyle in the circumstances of the case.

0.155 I accept that the decision to consider exercising his power under section 13 of the Police Act was entirely Mr Pyle’s. There is no evidence that he was put under any pressure by anyone else and in particular by Mr Picardo (Pyle 1, paragraph 26.1 [A257]). Mr Pyle gave honest and entirely candid evidence. He has had a distinguished career of public service, in Gibraltar and elsewhere. He is, I think, entitled to a more trenchant exoneration than my simply saying that there is no evidence that he acted improperly or corruptly. I roundly reject both suggestions. He has behaved honourably throughout.

- 0.156 On 5 June, TSN (on behalf of the GPA) wrote to Gomez & Co acknowledging ‘*certain procedural errors*’ and withdrawing their invitation to retire [C4742]. Less than an hour later, Gomez & Co replied that: ‘*given how unfairly [Mr McGrail] has been treated and the improper pressure put upon him to alter the course of a live criminal investigation, our client feels he must apply for early retirement from the Royal Gibraltar Police.*’ [C4801].
- 0.157 Later that afternoon, Mr McGrail met Mr Pyle. There are no minutes of this meeting, which Mr McGrail did not covertly record. Mr Pyle’s evidence is that he said that he intended to review all the relevant papers over the weekend and, although he had not made up his mind to use the powers vested in him under section 34 to require his resignation, he ‘*would be prepared to do so*’. Mr McGrail took this to be an implied threat. Mr Pyle denied that referring to section 13 was a threat to Mr McGrail to bring about his own retirement, and said ‘*it was stating the reality of the issue*’ [T/18/224.14].
- 0.158 The following day, 6 June, Mr Pyle wrote to Mr McGrail asking him to confirm that he intended to tender his letter of ‘*resignation*’ on Monday [C4815]. This was an error (for which he apologised at the Main Inquiry Hearing); he meant to ask if he intended to *retire* rather than to *resign* [T/18/228.6].
- 0.159 On 7 June, which was a Sunday, Gomez & Co wrote to Mr Pyle [C4820] strenuously objecting to what had occurred. The email argued that it would be unlawful for Mr Pyle to invoke section 13, as it is only available if the GPA is in default. It stated that Mr McGrail would not resign, but that he had been left with no choice but to apply for early retirement, if satisfactory financial terms could be agreed.
- 0.160 Mr McGrail met Mr Pyle again on the morning of 8 June. Mr McGrail’s evidence was that by then ‘*it dawned on [him] that [his] best option was to find the best way out before [he] was made to suffer even more*’. He said that his mental health was very badly affected. He had completed 36 years of service and did not want to jeopardise his pension entitlements (McGrail 1 para 108 [A44]). Mr McGrail returned at 16.00 in the afternoon, to offer to retire, subject to terms being agreed.

After consideration and some further exchanges, the Chief Secretary agreed that Mr McGrail should receive his pension, and untaken leave and time off in lieu was also to be paid (McGrail 3 para 162 [A132]).

0.161 It is submitted on behalf of Mr McGrail that, at the time that Mr Pyle threatened to invoke section 13(1)(f) of the Police Act on 5 June 2020, and ever since he had been notified of Sir David Steel's appointment, Mr Pyle was not able to exercise any functions of the office of Governor under section 22(3) of the Constitution. This is a matter of law, upon which I have no power to rule, and I decline to do so. It might however be helpful if I observe factually that Sir David Steel did not become the Governor until he was sworn in on 11 June and, therefore, he was not '*the Governor*' at the time that he, or the FCDO, informed Mr Pyle '*that he was about to assume*' the function of Governor. There is also as it seems to me a difference between notifying somebody of your future appointment, on the one hand, and on the other notifying somebody that you are about to assume the functions of Governor. Therefore, I suggest that section 22(3) does not apply. It is my opinion, therefore, that Mr Pyle, as Interim Governor had all the Constitutional and statutory powers to act as Governor, including powers under sections 34 and 13 of the Police Act, until the new Governor took office on 11 June.

0.162 Mr Wagner has also suggested that Mr Pyle was improperly rushing to achieve Mr McGrail's retirement before the new Governor was due to arrive on 10 June. There are two ways to look at this. First, Sir David Steel's email to Mr Pyle, dated 5 June [C4771] suggests that he was quite prepared to deal with the issue, if necessary; as I am sure he would have done - that would be his duty. Sir David Steel may have been able to bring a different – and independent – fresh perspective to the issue. A delay might have had the further advantage that everyone would have had time properly to formulate the allegations being made against Mr McGrail and would have allowed him time to properly to defend himself. On the other hand, I think Mr Pyle had a valid point when he said that he was anxious to complete the process before the new Governor arrived, otherwise Mr McGrail might have withdrawn his notice of retirement and sought to persuade the new Governor not to exercise his

powers under section 13(1)(f); then they would be ‘*back to square one*’, as he put it [C4845]. Either course would have been reasonable, and I do not criticise Mr Pyle for taking the position that he did. He was not rushing to judgment.

MR MCGRAIL’S MENTAL STATE

0.163 At 10.33 on 29 May, the day on which the Gomez letter was written, Mr Ullger sent a voice message to Mr McGrail outlining his account of a conversation which he (Mr Ullger) had had with Ms Samantha Sacramento (then the Minister for Justice) [E757], [E1106]. Mr Ullger said that he had told her that ‘*the best scenario here was what you were looking at, was you wanted to retire now because your position was untenable with the individual, ... with all individuals for that matter and that you wanted to leave the organisation but maintaining your pay and ... to have your retirement package in two years’ time...*’. As it seems to me, the importance of this point is that Mr Ullger must have thought that on 29 May Mr McGrail had already decided to retire provided that suitable terms could be agreed.

0.164 It may be that as early as 22 May, when he received the GPA letters, Mr McGrail realised that he may be forced to retire. But a proper analysis reveals the dilemma which he faced. Namely: (1) whether to stand and fight against what he considered to be a grossly unfair, unlawful and unconstitutional attempt to force him out, for improper reasons (which fight he feared he might lose, and in the process lose his pension and even cause damage to the reputation of Gibraltar); or (2) whether to accept the inevitable, to go quietly, to retire with a pension and with at least some dignity, ‘*with his head held high*’, and without causing a constitutional crisis. I do not think it in the least surprising that he chose the latter course. I do not think that he reached a firm and settled intention to retire until perhaps as late as 5 June; before that he sincerely, but perhaps increasingly unrealistically, hoped that something might turn up.

CONCLUSIONS ON THE REASONS FOR MR MCGRAIL’S RETIREMENT

0.165 I find that Mr McGrail retired as a result of the cumulative effect of these factors:

- a. Although he knew that Mr Picardo and Mr Pyle claimed to have lost confidence in him, and he realised that his position had therefore become untenable, he retired only because he felt he was being unfairly and unlawfully compelled to do so. This was because neither they nor the GPA had followed the proper procedures, and because Mr Picardo had not explained the real reason for his loss of confidence, which was the application by the RGP for the search warrant against Mr Levy and the ‘lie’ which Mr McGrail was alleged to have told to Mr Picardo and Mr Llamas at the meeting of 12 May.
- b. The improper pressure which he felt was being put upon him by Mr Picardo to alter the course of a live criminal investigation.
- c. The procedural unfairness of Mr Pyle failing to give him proper details of the complaints against him as he contemplated the ‘default’ process under section 13(1)(f) of the Police Act.
- d. The prospect of humiliation which he faced as a result of the threat of compulsory retirement following that unfair process.
- e. His deteriorating mental health.
- f. His genuine, but probably mistaken, belief that he would lose pension rights if he did not retire ‘voluntarily’ before being compelled to do so.

EVENTS AFTER MR MCGRAIL’S RETIREMENT

- 0.166 The Operation Delhi investigation continued after Mr McGrail’s retirement. There is no evidence whatsoever of Mr Richardson or Supt Wyan, or any other RGP officer, being deterred or discouraged by Mr McGrail’s retirement; they are officers of resolution and determination and would not tolerate or submit to that kind of interference and would protest if such pressure was put upon them.
- 0.167 On 29 October 2020, Supt Wyan wrote to Mr Baglietto (representing Mr Levy) saying that ‘*Following an extensive investigation, we have concluded that Mr Levy*

was no longer considered a suspect'. Supt Wyan added that Mr Levy's devices were to be returned, without having been examined [C5177].

0.168 In September 2020, Mr Cornelio, Mr Perez and Mr Sanchez were charged. In due course, the former the Former Op Delhi Defendants made an application to the Supreme Court for the case to be dismissed on the grounds that there was no case to answer. A hearing of that application was scheduled for March 2022 but on 21 January 2022, pursuant to section 59(2)(c) of the Gibraltar Constitution Order 2006, Mr Llamas discontinued the criminal proceedings issued against them. Mr Llamas issued a statement to the effect that although he had been advised by the DPP that there was sufficient evidence for there to be a realistic prospect of conviction at trial, there were matters in *'the wider public interest'* that required him to discontinue the proceedings. I decline to draw any adverse inference against Mr Llamas for declining to give reasons for discontinuing the prosecution on the basis requested.

RECOMMENDATIONS

0.169 I make the following recommendations.

0.170 **Conflicts of interest:**

- a. Consideration should be given to whether the Canadian Conflict of Interest Act 2006, or some similar legislation, is suitable for implementation in Gibraltar.
- b. An emphatic restatement of the principles as set out in the Ministerial Code should be enacted by law.
- c. Consideration should be given to more precisely define the role of the Attorney-General, and identifying when he might consider instructing external counsel. The role which the Attorney-General took at the three meetings with the RGP demonstrated the risks of potential conflict which might arise between (1) his duty and responsibility for instituting and undertaking criminal prosecutions and (2) his duty and responsibility as

legal advisor to the Chief Minister and to the Government, and at the same as legal advisor to the Governor.

- d. Three simple checks could and should be made before, during and after, any such meeting or call, where any substantive decision is being – or was – taken or discussed; those attending should go through the checklist together. Each person attending such a meeting, or making such a call, should:
 - i. Remind themselves, and everyone else in the meeting (or attending such a call), of the capacity in which they are participating.
 - ii. Declare any conflicts of interest, or potential conflicts, or any potential perception of conflict, that may arise and satisfy themselves that they should not by virtue of such conflict, potential conflict or perception of conflict, exclude themselves from the discussion.
 - iii. Establish who is making – or will make - a note; that person will promptly circulate that note to the others who attended (usually within one working day), and any person not agreeing with the note, should promptly circulate proposed amendments (again usually within one working day).
- e. Those attending critical meetings considering public affairs should take proper and accurate notes or minutes, which should be confirmed by a later exchange of emails.

0.171 The Police Act

- a. Parliament should consider amending and updating s34 of the Police Act to make provision for (1) the process or procedures to be followed either by the Chief Minister or the Governor when initiating the process under the section; (2) process or procedure which the GPA should follow when

considering the exercise of its powers; and (3) cover the situation where – as happened here - the Chief Minister and/or the Governor claim to have ‘*lost confidence*’ in the Commissioner.

- b. If the GPA is proposing to act under section 34 in consultation with the Chief Minister and/or Governor, then I recommend that consideration be given to legislation and/or regulations ensuring that:
 - i. such a power should only be exercised for some good, sufficient and proper reason;
 - ii. subject to the overriding interests of public safety or security, the Commissioner should be given written notice of the reasons relied upon;
 - iii. the Commissioner should be allowed sufficient time to make representations in answer to the allegations against him/her, having access to legal advice and assistance as necessary;
 - iv. the GPA should consider whether the allegations can be dealt with by a warning letter and to proceed to a hearing only if the allegations are so serious that there is no alternative. If there is a hearing, the Commissioner should be permitted to address the GPA personally, but if he/she does so the Commissioner should be required to answer any questions put to him/her;
 - v. the GPA should then consider the representations of the Commissioner, before deciding what action to take.
- c. While I do not propose to prescribe a specific procedure to be enacted under subsection 13(1)(f) of the Police Act, I similarly recommend that consideration be given, after appropriate public consultation and debate, to amending legislation or regulations that would provide for a mechanism

whereby a Governor considering exercising either of the powers under subsection 13(1)(f) must first of all:

- i. communicate the basis for doing so to the Commissioner in writing and with sufficient particulars;
- ii. permit the Commissioner a reasonable time period within which to make representations (written and/or oral) in response; and
- iii. give due consideration to those representations before arriving at a final decision.

0.172 The GPA

- a. To fulfil their duties and responsibilities, the Chair of the GPA must be sufficiently robust; they must have senior managerial and administrative experience and should be – and should demonstrably and apparently be – independent of the Government, of the Governor, of the RGP (and its Commissioner) and of other powerful influences.
- b. Payment for this role should be considered (perhaps comparable to the remuneration paid to the Chairs of similar regulatory authorities in Gibraltar).
- c. Consideration should be given to also making some modest payment to GPA members (as is made to the members of similar regulatory authorities in Gibraltar).
- d. Vacancies on the GPA should be advertised, candidates should be interviewed, and the process should be transparent.
- e. Pursuant to the GPA Policy on Standards and Conflict of Interest, every member is obliged to make a declaration of interest. This should be done at least annually and also confirmed at the commencement of each meeting, with regard to the items on the agenda.

- f. More adequate resourcing should be considered to provide a proper level of administrative assistance to the GPA, perhaps at the level of Higher Executive Officer (or equivalent), or even at the level of Chief Executive Officer. Such a post might be part time.
- g. Consideration should be given to some form of induction training for members and staff, particularly on the constitutional importance of independence, and some form of periodic refresher training.
- h. The GPA should not seek, or receive, gratuitous legal advice from a member of the Authority who happens to be a lawyer. The GPA should be entitled to receive public money for necessary legal advice without having specifically to apply to the Government. The GPA should never again consider the application of section 34 of the Police Act without independent legal advice.
- i. The GPA needs to establish, or update, procedural rules, to address matters such as meeting agendas, minutes, quorum, remote attendance and declarations of interest.

0.173 **The ‘Steering Committee on the reform of Police Governance’:** I hope and intend that the Recommendations which I have made in the preceding section will give the recently appointed ‘Steering Committee on the reform of Police Governance’ some guidance as to a possible way forward.

0.174 **The RGP**

- a. Any application for a search warrant in high profile, sensitive or serious cases, or cases which give rise to complex issues of fact or law, should be considered in detail by the OCPL, who should advise in writing.
- b. If Crown Counsel at the OCPL are unable to provide such advice, then in an appropriate case, experienced independent counsel should be instructed to advise, as commonly happens in the UK.

- c. There are many templates, with helpful Guidance Notes, for various applications for search warrants and orders issued by the Criminal Procedure Rule Committee in the UK. I recommend that they might (with suitable amendment) be considered for adoption in Gibraltar. However, applicants for search warrants should always adapt templates to address in detail the particular circumstances of the particular case.
- d. If the investigation of an offence requires the commissioning of an expert report, then the RGP should be able to instruct such an expert, at public expense.
- e. If actions by the RGP are challenged in legal proceedings, by judicial review or otherwise, and if the OCPL are unwilling or unable to defend such action, then the RGP should be entitled to instruct lawyers to do so, at public expense.
- f. As to the hearing of an application for a search warrant, I recommend that in high profile or serious cases, or cases which give rise to complex issues of fact or law:
 - i. The OCPL (or other appointed Counsel) should usually represent the RGP (or other prosecuting agency) at the hearing of the application.
 - ii. The case should be listed allowing sufficient time for the Judge or Magistrate to read the application in advance and for a sufficient allowance of court time for the issues to be properly considered.
 - iii. It is unnecessary and wasteful of time and resources for the application to be read aloud verbatim if the application has already been read in advance.
 - iv. The proceedings should be recorded.

- v. The Judge (or Magistrate) should engage with the applicant to ensure that the relevant statutory criteria have been properly considered.
- vi. The Judge (or Magistrate) should give a brief judgment, which can be given orally at the time, or given later by a short reserved judgment.
- g. It is not part of my remit to suggest what improvements should be made to the RGP's IT Department, particularly since this would have implications to the RGP's budget but, to my mind, this position needs urgent reconsideration, at a high Government level, perhaps considering the practice in comparable jurisdictions.

0.175 **Redress to Mr McGrail:** I decline to recommend that any form of redress, whether by way of apology or compensation, is made to Mr McGrail.

0.176 **The Inquiries Act 2024:** The Inquiries Act 2024 section 33 provides for the issue of rules dealing with matters of evidence and procedure. The Inquiry had devised its own Protocols under the old Act but in order to avoid the need for any future Inquiry to re-invent the process, consideration should be given to drafting and implementation of appropriate rules.

ANNEX 1: DISCLOSURE TO THE INQUIRY BY THE RGP

0.177 On 24 June 2024, six weeks after the Main Inquiry Hearing, the Government Parties realised that neither the RGP, nor any of its officers or former officers, had disclosed any WhatsApps passing between them. They asked the Inquiry to pursue the matter with the RGP [E305]. I do not criticise them for not making this specific request beforehand, since the Inquiry itself had already twice made such a request, and a specific reminder should not have been necessary.

0.178 On 2 September 2024, the RGP disclosed the WhatsApps between Mr McGrail and Mr Ullger; Mr Richardson and Supt Wyan; and Mr McGrail and Mr Yeats. That disclosure was limited to the period from 12 May to 9 June 2020 (in line with the

Inquiry's request). On 20 December 2024, more than three months later, the RGP made further disclosures of WhatsApp messages exchanged between Mr McGrail and Mr Ullger on their personal devices between 1 January and 30 June 2020. The printout extends to nearly 500 pages and contained many messages relevant to the Inquiry. On the same day, the RGP also disclosed the fewer messages which Mr McGrail had exchanged with Mr Richardson and Mr Yeats.

RGP WORK DEVICES

- 0.179 The RGP's *'Mobile Device Policy'* provided 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'* [E319]. The Policy made no provision for the data on that device to be backed up or retained in some other way, before it was wiped and then *'repurposed'*.
- 0.180 In November 2020, the RGP replaced the Samsung work devices used by Mr Ullger, Mr Yeats and Mr Richardson with Apple iPhones. Following this change, pursuant to the RGP Policy then in effect, the data on these devices, including the SMT Group Chat was wiped and was not backed up. The work devices of Mr McGrail, Mr Richardson and Supt Tunbridge would also have been wiped upon their retirement.
- 0.181 The RGP should have made clear to the Inquiry at a much earlier stage that WhatsApps, which might have contained relevant data, had been deleted when mobile devices surrendered by officers on retirement or re-posting. Having said that, I do not accept that the data deleted necessarily included anything relevant to Operation Delhi or even to the Inquiry: it might have done; it might not have done; it would be speculative to find as a fact that there was, or even that there probably was.

MR MCGRAIL'S PERSONAL DEVICE

0.182 In 2019, following the data breach by an RGP officer, the RGP decided to separate the use of mobile devices for official and personal purposes. Although Mr McGrail did continue to use his private device to send some sensitive work-related material, I would describe this as an administrative irregularity, but I do not think that this was improper, let alone that it carries some sinister implication.

0.183 During the time of his service, there were many exchanges between Mr McGrail using his personal device and Mr Richardson/Mr Ullger using their personal devices. Yet, Mr McGrail did not disclose these to the Inquiry; he maintains that he did not then realise that these exchanges might include material relevant to the Inquiry. I conclude that the most likely explanation for Mr McGrail's failure to disclose these exchanges was because he had overlooked their relevance; it was an '*inadvertent omission*' which he now genuinely and bitterly regrets. I would describe his approach to this exercise as being '*blinkered*': maybe he only saw what he wanted to see, but I do not think that he deliberately closed his eyes to the possible relevance of other material.

0.184 Mr Richardson has given evidence that on the morning of 12 May 2020, he sent a message to Mr McGrail telling him that he had arrived at Hassans offices with the search warrant (Richardson 4 para 6 [E261]). Mr McGrail gave evidence that he received that message (McGrail 1 paras 28-9 [A9]). However, there is no record of this message sent on 12 May 2020 either on the image taken of Mr McGrail's personal device by SIO McVea or on Mr Richardson's personal device, as he disclosed. It seems to me that this message of 12 May must have been sent by Mr Richardson on his work device to Mr McGrail on his work device.

MR ULLGER'S PERSONAL PHONE

0.185 For the same reasons that these messages should have been disclosed by Mr McGrail, they should have been disclosed by Mr Ullger. But his main reason for not doing so was different; he said that he was unable to access any old messages

on his device; he attributed this to: *‘purchasing a new device in June 2020’*. I have no reason to doubt this explanation, which I accept.

0.186 On 23 March 2023, Mr McGrail was arrested in connection with data breach allegations. Consequent to that arrest, the team led by SIO McVea seized Mr McGrail’s personal *4000 device. SIO McVea took a forensic image of all of the data on Mr McGrail’s device, including his exchanges with Mr Ullger and Mr Yeats. Mr Ullger should have recognised, and told the Inquiry that, once Mr McGrail’s personal phone had been seized by SIO McVea, the messages between him and Mr McGrail, which he had lost from his device, might be recovered from the image taken of the data from Mr McGrail’s phone.

0.187 However, I accept that as soon as he actually realised that the data might be relevant and was stored on an image of Mr McGrail’s personal device, which was held by the RGP, he alerted them to the fact and gave every assistance to them to recover and disclose it. He did not intend to suppress it.

OTHER ALLEGED IRREGULARITIES IN THE DISCLOSURE PROCESS

0.188 The Inquiry did not know of the existence of his day books until Mr McGrail mentioned them during his evidence at the Main Inquiry Hearing [T/6/131.11]. Mr McGrail said that on the day that he retired, he left his day books in a rucksack in his office ([T/7/1.17], [E91]). Despite searches by the RGP, the day books still have not been found, which is very unsatisfactory. The Inquiry should have been alerted to the existence of Mr McGrail’s day books at the outset, given that many entries may have been relevant and may have had significant evidential value. For the RGP to misplace the day books of the former Commissioner of Police, knowing of the exceptional circumstances of his departure, suggests an administrative failing.

0.189 Mr McGrail told the Inquiry that he left both his desktop and laptop computer in his office when he retired (McGrail 8 para 5 [A1553]). Again, I am sure that he did so. The RGP did not, at that time, have a written log recording the movement of

laptops or desktops within the RGP when an officer left the service (Yeats 4 para 15 [E4]). Following renewed searches at the time of the Main Inquiry Hearing, on 8 May 2024 Mr McGrail's laptop was found. DC Garcia examined the device and reported [E52] that at 07.01 on the morning of 4 June 2020, just a couple of days before Mr McGrail retired, an audio file named '*Meeting with AG & DPP 20th May*' (2020), had been deleted from this laptop. I infer that this must have been a copy of the recording of the meeting which Mr McGrail had that day with Mr Llamas and Mr Rocca. This confirms the conclusion that Mr McGrail was anxious to remove any evidence that he had recorded these meetings from RGP devices.

- 0.190 When Mr McGrail retired from the RGP, he took away with him an external hard drive, with a backup of his emails and reports. I do not think that his action in taking the hard drive away has adversely impacted upon the Inquiry in any way. I will not comment on the propriety, or lawfulness, of his actions, which are for others to consider.
- 0.191 Mr McGrail gave evidence that when he retired, he retained a number of hard copy documents relating to Operation Delhi. Mr McGrail had destroyed some of the hard copy documents '*under the direction and request of the RGP*'. However, he had destroyed those which he had kept in his possession from the time of his retirement on his own initiative, and neither '*under the direction and request of the RGP,*' as he had first said. Notwithstanding that, I do not think that he destroyed any evidence relevant to the Inquiry, which has not been otherwise disclosed to the Inquiry by the RGP; indeed, I find as a fact that he did not do so.
- 0.192 I expressly reject the suggestion that Mr McGrail was '*cavalier*' towards record keeping and still less to the fundamentals of policing, which I think would imply a deliberate disregard or at least a disdainful recklessness. The furthest I would go is that he showed a lack of procedural vigilance.
- 0.193 I do not think that it can properly be said that the RGP made the '*comprehensive disclosure*' which they claimed, and which was required of them. Indeed, I find that they did not.

ANNEX 2: DISCLOSURE BY MR PICARDO, MR LEVY AND MR BAGLIETTO

- 0.194 During the Main Hearing, various issues were raised about the extent of the disclosure made by Mr Picardo, Mr Levy and Mr Baglietto. In particular, after May 2019, Mr Picardo and Mr Levy, who had previously been in frequent contact by WhatsApp, changed their means of communication to '*discussion*' or '*conversation*' by word of mouth (of which there would be no record). I am asked by Mr Wagner, on behalf of Mr McGrail and by others, to draw an adverse inference against them for this unexplained change of practice. Although I see the force of this argument, I am not persuaded that I should do so.
- 0.195 Neither Mr Levy nor Mr Baglietto disclosed any WhatsApp messages to the Inquiry prior to the Main Inquiry Hearing, although Mr Baglietto subsequently disclosed a small number of SMS messages, and Mr Levy subsequently disclosed a small number of WhatsApp messages. Mr Levy's explanation is that when the RGP took possession of his telephone on 12 May 2020, his messages were copied by Hassans' IT department onto a '*copy telephone*'. The '*copy telephone*' stopped working and Hassans' IT Department copied the messages onto a '*replacement telephone*', but not all of his messages pre-dating 12 May 2020 were preserved during the transfer [T/8/199.5-201.11]. Mr Baglietto states that he does not have any correspondence with Mr Picardo or Mr Llamas going back to 2020 (Baglietto 1 para 4.1 and 4.5 [A948-9]). He gave evidence that he routinely deleted old chats with clients and family members.
- 0.196 Mr Mills (of Hassans' IT Department) has unsuccessfully attempted to recover missing WhatsApps from the replacement telephone, as well as from Mr Baglietto's telephone. Mr Mills has satisfactorily explained the absence of messages. I can take this no further and, in the circumstances, it would be wrong to draw any adverse inference against either Mr Levy or Mr Baglietto for this absence and I will not do so.

CHAPTER 1: INTRODUCTION

THE INQUIRY ESTABLISHED

- 1.1 Mr Ian McGrail retired as the Commissioner of Police on 9 June 2020. The sequence of events which led to him doing so, and the reasons why he retired, gave rise to widespread public concern. As a result, pursuant to Legal Notice 2022/034 dated 4 February 2022, the Governor (His Excellency Vice Admiral Sir David Steel KBE, DL) appointed me as Commissioner, under the Commissions of Inquiry Act 1888, *‘to inquire as [I] shall in [my] absolute discretion consider appropriate, into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement’*. These are the Inquiry’s Terms of Reference.

VARIOUS PROCEDURAL HEARINGS

- 1.2 Before the Main Inquiry Hearing, which started in April 2024, the Inquiry held five Preliminary Hearings. I gave a number of Rulings (during those hearings and subsequently), all of which are available on the Inquiry’s website either as separate documents where I gave the Ruling in writing, or in the transcript for the hearing where I gave the Ruling orally. The Rulings deal with various topics, including:
- a. open justice, the power of the Inquiry to make recommendations, the questioning of witnesses and the publication of the Inquiry’s report;
 - b. the composition of the Inquiry Team;
 - c. the identification of Core Participants (and their representation and funding) and applications for Core Participant status;
 - d. decisions on public funding of various Core Participants and witnesses;
 - e. the recording and transcription of the hearings;
 - f. the identification of the List of Issues for the Inquiry;
 - g. *‘live streaming’* by the Gibraltar Broadcasting Corporation (later with *‘Catch Up’*);

- h. the selection of witnesses to be called to give live evidence;
- i. the procedures to be followed for their questioning;
- j. the timetable of the Inquiry hearings, including various applications for adjournment;
- k. the preparation of a draft List of Agreed Facts;
- l. the extent to which the Inquiry should and could examine the discontinuance of the prosecution of the former Operation Delhi defendants;
- m. applications for restriction orders in respect of certain evidence;
- n. the application by HMGOOG parties to reconvene; and
- o. the request by Mr McGrail that the inquiry investigate payments made to 31 former officers of the RGP.

1.3 I do not consider it necessary to repeat or summarise what I have already said at, or following, those hearings, since all these Rulings are available on the Inquiry's website (www.coircomp.gi) and many of them are summarised later in the Report.

1.4 Furthermore, the Inquiry issued a number of protocols dealing with various procedural matters, all of which are also available on the Inquiry's website.

1.5 I also gave some closed Rulings, which were disclosed to the Core Participants, which were not uploaded onto the Inquiry's website. However, I also arranged for public summaries of the closed Rulings to be uploaded onto the Inquiry's website, so that the public could understand the subject matter of those Rulings without disclosing the sensitive material.

THE LIST OF ISSUES

1.6 It was necessary for the Inquiry to define the issues to be examined to the extent that I considered necessary and appropriate to fulfil the Terms of Reference. The Inquiry circulated a draft Provisional List of Issues before the Second Preliminary

Hearing on 20 September 2022, and a large measure of agreement was reached by those who were then Core Participants. Remaining matters were the subject of detailed submissions at the Second Preliminary Hearing, after which I finalised and published the Provisional List. This was then subject to an application on behalf of the RGP for a refinement of the List of Issues, to the effect that all issues be struck out save for Issue 3 (the Collision at Sea), Issue 4 (The HMIC Report) and Issue 5 (the Conspiracy Investigation). I declined to do so for the reasons set out in my Ruling dated 26 July 2023. I then delivered a further Ruling on 8 November 2023 when amendments were made to Issue 1 (the Airport Incident), Issue 5 (the Conspiracy Investigation) and Issue 6 (the Federation Complaints), and the Provisional List of Issues was further updated following this.

- 1.7 Although this is also set out on the Inquiry's website, it would avoid the need to cross-reference if I now set out that List of Issues.
- 1.8 The issues were subject to this general preamble ('**the preamble**', to which I often refer in the course of the Report):

'In relation to each of the issues listed in paragraphs 1-10 below:

A. What were the relevant facts (which the Commissioner will seek to ascertain only to the extent that he considers necessary and appropriate to address the matter under inquiry)?

B. To what extent, if at all, did the issue constitute a reason or circumstance leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking an early retirement (either because they led to a loss of confidence in Mr McGrail or for some other reason)?'

- 1.9 The issues set out (as updated on 29 November 2023) were as follows:
 1. *The actions of the Royal Gibraltar Police ('RGP') on:*

- 1.1. *8 February 2017 in obstructing an aircraft at Gibraltar airport to remove an employee of the UK Ministry of Defence who had previously been arrested by the UK Service Police;*
- 1.2. *1 March 2017 in arresting three senior Ministry of Defence members of staff and seizing and removing service personnel equipment from HM Naval Base and an officer's home (collectively with [1.1] 'the Airport Incident').*
2. *The RGP's investigation into an assault on a helicopter pilot and crew member in Gibraltar in March 2017 ('the Assault Investigation').*
3. *The collision at sea on 8 March 2020 outside British Gibraltar Territorial Waters involving an RGP vessel and resulting in two deaths ('the Incident at Sea'), and the RGP's subsequent handling of it. In particular:*
 - 3.1. *Did faults or failings in the operational instructions or procedures of the RGP cause or contribute to the collision at sea, and, if so, was Mr McGrail as Commissioner of Police responsible or accountable for those faults or failings?*
 - 3.2. *Was information as to the location of the Incident at Sea communicated by Mr McGrail and/or the RGP to Chief Minister Fabian Picardo ..., the Attorney-General Michael Llamas ... and the then-Interim Governor Nicholas Pyle ... in a timely and transparent fashion?*
 - 3.3. *Was information about the legal claims arising from the Incident at Sea communicated by Mr McGrail and/or the RGP to Mr Pyle, the Chief Minister and the Attorney-General in a timely and transparent fashion?*
4. *The findings of the Report by Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services into the RGP dated 9 April 2020 ('the HMIC Report'), and/or Mr McGrail's response in addressing the findings of the previous report by HMIC published in 2016.*

5. *The investigation into the alleged hacking and/or sabotage of the National Security Centralised Intelligence System and alleged conspiracy to defraud ('the Conspiracy Investigation'), and the RGP's handling of the same, including but not limited to the RGP's stated intention to execute search warrants as part of that investigation on 12 May 2020 ('the Search Warrants'). In particular:*
 - 5.1. *Did Mr McGrail seek or receive advice from the Director of Public Prosecutions ('DPP') or the Attorney-General regarding the search warrants, and did Mr McGrail accurately communicate any advice from the DPP or the AG on the Search Warrants (or lack thereof) to the Chief Minister and/or Attorney-General?*
 - 5.2. *Was the RGP's intention to execute the search warrants on 12 May 2020 contrary to an agreement or understanding with the Attorney-General and/or the DPP?*
 - 5.3. *Did the Attorney-General and/or Chief Minister place any or any inappropriate pressure on Mr McGrail regarding the investigation or otherwise interfere with the investigation, and in particular the RGP's intention to execute the Search Warrants?*
6. *The complaint(s), if any, made by the Gibraltar Police Federation ('the Federation') and/or its members to the Gibraltar Police Authority about Mr McGrail (including as to the difficult relationship between Mr McGrail and the Federation), and any allegations of bullying or intimidation by Mr McGrail discussed by the Gibraltar Police Authority ('the Federation Complaints').*
7. *The RGP's involvement in and/or handling of the Alcaidesa claims ('the Alcaidesa Claims').*
8. *The letter dated 29 May 2020 sent by Mr McGrail's lawyers Charles Gomez and Co to the Gibraltar Police Authority ('the 29 May Letter').*

9. *Mr Pyle's stated intention as to his powers under section 13 of the Police Act. This will include consideration of the relevance (if any) of Sir David Steel's imminent commencement as Governor, and particularly the date on which Mr Pyle learned of the date on which that was expected to occur ('the Section 13 Issue').*
10. *The Gibraltar Police Authority's process and decision in purported compliance with Section 34 of the Police Act, and subsequent withdrawal of that decision ('the GPA Process')*

1.10 I will consider each of these identified issues in the course of this Report.

THE EVIDENCE GATHERED

- 1.11 The Inquiry began its evidence gathering in April 2022, initially by seeking evidence from the 'statutory participants', namely the four parties who would (or at least could) have played a statutory role in Mr McGrail's retirement under the Police Act 2006: Mr Ian McGrail, Mr Nicholas Pyle (the former Deputy Governor, and Interim Governor at the time of Mr McGrail's retirement), Mr Picardo (the Chief Minister), and Dr Britto (Chairman of the GPA). Upon receipt of these statements, the Inquiry was able to widen its requests for evidence and approach other witnesses seeking their evidence. By a public notice dated 23 September 2022, the Inquiry Team also sought evidence from anyone who could give relevant information or disclosure that could assist the Inquiry. The Inquiry continued to request and receive written evidence throughout 2023 and indeed in 2024, including in some cases very shortly before (and even during and after) the Main Inquiry Hearing.
- 1.12 Those giving relevant evidence were asked to provide sworn statements. The Inquiry received some 114 affidavits from 73 different witnesses, and over 34,000 pages of documents. In so far as these are relevant (and not subject to redaction, for various reasons) each has been uploaded onto the Inquiry's website.

- 1.13 I make the obvious point that the mere fact of any statement or document being uploaded on the Inquiry’s website does not amount to a finding that any fact asserted is true, nor does it carry that implication.
- 1.14 Following submissions upon the point, I selected 17 witnesses to give oral evidence, which they did over a 19-day hearing starting on 8 April and finishing on 9 May 2024. Transcripts of their evidence are available on the Inquiry’s website. The Inquiry was livestreamed by the Gibraltar Broadcasting Corporation, and videos of each day’s proceedings remain available on their website.
- 1.15 From that mass of evidence Counsel to the Inquiry (**‘CTI’**) prepared a Facts Schedule, extending to more than 300 paragraphs and 125 pages, upon which I have extensively drawn when writing the Report; it is also available on the Inquiry’s website.¹ Although this schedule was not agreed, it was a very helpful reference for me when writing the Report.
- 1.16 After the conclusion of the Main Inquiry Hearing, when the draft Report was already at an advanced stage, the RGP disclosed additional material to the Inquiry, mainly consisting of WhatsApp messages between senior RGP officers. Following an application by the Government Parties in November 2024, I directed the Inquiry to be reconvened for a further short hearing (**‘the Reconvened Hearing’**). My reasons are set out in my Ruling dated 10 February 2025, which I do not propose to repeat here. The Reconvened Hearing took place on 9 – 11 April 2025. My conclusions from that hearing are largely addressed in the Annex to this Report, ‘Disclosure made by the RGP, Mr McGrail and other officers’, and where relevant I have also incorporated evidence which emerged at the Reconvened Hearing into the body of the Report.
- 1.17 Several of the RGP officers who gave evidence to the Inquiry were retired or have since retired. In the body of the Report, I therefore use the title ‘Mr’ to describe Mr

¹ <https://coircomp.gi/wp-content/uploads/2024/06/CTI-Facts-Schedule-for-Closing-Submissions-19-06-2024.pdf>.

McGrail (formerly Commissioner of Police), Mr Richardson (formerly a Superintendent), Mr Ullger (formerly Commissioner of Police), Mr Yeats (formerly Assistant Commissioner of Police) and Mr Field (formerly Detective Superintendent). No disrespect is intended by use of this title rather than their former RGP rank. For officers who remain in service with the RGP, I refer to them by their current rank rather than their rank at the time of events, for example Supt Wyan rather than DI Wyan.

THE MAXWELLISATION PROCESS

- 1.18 The Government has not yet issued any rules under section 33 of the Inquiries Act 2024 specifying a process to be followed in warning participants about potential criticism. The procedure and conduct of this Inquiry, including any warning process, were matters which fell within my discretion. However, pursuant to section 17(3) of the Inquiries Act 2024, in making any decision as to the procedure or conduct of an inquiry, I must act with fairness and with regard also to the need to avoid any unnecessary cost. I therefore sought to balance these two principles in developing a warning letter, or 'Maxwellisation', procedure.
- 1.19 To ensure fairness towards witnesses and others who may be affected by publication of this Report, I considered it to be important that anyone to be criticised publicly in this Report should have a reasonable opportunity to respond to the proposed criticism prior to publication. Warning letters were therefore sent to any person whose interests (personal or professional) may, in my reasonable assessment, be adversely affected by any criticism (express or implied) in the Report.
- 1.20 The letters were sent out in early July 2025 and set out, verbatim, the criticism which I intended to make in the Report, and afforded recipients an opportunity to respond within a reasonable period. Those responses were duly received and then considered by the Inquiry Team, and I made such changes as I considered to be appropriate.

THE EFFECT OF THE INQUIRIES ACT 2024

- 1.21 As I have already written, the Inquiry was commissioned under the Commissions of Inquiry Act 1888.
- 1.22 On 7 March 2024, approximately a month before the Main Inquiry hearing was scheduled to start on 8 April, the Government published the Inquiries Bill 2024. There was no statutory requirement that they should do so, but there was in fact no public consultation with the Inquiry before the introduction of the Bill before Parliament. After a lively Parliamentary debate, the Inquiries Act (the ‘**Act**’) was passed on 25 March, and received Royal Assent from the Governor, the following day, 26 March, to come into operation on the 28 March.
- 1.23 The Act contained ‘*transitory and transitional*’ provisions (section 35), which made clear that this Inquiry was subject to the new Act. However, section 35(5) provided that neither the repeal of the 1888 Act nor anything in the new Act affected the validity of any act or decision which I had already taken.
- 1.24 In the Fact Sheet which the Secretary to the Inquiry issued on 26 March 2024 (which can be found on the Inquiry’s website), the Inquiry sought to identify what seemed to be the main changes introduced by the new Act, most of which I need not describe here.
- 1.25 However, there was one significant change which requires further explanation. Under section 19 of the Act, the Government was given the power to serve a ‘restriction notice’ on the Inquiry, either to restrict public attendance at the Inquiry (or part of it) or to restrict the Inquiry from disclosing or publishing any evidence or documents. The Government was therefore given the power to serve a restriction notice if it considered this to be ‘*necessary in the public interest*’ to avoid or reduce ‘*any risk of harm or damage*’, including ‘*damage to national security or international relations*’ or ‘*damage to the economic interests of Gibraltar*’.
- 1.26 Under the procedure previously established under the 1888 Act, only I, as the Commissioner (now known as the Chairman as a result of the Act), could

determine whether evidence should be restricted in this way. Indeed, I heard and determined an application made by Mr Picardo to restrict some evidence under the old law and I declined to do so.

- 1.27 The hurried introduction of the legislation and, in particular, fears as to the way in which this power to make a restriction notice might be used, caused considerable anxiety and criticism, which was not allayed by the Government issuing such a restriction notice only on Friday 5 April, the last working day before the Inquiry opened on Monday 8 April. The restriction notice (**‘the Restriction Notice’**) issued under the Act in effect overruled my earlier Ruling.
- 1.28 The Government Parties have forcefully pointed out that this new power given under the Act only mirrored the power given to the Government under the Inquiries Act 2005 in the UK to issue restriction notices. Furthermore, the Restriction Notice which they issued could have been challenged by application for judicial review, and no such application was made, although I consider that the decision not to do so may have been motivated by a wish not to delay the Inquiry any further, and the very last-minute circulation of the Restriction Notice.
- 1.29 When I opened the proceedings on 8 April 2024, I said that it remained to be seen quite how the Act would impact upon the Inquiry. However, I then stressed that nothing would affect my resolve, or indeed my duty under the law to find and report on the facts, which I was determined to and which I have now done.
- 1.30 As I said when opening the Main Inquiry Hearing, this is a public inquiry. It has been conducted in public. The witnesses have given evidence in public; they have been questioned in public. The hearings in public lasted 19 days, with two additional days for Closing Statements and three additional days for the Reconvened Hearing. Our average sitting day lasted around 5 hours. The transcript of a typical day’s evidence extended to somewhere between 200 and 250 pages. During all those days, we sat in closed session just once (on 12 April) for only a quarter of an hour; the transcript of which takes just 4 pages. That closed session was necessary because when he was giving evidence Mr Richardson wished to develop a point, which – very properly, I might add – he felt he could not develop

without risking a breach of the Restriction Notice. He drew my attention to a couple of passages in the Charging Report (with which I will deal later in the Report), which had been redacted in accordance with that Notice.

- 1.31 I quote those passages in a supplementary closed Report, consisting of less than one and a half pages. I make the point, therefore, that the closed hearing was only a very small part of the evidence I heard.
- 1.32 Furthermore, the Restriction Notice was directed to only a few sentences in the thousands of documents which we have considered. Subject to that, and to the redactions of some irrelevant material, all the statements, and all the documents, relied upon have been uploaded onto the Inquiry's website; as have been the submissions of the Core Participants.
- 1.33 It seems to me that, if the Act had been introduced in a more timely manner, after public consultation and, if the Government had given advance notice and explained the limited effect of the restriction notice in advance, then they might have avoided, or at least greatly mitigated, much of the anxiety and the criticism then levelled against them.
- 1.34 I cannot be more specific without risking being in breach of the Restriction Notice. However in my opinion, as it turned out, every point of real substance has been made, developed, tested and, where necessary, even challenged, in public. Nothing of essential significance to the Inquiry's Terms of Reference, as amplified by the List of Issues, has been restricted. Although I would have been able to lay a greater emphasis upon one part of my findings had I not been restricted from doing so, I do not consider that the Restriction Notice has prevented me from making any significant findings of fact or from making any recommendations. For the avoidance of doubt, I make clear that in the supplementary closed Report, I make no further finding of fact and nor do I make any further recommendation.

PUBLICATION OF THE REPORT

- 1.35 I also observe that by section 25 of the Act, subject to certain exceptions which are unlikely to apply, it is the duty of the Government to arrange for the Report to

be published. The requirement for me to report to the Government and for the Government to publish this Report is entirely consistent with my Ruling dated 17 August 2022 (as amended on 25 August 2022) on this issue so nothing material has changed in this regard as a result of the Act.

- 1.36 The Government and the Inquiry Team have, as a matter of fairness, arranged for Core Participants to be given a copy of the version of this Report which is to be published briefly in advance of publication, under strict obligations of confidence.

THE INQUIRY TEAM

- 1.37 At an early stage in the Inquiry, I resisted an application then made on behalf of Mr McGrail that the Inquiry Team should consist only of lawyers from London. The submission, in short, was that the population of Gibraltar is small, the circle of legal professionals is smaller still, everyone knows everyone else, and only outsiders could bring true independence and experience of work in inquiries. In my Ruling of 8 February 2023, I said that: *‘Gibraltar has a strong and highly competent legal profession. Complex, sensitive, serious, high profile and high value cases are often contested in the courts here between advocates from Gibraltar. The subject matter of this inquiry arose in Gibraltar. It concerns citizens of Gibraltar. I have no doubt that the inquiry can properly and competently be served by having advocates and solicitors from Gibraltar. It would, as it seems to me, be impractical, inconvenient and unnecessarily expensive’* to engage lawyers from London.
- 1.38 Nor was I impressed by the submission that no one on the Inquiry Team had great experience of inquiries. I realised that in the United Kingdom there recently have *‘emerged a small circle of advocates experienced in inquiries’*, but I also observed that *‘they do not have a professional monopoly of such work, not even in the United Kingdom and certainly not here in Gibraltar.’* I was of the opinion that *‘competent and experienced advocates are adaptable’* and would be able to adopt to the roles and duties required of them.

- 1.39 I then confirmed that *‘Mr Santos and his junior have given me sound and skilled advice. They have done all that is asked or required of them; they have worked extremely hard and they seem to me to be outstandingly competent.’* I confirmed that I had *‘complete confidence in them’*. I did say that I would keep this *‘under review’* and I did so. However, as I confidently expected, both have discharged their duties with complete independence, skill and professionalism; they have grappled with the many unexpected contingencies, and they have worked long hours to complete the work of the Inquiry. I am grateful to them both; they have served Gibraltar well. Much of the burden has necessarily fallen upon Ms Hope Williams, the junior counsel engaged. Mr Santos has recently been appointed King’s Counsel, no doubt in large part to recognize the contribution which he has made to the Inquiry. I am anxious to pay them both this public tribute.
- 1.40 No Inquiry can properly function without a competent, independent and dedicated Solicitor, to identify, to gather and to present relevant evidence and to ensure the efficient and cost-effective administration of the Inquiry and to advise me, as necessary. Mr Charles Simpson, assisted by Mr Sebastian Triay, both of Triay Lawyers, have brought to bear their wide-ranging experience to achieve all these objectives with conspicuous skill and professionalism. I am extremely grateful to them.
- 1.41 I also record my thanks to Mr Maurice Turnock, the Secretary to the Inquiry, who has managed the many practical and administrative problems – often quite unexpected – with which we have been faced. He has also had the responsibility for over-seeing and controlling the costs. I am grateful to him also.
- 1.42 I am also grateful for the submissions and for the contributions made by those representing the Core Participants, some were represented by lawyers from the UK but many were represented by lawyers practicing in Gibraltar. I cannot single out individual lawyers for particular thanks; I was confident that the profession in Gibraltar would rise to the challenge, as it has done, and I am very grateful.
- 1.43 I have already thanked the staff of the Garrison Library for providing such a suitable venue for hearing. The collection in the Library is available for scholarly

consultation, but the building is a significant part of Gibraltar's heritage and provides a dignified and prestigious setting for many meetings and gatherings and, in my opinion, helped to set the tone for the examination of the serious matter in hand. I am grateful to them.

1.44 I turn now to consider the substantive issues under inquiry.

CHAPTER 2: THE AIRPORT INCIDENT

INTRODUCTION

- 2.1 The Inquiry's Terms of Reference, subject to the preamble, require me to inquire into:

The actions of the Royal Gibraltar Police ('RGP') on:

(1) 8 February 2017 in obstructing an aircraft at Gibraltar airport to remove an employee of the UK Ministry of Defence who had previously been arrested by the UK Service Police;

(2) 1 March 2017 in arresting three senior Ministry of Defence members of staff and seizing and removing service personnel equipment from HM Naval Base and an officer's home (collectively with (1), 'the Airport Incident').

- 2.2 I clearly state at the outset that these Terms of Reference do not require – or entitle – me to make findings about the events of the Airport Incident except in so far as they bear upon the circumstances of Mr McGrail's retirement. Still less do the Terms of Reference require – or entitle – me to pass judgment on the rights and wrongs of the conduct of the RGP, or the Ministry of Defence ('**MoD**'), or their officers, or of the later investigation by the GPA, and I shall deliberately refrain from doing so.
- 2.3 Mr Cruz, on behalf of the RGP, at first went further, and submitted that the Airport Incident, which happened more than three years before Mr McGrail's retirement, is quite irrelevant to the reasons for his retirement and so I should not consider the Airport Incident at all. I did not accept that submission. As I shall describe in detail when I come to the sequence of events leading directly to his retirement, both Mr Picardo and Mr Pyle say that they lost confidence in Mr McGrail, and the Airport Incident was one of the matters mentioned by them in their discussions at the time. It was also a matter mentioned by Mr Pyle in his first witness statement as contributing to his '*progressive*' loss of confidence in Mr McGrail (Pyle 1 para 13.2 [A240]).

- 2.4 I will set out the facts of the Incident. I will then consider the reactions of the parties at the time. I will move on to consider the way in which Mr Picardo changed – or apparently changed – his position. I will then consider whether it was appropriate for Mr Picardo and for Mr Pyle to have taken Mr McGrail’s conduct during the Airport Incident into account three years later, when they were considering Mr McGrail’s retirement as Commissioner of Police.
- 2.5 I turn first to find the primary facts (most of which are not now challenged by the Core Participants).

THE ARREST OF THE SERVICEMAN

- 2.6 In early 2017, Leicestershire Police had reasonable grounds to suspect that a serving member of the British Forces stationed in Gibraltar (**‘the serviceman’**) was in possession of indecent images of children on his IT devices. They issued a ‘wanted alert’ for him.
- 2.7 On 3 February 2017, officers of the Joint Provost and Security Unit of the MoD (**‘the JPSU’**) arrested the serviceman in Gibraltar and seized his IT devices. They believed that they had the power to make the arrest under the (UK) Armed Forces Act 2006. Very shortly afterwards, because there was no duty solicitor in Gibraltar to represent him and because the JPSU did not have its own custody facilities, they released the serviceman, but he remained in Gibraltar. However, they retained his devices, which they intended to send to the UK for forensic analysis.
- 2.8 On the following day (4 February 2017), the JPSU informed the RGP that they had arrested the serviceman.

THE LEAD UP TO THE AIRPORT INCIDENT

- 2.9 Mr Yome, then the Commissioner of Police, instructed Mr McGrail, then the Superintendent in charge of the Crime and Protective Services Division, to investigate the circumstances of the serviceman’s arrest (Yome 1 para 12 [A1344]). Thereafter, Mr McGrail, acting under Mr Yome’s direct orders, led the operational response (McGrail 3 para 148(a) [A120]; Yome 1 para 29 [A1346]; [T/7/59.8]).

- 2.10 Mr Yome sought legal advice from the Attorney-General (Mr Michael Llamas KC) and Senior Crown Counsel (Mr Rhoda KC, formerly the Attorney-General), who advised that the arrest and detention of the serviceman, and the seizure of his devices, by the JPSU in Gibraltar, was unlawful. Mr Llamas advised the MoD that, in his opinion, the MoD agencies were acting outside of their jurisdiction (Yome 1 para 18 [A1344]).
- 2.11 On 7 February 2017, Mr McGrail contacted Provost Marshall Squadron Leader Chris Collins ('**PM Collins**') to raise his concerns about the legality of the serviceman's arrest. At 11.00, RGP officers met with JPSU officers, who refused to hand over to the RGP the devices which they had seized from the serviceman [C147]. PM Collins informed the RGP that the serviceman's devices would be examined in the UK. If the devices were found to contain incriminating evidence, he would be flown back to the UK, to be charged and tried in the UK [C147].
- 2.12 At 12.54, RGP officers again met officers from the JPSU. PM Collins told them that he had arranged to send the serviceman's IT devices to the UK on 8 February 2017 [C148].
- 2.13 At 15.08, the RGP proposed to PM Collins that the RGP should conduct a parallel investigation into any offences committed in Gibraltar. PM Collins declined to co-operate with this proposal and repeated that forensic analysis of the devices would take place in the UK [C149].
- 2.14 At 16.30, Mr McGrail met Colonel Frank Green (the Chief of Staff, British Forces Gibraltar), and PM Collins, who again rejected the proposal of a parallel RGP investigation [C150]. PM Collins stated that the solution was to send the serviceman back to the UK. Mr McGrail responded that the RGP could be driven '*to impose executive action*', but he stressed that he hoped to resolve the issues by discussion to prevent further escalation [C151]. PM Collins agreed to put the RGP's arguments to his superiors and revert to Mr McGrail [C151].
- 2.15 At 19.33, Mr Yome sent a WhatsApp message to the RGP Senior Management Team ('**SMT**') chat group, noting that the Governor (Lt-Gen Davis) wanted 'a

pragmatic approach’ and, in contrast, Mr Picardo *‘wants us to go for the jugular. Prepare all necessary warrants etc. This person will not be allowed to leave jurisdiction and retrieve computers etc.’* [C757]. The SMT’s full run of messages can be found from [C757] to [C789].

- 2.16 At 22.12, PM Collins informed Mr McGrail that he planned to fly the IT devices out to the UK the next day, but when asked whether he was also intending to fly the serviceman out he replied saying *‘he was not at liberty’* to discuss his investigation strategies [C151-2].
- 2.17 On Mr Yome’s instructions, late that night, RGP officers applied for a warrant from the Stipendiary Magistrate to search the JPSU premises and recover the serviceman’s IT devices. The Stipendiary Magistrate declined to grant the warrant, on the grounds that he considered that there was insufficient evidence to suspect that the IT devices seized from the serviceman would reveal evidence of him having committed offences in Gibraltar [C152]. In the circumstances, on 8 February 2017, Mr Yome instructed Mr McGrail to make a fresh application for a warrant to the Supreme Court of Gibraltar to authorise the seizure of the devices, which was listed for 15.00 that afternoon.
- 2.18 Prior to 8 February, Mr Yome repeatedly tried to contact Commodore Walliker (the Commander of British Forces in Gibraltar). I infer that he hoped to arrange that the RGP and the MoD could co-operate in the investigation and reach an agreement as to how to proceed. However, Commodore Walliker was not in Gibraltar at the time and Mr Yome was unable to speak to him. Mr Yome did, however, manage to speak to one of his deputies, who maintained that they were acting in accordance with the legal advice from their legal team in the UK, and denied that any arrest or seizure of property had occurred. Mr Yome protested that the arrest was unlawful and said that he had a legal opinion from the Attorney-General to support him (Yome 1 para 16 [A1343]).
- 2.19 The Governor, who was abroad at the time, states that he requested that Mr Yome engage with the Commander of British Forces to *‘ensure that both civilian and military legal and due process imperatives were met in a mutually-supporting*

manner', and considered that the issue could be worked through by the military and civilian authorities. According to the Governor, he only became aware that '*anything was wrong*' when he received a telephone call from Mr Picardo on 8 February 2017, as I set out below. Mr Pyle, then acting as Governor in the Governor's absence, asked Mr Rhoda to request that the RGP defer any action whilst Mr Pyle sought legal advice from the Foreign and Commonwealth Development Office ('**FCDO**') as to whether the RGP had primacy in the matter [C152].

8 FEBRUARY 2017: THE CONFRONTATION ON THE RUNWAY

- 2.20 At 14.00, Mr McGrail learned that a military aircraft had landed at RAF Gibraltar. He reported this to Mr Yome [C153, C772]. An MoD officer asserted that the flight in question was a purely operational visit (Yome 1 para 20 [A1344]). Mr Yome believed that this explanation was untrue (Yome 1 para 20 [A1344]). PM Collins gave evidence that the flight had been planned for many months, and had not been flown in especially (Collins 1 para 11 [A1398]).
- 2.21 Mr Yome then received information that the serviceman and his IT devices would be removed from Gibraltar on the aircraft (Yome 1 para 20 [A1344]). Mr Yome thought that flying the serviceman out from Gibraltar '*was clearly unacceptable to [him] and [he] felt that the RGP's legal and operational authority was being challenged and undermined by the MoD...*' (Yome 1 para 21 [A1344]). Whilst the events at the airport were unfolding, at 15:20, Mr McGrail attended the Supreme Court to make a fresh application for a warrant, which was granted by the Chief Justice [C153]. Having regard to the immediacy of the developing circumstances, there may have been insufficient time to serve the warrant.
- 2.22 Mr Yome ordered that RGP officers and vehicles go to the RAF station at the Airport (Yome 1 para 21 [A1344]). When he learned that the serviceman and his IT devices had already been taken onto the plane, which was even then moving to its take-off position, he ordered RGP officers to drive police vehicles onto the runway, so as to prevent the aircraft from taking off, which they then did (Yome 1 para 24

[A1345]). The officers blockading the runway were acting on Mr Yome's specific orders (Yome 1 para 25 [A1345]).

- 2.23 Commodore Walliker then told Mr Yome that the aircraft would be returned to the stand (Yome 1 para 24 [A1345]). Mr Yome stated that shortly after this call, he received confirmation that the person and computer had been taken off the aircraft, which Mr Yome saw as vindicating the RGP's actions. Commodore Walliker later provided assurances to Mr Yome that the exhibits would be handed to the RGP in due course. In the circumstances, the search warrant granted by the Chief Justice was not executed [C157].
- 2.24 I pause to note that Mr McGrail was not one of the officers who drove onto the runway, but instead attended the JPSU Headquarters to speak to PM Collins [C154]. The Inquiry received evidence from Sergeant O'Malley, who claimed that Mr McGrail made '*threatening and extreme*' comments when entering the JPSU that he had arrested police officers in the past and would not hesitate to arrest them again [A1349]. Mr McGrail denied this and states that he treated Sergeant O'Malley with '*respect and courtesy*'; he also points out that the Police Complaints Board dismissed his complaint (McGrail 5 paras 49-53 [A155-6]).
- 2.25 At 18.00, Mr Picardo telephoned the Governor, and updated him on events. The Governor told Commodore Walliker to keep the serviceman in Gibraltar, and to hand over his IT devices, until the RGP had completed their inquiries (Davis 1 para 12 [A1410]).

AN ANALYSIS OF THIS INCIDENT

- 2.26 I pause here to comment on the constitutional implications of the confrontation on the runway.
- 2.27 For three hundred years, the UK was the colonial power in Gibraltar. The Gibraltar Constitution of 2006 (which came into force on 2 January 2007) profoundly changed that relationship. To the Government of Gibraltar, the supremacy of the laws of Gibraltar, which apply even to the MoD bases there, is a principle of the highest constitutional importance. The Chief Justice of Gibraltar, sitting in the

Supreme Court in Gibraltar, had issued a warrant authorising the RGP to search for, and to seize, the serviceman's devices and it seemed to the RGP that the MOD were obstructing the execution of the warrant. PM Collins says that the warrant was never served; perhaps there was not time to do so. However, I have no doubt that it seemed to the RGP that some officers in the MoD were obstructing the execution of the warrant, and in the circumstances, I consider that their belief was entirely reasonable. Mr Picardo and the RGP saw the actions of the MoD as a violation of their jurisdiction and of their constitutional principles, and even of the Rule of Law, which they were determined to uphold.

- 2.28 Mr Picardo strongly supported – and still strongly supports – this stance on this point of principle in relation to the confrontation on the runway. However, he does not support what followed, which he described in his evidence to the Inquiry as a '*particularly low moment*' in the dealings between UK and Gibraltar [T/16/25.10], to which I will later turn.
- 2.29 I do not think that the officers of Armed Forces understood the significance of this point. PM Collins has said that the move of the RGP onto the runway was '*a vastly disproportionate act*' (Collins 1 para 15 [A1399]).
- 2.30 Commodore Walliker has attested that '*the general behaviour of RGP officers on 8 February from the very top down was bizarre, potentially dangerous and unbecoming*' (Walliker 1 para 6 [A1386]). He had cause to '*wonder why the RGP felt compelled to insert themselves – unnecessarily in [his] view – into a criminal investigation being conducted by [British] Police*' (Walliker 1 para 5 [A1385]). Although he did not put this precisely in these terms, his view appeared to be that the serviceman was not a fugitive from justice; indeed, quite the opposite because he would face justice in the UK. He might have added, as events were to prove, that there were much better resources for the forensic examination of IT devices in the UK than there were in Gibraltar.
- 2.31 Moreover, he believed that there was '*no indication that a crime had been committed in Gibraltar*' by the serviceman (Walliker 1 para 5 [A1385]). I infer that no one had explained to him that the possession of a device in Gibraltar on which

were stored indecent images would be an offence in Gibraltar, regardless of where the downloading had taken place. He could not understand why the RGP had applied for a warrant, and he still believes that the actions of the RGP *‘had potentially hindered the investigation in [the] UK’* (Walliker 1 para 5 [A1386]). In one sense, this was quite true, but it misses the point entirely, which was the acute sensitivity of the principle at stake, as seen in Gibraltar.

- 2.32 Furthermore, since he claimed that the serviceman was believed to have mental health issues, the decision to send the serviceman back was *‘taken separately and based on a duty of care to a potentially vulnerable individual ... and certainly not as an attempt to prevent him from being arrested and charged by RGP’*. (Walliker 1 para 5 [A1385]. Mr McGrail disputes that the serviceman was removed on welfare grounds, and states that the serviceman was informed by senior military officials that he was being removed from Gibraltar in order to be arrested (McGrail 5 para 43 [A154]).
- 2.33 In the following days, Mr Yome met the Governor and Commodore Walliker. Mr Yome states that they agreed that the RGP would investigate whether offences had been committed in Gibraltar and would be given access to the IT devices (Yome 1 para 26 [A1345]).

THE LATER FAILURE OF THE RGP’S EXAMINATION OF THE DEVICES

- 2.34 A later examination of the serviceman’s IT devices in Gibraltar by the RGP failed to find any indecent images, and he was therefore effectively cleared in Gibraltar and released. He returned to the UK. His devices were sent to the UK for examination by forensic experts retained by the MoD, which found more than 40,000 indecent images of children, some of the most serious level. In due course, the serviceman was arrested by the police in the UK, appeared before a Court Martial and, following pleas of guilty, was sentenced to imprisonment.

THE SECOND INCIDENT: THE ARREST OF THREE SENIOR MOD OFFICERS

- 2.35 Following the confrontation on the runway, Commissioner Yome instructed Mr McGrail to ‘conduct a thorough investigation into the actions of the senior MoD officers’ (Yome 1 para 28 [A1346]).
- 2.36 Mr McGrail reported to Mr Yome that he needed to execute search warrants at various MoD premises for the purpose of securing material evidence in furtherance of his investigation. Mr Yome specifically sanctioned that course of action (Yome 1 para 29 [A1346]).
- 2.37 On 27 February 2017, the search warrants were granted by the Stipendiary Magistrate [C190]. The legality of the search warrants was not subsequently challenged in the courts.
- 2.38 On 28 February 2017, Mr Llamas received a joint opinion from Lord Pannick KC and Emily Neil, on the JPSU’s jurisdiction in Gibraltar [B2136]. They advised that the Armed Forces Act 2006 (UK) did not extend to Gibraltar. Further, neither the JPSU nor the Provost Marshal’s Department had legal authority to arrest the serviceman in Gibraltar, nor to seize his IT devices, and that their actions in doing so were unlawful. By contrast, as they pointed out, the RGP did have the legal power, right and indeed duty to do so. No one has since questioned the correctness of this advice. Mr Llamas shared this advice with Mr Yome and Mr McGrail [C205].
- 2.39 After the searches were conducted, Mr McGrail advised Mr Yome that, in his opinion, there was sufficient evidence to arrest three senior officers with obstructing the police in the execution of their duties and attempting to pervert the course of justice, which course Mr Yome specifically sanctioned. Mr Yome gave evidence that Mr Llamas was also in attendance at the meeting where this was agreed (Yome 1 para 30 [A1346]) but Mr Llamas disputes this (Llamas 2, paras 73-4 [A317]). I need not find which version of events is correct.
- 2.40 I must give a brief outline of what happened next, so as to explain Mr Pyle’s reaction, but I do not think it necessary to do more than that.

- 2.41 The plan for the ‘*simultaneous strike*’, as Mr McGrail called it [B2663], was written under Mr McGrail’s directions. The possibly unfortunate operational name given was ‘*Apache*’, which he says was drawn at random from an alphabetical list [T/7/225.9]. He justified his approach as being ‘*a standard approach where you fear that the persons that you are dealing with may confer, dispose of evidence or abscond*’ [T/7/60.19], which does not take into account the fact that he was dealing with senior officers in the Armed Forces, and not gangsters or target criminals (who present a danger of flight, or resisting arrest, or interfering with evidence, whereas senior officers present no such risks).
- 2.42 On 1 March 2017, the RGP arrested Colonel Frank Green, Wing Commander Liz Hutchison (the Station Commander at the Airport) and PM Collins, on suspicion of obstructing the police and attempting to pervert the course of justice. The RGP executed search warrants and seized equipment from the Naval Base and at MoD offices. Colonel Green was arrested in his office, in the presence of the Commander of the British Forces [C2757]. Mr McGrail was involved in the execution of the warrant at the British Forces Gibraltar Headquarters and arrested Colonel Green. Commander Hutchison was arrested in front of her team at RAF Gibraltar Station Headquarters. PM Collins was arrested in the baggage hall of the Airport, as he arrived from a flight (Collins 1 para 17 [A1400]), with what Mr Pyle described as ‘*quite unnecessary drama, removed from a civilian, commercial flight*’ (Pyle 1 para 21.5 [A246]). Mr Pyle later accepted in questioning that PM Collins had been arrested in the baggage hall, not on the plane itself [T/18/17.16]. Commodore Walliker’s assessment was that the RGP intended to ‘*humiliate*’ the MoD by making the arrests in public, and stated he witnessed RGP officers giving each other ‘*high fives*’ (Walliker 1 para 8 [A1387]). Mr Picardo referred to the ‘*high fiving*’ in his evidence [T/16/27.12].
- 2.43 The officers who had been arrested were not charged; Commissioner Yome states that they were given ‘*formal warnings*’ (Yome 1 para 32 [A1346]). There is some dispute as to why the officers were released, which I need not resolve. Mr McGrail stated that this was pursuant to a discretion not to charge, and that the evidence showed that criminal offences had been committed (McGrail 5 para 47 [A155]);

and Commissioner Yome stated that the claim that all three officers had acted on UK legal advice did not exonerate them (Yome 1 para 32 [A1346]). On the other hand, Commodore Walliker suggests that the officers were released because *‘there was nothing to charge them with’* (Walliker 1 para 11 [A1387]).

REACTIONS AT THE TIME OF THE INCIDENT

THE RESPONSE OF MR PICARDO

- 2.44 In an email on 8 February 2017, on the day of the confrontation on the runway, Mr Picardo wrote to the senior officers of the RGP that by *‘asserting our jurisdiction ... you have done Gibraltar proud’*. Although he acknowledged that *‘we must not exacerbate matters... You enjoyed my full support today at every stage of the way. Excellence (sic) work’* [C142].
- 2.45 Mr McGrail gave evidence that at some time in mid-February, he went to the Airport to meet Mr Picardo, who was flying out to London. Mr McGrail gave evidence that Mr Picardo then thanked him and Mr Ullger, who was also there, for the manner in which the RGP had dealt with the incident. He said that he was proud of the RGP and what they had done. He gave no hint of criticism and put the blame entirely on the officers of the Armed Forces whom he called *‘fucking idiots’* (McGrail 5 para 13(d) [A146]). Mr Ullger had no recollection of this meeting, but said that he had no reason to doubt Mr McGrail’s account [T/13/83.10]. When he gave evidence, Mr Picardo did not deny it [T/16/11.23]. Further, Mr Picardo stated it was *‘very likely’* he called the military officers *‘fucking idiots’*, stating: *‘I felt that way then and I would be unsurprised if I didn’t feel that way again if I once again reviewed things... It’s not a position from which I resale.’* [T/16/12.11].
- 2.46 On 3 March 2017, two days after the arrests, Mr Picardo sent an email to Mr Yome with a strong message of support for the RGP’s actions, describing the MoD officers as *‘clowns in uniform’* and their actions as *‘nonsense and bravado... displayed by fools’*. The email added: *‘If it requires another turn of the screw, which I will not hesitate to support you in, it will once again have been brought about by those who fail to recognise the need to show proper and genuine contrition and*

respect for the RGP and for our Constitution.’ The email concluded: ‘Gibraltar, its Chief Minister, its Government and its people are proud of their police and the SMT, Commissioner and their Attorney-General. The UK as a whole, conversely, has been embarrassed by its senior ranks on the Rock...’ [C207].

- 2.47 On 4 March 2017, the CBF sent an email to Mr Yome (copying Mr Pyle, the Governor and others) setting out his *‘understanding of what has been a difficult situation’*, and stating that *‘I very much hope that you will be in a position to drop all charges against all three, lift the conditions of bail, and inform them that the investigation has been formally terminated because there is no evidence to support the charges of perverting the course of justice’* [C221]. On 5 March 2017, Mr Picardo sent a WhatsApp message to Commissioner Yome, which the latter circulated to the Senior Management Team [C817], stating that *‘every single operative sentence in the email from the CBF contains an error of legal understanding and presents equivocation in respect of contrition...’*. That same day, Mr Picardo sent a further email to Mr Llamas (copying Commissioner Yome), stating: *‘I have just spoken to [the Governor] and told him they have to allow RGP to have space to make their own decisions on criminal aspects of this case... Let’s keep in touch to ensure that we continue to do Gibraltar proud on all aspects of this matter....’* [C232].

THE REACTION OF THE MOD

- 2.48 The arrests of the three senior officers, and the manner in which they were effected, caused outrage within the UK Armed Services. According to the evidence called by the Government parties, the arrests caused great damage to the UK’s relationship with Gibraltar; I readily accept that. No doubt anxious to repair the damaged relationships, all three of the arrested officers apologised to the RGP [C2788-2794]. However, Mr Pyle pointed out that he had never seen an apology by the RGP [T/18/26.2], and Mr McGrail stated that he had not apologised for his behaviour during the Airport Incident as *‘I don’t think I needed to’* [T/7/61.15].
- 2.49 On 6 March 2017, Commodore Walliker sent an email stating that *‘the events of 8 February and the manner in which they have continued to unfold are a source of*

deep regret for me, my team, and I know that is also reflected by my higher HQ and the MoD, and apologising for any alarm or offence caused by a previous email [C237]. I note that this apology was not repeated in his later witness statement.

- 2.50 On 8 March 2017, Rear Admiral A D Radakin (then the Chief of Staff, Joint Forces Command) wrote to Mr Yome (copied to Mr Llamas and to the Governor) apologising on behalf of the Joint Forces Command. He accepted that the MoD's view at the time that the case was subject to exclusive Service Police jurisdiction was not correct [C260]. He admitted that Joint Forces Command *'did not immediately recognise the jurisdictional legal primacy in this case for [the RGP] to investigate, and if necessary, prosecute the individual'* [C261]. He expressed his *'regret'* that there were *'altercations'* between British Forces personnel and RGP officers and regretted the accusations that British Forces Personnel had behaved *'disrespectfully'* towards RGP officers [C261].
- 2.51 On 9 March 2017 (the day on which the apologies were issued), a member of the FCDO staff emailed Mr Picardo, copying Mr Llamas, Mr Picardo, Mr Pyle and the Governor. They stated: *'I just went to update Sir Alan Duncan [then Minister for Europe] in relation to the events of 8 February and beyond. The Minister was very happy that we appear to have reached a good outcome. He asked me to pass on his personal gratitude to you, and the Commissioner of Police, for helping us get to this point.'* [C291]
- 2.52 At the Inquiry hearing, Mr Pyle was asked whether this email demonstrated that the Minister held a positive view of how the incident was resolved, he replied that *'they are happy to have reached a good outcome. It doesn't mean they're happy with how we got there. This is diplomacy...'* [T/18/27.6].
- 2.53 On 10 March 2017, the Governor sent an email to Mr Yome (copied to Mr Picardo and Mr Llamas) offering *'deep gratitude to [Mr Yome] and [his] Police Officers for the efficacy and manner in which the RGP has conducted this investigation... in short a very tough job, very well done'* [C293].

- 2.54 By contrast, Commodore Walliker and PM Collins have provided statements to the Inquiry which strongly criticise the actions of the RGP, and indeed of Mr McGrail.

THE ATTITUDE OF MR PYLE

- 2.55 I formed the view from his evidence that Mr Pyle was not too impressed with these apologies. He pointed out [T/18/27.6] that they were given by diplomats, and such is part of their '*trade craft*'. He appeared to be suggesting that these apologies should not be taken at face value.
- 2.56 It was clear to me that he has always taken a very dim view of the actions of the RGP and of Mr McGrail in particular. Mr Pyle gave evidence that he still finds it incredible that, after an event which nearly caused a rupture in the relationship between Gibraltar and the MoD/UK and after the issue of jurisdiction had been resolved, a decision was taken to arrest three senior military officers [T/18/18.11].
- 2.57 He said that the confrontation on 8 February had caused consternation and the Provost Marshall's arrest was carried out with what he alleged had been '*unnecessary drama*' (Pyle 1 para 21.3-21.4 [A246]). As a result, ministerial intervention was required to undo the damage done to relations with Gibraltar (Pyle 1 para 21.11 [A248]). Mr Pyle says that he complained at the time about Mr McGrail's conduct and urged a review (Pyle 1 para 21.7 [A247], [T/18/32.9]), but the Inquiry has not been provided with any written record of these complaints or this request.

THE GPA REPORT

- 2.58 On 9 May 2017, Mr Picardo requested the GPA to inquire into the Airport Incident. (Gonçalves 1 para 11 [A338]).
- 2.59 The Inquiry heard a good deal of evidence about the investigation by the GPA. Mr Gonçalves, then the Chairman of the GPA, understood that the scope of this request was to inquire only into the confrontation on the runway, and not the subsequent arrests [T/14/123.17]. No explanation has been given for the limited terms of this reference, but his evidence on this point has not been challenged.

- 2.60 At their meeting of 15 May, the GPA were advised by a member, who was a lawyer (their '*unofficial legal advisor*' as Mr Gonçalves called him [T/14/120.11]), that the GPA had no authority or jurisdiction over the MoD [T/14/120.11]. The GPA therefore decided to report under section 19 of the Police Act, which just requires the Commissioner to provide such '*information ... documents ... evidence ... and other things*' as may be '*required by [the GPA] for the purposes of the carrying out any of its functions*'. [C316]
- 2.61 I point out that, although the GPA had no authority or jurisdiction over the MoD in that it could not compel officers in the Armed Forces to make statements, or to produce documents or to attend to answer questions, in my opinion, there was nothing to prevent them from asking them to do so voluntarily, and they may well have been willing to do so. Mr Pyle said that he was '*unequivocal*' in his belief that the MoD would have cooperated fully [T/T/18/35.1], but Mr Gonçalves says that Mr Pyle did not raise this with the GPA. I need not make any finding on this point because the GPA did not ask them, having accepted the advice that they had been given. I observe, in passing, that it is not good practice to act upon the advice of an unofficial legal advisor. The advice resulted in the information which they received being one-sided. If they wanted legal advice, they should have properly instructed a lawyer to advise professionally.
- 2.62 Understandably, the GPA proceeded as they had been advised. Therefore, they did not ask for, and did not receive any statements, or submissions, from the MoD, or from any officers of the Armed Services, or from the Governor, or for that matter from Mr Pyle.
- 2.63 On 17 August 2017, Mr Yome provided the GPA with three documents about the Airport Incident being: Mr McGrail's report of 10 February 2017 [B2121], the opinion of Lord Pannick dated 28 February 2017 [B2136] and Rear Admiral Radakin's letter of 8 March 2017 [C477]. The GPA met to discuss those documents in August 2017 (Gonçalves 1 para 19 [A340]).
- 2.64 On 31 August 2017, the GPA heard from Mr Yome, Mr McGrail, Mr Ullger and Chief Inspector Tunbridge. No minutes of that meeting have been traced (Gonçalves 1

paras 19-20 [A340]). Mr McGrail explained that there was a *‘question and answer session and we had to deliver individual inputs to the Authority on our actions and our decision making’* [T/8/10.2].

- 2.65 Mr Pyle realised that, because he had been acting as Governor at the time of the confrontation on the runway (in the absence of then Governor Lt Gen Davis), he might therefore be conflicted, so he thinks that he did not attend all the meetings. Because not all the minutes can be found it is not clear which meetings he attended and which he did not. It appears that Mr Pyle did attend the meeting where the GPA agreed to use their powers under section 19 [C316], but he does not recall attending the meeting where the RGP officers attended to give evidence to the GPA [T/18/37.18], and Mr Gonçalves also did not believe that Mr Pyle was present [T/14/118.23]. There is no record of Mr Pyle giving, or being asked for, his account of the Airport Incident, but neither is there any record of his having objected to the process adopted by the GPA.
- 2.66 On 5 September 2017, Mr Gonçalves wrote to Mr Picardo communicating the GPA’s conclusions on the confrontation on the runway (and not on the subsequent arrests: [T/14/167.23]):

‘The GPA has come to the firm conclusion that the actions of and the restraint shown by the relevant RGP officers during the ... Incident were considered, deliberated, entirely proportional and highly commendable. As such, we do not doubt the effectiveness and probity of the policing demonstrated by the RGP in respect of the ... Incident. We would take the liberty of adding, though it may not be our place to do so, that the actions of certain MoD personnel in respect of the ... Incident deserve censure and that you should consider whether a full inquiry ought to be undertaken by an (sic) body independent of the RGP and the MoD so that lessons may be learnt from this incident.’
[B2157-8]

2.67 There is no evidence that Mr Pyle was himself a party to this conclusion, but he did not criticise it at the time, still less did he seek to dissent. Mr Pyle accepted that he probably did not object to the use of the section 19 procedure, but stated that he told the GPA that they should seek evidence from the MoD [T/18/34.25]. Mr Pyle now alleges that the GPA's methodology was '*seriously flawed*' (Pyle 1 para 21.7 [A247]). He criticised (at [T/18/33.17, 35.16]) their decision not to seek evidence from the MoD, from him or from the Governor. For reasons which were not explained to me, the GPA were not asked to consider the later arrests. Furthermore, they had been advised that they could only consider evidence from the RGP. Therefore, within the confines of the terms of the reference made to them, and the advice they had received, they did their best. Furthermore, they recommended that there should be a full inquiry [B2158]. The Governor, Mr Picardo and Commodore Walliker also then recommended an independent review (Pyle 1 para 21.8 [A247], Davis 1 para 13 [A1410]).

NO LATER INQUIRY OR REVIEW

- 2.68 Mr Llamas said that following the Airport Incident, he was required to '*pick up the pieces*' and as a result spent most of 2017-2018 drafting an Armed Forces Gibraltar Act and a Protocol on the exercise of criminal jurisdiction in Gibraltar [T/12/121.14], which was intended to avoid such problems recurring in the future.
- 2.69 The evidence of Commodore Walliker (Walliker 1 para 21 [A1412]) suggests that the passing of the Armed Forces Gibraltar Act and the Protocol was probably one of the main reasons why the MoD decided not to have an Inquiry, or even a less formal review. They may also have thought that it was better to move on rather than to dwell upon what they considered to be such a regrettable sequence of events, which had caused so much damage to the relations between the UK and Gibraltar. I have been careful myself not to conduct that independent review, which the MoD decided not to hold at the time. Therefore, I have not sought to resolve the disputes of fact about what the GPA heard and did. This would not help me at all to consider the circumstances relevant to Mr McGrail's retirement, and so I consider it to be outside my Terms of Reference.

SUBSEQUENT COMPLAINTS BY TWO JUNIOR MOD STAFF MEMBERS

- 2.70 On 19 August 2019, two junior MoD staff members made a complaint to the Police Complaints Board ('PCB') alleging that Mr McGrail had acted outside the remit of the search warrant served on the JPSU [C2536 – C2544].
- 2.71 The PCB did not uphold this complaint [C2552]. The complainants asked the GPA to review the decision of the PCB [C2553-4, C2560-1], which they did. They concluded that, since no new evidence had been provided and the decision of the PCB could not be construed as perverse, it was therefore upheld [C5143].
- 2.72 I do not think this has any bearing whatsoever on the circumstances of Mr McGrail's retirement. I mention it only to show that I have not overlooked the evidence on the point.

LATER REACTIONS TO THE INCIDENT

THE LATER REACTION OF MR PICARDO

- 2.73 I will need to return to these points later, so there will be some repetition, but the later reaction of Mr Picardo, and his change of attitude towards the Airport Incident is better understood if I first set these points out here.
- 2.74 I have set out the robust language used at the time by Mr Picardo to express his strong approval and encouragement of much of the conduct of the RGP, not only at the airport on 8 February but also for the subsequent arrests. By contrast, Mr Picardo gave evidence to the Inquiry that '*massive damage*' had been done to Gibraltar's relationship with the MoD as a result of the arrests in the aftermath of the Airport Incident [T/16/4.15]. He accepted that there is no written record of him expressing concern to anyone about Mr McGrail at the time, but he said that absence of written record did not mean that he did not express criticism orally, in particular to Mr Yome [T/16/28.18].
- 2.75 As I will explain when I come to detail the events leading up to Mr McGrail's retirement, on 14 May 2020, over three years after the Airport Incident, but only two days after the RGP had attempted to execute a search warrant at the offices

of Hassans, Mr Picardo texted Mr Pyle. Mr Picardo raised a number of issues which he claimed were then causing him to start having concerns about the senior management of the RGP, including the Airport Incident when – as he then put it – *‘we had to go in to bat for them, despite all aspects having clearly been mishandled by the RGP (and parts of MoD also)’* [B1439].

- 2.76 In his statement to the Inquiry (Picardo 1 paras 21-22 [A186]), Mr Picardo had further changed his tone. Whilst he continued to think that the *‘policing objectives were meritorious’*, and whilst he recognised that he had, at the time, given *‘fulsome public support’*, he now thought that Mr McGrail had led the investigation in a way which was *‘unnecessarily institutionally confrontational’* towards the MoD and that the objective *‘could and should have been more quickly, effectively and easily achieved via a more collaborative and conventional route’*. Furthermore, he now recognised that *‘Mr McGrail had led the RGP into a dangerous, difficult and damaging situation for Gibraltar’* in its relationship with the MoD. He expressed his concern at the manner in which they had acted and for *‘the consequences for the massively important relationship with the MoD’* (Picardo 2 para 21 [A230]). Mr Picardo said in evidence to the Inquiry that Mr McGrail could have dealt with the arrests differently, for example by procuring attendance of witnesses to New Mole House or procuring the delivery up of electronic devices that would not have required the RGP to raid the Tower [T/16/3.23]. Voluntary attendance at New Mole House with a solicitor was a course that Commodore Walliker says that he had suggested to Mr McGrail and Mr Yome (Walliker 1, para 8 [A1387]). Mr McGrail denied this [T/7/59.24], and stated that he did not think the RGP considered asking the MoD officials to attend the police station. If he did not consider this option, he ought to have done.
- 2.77 At the Inquiry, Mr Picardo confirmed that before the confrontation on the runway, he was *‘very clear that the RGP deserved our support’* [T/16/7.4]. He could not recall whether he had advised the RGP to *‘go for the jugular’*, but he conceded that he might have done so [T/16/8.17]. He repeatedly contrasted his support for the confrontation on the runway, with the subsequent arrests of the three senior MoD officials and search of the Tower, which he did not support [T/16/3.23, 7.4].

THE LATER REACTION OF MR LLAMAS

2.78 Although Mr Llamas accepted in evidence to the Inquiry that there was no written record of his concerns about the Airport Incident at the time, and indeed he did not express any such concerns in his written evidence to the Inquiry [T/12/165.1], Mr Llamas said that the *‘wound that had been created by the way those three senior officers had been arrested, ran very deep’*, and that as a result he had concerns about Mr McGrail’s policing method and style [T/12/122.10].

MR PYLE’S LATER REACTION

2.79 Mr Pyle has not changed his mind. Mr Pyle has always thought (although not recorded in writing) that the relationship between the MoD and Government was damaged by the Airport Incident [T/18/29.18]. He has always thought Mr McGrail actions during the Airport Incident demonstrated errors of judgment, arising from his personality. He made clear that his objections to Mr McGrail conduct arose *‘more about the arrests and the subsequent action than the actual incident and the blocking of the plane taking off’* [T/18/15.16].

CONCLUSIONS ON THE AIRPORT INCIDENT

2.80 As I wrote at the beginning of this section on the Airport Incident, I accept that it is not within my Terms of Reference to decide whether the confrontation at the airport on 8 February 2017 (and the subsequent arrests, or the inquiry by the GPA) could – and should – have been handled rather differently by the RGP, MoD or GPA, and I deliberately avoid so doing. But, in my opinion, the Airport Incident does have a relevance to Mr McGrail’s retirement, which I seek to explain.

2.81 I do not doubt that the Government of the UK, and indeed its people, regard Gibraltar with affection, but the hard political fact is that, as Mr Picardo put it in the course of his evidence [T/16/5.7], the UK’s essential interest in Gibraltar is as a military asset, available for use if and when the need – often unpredictable and unpredicted – arises. Arresting senior officers of the Armed Forces, in a manner which they perceived to be unnecessary and humiliating, caused massive damage

to the relationship with the UK and its Armed Forces, which took a long time, and much patient diplomacy, to repair.

- 2.82 I have now set out the primary facts of the Airport Incident. I move on to draw conclusions and inferences from those primary facts.
- 2.83 As I will set out in detail when I turn to the sequence of events leading to Mr McGrail's retirement, Mr Picardo mentioned the Airport Incident in his WhatsApp message to Mr Pyle on 14 May 2020 [B1439]. However, it was not one of the matters referred to during the email exchanges between Mr Pyle and Mr Picardo on the evening of 17 May 2020 when they were considering the issues to raise with Dr Britto (the Chairman of the GPA), whom they were to meet the next day [C3948]. It was not referred to by Mr Picardo in his 'Informal Record' of the meeting of 18 May 2020, which served as a minute for that meeting [B1357]. It was not one of the matters referred to by the GPA in either of their two letters to him on 22 May 2020 calling upon him to retire [C4315, B1364], which letters were in part written by Mr Picardo [T/17/23.15, T/17/26.11]. Nor was it mentioned either by Mr Pyle or Mr Picardo in their letters to the GPA, dated 3 and 5 June 2020 respectively [C4675, C4734]. Indeed, the Airport Incident was not mentioned to Mr McGrail either by Mr Picardo or by Mr Pyle (or for that matter by Dr Britto) in any of the conversations that they had with Mr McGrail before his retirement.
- 2.84 However, in my opinion, the part which Mr Pyle believed that Mr McGrail had played in the Airport Incident, coloured his opinion of his competence and judgment and was one of the reasons which contributed to his loss of confidence in Mr McGrail at the time of his retirement in June 2020. I will comment later on this, after I have reviewed the circumstances of Mr McGrail's appointment as Commissioner and again after I have reviewed the sequence of events leading up to his retirement.

CHAPTER 3:

THE ASSAULT INVESTIGATION

BACKGROUND

- 3.1 Subject to the preamble, one of the matters into which I am required to inquire is Issue 2:

*‘The RGP’s investigation into an assault on a helicopter pilot and crew member in Gibraltar in March 2017 (**The Assault Investigation**).’*

- 3.2 The assault on the helicopter pilot occurred on 10 March 2017, long before Mr McGrail was appointed Commissioner. However, I observe that this was only the month after the Airport Incident, when I think it likely that there was lingering resentment from the MoD, and perhaps also from Mr Pyle, as to the part which they believed that Mr McGrail had played in it.
- 3.3 When I come to consider the events leading to Mr McGrail’s retirement, I will set out the complaints that were then made about him. However, I note at this juncture that the Assault Investigation was not mentioned at any of the following points:
- a. Mr Pyle did not complain about this investigation either to the RGP, or to Mr McGrail, or to the GPA, nor is there any record of him having complained to anyone else.
 - b. Mr Pyle did not mention the ‘Assault Investigation’ when he was first formulating the complaints against Mr McGrail either at his meeting with Mr Picardo on 15 May, or in his email to him on 17 May.
 - c. Mr Pyle did not include the ‘Assault Investigation’ in the list of complaints that he and Mr Picardo made when they met Dr Britto on 18 May 2020.
 - d. Neither Mr Pyle nor Mr Picardo mentioned it in any of the exchanges between them as they were considering Mr McGrail’s retirement.

- e. The incident was not mentioned in either of the two letters which were sent to Mr McGrail by the GPA on 22 May 2020, much of which Mr Picardo drafted.
 - f. Nor did Mr Pyle, or Mr Picardo, or Mr Llamas mention it in the ‘three letters’ which they sent on 3 and 5 June 2020. Although in his letter to the GPA on 3 June Mr Pyle referred to his ‘already-existing concerns’ about Mr McGrail, he did so without giving any details and not mentioning the Assault Investigation [C4676]).
 - g. Mr Pyle did not mention it to Mr McGrail when he met him on 5 June 2020.
- 3.4 I will consider all these exchanges in detail, as I come to consider the sequence of events leading to Mr McGrail’s retirement. (I will then provide the detailed references; I have not considered it necessary to do so here).
- 3.5 Indeed, Mr Pyle made no complaint about the Assault Investigation until he swore his First Affidavit on 12 May 2022, fully two years after Mr McGrail’s retirement. He wrote that his *‘loss of confidence in Mr McGrail’s probity and integrity, and his leadership of the RGP, had been progressive over a period of time and by reason of a number of incidents’* which, he said, had *‘begun early on after [his] arrival in Gibraltar’* and one of the matters he cited was *‘the Helicopter Pilot Incident’* (Pyle 1 para 20, 22 [A245, 248]).
- 3.6 He gave these details (Pyle 1 para 22 [A248]):

‘In March 2017, during a stop-over in Gibraltar, a helicopter and another member of the crew were assaulted in a bar in Gibraltar, the pilot so severely that his cheek or jawbone was fractured which prevented him from flying. Despite witnesses, and I believe CCTV, charges were never pressed. It took the RGP several weeks to state that the forensic evidence they had collected was not conclusive. The widely held belief in MoD

circles is that the RGP did not investigate the crime correctly to protect those involved in the attack.'

- 3.7 Mr Pyle alleges that the investigation of this assault was one of the reasons why he lost confidence in Mr McGrail, and the Inquiry, therefore, identified it as one of the relevant Issues.
- 3.8 The Inquiry also received evidence on the Assault Investigation from Commodore Michael Walliker, then Commander of the British Forces in Gibraltar. He thought that the RGP was operating what he called '*systemic cultural issues*', applying different standards to citizens of Gibraltar and to serving members of the Armed Forces. He also said that (Walliker para 13 [A815]):

'...there is no evidence of any investigation being conducted whatsoever. At the time, there were rumours that an assailant had been arrested, but allowed to go home to change his clothes, and that he was released without charge only a few hours later. When I spoke to Supt McGrail about the incident, I was told that whilst the RGP was investigating the incident, there was evidence that the helicopter pilot was drunk and abusive and therefore deserved what he got. I reported this conversation back up my command chain...'

THE EVIDENCE CONSIDERED

- 3.9 In the light of these criticisms, the Inquiry Team requested disclosure from the RGP of the material bearing upon the 'Assault Investigation'. I have examined that material being: (i) a bundle of witness statements, extending to 74 pages (admittedly with some duplication) [C399]; (ii) a detailed written analysis of the CCTV footage, extending to 30 pages, with many annotated 'stills' [C369]; (iii) a single page file note on the examination of the CCTV recorded from Watergate House [C305]; (iv) a 5 page written submission to Cellmark Forensic Services

[C347]; and (v) a 17 page report by the Officer in the Case, PC Figueras, dated 12 July 2017 [C352].

- 3.10 Having reviewed this disclosure, on 5 February 2024, the Solicitors to the Inquiry ('STI') wrote to Core Participants summarising the evidence received to date, and expressing the preliminary view that (on the basis of the evidence) there appeared to have been a thorough and professional investigation of the Assault. The Government parties (and particularly Mr Pyle) were invited to confirm whether they continued to pursue this allegation, and stated that if the matter was to be withdrawn, a short statement of Agreed Facts could be produced summarising the evidence on this issue (Issue 2). In the alternative, if the Government parties continued to pursue the allegation, the Inquiry proposed that the Commissioner could make findings on Issue 2 summarily on the papers.
- 3.11 On 3 March 2024, Peter Caruana & Co responded indicating that Mr Pyle could not agree to the removal of Issue 2 for the reasons STI had articulated, and stated that *'Mr Pyle has alluded to this issue ... as one of several incidents by virtue of which his loss of confidence in Mr McGrail had been progressive over a period of time. Mr Pyle stands by his sworn evidence as to the matters that contributed to him, subjectively, to progressively lose confidence in Mr McGrail...'*. Nevertheless, Peter Caruana & Co stated that the Government Parties had *'no issue with [the Inquiry] removing Issues 2 and 7 from the Inquiry's provisional list of issues'* (I will return to Issue 7 below). In the circumstances, I considered it prudent to keep the 'Assault Investigation' as an issue for the Main Inquiry Hearing.

THE INVESTIGATION BY THE RGP

- 3.12 I now set out the facts relating to that investigation, which are not disputed by Core Participants.
- 3.13 F and J (the '**complainants**') were members of the Royal Navy serving as helicopter crew as their ship, HMS Monmouth, stopped over in Gibraltar. On 10

May 2017, they were assaulted and suffered injuries outside a bar off Casemates Square. J suffered a broken bone to his face.

- 3.14 At the material time, Mr McGrail was the Superintendent in Charge of the Crime and Protective Services Division. As was the usual procedure, the investigation of the assault was handled by uniformed officers. It was treated sufficiently seriously to be given an operational name, 'Bolero', led by DI Roy Perez (McGrail 5 paras 55-58 [A156-7]).
- 3.15 As it seems to me, every step was taken to try to obtain eye-witness evidence. The officer in the case, PC Figueras, obtained statements from 18 witnesses [C399]. It was no fault of the police that few eye-witnesses were willing to come forward and none was able, or willing, to give evidence describing or identifying anyone responsible. It also seems to me that every step was taken to seize and examine the CCTV. It is not the fault of the police that many cameras were not working, or that the images of others were blurred, or that the action happened out of shot of those cameras which were working. The clothing was sent for forensic examination [C347] but this proved negative [C366]. Attempts were made to interrogate the suspects' phones but that yielded no evidence either [C367].
- 3.16 PC Figueras submitted a written report to Chief Inspector Wayne Tunbridge (Mr McGrail's Deputy at the time) [C352]. I summarise his findings as follows:
 - a. No one, including J himself, was able to describe, still less to identify, anyone who had been involved in the attack.
 - b. Although footage from many cameras was recovered, upon detailed analysis, there was no CCTV coverage of the actual attack upon J. The CCTV appeared to show two suspects following the two naval officers F and J out of the bar, but no more than that. Some suspects identified in that footage were arrested and interviewed, but they gave 'no comment' interviews, as they were entitled to do. This evidence was not sufficient to justify charging them.

- c. Another suspect was being restrained, or being held back, at the scene by another, but it was not clear why he was being held back. There was not sufficient evidence against this suspect either.
- d. Two suspects were seen running away from the square but the mere fact of running away from such an incident was plainly insufficient to justify charging them.
- e. There was no forensic science evidence to implicate anyone.
- f. Therefore, there was no evidence to prove that any of the suspects were involved in this assault and '*the likelihood of any conviction against [the four suspects] is non-existent*' and he recommended that they be released from arrest [C368].

EVIDENCE ON THE ASSAULT INCIDENT

MR MCGRAIL'S EVIDENCE

- 3.17 In his written evidence, Mr McGrail said that he had no recollection of the incident, or the investigation, when he first read Mr Pyle's affidavit (McGrail 5 para 54 [A156]). However, having now read the RGP file again, his evidence to the Inquiry was that his involvement in the investigation was limited to seeking updates on its progress (McGrail 5 para 61 [A157]), so that he could update the Provost Marshall [T/7/65.9]. There is no evidence that Mr McGrail played any part in deciding that the evidence was insufficient, or that he was even asked to approve or ratify that decision.
- 3.18 He described Mr Pyle's allegation that the RGP did not investigate the crime properly as '*absurd and insulting*' (McGrail 5 para 64 [A157]). He pointed out that the Commanding Officer of HMS Monmouth wrote to Mr Yome (then the Commissioner) expressing appreciation for how the RGP had dealt with the matter (McGrail 5 para 63 [A157]). Mr McGrail gave his opinion that '*having seen the work that the officers carried out and the lengths that the RGP went to in terms*

of sending exhibits off for forensic examination to the UK, arresting four or five individuals, questioning them, trawling through hours on end of CCTV footage, I think it was an investigation well-conducted [T/7/65.9]. He also stated that neither Mr Pyle nor the GPA had raised this issue with him [T/7/66.20]. He said that he has no recollection of any conversation as alleged by Commodore Walliker, and denies that he would ever have said that a victim of an assault deserved a beating (McGrail 5 para 68 [A158]).

MR PYLE'S EVIDENCE

- 3.19 As I have already said, Mr Pyle made no complaint into the investigation at the time, let alone into Mr McGrail's part in it, which is significant since he was a member of the GPA. He said that he thought it might have been in a newspaper report and that such reports were usually discussed at GPA meetings [T/18/44.6], although no such report has been produced, nor is there any minute of such a discussion.
- 3.20 Nor, as Mr Pyle said to the Inquiry, did he take any steps to verify the '*widely held belief in MOD circles*' that the RGP did not investigate the crime. He stated that he had no reason to doubt Commodore Walliker's version of events [T/18/42.10; T/19/209.1]. I comment that he does now have a reason to doubt this version of events: namely, if he was to read the file of evidence presented by the RGP which, in my opinion, showed the '*widely held belief*' to be quite wrong.
- 3.21 When asked if he accepted the information on which he now relied was hearsay, he stated '*well, it was hearsay from the Commander of British Forces so I suspect – I suggest it is more than hearsay*' [T/19/209.7]. Mr Pyle stated that he had a '*very close relationship*' with Commodore Walliker, and had what he said been untrue, it would have been a '*very brave thing*' to report them up the command chain [T/19/34.14-35.4]. In questioning, Mr Pyle accepted that he gave more weight to information coming from MoD sources than from other people, as he had no reason to doubt what they were telling him [T/19/35.12].

- 3.22 Mr Cruz, on behalf of the RGP, argued in his closing submissions (para 13.2.2) that by making these criticisms, Mr Pyle has here shown his '*predisposition*' to give '*unnatural weight and importance*' to the views of the MoD, and has thereby demonstrated '*his lack of thoroughness, or desire to make an informed and cautious assessment, before reaching conclusions*'. This was, Mr Cruz suggested, also clear from his attitude to the Airport Incident (paragraph 13.1.5).
- 3.23 Mr Pyle's view, relied on by the Government Parties in their closing submissions (para 230), is to the effect that if Commodore Walliker repeated the rumour up the chain of the command, he must have believed it to be true. I do not doubt that he believed the rumour to be true, but – as I have pointed out – he was mistaken in his belief.

CONCLUSIONS ON THE ASSAULT INCIDENT

- 3.24 Having regard to the material which I have read, I consider that this investigation by the RGP was highly competent, thorough and professional. The conclusions of the officer in the case seem to me to have been soundly based upon the evidence and they were, in my opinion, obviously correct. Despite his thorough investigation, there was no sufficient evidence against any particular suspect to justify charging them. I reject the suggestion that there was some failure or misconduct in the investigation, or that it was not properly pursued by the RGP, still less that the investigation was deliberately obstructed so as to protect the guilty, or that Mr McGrail was in some way complicit in these alleged failures or misconduct. Although Commodore Walliker may have thought that there was no police investigation whatsoever, he was quite wrong.
- 3.25 I think that, as with the Airport Incident, which had occurred only a fortnight before, the Assault Investigation coloured Mr Pyle's opinion of Mr McGrail's competence and judgment.

- 3.26 I will return to this topic after I have reviewed the circumstances of Mr McGrail's appointment as Commissioner and again after I have reviewed the sequence of events leading up to his retirement.
- 3.27 I should perhaps make clear that although Mr Picardo says that his loss of confidence was due to several reasons (although mainly his meeting with Mr McGrail on 12 May 2020), he has never claimed that the investigation into the assault on the helicopter pilot was one of them, and I am sure that it was not.

CHAPTER 4:

THE ALCAIDESA CLAIMS

INTRODUCTION

- 4.1 I need to mention, as no more than a footnote to the Report, the ‘Alcaidesa Claims’.
- 4.2 In the WhatsApp which he sent to Mr Pyle on 14 May 2020 [B1439], Mr Picardo referred to the ‘*huge concerns*’ which he was ‘*starting to have*’ about the senior management of the RGP, and at (v) referred, in passing, to the ‘*continuing saga of the Alcaidesa claims*’.
- 4.3 It was as result of this reference that Issue 7 was included in the List of Issues, which – subject to the preamble – reads as follows: ‘*the RGP’s involvement in and/or the handling of the Alcaidesa Claims*’.
- 4.4 However, I note that:
 - a. Neither Mr Picardo nor Mr Pyle mentioned the Alcaidesa Claims when they met Dr Britto just four days later on 18 May 2020, to explain to him their ‘*grave concerns*’ about ‘*certain aspects of policing in Gibraltar*’ [B1448].
 - b. Dr Britto made no reference to the Alcaidesa Claims in the two letters which he sent to Mr McGrail, on behalf of the GPA, on 22 May 2020 (the second of which was – in effect – drafted by Mr Picardo) [C4315, C4282].
 - c. Neither Mr Picardo, nor Mr Pyle, nor Dr Britto made any reference to the Alcaidesa Claims in their later exchanges with Mr McGrail. Nor indeed did they make any reference to them as part of their decision-making or thought process in their statements to this Inquiry, let alone suggest that Mr McGrail had any blame or responsibility for what occurred. Nor did they explain how it is alleged that the Alcaidesa Claims had any relevance to the reasons and circumstances leading to his retirement.

- 4.5 As I have already set out above in relation to the Assault Investigation, on 5 February 2024 STI wrote to Core Participants about potentially narrowing the Preliminary List of Issues. The letter noted that the Inquiry Team had read and considered the detailed report into the incident by Supt Gomez, and observed that the report made clear that Mr McGrail was not involved in the incident and was not one of the officers under investigation. The letter invited the Core Participants (and in particular Mr Picardo and Mr Pyle) to reflect on the position and confirm whether they considered it necessary to maintain the Alcaidesa Claims as an issue.
- 4.6 In response on 3 March 2024, Peter Caruana & Co indicated that Mr Picardo could not agree to the removal of Issue 7. Their letter stated that Mr Picardo's WhatsApp of 14 May 2020 had said he was '*starting to have huge concerns about the senior management of the RGP*' and that he had illustrated his '*concerns by reference to the list of issues mentioned in WhatsApp, which included "the continuing saga of the Alcaidesa claims"*'. Although the Government parties indicated that they nevertheless had no issue with me removing Issue 7 from the Provisional List of Issues, given the circumstances, I considered it prudent to keep the 'Alcaidesa Claims' as an issue for the Main Inquiry Hearing.

THE FACTS

- 4.7 Since Mr Picardo in his WhatsApp message of 14 May 2020 sought to rely on the 'Alcaidesa Claims' as being one of the reasons that he had concerns about the Senior Management of the RGP, I need to set out the facts, which are as stated in the thorough report into the incident by Supt Gomez, dated 30 November 2010 [C61].
- 4.8 At the outset, I note that neither I nor the Inquiry Team have seen, nor has any Core Participant produced, any evidence of any '*claims*', in the civil sense, relating to the Alcaidesa incident. When asked in questioning about what he meant by the 'Alcaidesa Claims', Mr Picardo said that he '*understood that there might be criminal proceedings against police officers in Spain, claims for*

trespass for property owners, etc', and *'that had not been resolved at the time: I understand there was still outstanding litigation in Spain on those issues, which were still causing ructions within the RGP etc'*. When asked whether that was a reference to Mr McGrail or to other people within the RGP, he said: *'To the RGP generally and the senior management team in particular'*. Mr Picardo clarified that he was not aware of any involvement by Mr McGrail in the Alcaidesa incident itself, but that he was *'in superintendence of the force and this issue had not yet been resolved'* [T/16/312.12]. Mr Pyle confirmed that the 'Alcaidesa Claims' were not really in the picture for him [T/18/151.19].

- 4.9 In the circumstances, I can only set out the facts relating to the Alcaidesa incident and the criminal proceedings in Spain which followed. Those facts are not now disputed and can be stated by way of a short summary. At the time, Mr McGrail was a Chief Inspector; it was long before he was appointed Commissioner of Police. On two occasions in early August 2010, officers from the RGP entered a flat in Alcaidesa accompanied by the owner, and with his knowledge and consent, but without the knowledge or consent of the tenant, and without any warrant granted in Spain. On the second occasion, they removed some property, which they believed to have been either unlawfully possessed by the tenant or to be of evidential value to an on-going investigation. They then took that property back to Gibraltar. Their actions were unlawful in Spain and resulted in public and political criticism. In November 2018, five individuals, including two serving RGP officers and an ex-police officer, admitted crimes of trespass of a household and (in the case of the ex-officer) theft before a Magistrate in a Spanish court, and were sentenced to fines [C1591].
- 4.10 Mr McGrail had no involvement whatsoever in the incident. He did not authorise the visits to Spain. He did not visit the flat. He did not later ratify the visits. He was not one of the officers under investigation for disciplinary offences arising out of the incident. His only involvement in the affair was to interview under caution some of those suspected of such offences.

- 4.11 Mr McGrail has made his own views very clear (at McGrail 5 para 165 [A176]) when he said that the Alcaidesa Claims are ‘*clearly irrelevant (or so tangential as to be effectively irrelevant)*’ to the claimed loss of confidence by Mr Pyle by Mr Picardo. No one has sought to argue to the contrary.

CONCLUSIONS ON THE ALCAIDESA CLAIMS

- 4.12 In his WhatsApp message of 14 May 2020, Mr Picardo stated that the ‘*Alcaidesa Claims*’ were among the reasons that he was starting to have concerns about the Senior Management of the RGP. He has not maintained any criticism of Mr McGrail personally arising from the Alcaidesa incident, nor could he properly have done so. His position appeared to be attributing some undefined responsibility to Mr McGrail on account of his superintendence of the force at the time [T/16/313.17].
- 4.13 In my judgment, no possible criticism could properly be made of Mr McGrail personally arising out of the ‘Alcaidesa Claims’. Even if any decisions or actions were taken by the senior management of the RGP in relation to the ‘Alcaidesa Claims’, or the Alcaidesa incident, at the time – as to which I deliberately make no finding – Mr McGrail was not a party to those decisions or actions and cannot be held responsible for acts of others. In the circumstances, I do not think that issue this played any part in Mr Picardo losing confidence in Mr McGrail, which led to his retirement, which is why I have relegated it to be effectively a footnote to the Report.

THE PANORAMA ARTICLES AND OTHER MEDIA COMMENTS

- 4.14 For completeness, I should deal with another point.
- 4.15 Mr Morello, formerly the Chairman of the GPF, has alleged (in his statement at Morello 1 para 59 [A1208]) that Mr McGrail gave misleading information in a couple of Panorama articles (and to GBC and the Chronicle) in June 2019 when he said, in relation to the Alcaidesa incident, that there were ‘*no adverse records in respect of any RGP officers in Spain*’. Mr McGrail’s basis for making this

statement was that in Spain, after six months, a fine for (as he puts it) ‘*civil trespass*’ is ‘*spent or possibly even wiped from their systems*’, and that ‘*civil trespass*’ is not a crime in Gibraltar (McGrail 6 para 49 [A1459]). I make no finding on the accuracy or otherwise of these statements, as they played no role in Mr Picardo’s mind.

- 4.16 I might point out that, at the time of the Panorama articles, Mr McGrail received fulsome messages of support from the Governor, from Dr Britto (then the Chair of the GPA) and indeed from Mr Picardo, who wrote that he had ‘*no issue with the manner in which past and current COP’s have answered questions on this*’ (McGrail 6 para 49 [A1459]).
- 4.17 The answer that Mr McGrail gave to Panorama played no part in Mr Picardo losing confidence in him, and he has never claimed that it has. I only mention this so as to dismiss it and to show that I have not overlooked the point.

CHAPTER 5:

THE APPOINTMENT OF MR MCGRIL AS COMMISSIONER OF POLICE

THE APPLICATIONS FOR COMMISSIONER OF POLICE

- 5.1 Mr Yome, then the serving Commissioner of the RGP, gave notice that he intended to retire on 1 May 2018. Accordingly, in October 2017, the GPA invited applications for appointment of the new Commissioner.
- 5.2 The procedure for the appointment was agreed by the members of the GPA, including Mr Pyle, although he did not then understand that there would be no standardised scoring (a point to which I refer later). The process was similar to that adopted at the time of Mr Yome's appointment. It was the same process as that adopted when appointing Chief Constables in the UK. The GPA delegated the appointment to a sub-committee of four members, consisting of Mr Gonçalves (the Chairman), Mr Pyle, Mr Ernest Gomez (the then Chief Secretary) and Mr Edgar Lavarello. The sub-committee drew up relevant criteria to be considered.
- 5.3 Mr Gonçalves told the Inquiry that Mr Pyle had said, in advance of the interviews, that he could not support Mr McGrail (Gonçalves 1 para 25 [A341]; [T/14/132.20]), which Mr Pyle denies [T/18/49.1]. The Inquiry heard conflicting evidence on the point (which is summarised in paragraphs 481-3 of the Facts Schedule prepared by CTI). Mr Neish KC on behalf of the GPA described this – rightly in my opinion – as a peripheral point (closing submissions, para 2). I do not consider the point sufficiently relevant to the circumstances of Mr McGrail's retirement to require me to resolve this conflict.
- 5.4 Mr Pyle had suggested that the sub-committee should invite applicants from outside Gibraltar, possibly from the Commonwealth, but that proposal was rejected. Some, including Mr Gonçalves, thought that there were suitable candidates in Gibraltar [T/14/132.12]. Mr Lavarello thought that there may not have been sufficient time to seek candidates from the UK [T/14/205.4].
- 5.5 Two candidates applied: Mr McGrail and Mr Ullger, both then Superintendents. Both provided a written application, with evidence to support various identified personal and policing 'competencies', together with a written statement of their

vision for the future of the RGP [C621, C680]. Mr Yome provided written assessments of both candidates [C715, C730]. Both had attended the Strategic Command Course with the College of Policing in the UK, which provided a report upon each of them [B2176, B2192].

THE INTERVIEWS

- 5.6 On 27 November 2017, the candidates gave their presentations to the sub-committee setting out their respective visions for the RGP in the next 5 years (Mr McGrail's slides are at [C600]). On 30 November 2017, each was then interviewed on various agreed topics, which did not include the 'Airport Incident' or the investigation into the assault on the helicopter pilot, as set out below.
- 5.7 Mr Gonçalves confirmed that, during the appointment process, Mr Pyle did not raise either the Airport Incident or the investigation into the assault on the helicopter pilot. Indeed, he said that GPA knew nothing of the latter, which they had never discussed [T/14/149.8]. Mr McGrail said that the Airport Incidents were not put to him *'in any way, shape or form'* during the application process, including during questioning by Mr Pyle [T/8/13.9]. Mr Pyle accepted that he did not use his opportunity as a panel member to raise concerns on either of these issues [T/18/54.5]. He suggested that *'I like to consider myself professional enough that I could park issues that were a year or so old and be objective'* [T/18/50.7], and added *'this was about the future of the RGP, not things that had happened before'* [T/18/54.13]. I asked him in his evidence to the Inquiry, whether he thought it was fair to have referred to these matters at the time of Mr McGrail's retirement, if he did not raise them during the recruitment process. Mr Pyle said that he took the point, but that if he had referred to matters without explaining them to the sub-committee, he may have been asked to go into detail [T/18/54.21-56.3]. I think it is unfortunate that he did not then do so.

THE APPOINTMENT OF MR MCGRAIL

- 5.8 The sub-committee met on 5 December 2017 and considered the applications; Mr Gonçalves believes that these deliberations lasted *'the best part of an hour'*

[T/14/171.3]. By a majority of 7-2, the GPA recommended Mr McGrail for the appointment; Mr Pyle and another dissented.

5.9 Mr Gonçalves thought it was more likely than not that minutes were taken [T/14/175.19; T/19/223.11]; but, if there were minutes, they have been lost.

5.10 As a result of this process, the GPA advised the Governor (Lt-Gen Davis) to appoint Mr McGrail. Accepting that advice, and having consulted Mr Picardo, the Governor appointed Mr McGrail as Commissioner of the RGP, for a term of four years, to take effect on 1 May 2018, upon Mr Yome's retirement. The Governor's letter of appointment thanked the GPA '*for its diligent work in the conduct for the selection process*' [B2271]. The letter requested that the GPA '*formally review progress against the objectives set out in Superintendent McGrail's vision statement and associated action plan at the mid-point of his tenure as Commissioner*' (i.e. April 2020). In his letter to Mr McGrail, the Governor congratulated him of the '*well-deserved appointment*' and assured him of his '*personal support*' [C749].

SUBMISSIONS ON THE APPOINTMENT PROCESS

5.11 As I will later set out, when I deal with the events leading to Mr McGrail's retirement, on 14 May 2020, Mr Pyle sent a WhatsApp to Mr Picardo saying that: '*As we thought at the time, wrong appointment*'. This referred to Mr McGrail's appointment as Commissioner of Police. In that message Mr Pyle also claimed that '*the recruitment process ... was abject*' [A199].

5.12 This text message suggests that Mr Pyle may have complained to Mr Picardo at the time but, if he did so, there is no written record of his complaints [T/18/52.19]. Furthermore, he made no official complaint to the GPA. Mr Pyle gave evidence that he wrote to the Governor setting out his concerns, but no record of such a complaint can now be found. In the absence of any written record, I am not impressed by these reservations. In the course of his oral evidence to the Inquiry,

Mr Pyle reflected that the word '*abject*' was too strong, he would now say that the process '*had flaws*' or '*was suboptimal*' [T/18/52.6].

5.13 The Inquiry heard live evidence about the process from Mr Gonçalves and from two other members: Mr Lavarello and Mr Pyle. I also heard from Mr Ullger, the losing candidate (and, of course, from Mr McGrail himself).

5.14 Mr Lavarello, who was a member of the sub-committee, gave evidence to the Inquiry about the appointment process. He was an impressive witness, with much administrative and business experience. He considered that the process was sufficiently thorough for a role as important as Commissioner of Police [T/14/202.13]. He stressed that every member of the GPA had the opportunity to ask as many questions as they wanted during the application process [T/14/212.12].

5.15 In his questioning of Mr Gonçalves, Sir Peter Caruana KC for the Government Parties advanced three criticisms of the process [T/14/178.16]. First, he said that the committee did not deliberate sufficiently. However, it seems to me that the process was very thorough and, having heard from Mr Gonçalves and Mr Lavarello, as well as from Mr Pyle, I am satisfied that the sub-committee properly considered the matter. Secondly, he says that minutes should have been kept and none have been found. Mr Gonçalves answered that by saying that his letter to the Governor recording their decision served as an adequate written record [T/14/178.6]. Thirdly, Sir Peter says that although the criteria were clearly set out (see at [B2167]), there was no agreement as to the standardised scoring of the various competencies. It may now be common HR practice to do so, but I doubt whether it was a universal practice back in 2017. Even if it was, I am satisfied that this omission – if such it be – does not invalidate the process.

CONCLUSIONS ON THE APPOINTMENT PROCESS

5.16 In my opinion, the best answer to criticisms of the appointment process is that the members of the sub-committee, including Mr Pyle, followed the process that

they had agreed upon. Furthermore, it was the same process that had been adopted before in Gibraltar and was the general practice in the UK. I might also make the point that Mr Gomez, the then Chief Secretary, who was on the sub-committee, voted for Mr McGrail. I also consider it significant that Mr Ullger, the losing candidate, regarded the process as being entirely fair [T/13/202.13]. I might also add that several members observed that there were two excellent candidates, either of whom was suitable to be appointed as Commissioner (and indeed Mr Pyle marked both candidates as suitable and credible: Pyle 2 para 25 [A266]).

- 5.17 I accept the submissions on behalf of the GPA that the process was ‘*transparent, thorough and fair*’ (opening submissions, p15 para (v)). Accordingly, I reject Mr Pyle’s criticisms. I find no procedural fault or flaw with the appointment process.

THE RELEVANCE OF THIS TO MR MCGRAIL’S RETIREMENT

- 5.18 I turn to consider the relevance of these points to the circumstances of Mr McGrail’s retirement.
- 5.19 As I will make clear when I come to consider the events leading to Mr McGrail’s retirement, both the Airport Incident and the investigation into the assault on the helicopter pilot were mentioned, more than once, in the discussions between Mr Pyle and Mr Picardo. In his first witness statement, Mr Pyle said that ‘*his loss of confidence in Mr McGrail’s probity and integrity, and his leadership of the RGP had been progressive over a period of time and by reason of a number of incidents and matters*’ (Pyle 1, para 13.2 [A240]). I have no doubt that among the ‘*incidents and matters*’ which he had in mind were both the Airport Incident and the investigation into the assault on the helicopter pilot.
- 5.20 Mr Pyle said in his oral evidence to the Inquiry that: ‘*... the Incident at Sea alone is the only issue that ... matters to me in terms of losing confidence. Looking at the airfield incident, the helicopter, the Federation, the bullying, the reports and this sort of stuff on their own would not cause me to lose because I believed they*

could be rectified and put right. The incident at sea could not be put right.' [T/18/137.14-22]. He, therefore, relies on his oral evidence that he did not *'take either of these matters [the Airport Incident and the Helicopter Pilot Incident] into account when later considering if he should require him to retire, nearly two and a half years later'*. But because he discussed both these incidents with Mr Picardo at the time of Mr McGrail's retirement, I have no doubt that both had – at the very least – coloured his view of Mr McGrail. In my opinion, it was inappropriate, and even unfair, for Mr Pyle to have allowed these matters to be referred to at the time of Mr McGrail's retirement, without him making clear that he had not raised them at the time of his appointment. Indeed, despite his considerable doubts, and whilst preferring the other candidate, Mr Pyle had marked McGrail as being *'suitable'* for appointment (Pyle 2 para 25 [A266]).

CHAPTER 6:

THE FEDERATION COMPLAINTS

INTRODUCTION

- 6.1 I turn now to consider the complaints against Mr McGrail made by the Gibraltar Police Federation (the ‘GPF’). Later, as I examine the sequence of events leading to Mr McGrail’s retirement, I will consider in detail the complaints against Mr McGrail as they were made at the time, but I need here to give a short summary to provide the context for this section of the Report.
- 6.2 In his message to Mr Pyle [B1439], dated 14 May 2020, Mr Picardo referred to the ‘*Federation bullying issues*’ as one of the reasons for his concerns about, and for starting to lose confidence in, the senior management of the RGP. Beyond those three words, he then gave no further particulars. Moreover, neither Mr Picardo nor Mr Pyle mentioned the ‘*Federation bullying issues*’ in their email exchanges on the evening of 17 May [B1211], as they were considering between themselves what ‘*concerns*’ they should raise with Dr Britto; nor did they do so at that meeting on 18 May [B1357]. Nor did the GPA mention them in the ‘second letter’ of 22 May, which Mr Picardo had drafted to set out their complaints [B1364]. Mr Pyle did, however, refer in his letter to the GPA on 3 June [C4677] to ‘*the numerous allegations of bullying...*’.

MR PYLE’S COMPLAINTS

- 6.3 In his written evidence to the Inquiry on this topic (at Pyle 1 para 23 [A248-9]), Mr Pyle made three points (among others). First, that Mr McGrail’s management style had ‘*... resulted in a fractured, almost hostile relationship between him and the Gibraltar Police Federation ...and in poor morale within the RGP*’. Secondly, he said that the resulting tensions between the RGP leadership and the GPF had ‘*culminated in formal complaints from the Federation to the GPA about Mr McGrail*’, and that members of the GPA had regularly spoken at its meetings about the allegations of ‘*bullying and intimidation*’ by Mr McGrail. Thirdly, he said that he had ‘*often heard numerous anecdotal stories of bad practice and behaviours by the RGP*’ that were ‘*hard to ignore*’ given their volume. However,

given that they were rumours and anecdotal, despite some of the sources being credible, they were not things on which he felt it was possible to act, but they *‘nevertheless contributed to [his] growing sense of unease’*.

THE ATTITUDE OF MR PICARDO

- 6.4 Mr Picardo has set out his position on this topic (at Picardo 1 paras 109-111 [A216-7]). He said that one of the policies which he had implemented when he was appointed was *‘the implementation of a Police Federation ... for the representation of officers’*. He said that whilst this had *‘worked well and was embraced by Commissioner Yome’*, the relationship between the GPF and Mr McGrail was *‘very difficult’*. He said that Mr McGrail *‘seemed incapable of accepting even the most basic criticism’* from the GPF, and that he was *‘not able to engage with them positively at all’*. In later evidence (Picardo 2 para 5.3 [A220]) he stated that he found Mr McGrail to be *‘virulently against the work of the GPF, even going as far as trying to persuade me to undo the establishment of the Federation because he considered that he could not work with them.’*
- 6.5 Mr Picardo also referred to an occasion when Mr McGrail had written to the Governor to ask him to propose legislation limiting the powers of the GPF in the representation of its members. Mr Picardo told Mr McGrail that he did not agree with that proposal. He *‘... found this unacceptable given that the Government had obtained a popular mandate to pass the legislation, which had worked well with Mr Yome as Commissioner’* (Picardo 2 para 21 [A230-1]).
- 6.6 Generally, Mr Picardo said that although these allegations did not cause him to lose confidence in Mr McGrail, they were *‘a demonstration of his very fractious and difficult approach to relationships’* (Picardo 1 para 111 [A217]).

THE IDENTIFIED ISSUE

- 6.7 Having regard to the mention of the issues of ‘bullying’ made in Mr Picardo's email of 14 May 2020, and to what Mr Pyle and Mr Picardo had said in their

witness statements, Issue 6, subject to the preamble, to which I have frequently referred, requires me to inquire into:

*‘The complaint(s), if any, made by the Gibraltar Police Federation (**‘the Federation’**) and/or its members to the Gibraltar Police Authority about Mr McGrail (including as to the difficult relationship between Mr McGrail and the Federation), and any allegations of bullying or intimidation by Mr McGrail discussed by the Gibraltar Police Authority (**‘the Federation Complaints’**).’*

- 6.8 This Issue was deliberately revised to be drawn tightly, so as to focus only on those complaints which were made to the GPA, or which were discussed by them, rather than to open up a whole range of other issues, none of which were considered by Mr Pyle or Mr Picardo at the time of Mr McGrail’s resignation.

EVIDENCE FROM THE GPF

- 6.9 Shortly after Mr McGrail’s retirement, Mr Maurice Morello, the Chairman of the GPF, had sent an email to the GPA on 22 June 2020 [C5002], from which I quote:

‘It is no secret that we have had numerous issues with Mr McGrail due to his management style and the lack of respect which he demonstrated towards the Gibraltar Police Federation, and especially towards the Secretary, Leif Simpson and myself as Chairman. As a result, the relationship between Command and the Federation was strained at best, over these last two years.’

- 6.10 Pursuing their investigation into these topics, the Inquiry Team asked the GPF this question:

‘During Mr McGrail’s tenure as Commissioner of Police, was the Police Federation aware, or put on notice, of any allegations or complaints by its members in respect of bullying

and/or intimidation by Mr McGrail? Were any such complaints raised by the Police Federation to the Gibraltar Police Association or any other body or office?’

- 6.11 As a result of that enquiry, Mr Maurice Morello, and Mr Leif Simpson, the Secretary, both made statements. Mr Morello’s statement ran to fully 38 pages [A1194], detailing their various complaints about Mr McGrail’s management of the RGP. As the vast majority of these do not bear upon the reasons and circumstances leading to Mr McGrail’s resignation, and therefore did not fall within the Terms of Reference, I ruled those parts of the statement to be irrelevant in a Closed Ruling dated 1 March 2024 (necessarily closed given that it was inappropriate to refer to the irrelevant material in a public Ruling). A short summary of that Ruling was published on the Inquiry website on 1 March 2024.² The same applies to most of the long statement by Mr Simpson [A1467], and that of the previous Chairman of the GPF, Mr Henry Bautista [A1498].
- 6.12 But, more relevantly, both Mr Morello and Mr Simpson described their own dealings with Mr McGrail. They both described the relationship between them personally, the Federation and Mr McGrail as being very difficult. They believed that Mr McGrail was determined to bring the Federation and its officers under his direction and control, whilst they assert that they were only determined to preserve their independence (Morello 1 para 7 [A1195]; Simpson 1 para 5 [A1467]). Mr Morello described Mr McGrail’s management style as being ‘*completely authoritarian*’ (Morello 1 para 93 [A1214]). Both Mr Morello and Mr Simpson described his manner as ‘*bullying*’ (Morello 1 para 94 [A1214]; Simpson 1 para 104 [A1484]).

² <https://coircomp.gi/wp-content/uploads/2024/03/2024-03-01-Summary-of-Rulings-PH4-Agenda-items-8-and-9.pdf>

THE POOR RELATIONSHIP BETWEEN MR MCGRAIL AND THE GPF

- 6.13 Everyone who provided statements to the Inquiry on this topic said that the relationship between the GPF and Mr McGrail was very difficult, even antagonistic. CTI give many examples in their Facts Schedule (at paragraph 458), which I do not need to repeat here. Similarly, they have identified (at paragraph 459) many contemporaneous documents demonstrating tension and disagreement between Mr McGrail and the GPF, which again I do not propose to repeat.
- 6.14 I accept that the WhatsApp messages disclosed after the Main Inquiry Hearing show that Mr Ullger used insulting and disrespectful language towards the GPF leaders, referring to them as ‘*idiots*’ [E417], ‘*cabrones*’ (an opprobrious term which has no precise English translation) [E373, E422] and ‘*fools*’ [E1096]. I note that Mr McGrail made no protest at this language. Mr Ullger agreed in evidence at the Reconvened Hearing that the relationship between the RGP leadership and the GPF was ‘*very fractured*’, and even accepted that there was ‘*mutual hostility*’ [T/22/248.9, 250.9], but qualified that by saying that *we always tried to work with the Police Federation*’ [T/22/249.15].
- 6.15 But none of these statements, nor the WhatsApps disclosed after the Main Inquiry Hearing, refer directly to any allegations of bullying of members of the GPF by Mr McGrail, about which Mr Pyle complained in his evidence. I turn then to the allegations of bullying.

CONTEMPORANEOUS COMPLAINTS OF BULLYING

- 6.16 In the summer of 2019, the GPF commissioned a survey from an independent marketing agency to provide evidence of their members’ concerns (Morello 1 paras 87-90, 93-94 and 99 [A1213-5]). The survey identified ‘*discontent amongst the rank and file with complaints of bullying*’; similar criticisms had previously been made of the RGP in the *Panorama* newspaper (McGrail 3 para 16 [A54]). Mr Morello alleged that Mr McGrail ‘*failed to accept that bullying was happening under his watch*’ and ‘*as a result it was never really addressed or appropriately*

tackled’, and added: *‘What he failed to see, or did not want to accept, was that bullying in the RGP stemmed from his authoritarian style of management, which filtered down to senior management and to other managers’* (Morello 1 para 93 [A1214]). Mr Morello went as far as saying that Mr McGrail *‘was himself the biggest problem and bully the RGP had’* (Morello 1 paras 93-4 [A1214]).

DID THE GPF COMPLAIN TO THE GPA?

- 6.17 There is – or at least was – a dispute as to whether any formal complaints were made by the GPF to the GPA about Mr McGrail.
- 6.18 As I have already said, Mr Pyle’s evidence was that the GPF had made *‘formal complaints’* to the GPA (Pyle 1 para 23.2 [A248]), but he was unable to give any particulars of those complaints, nor was he able to identify the date on which such complaints had been made.
- 6.19 Mr Morello gave evidence to the Inquiry that, in late January or February 2020, he spoke to Dr Britto by phone and asked to address the GPA Board, *‘not only in relation to the ongoing internal investigation but the general relationship with the GPF/Command and the authoritarian style of leadership’* (Morello 1 para 145 [A1225]). He said that he attended a meeting at the GPA offices sometime in February 2020 (Morello 1 para 146 [A1225]). He said that he asked them how he could make a complaint of bullying against the Commissioner, to which Dr Britto replied: *‘No please, no, that’s all we need now’*. I think it likely that Dr Britto did say that or words to that effect; and that was, I observe, a very characteristic response. Mr Morello then answered his own question by pointing out that since the Police (Discipline) Regulations 1991 did not apply to the Commissioner of Police, there was no effective way that he could make a complaint against Mr McGrail. Despite this, Mr Morello considered what he had said to be an *‘official complaint’* [T/14/55.9]. Mr Morello says that nonetheless he then gave *‘a summary of events that had transpired since being elected as Convenor and the issues raised in our Staff surveys’*, at which point he claims that a Board member stated *‘that is clearly bullying, and the problem clearly here is Mr McGrail’*

(Morello 1 paras 145-8 [A1225-6]). In questioning, he agreed that the ‘*summary of events*’ he gave to the GPA covered the ‘*kinds of things*’ that he raised in his witness statement, which included allegations of bullying by Mr McGrail against Mr Morello and other officers [T/14/21.4].

- 6.20 He commented that GPA was ‘*very supportive*’, but he did not follow up the matter after the meeting as – to use his words – ‘*it didn’t have the oomph to take on the [RGP]*’ [T/8/22.18].
- 6.21 Mr Morello was – entirely properly I should add – questioned by Mr Neish (on behalf of the GPA) on the footing that no such meeting took place, because there were no minutes of any such meeting, Mr Neish referred to the minutes of various GPA meetings around the time identified by Mr Morello to make his point [T/14/57.9]. Mr Morello remained adamant that this meeting had taken place. He added that most of the members of the GPA were there, including Mr Pyle [T/14/6.5; T/14/11.10].
- 6.22 I will consider later the evidence bearing on the ‘*Job Offers*’, one of which was accepted by Mr Morello; I had this very much in mind as I came to evaluate his evidence. Notwithstanding this, I thought that Mr Morello’s evidence on this point was very convincing: he gave the (rough) date and place of the meeting; he said who was there and gave an account of what he had said. I thought it most unlikely that he had made up or misremembered these details. I should also point out that Mr Morello’s version was supported by Mr Simpson, who had given an almost identical account in his written evidence, although he said that the meeting took place on 31 January 2020.
- 6.23 Dr Britto accepted that the ‘*issues and disputes between Mr McGrail / Command on the one hand and Mr Morello / GPF on the other were occasionally raised with me by both sides*’, but he was firm in written evidence that ‘*no formal complaint, oral or written, was ever made.*’ He said that he ‘*regarded things said to me as matters in dispute rather than complaints*’ (Britto 2 para 3 [A329-30]). He said that he did not recall any meeting of the GPA attended by Mr Morello in January or

February 2020 and made the point, to which I have already referred, that there was no record or minute of any such meeting (Britto 2 para 4 [A330]; Britto 3 para 7 [A333]).

- 6.24 Moreover, none of the other members of the GPA (no fewer than 13 of whom made relevant witness statements) have any recollection or record of formal complaints against Mr McGrail being made.
- 6.25 This seemingly irreconcilable conflict of evidence was resolved during the course of the Inquiry hearing when Mr Lavarello (a member of the GPA) disclosed two emails [C7017-7019], from Dr Britto and the GPA's secretary Ms Hanglin, to the members of the GPA to the effect that Dr Britto would be meeting the GPF at the GPA offices on 31 January 2020 and any other member of the GPA board was '*most welcome to attend*'. In addition, Mr Lavarello's timesheet for that date included 2.5 hours billed to the code 'Admin', which he may have used for GPA matters (as well as others).
- 6.26 Dr Britto still did not recall a meeting taking place on 31 January 2020 but accepted that it possibly did happen. He maintains that it was not an official meeting, and that is why it was not minuted: '*... because it was just almost like having a coffee with them...*' [T/15/24.15]. Therefore, he considered it not to be a formal complaint, which he took to mean '*a written complaint*', which would be considered at an official meeting [T/15/19.16]. I observe that this fine distinction was attractive to him, since it avoided him having to deal with a formal '*complaint*'. Dr Britto did not like conflicts, a topic to which I will need to return when I come to the sequence of events leading to Mr McGrail's retirement.
- 6.27 Although he did not use these precise words, Mr Lavarello also drew the same distinction between official and unofficial/introductory meetings [T/14/217.13].
- 6.28 By contrast, Mr Morello's understanding was that his comments to the GPA (on 31 January 2020) did amount to a '*verbal complaint to the GPA*' [T/14/25.3]. Mr

Morello – understandably – believed that he spoke at an official meeting of the GPA.

- 6.29 I think that this meeting of 31 January was briefly noted in the minutes of the ‘official’ meeting of the GPA on 6 February 2020 [B5881], under the heading ‘*Meeting with GPF & CoP*’, where it was reported that: ‘*the [Chairman] gave an overview of the situation between the GPF and the RGP. He said that he had asked the GPF to draft a policy based on the dignity at work ... the [Chairman] suggested that Authority should advise the CoP to seek guidance upon how federations in the UK function. He also suggested advising the CoP to take a step back on the proposed disciplinary action against the GPF*’ (by way of explanation, the RGP had commenced such proceedings against Mr Morello and against Mr Simpson). The minutes record that Mr McGrail was also present at part of the GPA meeting of 6 February and state that he ‘*explained the situation between the GPF and the RGP*’ and ‘*agree[d] to go down the route of mediation and review*’. However, neither had time to do so before Mr McGrail retired.
- 6.30 Dr Britto observed that the reference to a ‘*Meeting with GPA & CoP*’ was wrong as there had been no such meeting with the GPF (Britto 4 para 8 [A870]), but plainly, to my mind, this minute referred back to the informal meeting on 31 January.
- 6.31 At the Main Inquiry Hearing, Mr Santos (CTI) asked Dr Britto whether he wanted to revisit his evidence in light of the new email disclosure about the 31 January 2020 meeting. Dr Britto then recalled an exchange of the nature that Mr Morello described, but thought that this was at a coffee morning between the GPA and GPF, not a GPA meeting [T/15/22.1]. He said that ‘*I am not 100 per cent sure that my original take on that isn’t the correct one, but I am willing to accept that it could well be*’ [T/15/28.15]. He accepted that he did his best to provide a ‘*mediatory role*’ between Mr McGrail and the GPF [T/15/29.12]. He accepted that the GPA regularly spoke at its meetings about the issue of bullying within the RGP, but he maintained that these discussions did not relate to allegations of bullying by Mr McGrail specifically [T/15/32.10]. However, later in questioning he

stated: *'I wouldn't say regularly but it must have been discussed because we discussed everything that was out there in the community'* [T/15/164.17].

- 6.32 Curiously, Mr Pyle does not recall the meeting as described by Mr Morello either [T/18/62.23; 64.1]. He does not recall being present at any GPA meetings where the GPF made a complaint [T/18/58.24]. In his written evidence, he stated that the GPA *'regularly spoke at its meetings about the allegations of bullying and intimidation by Mr McGrail'* (Pyle 1 para 23.2 [A248]). During oral evidence, he said that he was *'under the impression that the Federation were, or had, complained or were looking to complain formally about Mr McGrail to the GPA'* [T/18/58.8].
- 6.33 Mr Lavarello, who had helpfully alerted us to the meeting of 31 January, did not himself recall a meeting of the type described by Mr Morello taking place [T/14/217.13].
- 6.34 Although no single member of the GPA remembers any such complaint being made – indeed, each one specifically disavows being aware of any complaints of bullying – and although there is no reference in the GPA minutes to him having made any such complaint, I conclude from Mr Lavarello's disclosed emails and from his timesheet entries that there was an unofficial meeting of the GPA and GPF on 31 January. I think this was corroborated by the entry in the minutes of the official meeting on 6 February. Mr Morello's evidence that he made a complaint to the GPA has therefore been confirmed. I accept that he did attend a meeting on that date, and I also accept that he did make the complaints as he has alleged. No one else can remember what Mr Morello said and – regrettably – there was no detailed minute kept. In the circumstances, I cannot with confidence reach any conclusion as to the detail of what he said, but I do accept that he believed that he had made a formal complaint. I also accept that Mr Pyle was aware of these complaints.
- 6.35 But, I do not think it is helpful to enter into the semantic or bureaucratic dispute as to whether this constituted an *'official complaint'*. I accept that no one at the

GPA thought that what Mr Morello said did constitute an official complaint, which no doubt explains why it was not minuted as such and why no action was taken upon it. I also emphasise that I am not making a finding as to the veracity or reliability Mr Morello's underlying allegations of bullying.

MR MCGRAIL'S ANSWER TO THE ALLEGATION OF BULLYING EVIDENCE

- 6.36 In his statement, Mr McGrail accepted that the relationship between the senior management of the RGP and the GPF, and particularly with Mr Morello and Mr Simpson, was '*strained*' and '*difficult*' (McGrail 3 paras 10 [A53] and 149(f)(ix) [A126]; McGrail 6 para 44 [A1458]). He thought that they were seeking to wield a disproportionate amount of influence (McGrail 5 para 136 [A170]). He found their style of challenging the senior management as '*inappropriate*' and that they showed '*arrogance and disrespect*', that they were bent on generating conflict and their behaviour started to verge on '*outright insubordination*' (McGrail 5 para 139 [A170]). This, he suggests, accounts for what he calls the '*spurious or ...skewed*' nature of their statements (McGrail 5 para 132 [A169]).
- 6.37 At the Inquiry hearing, Mr McGrail accepted that, on occasions, he had raised his difficult relationship with the GPF with the GPA [T/7/64.21]. For example, on 21 December 2018, he wrote to Dr Britto complaining about the '*incessant path of destruction*' on which the GPF was set [C1627]. He also raised similar concerns directly with Mr Picardo [C6686].
- 6.38 However, he strongly refuted the allegations of bullying. He knew that there were rumours of bullying: he told the Inquiry that '*[i]t was on the media and it came out in the surveys*' [T/7.226-7]. Indeed, he said that was one of the reasons why he had commissioned an independent consultancy firm (AAP Associates) to '*help us contextualise the survey results as they were very raw in substance and required analysis*' and to provide assistance in addressing issues of concern arising from the survey. He said that he carried out various recommendations to deal with the problem (McGrail 3 para 14 [A53-4]).

- 6.39 Mr McGrail also made the point that the relationship between his successor and the GPF remained poor, by which I understand him to suggest that he was not the cause of the problem (McGrail 6 para 44 [A1458]). Mr Ullger also gave evidence (to which I turn next) that his relationship with the GPF markedly improved once Mr Morello and Mr Simpson left office with the GPF.
- 6.40 Furthermore, Mr McGrail said that he was given no notice by the GPA that complaints of bullying had been made against him, with the result that he had no opportunity to present his answer to the complaint (McGrail 3 para 147(i)(d) [A113]; McGrail 5 para 141(i) [A171]). This was, I infer, because the GPA did not think that an official complaint had been made against him.

THE ATTITUDE OF OTHER SENIOR RGP OFFICERS TO THE GPF

- 6.41 Having summarised the evidence of this complaint by Mr Morello, I think it only fair to Mr McGrail to set out some of the other evidence in his favour, which also bears on the point.
- 6.42 Mr Ullger, who succeeded Mr McGrail as the Commissioner of Police, was before that the Assistant Commissioner. He knew that there were personality clashes between Mr Morello, Mr Simpson and Mr McGrail. He considered that *‘there was very little respect offered to Mr McGrail’* by Mr Morello, who was *‘constantly being disrespectful and challenging towards him’* [A531].
- 6.43 He said in his statement to the Inquiry that he was not aware of any formal allegations or complaints made by the GPF in respect of bullying or intimidation by Mr McGrail (Ullger 1 para 12 [A530]), although he knew that *‘Mr Morello constantly qualified (sic) Mr McGrail as a bully, but as explained he never made a formal complaint to me about it, nor did he report it to me officially’* (Ullger 1 para 24 [A533]).
- 6.44 Mr Ullger confirmed Mr McGrail’s evidence that independent consultants, who were retired senior UK officers, had been instructed, and their recommendations

led to the setting up of a working group consisting of members of the RGP Command Team and the GPF (Ullger 1 para 17 [A531]).

- 6.45 It is, I think, relevant that Mr Ullger also has had a difficult relationship with Mr Morello. In his evidence to the Inquiry, Mr Ullger went rather further, describing Mr Morello as a *‘very difficult individual’* and a *‘rebel’*, constantly trying to make life difficult for the Command team [T/13/87-8]. Mr Morello did not accept this, although he conceded that he could be *‘assertive’* [T/14/26/12].
- 6.46 In an email dated 29 August 2019, Mr Ullger expressed his *‘disgust’* at the tone of a message which Mr Morello had sent to him, observing that it *‘was filled with little co-operation and signs of confrontation’* [C2593].
- 6.47 In an email dated 10 March 2023 to all police staff, Mr Ullger wrote: *‘The Chairman of the Police Federation has chosen to write to you all and I don’t intend to answer all of his negative misleading comments in his email to you but ... suffice to say that as much as I have tried to work with the Chairman and Secretary of your Federation to try and achieve better things for you all, it has been almost an impossible task, and I can no longer work with them. I sincerely do apologise to you all because this is not my style and many of you know how I operate but, after much trying to collaborate with them and avoiding confrontations, my back is broken...’* [C7047].
- 6.48 He gave evidence that, since the change of Chairman of the GPF, his relationship with it has improved: *‘we discuss and we disagree, but we respect each other and we are already achieving a lot of good things for the organisation’* [T/13/92.25].
- 6.49 Mr Morello called this evidence *‘laughable’* and stated: *‘I have information that Mr Ullger threatened to sue the new convenors if they released the survey with the comments unredacted’*. He accused Mr Ullger of wanting the public – and presumably the Inquiry – to believe he got on better with the new officers of the GPF, to discredit Mr Morello and Mr Simpson [T/14/28.24-29.12].

- 6.50 The Inquiry has received evidence from many other senior officers, including Mr Richardson, Mr Yeats, Mr Field and Supt Wyan. None of them were any aware of any allegations or complaints made by the GPF, or by any of its members, in respect of bullying or intimidation by Mr McGrail. However, both Mr Yeats and Mr Field recognised the difficult and unhealthy relationship between Mr McGrail and the GPF.

CONCLUSIONS ON THE FEDERATION COMPLAINTS

- 6.51 I accept that there was plainly a difficult and fractious relationship between Mr McGrail and the GPF. I also accept that the GPA, Mr Pyle and Mr Picardo were all well aware of that. I accept therefore that, regardless of whether ‘*formal complaints*’ were made to the GPA or by the GPA, this was clearly something which was on Mr Pyle’s mind. However, I accept the closing submission of CTI (para 472) to the effect that it is impossible and impracticable, as well as being outside my Terms of Reference, for the Inquiry to look into and resolve the ‘*numerous anecdotal stories of bad practice and behaviours by the RGP*’ to which Mr Pyle referred. In any event Mr Pyle confirmed that these were not things on which he felt it was possible to act, although they contributed to his ‘*growing sense of unease*’ (Pyle 1 para 23.4 [A249]).
- 6.52 It seems to me that, without a formal complaint, without proper particulars setting out precisely what was alleged against Mr McGrail, and by whom, Mr Pyle was right to dismiss these rumours as being something on which he could not properly act. Having said that, I do not doubt that Mr Pyle was genuinely concerned about what he had heard. But there are, it seems to me, dangers in allowing what he had heard ‘*to contribute to his growing sense of unease*’, since he was then – in effect – being influenced by rumours, even if he was not acting upon them.
- 6.53 Moreover, I am of the opinion that he should not have been influenced by such matters without giving Mr McGrail detailed particulars of the complaints and

allowing him the opportunity to answer the allegations against him, which he never did.

- 6.54 Having said that, I should point out that Mr Pyle had written in his statement that the complaints by the GPF were *‘a concern of a lesser order of gravity, which nevertheless fitted into the pattern of behaviours by Mr McGrail which was already causing [him] concern and causing [him] to begin to lose confidence in [Mr McGrail].’* (Pyle 1, para 23 [A248]. He confirmed in his oral evidence that the bullying allegations made by the GPF did not play a primary role in his loss of confidence [T/18/137].
- 6.55 In this section, I have done what I can to inquire into the complaints made by the GPF, and its members to the GPA, including into the difficult relationship between Mr McGrail and the GPF, and any allegations of bullying or intimidation by Mr McGrail discussed by the GPA subject to and within the Terms of Reference. I do not think that, whilst acting within the Terms of Reference, I can take these matters any further.

CHAPTER 7: THE ‘JOB OFFERS’

INTRODUCTION

- 7.1 I move on to another topic, which is loosely allied to the GPF.
- 7.2 In order to gather relevant evidence bearing upon the complaints made by the GPF of bullying (Issue 6), the former STI (Attias & Levy) wrote to the GPF in these terms:

'During Mr McGrail's tenure as Commissioner of Police, was the Police Federation aware or put on notice of any allegations or complaints by its members in respect of bullying and/or intimidation by Mr McGrail? Were any such complaints raised by the Police Federation to the Gibraltar Police Association or any other body or office?'

- 7.3 Following this request, 19 witness statements by present or former RGP officers were submitted to the Inquiry by Hassans on behalf of each individual witness, not on behalf of the GPF as an organisation. Most of these statements did not refer to bullying at all but made allegations of all manner of other misconduct, some of which alleged the commission of criminal offences, by many different RGP officers and former officers, including by Mr McGrail. The Inquiry had separately received an account from Sergeant Maurice Morello, former Chairman of the GPF. Later, three other officers wrote to the Inquiry making various allegations of misconduct against other officers (not against Mr McGrail) during the Inquiry's disclosure process. In total, 23 officers or former officers have made complaints to the Inquiry.
- 7.4 By letter dated 29 June 2023, the Inquiry Team disclosed the 19 statements to the Core Participants (subject to the Inquiry's confidentiality ring) to allow them to make representations on their relevance. The later statements from the three other officers were subsequently also disclosed.

- 7.5 I then considered the relevance of these statements to the Inquiry's Terms of Reference. I accepted that I needed to investigate the reasons for Mr Picardo and Mr Pyle claiming to lose confidence in Mr McGrail. However, as it seemed to me, an event, circumstance or state of affairs alleged to be caused or contributed to by some fault or misconduct on the part of Mr McGrail could have only caused or contributed to a loss of confidence in him at the time of his retirement, if Mr Picardo, or Mr Pyle, or either of them, knew or believed the existence or occurrence of that event or circumstance or state of affairs, at that time (my emphasis) and took it into consideration.
- 7.6 I ruled, therefore, that neither Mr Pyle nor Mr Picardo could now rely on some fault or misconduct alleged against Mr McGrail, of which they did not know, and did not consider, at the time. To put it another way, I had to assess their loss of confidence, based on what they knew or believed at the time, and not on anything they learnt thereafter.
- 7.7 I also considered that separate incidents might theoretically be relied on as something akin to '*similar fact evidence*' in criminal trials, for example as establishing a propensity of Mr McGrail to behave in a particular way. Such incidents might be relevant even if they were not known by Mr Pyle or Mr Picardo at the time. However, such incidents would only help me to find the relevant facts if their probative value justified the expenditure of time and resources in resolving the factual issues to which they gave rise. In my opinion, none of these 19 statements met these criteria.
- 7.8 In a closed Ruling dated 1 March 2024, I applied these principles to the 19 witness statements, as well as to Mr Morello's statement. I held that all but three of these statements were not relevant to the reasons and circumstances of Mr McGrail's retirement. Those three statements I held to be relevant were only relevant in part. I also concluded that Mr Morello's statement was relevant in part. It is plainly inappropriate now to make public that closed Ruling, which would disclose irrelevant matters, which are not within the Inquiry's Terms of

Reference. A short summary of the closed Ruling – to the extent that I was able to make my findings public – is available on the Inquiry website.³ The statements that I found to be relevant in part have also been uploaded to the Inquiry website, with suitable redactions.

- 7.9 The statements by the three officers alleging misconduct by others in the Inquiry’s disclosure process (to which I refer at the end of paragraph 3 above) were obviously not relevant to the reasons or circumstances of Mr McGrail’s retirement and, therefore, did not fall for consideration in the Ruling. So far as the Inquiry process is concerned, only one of these witnesses, Mr Morello, gave oral evidence. He gave evidence that he complained of bullying to the GPF: I have accepted his evidence that he complained about bullying, but I did not find that it established that there was bullying in the RGP, still less that Mr McGrail was responsible for it. (I have already summarised these findings when addressing the section on the GPF complaints.). I made no findings of fact upon the other parts of his written evidence, much of which was irrelevant to the Inquiry.

THE INQUIRY’S INVESTIGATION INTO THE JOB OFFERS

- 7.10 I have no power to make findings of fact on the statements made by the witnesses whose evidence I found was not relevant to the Inquiry’s Terms of Reference. However, I was not dismissing these allegations as unimportant, or not serious, still less as being untrue. I considered it was for the RGP to decide whether to investigate these matters, and if so, how they should do so. Nothing that I have said could have been – or was – taken as discouraging their further investigation.
- 7.11 In fact, the RGP appointed Mr McVea, a former Detective Superintendent with the Police Service of Northern Ireland who was sworn in as an officer of the RGP, to conduct a criminal investigation into these matters. At the request of the RGP,

³ <https://coircomp.gi/wp-content/uploads/2024/03/2024-03-01-Summary-of-Rulings-PH4-Agenda-items-8-and-9.pdf>

and in the light of Mr McVea’s ongoing criminal investigation, I concluded in July 2023 that given the obvious risk of prejudicing an ongoing criminal investigation, it would not be possible properly, or even sensibly, to proceed with the Main Inquiry Hearing, which was then scheduled for September 2023.⁴

- 7.12 However, in January 2024, Mr McVea confirmed that the RGP did not object to the Main Inquiry Hearing continuing alongside the criminal investigation, which allowed the Hearing to proceed in April 2024.
- 7.13 Mr McGrail strongly denies all the allegations made against him in these 19 statements; he claims that all were offered employment or other inducements, rewards or incentives to give false evidence against him. It was argued by Mr Wagner KC on behalf of Mr McGrail that (1) none of the jobs which they were offered by other Government agencies appear to have been made in respect of an advertised vacancy; (2) none of those appointed appear to have been interviewed for suitability; and, (3) no inquiries were made with the RGP to examine their claims that they had been – or were likely to be – victimised or discriminated against, such that their position would become untenable in the force. He also argued that these ‘Job Offers’ – as he called them – did not accord with any published policy and were not sanctioned by law. In the circumstances, he claimed that this whole process, and Mr Picardo’s alleged role in it, was highly inappropriate and ran a real risk of ‘skewing’ the evidence given to the Inquiry, which might amount to an abuse of process and an abuse of state power.
- 7.14 The answer by the Government Parties to Mr McGrail’s allegations is that what the witnesses say is – or at least may be – true, and that there is nothing improper or irregular in these job-offers or payments being made to the witnesses, which were justified, indeed required. They claim that the witnesses were, in effect, ‘whistle-blowers’ giving truthful information alleging misconduct against past or

⁴ <https://coircomp.gi/wp-content/uploads/2023/08/2023-08-11-Ruling-.pdf>.

present officers of the RGP, and they were entitled to protection from victimisation within the RGP. Indeed, Mr Picardo gave evidence that his understanding of the legislation was that the Government was required to act so as *‘to prevent the individual suffering a detriment and if we don’t do that, then eventually an individual who has suffered a detriment is potentially able to take us to the Employment Tribunal...’* [T/17/40 onwards].

7.15 At the Fourth Preliminary Hearing, in July 2023, it was submitted on behalf of Mr McGrail that the Inquiry itself should investigate these so-called ‘Job Offers’. I decided that if there was evidence of a practice of offering incentives to witnesses to give evidence against Mr McGrail that might amount – I deliberately put it no higher than that – to an improper interference with the Inquiry process. In order to maintain the integrity of the Inquiry, and to be seen to be doing so, and to retain public confidence in the Inquiry’s hearings and findings, I decided that the Inquiry itself should make some investigation into the circumstances in which these statements came to be made. An inducement to give false sworn evidence to the Inquiry would be a serious crime, akin to contempt of court. The giving of false evidence would also directly interfere with the Inquiry’s ability to fulfil its Terms of Reference.

7.16 For these reasons, the Inquiry Team made some enquiries into the allegations of ‘Job Offers’.

EVIDENCE ON THE JOB OFFERS

7.17 At the Main Inquiry Hearing, Mr Morello gave evidence as to the procedure for providing letters of assurance [T/14/50.19]. He had retired early, having accepted ‘a letter of assurance’ and having been given a significantly enhanced pension. I set out his evidence below (although I make clear that I am not making any findings as to whether this was the procedure that was adopted, or whether any such procedure was lawful).

- a. There would first be a meeting between the relevant RGP officer, Mr Morello and Mr Michael Crome, a senior officer within HMGOG. At that meeting, the officer would be assured that they would be provided with whistleblower protection if they agreed to provide evidence to the Inquiry. The officer would verbally explain their evidence.
- b. Following the meeting, a witness statement would be drafted and signed by the officer.
- c. After that, the officer would receive a letter of assurance.

7.18 The two letters of assurance which were adduced in evidence were both signed by Mr Picardo personally. In the course of his evidence, he accepted that he signed 'letters' (plural) [T/17/42.19]. I cannot properly find whether he signed other letters. However, alert to the dangers of '*procedural over-reach*' beyond the Inquiry's Terms of Reference, I have always made clear that 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 or circumstances in which Mr McGrail retired, nor is it one of the List of Issues upon which I am charged to report. I have always sought to avoid the Inquiry being diverted or deflected away from those core Issues into matters which did not bear directly upon the reasons or circumstances of Mr McGrail's retirement.

7.19 Mr McVea investigated the matter of the '*Job Offers*'. His recommendation was that the available evidence did not meet the threshold for prosecution for the criminal offence of misconduct in a public office. His investigation, and his conclusion, were validated by an independent officer at the UK's National Crime Agency, who described his investigation as '*thorough*'. His conclusion was confirmed by the advice of King's Counsel in London. The RGP have therefore given notice that their investigation has ended.

7.20 As I have already written, the Inquiry did make some inquiries and did receive some limited – and largely uncontested – evidence about the Job Offers. In my judgement, by so doing, the integrity of the Inquiry process was preserved. I do not think that any further investigation by the Inquiry Team will bear on the circumstances of Mr McGrail's retirement, and any such further investigation will therefore be beyond my Terms of Reference. That, it seems to me, is the end of the matter; I cannot take the matter any further and I decline to do so.

MR PYLE'S POSITION AS A CONSULTANT TO HMGOG

7.21 I have some hesitation about putting this piece here, since I do not consider that Mr Pyle was offered, or accepted, a comparable '*Job Offer*'. Apart from anything else, he made his allegations against Mr McGrail long before he was offered a post with the Government, but I feel that I ought to deal with the topic, which has been commented on in public, and in Parliament, and which was canvassed with him in the course of his evidence.

7.22 After his term as Deputy Governor came to an end, Mr Pyle applied unsuccessfully to the FCDO for a couple of foreign postings [T/18/241.19]. He was then appointed by the Chief Secretary of Gibraltar as a consultant to the Government of Gibraltar, on a three-year contract, to advise on the modernisation of the Civil Service [T/18/241.8; 244.6]. Some criticism has been directed at him for having accepted such a post during the currency of the Inquiry, in which he was to give evidence in support of the Government's case. However, it is not unusual for jobs to be offered to public servants at the end of their engagement, since they can often offer relevant experience and knowledge. Furthermore, he sought – and was given – specific approval from the FCDO to take up such a post [T/18/243.16].

7.23 I am satisfied that Mr Pyle gave entirely independent evidence to the Inquiry. He had cleared the proposed employment with the FCDO. I think he was entitled to take the position. I do not consider him to have been in any way beholden to the Government. Indeed, particularly on the second day of his evidence, he seemed

very willing to make a number of unexpected concessions adverse to their position. I therefore reject any criticism of him relating to the decision to take up a role as consultant. Furthermore, Mr Pyle had considerable experience of public affairs in Gibraltar and I do not criticise the Government for appointing him as a consultant.

CHAPTER 8:

THE INCIDENT AT SEA

OVERVIEW OF THE INCIDENT

- 8.1 In the early hours of 8 March 2020, contrary to their Standard Operating Procedures, the crew of an RGP launch left British Gibraltar Territorial Waters ('**BGTW**'), entered Spanish territorial waters, then chased a suspect Rigid Hull Inflatable Boat ('**RHIB**') at high speed for eight minutes. The RGP launch collided with the suspect RHIB, killing two members of its crew and injuring the other two and severely damaging both vessels.
- 8.2 This is the 'Incident at Sea', which gave rise to Issue 3 in the List of Issues. Subject to the Preamble, which I have already explained, Issue 3 requires me to inquire into:

'The collision at sea on 8 March 2020 outside British Gibraltar Territorial Waters involving an RGP vessel and resulting in two deaths ('the Incident at Sea'), and the RGP's subsequent handling of it. In particular:

Did faults or failings in the operational instructions or procedures of the RGP cause or contribute to the collision at sea, and, if so, was Mr McGrail as Commissioner of Police responsible or accountable for those faults or failings?

Was information as to the location of the Incident at Sea communicated by Mr McGrail and/or the RGP to Chief Minister Fabian Picardo QC..., the Attorney-General Michael Llamas QC ... and the then-Interim Governor Nicholas Pyle OBE ... in a timely and transparent fashion?

Was information about the legal claims arising from the Incident at Sea communicated by Mr McGrail and/or the RGP to NP, the CM and the AG in a timely and transparent fashion?'

- 8.3 Mr Pyle said in his witness statement that '*Without doubt, the most serious*

incident, that was the tipping point from my “growing concerns” changing to recognising that things could not go on as they were, and that change was needed, arose in relation to this incident, which set in motion a chain of events that led me to lose confidence in the abilities of the Commissioner to effectively lead his police force and indeed lead me to lose confidence in his probity’: Pyle 1, para 25.1 [A251]. In his oral evidence, he confirmed that his loss of confidence in Mr McGrail *‘would possibly not have happened without the Incident at Sea’* and that it was *‘unequivocally’* this incident that made him act as he did in May 2020 [T/18//11]. At the time of the Incident at Sea in March 2020, Mr Pyle was serving as the Governor in an interim capacity (Lt Gen Ed Davis having left this Office in February 2020, and Sir David Steel assuming the Office in June 2020). Mr Pyle continued to hold this Office during the events of Mr McGrail’s retirement, as I will consider in later chapters.

- 8.4 Mr McGrail has always accepted the seriousness of the Incident at Sea. In the course of his oral evidence, he acknowledged that *‘it was evident that this was a serious matter and that there was reputational risk for the RGP and ... Gibraltar and serious consequences for those involved’* [T/6//65], giving rise to *‘serious diplomatic and international risk’* [T/7/198]. He could not recall any other occasion during his 36 years’ service where acts of RGP officers had caused deaths, except for deaths in custody [T/7/197]. He feared the possibility of retribution against RGP crew members and their families and also feared public disorder in the neighbouring Spanish town of La Linea de la Concepción, which had occurred after a similar incident in the past [T/6/36].
- 8.5 The Incident at Sea gave rise to three complaints against Mr McGrail: (i) that he *‘misled’* Mr Pyle or at least that he did not give him timely and accurate information as to whether the incident had occurred in Spanish waters; (ii) that, as Commissioner of the RGP, he should be held accountable for the actions of his officers; and (iii) he had failed to provide timely information about the civil claims which arose from the incident to Mr Picardo. Although this will lead to some repetition, I think the better course is to deal with these three complaints

separately. I will deal first with the complaint that Mr McGrail ‘misled’ Mr Pyle, that being the complaint on which the Main Inquiry hearing was primarily focused in relation to Issue 3.

THE COMPLAINT THAT MR MCGRAIL ‘MISLED’ MR PYLE ABOUT THE LOCATION OF THE COLLISION

- 8.6 In his email to the FCDO dated 12 March 2020, Mr Pyle expressed concern that Mr McGrail had been unable to confirm to him the location of the collision ‘3 days on’ [B1761]. However, I point out that neither Mr Pyle nor Mr Picardo, either at the time, or for two months thereafter, complained even between themselves that Mr McGrail had given inaccurate or incomplete information to Mr Pyle about the location of the Incident at Sea.
- 8.7 The first reference to any form of complaint between Mr Pyle and Mr Picardo that the Inquiry has seen was made by Mr Picardo in his WhatsApp to Mr Pyle ([B1439], to which I will come in more detail later) on 14 May 2020, when Mr Picardo messaged Mr Pyle to express his concerns about the leadership of the RGP, identifying – among other things – that the deaths were caused outside BGW, and that, if proceedings were taken against the crew of the RGP launch in Spain, they would have no protection as police officers.
- 8.8 The next day, on 15 May 2020, Mr Picardo and Mr Pyle met to discuss these matters. Mr Pyle explained to Mr Picardo that, for some while, he had had concerns about the RGP and its leadership. He said that the Incident at Sea, which had caused the loss of two lives, was going to cause Gibraltar reputational and political damage and further demonstrated a lack of control by RGP leadership. He said that he had asked Mr McGrail numerous times where the incident had taken place. He did not like Mr McGrail’s ‘*flippancy*’ over the location, which was to say that it ‘*could be in, could be out*’. He believed that Mr McGrail had misled him by his evasive answers (Pyle 1 para 26.2-26.4 [A255-6]).
- 8.9 On 21 May 2020, Mr Picardo wrote to Mr McGrail, requiring a report under section 15 of the Police Act. Mr Picardo referred (amongst other matters) to the legal

claims made on behalf of the crew of the suspect RHIB on 20 May 2020, and concluded: *'I have no confidence that you have expeditiously provided me with all the information and documentation that I should have been provided with ... I have no confidence that either the Government or the office of the Governor (with whom I have discussed this matter at length) have had the timely candor and transparency that we would have expected from you...'* [B1251].

- 8.10 The only other written notice of this complaint given to Mr McGrail at the time was in the 'second letter' sent by the GPA on 22 May ([C4282], to which I will come) to the effect that Mr Picardo had no confidence that he was *'provided with the information expeditiously about this very serious incident. Additionally, the Governor expressed the view that he feels he has been misled by you about this most serious incident which has resulted in loss of life.'* I observe that this letter gives no particulars of how – or when – Mr McGrail was alleged to have *'misled'* Mr Pyle.
- 8.11 These sketchy particulars were later amplified by Mr Picardo and by Mr Pyle in the evidence that they gave to the Inquiry. Mr Pyle said in his written statement that he had developed a *'strong sense and suspicion at the time'* that Mr McGrail was *'deliberately withholding from me important information about the nature of his understanding of the location of this incident'* (Pyle 1 para 25.8 [A253]). He said that he *'asked Mr McGrail directly on numerous occasions if he was able to confirm whether the incident had taken place in Spanish waters. ... The simple fact is that I repeatedly asked [Mr McGrail] a simple and direct question to which he did not reply candidly with the best information available to him. He withheld highly relevant information from me'* (Pyle 2 para 19.1 [A264]).
- 8.12 Mr Pyle claims that he had *'at best been misled over issues that were of the Governor's direct responsibility. This was about where the incident had taken place'* (Pyle 1 para 26.3 [A256]). The Government Parties put their case (closing submissions, para 163) in this blunt sentence: *'Mr McGrail had intentionally failed to provide to Mr Pyle the best information available to him'*.

- 8.13 Later, after he had read the report provided by Mr McGrail under section 15 of the Police Act (**‘the Section 15 Report’**), Mr Picardo commented that *‘It is clear from the timeline of communications that I was being told one thing about the location of the incident, hours after it had occurred, and that the Governor was not given the same information until three days later’* (Picardo 1 para 86 [A206]).
- 8.14 Having set out the essence of the complaint that Mr McGrail ‘misled’ Mr Pyle about the location of the Incident at Sea, I turn to review the evidence which bears upon the point.

THE STANDARD OPERATING PROCEDURES

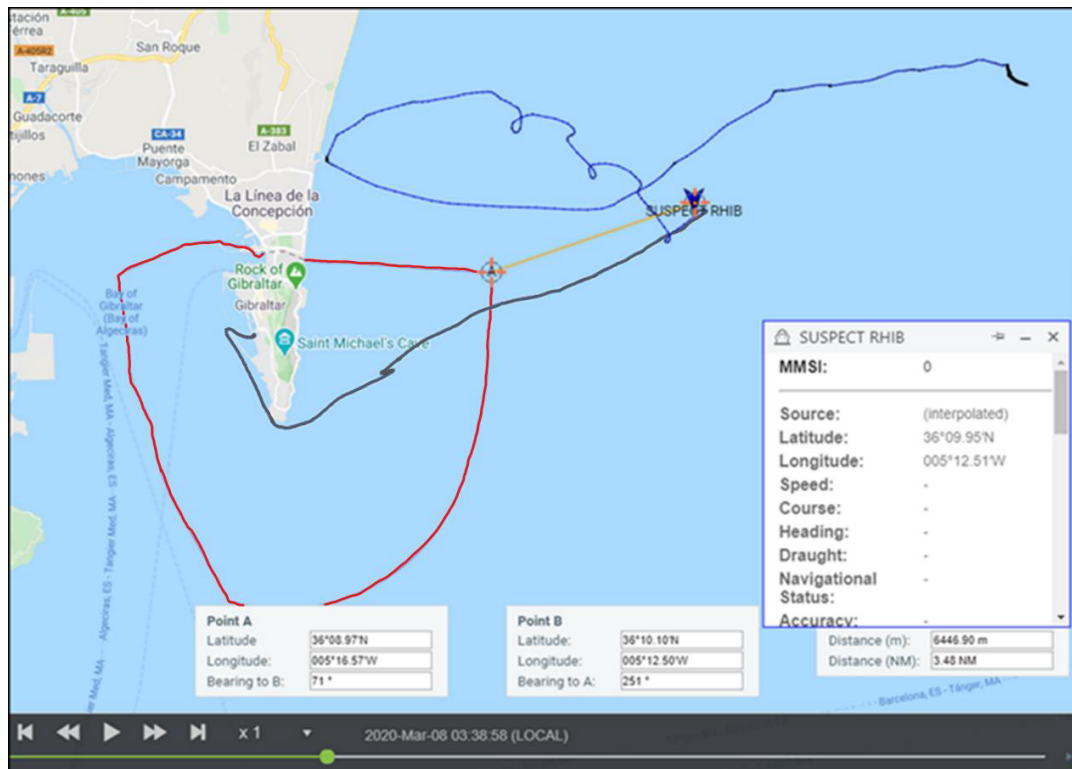
- 8.15 Under section 47(1)(a) of the Gibraltar Constitution, the Governor is responsible in Gibraltar for the conduct of external affairs provided that the Governor shall in respect of external affairs as far as practicable act in consultation with the Chief Minister. For a variety of reasons, relations between Gibraltar and Spain are politically and diplomatically sensitive. Therefore, any incursion by RGP vessels into Spanish waters, except with the specific authority of the Spanish authorities, is bound to cause serious political and diplomatic problems.
- 8.16 The Marine Section issued instructions (dated 8 June 2015 [C135] and 17 February 2016 [B1703]) making clear that vessels must not operate outside BGTW except when in support of a search and rescue operation authorised and co-ordinated by the Gibraltar Port Authority, or to assist a person or vessel in distress and, even in those circumstances, the crew must be authorised by a senior RGP officer. These instructions were re-circulated from time to time. Subsequently, on 8 July 2016, a further set of Marine Section Instructions [C5251] were created stating that officers were not authorised to operate outside BGTW and in Spanish Waters unless participating in a search and rescue operation at the invitation of Spanish Authorities. These instructions were sent to the Marine Section by PS Stuart Stone on 16 September 2016 [C5509, D1162]. A Misconduct Report prepared by the Metropolitan Police dated 4 June 2021 (to which I will return below) records that Marine Section Officers were reminded of the

Instructions by Chief Inspector Finlayson on 21 January 2020 [B1295].

- 8.17 At the relevant time, Operating Procedures (undated, [D10183]) also provided that: *‘marine crews will conduct systematic periodic patrols of Gibraltar’s coastline and territorial waters throughout their tour of duty. They will pursue suspect vessels in a determined though safe manner within their territorial waters and liaise with their Spanish counterparts.’* They added that: *‘we will only operate outside BGTW when we are called upon to attend to a lifesaving situation.’*
- 8.18 The Inquiry also received evidence from PS Stone that the 2016 Policy *‘was printed out and pinned up on the notice board, within the control room at the Marine Section, where I would constantly remind the crews about the importance of not leaving BGTW’* (Stone 1 para 15 [A1537]).
- 8.19 The Inquiry has not received any evidence which doubted that everyone in the Marine Section, and their crews, knew that (a) they were not to operate in Spanish waters except at the invitation of Spanish authorities, and then only for authorised search and rescue operations; and (b) that chasing suspect vessels outside BGTW, and in particular into Spanish waters, was not permitted.
- 8.20 All RGP vessels were fitted with an Automatic Identification System (**‘AIS’**), by which their position, direction of travel and speed were accurately monitored and recorded. The instructions dated 17 February 2016 reminded crew that they should only use vessels fitted with AIS, which had to be switched-on at all times [B1703] and this was further reinforced in a record of a Daily Taskings Group Meeting on 19 April 2017 [B2911].

THE CHRONOLOGY OF THE COLLISION

- 8.21 I turn now to a detailed chronology of the Incident at Sea. At the outset, it is necessary to explain some relevant geography, by reference to the map produced below, which I have taken from the Solis Report (although the lines drawn upon the map have been re-coloured by the Inquiry Team for clarity).



- 8.22 The map shows the peninsula of Gibraltar, jutting out to the south of the border with the Spanish town of La Línea de la Concepción, and with BGTW surrounding it.
- 8.23 The land border between Gibraltar and Spain is demarcated by a broken grey line.
- 8.24 In the sea (shown in blue), there are three lines in red, dark blue and black.
- The red line demarcates the limit of BGTW around Gibraltar.
 - The dark blue line shows the line of travel of the suspect vessel, which initially moved west from further out eastwards, towards the Spanish coast, before then heading back out eastwards and performing a number of turns prior to the collision.
 - The black line shows the RGP vessel, which left the Marine Base on the west side of Gibraltar, headed south and round Europa Point, before heading out in a north-easterly direction to meet the suspect vessel.

- 8.25 There are two cross-hairs which are connected by a yellow line:
- a. The one on the right marks the point of the collision.
 - b. The one of the left (with an 'A' in the centre) marks the closest part of the limit of BGTW to the collision.
- 8.26 The distance between those two points is 6,446.90 metres (or just under 6.5 km) or 3.48 Nautical Miles; the collision was therefore that distance out of BGTW.
- 8.27 The facts of the chase and collision are clearly set out in the Section 15 Report, which are not now disputed and I accept them as accurate. As to the aftermath, and in so far as it is relevant to the Terms of Reference, I will set out the rival versions before making my findings of fact.
- 8.28 At about 02.00 in the early morning of 8 March 2020, officials at the Windmill Hill Signal Station in Gibraltar ('WHSS') noticed an image of a 'suspect RHIB' on their thermal camera. It was about 3-4 nautical miles east of – and therefore far outside – BGTW, which extend only for three nautical miles from the coastline.
- 8.29 At 02.35, WHSS observed the suspect vessel heading towards La Atunara, on the coast of La Linea, Spain.
- 8.30 At 02.38, WHSS informed the RGP Marine Section officers that the suspect vessel was on the eastern side of Gibraltar approximately 3 to 4 miles out of BGTW. That message was received by the crew of the RGP launch, Sir John Chapple (consisting of three RGP officers, two of whom were experienced mariners and another who was not).
- 8.31 In contravention of Standard Operating Procedures, the crew of the RGP launch had not switched on their AIS system. There are two possible explanations for the device not being switched on:
- a. That this was done deliberately so that the vessel could not – and would not – be tracked out of BGTW into Spanish waters. This was what Mr

McGrail suspected [T/6/49.1].

- b. That the glare from the instrument panel adversely affected the coxswain's night vision, as Officer 1 on board later claimed. However, no one, including Officer 1, had made a complaint of this beforehand. Furthermore, there is, in any event, a dimmer on the device to reduce glare.

- 8.32 I accept that it is not within my Terms of Reference for me to find which explanation is right, and I deliberately avoid doing so.
- 8.33 At 03.08, a member of the crew of the RGP launch telephoned the Spanish Guardia Civil ('GC') Central Operativa de Servicios ('COS') to pass on the information received from WHSS, and the GC confirmed that they also were monitoring the suspect RHIB.
- 8.34 At 03.09, the crew of the RGP launch informed the WHSS that the GC was monitoring the suspect RHIB, and that they were moving to the eastern side of Gibraltar to monitor it themselves.
- 8.35 At 03.15, officers at the WHSS observed on their thermal cameras that the suspect vessel was heading towards La Atunara Port, where it met another small vessel.
- 8.36 At 03.20, the Spanish GC contacted the RGP vessel as it arrived at the eastern side of Gibraltar and informed them that the suspect RHIB was by the breakwater at Atunara Port carrying out what they believed to be a crew change or a re-supply (of food or fuel), and advised the RGP vessel to head east, presumably to be in a position to intercept it should it stray into BGTW.
- 8.37 At 03.22, the Spanish GC advised the RGP launch to remain at its current position as the suspect RHIB was heading towards it. The Spanish authorities did not invite or request the RGP launch to enter into Spanish Waters, and – even if they had done so – to accept such an invitation or request would have contravened

RGP Standard Operating Procedures and instructions (as it would not have been for a rescue operation).

- 8.38 At 03.29, the crew of the RGP launch saw the suspect RHIB, which was not displaying navigation lights. It was a typical ‘Narco Boat’, 14 metres in length, with four 300 horse-power outboard engines, which, due to its length, was a vessel prohibited in BGTW. It had a crew of four. The RGP crew suspected that the RHIB was engaged in smuggling activities; their suspicion was plainly justified.
- 8.39 Immediately upon seeing the RHIB, at around 03.29, the RGP launch began to chase it. The RGP launch turned on its blue flashing emergency lights. However, at no time during its tour of duty, or even during the chase, did the RGP launch turn on its AIS, which would have given – and recorded – a precise geographical fix. Since no AIS data was transmitted (or recorded), the position of the RGP launch, its speed and direction of travel could not be monitored contemporaneously, nor was its position recorded.
- 8.40 According to the SOLIS report (referred to below), even by visual observation, and particularly by reference to the bright lights at Gibraltar airport, which are on day and night, it would have been clear to the experienced marine officers on board that they were so far to the north of BGTW that they must have realised that they were in Spanish waters. The RGP crew did not inform their Marine Station or the Spanish authorities that they had left BGTW, or that they had commenced a chase, or still less that they had entered Spanish waters to do so, nor did they provide a running commentary of what was taking place.
- 8.41 As the chase developed, the suspect RHIB performed sudden, evasive and dangerous manoeuvres and its crew members threw objects at the RGP launch. The RGP launch then took a very sharp turn to port immediately before the collision. The chase lasted just eight minutes and ended with the RGP launch colliding with the suspect RHIB. The crew of the RGP launch then drew alongside the wrecked RHIB, which two officers then boarded. They saw that one crew

member of the RHIB had been killed and another seriously – indeed fatally – injured.

THE VESSELS RETURN TO PORT

- 8.42 At 03.39, the crew called the Spanish GC. They spoke for only 15 seconds. There was another slightly longer call at 03.45, which lasted 44 seconds. There is no recording of either of these exchanges, and what was said cannot now be ascertained.
- 8.43 At 03.43, the crew called WHSS and informed them of the collision with one fatality and a second person seriously injured. They did not give any information as to the location of the collision.
- 8.44 At 03.46, the RGP launch headed back towards Gibraltar with the suspect vessel in tow.
- 8.45 At 03.48, the crew reported the fact of the collision back to RGP HQ at New Mole House and asked for an ambulance to meet them at arrival at the Marine Station.
- 8.46 The casualties were transferred to HM Cutter ‘Seeker’ and taken to the Marine Section of the RGP where, despite attempts to revive him, the seriously injured member of the crew was pronounced dead.
- 8.47 At 03.53, the RGP Duty Inspector informed Mr Field, who was the Gold Commander on duty, of the occurrence of the fatal collision but he had – and therefore he gave – no information as to its location. Mr Field first recorded his actions in a notebook, and later switched to his day book [C6954], which he then continued as an almost contemporaneous log. At 04.25, he informed Mr McGrail of the fact of the collision.
- 8.48 At 05.00, Mr McGrail convened a Gold Command meeting in his office at the Police Headquarters in New Mole House; Mr Richardson (appointed Deputy Gold Commander) and Mr Field (appointed Senior Investigating Officer) also attended.

THE IMPORTANCE OF ASCERTAINING THE LOCATION OF THE COLLISION

8.49 After the RGP had declared this to be a critical incident, one of the identified ‘*fast track actions*’ was the ‘*[n]eed to determine location of incident ASAP*’ [B1276]. Mr McGrail was aware that the collision might give rise to diplomatic tensions; he was also concerned about possible civil unrest, which had followed another incident in which a suspected smuggler had died [T/8/86.7]. Furthermore, he knew that the crew of the suspect RHIB could not be held – or tried – in Gibraltar for any offence unless it had been committed in BGTW [T/8/80.10]. In the circumstances, I readily accept that Mr McGrail knew from the outset the importance of finding out where the collision had occurred.

8.50 Mr Pyle gave evidence to the Inquiry, which I accept, that it was standard practice for the Governor to be updated by the RGP when there are major incidents, which fall within the Governor’s responsibilities [T/18/65.22]. In order that the Governor could be kept informed of events that might affect relationships with Spain, I think it was important that Mr McGrail provided Mr Pyle and Mr Picardo with the best available information as to the location of the collision, but he was not expected to give them a detailed running commentary of all developments of a dynamic situation or to pass on every scrap of unverified information. I accept that he had to apply some kind of filter, but I do not think that he had to await confirmation of relevant information before passing it on. As will become clear, the information which the RGP received was, certainly at first, confused and conflicting. Of course, the main reason for the difficulty in ascertaining the movements of the RGP launch, before and during the chase, and the exact location of the collision, was that – contrary to Standard Operating Procedures – the crew of the RGP launch had not switched on the AIS.

THE START OF THE POLICE INVESTIGATION

8.51 The RGP’s investigation into the Incident was allocated the name ‘Operation Kram’. At 06.05, Mr McGrail sent WhatsApp messages to Mr Picardo and to Mr Pyle informing them [B1343], in the same terms:

‘...We’re dealing with a critical incident - one of our boats has been involved in a collision with a smuggling RHIB with 4 on board. 2 on the smuggling RHIB are fatalities. Our crew are uninjured but clearly shaken & shocked. ... Once I have further updates, I will let you know. ...’

- 8.52 The two survivors from the crew of the RHIB were arrested on suspicion of importing a prohibited item (being the suspect RHIB), of dangerous navigation and of obstructing the police. (They were later released after it was accepted that the suspect RHIB had never entered BGTW, and therefore had not committed any offence triable in Gibraltar.)
- 8.53 Mr Field’s day book entry [C6953-4] for 07.00 sets out the conflicting reports which he received during the course of that early morning:
- a. One of the survivors of the crew of the suspect RHIB told an RGP officer that the incident *‘happened by the Alcaidesa’*, which information was passed on to Mr Field [C6953].
 - b. The incident occurred *‘3 miles off Europa Point’*, this being reported by one of the members of the crew on the RGP launch to an officer in the RGP ‘Control and Dispatch’ unit, who passed the information on to Mr Field [C6954] [T/13/32.6]. Events were to show that this information was not true. Again, I observe that it is not within my Terms of Reference for me to say whether what the crew member reported was an honest mistake or a deliberate lie.
 - c. *‘...There had been an incident by la Atunara’*, this being information provided by the Spanish Port Authority at Tarifa to Mr Undery at the Gibraltar Port Authority at 04.00, who passed on the information to Mr Field [C6954].
- 8.54 Mr McGrail gave evidence to the Inquiry that he recalled: *‘there being unconfirmed reports that the incident had occurred outside Gibraltar’s territorial*

waters together with conflicting reports that it had actually happened in Gibraltar waters' (McGrail 3 para 47vii [A66]). He added that *'initial reports suggested the collision to have occurred 3 miles of Europa Point (and to my understanding within BGTW) ...'* (McGrail 3 para 50 [A67]). This corresponded with the information which he had received from Mr Field. Mr McGrail also stated in his written evidence that at some point in these early hours the duty Vessel Traffic Services (VTS) Officer of the Port Authority had reported to the RGP that he had been advised by Spanish marine traffic control in Tarifa of an incident in Alcaidesa (a residential development on the Spanish coast to the north of La Linea), but the VTS Officer was uncertain whether this was the same incident (McGrail 3 para 58 [A71]).

- 8.55 I accept that, as Mr McGrail said in the course of his evidence, at the beginning of the investigation the situation was *'very dynamic and fast pacing... everything was fast actions, fast briefings'* [T/6/15.1]. Furthermore: *'The intelligence picture at that stage was unclear and confusing with the limited facts recounted by the PMB crew being out of sync with other facts. Such confusion is common in the initial stages of a serious investigation...'* [B1273].
- 8.56 At 07.41, Mr Picardo asked Mr McGrail via WhatsApp: *'What time did it occur and was it firmly within BGTW or questionable?'* [B1344]. I comment that this was an obviously important question.
- 8.57 At 07.43, Mr McGrail replied to Mr Picardo: *'Collision occurred approx. 03.40hrs. Location still to be confirmed'* [B1344].
- 8.58 At 07.50 the Gold Command committee was told that neither the WHSS nor the Gibraltar Port Authority had co-ordinates for the incident. Mr Richardson noted: *'AIS [on the RGP launch] either switched off or faulty'* [B1681]. The entry in Mr Field's day book for 07.00 also records that the Port Authority did not have any AIS data for the RGP vessel, and therefore it was possibly not working or switched off [C6955].

- 8.59 When giving evidence at the Inquiry, Mr McGrail stated that whilst messaging with Mr Picardo, he was continuing to receive updates, and was told that *‘neither Windmill Hill Signal Station nor Gibraltar Port Authority had any coordinates plotted for the police vessel, this potentially meaning the vessel’s Automatic Identification System (AIS) was either switched off or faulty’* (McGrail 3 paras 56-57 [A71]), a situation which he said was *‘regrettable’*, and which he was *‘surprised’* to learn [T/6/22.15]. He later stated that he was *‘not pleased at all’* when he found out that AIS had not been switched on [T/6/46.12]. He said that he did not know if there was any practice of not turning the AIS on, but there were specific instructions that it had to be switched on [T/6/46.18].
- 8.60 Between 07.24 and 08.14, in response to questions from Mr Picardo, Mr McGrail sent a series of WhatsApps [B1344], giving him the further information that two of the crew of the suspect vessel were of Moroccan descent from Ceuta, one other was Spanish, and another was Portuguese. There were also exchanges about the welfare of the RGP crew and the contact they had had with the Spanish authorities.
- 8.61 At 09.00, Mr McGrail sent the information which he had sent previously by WhatsApp (at 06.05) to Mr Picardo and to Mr Pyle, to Dr Britto (the Chairman of the GPA [C6552]). Dr Britto responded (at 10.31) stating that he had seen it on *‘the news feed’*, adding a bit later that *‘it is unfortunate, to say the least!’* [C6553].
- 8.62 The WhatsApps disclosed after the Main Inquiry Hearing show that at 09.05, Mr McGrail sent a message to Mr Ullger [E502], to the effect that he did not want Mr Richardson *‘talkin[g] of potential corporate manslaughter etc’*, which obviously he had been. Mr McGrail said that he had *‘really had to assert myself here’*. At the Reconvened Hearing, Mr Richardson stated that he had mentioned the issue of corporate manslaughter but that Mr McGrail was *‘not receptive’* [T/23/204.1]. Plainly Mr McGrail was irritated at the suggestion that the deaths might give rise a prosecution of the RGP for manslaughter, particularly as he thought that at that early stage the *‘circumstances had yet not (sic.) been established. We did not*

have evidence to support any of that ... I knew from the outset that this was going to be a matter that was going to be dealt with independently and we should not, or rather the RGP should not be the ones that propose any views... [T/23/99.19]. He showed how much this reference to manslaughter had irritated him by referring to it six weeks later on 21 April in the context of a conversation about an unrelated and hypothetical death [E629].

- 8.63 At 09.27, Mr Pyle replied to Mr McGrail's initial WhatsApp message at 06.05 about the incident, thanking him for letting him know, and two minutes later (09.29) added *'And of course if [they] need anything from us/HMG just ask.'* Mr McGrail acknowledged receipt of that at 09.41 [B1345]. Mr Pyle was asked, at the Main Inquiry Hearing, why he did not then ask any further questions. He said that he wanted to send an immediate response to Mr McGrail's earlier message (sent at 06:05), and he expected that *'over the next few hours he would be briefed, called or emailed, and updated on events'* [T/18/65.16]. He confirmed it was standard practice for the Governor to be updated by the RGP when there are major incidents, which fall within the Governor's responsibilities under section 47 of the Constitution [T/18/66.2].
- 8.64 At 09.35, an officer of the GC called DI Chipolina (the RGP officer responsible for liaison with the Spanish authorities) and told him that, according to their radar, *'the coordinates of the collision were 36 09N 5 12W which was approximately 6.54 miles east of Santa Barbara Beach. GC stated this data was subject to confirmation by technical extraction...'* [B1319]. I observe that a position six and a half miles east of Santa Barbara (a beach in La Linea) was way outside BGTW, which extend for only three nautical miles from the Gibraltar coast.
- 8.65 At 09.40, DI Chipolina forwarded this information to Mr Field (Field 1 para 38 [A801]). Mr Field told the Inquiry in live evidence that although he understood that this was a provisional location and subject to technical confirmation, in his experience the information given by the Spanish authorities, even at the early stages of an investigation, was *'usually right'*. Indeed, he said that there was *'a*

strong likelihood that it would have been the exact coordinates', although it was another thing to try to get confirmation in writing [T/13/30.2]. Mr Field passed this information to Mr Richardson [B1681], and one of them passed it on to Mr McGrail. I note that, as it turned out, these co-ordinates were virtually correct.

- 8.66 Mr McGrail's written evidence is that: *'At 0940hrs I received information from DCI John Field who in turn relayed information provided by the Guardia Civil suggesting the collision had occurred in Spanish territorial waters though this required confirmation by them'* McGrail 3, para 60 [A72]. Mr McGrail said in evidence to the Inquiry that he accepted that the coordinates had been provided by Mr Field at the briefing at which he was present [T/6/13.1]. When asked whether this information placed the collision comfortably within Spanish waters, Mr McGrail replied *'I can't say that with 100 per cent certainty because I don't know what distance. The distance of 6.54 miles is from the coastline eastwards, but I do not know in relation to international waters laterally as opposed to just the vertical. ... It could be anywhere within one kilometre beach. Santa Barbara could be one kilometre beach, or it could be at ... The most southern end of the beach, which is practically joining up with our own runway, or it could have been its northern aspect which would have taken it closer to the fishing village commonly known as La Atunara'* [T/6/13.22]. In my opinion, this reply suggests some confusion of thought, and perhaps even a reluctance to acknowledge the obvious fact that the evidence, even quite early on the morning of 8 March, established a strong likelihood that the incident had occurred in Spanish waters.
- 8.67 Shortly afterwards, Mr Llamas came to New Mole House to meet Mr McGrail (accompanied by Mr Richardson) [B1681].
- 8.68 At 09.49, Mr McGrail sent a WhatsApp message to Mr Picardo, answering the question asked by him at 07.41, stating: *'CM - the information suggests that the collision took place outside BGTW – approx 6NM east of the runway/Santa Barbara Beach'* [C6699]. He did not copy this message to Mr Pyle or send him an equivalent message. He explained that he used the word *'information'*, to

indicate that it *'had not been verified and therefore caution had to be exercised'* (McGrail 5 para 72, [A158]).

- 8.69 Mr McGrail was asked about the information he had given about the position of the collision. Of course, he accepted that BGTW only extends three miles to the east of the Gibraltar coastline, and therefore six nautical miles east of the runway off Santa Barbara beach was necessarily outside BGTW [T/7/203.12]. He said his suspicions were that the collision was in Spanish waters, but he *'was not certain until its confirmation'* [T/7/204.25]. He was not *'over-thinking'* what he had to write and was relaying what information he had at the time to Mr Picardo, who did not attend any of the briefings that day [T/8/90.15].
- 8.70 Mr McGrail said that he sent this message to Mr Picardo *'in response to a question that he'd asked me'* [T/6/19.4], which is presumably a reference to Mr Picardo's message at 07.41 [B1344]. When asked why he did not also send this information to Mr Pyle, when he had written at 06.05 that he would keep them both updated, and when he had acknowledged receipt of Mr Pyle's email of 09.29 only a few minutes before at 09.41, he said that he *'was engaged in a form of conversation with Mr Picardo and I was responding to questions from him in the same way as I was responding to questions from Mr Pyle'* [T/6/19.14]. I observe that he hardly was *'in conversation with the Chief Minister'*, with whom he had last corresponded at 08.14 [B87], whereas his most recent dealings with Mr Pyle were as recently as 09.41 [B85]. Mr McGrail said that: *'There is absolutely no doubt whatsoever that this information would have been shared with Mr Pyle at the next point of communication with him'* [T/6/19.19]. I will come later to what he did tell Mr Pyle when they met. Mr Picardo said that upon receiving that message, he realised that the collision had clearly taken place in Spanish waters [T/16/31.6]. He also said that he would be very surprised if he had not spoken to Mr Pyle on 8 or 9 March about the incident at sea, and would have felt it *'proper'* and *'necessary'* to share with Mr Pyle the information provided to him by Mr McGrail as to location of the collision [T/16/35.18].

- 8.71 At 10.11, during the course of that meeting, Mr Richardson sent an email to Mr McGrail (copied to Mr Ullger and Mr Field) with a log of events which included the information which he had received at 09.40, from Mr Field to the effect that the *'collision occurred 36'09 N 5" 12" W approx.. 6.54 East of Play (sic.) de Santa Barbara'* [B1680-1], and his evidence was that he did not think he had any doubt in his mind that the collision had happened outside BGTW, but he remained unclear whether the chase had started within BGTW [T/4/237-8].
- 8.72 Meanwhile, an RGP officer (Mr Field believes this was probably Roy Perez [T/13/26.11]) was plotting on a map the co-ordinates of the collision which had been provided by DI Chipolina, which he then printed out [B2789]. At 11.05, Mr Field came to the meeting and produced the map showing what he called the *'suspected exact coordinates'* (Field 1 para 38 [A801]). He remembers discussing with Mr McGrail, Mr Richardson and Mr Llamas that the co-ordinates, as marked on the map, were plainly well outside BGTW. Given that the crew of the RGP launch had reported that the incident had occurred 3 miles off Europa point, which Mr Field then had no reason to doubt, he then reasonably – but wrongly as it turned out – inferred that the chase had started in BGTW. He thinks that he left a copy of the map in the room, as I think it likely he would have done [T/13/37-38]. However, in questioning, Mr Richardson stated that he did not recall Mr Field attending the meeting with Mr McGrail and Mr Llamas [T/4/163.2].
- 8.73 Mr Llamas also gave evidence of this meeting. He did not remember precisely what Mr McGrail told him about the location of the collision, but that to the best of his recollection, he said *'there had been a chase that straddled BGTW and Spanish waters, that there had been some element of contact between the RGP and the Spanish Guardia Civil and that it seemed highly likely that the collision had occurred in Spanish waters but that he was waiting for formal, technical confirmation of this'* (Llamas 1 para 82 [A294]). He recalled Mr Field entering with some coordinates which he understood he had received from the GC, and that he may have mentioned six nautical miles [T/11/107.10]. He could not recall whether an explanation was given for the AIS on the RGP launch not being

switched on but was surprised to learn that [T/11/108.2]. In response to my question, Mr McGrail confirmed that he thought – and that he had told Mr Llamas during that briefing – that it was ‘*highly likely*’ that the collision occurred in Spanish waters, but that he believed at that time that part of the chase had occurred in BGTW [T/6/25.7].

- 8.74 At 10.49, Mr McGrail wrote to Mr Ullger: ‘*Here with AG in my office. Collision happened 6NM east of the airport/la linea beach*’. Mr Ullger replied: ‘*6nm is past the 3nm instructions but the airport/LaLinea medium line I can live with. If the chase is long and intense coxswains will not be looking at radar for co-ordinates, they will be concerned with the chase and vessel in front.*’ [E502].
- 8.75 Mr Santos asked Mr McGrail whether it was fair to say from this that Mr McGrail’s position was that the collision had happened outside BGTW. Mr McGrail did not accept that; he replied: ‘*No, that is not a fair comment. That message was sent in a dynamic situation and it is probably incomplete and/or incorrect. It was shortly after the incident. So we are still talking about the critical moments of the incident. ... So that message is inaccurate insofar as it says that it seems -- confirmed that the collision happened at six nautical miles when at that point it was not confirmed. So it was more information or apparently or seems to have happened rather than confirmed. And what is missing from that message is also that at the time we were working from the hypothesis that there was a chase, a pursuit in British territorial waters which happened to be not the case.*’ [T/23/101.15].
- 8.76 Despite Mr McGrail’s answer, I think that even at this early hour on the morning of 8 March, it was quite clear that the collision had occurred way outside BGTW. I note that he was not then seeking to make a distinction between the location of the collision and start of the chase; I think this was an idea that came to him (or his legal team) much later.
- 8.77 At 11.40, during that same meeting, Mr Llamas erroneously sent a WhatsApp [B1345] to Mr McGrail (who was standing immediately beside him), which he had

meant to send to Mr Picardo, to the effect that: *‘Been in New Mole for the last hour or so. ... PR [Press Release] will not say where incident occurred, but it is virtually certain it was outside BGTW eastern side opposite runway. It also seems that part of the chase was within BGTW.’* Mr Llamas said in his evidence that he thought that he drafted this message with Mr McGrail whilst speaking to him [T/11/111.19]. Mr McGrail said in his evidence that it was *‘not inappropriate’* to say that it was then *‘virtually certain’* that the collision had occurred in Spanish waters [T/6/26.25]. Mr McGrail could not recall discussing coordinates with either Mr Llamas or Mr Pyle on that day [T/7/210/1].

- 8.78 Despite having been given the coordinates and having been given a map marked with the co-ordinates, Mr McGrail’s evidence to the Inquiry was that he was *‘nonetheless working on a provisional hypothesis that the pursuit had taken place in BGTW. My reasoning for this was based on the premise that RGP marine crews had no authority to operate outside BGTW unless it was on a specific search and rescue mission which in this case did not apply. ...’* (McGrail 3 para 60 [A72]). Upon closer questioning, he said *‘we were working on the hypothesis that there had been a pursuit that had taken place in [BGTW] and/or straddled into Spanish waters or international waters, but certainly that something had happened within our waters and that the collision seemed to have occurred in Spanish waters’* [T/6/16.19, see also T/6/24.21]). He also said that he had seen reference to the coordinates being plotted, and he did not doubt Mr Field’s evidence, but it was *‘a very dynamic and fast-paced incident’* [T/6/14.21]. He stressed that he wanted to work on obtaining confirmation and *‘best information, best evidence’* [T/6/17.12] and did not want to give inaccurate information that *‘could cause knock-on effects’* [T/6/18.8].

THE INFORMATION WHICH MR MCGRAIL GAVE TO MR PYLE

THE MEETING OF 8 MARCH

Mr Pyle’s evidence

- 8.79 There is a keen dispute of evidence as to what was said when Mr Pyle met Mr

McGrail that morning. I will first summarise the relevant evidence.

- 8.80 Mr Pyle says that he deliberately visited New Mole House, which he was passing whilst walking his dog, because he had heard nothing from Mr McGrail in the six hours that had passed since his first message at 06.05 earlier that morning, and he wanted an update [T/18/67.3]. He met Mr McGrail. He thinks that he may have passed Mr Llamas, as he was walking out of the room, but they did not speak. He thought that Mr Field and DI Chipolina were present [T/18/66.24].
- 8.81 In his statement Mr Pyle made clear that his *‘primary concern was to establish the location of the incident, and whether it occurred in Spanish territorial waters and to at least be able to report the best available information back to the foreign office in London given the possibility of diplomatic and political situation with Spain about this incident’* (Pyle 1, para 25.3 [A251]). In his oral evidence, Mr Pyle said that, apart from his concern *‘for the welfare of those involved in the incident’*, the only matter which concerned him was *‘where it happened’*, and he believed he would have explained the importance of this to Mr McGrail [T/18/69.8], although the importance of the location of the incident should have been obvious to Mr McGrail. I have no doubt that his main concern was to find out where the collision had occurred.
- 8.82 Mr Pyle gave evidence that he asked Mr McGrail about the location and whether it was inside or outside BGTW and that: *‘He [Mr McGrail] replied with a slightly flippant waving of his hands, “could be in, and could be out, it’s difficult to tell at night”’* (Pyle 1 para 25.3 [A251]). Mr Pyle said that this gave him the impression that the location was uncertain to, say, within a few hundred yards of the limits of territorial waters [T/18/69.25]. Mr Pyle stated that the meeting lasted *‘possibly ten, fifteen minutes’* [T/18/69.5]. He added if he had been told the provisional coordinates, and if this placed the incident *‘firmly inside Spanish waters’*, even if they were yet to be confirmed, he would have reported this back to the FCDO, to the British Embassy in Madrid, and that the message would have gone up to ministerial level [T/18/71.2]. Mr Pyle categorically stated that he was not shown a

map of the coordinates, and that if he had been he would have taken a copy [T/18/75.15].

Mr McGrail's evidence

8.83 Mr McGrail gave evidence that Mr Pyle did not '*raise any particular query*' (McGrail 3 para 65 [A73]). When questioned at the hearing, he accepted [T/6/21.23] that Mr Pyle '*was entitled to the best available information*' but he maintained that '*he was provided with the best information*'. He conceded that '*It is possible that he [Mr Pyle] asked*' where the collision had occurred, but stated that what he believed happened was that '*I briefed him to the same level that I briefed the Attorney-General*' [T/6/28.1]. He denied any '*flippancy*' and stated that '*the essence of what we were discussing was that we were working on the hypothesis that part of the chase could have happened in Gibraltar waters or could have happened out.*' [T/6/29.17]. When I asked what precisely he had told Mr Pyle, he said: '*I cannot tell you with certainty other than say that the matter – that the collision was highly probable that it happened in Spain with part of the chase happening in Gibraltar waters*' [T/6/30.17]. He said there was '*no change in my posture*' from what he had said when briefing Mr Llamas to what he had said when briefing Mr Pyle [T/8/94.16].

8.84 He also made the point that neither Mr Llamas nor Mr Richardson had suggested he had missed out salient information [T/8/94.11]. As I explain below, I am sure that Mr Llamas had left the meeting by then, so there is nothing in that point in relation to him; but Mr Richardson probably was still there, I will consider his evidence later.

Mr Llamas's evidence

8.85 Mr Llamas had originally thought that he had stayed at New Mole House after Mr Pyle had arrived and that he had himself been present at this meeting on 8 March (Llamas 1 para 84 [A295]). However, in live evidence, he said that on reflection he thought that he had been confused and that he was only present at the meeting the next day, 9 March. He also pointed to a missed call which he received from

Mr McGrail at 12.12 on 8 March, which he suggested meant he was not with Mr McGrail at the time [T/11/113.11]. I think his revised memory is right: he left the meeting on 8 March just as Mr Pyle was arriving and did not speak to him, neither did he hear what Mr McGrail said to Mr Pyle.

Mr Richardson's evidence

- 8.86 Mr Richardson was still in the office when Mr Pyle *'arrived pretty much towards the very end of the meeting ... I think he just popped in. I think he was just walking past the station with his dog, and he popped in to say hello.'* [T/4/169.17]. He could not recall whether the location of the collision was discussed in the time that Mr Pyle was at the station [T/4/170.3] but, based on his note, he believed that it was mentioned that part of the chase was outside BGTW, but could not say with any certainty whether it was mentioned that the collision was outside BGTW [T/4/170.14]. He said that although it was *'a very murky picture during those first few hours'* [T/4/239.24], he did not personally then have any doubt that the collision had happened outside BGTW, although he did not know whether the chase, or any part of it, had happened within BGTW [T/4/237.2].
- 8.87 I comment that Mr Richardson was not particularly focused on what information Mr McGrail was giving to Mr Pyle, and he did not make any note of that. Although he says that he does not recall whether the location of the collision was discussed, I am sure that it was, because this was Mr Pyle's main concern and interest. I accept that Mr Richardson would have intervened – and remembered – if he heard Mr McGrail giving false or misleading information about the location of the collision, and he did not do so. However, he relies entirely on his brief note and I am not sure that he either heard or remembers at all what Mr McGrail said to Mr Pyle. Therefore, I do not consider the fact that Mr Richardson did not intervene to be persuasive, one way or the other.

Mr Field's evidence

- 8.88 Mr Field stated that he only saw Mr Pyle once in Mr McGrail's office, for less than a minute, when he entered to quickly to brief the Commissioner about something

insignificant and then left. He says that there was no discussion of ‘*BGTW or anything like that*’. He was unable to say whether this was 8 or 9 March [T/13/45.11]. Therefore, his evidence does not help me to resolve what Mr McGrail told Mr Pyle on 8 March.

Mr Pyle’s emails

- 8.89 After the meeting concluded, Mr Pyle messaged Mr McGrail by WhatsApp, at 13.33 [B1346]; plainly he was summarising what he understood that Mr McGrail had told him:

‘Thanks for the briefing. I’ll do a quick note for London when it hits the press. Line will be. Investigation ongoing. Spanish nationals from Cueta (sic.) (did you say one person was Portuguese). Not sure in whose waters incident took place. RGP seeking assistance from UK police authorities. No assistance needed from FCO at this stage.’ (The emphasis by underlining is mine.)

- 8.90 At 13.46, Mr McGrail replied ‘Yes, *all correct*’. He followed that up with a further signal to Mr Pyle, at 13.47, that he was ‘... *trying to clarify exact position of the collision ...*’. [B1436].

- 8.91 At 14.09, Mr Pyle emailed FCDO in London to report the incident:

‘I’ve just met with the Commissioner of Police who kindly gave me a briefing on the incident. The facts have yet to be determined and the investigation is ongoing, but initial headlines are as follows: The incident happened @ 04.00 hours though it is not yet known whether it took place in BGTW or just outside...’ [B1746]

- 8.92 Mr Pyle’s written evidence was that Mr McGrail had caused him to report to London ‘*on the basis of incomplete, indeed erroneous information and less information than was available*’ (Pyle 1 para 25.8(iv) [A254]).

8.93 Mr McGrail may not have been sure of the exact position of the incident but the best information available to him was that: (a) the Spanish authorities had provided provisional co-ordinates of the collision, which were some six and a half nautical miles off the Santa Barbara Beach; (b) this position had been plotted on a map; and (c) it was – to use Mr McGrail’s words in oral evidence [T/6/30.17] – ‘*highly probable*’ that the collision happened in Spanish waters but the chase may have started in BGTW, but he needed confirmation. In my opinion, if Mr Pyle had been given that information at their meeting, he would have set this out in his summary sent in his WhatsApp message of 13.33 and in the later email that he sent to the FCDO at 14.09. Furthermore, Mr McGrail would not have replied that the summary, as sent, was ‘*all correct*’, rather he would then have said that Mr Pyle had not properly understood what he had said, which he would have repeated to avoid any further misunderstanding, but he did not do so. I therefore conclude that Mr McGrail did not provide Mr Pyle with the best available information in their meeting that day.

MR LLAMAS GIVES FURTHER INFORMATION TO MR PYLE

- 8.94 Mr Llamas and Mr Pyle are friends. That evening (8 March), they had dinner together. Although Mr Llamas has no positive recollection of doing so, he said that he was sure that they would have discussed the Incident at Sea, which was the most pressing event of the day. There were also pending negotiations with Spain and they were ‘*...very concerned to make sure that this incident would not create problems with that meeting which was very important*’. [T/11/116.17]. He said it was ‘*completely implausible*’ that he would not have passed on what Mr McGrail had told him earlier [T/11/116.17].
- 8.95 Mr Pyle said that it was inconceivable that they would not have discussed the Incident at Sea, and that Mr Llamas would have passed on to him the information which he had received from Mr McGrail, but he could not recollect the precise words he used [T/18/76.20]. I should note that there was no express mention of this dinner meeting, nor what was discussed at the said dinner, in either Mr

Llamas's or Mr Pyle's evidence. However, a WhatsApp message from Mr Pyle to Mr McGrail on the morning of 9 March [B1346] refers to Mr Pyle having been '*with the AG last night*', and Mr Llamas's written evidence referred to having spoken to Mr Pyle '*later that day*', i.e. later on 8 March (Llamas 1 para 85 [A295]).

8.96 Therefore, I have no doubt that, whatever he had or had not been told by Mr McGrail earlier in the day, by that evening, Mr Pyle was told by Mr Llamas that it was virtually certain (reflecting the language in the Mr Llamas's message intended for Mr Picardo [B701]) – or at least highly likely – that the collision had happened in Spanish waters.

8.97 Having received this information, Mr Pyle went on – unwisely and unnecessarily, I observe – to speculate to Mr Llamas that what must have happened was that '*on a bored night with not much going on, suspect activity was reported by Windy Hill, the RGP decided to go and have a look, and ... have some fun, Miami Vice style*' [T/18/78.1]. This reaction suggests that he then thought that the crew of the launch were engaged, contrary to Standard Operating Procedures, in some spontaneous, unplanned and unauthorised enterprise of their own.

8.98 Mr Pyle and Mr Llamas agreed that they needed to meet Mr McGrail the following day, '*not least given the Gibraltar EU exit negotiations with Spain*' (Pyle 1 para 25.5 [A252]; Llamas 1 para 85 [A295]).

THE EVENTS OF 9 MARCH

8.99 Mr Pyle believes that what he heard from Mr Llamas was reinforced the next morning by something, of which he had an '*unclear memory*', to the effect that he overheard one of his colleagues saying that staff at the WHSS, using their thermal imaging, had managed to do '*a loose triangulation and plotting based on other ships that were anchored*', from which they had concluded that the whole of the chase was outside BGTW [T/18/83.6; T/19/101.22; T/19/105.19].

8.100 Having heard from Mr Llamas the evening before, Mr Pyle passed on that information to the FCDO by email the next morning (9 March, at 07.57 [B1748]):

'There may be complications around yesterday's incident in that it might have happened as much as six miles inside Spanish waters.'

If true, it's hard to fathom quite what the RGP were doing chasing a vessel so deep into Spanish waters and one can only hope that it was at the invitation of the Spanish. But this may be why GoG have kept details very close and have asked for no social media speculation.'

8.101 Therefore, whatever Mr Pyle had been told by Mr McGrail the day before, the email sent by Mr Pyle early on the morning of 9 March, clearly shows that on the day after the collision, Mr Pyle believed that the collision might have happened '*as much as six miles inside Spanish waters*'.

8.102 It was suggested on behalf of Mr McGrail that the reference in this email to '*six miles inside Spanish waters*' suggests that Mr Pyle was passing on information which was likely to have been given to him by Mr McGrail the day before (opening submissions, para 134.2.1(a)). In my opinion, this cannot be right because Mr McGrail never believed, or said, that the incident happened '*as much as six miles inside Spanish waters*'. What he believed was that it happened '*six miles from the Spanish coast*' (or words to that effect), which is quite different. He would never have said that the incident happened '*as much as six miles inside Spanish waters*', which was quite untrue, and which he never believed [T/6/43.19]. I conclude that Mr Pyle did not hear that the collision happened '*six miles inside Spanish waters*' from Mr McGrail; he heard it from Mr Llamas.

8.103 I continue with the narrative. At 10.00, a meeting was held at GC Headquarters in Spain, which DI Chipolina and DI Perera attended on behalf of the RGP. The timeline later provided by the RGP (in answer to the request under section 15 of the Police Act, to which I will come) recorded that the Spanish authorities were asked if they could provide the confirmed coordinates for the collision. Officials of the GC stated that an initial report had been prepared but needed to be

discussed with the designated Spanish judge. GC stated that the approximate coordinates supplied previously to DI Chipolina stood but that their technicians had yet to extract and validate such data. They confirmed the approximate collision location was 6 to 6.5 miles off Santa Barbara Beach [B1321].

8.104 Mr McGrail stated that ‘*during the course of the morning*’, he was informed that the GC were still of the view that the collision had occurred in Spanish waters but that their interpretation still had to be confirmed by their technicians (McGrail 3 para 67 [A74]). In questioning, he said he could not be certain that he passed this information on to Mr Pyle [T/6/39.9].

8.105 At 10.15, Mr Pyle messaged Mr McGrail [B1346] saying that he had been with Mr Llamas the previous night and ‘*wondered*’ if he could have an update later that morning. He said ‘*[w]e are keen to reach [out to] Spain given talks this week in London...*’.

THE MEETING ON 9 MARCH

8.106 At 12:10, Mr McGrail met Mr Llamas and Mr Pyle; Mr Richardson was also present. Again, there is disagreement as to what was said; so, again, I will summarise the rival versions.

8.107 Mr McGrail’s written evidence was that, at that meeting, he informed Mr Llamas and Mr Pyle that the exact coordinates of the collision had still not been determined. He did not recall whether the GC’s provisional coordinates were discussed, but suggested by reference to Mr Richardson’s brief note (below) that the provisional coordinates were mentioned, and that ‘*location was discussed albeit with a caveat that this still needed verification*’ (McGrail 1 para 69(i) [A75]). He thought that the pursuit was believed to have lasted 10 minutes ‘*in and around British Gibraltar Territorial Waters*’ (McGrail 1 para 69(ii)(a) [A75]). In oral evidence, Mr McGrail stated that he did not have any recollection of providing the provisional coordinates to Mr Pyle, but said that there was a discussion of coordinates, and the only coordinates available at the time were those provided

by the GC [T/6/41.21].

8.108 Mr Pyle's evidence was that he again asked Mr McGrail about the location of the incident and again he said that he was still not sure (Pyle 1 para 25.6 [A252]). He maintains that Mr McGrail still did not mention the fact that coordinates had been provided by the GC (Pyle 2 para 16.1 [A262]). He said that, if he had been told the coordinates, he would have immediately passed them on to the FCDO in London and British Embassy in Madrid (Pyle 2 para 16.2 [A262]). He also said that nobody produced Mr Field's map, on which he had marked the provisional location of the collision [T/19/111.19].

8.109 When he was questioned about not putting it directly to Mr McGrail at the meeting that he had been told by Mr Llamas the night before that it was virtually certain that the collision had occurred in Spanish waters – and perhaps even up to six nautical miles into Spanish waters – Mr Pyle said *'I don't have an answer to that. It's something that I have asked myself and I can accept the suggestion that I should have been more forceful and directive and more open with Mr McGrail and said that I had had information that sort of quite clearly puts the incident inside Spanish waters'* [T/18/91.13]. He also accepted that if he had done so Mr McGrail would have been able to provide him with better information. He denied that he had decided to test Mr McGrail and see how long he took to give the information; he said that he was *'not Machiavellian'* [T/18/94.2].

8.110 He repeated, however, that his interest was not the exact location of the collision, but rather whether it was inside or outside Spanish waters [T/18/92.8]. He added: *'I think it may be an influence from ... the previous day where Mr McGrail had the opportunity to fully disclose what he knew. That was an oversight on his part of such significance and magnitude that I really found it quite hard and still do to understand why Mr McGrail didn't tell me that and the only conclusion ... either there was this massive oversight or it was deliberate'* [T/18/93.11].

8.111 When pushed in questioning by Mr Wagner whether Mr Pyle might have been confused between the *'location of collision'* and the *'location of the incident'* (a

term which he suggested covered both the chase and the collision), Mr Pyle accepted that it was possible – I seek to reproduce his emphasis – that what he thought was evidence of evasion on the part of Mr McGrail was actually a misunderstanding, but he maintained that Mr McGrail was being evasive, although not necessarily deliberately so [T/19/116.13], which concession he repeated several times.

- 8.112 Turning to another point, Mr Pyle had said that at the 9 March meeting, Mr McGrail attributed not switching on the GPS/AIS instruments to have been a decision taken ‘*in the heat of the moment*’ (Pyle 1 para 25.6 [A252]). Mr McGrail denied saying that (McGrail 5 para 80 [A159]). It was pointed out to Mr Pyle that in his email to the FCDO later that day at 16:42 [C3278], he reported that Mr McGrail had used the expression in ‘*the pressure of the moment*’ in relation to the RGP helmsmen not reporting the start of the chase to his Operations Centre as per Standard Operating Procedures. Mr Pyle conceded the point and remarked that ‘*You could be right. I could be conflating two issues. ... But the point is that issues of significant importance were brushed off to an oversight so, with respect, which issue it was, given that both were quite substantial issues, is relevant but for me not pivotal.*’ [T/18/97.8]. He also accepted that if there had been a similar exchange with Mr McGrail in relation to AIS, he would have recorded it in the email [T/18/97.22].
- 8.113 Mr Llamas recalled that Mr Pyle asked Mr McGrail why the AIS system could not confirm the location of the collision and that Mr McGrail replied that it was switched off (Llamas 1 para 86 [A295]).
- 8.114 Mr Richardson’s brief note of the meeting records ‘*Exact co-ordinates of collision still not determined*’, ‘*10 mins chase in and around Gib waters*’, and ‘*Element of chase [within] BGTW*’ [A1292-3]. This was put to Mr Pyle, who confirmed that he recalled the expression ‘*we’re still not certain where it is*’ [T/18/98.9].
- 8.115 Mr Llamas agreed that it was very likely that Mr Richardson’s note was accurate and that they were told that an element of the chase had taken place within BGTW

[T/11/125.6]. He remembered Mr Pyle specifically asking about the location of the collision, to which Mr McGrail responded that the exact coordinates were still not determined, but he did not believe the unconfirmed coordinates were mentioned [T/11/126.6]. Mr Llamas recalled that Mr McGrail *'was very keen in getting the exact coordinates'* [T/11/127.6].

8.116 When asked why he did not intervene at that point and remind Mr McGrail of what he had told him the previous day, Mr Llamas said that if Mr McGrail wanted to be absolutely certain of the coordinates before confirming it to Mr Pyle, *'that was ... a matter for him'* [T/11/127.19]. That reluctance to intervene – I observe – was a characteristic, but not a very helpful, stance for him to take.

8.117 It is worth pointing out that Mr Richardson, whom I consider to be a reliable and shrewd observer and commentator, did not have the impression at any stage, in those meetings which he attended, that Mr McGrail was deliberately keeping any information from Mr Pyle, nor did he know of any reason for him to do so [T/4/232.22].

FURTHER EMAILS FROM MR PYLE

8.118 Following that meeting, Mr Pyle emailed the FCDO at 13.16 stating that *'we are unlikely to have the facts until tomorrow at the earliest'* [B1752].

8.119 At 16.42, Mr Pyle sent a further email to the FCDO [C3278] stating that:

'The GC confirmed they had opened up an investigation which they would pursue regardless of where the collision took place. This infers even they are not sure where it happened. ...

The RGP helmsmen did not report the start of the chase to Ops Centre as per SOPs [Standard Operating Procedures]. CoP brushed this off to an oversight due to the pressure of the moment. I was less forgiving.

CoP confirmed that the exact location has still to be determined as were details of the chase which lasted 10 minutes.

... The AG said it was clear, with the entry at some point of the vessel into BGTW, that the law had been broken and that therefore the chase was legitimate.'

8.120 I observe that Mr Pyle wrote that '*the exact location has still to be determined*' (my emphasis), but he did not mention that the Spanish authorities had provided co-ordinates, which were subject to confirmation, or that those co-ordinates made it highly probable that the collision had occurred in Spanish waters, which surely he would have done if Mr McGrail had said so. From the fact that he did not do so, I draw the inference that he was not told this by Mr McGrail.

8.121 Mr McGrail was asked about this email; he maintained that it was accurate because the exact location was still to be determined, given that the coordinates were yet to be confirmed [T/6/51.13]. This point was reflected by the entry Mr Field made in his day book for 9 March [C6958] to the effect that: '*we need to establish ... exact location*'. However, Mr McGrail would not accept that it was misleading to say that the exact location had still to be determined, without mentioning the information they had about the provisional co-ordinates.

EXAMINATION OF THE SUSPECT RHIB

8.122 Mr Field gave evidence that on 9 March 2020, the RGP examined the screen of the Garmin GPS/radar device on the suspect RHIB, which had been switched on (I interpose that presumably the crew of the RHIB did so because they needed it to navigate). Mr Field said that there was a '*strong indication*' that the time and the coordinates still displayed on the screen showed the time and place of the collision, because the vessel would have lost power on impact [T/13/32.18]. A photograph [B1715] was taken of the coordinates on the screen, which were N36°09.953', W005°12.511', well within Spanish waters, and which tallied with

the provisional coordinates that the GC had provided [T/13/32.18]. Mr Field believed that this attempt to extract data from the RHIB was recorded in his day book on 9 March 2020 (at [C6959]) [T/13/35.12].

- 8.123 However, rather unhelpfully – as it seems to me – this information does not appear to have been passed on to Mr McGrail at that time (I am not here seeking to blame Mr Field for this; I do not know who should have done so). In accordance with standard procedures, the vessel was declared a crime scene, and nobody thereafter touched anything on the vessel until the Metropolitan Police crime scene investigators came much later to examine it, as I explain below [T/6/66.3]. Mr Pyle said in his oral evidence that it would have been helpful if the RGP had informed him of this information, because, if he had been given all the available information, he could have worked out for himself what was relevant [T/18/118.15]. I also agree with this observation.

LATER DEVELOPMENTS ON 9 AND 10 MARCH

- 8.124 On the evening of 9 March, Mr Picardo created a WhatsApp group under the name ‘Maritime Incident’ [B99], and included Mr McGrail, Dr Britto, Mr Frank Carreras (the Chair of the Police Complaints Board) and Mr Darren Grech (the Chief Secretary). He did not include Mr Pyle in that group. He was asked at the hearing why he had not done so; he explained that this was because the group was to deal with what he called ‘Gibraltar issues’, which the GPA, Police Complaints Board, the Chief Secretary and the Commissioner of Police would have to consider with the Chief Minister [T/16/37.25]. He must have implied that these were not matters to be considered by the Interim Governor. I am satisfied that he had no ulterior motive in not including Mr Pyle in the group, so there is no significance in his having omitted him.
- 8.125 At 20.13, Mr McGrail reported to the WhatsApp group that: ‘*The AG is up to speed on this. I am politely resisting sharing any information with ES LEAs [Spanish Law Enforcement Agencies] until such time as we are certain ourselves of key issues e.g. exact details of the pursuit etc. My own officers have only supplied a very*

preliminary account shortly after the incident & as per our post incident procedures will be providing a more detailed account between tomorrow and Wednesday.'

- 8.126 On 10 March, Mr Field received a report [C6960] from Mr Mandelberg (an officer of the Gibraltar Port Authority) that the AIS navigational aid on the RGP launch, which had been switched off throughout the chase and at the time of the collision, had been turned back on at 04.47, just after the launch had met with HM Cutter Seeker [T/13/49.4].
- 8.127 That same day experts confirmed to the RGP that they were unable to extract data from the RGP launch to determine its location either during the chase or at the point of the collision [B1323].
- 8.128 Also on that same day, Mr McGrail arranged for the Directorate of Professional Standards of the Metropolitan Police Service to carry out an independent investigation of the Incident at Sea [B1322]. I note, however, that on 11 March, Mr McGrail's messaged Mr Ullger: *'They are coming on Friday. I intend to brief them on the local context. But I am concerned of PR [Mr Richardson] steering it to where I do not want it to go...'* [E509]. Sir Peter Caruana asked him whether this was consistent with his evidence that he did not think the RGP should propose any views to the investigators from the Metropolitan Police [T/23/99.19]. He replied that, *'I am talking this with my deputy. I am not sharing this with the ... Metropolitan Police or with any external party.'* [T/23/122.21] The Inquiry has received no evidence that Mr McGrail did attempt to influence the Metropolitan Police.

EXCHANGES ON 11 MARCH

- 8.129 At 18.02 on 11 March, Mr McGrail sent Mr Llamas a WhatsApp seeking his approval for a short statement to the GC on the Incident, the material part of which read as follows [B701]:

'Ref: Initial Incident Report – Collision at Sea with fatalities

At about 03.00hrs on Sunday 8th March 2020, officers from the Royal Gibraltar Police Marine Interceptor Sir John Chapple (Bravo 4) communicated with the Guardia Civil COS in relation to the presence of a suspect vessel activity in waters off the Playa de Santa Barbara, near to the eastern side between Gibraltar and La Linea. Bravo 4 deployed and remained ready to engage at a point approximately 3 miles East of the runway.'

8.130 At 19.15, Mr Llamas replied to Mr McGrail's WhatsApp (of 18.02, referred to above) stating '*Ian, that seems fine to me. Factual whilst being amenable to further precision once you obtain further details.*' [B703].

8.131 At 18.58, Mr Pyle emailed Mr McGrail, asking: '*... Are we any clearer as to where the collision took place? London are keen to know whether it was inside or outside BGTW and if the latter, approximately by how far*' [B1591].

8.132 As the Government Parties argue in their closing submissions (para 175.4-5), this question is plainly inconsistent with Mr McGrail having provided the provisional coordinates to Mr Pyle on 9 March. Indeed, Mr Pyle's question, as posed, still leaves open the possibility that the collision took place inside BGTW, a possibility which Mr McGrail had rejected in the early hours of 8 March.

8.133 Mr McGrail replied at 19.07:

'... we are getting there on establishing exact co-ordinates of where collision took place. We are tying up some loose ends and probing further from WHSS and should be able to confirm soon. It is, highly probable it did occur out BGTW. We are getting plotted which will provide a better understanding in terms of distance from BGTW.' [B1591]

8.134 As the Government Parties argue in their closing submissions (para 175.7), why would Mr McGrail have written that it was '*highly probable*' that the collision did occur out of BGTW if he had told him that before? Plainly, to my mind, Mr McGrail

is giving new or fresh information in this reply, which he had not given to Mr Pyle before.

8.135 At 19.28, Mr Pyle responded to Mr McGrail's email (of 18.58): *'OK. Thanks. I'll inform London, facts still not established but highly likely to have occurred outside BGTW.'* [A83]

8.136 At 19.09, Mr McGrail messaged Mr Llamas:

'HE (Nick) is asking for confirmation of where collision took place as London are keen to know. I have informed him along the same lines that you advised CM ie that it is highly probable that it happened outside BGTW.' [B703]

8.137 To my mind, again this message strongly suggests that the information which Mr McGrail had just given to Mr Pyle – to the effect that it was highly probable that the collision happened outside BGTW – was new. This was something that Mr Pyle had just been told by Mr McGrail, not something which he had been told on 8 March and told again on 9 March.

8.138 On 12 March 2020 at 08.49, Mr Pyle emailed the FCDO stating:

'I asked the Commissioner of Police yesterday if he could, 3 days on, confirm the location of the collision, as per the meeting Michael and I had with him on Monday. He could not and restricted himself to saying more work needed to be done but "it is highly probable it was outside BGTW" ... I have to say I can't quite understand why we still don't definitively know whether the incident took place inside or outside of BGTW. The exact coordinates don't matter [at this stage] – it's a matter of inside or out. This leaves me worried that it was significantly outside.' [B1761]

8.139 So here, as I conclude, Mr Pyle is passing on the new information which he had

received from Mr McGrail the previous evening. When Mr Pyle gave evidence at the Inquiry, he relied upon this email to show that he complained at the time that Mr McGrail was not giving him sufficient information, [T/19/79.18; 82.4], but – I observe – he is not here complaining that he was ‘*misled*’.

- 8.140 I turn to reflect on these further exchanges. Mr Pyle contends that Mr McGrail’s email of 19.07 on 11 March was the first time that Mr McGrail had told him that it was highly probable that the incident occurred out of BGTW (Pyle 1 para 25.8(iv) [A254]), although he said in the course of his oral evidence this only confirmed what he had already heard from Mr Llamas and from his colleagues at the WHSS [T/18/103.13].
- 8.141 Mr McGrail argues that, on 11 March, he was not telling Mr Pyle anything that Mr Pyle did not already know, since Mr Pyle had already reported to the FCDO on the morning of 9 March that the collision had occurred in Spanish waters [T/6/54.22].
- 8.142 Mr Pyle countered that this was the first time he heard this information from Mr McGrail, who he believed was evasive with him from the Sunday morning up until that message, and even then, was not saying that the collision had definitely taken place in Spanish waters, as was reflected in his email to the FCDO at 19.28 [T/19/247.7].
- 8.143 At 16.13 on 12 March, Mr McGrail messaged the ‘Maritime Incident’ WhatsApp group (which did not include Mr Pyle), stating: ‘*the evidence points at the pursuit & collision occurring outside BGTW. Not the best news we wanted to hear*’ [B100].
- 8.144 Mr McGrail’s written evidence did not make clear what new evidence he had received to prompt this further bulletin. When questioned at the hearing, he said that the position of the collision had been confirmed after examining the recordings of the footage from the thermal cameras of the Port Authority; this further information changed the position ‘*from the information stage to evidence*’ [T/6/56.25].
- 8.145 I should perhaps add that Mr Field confirmed that he briefed Mr McGrail about

the conclusions drawn from the thermal recording at this time [T/13/55.21]. This is noted in his day book for the afternoon of 12 March [C6965]. However, his evidence was that the thermal imagery only showed the collision and part of the chase, and it was only established that the interception, the whole of the pursuit and the collision had all taken place in Spanish waters when Captain Richard Meikle, the marine investigator from Solis Marine Consultants, to which I will return below, provided the rapid replay on 25 March 2020 [T/13/54.6, 56.3, 56.23].

- 8.146 Mr Picardo responded to Mr McGrail's message of 16.13: *'Thank you Ian. Location does not worry me so much. Helps us in a way. Will discuss directly with you'* [B101]. I comment that this may appear to be a rather strange reaction to the news, which was likely to cause diplomatic and political fall-out, that both the chase and the collision had happened in Spanish waters. Mr Picardo in his evidence to the Inquiry said that this news demonstrated the help that the RGP was giving to the Spanish authorities to assist in the suppression of smuggling to Spain (Picardo 2 para 20 [A230]). However, he added that he was also *'making the best of a bad lot'*, given *'the context of the difficult moment we were in the negotiations'* [T/16/40.7].
- 8.147 Mr Pyle added that he agreed with Mr Picardo's approach, stating that the enquiries being made in Gibraltar in the aftermath of the collision to determine how the collision had happened would indeed demonstrate the nature and extent of cooperation between Gibraltar and Spain to suppress smuggling [T/18/107.1].
- 8.148 Mr McGrail's evidence was that he then spoke with Mr Pyle *'to update him in the same vein as I had done with other officials in the 'Maritime Incident' group chat'*. Mr McGrail stated that he has no notes of this call, but that he told Mr Pyle that the evidence pointed to the pursuit and collision occurring outside BGTW. Mr McGrail stated that *'this was the first occasion I had verified information / evidence that the collision had taken place outside BGTW'* (McGrail 3 para 92 [A83]). Mr Pyle's evidence of this call was that Mr McGrail *'confirmed that not only did the collision take place in Spanish waters, so did the whole of the pursuit that*

preceded it. No part of the incident had taken place in British Gibraltar territorial waters' (Pyle 1 para 25.8(v) [A254]). He did not believe he ever raised with Mr McGrail the fact that he had known since 8 May 2020 the approximate location of the collision [T/18/108.18].

8.149 At 16.50, Mr Pyle updated the FCDO by email [B1762]:

'I've just had an update from the Commissioner of Police who confirmed our suspicions that not only did the collision take place in Spanish waters, so did the pursuit. The Commissioner also confirmed that [Standard Operating Procedures]/Protocols [were] not followed.'

8.150 On the morning of 13 March 2020, the team from the Metropolitan Police (led by DCI Smith, later promoted to Detective Superintendent) [B2916] arrived in Gibraltar and they met RGP officers for a briefing. Capt Meikle, a maritime accident investigator from Solis Marine Consultants (**'Solis'**), who had been commissioned by the RGP to investigate the collision, arrived on the same day [B1328].

8.151 On 14 March 2020, Capt Meikle conducted an examination of both vessels and removed their navigational systems for further examination [B1328].

8.152 On or about 20 March 2020 (there is some disagreement as to the exact date, but I do not think the date is material), DCI Smith (from the Metropolitan Police) gave a *'rushed initial debrief'* to Phil Culligan (Mr Pyle's deputy). Mr Culligan's pithy note [C4230] records, in a bullet point, that: *'All indications were that the incident had happened in Spanish waters possibly up to 3 miles out of BGTW'*. He also said that the crew were declining to answer questions, upon legal advice. Mr Pyle's evidence was that he may have been at the debrief for some short time, but he was not there to hear this information [T/19/109.18]. By contrast, DCI Smith's evidence was that he had no direct contact with Mr Pyle. I do not think these differences in evidence were sufficiently significant to pursue (see

variously Smith 1 para 32 [A1054]; Mr Cullinan's email [C4230]; and Mr Pyle's account in oral evidence [T/18/109.18, 111.16]).

- 8.153 On 25 March, Capt Meikle reported that a screenshot of a '*Rapid Reply Construction*' collision put the approximate position at 36°09 95 N, 005°12 51W. This was the first authoritative confirmation of the location of the collision (this was set out in the RGP's timeline at [B1331]).

DID MR MCGRAIL MISLEAD MR PYLE AS TO THE LOCATION OF THE COLLISION?

- 8.154 Having reviewed the contemporaneous evidence, and some of the submissions based upon them, I turn to consider the other arguments.
- 8.155 Mr Wagner has argued that there was no logical motive for Mr McGrail being deliberately evasive or for him deliberately to conceal the information about the location of the collision from Mr Pyle, when he had already given that information to Mr Picardo and to Mr Llamas. This was particularly so when it was inevitable that, sooner rather than later, Mr Pyle would find out the true position – as indeed he did. Mr Wagner suggests that Mr McGrail would also have realised that Mr Llamas might pass on the same information to Mr Pyle on 8 March – as in fact he did, only a few hours later – so no purpose would be served by giving misleading information to Mr Pyle.
- 8.156 I acknowledge that this is a powerful argument, which I have anxiously considered. However, by way of example, the long experience of the courts is that, whilst a consideration of all the relevant circumstances often drives a jury to a clear conclusion that a defendant did – or did not do – the act or omission alleged, the reason or motive for them doing – or not doing – it is often obscure or unknown, sometimes even to the defendant himself. People sometimes do act irrationally, without any obvious reason or motive. That is why juries are directed to ask whether they are sure that the defendant did the deed – or omitted to act – with a particular intent, but they are not asked why they did so – or did not do so. Lack of motive must be considered before deciding whether the defendant did –

or did not do - the deed, but once they are sure that he did – or did not – do the deed, it is not necessary for them to decide why he did – or did not – do so. I will return to this point later. I turn now to review the other arguments.

- 8.157 I do not accept Mr Wagner’s submission that, by giving information to Mr Llamas at the meeting of 8 March, Mr McGrail was thereby giving that information to Mr Pyle (in his capacity as Interim Governor), on the grounds that Mr Llamas was the legal advisor to the Interim Governor and he was receiving the information on his (Mr Pyle’s) behalf as such. Further, Mr Wagner relies on the fact that Mr McGrail knew that Mr Llamas and Mr Pyle had been together on the night of 8 March.
- 8.158 Mr Llamas addressed this in his Second Affidavit, where he stated that he was not a ‘post box’ (Llamas 2 para 49 [A311]). He made his position very clear at the hearing [T/11/121.18] when he said that those with a constitutional obligation to brief the Governor on matters relating to the Governor’s constitutional responsibility cannot discharge their duty by briefing the Attorney-General.
- 8.159 I accept that Mr Llamas did from time to time act as the Interim Governor’s legal advisor, and he did later do so as the crisis of Mr McGrail’s retirement later developed, but he was not acting as the Interim Governor’s legal advisor in respect of the Incident at Sea at the meeting of 8 March, and no one there then thought – still less said – that he was there in that capacity.
- 8.160 I move on to another point. Mr Wagner has suggested that Mr McGrail did not want to give information to Mr Pyle based only on probability; he wanted to wait until he was certain. But he could easily have said that the information which he had was only ‘*the best available information*’, but it was subject to confirmation; and he did not do so. Furthermore, he gave the best available information to Mr Picardo, to Mr Llamas, and to Mr Ullger I can see no good reason why he did not give the same information to Mr Pyle. So, I do not accept this to be an adequate explanation either.
- 8.161 Mr Wagner has also suggested that Mr McGrail was using the word ‘incident’ to

refer to both the chase and the collision, with the result that, when Mr McGrail said that he was not sure where the ‘*incident*’ had taken place, this was literally true, since there remained doubt as to where the chase had started. But I consider this submission to be – as the Government Parties argue – disingenuous: if this was what he meant, he could easily have spelt out the different information relating to the chase and to the collision, which he did not do. Furthermore, as they also point out, he often used the words ‘*collision*’ and ‘*incident*’ interchangeably (a use of which they gave several examples, at para 184 of their closing submissions). In my opinion, what really mattered was the location of the collision – that was the ‘*incident*’. Without the collision, there would have been no deaths and no ‘*incident*’. I therefore reject Mr Wagner’s argument on this point also.

8.162 Nor am I impressed by Mr Pyle conceding in questioning by Mr Wagner, the possibility of this misunderstanding about the meaning of the word ‘*incident*’ (the emphasis was given by Mr Pyle himself, which I am seeking to reproduce). I do not think his concession was a mark of ‘*his candour*’, as the Government Parties contend, for this was one of a series of concessions made in the afternoon hearing session when he seemed to be agreeing with many contentious points that were put to him. Furthermore, in many other and later exchanges, and in re-examination, Mr Pyle stoutly maintained that he still believed that Mr McGrail had been evasive (the references are helpfully gathered together in the Government Parties’ closing submissions at para 187; I need not repeat them here).

8.163 Having reviewed, in some detail, the contemporaneous evidence and in particular the email exchanges between Mr Pyle and Mr McGrail, Mr Pyle and the FCDO, and between Mr McGrail and Mr Llamas, I think that the inevitable and only inference is that Mr McGrail did not tell Mr Pyle on 8 or 9 March that he had received unconfirmed co-ordinates of the collision from the Spanish authorities, that these were six and a half nautical miles off Santa Barbara Beach and therefore that it was highly likely that it occurred outside BGTW and inside Spanish waters. He did not, therefore, give him the best available information. I

conclude that he did not properly discharge the duty which he owed to Mr Pyle, as Interim Governor, to keep him properly informed of matters falling within his responsibility. I am therefore satisfied that, as Mr Pyle maintains, and as the Government Parties argue, that this seriously damaged the trust and confidence that Mr Pyle had in Mr McGrail, as Commissioner of Police.

8.164 Therefore, turning to the question posed in the List of Issues, although Mr McGrail did give information as to the location of the Incident at Sea in a timely and transparent fashion to Mr Picardo and Mr Llamas, he failed to give that information in a timely and transparent fashion to Mr Pyle, and that caused Mr Pyle to lose confidence in Mr McGrail.

8.165 However, rather than leave the matter there, I return to the question of motive and why Mr McGrail did not give the best available information to Mr Pyle when he had done so to others. Obviously, Mr McGrail cannot (or has not sought to) answer this question, since he maintains that he did. Mr Pyle concluded – and the Government Parties now argue that – Mr McGrail was being deliberately – and dishonestly – evasive. I could speculate that on the morning of 8 March he was confused, tired, stressed or lost concentration and focus when dealing with the crisis. However, that cannot explain his later emails, or why he persisted in not giving the best available information on 9 March, or why he did not give it until 11 March. I could speculate that he may have been prepared to give the best available information to Mr Picardo, thinking that he would accept the news and make the best of it – as in fact happened; whilst he was reluctant to give the same information to Mr Pyle, thinking that he would take a very dim view of the situation – as in fact happened. But these are speculations, and I am not going to decide his motive on speculation.

8.166 I have found as a fact that Mr McGrail did not give the best available information to Mr Pyle; it is a separate question of fact why he did not do so and, most particularly, whether he deliberately and dishonestly misled him. In my opinion, particularly cogent evidence is required to find that Mr McGrail, as Commissioner

of Police, deliberately and dishonestly misled the Interim Governor on a matter where he had a duty to give the best available information. It would, I think, be completely out of character for him to be deliberately dishonest, and it makes little or no sense to give full information to Mr Picardo and Mr Llamas and then deliberately and dishonestly to give incomplete information to Mr Pyle within a very short time. I am satisfied – indeed I am sure – that Mr McGrail did not give the best available information to Mr Pyle on 8 and 9 March and he did not do so until 11 March. However, I do not know why he did not do so and I am unable to find that he was dishonest or sought deliberately to mislead the Interim Governor.

8.167 Mr Wagner does not claim this to be mitigation, but he does seek to minimise the seriousness of the consequence of Mr McGrail's failure by pointing out that on the evening of 8 March, Mr Pyle had been told by Mr Llamas that it was highly likely that the incident had occurred in Spanish waters, which information he passed on to the FCDO quite early the next morning (on 9 March). So, he argues, if Mr Pyle was '*misled*', he was only '*misled*' for a few hours, and no one acted to their detriment as a result of this incomplete information; it had no adverse effect on anyone. But that does not answer the point made by the Government Parties that this failure did damage the trust and confidence that Mr Pyle had in Mr McGrail, which was not reduced by being given the same information by Mr Llamas later that day; nor was it restored by the provision of more accurate information by Mr McGrail himself three days later. The damage was done and it cannot so easily be undone.

8.168 I will come later to a quite separate point when I review the actions of the GPA but, in my opinion, Mr Pyle's complaint of evasion on 8 and 9 March was not properly spelt out either to the GPA or to Mr McGrail during the events of May and June 2020, with the result that he had no opportunity of properly presenting his explanation or response. Mr Pyle in his evidence accepted that the first written record of his specific concern about information sharing was the 3 June letter to the GPA [T/19/81.11]. Having said that, I should point out that there are vague references to this concern in the following three documents (although the first

document was not shown to Mr McGrail at the time): (a) Mr Picardo's Informal Note of a meeting on 18 May between him, Mr Pyle and Dr Britto records that Mr Pyle said that *'he had felt misled when the incident at sea had occurred and that he felt he had not received all information available to the RGP in respect of that event'* [C3997], (b) Mr Picardo's section 15 request letter dated 21 May said that Mr Picardo had *'no confidence that either the Government or the office of the Governor (with whom I have discussed this matter at length) have had the timely candor and transparency we would have expected from you in the circumstances arising in respect of the incident'*, and (c) the GPA's 'second letter' dated 22 May [C4283] referred to Mr Pyle having *'expressed the view that he feels he has been misled by you about this most serious incident'*.

THE LEGAL CLAIMS

BACKGROUND

- 8.169 For the sake of completeness, I will continue with the narrative (nothing in this section bears directly on the decision which I have just made but some of these events do help to set the scene for what followed later).
- 8.170 On 9 March 2020, the day after the Incident at Sea, in the context of discussing the independent review of the Incident at Sea, Mr McGrail messaged Dr Britto (the Chairman of the GPA): *'technically there isn't a complaint yet as no family member has filed one but it could happen...'* [B1347]. At the meeting later that morning (which I have already covered in another context), Mr McGrail told Mr Pyle and Mr Llamas that Verralls, a firm of lawyers in Gibraltar, were representing the families of the deceased and those arrested, but he did not at that point refer to claims being brought by those persons. By email sent the same day [B1590], Mr Pyle told the FCDO that Verralls had been engaged.
- 8.171 The next day, Verralls requested the RGP that a pathologist instructed by them should be present during the post-mortem examinations [B1323].
- 8.172 On 12 March 2020, Mr McGrail messaged the 'Maritime Incident' WhatsApp

Group informing them that Verralls were representing the families [C3266].

- 8.173 On 17 March 2020, Mr McGrail met Mr Llamas and explained the ‘*various strands*’ relevant to the Incident at Sea, including the ‘*Coroner’s Inquest, possible civil action, professional standards inquiry, Spanish judicial action, law enforcement co-operation angle ... and the obvious political dimension...*’ (McGrail 3 para 98 [A85]). Mr McGrail said that Mr Llamas told him there was no need for Mr McGrail to see Mr Picardo, and that Mr Llamas would speak to Mr Picardo himself to discuss whether he was content for the Metropolitan Police to liaise with the GC. Mr Llamas subsequently messaged Mr McGrail to ‘*proceed as we discussed*’. Mr Llamas did not recall this meeting but suggested that Mr McGrail’s recollection is ‘*almost certainly correct*’ (Llamas 2 para 57 [A314]). In questioning at the Inquiry hearing, Mr McGrail explained that he did not deal directly with Mr Picardo at this point because it was ‘*in the eye of the storm of Covid and ... that was quite a critical time for Gibraltar.*’ However, Mr McGrail asked Mr Llamas to check with Mr Picardo that he (Mr Picardo) was willing for RGP officers to engage with the Spanish authorities ([A85] [T/6/71.22]). After the meeting, at 13.43, Mr Llamas sent Mr McGrail a WhatsApp message saying: ‘*All good Ian. Proceed as we discussed.*’ [C6606].
- 8.174 On 18 March 2020, Mr McGrail held a video conference with the Metropolitan Police team, DI Chipolina and the GC, who – according to Mr McGrail’s note [B1331] – said that they had ‘*an idea where this occurred but required formal confirmation from technicians*’. They also said that a Spanish judge would be appointed to investigate, and the GC anticipated that the judge would request information and accounts from the RGP [C6606]. Mr McGrail considered that the meeting served to demonstrate that the RGP were ‘*totally transparent*’ [C6606].
- 8.175 In the same message on 18 March [C6607] Mr McGrail reported to Mr Llamas that: ‘*GC also expects the family of the deceased to file a complaint in their courts to seek compensation. This will no doubt complicate matters for us as the judge may be swayed to look at the matter from a different perspective in terms of where*

the collision took place'. No reply to that message has been disclosed, and it appears that there was none.

- 8.176 Also on 20 March 2020, the Spanish Government replied to questions asked by the Vox party in the Spanish Parliament, confirming that the incident took place in Spanish waters (giving the same coordinates as those initially identified by the Spanish GC), that there was no authority for the RGP's actions in Spanish waters, and that there was no prior request for assistance by the GC [C4168].
- 8.177 I note, in passing, that on that same day (20 March) there was an exchange of WhatsApp messages [B1354] between Dr Britto, the Chairman of the GPA, and Mr McGrail, in which Dr Britto sought reassurance from Mr McGrail that he was keeping Mr Pyle updated about the developments relating to the Incident at Sea, and suggested that Mr McGrail send an update to Mr Picardo. Mr McGrail gave that re-assurance and said that both the Convent and Mr Llamas were '*up to speed*', and that Mr Llamas had '*fed up to CM*'.
- 8.178 On 26 March 2020, Verralls contacted CI Perez, informing him that they were acting for the families of the deceased in Gibraltar and were dealing with Spanish lawyers who were working on the matter in Spain [B1331]. CI Perez and DI Perera then liaised with Verralls in the following days [B1332].
- 8.179 Mr McGrail stated that in the '*days that followed*', he was provided with periodic updates, and that Verralls were making several requests which were being shared with HM Coroner and the Metropolitan Police team (McGrail 3 para 105 [A88]).
- 8.180 On 1 April 2020, DCI Smith informed Mr McGrail, Mr Richardson and Mr Field by email that the family of the deceased and the survivors were considering legal action against the RGP, and the Spanish authorities may also be considering a homicide investigation [B1333].
- 8.181 On 6 April 2020, at 12.22, Mr McGrail messaged Mr Llamas requesting to discuss the Incident at Sea, stating '*I am conscious that this won't go away and would like*

to act at least to have the strategy in place for when the time comes to act' [B1354].

8.182 On 7 April 2020, Mr McGrail met Mr Llamas to discuss strategy for defending the RGP officers in any Spanish proceedings [B1334]. Mr McGrail's timeline (which he had prepared for the purposes of the Section 15 Report) recorded that Mr Llamas said '*... perhaps the RGP went too far by going out of BGTW but in essence they were discharging a law enforcement role and he would be happy to defend that position. Discussed the correlations with the Alcaidesa Incident where RGP officers also went beyond their remit in Spain and how that particular case went on for 10 years and therefore I [Mr McGrail] wanted a Gibraltar PLC strategy to deal with the case if only to keep on file until such time as we needed to activate it. AG fully agreed with me and undertook to discuss with the CM whom he had quick access to.*' [B1355] (I will deal with the 'Alcaidesa Claims' later). Mr McGrail added in his written evidence that he '*aired concerns about what the RGP officers involved could be facing*' (McGrail 3 para 106 [A88]).

8.183 On 22 April 2020, Mr McGrail met Mr Llamas and Mr Rocca, the DPP [B1336; B1355]. Mr McGrail said that they met '*possibly*' to discuss a letter from Mr Robert Fischel KC of Verralls '*suggesting they would be making a civil claim for damages*' but did not recall on what date he received this letter (McGrail 3 para 107 [A89]). Mr McGrail stated that '*the DPP advised that no civil claim had yet been filed and therefore there was no immediate need to appoint crown counsel*' (McGrail 3 para 107 [A89]) and that Mr Llamas stated that they would be in a better position to devise a strategy upon receipt of the Metropolitan Police report (see McGrail 3 para 106 [A88] and [B1280]). Mr McGrail added in oral evidence that Mr Llamas said that the RGP should await the conclusion of the Metropolitan Police investigation [T/6/75.8]. The DPP did not recall this meeting in questioning but did not doubt the accuracy of the record [T/10/131.23]. Mr McGrail's record stated that: '*AG undertook to keep the matter alive with CM pending any developments on the political front...*' [B1355]. Mr Llamas confirmed the accuracy of the note and specifically his undertaking to keep the matter alive with Mr Picardo, which

he said he did as much as he could, although he did not inform him of the potential claims at that point because they had not yet been filed, as opposed to the subsequent letter from Verralls forwarded to him by Mr Rocca on 19 May 2020, at which point the matter *'manifested itself in a real sense'* [T/11/143.5].

- 8.184 When asked whether Mr Llamas had kept the issue of the legal claims *'alive'* with him, Mr Picardo said: *'I don't know that I can agree with that. He may have mentioned it but remember that at this stage we are in lockdown: I am hardly seeing the Attorney-General. ... But certainly, when I read in about the filing of the legal claims it came to me like a bolt from the blue...'* [T/16/44.16].

CLAIMS IN RESPECT OF THE INCIDENT AT SEA NOTIFIED TO THE RGP

- 8.185 On 14 May, an article appeared in the Spanish regional newspaper, *El Faro De Ceuta*, reporting that claims were being made against the RGP on behalf of those killed and injured in the Incident at Sea and doing so in florid language, *'[denouncing] the Gibraltar Police for the crime of reckless homicide after the death of two people from Ceuta'* [B1205]. I accept that these claims came as no surprise to Mr Picardo, as he said that he had been expecting them (Picardo 1 para 67 [A198]).
- 8.186 At 09.36 that morning (14 May) Mr Picardo sent Mr Llamas a link to this article, with the covering message: *'This has appeared TODAY!'*. Mr Llamas replied at 09.44: *'Couldn't make it up!'* [B1417]. Mr Llamas explained in the hearings that he made this comment because of the timing of the article, which was just two days after 12 May [T/12/29.19].
- 8.187 Mr Picardo also sent the link to the article to Mr Pyle at 09.49, stating: *'Hi. This article has just appeared. A civil claim has been filed in Spain (in Ceuta) by the families of the deceased in the incident with the RGP on the Eastside. This is obviously going to cause us huge issues. Damages claims, political problems etc. I am totally there to support the officers on the front line. I am starting to have huge concerns about the senior management of the RGP.'* [B1439]. Mr Pyle

emailed the FCDO ten minutes later attaching a copy of the article [C3904]. He added: *'I am meeting the CM later today to discuss this and other issues relating to the behaviour of the RGP and in particular its leadership. I'll report thereafter. Needless to say, he is extremely worried about many aspects of the case which we agreed is not good news and will require extremely careful handling.'*

- 8.188 When asked at the hearings whether he raised the article with Mr McGrail on 14 May 2020, Mr Picardo stated *'I don't think my relationship with Mr McGrail at the time was such that I wanted to raise anything with him ... this was another one of the many straws that broke the camel's back in this case.'* [T/16/50.15]. Mr Picardo later added that it was a *'very difficult period'* due to the unprecedented lockdown, and *'The last thing I would expect to have to be doing was to be chasing the Commissioner of Police for information that he had and should be sending me, which I didn't know he had'* [T/16/72.17].
- 8.189 On the same day (14 May), Mr Fischel of Verralls sent a letter (the **'Fischel letter'** [C3762]) to Mr McGrail, stating that he was instructed on behalf of one of the injured RHIB crew members to pursue a claim for damages for his injuries. He asked whether the entry by the RGP vessel into Spanish waters was authorised or requested by their Spanish counterparts. Mr McGrail described this as a *'letter before action'* (McGrail 3 para 108 [A89]), or at least *'a notification that the claim was potentially heading our way'* [T/6/76.10]. According to Mr McGrail, Mr Rocca took the view that it was not a formal letter of action, and therefore the RGP was not bound to do anything while it investigated the matter [T/6/76.13]. Mr McGrail explained that, having received this advice, he did not consider referring the matter directly to Mr Picardo at that stage because he had been advised that the letter was not a letter before action [T/6/76.9].
- 8.190 He pointed out that he had previously notified Mr Picardo that the right-wing party Vox had raised questions in the Spanish Parliament [T/6/77.9] (Mr McGrail's email to Mr Picardo, Mr Llamas and the Minister of Justice on 11 May is reproduced in his log at [B1355]).

8.191 The following day (15 May), Mr McGrail sent a holding response to the Fischel letter saying that he had allocated the matter to Supt Cathal Yeats to arrange for counsel to be instructed to represent the RGP [C3814], which he did [B2592]. Mr Yeats then emailed Mr Rocca informing him of the Fischel letter [C3801], and seeking a meeting, which was arranged for 19 May 2020 [C4013]. He later sent him a copy of the Fischel letter, referring to it as a '*letter of claim*' [C4026]. The DPP informed Mr Llamas of the letter (referring to it as '*the claim filed in respect of the death at sea*'); he said that he was due to meet the RGP and would update him after the meeting [C6854]. They subsequently agreed that the OCPL would be conflicted [T/11/144.24].

8.192 On 19 May, Mr Yeats met Mr Rocca, who advised that since there may be a conflict of interest, his office (the OCPL) should not act and that he (Mr Rocca) would discuss the matter with Mr Llamas, which he did. Mr Llamas agreed that the OCPL would be conflicted, and Mr Rocca asked Mr Yeats to write to Mr Llamas seeking his views on representation (McGrail 3 para 108 [A89]). Mr Yeats prepared a short note of the meeting [C4081]. The DPP confirmed this in live evidence [T/10/130.12]. Also on 19 May, Mr Fischel sent another letter to Mr Yeats [C4029], asking if there had been a request from the GC to pursue the suspect RHIB or if the Spanish authorities had granted any permission to the RGP launch to enter Spanish waters.

8.193 On 20 May, Mr Yeats also sent a letter to Mr Fischel pointing out that Mr McGrail had not yet received the Metropolitan Police's interim report and stating that he was unable to provide the requested information until it was '*appropriate to do so*' [C4065].

NOTIFICATION OF THE CLAIMS TO MR LLAMAS AND MR PICARDO

8.194 Following his exchanges with Mr Rocca, on 20 May, Mr Yeats sent an email to Mr Llamas [C4088] notifying him of the claim and asking for his authority to appoint counsel. He also sought Mr Llamas's advice on who would be best placed to represent the RGP, as well as for an indication as to whether he wished for the

case to be handled by Government or the RGP. Mr Llamas forwarded that email to Mr Picardo just over one-and-a-half hours later [C4088].

8.195 As he made clear by his email in reply (20 May [C4090]), Mr Picardo strongly objected to the fact that the matter had not been raised with him in the first instance by Mr McGrail personally. Mr Picardo wrote to Attorney to the effect that it was *'entirely inappropriate'* for the Commissioner of Police not to have raised this with Mr Picardo personally, because it raised *'issues of fundamental human rights, the right to life, potential payment of huge amounts of damages, the potential extradition and liberty of serving police officers being at stake, the issue of Standard Operating Procedures which may be in place and the management thereof. All of that is in addition to the huge potential political exposure that arises for Gibraltar as a result thereof and the concomitant (and dangerous) issues of sovereignty and the United Nations Convention on the Law of the Sea'*. In his written evidence, Mr Picardo stated that he was disappointed that he had been left to read of the start of the process of the potential claims in the *El Faro de Ceuta* newspaper report, and that was fully six days earlier (Picardo 1 para 78 [A204]). These considerations were among the factors which Mr Picardo alleged caused him to think that Mr McGrail was not taking this incident sufficiently seriously. Mr Picardo forwarded his response to Mr Pyle two minutes after sending it to Mr Llamas [C4096].

8.196 I do not think it is a valid criticism that Mr McGrail did not raise the matter with Mr Picardo personally; he had delegated the matter to Mr Yeats, a very senior officer, who had been dealing with the Law Officers. I do not think this shows any disrespect or a failure to take matters seriously. Furthermore, Mr McGrail knew that Mr Llamas, in this matter, was acting for and on behalf of the Government and, in particular, on behalf of Mr Picardo, and that Mr Llamas had undertaken to keep Mr Picardo updated on this issue. Therefore, he knew that information given to Mr Llamas would be passed on to Mr Picardo, as in fact happened.

8.197 Consequently, Mr McGrail was astonished by the strength of Mr Picardo's

reaction. At 18:34, Mr McGrail messaged Mr Llamas saying that *‘I honestly do not know why [Mr Picardo] has reacted like this. Have you briefed him of our meetings we’ve had on the matter?’* Mr Llamas replied: *‘He is aware you and I have spoken about this. ...’* Mr McGrail replied: *‘Good. But the wobbler he’s thrown is what I do not understand. Anyway, something for me to take up with him. Thanks.’* [C6926-7]. Mr Llamas also forwarded that message to Mr Picardo and commented *‘They are very stubborn’*, and then *‘Just seen his email to you. Does not address the issue.’* [B1418]. In questioning, Mr Llamas said he did not consider any reason why he should hide the exchange from Mr Picardo but did not remember why he said the RGP was stubborn [T/11/148.20].

- 8.198 Mr McGrail responded to Mr Picardo’s criticisms by saying that it had *‘never been my intention to withhold anything from you concerning this very serious matter. I provided you with an overview on the day of the incident, then engaged with the AG, as per your suggestion and have been doing so ever since’* [C4104]. He said that he would be in a better position to brief Mr Picardo on the full details of the incident once the Metropolitan Police had finished their report, but their officers had to return to the UK and had been delayed because of the Covid lockdown. He wrote that the letter from Verralls had only been received a few days ago, and that had triggered his correspondence with Mr Rocca and Mr Llamas. In his written evidence, Mr Picardo stated that he was disappointed to learn that the RGP had received the damages claims some days earlier (Picardo 1 para 78 [A204]).

- 8.199 In his oral evidence, Mr Picardo sought to justify his position:

‘It was of course fundamental that I had heard this from public sources in another jurisdiction and not from the Commissioner. It was fundamental that we get right something which had resulted in the death of two individuals at sea, whoever those individuals might be. It was fundamental that we get to the bottom of why on earth our Royal Gibraltar Police officers were operating outside the jurisdiction of Gibraltar. It

was fundamental that the Chief Minister and the Governor should have all information timeously about this. It was going to be a key issue going forward that the Parliament in Gibraltar was going to have to make an appropriation in respect of the costs that were going to arise, both in respect of legal fees and payments that might eventually have to be made if liability was found. All of these things are playing on my mind at the time. ... I was, and remain, very worried about this. ... it was very clear that standard operating procedures should have prevented an incident like this from happening in these circumstances, and I have always been very clear in the views I had expressed to Commissioners of Police that the [RGP] should operate within Gibraltar's jurisdiction and should only go outside it in certain very defined circumstances...'. [T/16/59.11]

8.200 Mr Picardo's written evidence was that he considered that Mr McGrail was 'making excuses for not having provided [him] with timely information about the claims' and that he (Mr Picardo) was 'even more disappointed to learn that the RGP had received the damages claims, "some days earlier" and I had not been told' (Picardo 1 para 78 [A204]). In questioning at the hearing, he said that he did not know whether it was only in relation to the claims that Mr McGrail had not kept him properly informed, or whether that also applied to the location of the incident, and he was 'very concerned that I was not getting the full picture about any of this', also referring to the item fitted at the front of the RGP vessel (this, I think must be a reference to the 'bow protector', with which I deal elsewhere) [T/16/42.9]. He added: 'So, it appeared to me that there were a lot of issues that I was not confidently able to say I had been kept fully informed about which could have repercussions for the public purse, for Gibraltar's international reputation, in respect of the negotiations, etc.' [T/16/42.23].

8.201 In questioning, Mr McGrail said that by 20 May 2020 'Mr Picardo already knew that he didn't want me in post'. Mr McGrail was aware that Mr Picardo was 'extremely

disappointed and angry ... in the wake of the intervention on 12 May when ... all hell broke loose'. Mr McGrail pointed out that previously Mr Picardo had told him that he was not too concerned about the collision happening in Spain, so suggested that Mr Picardo's '*extremely, extremely angry*' reaction was '*totally unrelated*' to the legal claims [T/6/83.19]. He pointed out that Mr Picardo did not raise any concerns about Mr McGrail's communications relating to the Incident at Sea, which had occurred more than two months before on 8 March (McGrail Closing, para 76).

8.202 When Mr Picardo was asked if, after the police had visited Hassans on 12 May with the warrant, Mr McGrail simply could do nothing right in his eyes, he replied:

'To a very great extent, it is true that after 12 May I found it very difficult to believe anything that Mr McGrail did or said or to even consider that the things he did he was doing in good faith. My loss of confidence in him after 12 May and finding out that after that meeting in my office that what he had said was untrue was huge. I cannot underestimate (sic.) for you just how catastrophic the loss of confidence was.' [T/16/62.4]

8.203 Mr Picardo also stated that he and Mr Pyle were aware of, and would have discussed, the legal claims between 14 and 19 May 2020 [T/16/55.2]. He believed that if the events of 12 May had not happened, Mr McGrail would have written to him about the claims, and '*hopefully more timeously*' [T/16/58.8].

8.204 I have now reviewed the evidence which gave rise to one of the questions posed in the List of Issues, namely: '*Was information about the legal claims arising from the Incident at Sea communicated by Mr McGrail and/or the RGP to Mr Pyle, the Chief Minister and the Attorney-General in a timely and transparent fashion?*'. The fact is that Mr Picardo expected that claims would be coming. He knew (by 14 May) that claims had been filed in Ceuta; and on Mr McGrail's specific directions, Mr Yeats kept Mr Rocca and Mr Llamas (and through him Mr Picardo) informed of the progress of the claims. Mr Llamas had also undertaken to Mr McGrail to keep

Mr Picardo updated on the matter. I do not think it was necessary for Mr McGrail personally to have notified Mr Picardo. In the circumstances, I think that Mr Picardo was kept informed in a timely and transparent fashion and I do not think that Mr McGrail was in breach of any duty or obligation. I therefore reject this allegation.

THE SECTION 15 REPORT

DISCUSSIONS LEADING TO THE REQUIREMENT

8.205 Pursuant to section 15 of the Police Act, the Chief Minister may ‘*require factual or assessment reports from the Force or the Authority on any policing matter*’ within 7 days.

8.206 On 20 May Mr Picardo forwarded Mr McGrail’s response about the legal claims to Mr Llamas [C4112] and Mr Pyle [C4117]. To Mr Pyle, Mr Picardo wrote:

‘Given the seriousness of the matter, I would appreciate the opportunity to discuss with you my intended response. I consider this is a trigger the only appropriate response to which will be the exercise of my powers under s.15(1)(a). Happy to speak later or tomorrow...’.

8.207 On the previous day (19 May 2020, the day before Mr Yeats had written to Mr Llamas about Verralls’ potential claim), at 11.44, Mr Picardo and Mr Pyle began their exchange of messages [B1441] discussing whether Mr Picardo should seek a formal report from the Commissioner of Police about the Incident at Sea under section 15(1)(a) of the Police Act. Mr Picardo sent Mr Pyle a message via WhatsApp asking for his ‘*instinct*’ on whether to request a section 15 report. Mr Pyle replied that since he hoped that the RGP would already have their own internal investigation and would already have an internal report, Mr Picardo could use the legal claim being filed as ‘*the peg*’ on which to require the report. Alternatively, they could wait to see what ‘*Joey comes up with*’, meaning presumably that they might wait to see what Dr Joey Britto and the GPA did (their

meeting was scheduled for 21 May). Mr Pyle's preference, '*on balance*', was to seek the Section 15 Report. Incidentally, this exchange demonstrates that Mr Picardo and Mr Pyle were aware of and discussing the claims being filed prior to Mr Llamas forwarding Mr Yeats's email to Mr Picardo.

- 8.208 Mr Pyle was asked why he had this preference. Reflecting on the use of the word '*peg*', he acknowledged his language could have been tighter, but he thought that the filing of the claim on behalf of the relatives alone was sufficient for the report to be requested. In any event, he said, Mr Picardo did not need an '*excuse*' before requesting the report [T/18/123.13]. As to waiting to see '*what Joey comes up with*', he said that they expected the GPA to take forward the process and, if Mr McGrail made '*representations*', that might give them a bit more information. He said, with hindsight, that he would not have included this point [T/18/125.13]. When asked about Mr Pyle's use of the word '*peg*', Mr Picardo stated:

'He uses the word "peg", I use the word "trigger". I mean, it really is the moment that we felt we had to act and you will know that section 15 requires me to act with the consent or information of the governors.' [T/16/65.6]

THE REQUIREMENT FOR THE REPORT

- 8.209 Following these exchanges, on 21 May 2020, Mr Picardo wrote to Mr McGrail requiring a report under section 15 [B1249, B1257]. Mr Picardo referred (amongst other matters) to the legal claims on 20 May 2020, and concluded:

'I have no confidence that you have expeditiously provided me with all the information and documentation that I should have been provided with ... I have no confidence that either the Government or the office of the Governor (with whom I have discussed this matter at length) have had the timely candour and transparency that we would have expected from you...'
[B1251-4]

8.210 The letter referred to the following ‘concerns’:

- a. The fact that the incident took place outside BGTW. Mr Picardo requested information about whether the RGP was operating inside Spanish waters at the invitation of or with express/tacit consent of the Spanish ‘*especially when the equipment now provided by [the Government] enables officers to know their exact location whilst out on operations at sea*’.
- b. The welfare of the RGP officers and ‘*the potential for multi-jurisdictional legal action against them*’.
- c. The ‘*very large potential claims in damages against HMGoG*’.
- d. ‘*Serious issues as to the operational welfare of officers of the RGP at sea*’.
- e. ‘*The events in question can provide grounds for a serious setback in Gibraltar in the context of the relationship with our Spanish counterparts at a political level*’.
- f. ‘*The sovereignty implications for Gibraltar and the United Kingdom*’.

8.211 I consider these to have been legitimate concerns, and not in any sense imagined or contrived; the requirement for a report was fully justified.

8.212 Mr Picardo was asked why he did not seek the Section 15 Report earlier than 21 May 2020. He said that perhaps he could have done so, but the Government was dealing with Covid and he had made a ministerial statement on the day before, and it was necessary to ‘*make time for everything and to prioritise things as necessary*’ [T/16/67.3]. He said that Mr Yeats’s email of 20 May 2020 was the ‘*culmination*’ of his view that he was not confident that he was getting all of the information in relation to the collision at sea from Mr McGrail [T/16/42.9, 64.16] and therefore he requested the Report.

8.213 He was asked whether the request was intended to put further pressure on Mr McGrail [T/16/69.6], which Mr Picardo denied. He also pointed out that ‘*we were*

all under a lot of pressure at the time’ and Mr McGrail would not have to write the Report himself but had the ‘*the whole organisation*’ of the RGP available to provide the information [T/17/232.15].

8.214 He was asked why he requested the Section 15 Report, at a time when he knew that the GPA would be calling on Mr McGrail to retire. Mr Picardo responded that the GPA ‘*process was not a fait accompli, as unfortunately later transpired*’. Furthermore, the section 15 request was not personal to the Commissioner; the report would be required from the Senior Management Team, even if Mr McGrail retired [T/16/68.15]. Mr Pyle justified the tight seven-day time limit by saying that he and Mr Picardo needed all the information possible in view of the claim and the ongoing negotiations with Spain [T/18/126.8].

8.215 Mr Picardo was criticised by Mr Wagner for allowing only a seven-day deadline. As he pointed out, this would be tight in any circumstances, particularly since only a few minutes before he had suggested to Dr Britto that the GPA should require him to respond within seven days to their letter of 22 May (I will deal with this letter later, but it was a letter of vital importance purporting to set out the complaints which Mr Picardo and Mr Pyle had against him). Therefore, Mr McGrail was being required to furnish two critical reports within just seven days. I see the force of this argument, but the fact is that in drafting the Section 15 Report Mr McGrail could draw on the RGP’s SMT, much of the work had already been done, and ultimately they did produce their very detailed report on time.

8.216 I accept that, if Mr Picardo was concerned about the Incident at Sea, and if he did not think that he was getting all the information he wanted, he could have asked for the Section 15 Report before he did. Nor do I think that the news of the legal claims is a very convincing ‘*peg*’ on which to hang the request, since it had been obvious right from the date of the incident that claims would be forthcoming. I have carefully considered these conflicting submissions. In my opinion, Mr Picardo had many legitimate concerns arising out of the conduct of the RGP and the crew of their launch, which were not in any sense imagined or contrived. It

was entirely reasonable for him to ask for the Report under section 15. He did not ask for the Report out of improper motives. He could perhaps have given Mr McGrail a longer time in which to report, but the Report was filed in time, so no harm resulted.

THE DELIVERY OF THE REPORT

- 8.217 Mr McGrail acknowledged Mr Picardo's request the following day (22 May 2020) at 10.21 [C4344]. On 24 May 2020, Mr Field messaged Mr Richardson about the Section 15 Report: *'Boss what time are you thinking of tweaking the report? I intend to go in at 10 to make sure that there is nothing compromising in the files. If we finish before you come, we won't be there to assist you.'* [E850]. At the Reconvened Hearing, Mr Richardson was asked what he thought Mr Field meant by *'compromising'*, he replied that *'it would be speculation, but maybe some bloopers, something that was obviously wrong that shouldn't have been there.'* [T/23/220.14]. When pressed, he suggested *'something that was left in there from some other investigation or something that was irrelevant or not important'* [T/23/221.21]. Mr Richardson was therefore clear that all that Mr Field was suggesting was that the draft Report should be reviewed to remove mistakes or irrelevant or unimportant material. I accept this explanation; Mr Field's suggestion was sensible and entirely proper.
- 8.218 The RGP did produce the Report on 28 May 2020, within the seven days allowed [B1269, 1271] (the document is dated 27 May, but it was sent by email by Mr McGrail to Mr Picardo at 16.21 on 28 May 2020). Mr McGrail sent a hard copy of the Report to the Chief Minister's office on the late afternoon of 28 May [B1269]; it was received there, and date stamped 28 May. Mr Picardo says – no doubt correctly in relation to the hard copy – that he did not personally receive it until 29 May (Picardo 1 para 8 [A221]), but I do not consider that to be a significant point.
- 8.219 The Report set out a detailed timeline of the Incident, much of which has been incorporated into the chronology of the Incident at Sea which I have already set out.

8.220 At Appendix 19 to the Report, Mr McGrail included the Draft Solis Report. This was the first time that the Draft Solis Report (summarised below) had been provided to Mr Picardo.

REPORTS BY THIRD PARTIES INTO THE INCIDENT AT SEA

THE SOLIS REPORT

8.221 On 30 April 2020, Capt Meikle of Solis sent his 'Draft Solis Report' [B1683] to Mr McGrail. He reported that the collision occurred at around 03.38 on 8 March, in position 36° 10.00' N 005° 12.5' W, and that the intercept, pursuit and collision took place in Spanish waters [B1737]. I will summarise the findings of the Draft Solis Report, pointing out any changes made by the Final Report, which is dated 4 January 2021 [C5573].

8.222 The Solis Report drew these conclusions:

- a. The RGP crew did not comply with the instructions that were issued (3.13.3 [B1732]).
- b. It was not known why the RGP crew headed into Spanish waters (3.13.1 [B1732]).
- c. The crew placed themselves so close to the suspect RHIB as to place themselves and the crew of the suspect RHIB in considerable danger (3.13.3 [B1732]).
- d. Despite the RGP Marine Section instructions, '*Anecdotal evidence from the RGP Marine Support Unit's Senior Marine Mechanic stated that 'hot pursuits' into Spanish waters could be permitted with the approval of the Guardia Civil*' (2.10.17 [B1705]). However, in the Final Solis Report, this was amended to: '*...had historically been permitted with the approval of the Guardia Civil; however, this was not the case at the time of the Incident*' (2.10.7 [C5600]). I observe that in this case it has never been suggested that the GC approved either the entry into Spanish waters or

the chase, let alone both.

- e. Senior Marine Section Officers were aware and accepted that highspeed pursuits were being routinely carried out. For example, instructions had been issued on the use of PPE when faced with missiles being thrown presumably from the pursued RHIBs. *'They must have also been aware that pursuits also strayed into Spanish waters and records should exist internally, or with the Guardia Civil of any previous operations taking place where boundaries were crossed...'* (3.17.5 [B1734]). This sentence was deleted from the Final Solis Report, which added instead: *'The RGP maintained a database of police actions which included when chases of suspect vessels occurred and recorded whether these events were inside or outside of BGTW. An internal review by the RGP showed that between 1 April 2017 and 1 June 2020 that, of the 59 entries that involved a chase, two (including this case) had continued outside of BGTW'* (3.17.6 [C5633]).

I interpose my observation that, during questioning at the Inquiry, Mr McGrail accepted that if the AIS equipment had been switched off in any RGP launch, it would not be known if that patrol had strayed into Spanish waters and therefore he did not believe that such an incursion would be shown within those statistics [T/6/50.21]. I observe, therefore, that I cannot exclude the possibility that other RGP launches have chased suspect vessels into Spanish waters, but there is no direct evidence that this has actually happened (there is only the vague reference in para 3.17.5 of the Draft Solis Report to Senior Marine Section Officers being aware of pursuits straying into Spanish waters [B1734]). I do not think that any inference can properly be drawn that this has ever happened, let alone that there was a common practice of doing so.

- f. There was no training for carrying out pursuits of suspect vessels, which were taking evasive action to avoid being apprehended. While numerous

pursuits had been carried out, the coxswains' experience in pursuits was learned on the job, watching more experienced coxswains as they trained. Pursuits methods were therefore developed and were undertaken by the coxswains, but without RGP Marine Section management standard or proper established oversight in place (3.15.1 [B1733]). This was reflected in the finding of the final report that from the evidence reviewed to date, it appeared that *'Marine Section Managers did not apply effective oversight into how their patrols were being carried out'* (3.17.6 [B1734]).

I interpose the observation that the Inquiry heard no evidence that Mr McGrail knew this, or even that he could – let alone should – have known this.

8.223 As to navigational equipment, the Solis Report concluded that:

- a. The GPS chart plotter, and therefore the AIS, in the RGP launch was left off. Officer 1 (on the crew of the RGP launch) stated that the equipment reduced his night vision (1.8.6, 2.3.1 [B1692, B1700]).
- b. There was no evidence produced to support Officer 1's statement that the brightness of the chart plotter interfered with night vision, or that the alleged issue had previously been reported to managers. There was a clear instruction that the vessel's AIS system should always be turned on (3.11.2 [B1731]). In the Final Solis Report, the following additional point was made: *'The dimming facility of the chart plotter was tested and found to dim the display as would be expected for use in night-time navigation and would, if set correctly, have not interfered with the coxswain's night vision'* (3.10.2 [C5629]).
- c. It would have been clear to the experienced members of the RGP crew that they were in Spanish waters and *'well to the north of BGTW'* (3.2.3 [B1713]).

- d. While the limits of BGTW were known to the RGP crew, the engagement, chase and collision were all carried out at least 1.5 nautical miles beyond the limits of BGTW (3.3.2 [B1716]).
- e. While the limits of BGTW were not visible on the chart plotter, the northern limit of BGTW is generally indicated by reference to the lights from Gibraltar Airport. As the RGP vessel was significantly to the north of the airport and off the Spanish port, it would have been clear to the officers that they were in Spanish waters (3.3.3 [B1716]).

8.224 As to officer training, the Solis Report found that:

- a. The RGP Marine Support Unit, which provided training to Marine Division Officers, provided training in '*pacing*' (where two powerboats manoeuvre alongside each other at speed), but there was no specific training provided for highspeed pursuits or the apprehension of suspect vessels (2.5.3 [B1702]). The Final Solis Report added that as there is no established safe method of stopping a suspect vessel at sea, no training is provided on this manoeuvre (2.5.10 [C5597]). The Final Solis Report also added that the RGP Marine Section trainers considered that aspects of other modules in training, such as pacing and safe manoeuvring, were applied to safely pursuing vessels (2.5.8 [C5597]).
- b. While numerous pursuits had been carried out, the coxswains' experience in pursuits was learned on the job, watching more experienced coxswains. There was no properly established oversight (3.15.1 [B1733]).
- c. There were apparently no guidance/instructions/orders as to what navigation equipment was to be used when on patrol, either in daylight or at night. A poor standard of navigation was being practised at the material time (3.12.1, 3.12.3 [B1732]). (This seems to me to be a different way of saying that the chart plotter and AIS was switched off rather than a

separate alleged fault.)

- d. *'Marines [sic] Section Managers did not have an effective oversight of how their patrols were being carried out'* (5.11 [B1738]). In the Final Solis Report, this was amended to: *'Marine Section Managers could have had a more effective oversight of how their patrols were being carried out'* (5.16 [C5640]). I also note this finding, but the Inquiry heard no evidence – or suggestion – that Mr McGrail knew this, or even that he could, or should have known this.

Recommendations in the Solis Report

- 8.225 I do not think that the Recommendations in the Draft Report (or the Final Report for that matter) are relevant to the Inquiry, particularly since two of the three recommendations were deleted from the Final Report. The third merely recorded that data had been provided of the recorded instances of RGP launches operating outside BGTW and I have dealt with this already.

THE SITUATION REPORT FROM THE METROPOLITAN POLICE

- 8.226 On 28 May 2020, Mr Pyle emailed Mr Picardo copies of a *'Situation Report'* dated 23 March, amended on 19 May 2020 [C4467]. It appears that this was a document prepared by the Metropolitan Police team led by DCI Gary Smith and sent to members of the RGP and to Mr Pyle on 27 May (see [C4405]).

- 8.227 The Report stated:

'The early indications are that the collision happened three miles outside BGTW and inside Spanish waters. We therefore need to determine if the RGP officers knew or suspected they had left BGTW during the pursuit.'

We have confirmed that there is a standing instruction that RGP marine vessels should only leave BGTW for search and rescue matters. Where incursions have taken place into Spanish

waters in the past, the Spanish have taken over the pursuits. However, on this occasion there were no Spanish vessels in the area. ...'

THE SUMMARY OF EVIDENCE PREPARED BY THE METROPOLITAN POLICE

8.228 On 1 December 2020, DCI Smith completed a Summary of Evidence relating to the Incident at Sea [B2888], detailing the evidence acquired throughout his investigation with the intention of *'providing an evidence based assessment on whether any charges should be brought against any RGP officers in relation to the collision'* [B2890]. I refer to the relevant parts of the Summary of Evidence below.

8.229 As to the RGP's policies on leaving BGTW:

- a. A review had identified that RGP vessels had made 59 chases at sea between 1 April 2017 and 1 April 2020. Of these, 57 were terminated at the limit of territorial waters [B2910] (although this is subject to the point I have already made above as to chases where AIS was switched off not showing within these statistics, which was accepted by Mr McGrail [T/6/50.21]). The same officer (in fact Officer 1 on duty in the Incident at Sea) had been involved in 18 of the chases. The Summary of Evidence concluded that *'it is clear that [the Officer] was aware of his obligation to remain inside BGTW as many of the chases he was involved in were terminated prior to leaving territorial waters'* [B2910].
- b. *'While there are no formal arrangements between the Governments of Spain and Gibraltar, it is clear that the Law Enforcement Agencies (LEA's) in the area have a degree of professional co-operation ... This is evidenced by the fact that the Guardia Civil are able to communicate directly with the RGP Marine Section.'* [B2915]
- c. *'RGP instructions regarding BGTW are very clear – RGP vessels must only enter Spanish territorial waters at the invitation of the Spanish authorities and only for the intention of search and rescue.'* [B2915]

8.230 DCI Smith went on to make other findings, which I now summarise. As to navigational equipment:

- a. Officer 1 gave evidence (to the compiler of the Summary of Evidence, not to the Inquiry) that the GPS chart plotter was *'left off due to the bright backlight, which is safer not to have on in order to be able to see more safely at night.'* [B2891]
- b. *'RGP instructions regarding the navigational equipment are clear – RGP must operate radar and AIS at all times when at sea.'* [B2915]
- c. As to Officer 1 (the coxswain), *'There is evidence that he disobeyed orders to ensure the correct navigational equipment was in use when deployed and left BGTW for an unauthorised purpose and without authority.'* [B2915]
- d. Officer 2 *'had sufficient knowledge, training and experience to know that the Marine Section should always operate with their navigational equipment in use and they should not leave BGTW other than for search and rescue operations...'*. [B2916]
- e. *'Had [Officers 1 and 2] followed standing orders by using their navigation equipment, they would not have left BGTW. This is supported by the fact that the coxswain has previously stopped at the limit of BGTW on numerous other occasions involving pursuits at sea'* [B2918].
- f. *'[E]vidence shows [Officers 1 and 2] knew or ought to have known that there were standing orders to use navigational equipment on board marine section vessels when deployed at sea.'* [B2919] (I clarify that the reference to 'evidence' is to evidence considered by the compiler of the Summary of Evidence, not evidence given to the Inquiry.)
- g. There appeared to be *'wilful (sic.) failure to follow correct procedures by not using the navigation equipment on board the SJC'* [B2921].

8.231 As to officer training:

- a. Both Officer 1 and Officer 2 held a *'Government of Gibraltar Competency Certificate'* stating they were competent in the capacity of Boatmaster, with limitations *'for Royal Gibraltar Police operated launches in Gibraltar Territorial Waters only'* [B2902-4].
- b. An RGP Marine Section Instructor confirmed that *'there is no module or content in the training course for 'pursuit training'*, and that *'he instructs trainees not to come alongside suspect RHIBs. Instead, they should maintain a safe distance...'* [B2905]. Another Instructor added *'there is little or no training for pursuits at sea due to the hazardous conditions and narrow margin of error'* [B2905].
- c. The manner in which the boat was navigated was *'far below the standard expected of trained mariners'*; no first aid was delivered; and no distress signal was sent [B2920].

8.232 The Summary of Evidence was accompanied by a list of *'Organisational Learning'* recommendations [B2924]. Although these were not published until after Mr McGrail's retirement it is, I think relevant that it established that the RGP did not have a tactic for stopping a vessel at sea. As a result, there is no module or content in the training course for *'pursuit training'* [C6227]; therefore, although he had been involved in many police pursuits at sea, Officer 1 had never received any training regarding pursuits [C6204]. This echoes the point to which I have already referred when summarising the Solis Report to the effect that, as there is no established safe method of stopping a suspect vessel at sea, no training is provided on this manoeuvre.

8.233 I do not consider the revised *'RGP Police Vessel Patrol and Pursuit Policy'* [B4276] to be relevant to the Inquiry, since it was not issued until October 2020, long after Mr McGrail's retirement and effectively re-issued the earlier instructions, but with some added formality and emphasis.

THE MISCONDUCT REPORT PREPARED BY THE METROPOLITAN POLICE

8.234 The Metropolitan Police did not provide their *‘Misconduct Report’* until 4 June 2021, fully a year after Mr McGrail’s retirement, which cannot therefore have been in anyone’s minds at the time. I will not therefore detail its findings.

THE INQUEST

8.235 I do not propose to consider the evidence given at the Coroner’s Inquest, which was not held until much later, which cannot have been in the minds of anyone at the time of Mr McGrail’s retirement. Furthermore, in April 2025 the Court of Appeal quashed the Coroner’s verdict of unlawful killing on the basis of unsafe directions to the jury and ordered that a new Inquest should take place. The Inquest has not yet taken place.

THE COMPLAINT THAT MR MCGRAIL SHOULD BE ‘ACCOUNTABLE’

THE ABSENCE OF COMPLAINT IN THE TWO MONTHS FOLLOWING THE INCIDENT AT SEA

8.236 Apart from the allegation that Mr McGrail *‘misled’* Mr Pyle – or was evasive – about the location of the collision, which point I have already dealt with, the other essential argument made on behalf of the Government Parties is that Mr McGrail was accountable for what Mr Picardo and Mr Pyle perceived to be the failures of the RGP (see, for example, their closing submissions at para 9.3). It will be remembered that one of the Issues for me to consider is: *‘Did faults or failings in the operational instructions or procedures of the RGP cause or contribute to the collision at sea, and, if so, was Mr McGrail as Commissioner of Police responsible or accountable for those faults or failings?’*.

8.237 Before I come to consider this, I comment that up to 14 May (that is two days after the visit of the police to Hassans with the search warrant, to which I will come), neither Mr Picardo nor Mr Pyle had raised any concerns – still less complaints – either to Mr McGrail personally, or to the GPA, in relation to Mr McGrail’s conduct,

or to the conduct of the RGP generally in relation to any matter relating to the Incident at Sea.

8.238 As I will set out later, the attitude of Mr Picardo and Mr Pyle changed; this, as it seems to me, poses three relevant questions. First, whether – as Mr McGrail alleges – Mr Picardo’s attitude changed as a result of the visit of the police to Hassans’ offices to execute a search warrant on 12 May. Secondly, whether – as Mr Pyle alleges – his attitude changed as a result of a gradual and evolving thought process. Thirdly, whether – as Mr Picardo and Mr Pyle allege – it was truly co-incident that both appeared to change their mind at the same time, but for quite different reasons, or whether – as is alleged on behalf of Mr McGrail – Mr Pyle was in some way ‘*manipulated*’ by Mr Picardo to change his mind.

THE LATER COMPLAINTS

8.239 The first notice directly given to Mr McGrail by Mr Picardo and Mr Pyle of their complaints about the Incident at Sea was in the request for the Section 15 Report and the ‘second letter’ sent by the GPA on 22 May [C4282].

8.240 First, Mr Picardo’s section 15 request letter dated 21 May stated:

‘I have no confidence that you have expeditiously provided me with all the information and documentation that I should have been provided with ... I have no confidence that either the Government or the office of the Governor (with whom I have discussed this matter at length) have had the timely candor and transparency that we would have expected from you...’

[B1251]

8.241 Second, the GPA’s ‘second letter’ to Mr McGrail of 22 May stated that the Incident at Sea was ‘*further evidence of the RGP acting inefficiently by seeking to act beyond its remit and jurisdiction*’; the incident ‘*has resulted not just in a diplomatic complaint filed against the United Kingdom and Gibraltar, but also to a vessel being out of action*’ and raises ‘*questions as to standard operating*

procedures'. It was further alleged that Mr Picardo had no confidence that he was *'provided with the information expeditiously about this very serious incident. Additionally, the Governor expressed the view that he feels he has been misled by you about this most serious incident which has resulted in loss of life'*. I observe that no particulars were given of the way in which the RGP was *'acting inefficiently by seeking to act beyond its remit and jurisdiction'* (although presumably this meant the RGP leaving BGTW to chase the suspect vessel), nor of the way in which Mr McGrail was alleged to have *'misled'* Mr Pyle.

THE CASE PUT BY THE GOVERNMENT PARTIES

8.242 As an uncontroversial starting point, by section 33(1) of the Police Act:

'... the Commissioner shall, subject to the provisions of this Act, have command, superintendence, direction and control of the Force, and shall be responsible for the efficient administration and government of the Force and for the proper expenditure of all public moneys appropriated for the service thereof.'

8.243 I have already referred to the statement made by Mr Pyle in his witness statement (Pyle 1 para 25.1 [A251]) in which he described the Incident at Sea as follows:

'Without a doubt, the most serious incident that was the tipping point from my "growing concerns" changing to recognising that things could not go on as they were and that change was needed, arose in relation to this incident, which set in motion a chain of events that led to lose confidence in the abilities of the Commissioner to effectively lead his police force, and indeed caused me to lose confidence in his probity.'

8.244 Mr Pyle's witness statement also made reference (at Pyle 1 para 25.9 [A255]) to the following findings in Draft Solis Report (without giving any particulars as to why the failings referred to were attributable to Mr McGrail, other than that he was

head of the organisation and thus should be held accountable for them – Pyle 1 para 26.7 [A256]):

‘(a) Pursuit methods are therefore developed and understood by the coxswains, but without RGP Marine Section management standards or proper established oversight in place.

(b) Marine Section Managers did not apply effective oversight into how their patrols were being carried out.

(c) There was no proper training in pursuits of suspects vessels for the coxswain who would be required to take evasive action.’

8.245 In his oral evidence to the Inquiry, he confirmed that his loss of confidence in Mr McGrail *‘would possibly not have happened without the Incident at Sea’* and that it was *‘unequivocally’* this incident that spurred him on to act as he did [T/18/3.11]. But even there he did not particularise the complaints against Mr McGrail.

8.246 In the course of his oral evidence, Mr Pyle referred to what he considered to be Mr McGrail’s evasiveness and lack of full disclosure of the best available information to him (with which I have already dealt) being *‘secondary to my point of losing confidence in that, as I said yesterday, this discussion around accountability for the loss of life at sea’* [T/19/122].

8.247 The Government’s closing submissions (at para 158) rely upon the fact that Mr McGrail accepted in his oral evidence he had overall responsibility for: (i) ensuring that officers receive proper training in the execution of their duties; (ii) ensuring that there is effective oversight and supervision of officers; (iii) overall command and superintendence; and (iv) ensuring that systems exist and are being properly applied to ensure policies and procedures are adhered to in practice [T/7/198.13 onwards].

8.248 I consider that this formulation of Mr McGrail's responsibilities at the time of his retirement is very vague. In my opinion, Mr McGrail's alleged failures should have been far more clearly spelt out at the time, so that everyone – and most particularly Mr McGrail himself – would know what was alleged and whether he could or should properly be called on to accept accountability for what happened; this was not done.

8.249 Mr Pyle told the Inquiry that he read the Section 15 Report between 29 and 30 May 2020 [T/18/116.12]. He also said that there was still to be justice or accountability, and *'the question I occasionally ask myself is whether that level of accountability and responsibility would have been different had, for example, everybody in that incident been killed or those on the boat had not been Spanish and had been Gibraltarian'* [T/18/137.23]. When asked about that, he suggested that *'there may have been a greater acceptance of accountability for the head of the organisation. It pains me to say that, I have to say'* [T/19/53.5]. He added that the operational reaction might have been different and there would have been a greater public outcry for accountability [T/19/53.17], although he later said that the steps taken by the RGP and the operational and prosecutorial processes would have been the same [T/19/55.2]. He said he thought that if the incident had happened in the UK, the head of the organisation may have reflected on whether their position was tenable [T/19/147.22].

8.250 Mr Pyle denied that he was rewriting history to make it seem like he was dishonestly misled about the Incident at Sea, when in reality he misremembered or misunderstood [T/19/79.9]. He maintained that he held Mr McGrail accountable based on what he knew at the time, before the Metropolitan Police report was completed, and he had a pretty clear understanding of what happened by the time the process under section 34 of the Police Act (to which I will come) was commenced [T/19/155.1], in that he understood that two people had been killed at the hands of the RGP outside of BGTW and in Spanish territorial waters, he had seen the draft Solis Report, he knew about AIS being switched off, and therefore believed the Commissioner of Police should be held accountable and

did not need the Metropolitan Police report to tell him any of that [T/19/237.10].

8.251 He therefore rejected the suggestion that he had jumped to conclusions without having the benefit of the report from the Metropolitan Police.

8.252 I add, for the sake of completeness, that on 29 May, Mr Pyle emailed Mr Picardo and Mr Llamas: *'According to the Spanish [Note Verbale] the collision took place at 36.09N – 5.12W. This appears to be confirmed by the photograph on p3 of [the Section 15 Report]. Not quite where I was expecting the collision to have taken place'* [B1934]. I do not quite understand why this was not what he was expecting, because it very closely corresponded with what he had been told by Mr McGrail on 11 March and what was stated in the Draft Solis Report. In evidence he explained that he may have been swayed by the initial reference to one of the people on the RGP vessel saying it was *'off the other side of Europa Point'* [T/18/112.15].

MR MCGRAIL'S ANSWER TO THE CLAIM THAT HE SHOULD BE 'ACCOUNTABLE'

8.253 Mr McGrail accepted that, as well as the fact of the deaths, and reputational risk to Gibraltar, there was also a *'serious diplomatic and political risk cost'*. He also accepted that under section 33 of the Police Act, he was responsible for the efficient administration and governance of the police force, and that he had overall responsibility for ensuring: (i) proper training, (ii) effective oversight and supervision, and (iii) that systems were in place to ensure policies and procedures were adhered to [T/7/198.7].

8.254 He maintained, however, that he had no reason to doubt that the Marine Section was functioning properly and that, so far as he was aware, there was no cause for concern [T/7/200.3].

8.255 At the Main Inquiry Hearing, Mr McGrail accepted that *'there is room for improvement'* in terms of more effective oversight by Marine Section managers, but he did not accept responsibility for the *'shortfalls'* identified in the Solis

Report [T/6/69.7]. On 15 March 2020, Mr McGrail messaged Mr Ullger complaining about the Marine Section instructions: *'Mosquado (sic.) con los [Angry with the] SoP del [of the] marine section done by Brian F & Nolan apparently. So so shabby in presentation. In blank paper, no letterhead, no author, no date. Shambolic. Such basic things that even probationer wouldn't miss. Si a ultima hora HMIC tiene razon [In the end HMIC is right] on the negative comments viz leadership. We can fucking produce a proper set of instructions.'* [E511]. Mr Ullger responded in agreement: *'Indeed that was so ooor (sic.), pero el [but] Wayne has responsibilities here too and should have had a better grip. Ive said it before, not impressed with Nolan either.'* [E511]. These messages were disclosed after the Main Inquiry Hearing. At the Reconvened Hearing, Mr McGrail agreed that this demonstrated his disappointment with the Marine Section's Standard Operating Procedures and leadership [T/23/103.8]. He also agreed that he was referring to the section of the HMIC Report that said leadership was an area of improvement for the force [B1552, T/23/103.11].

8.256 But he did not accept responsibility as head of the organisation for the collision at sea, making the point that individual officers have to be accountable for their actions and that he was at home asleep at the time [T/6/70.1]. That – as it seems to me – is a very bad point; it was not repeated by Mr Wagner in his closing submissions. That he was asleep at the time of the incident is no reason why he should not be accountable if there was some failure of leadership or supervision for which he should be accountable.

8.257 He said that he had no reason to believe that the officers would disobey mandatory standing orders or instructions. The order not to enter Spanish waters was not an obscure one, and the officers themselves should personally be held to account [T/8/77.2]. He expected the instructions about not operating outside BGTW and inside Spanish waters, except when requested by the Spanish authorities: *'to be followed all the time and I would have expected, if there were any breaches of them, depending on their gravity, to be reported up'*, and as far as he was aware, they were followed at all times [T/6/67.6]. He observed that

there had been many instances where the RGP has undertaken chases at sea, but when the suspect vessel left Gibraltar waters, the RGP ‘disengaged’ [B1301].

8.258 He added that neither Mr Pyle, nor Mr Pyle, nor the GPA, nor Mr Llamas had ever raised any concerns with him about the Incident at Sea at the time [T/7/201.10].

CONCLUSIONS ON MR MCGRAIL BEING ACCOUNTABLE

RGP crews leaving BGTW and entering Spanish Waters

8.259 Of course, I accept that it is a matter of the greatest concern that the crew of the RGP launch left BGTW and entered Spanish waters before even starting the chase of the RHIB, which ended with the deaths of two of crew of the RHIB. But leaving BGTW was contrary to the very clear and well-known instructions and Standard Operating Procedures. The Inquiry received no direct evidence to suggest that it was a common practice for RGP launches to leave BGTW. In 59 instances of known recent chases of suspect vessels, only two left BGTW, and one of those was the instant case. (The Inquiry was not given the details of the other incident.) I accept that other chases might have taken place into Spanish waters, which were not recorded because the AIS was switched off, but there is no direct evidence that this happened, let alone that it was a common practice. Neither of the thorough Reports on the Incident at Sea found it to be a common practice (although as I have highlighted above the Draft Solis Report stated at para 3.17.5 and 3.17.6 [B1734] that Marine Section senior officers ‘*must have been aware that pursuits strayed into Spanish waters*’ and ‘*did not apply effective oversight into*’ patrols). The Inquiry heard nothing at the hearings to support there being a common practice, and I am therefore quite unable to find that this was a common practice; still less that Mr McGrail believed – or had any reason to believe – that it was.

Switching off the AIS

8.260 Another concern is that the crew of the RGP launch had not switched their AIS system on. Both Mr McGrail and Dr Britto said that they were surprised to hear this, since this also was contrary to Standard Operating Procedures. Dr Britto

stated that he had heard rumours about the AIS being switched off, from retired officers both in Gibraltar and amongst the Spanish police, but that the information was purely anecdotal, it was *'hearsay and conjecture'* [T/15/37.9]. Furthermore, he did not raise those rumours with the GPA or with Mr McGrail [T/15/193.22]. He had no particulars of these rumours, which cannot therefore be sourced or verified. Neither of the thorough Reports on the Incident at Sea found it to be a common practice. Indeed, the Draft Solis Report stated at 3.17.3 and 3.17.4 [B1734] that Marine Section Senior Officers had provided instructions, on several occasions, that the AIS was to be turned on, and that *'it would be reasonable to assume that Marine Section senior officers would have expected that all available navigation equipment, particularly when navigating at night, would be used'*. The Inquiry heard nothing to contradict this and I am therefore quite unable to find that switching off AIS was a common practice; still less that Mr McGrail believed – or had any reason to believe – that it was.

No training for pursuits of suspect vessels

8.261 Because suspect vessels were often spotted in BGTW, RGP crews did commonly chase them; they can hardly be expected to stand by and watch them go about their apparently criminal enterprises without some attempt at intervention and disruption. But because, as I understand it, there is no safe way for one vessel to chase – or at least to intercept – another vessel at speed, there was no training for crews to do so. The coxswains therefore developed skills on the job, by learning from others. There was no evidence before the Inquiry to suggest that anyone provides such training; if they do, no doubt some RGP coxswains should be sent for such training. This point was not developed at the Inquiry; indeed, I am not sure that it was even mentioned once in the course of the 19 days of hearings. In my opinion, in the light of information available at the time, Mr McGrail cannot – and should not – be held accountable for the fact that such chases did commonly take place, without the crews having any relevant training, the matter never having been drawn to his attention.

BOW PROTECTORS

- 8.262 I might here also mention, as a footnote to the Incident at Sea, the '*bow protector*' fitted as an '*accessory*' to the RGP launch, which Mr Ullger addressed in his email and letter to Mr Picardo on 4 June 2020 [C4715]. Mr Pyle also referred to this accessory in his evidence to the Inquiry [T/19/46.14]. Mr Picardo's query to Mr Ullger had apparently arisen from seeing a report by the Spanish broadcaster RTVE, which claimed that the RGP launch had been fitted with a saw-shaped attachment, allegedly in breach of some unspecified '*UN Rules*' [C4717]. Mr Cruz, for the RGP, in the course of his final oral submissions said that this claim had recently been repeated by protestors outside New Mole House.
- 8.263 The bow protector has a blunt serrated edge, which a casual and uninformed observer might mistake for a '*saw*'. However, at the end of the Inquiry hearings, the RGP filed evidence from Mr Ullger to deal with this point (Ullger 4 [A1557]). Because of the serious damage caused in the past to their launches following collision with floating tree trunks and other debris, the RGP had been told by marine experts about '*bow protectors*', designed to push logs and other floating debris aside. These '*bow protectors*' are claimed by the manufacturers, and no doubt by their salesmen, to be an important safety accessory fitted to protect the vessel, and its propellers (see also [C5488]). Captain Meikle and the Gibraltar Marine Authority advised the RGP that they did not know of any UN laws that would prevent the use of this accessory. Whether the '*bow protectors*' do actually give any effective protection to a launch travelling at speed, I do not know, but I accept Mr Ullger's explanation. I conclude that the article in the Spanish newspaper to which Mr Pyle referred to was at best misinformed. I reject it as a criticism of the RGP that such a device was fitted; it follows that Mr McGrail cannot possibly – let alone properly – be held accountable for the decision to fit such a device.
- 8.264 I have mentioned this only to demonstrate that I have not overlooked the point but, in my opinion, it has no relevance at all to the circumstances relating to Mr

McGrail's retirement, nor indeed to the Inquiry. I do not propose to mention it further.

CONCLUSIONS ON THE INCIDENT AT SEA

- 8.265 I do not seek to minimise the gravity of what happened, as the crew of an RGP launch left BGTW, entered Spanish waters, chased a suspect RHIB and collided with it, killing two crew members. These are acts for which the experienced members of the crew might personally be held accountable, and even liable – about which I deliberately express no opinion.
- 8.266 Having set out the primary facts, I now set out my clear conclusion: I am not satisfied that Mr McGrail, as the Commissioner of Police, should be accountable if the Incident at Sea resulted from aberrant officers acting quite contrary to the Operating Procedures, unpredictably, on their own, without the knowledge, acquiescence or ratification of supervising or managing officers. In my opinion, none of the allegations made, or implied, against Mr McGrail withstand detailed analysis and I am not satisfied that any of them are established.
- 8.267 So, returning to the Issue as posed: I consider that there were faults and failures on the part of the crew of the RGP launch to follow the operational instructions or procedures of the RGP; those faults and failures did cause or contribute to the collision at sea; but I do not consider that Mr McGrail as Commissioner of Police was responsible or accountable for those faults or failings.
- 8.268 I have already mentioned, in passing, that the allegations against Mr McGrail, and the claim that he was accountable for the Incident at Sea were not properly particularised at the time, to the GPA, and still less to Mr McGrail himself. I will cover this point in more detail when I come to review the GPA process.

CHAPTER 9:

THE 2020 HMIC REPORT

INTRODUCTION

9.1 From time to time, the RGP voluntarily requests Her Majesty's Inspectorate of Constabulary and Fire and Rescue Service ('**HMIC**') to conduct formal inspections of the force and to report their findings. HMIC issued such a Report in 2016, before Mr McGrail became the Commissioner of Police. In 2019, after he had become Commissioner, Mr McGrail requested HMIC to conduct another inspection, after which they issued the 2020 Report. Although the 2016 Report was largely favourable to the RGP, the 2020 Report made a number of criticisms, some of which I will summarise. I will then examine the initial response of the various parties to the 2020 Report. I will then turn to the submission made by Mr Wagner, on behalf of Mr McGrail, that the responses of Mr Picardo and of Mr Pyle changed.

9.2 The different interpretation of the ensuing events led to the inclusion of Issue 4 on the List of Issues. Subject to the preamble, Issue 4 requires that I inquire into:

'The findings of the [2020 report] ... and/or Mr McGrail's response in addressing the findings of the previous report by HMIC published in 2016.'

9.3 Having set out that Issue, the Government Parties have made very clear in their closing submissions (at para 199) that the 2020 Report was only a contributing factor to what they say was the '*accumulating loss of confidence*' by both Mr Pyle and Mr Picardo; both say '*that, by itself, it would not have resulted in a loss of confidence in Mr McGrail such as to seek his removal from office*'. In my opinion, the 2020 Report is indeed a subsidiary Issue within the Inquiry, with which I propose to deal proportionately, rather than exhaustively.

THE 2016 HMIC REPORT

9.4 Within the confines of length and practicability, I cannot sensibly set out all the findings of the dense 31 pages of the 2016 Report [B1512]. I will select just some

of the extracts helpfully highlighted in CTI's Facts Schedule (at paragraphs 227), so as to demonstrate that the Report was indeed largely favourable.

- 9.5 The RGP was *'generally well led. Senior officers were visible and had a good oversight of policing activity'* [B1517]. The Commissioner (at that time Mr Yome) *'adopted an open, transparent and constructive approach'* [B1517]. There was *'professional and formal, yet supportive and open, engagement between senior officers and other staff'* and *'when mistakes were made, the emphasis was on putting the matter right and learning from the experience rather than finding blame'* [B1518]. There was *'strong evidence that senior officers were committed to improving how the force operates concerning values and standards'* [B1519]. Members of the public *'reported a high level of confidence in the force in general'* [B1520]. The inspection team *'did not encounter any suggestion of bullying or harassment'* [B1522].
- 9.6 *'Generally, the prevention and investigation of crime and care for victims was effective.'* [B1523]. The RGP was *'committed to meeting all demands, which led to high levels of public confidence and satisfaction but placed major pressures on the workforce'* [B1531]. Although there were some *'examples of inadequate investigations'*, a review of case files revealed *'various examples of good police work and appropriate decision-making'* [B1527]. Overall, with some qualifications, the evidence revealed *'a force that is working with the public in an effective way to prevent crime'*; but there was *'scope for the force to improve its effectiveness'* [B1540].
- 9.7 The Report identified eight areas for improvement by the RGP. Again, I shall give a robust summary of CTI's Facts Schedule (at paragraph 228). The Commissioner was required to:
- a. Augment the existing arrangements for crime recording [B1525];
 - b. Align the *'counting rules policy'* (of recording and detecting crime) more closely with UK standards [B1526];

- c. Ensure that arrangements for the supervisory oversight of investigations were introduced [B1527];
- d. Define in policy and procedures how to identify vulnerable and repeat victims, how to assess the risks to them and how to provide appropriate support to them [B1529];
- e. Agree with the GPA a policy and procedure to prioritise – and then to match – resources to demand, particularly for response teams [B1534];
- f. Establish an effective way to assess the likely daily calls for service and patterns in their demand [B1535]; and
- g. Compile a comprehensive prediction of future demand, so as to create plans for funding, skills, structure, estates, information and communication technology and other equipment [B1537].

9.8 The eighth recommendation was directed at the Minister for Finance, who should set out the funding formula, including the associated criteria, thresholds and conditions that needed to be met for resources required to police Gibraltar [B1539].

9.9 As I will explain, Mr Pyle later contrasted this largely favourable Report with what he interpreted as more critical passages in the 2020 Report (Pyle 1 para 24.4 [A250]).

THE 2020 REPORT

INTRODUCTION TO THE 2020 REPORT

9.10 Although the next HMIC inspection was not scheduled to take place until 2020, in September 2019 Mr McGrail commissioned another formal inspection, which he hoped would demonstrate ‘*openness, transparency and willingness to progress*’ (McGrail 3 para 16 [A54]). He also thought it would establish whether there was bullying within the force and, if so, would help to address the issue following criticism in *Panorama* about the RGP, the GPF survey results (see Issue

6 below), and the *‘apparent discontent amongst the rank and file with complaints of bullying’* (McGrail 3 para 16 [A54]).

- 9.11 In requesting a further inspection, he rejected the views of others in the Senior Command Team who, sensing that some of the recommendations of the 2016 Report remained outstanding, thought it would be better to wait until further progress had been made (see, for example Ullger 1 para 42 [A541], [T/14/95.2] and Yeats 1 para 31 [A638]).
- 9.12 The HMIC team conducted their inspection in October 2019. A draft report was sent to the RGP in February 2020 [D1152]. Mr McGrail consulted Dr Britto, Chairman of the GPA, about the draft Report and reverted to HMIC with comments upon it. The final Report [B1548] was sent to Dr Britto on 9 April 2020. Dr Britto sent copies of the Report to Mr McGrail, to the members of the GPA, to Mr Pyle and to Mr Picardo, amongst others. Again, I gratefully adopt the summary in the closing submissions of CTI (at para 241).

OVERALL IMPRESSION OF THE 2020 REPORT

- 9.13 The Report concluded that overall, the RGP *‘offers a good level of service. But there are areas where it could improve...’*, and *‘we expected to see that rather more had been achieved when we revisited in 2019’* [B1556]. The Report found:

‘the force isn’t as effective or efficient as it could be’, ‘poor and outdated practice often curtails officers’ effectiveness’ and there was ‘little incentive for the force to become more efficient and effective’, and ‘limited appetite to challenge [the force] culture or modernise.’ [B1556]

THE AREAS FOR IMPROVEMENT IDENTIFIED IN THE 2016 REPORT

- 9.14 The Report considered the eight areas for improvement identified by the 2016 HMIC Report, and considered whether, and to what extent, they had been implemented. As to crime recording (area for improvement 1), there remained *‘similar problems to those ... found in 2016’*, for example incorrect classification

of crimes, absence of necessary information in crime reports, supervisors not checking crime reports well enough, and not employing ‘*dip sampling*’ [B1557-8].

- 9.15 The RGP’s counting rules (area for improvement 2) of recording and detecting crime were now aligned more closely with UK procedures; the RGP had therefore addressed this particular area for improvement [B1559].
- 9.16 As to area for improvement 3, there was greater supervisory involvement than evident in the 2016 inspection, but this had caused delay in case files being submitted to Crown Counsel. These problems more acutely affected officers from response teams than specialist units [B1560]. The relationship between RGP and Crown Counsel was effective and professional, but not always efficient [B1562]. The RGP had not provided all officers who investigated or supervised criminal investigations with enough training or continued professional development [B1561]. The RGP did not have a crime allocation policy, meaning inexperienced officers had been investigating serious crimes [B1561]. Specialist units for safeguarding and economic crime were stretched to capacity; the Economic Crime Unit did not have the resources to conduct investigations commensurate to Gibraltar’s risk profile [B1561]. Officers were using their personal devices to examine offenders’ phones, which was not good practice [B1562] (this point has a relevance to which I will return when examining the sequence of events leading to Mr McGrail’s retirement, but will distract from the focus on the 2020 Report if I deal with it here). The RGP ‘*should do more to make sure that victims of crime get the service they need*’. There is no Code of Practice for Victims of Crime, as introduced in the UK in 2016 [B1563].
- 9.17 As to victim identification and assessment (area for improvement 4), there were still areas for improvement [B1567]. The RGP still did not have a definition of vulnerability [B1564]. The RGP had introduced a risk assessment system, and officers appeared to be using this appropriately, but the RGP lacked comprehensive processes to routinely risk assess all potentially vulnerable

victims [B1564]. The dispatch system did not flag if a caller was a vulnerable or repeat victim and did not allow searches against names and addresses to establish if a repeat or vulnerable victim was involved [B1564]. The RGP's response to reports of children absent from care homes was not as good as it should be, and the RGP should supervise this more closely to guard against vulnerable children becoming involved in criminality or being sexually exploited [B1565]. Not all of the RGP force understood the policy on body-worn video [B1565]. The RGP worked well with partner organisations, but there were two notable absences: namely, no youth offending team or victim support team [B1566].

- 9.18 As to resourcing and demand (area for improvement 5), the RGP had taken steps to better match resources to demand and had '*made progress*', but '*should do more to systematically apply these principles and make best use of its resources*' [B1567]. The RGP was appropriately grading and responding to most emergency calls, but the procedures for recording these assessments were not consistent [B1568]. A sizeable portion of police officer resources were being used to support work that could be done by others, such as directing traffic at the border, marine call outs, guarding remand prisoners at court, and escorting vehicles [B1568].
- 9.19 As to developing tools to predict how busy the force is likely to be (area for improvement 6), there were shortcomings in the RGP's IT systems, limiting its ability to understand demand [B1570]. The RGP had made '*limited efforts*' to monitor and review demand, but it did not have a comprehensive understanding of all demands [B1570]. The RGP had made progress in matching resources to demands it was aware of, including adjusting shift patterns, but that had been at a cost to neighbourhood policing [B1570]. Officers were stretched and carrying heavy workloads and used a high level of overtime [B1571].
- 9.20 As to mapping future demand (area for improvement 7), the increase in police officer numbers gave the RGP a '*significant opportunity to change the way it polices*', and it was '*vital that the force manages and leads this change*'

effectively [B1572]. But, the RGP had not analysed likely future demand, and did not have a comprehensive understanding of current workforce skills [B1572]. The force should design processes to structure and measure training needs. The RGP should *‘develop overarching plans to give leadership and direction at this critical period of change so that senior leaders and the GPA can oversee and manage the change effectively’* [B1572]. The RGP had no IT strategy to guide future planning and investment [B1573].

- 9.21 Area for improvement 8 was addressed to the Minister for Finance [B1573] and did not impact directly upon the responsibility of the Commissioner. Consequently, I will not address this paragraph. Furthermore, Mr Picardo regarded this criticism made in the Report as being *‘entirely misconceived’*, arising from a failure to understand Gibraltar’s budget operations. He therefore had no regard for this recommendation at all [T/16/84/11].
- 9.22 The upshot of this section of the 2020 Report is that in six out of the seven areas of improvement identified in the 2016 Report, only one (area 2, ‘counting policy’) had been implemented.

ETHICS, VALUES AND CULTURE

- 9.23 The 2020 HMIC Report also addressed new topics of *‘Ethics, values and culture’* and *‘behav[ing] ethically and lawfully’*. The Report found the RGP had introduced a new Code of Ethics (being copied verbatim from College of Policing Code of Ethics adopted in the UK) but had not adopted large sections in its procedures and policies, and some RGP policies contradicted it [B1575]. The Code of Ethics was not fully integrated across the force and many officers did not understand how to apply it [B1576].
- 9.24 Many junior officers perceived that some senior officers were *‘sometimes too ready to apportion blame when something goes wrong’*, although the inspectors were unable to determine whether there was a *‘blame culture’* within the force [B1580]. That said, on the whole, the Report considered the RGP officers were

‘professional, committed and enthusiastic about their work’ [B1580].

BULLYING

9.25 The Report noted that management behaviour may have amounted to bullying *‘in a small number of instances’* [B1579]. The Report referred to surveys conducted by the GPF (to which I have already referred to in an earlier section of the Report), stating: *‘A perception exists among an apparently large number of officers that some senior officers sometimes behave in an unacceptable manner when dealing with their staff. Whether true or not, this perception is a cause for concern’* [B1579]. The Report recommends that: *‘HM Governor and the GPA should support the commissioner and the force in resolving this problem to ensure that any unacceptable behaviour is dealt with’* [B1579]. The recommended area for improvement was that: *‘With immediate effect, the Royal Gibraltar Police’s senior leadership team should produce an anti-bullying statement and improve the force’s processes to prevent bullying.’* [B1580]

CORRUPTION

9.26 The Report found the RGP was not doing enough to counter the risk of corruption, and should do more to protect the public, its organisation and staff from corruption and allegations of corruption [B1578]. It observed that: *‘The issue of corruption, even at a low or subconscious level, didn’t appear to be a concern for the force’*, and further that *‘The force doesn’t fully understand its exposure to the risk of corruption’* [B1581]. It was also said to be unable proactively to identify individuals who were corrupt or susceptible to corruption, representing a risk to the force [B1582]. The RGP lacked a thorough understanding of the risks and signs of corruption [B1583]. It was not routine practice in Gibraltar to record, monitor and review business interests in police forces [B1578]. There was no clear and well applied policy on reporting notifiable associations [B1578]. The RGP’s policy was that individuals should recognise any risk and manage it themselves, which policy inspectors stated, *‘isn’t appropriate and increases officers’ personal exposure to allegations of corruption’* [B1578]. The

Professional Standards Unit lacked resources and expertise to understand, monitor and mitigate the threat [B1582]. The Report recommended that better vetting of business interests and notifiable associations together with effective use of auditing could be used to mitigate the risks [B1582].

- 9.27 I note, in passing, that these criticisms of the force's lack of policy towards the risks of corruption were specifically noted by Mr Picardo and Mr Pyle as a reason contributing to their losing confidence in Mr McGrail (see, for example, [B58], [B353], [C3991]).

OTHER MISCELLANEOUS FINDINGS

- 9.28 The Report noted a variety of other shortcomings. The register for monitoring gifts and hospitality for RGP officers was not being used routinely [B1580]. There was no consistent approach to vetting recruits or those seeking promotion or moving post [B1581]. There were no mechanisms to confidentially report poor behaviour, bullying and abuse of power for sexual gain [B1583]. The RGP had not recognised the potential for employees to abuse their position for a sexual purpose, and, unlike police forces in the UK, had not briefed or trained its workforce on this issue [B1577].

'RECOMMENDATIONS' AND 'AREAS FOR IMPROVEMENT'

- 9.29 The Report (at [B1586]) set out ten '*New Recommendations*' for the senior leadership of the RGP to implement (by 1 August 2020 unless otherwise indicated), which I will summarise.
- a. With immediate effect, to ensure that all calls for service are recorded on the force's computer system.
 - b. To '*set clear expectations ... for supervisors*', making provision for the training of supervisors, specifying the '*frequency and depth of supervision*' needed, and establishing a system of '*monthly dip-sampling of investigations to provide assurance that these expectations are met*'.

- c. To adopt the Code of Practice for Victims of Crime, and conduct victim surveys.
- d. To develop a corporate definition of vulnerability and develop processes to make sure officers identify any vulnerabilities of the victims, witnesses, and suspects they encounter, and make appropriate interventions.
- e. By 1 November 2020, to evaluate all reported domestic violence incidents in accordance with this definition, to enable *‘the most appropriate agency’* to consider whether legislative measures that exist in the UK would have provided valuable additional protection for victims in Gibraltar.
- f. To adopt a Code of Ethics policy, which should be incorporated into other policies and processes.
- g. With immediate effect, to *‘produce an anti-bullying statement and improve the force’s processes to prevent bullying.’*
- h. To review the force’s vetting procedures.
- i. By 1 November 2020, to *‘determine the best model for providing a counter-corruption capability to proactively identify and pursue employees who are corrupt or susceptible to corruption’.*
- j. By 1 November 2020, to *‘develop a method of anonymously and confidentially reporting integrity issues’.*

9.30 Although these were recommendations for future action, it seems to me that the identification of these matters as requiring attention amounted to an implied criticism of the RGP and indeed of Mr McGrail personally. I suggest that the identification of these issues showed some serious shortcomings in the leadership of the RGP.

9.31 The Report also identified nine *‘New Areas for Improvement’* (at [B1584]), which

I will very briefly summarise:

- a. A *'deputy crime desk manager'* should be appointed.
- b. The *'Code of Ethics'* should be *'embedded across the entire workforce'*.
- c. The force should consider *'establishing a network of ethics champions'* and having the Code of Ethics as an agenda item in senior management meetings, and forming a committee that focuses exclusively on ethics and equality.
- d. More guidance should be provided to increase understanding of the risks posed by abuse of position for a sexual purpose.
- e. A *'business interests and notifiable associations'* policy should be drawn up to require such issues to be declared and registered and that the register should be periodically reviewed.
- f. Better leadership training should be provided, with exchanges with forces in the UK.
- g. The Senior Leadership Team should ensure that the gifts and hospitality registers are monitored regularly to ensure force compliance.
- h. A *'comprehensive, local, counter-corruption threat assessment and control strategy'* should be drawn up *'to evaluate and manage the full range of risks to the integrity of its organisation'*.
- i. The force should provide *'a briefing about corruption risks and signs of corruption to the workforce'*, based on the College of Policing's policy on counter corruption.

9.32 I consider that the identification of these *'new areas for improvement'* suggests further shortcomings in the leadership of the RGP, though to a rather lesser extent than in the previous section on *'New Recommendations'*.

NO WORKING GROUP SET UP

- 9.33 Mr Picardo has drawn attention to Mr McGrail's application for the post of Commissioner dated 2 November 2017 in which, commenting on recommendations made in the 2016 Report [B1097], he had written at paragraph (x) that *'The inspection ... revealed various areas for improvement. Whilst some of these recommendations have already been addressed there still remains some requiring further action. It is imperative that a working group is created to see this project through. In my view the most pressing area for improvement ... is that of the creation of manual of guidance which should represent Force policy in crime investigation standards. This will inherently make officers better at conducting investigations and is positive for their all-round personal development.'* Yet, as Mr Picardo pointed out, the working group, which Mr McGrail had said was *'imperative'*, was never set up (Picardo 1 para 107 [A216]), despite having given a completion date of 1 March 2019 (in his Action Plan in Annexe B to his application [B1103]). Indeed, Mr Ullger said that it had not even been discussed [T/13/99.10].
- 9.34 Mr McGrail's explanation for these failures is to claim that his time and attention was much diverted by unexpected exigencies including the investigation into the circumstances in which an Iranian Oil Tanker, the Grace 1, was arrested in Gibraltar in July 2019. He claims that this placed unprecedented demands on the RGP with the result that he was *'addressing the issues raised by the Report by merging them in daily work practices'* [C4594]. He also pointed to the disclaimer in his Action Plan, which stated *'in policing, things change very quickly and therefore whilst the intention is to deliver on the stipulated actions, unexpected exigencies may warrant a review of these actions'* [C594].

THE REACTION TO THE 2020 REPORT AT THE TIME

- 9.35 The 2020 Report itself recommended that: *'HM Governor and the GPA should support the Commissioner and the force in resolving this problem to ensure that any unacceptable behaviour is dealt with'* [B1579]. I interpret this to mean that

the Report contemplated that such problems as there were should be tackled by the Governor and the GPA, acting together, to support Mr McGrail.

- 9.36 On 5 March 2020, Mr McGrail messaged Mr Ullger: *‘battling against Cathal [Yeats] and Paul [Richardson]’*. Mr Ullger replied to the effect that he had already said that they were *‘pasota’* (meaning apathetic), in not treating the HMIC Report as important; saying that *‘[t]hey don’t see the damage it can do.’* [E495]. Mr McGrail said that he *‘was obviously bothered and worried about the inspection report because it was not a good one. I think everybody was, but that is it. I was expecting work to be done...’* [T/23/108.17].
- 9.37 On 6 March 2020, Mr McGrail messaged Mr Ullger: *‘At least joey [Britto] agrees with us pero [but] I don’t think I can count with his support if the wheel comes completely off.’* [E497]. At the Reconvened Hearing, Mr McGrail explained that the RGP were enjoying good public opinion, but *‘...although the GPA, I believe, were on side with me because they were equally disappointed with the language and the tone, I sensed again ... a bit of weakness, that they would stand by the RGP if we were bombarded with criticisms from the quarters that I have mentioned’* [T/23/110.3] (the quarters being *‘certain sections in the media’*, *‘the political power’* and the Governor).
- 9.38 On 24 March, Dr Britto (Chairman of the GPA) wrote to Mr Holewell (one of the inspectors who had written the Report) having seen a draft version of the Report to the effect that *‘the GPA will work with the RGP to ensure that every effort is made to address the points and areas addressed in the report’* [C6557].
- 9.39 After receiving the draft Report, Mr McGrail and his Command Team began to prepare a *‘road map’* to adopt the recommendations (McGrail 1 para 31 [A61]).
- 9.40 Shortly after publication, Mr McGrail and Mr Ullger met Dr Britto to discuss the Report. Mr Ullger told the Inquiry that Dr Britto was *‘very supportive’* of Mr McGrail and the RGP in responding to the Report [T/13/102.23].
- 9.41 On 16 April, Dr Britto wrote to Mr Picardo saying that in the Report, the Inspectors

'have pulled no punches and have highlighted some areas for development, in relation to internal governance, and have expressed themselves in no uncertain terms' [B1434]. He wrote that he had discussed the findings with Mr McGrail. He said that *'the RGP have taken it on the chin and are already working towards all the recommendations'* [B1434]. The tone of this message confirms that he was expecting to work with Mr McGrail to implement the recommendations.

- 9.42 On 20 April, Dr Britto wrote to Mr Picardo, attaching the Report, saying that the Report made for *'uncomfortable reading'* in places, but that Mr McGrail was keen to publish it since *'he is confident that he will be able to expound further on the report and answer any press questions with minimal negative coverage...'* [C6560-1]. Dr Britto also sent Mr Picardo a WhatsApp message referring to the report and stating *'CoP seems to be quite comfortable and amenable to dealing with this, in case you are wondering and you wish to speak to him...'* [B1434].
- 9.43 On 21 April, Dr Britto wrote to Ms Sacramento, the Minister of Justice, saying that although the Report was *'somewhat critical at times'*, the RGP were already working towards implementing these recommendations and *'the report provides both the GPA and RGP with a developmental road-map.'* [E1132]
- 9.44 On 22 April, Dr Britto asked Mr McGrail for his *'plan of action in response to the report and the recommendations, working groups to be set up ... etc'* [C6561].
- 9.45 On 23 April, Dr Britto asked for the RGP's plan of action in response to the Report and recommendations for the benefit of GPA colleagues [C6561]. On 28 April he further requested that *'specific references are ... made to the reasons for the recommendations in the previous HMIC Report not being met'* [D2319]. The RGP prepared a 'Road Map', dated 24 April 2020 [C6729], which set out responses to each of the new areas for improvement identified by HMIC, which Mr McGrail sent to Dr Britto and Ms Sacramento. Mr Pyle said that he did not see this [T/18/139.4].
- 9.46 On 28 April, at 10.23, Dr Britto sent an email to Mr McGrail and Mr Ullger stating:

'please ensure that specific references are also made to the reasons for the recommendations in the previous HMIC report not being met, that it (sic) to say, the ones that were not met and why it was not possible.' [D2319].

- 9.47 One of the messages disclosed after the Main Inquiry Hearing shows that on 28 April, Mr McGrail sent a voice note to Mr Ullger [E675], which I summarise (the transcript is at [E1102]). He said that they needed to *'explain why we never worked on the other recommendations'* and suggested various reasons, for example, lack of resourcing, challenges with the IT system, and other problems and operations which required a lot of time and energy. So, he said, there were *'loads of reasons'* why they could say that they could not allocate that much time to it. Furthermore, they could point out that they had commissioned the Report long before it was due. The Government Parties submit that Mr McGrail appears in that voice note to be devising *'credible explanations, as opposed to relating genuine reasons'* (submissions for Reconvened Hearing, para 29.4). Mr McGrail maintains that this was in response to correspondence from Dr Britto shortly beforehand requesting that Mr McGrail provide him with explanations as to why the recommendations had not been addressed [T/23/112.5]. He thought that this could have been the email at D2319, but that there had also been a formal letter [T/23/114.10]. I return to this point at the end of this section.
- 9.48 On 29 April, Mr Pyle emailed Dr Britto suggesting that the Report should not be published in full [C3343]. He explained at the Inquiry that his view was that publication should wait *'until [they] have had a chance to discuss it and work out how we can handle it'* [T/18/135.12].
- 9.49 On the same day, Ms Sacramento messaged Mr McGrail [C6503] stating: *'The report is shocking reading on the face of it, but if you analyse it deeper It's not that bad, and [it has] easy solutions. ... It can all be fixed, don't worry'*. Mr McGrail's evidence was that they met on 30 April and discussed the main themes of the report; he said that Ms Sacramento *'was very supportive of seeing this through'* [T/6/115.1]. So – as it seems to me – she also was contemplating working

together with Mr McGrail to remedy the shortcomings which had been identified in the Report.

9.50 In her recent statement, Ms Sacramento said that she was initially ‘*extremely concerned with its content*’ and ‘*momentarily questioned whether Mr McGrail was up to the task of resolving the issues at hand*’, but on a more careful second reading ‘*saw it in a better light*’ and thought that the report was ‘*quite badly drafted*’ and ‘*quite formulaic in its approach*’. She was ‘*solution-focused*’ and by the end of her meeting with Mr McGrail on 30 April, considered that ‘*this was not a problem that was insurmountable and I made it very clear to Mr McGrail that he could count on my support in relation to the fixing of these issues*’ (Sacramento 1 para 50 [E1078-9]).

9.51 That same day (30 April), Mr Pyle emailed Mr Picardo, writing that the Report was: ‘*... quite damning and it will need careful handling*’. But he also said that he did not:

‘think the issue is as bad as the headline suggests and believe it is an issue of culture and leadership more than anything else. Most of the issues should be relatively easy to fix though it will take a collective effort, driven bottom up from within the RGP as much as from its leadership which needs to be both more strategic and directive.’ [C3344]

9.52 He commented that:

‘...the inspection report will undoubtedly become public at some stage. It is important therefore that we [the Commissioner, the GPA, Mr Picardo and the Governor] are all ready to respond collectively and as one when it does. This means being upfront and honest about the issues and challenges as well as displaying a commitment to put things right...’ [C3344]

- 9.53 He added that his *‘initial thought is to suggest the Commissioner makes the report public at the same time he publishes his roadmap on the way forward’* [C3344]. So – as it seems to me – Mr Pyle also, at that stage, was prepared to co-operate with Mr McGrail so as *‘to put things right’*. Indeed, at the Inquiry, he accepted that he was then willing to work with Mr McGrail, through the GPA, to fix the issues identified in the Report [T/18/141.15; T/19/186.2].
- 9.54 Mr Pyle said to the Inquiry that he hadn’t at that stage *‘started to draw the threads together’* – as he put it; only gradually did he come to believe that the RGP needed a change of leadership [T/18/137.1].
- 9.55 In the same vein, Mr Picardo’s response to Mr Pyle, later that same day, was to the effect that he agreed with Mr Pyle’s proposal and that they might *‘gently point [Mr McGrail] in that direction’* (Picardo 1 para 105 [A215]). (I note that the Inquiry has not seen a print-out of this email, but I have no reason to doubt that Mr Picardo has accurately summarised its effect.) I observe that this sentiment is far removed from requiring him to retire, let alone to do so with immediate effect. At the hearing, Mr Picardo also agreed that, at that time, both he and Mr Pyle believed there was a way forward and that Mr McGrail could continue to lead the RGP [T/16/78.14].
- 9.56 On 5 May, Mr McGrail wrote to Mr Picardo to the effect that he had *‘no major concerns with the report being made public’* and proposed to issue a press statement on the way forward [C3420]. This email was copied to Mr Pyle, who did not then express any concerns about the proposed way forward [C3420]. After the Report was made public on 7 May, the RGP duly issued the press statement.⁵ I infer that Mr McGrail then intended to work in co-operation with the GPA, Mr Pyle and indeed with Mr Picardo to remedy such areas for improvement as the Report had identified.

⁵ <https://www.police.gi/news/commissioner-welcomes-hmicfrs-report-327>.

- 9.57 On 6 May, Dr Britto informed Mr Picardo that the GPA would issue a '*short supporting statement*' indicating that Dr Britto was intending to work with Mr McGrail to turn things around [B1435]. Dr Britto told the oral hearing of the Inquiry that he was ready for Mr McGrail to go forward to address the recommendations of the Report, which he described as a '*developmental road map*' [T/15/55].
- 9.58 The 2020 Report was released to the public on 7 May, with some adverse criticism in the local press. The following day (8 May) Dr Britto discussed the coverage with Mr McGrail, writing that '*we just have to carry on and ensure that as many of the [recommendations] are addressed as possible in the time frame ...*' [C6569]. When asked to comment on that at the Inquiry, he said that he did then remain very willing to work with Mr McGrail [T/15/61.1].
- 9.59 On 9 May, Mr McGrail received supportive WhatsApp messages from Mr Costa, the former Minister of Justice [A62], and from the former Governor Lt-Gen. Davis [A63], who had retired in February 2020.
- 9.60 On 10 May, Mr McGrail and Ms Sacramento appeared together at a public Covid briefing, during which a journalist asked a question about the Report, and Ms Sacramento pledged her support to Mr McGrail in implementing the recommendations (McGrail 1 para 42 [A64]).
- 9.61 After the press conference, Dr Britto also sent Mr McGrail a supportive message [C6570].
- 9.62 On 14 May, Mr McGrail was interviewed by Viewpoint, a local television programme (a transcript of this interview is at [B1216]), during which he welcomed '*the Report in its entirety, and the recommendations in a very constructive way, because we see it as a platform that will allow us to improve and develop from our current position*' [B1216]. He said that the force had willingly submitted itself to the audit, because it was '*aspiring to develop and improve*' [B1221]. He said that the '*road map*' demonstrated his willingness to implement the recommendations [B1219-20].

COMMENT ON THE INITIAL REACTION TO THE REPORT

- 9.63 The 2020 Report was very critical of the RGP. I do not think that the comments that it was ‘*shocking*’, ‘*quite damning*’ or even ‘*very damning*’ were at all misplaced. I think that Mr McGrail was fortunate that no calls were made for his removal at that time. However, that did not happen, and although everyone realised that the criticisms made in the Report were serious, in the month or so after it was issued, Mr Pyle, Mr Picardo, Dr Britto, the members of the GPA, Ms Sacramento and indeed Mr McGrail himself, all thought that, if they worked together collaboratively, all the failings identified could be remedied and all the suggestions for improvements could be implemented. Indeed, as Mr Pyle had put it himself in his email of 30 April 2020 (to which I have already referred): he then thought that ‘*most of the issues should be relatively easy to fix*’ [C3344].
- 9.64 There is no evidence that either at the date of publication, nor for the month or so afterwards, that either Mr Picardo or Mr Pyle suggested that the criticisms in the Report would require Mr McGrail to retire. Nor do I think that, during that time, either of them ever contemplated that he should be compelled to do so.
- 9.65 Mr McGrail was not aware of the email sent by Mr Pyle to Mr Picardo on 30 April, describing the 2020 report as being ‘*quite damning*’ (to which I have already referred) [C3344]. The first indication of dissatisfaction with the Report that Mr McGrail received was 20 May 2020. Mr Picardo’s email to Mr Llamas regarding the civil claims arising from the Incident at Sea (which I have reviewed in the context of the Incident at Sea) was forwarded to Mr McGrail [C4101]; that email referred to the ‘*backdrop of the very unflattering report from the HMICFRS*’ [C4090]. Neither Mr Picardo nor Mr Pyle communicated any concerns about the 2020 Report to Mr McGrail himself until Mr Picardo did so by his amendments to the second GPA letter of 22 May 2020 [C4282], to which I will come in due course.

LATER REACTIONS TO THE 2020 REPORT

MR PYLE’S LATER REACTION

- 9.66 In his first statement to the Inquiry (dated 12 May 2022), Mr Pyle made more detailed criticisms. At paragraph 24.4, he noted what he considered to be the ‘*sharp contrast*’ between the tone of the 2016 Report, as summarised above, and the 2020 Report, which he thought painted ‘*a markedly different, deteriorated position*’ (Pyle 1 para 24.4 [A250]). He then drew attention to some of the points which I have already made in my summary of the 2020 Report (Pyle 1 para 24.5 [A250]). Mr Pyle therefore considered that the situation of the force as shown in the 2020 report represented a deterioration rather than the expected progress and went some way to validating the GPF’s grievances. He believed that these differences between the 2016 and 2020 reports reflected Mr McGrail’s management style (Pyle 1 para 24.6 [A251]).
- 9.67 At the oral hearing, Mr Pyle made clear [T/18/132.15] that, as he had said before, ‘... *the HMIC report on its own wouldn’t have caused a loss of confidence...*’.
- 9.68 But, I comment, if he felt so strongly about the tone of the Report, it seems to me to be odd that he did not complain to Mr McGrail personally at the time, for example, in answer to his email of 6 May [C3420] about the press strategy, to which I have already referred.

MR PICARDO’S LATER REACTION

- 9.69 In his statement to the Inquiry, Mr Picardo has suggested that when the Report was published, he (Mr Picardo) was facing many other critical demands upon his time – in particular, the Covid crisis was breaking, and the Government was grappling with the requirements of lockdown (Picardo 1 para 103 [A215]). It is easy now to forget how public life came to a halt at that time. Indeed, he told the Inquiry that he may not have read the Report until 17 May [T/16/83.21], when he sent a quotation from the Report to Mr Baglietto (an incident to which I will refer in detail as I come to consider the sequence of events leading to Mr McGrail’s retirement). He said that when he was able to turn his attention to the detail of the Report, he found that it was ‘*very damning*’ (Picardo 1 para 107 [A216]).

9.70 So, as Mr Picardo now explains, he did not at the time of its publication have sufficient opportunity properly to review the detail of the Report. On these grounds, he seeks to distance himself from his early responses to the Report as being not fully considered. In characteristically picturesque language, he said that the 2020 Report ‘...*was definitely a crocodile but it wasn’t the one nearest the canoe*’ [T/16/83.1]. On the other hand, Mr Picardo had approved the publication of the Report and had at least read the headlines [T/16/81.23-82.15].

9.71 Mr Picardo put his views very clearly (Picardo 1, para 107 [A216]):

‘... the report did not make me lose confidence in the integrity or probity of Mr McGrail as Commissioner of Police. ... [H]owever ... once I reviewed the conclusions, I was persuaded that they did reflect on Mr McGrail’s ability to maintain the efficiency and effectiveness of the RGP, which are also key aspects of the criteria of the power of the Authority in section 34(1) of the Police Act. I was, thereafter, also not confident that Mr McGrail could be the person to address the HMIC recommendations, given he had demonstrably failed to act since 2018 and matters had obviously deteriorated and not improved on his watch. He had, for instance, as far as I am aware, not established the working group he had suggested in his job application was ‘imperative’.’

9.72 Mr Picardo said of the various concerns about Mr McGrail’s leadership of the RGP:

‘all of these then came together like the strands of circumstantial evidence and became a cord that for me was the straw that broke the camel’s back after my huge loss of confidence in Mr McGrail on 12 May 2020.’ [T/16/78-9]

9.73 He has always stressed that, so far as he was concerned:

‘the key issue affecting my confidence in Mr McGrail, however, related to my personal loss of confidence in his integrity and probity as a result of his having misled me.’ (Picardo 1 para 108 [A216])

MR MCGRAIL’S RESPONSE

- 9.74 Mr McGrail accepted in his written evidence that the 2020 Report did identify some failings in the RGP but, as he points out – correctly in my opinion – the Report did not make any express personal criticism of him or of his leadership (McGrail 1 para 74 [A27]).
- 9.75 In his oral evidence to the Inquiry, he was more defensive. He did not think that the conclusions of the Report were entirely fair [T/6/98.10]. He did not accept that the RGP did not fully understand its exposure to the risk of corruption [T/6/100.6; T/6/107.13; T/6/108.1].
- 9.76 He was critical that the Report had not referred to the force-wide bulletin on bullying, which he had issued on 9 August 2019 [B2524], in which he had condemned bullying and had committed the Force to its eradication. and which he considered to be a sufficient policy statement on bullying [T/6/105.5]. I have referred to this in the section in which I deal with the GPF Complaints.
- 9.77 Generally, he said that the findings of the Report ‘... *did not resonate with what I knew of the RGP*’ [T/6/100.23]. However, he did accept that ‘*with the benefit of hindsight*’ he should have taken more heed from his Senior Command Team colleagues, who had opposed him calling the inspection early [T/6/91.4].
- 9.78 The Government Parties have unfavourably contrasted his defensive attitude with Mr Ullger’s ready acceptance of his ultimate responsibility, as head of the organisation, for the conduct of the organisation. Mr Ullger also said in oral evidence that he thought the criticisms and recommendations made in the Report were fair [T/13/104.4, 106.19].
- 9.79 It is submitted on Mr McGrail’s behalf that some of the alleged failings in the RGP

were not caused by faults on his part, but were also the result of what he claims to be ‘*institutional*’ failings on the part of the Government, out of date legislation, lack of resources, and the failure to provide support for vulnerable victims and vulnerable offenders (closing submissions para 95). All these, it is said, were matters beyond his control. Mr McGrail also relied on what he said was a lack of government funding.

9.80 The Government Parties roundly reject these arguments, and submit that after Mr Ullger was appointed Commissioner, he had managed to implement all the recommendations of the 2020 Report without any increase in funding (closing submissions, para 210.1). This was a reference to the 2022 HMIC Inspection. Of the 10 recommendations, 6 had been fully achieved and 4 partially achieved. Of the 15 areas for improvement, 4 had been achieved and one had been partially achieved (Yeats 1 para 36 [A639]). The Government Parties also relied on Mr McGrail’s statement in an interview on Viewpoint about the Report on 14 May 2020 that ‘*the Government has been very supportive*’ and agreed to the RGP’s ‘*business case*’ [B1216] [T/17/285.9].

9.81 I do not propose to inquire into – still less to determine – these rival arguments about funding issues, none of which are relevant to the circumstances of Mr McGrail’s retirement and which I do not consider to be within the Inquiry’s Terms of Reference.

CONCLUSION ON THE HMIC REPORT

9.82 In this section I have sought to set out the facts and circumstances relating to the publication of the 2020 HMIC Report. I have identified some of the criticisms made in the Report. As I have written, when the Report was published, both Mr Pyle, Mr Picardo, Dr Britto and the GPA, considered that such criticisms as were made of the RGP in the Report should, could and would be remedied by co-operation with Mr McGrail. It is clear that their attitudes did change. When I turn to the later sequence of events, I will need to consider why they changed their minds and whether that was the result of a gradual development in the light of

cumulative circumstances – as they contend – or whether Mr Picardo had reacted adversely to the visit by the RGP to Hassans offices with the search warrant on 12 May 2020, and whether he then inappropriately influenced, or even ‘*manipulated*’, Mr Pyle to change his mind, as Mr McGrail contends.

CHAPTER 10:

OPERATION DELHI TO 12 MAY 2020

THE ISSUES AS IDENTIFIED

10.1 Subject to the preamble, Issue 5 on the List of Issues reads as follows:

*‘5. The investigation into the alleged hacking and/or sabotage of the National Security Centralised Intelligence System and alleged conspiracy to defraud (**‘the Conspiracy Investigation’**), and the RGP’s handling of the same, including but not limited to the RGP’s stated intention to execute search warrants as part of that investigation on 12 May 2020 (**‘the Search Warrants’**). In particular:*

*Did Mr McGrail seek or receive advice from the Director of Public Prosecutions (**‘DPP’**) or the AG regarding the Search Warrants, and did Mr McGrail accurately communicate any advice from the DPP or the AG on the Search Warrants (or lack thereof) to the CM and/or AG?*

Was the RGP’s intention to execute the search warrants on 12 May 2020 contrary to an agreement or understanding with the AG and/or the DPP?

Did the AG and/or CM place any or any inappropriate pressure on Mr McGrail regarding the investigation or otherwise interfere with the investigation, and in particular the RGP’s intention to execute the Search Warrants?’

A RESTATEMENT OF THE LIMITATIONS OF THESE ISSUES

10.2 I have made it abundantly clear in a number of preliminary Rulings, and I have repeatedly stressed throughout the Preliminary Hearings and the Main Inquiry Hearing, that I am required and authorised (by the scope of the Inquiry’s Terms of Reference in Legal Notice 2022/034) only to inquire into the reasons and circumstances leading to Mr McGrail’s retirement. I could draw up an endless

list of the matters into which I am not authorised to inquire but it may be salutary, for the avoidance of doubt, to set out some of them.

- a. I am not authorised to inquire into whether there was sufficient evidence to charge Mr Cornelio, Mr Perez and Mr Sanchez (the ‘**Former Operation Delhi Defendants**’), let alone whether they were guilty or not.
- b. I am not authorised to conduct this Inquiry as if it was a substitute for their criminal trial.
- c. I am not authorised to decide whether there was indeed hacking or sabotage of the National Security Centralised Intelligence System (‘**NSCIS**’) platform.
- d. I am not authorised to say whether Mr Gaggero interfered with or influenced the conduct of the investigation.
- e. I am not authorised to say whether the search warrant was lawfully granted against Mr James Levy KC, nor whether he was rightly considered to be a suspect.
- f. I am not authorised to make findings as to whether Mr Picardo (or other members of HMGOG) breached the Nolan Principles or Ministerial Code through their conduct in relation to the setting up of 36 North and the attempts to obtain the transfer of the NSCIS contract to them.

- 10.3 However, before dealing with the extent to which the police investigation into the alleged hacking and sabotage of NSCIS, and the grant of the search warrants which the RGP obtained in respect of Mr Levy at his offices at Hassans and at his home, were reasons or circumstances leading to Mr McGrail’s retirement, I need at least to give some outline of the background, without which those matters cannot be understood. Since most of this section of the Report bears only indirectly upon the circumstances of Mr McGrail’s retirement, I will do so in neutral terms, setting out the relevant

facts and the rival contentions, without determining the issues raised.

BACKGROUND TO OPERATION DELHI

THE NSCIS PLATFORM

- 10.4 Bland Ltd (**'Bland'**) developed and managed the NSCIS, which was a platform designed to monitor and control Gibraltar's borders, by a variety of different techniques (none of which are relevant to the Inquiry). The Government paid Bland for this service.
- 10.5 Mr Thomas Cornelio and Mr John Perez worked for Bland; they had particular responsibility for NSCIS (Mr Cornelio had developed the technology). They realised that with their IT and business skills, there was a commercial opportunity for them, if they could persuade the Government to transfer the management and development of NSCIS from Bland to a company which they would set up and control themselves, making a profit as the Government would pay them rather than Bland.
- 10.6 They needed advice and investment in order to set up the company, with a view to transferring the business from Bland; to do so they approached Mr Levy at Hassans, who was a recognised specialist in identifying, and realising, commercial opportunities in Gibraltar.
- 10.7 Mr Levy told the Inquiry that Mr Perez approached Hassans at the end of 2017 or at the beginning of 2018 [B5232]. They had an initial meeting to discuss their proposal in the first quarter of 2018 [B5232]. Mr Levy said that the plan was for Hassans to finance the project, and, in return, they would become shareholders [T/8/127.12]. As was Hassans' practice when considering new commercial proposals, Mr Levy assessed the risks with two other partners before deciding to invest in the new company, which was to become 36 North [T/8/209.1]. Having made this decision in principle, he then delegated the detailed negotiations to Mr David Weber, a consultant lawyer at Hassans.

- 10.8 By email dated 28 March 2018 [B5249], Mr Perez sought advice from Mr Levy on the type of company that should be set up, and sent his key proposals, which were later modified (as I shall later describe). On Mr Weber's instructions [B5279], on 23 April 2018, 36 North Ltd was incorporated [C982].
- 10.9 Mr Levy gave oral evidence that once the transfer of the NSCIS contract had taken place from Bland, they intended that 36 North would manage the contract in Gibraltar. However, they hoped that the system could be profitably exported to other countries, particularly to various parts of Africa. Mr Levy said that he was more interested in the commercial possibilities of developing the international business rather than continuing the more modest domestic business in Gibraltar [T/8/119.10].
- 10.10 He confirmed, however, that 36 North needed to obtain the NSCIS contract in Gibraltar for the company to be profitable in its first year [T/8/120.22]. Furthermore, 36 North needed investment from Hassans until it was profitable. All of this is clearly shown by the cash flow forecast [B5161].
- 10.11 In early April 2018, Mr Weber and Mr Levy prepared a Memorandum of Understanding for the venture [B5250]. After negotiations with Mr Cornelio and Mr Perez, they agreed that 36 North would have a 'draw down' facility of £1 million for the first year, to cover startup costs; that Hassans would provide legal support; and, further, if 36 North ceased trading, Hassans would employ Mr Perez and Mr Cornelio as consultants each for £300,000 per year for three years or offer them a '*suitable alternative post*' [B5282]. This agreement became known as the '*Hassans Comfort Letter*' [B5295]; it was signed with other agreements on 28 June 2018 [B5298]. If Hassans did not secure the NSCIS contract, Hassans and its partners were therefore exposed to significant financial risk (as Mr Levy accepted in questioning [T/8/208.25]).
- 10.12 I interpose that by April 2019, 36 North had drawn down £400,000 of this loan facility in stages (para 24 of Mr Levy's statement to the RGP dated 9 June 2020 [B5234]). In June 2019, on the basis that 36 North had failed to generate the

anticipated income (para 24 of Mr Levy's statement to the RGP dated 9 June 2020 [B5234]), Mr Weber prepared a Notice pursuant to the Loan Facility Agreement cancelling Hassans' obligation to make further advances to 36 North (Weber 1 para 15 [A1424]). However, on the basis of revised cash flow forecasts, in September 2019, Mr Weber prepared a Supplemental Facility Agreement providing for a further advance (Weber 1 para 16 [A1425]), under which a further £76,000 was advanced (para 24 of Mr Levy's statement to the RGP dated 9 June 2020 [B5234]).

- 10.13 36 North were obliged to re-pay the sum of £476,000, which they had borrowed, by the end of August 2020. The projected cash flow of 36 North showed that the NSCIS contract in Gibraltar was to be their primary source of income [B5161].
- 10.14 I do not need to detail the somewhat complicated re-arrangement of the shareholdings in 36 North in the intervening period, because the eventual position in terms of shareholdings and directorships is accurately shown in a manuscript diagram drawn by Mr Richardson [C1776] (but I do not endorse the description that he gave of that re-arrangement). By May 2020, the company was owned as to one third by Mr Cornelio (through his company Icode Ltd), as to one third by Mr Perez, and the remaining third by the partners in Hassans (through the company Astelon Ltd), resulting in Mr Levy owning 10.56% of 36 North, and Mr Picardo, owning just under 1% (being 2.94% of Hassans' third) with other equity partners in Hassans also having similar interests commensurate with their partnership share.

AN OUTLINE OF THE FAILED ATTEMPT TO TRANSFER THE GOVERNMENT BUSINESS

- 10.15 On 30 January 2018, Mr Perez met Mr Picardo to inform him about his and Mr Cornelio's plans for the transfer of the Government service contract. Mr Perez stated in his written evidence that Mr Picardo *'was encouraging and supportive and asked that I let him know before we tendered our resignations*

[from Bland]' (Perez 1 para 23 [A1236]).

- 10.16 Mr Picardo confirmed in oral evidence that Mr Perez told him that he would be leaving Bland, together with Mr Cornelio, in order to establish their own business offering the same or similar services to the Government, and hoping to sell NSCIS internationally; they wanted the Government to agree to that. Mr Picardo asked to be kept updated on the resignations [T/16/99.10, 104.24]. Mr Picardo saw them as promising entrepreneurs; he saw them, and their project, as something to be encouraged [T/16/118.18].
- 10.17 In '*spring or early summer 2018*', Mr Picardo was aware of negotiations between Bland and 36 North about who would run the NSCIS platform [B1111]. However, Mr Picardo suggested that when Mr Levy spoke to him about the potential investment by Hassans, he did not particularise what the investment would be [T/16/126.16], and that he only found out '*later*' about the consultancy agreements, which he found '*extraordinary*' [T/16/126.5].
- 10.18 Mr Picardo said in his statement to the RGP that he had told Mr Levy that he would not object to 36 North running NSCIS, nor to the partners in Hassans investing in 36 North, '*but that this would not affect Government's attitude to 36 North in any positive or negative manner*' [B1111]. He was suggesting, therefore, that he would ignore Hassans' interest in the matter when deciding whether to award the contract to 36 North or not [T/16/101.18]. Nevertheless, Mr Picardo stated he had expected 36 North would succeed in its venture, which he considered would be positive for the taxpayer [T/16/127.8].
- 10.19 It is submitted against him that, whatever his expressed intentions, the appearance of this arrangement must be that he is conflicted in having to decide between the public interest in allowing Bland to manage the efficient and competitive running of NSCIS and his own and Hassans' interests in making a profit from the transfer of the business to 36 North [T/22/29.1].
- 10.20 As part of his investigations (to which I will come in due course), DI Mark Wyan

(now a Superintendent) identified (at [B3598]) the exchanges passing between Mr Picardo and the Former Operation Delhi Defendants, as well as a message between Mr Picardo and Mr Levy, in the summer of 2018, which I now set out in chronological order.

- 10.21 On 8 July 2018, Mr Perez informed Mr Picardo that on the next day he would be informing Mr Gaggero that he and Mr Cornelio would be serving their notices, ending the message with: *'All is in place.'* Mr Picardo replied: *'Good luck for tomorrow my friend. Best wishes. Fabian.'* Mr Perez replied with thanks [B3598].
- 10.22 When questioned about this exchange at the Inquiry, Mr Picardo said that he understood Mr Perez to mean that he was ready to leave Bland, but he denied that he was very much in the loop or supportive of 36 North's plans, saying that this was just *'something that was happening around me at that time'* [T/16/117.20].
- 10.23 On 9 July 2018, Mr Perez resigned from Bland (to take effect 9 September 2018) [B5153]. On 10 July 2018, Mr Cornelio gave notice of his resignation from employment with Bland, with his last day being 10 August 2018 [B5153]. He subsequently agreed that he would continue to maintain the NSCIS system as a consultant (Cornelio 1 para 29 [A1265]); he was then appointed a director of 36 North.
- 10.24 On 12 July 2018, Mr Perez messaged Mr Picardo to tell him that Mr Gaggero was likely to come to see him, and Mr Gaggero was paying other developers of NSCIS to stay at Bland which, he wrote, was *'Not critical'* to the success and development of 36 North. He said that all law enforcement heads were aware that *'it's not just about the software which I doubt they can sustain but about the relationship. Both of us remain critical to sustain the current platform in place. Just for info.'* [B3598]. I interpret this as Mr Perez telling Mr Picardo that even if Bland retained the management of the software program for NSCIS, that alone would not be sufficient for them to run the system

efficiently and effectively, because Bland would need the particular skills and relationships with law enforcement agencies that only Mr Perez and Mr Cornelio could bring.

- 10.25 Mr Picardo replied *'Thanks. Noted.'* Mr Perez responded: *'Fabian all good so far he appears to accept the birth of 36 North as long as I assist him in some capacity with Bland. Next meeting set for Mon.'* [B3598] I interpret that as saying that Mr Perez then understood that Mr Gaggero agreed to the creation of 36 North, provided that Mr Perez continued to provide assistance to Bland.
- 10.26 On 21 July 2018, Mr Gaggero telephoned Mr Picardo to discuss the departure of Mr Perez and Mr Cornelio from Bland [B1112], which Mr Picardo noted contemporaneously on his iPad [B1129]. In his oral evidence, Mr Picardo said that Mr Gaggero told him that he had no difficulty with Mr Perez and Mr Cornelio leaving but that they had to sort out a few issues, but it was all an agreed process; his concern was to tie down the issue of ownership of the NSCIS platform, because this would be cheaper (he meant to the Gibraltar taxpayer) and would resolve the ownership issue [T/16/107.25]. Mr Picardo stated in his witness statement to the RGP that after this date he *'continued to receive communications from Mr Gaggero and Mr Perez'* and that he *'repeatedly emphasised to both my desire to assist both sides'* [B1113].
- 10.27 At this juncture, it is also necessary to explain the role of Mr Caine Sanchez, the third Former Operation Delhi Defendant. At the relevant time, Mr Sanchez was Principal Secretary to the Deputy Chief Minister, which included being the data controller for the NSCIS (Sanchez 1 para 10 [A1272]). According to Mr Sanchez, in early 2018, he became aware that Mr Cornelio and Mr Perez were considering resigning from Bland to set up their own company. He became a point of contact between Mr Cornelio, Bland and Mr Picardo about the transition of the NSCIS to 36 North (see Sanchez 1 from para 21 onwards [A1276]).
- 10.28 On 13 August 2018, Mr Sanchez informed Mr Picardo that Bland had asked for

departments to write to Bland stating that they were changing provider and that Bland was no longer liable. Mr Picardo replied: *'I guess if we are saying the programmes are ours, then they only really had maintenance liability or development liability. Tell the depts to send to you so we can get [the Government lawyers] to look at these'* [B3598]. Mr Picardo said in questioning that he was here asking Mr Sanchez to ensure that there was proper legal oversight over the transition [T/16/120.16]. I interpret this as him making the point that the transfer was – or at least that he believed that it was – transparent and accepted on both sides.

- 10.29 On 17 August 2018 [B3598], Mr Perez sent another email to Mr Picardo thanking him for *'all your support as always'* and asking to call him, saying *'I am okay just keeping my discipline at the mo[ment] which I must admit is very frustrating. ... I think they will try to offer me payment in lieu and some form of compromise. I have not fired a single rocket yet'*. He also pointed out that NSCIS was *'becoming difficult as we continue to run it under unnecessary strain'*, but he maintained that they would continue to do so if necessary. When asked at the Inquiry what *'support'* (from Mr Picardo) Mr Perez was referring to in that message, Mr Picardo said *'I assume support in wanting to see them establish themselves, asking that the departments provide the legal advice necessary for the migration of the system...'* [T/16/121.5].
- 10.30 On 21 August 2018, Mr Perez said he had just finished with Mr Gaggero, that he was *'Determined to get some form of compensation'*, and that he wanted Mr Picardo's *'take'* before reverting, to which Mr Picardo said he was happy to help and asked whether it was pleasant or not. Mr Perez responded *'No, a bit all over the place. Brief you when we talk.'* [B3599]
- 10.31 On 23 August 2018, Mr Perez again asked for a catch up to discuss the situation and to brief Mr Picardo about Mr Gaggero's attitude to the transfer [B3599].
- 10.32 On 28 August 2018, Mr Perez sent a message to Mr Picardo; he wrote that he

was going to Mr Gaggero later that morning: *'He continues to be a nasty piece of work. Mal [Bad]. I am going to try and get him off our back and reach a compromise with him. Will let you know.'* [B3599]

- 10.33 On 29 August 2018, Mr Cornelio prepared a draft email to Bland stating that he would no longer maintain the NSCIS system for them after 1 September 2018 [B5318]. He sent the draft to Mr Levy, who forwarded the email and draft to Mr Picardo's personal email address (rather than his official email address as Chief Minister) and asked for his views, stating *'Tommy wants to send this. I have asked him to wait. What do you think.'* [B5318].
- 10.34 When asked why he sent the email to Mr Picardo, Mr Levy gave his account of the relationship between Mr Perez and Mr Cornelio with Bland, which he said had *'fluctuated'*. At first Bland were quite happy to let them carry on with this part of the business on their own, but as part of the bargain for agreeing to the transfer of the business to 36 North, Bland first asked them for 50 per cent of the company, which they later reduced to 30 per cent. Mr Levy then said that he was quite willing for Hassans to drop out of the business entirely, because *'if it went out of hand, it would not be good for anybody'*. He *'was trying to ensure that nothing terrible happened until they came to some agreement'* but they did not come to an agreement. Therefore, Mr Levy said that he was trying to delay Mr Perez from sending his letter, which he thought *'could upset any possibility of a settlement between the parties.'* He added that *'if this happened, there would have been a big problem with NSCIS'*; he also thought that Mr Picardo *'was also trying to avoid a split between them'* [T/8/121.15, 123.1].
- 10.35 When asked why he sent the email to Mr Picardo's personal address, rather than to his official address as Chief Minister, Mr Levy said he was on holiday and *'not extremely good at these things so I could have sent them to both for all I know ... I don't use a computer; I only use my telephone.'* [T/8/122.16].
- 10.36 Mr Picardo was asked about this email. He said in his oral evidence that he did

not know whether he read it at all, and probably did not reply to it. Mr Levy was sending him *'a lot of stuff about 36 North, etc., much of which I was ignoring because it didn't really have anything to do with me'* [T/16/124.1]. He said he received hundreds of emails a day to his personal email address and close to a thousand in his other email addresses, many hundreds of WhatsApps a day and many telephone conversations [T/16/124.21].

- 10.37 Mr Cornelio sent the email to Bland on 30 August 2018 [B5321].
- 10.38 On 30 August 2018, Mr Levy sent a WhatsApp to Mr Picardo: *'You should know that I have spoken to Tommy [Cornelio] and despite his letter to James [Gaggero], he will continue ensuring that the system is kept going until a solution is found acceptable to the government.'* [B3599] This message was forwarded by Mr Levy to Mr Cornelio on the same day. Mr Picardo responded: *'Will look forward to meeting him. Mena and me are the people who will understand him.'* [B3599] (Mr Albert Mena was then the Financial Secretary.)
- 10.39 On 4 September 2018, there was a further exchange (this time on WhatsApp) between Mr Levy and Mr Picardo [B1117] in which Mr Levy asked Mr Picardo if he had *'been able to find a solution with James G?'*. Mr Picardo replied that he had seen him yesterday, he (Mr Gaggero) asked for *'a bit of time and not to have a row. He is pissed off, he needed to speak to a few people'*, which Mr Levy dismissed as being *'the attitude of la derecha'* (being *'the right wing'*).
- 10.40 Mr Picardo was asked whether by that point it was apparent to him that there was no longer an agreement between Mr Cornelio, Mr Perez and Mr Gaggero, but rather a developing dispute. He said that he did not think that was fair but this was *'where it starts to get sticky'*, because Bland were starting to say that the platform belonged to them, and if 36 North wanted it, they would have to buy it from Bland. Then, he said, the situation deteriorated, as Mr Gaggero became incensed because he found that Mr Cornelio and Mr Perez had disbursed some costs for the setting up of their new venture using Bland credit cards. It was put to Mr Picardo that, in the circumstances, he should have

realised that he should have extricated himself from involvement with the deal, since he had a financial and personal interest in the situation. He said that it was still very much in everybody's interest that NSCIS should continue to work properly and the developing differences between 36 North and Bland had not yet reached the stage of it becoming impossible or even difficult, with the result that, as Chief Minister, he would have to make a decision as to the transfer of the contract [T/16/130.14].

- 10.41 On 11 September 2018, Mr Levy sent a WhatsApp message to Mr Picardo: '*I assume the Gaggero issue is more complicated since I see you are reluctant to discuss it*'. I infer that he was referring to Mr Picardo's failure to reply to his last email. Mr Picardo responded '*No. Just in the thick of the biggest issue in Europe right now.*' (referring, I think, to the fallout from Brexit) [B1204].
- 10.42 On 27 September 2018, Mr Picardo met Mr Gaggero, who told him that Bland were about to commence proceedings against 36 North, and that once the case started, the matter would be out of his hands, to which Mr Picardo replied that if that happened it was improper for him to interfere (Gaggero 1 para 75 [A1374]). Mr Picardo confirmed that he very probably said that to Mr Gaggero, because if that happened then '*it would be in dispute territory*', but that as he understood it no such case had been commenced yet [T/16/136.19]. Mr Picardo asked whether he made Mr Gaggero aware of his own stake in 36 North; he replied that he believed Mr Gaggero was already aware of it from the way that Mr Gaggero communicated with him [T/16/137.2].
- 10.43 At or about this time, Mr Picardo said that Mr Gaggero told him that Mr Cornelio '*might have sought to sabotage the operation of the system for short periods in order to demonstrate that Bland Ltd were unable to properly operate it*' [B1124]. Mr Picardo said in evidence that he did not need to investigate the truth of this allegation, indeed, he did not have the means to do so, but his view was that he would not authorise the transfer of the platform

to 36 North if there was a risk to the security of Gibraltar [T/16/138.21].

- 10.44 When it was put to him that, in those circumstances, he then had no option but to order that the contract remain with Bland, Mr Picardo replied that there were other options, but he did not want to risk the security of the system and he had received an assurance from Bland that they could make the system stable [T/16/139.23].
- 10.45 Accordingly, on 4 October 2018, Mr Picardo, as Chief Minister, gave an instruction that Bland should retain full control of the NSCIS system [B1123], which decision was implemented.
- 10.46 Since that date, the NSCIS contract has remained with Bland, and I do not consider that the subsequent affairs of 36 North have any relevance to the circumstances of Mr McGrail's retirement and I do not propose to consider its affairs further.

THE ALLEGATION THAT MR PICARDO HAD A CONFLICT OF INTERESTS

- 10.47 Both Mr Levy and Mr Picardo gave evidence that Mr Picardo played no part in setting up 36 North [T/8/118.24, T/16/96.14], which I accept; there is no evidence to the contrary. But the parties to the NSCIS contract were the Government and Bland, and the contract could not be transferred from Bland to 36 North without the Government's agreement. The Government would need to be satisfied that 36 North could properly, securely and economically service NSCIS, so as to provide effective protection to Gibraltar. The decision whether to transfer the contract was one being made by Mr Picardo, as Chief Minister, on behalf of the Government.
- 10.48 Mr Wagner argues on behalf of Mr McGrail that this presented Mr Picardo with a serious conflict between his private and commercial interests, on the one hand, and his duties and obligations as Chief Minister on the other (McGrail Closing, paras 29-30). The transfer of the contract from Bland to 36 North was essentially in his gift. He stood to benefit financially as a partner of Hassans

and, at least to a small extent, as a beneficial owner of 36 North, whose business plan and viability depended upon obtaining his consent to the transfer of the contract from Bland to 36 North. Furthermore, his friend and mentor, Mr Levy stood to make large potential profits if the transfer took place and if 36 North flourished, whereas the failure of 36 North would expose Hassans and Mr Levy to considerable liability in having to honour the onerous terms of the Hassans Comfort Letter. This, Mr Wagner contends, is a clear and obvious breach of the Ministerial Code. He particularly cites:

‘7.1 Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise.’

‘7.7 Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision they should be guided by the advice given to them by the Chief Secretary. Minister’s decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation.’

- 10.49 He argues that these extracts make clear that Mr Picardo should have recused himself from decisions relating to the NSCIS contract (McGrail Closing para 30).

MR PICARDO’S ANSWER TO THESE ALLEGATIONS

- 10.50 Mr Picardo was asked whether he considered withdrawing from the proposed transfer of the NSCIS contract because of his own investment in 36 North. He said that there was no need for him to do so, or to recuse himself, because he

had only '*a tangential, minor, financial investment*' in 36 North and the investment was so small. Further, he said at that time, he was not being called upon to make any decision. Since the transfer then proposed was by agreement, there was not then '*a conflict situation*' [T/16/109.1]. In any event, he expected 36 North would be successful, since Bland and 36 North appeared to be dealing with the issue in a way that was '*entirely agreeable to both of them*', despite some issues relating to wages, and some other matters [T/16/126.12].

- 10.51 He acknowledged that this deal might have produced some income for him tangentially, but '*that was not what drove me to agree to something which was somebody else's idea*' [T/16/128.12].
- 10.52 He observed that by deciding that the contract would stay with Bland he would, in the process, be depriving himself of any personal financial interest in the matter, '*thereby demonstrating that I acted selflessly and with integrity in the best interests of Gibraltar and its people and not in my self-interest in any way.*' [T/16/102.14].
- 10.53 In the light of these answers, I will summarise Mr Picardo's defence to these allegations, as it appears to me. He said that when the proposed transfer of the NSCIS contract from Bland to 36 North was first presented to him, it appeared that the transfer would be agreed amicably between them, and therefore no decision or choice from him, or the Government, was needed. He recognised that the situation would have been different if there was a dispute between Bland and 36 North, as to the principle of the transfer or as to its terms. If there was a dispute between them, then the Government would have to decide whether the contract should be transferred or not, and, if so, on what terms. That would give rise to a conflict of interest, which he readily concedes would render it inappropriate for him to resolve. But, he argues, the dispute between Bland and 36 North did not arise until much later. As soon as he realised that Bland and 36 North were no longer in agreement, and the

contract could not be transferred by agreement, he decided that the contract should stay with Bland, thereby (he argues) ensuring that he made no financial gain and never faced a conflict of interests.

- 10.54 I should point out that Mr Picardo stressed that he has throughout co-operated with the RGP in their investigations into these matters (Picardo 1 paras 34-5 [A189]). On 25 June 2021, he provided a long witness statement to the RGP investigating Operation Delhi, addressing his dealings with 36 North, Mr Gaggero and the NSCIS contract [B1109].

MR LEVY'S ACCOUNT

- 10.55 Mr Levy was asked whether he thought it was appropriate for Mr Picardo to involve himself in the decision as to who would keep the NSCIS maintenance contract, given that Mr Picardo held an interest in 36 North himself, Mr Levy said: *'Well, that is a matter which I am sure he cleared politically.'*; Mr Levy did not consider the point himself [T/8/127.25].
- 10.56 When asked what arrangements were in place to ensure that there could be no conflict of interests for Hassans' partners who were in Government at the time of investing in 36 North, Mr Levy said that there was no protocol at Hassans to deal with that situation. He assumed *'they would themselves seek whatever consents they needed'* from the appropriate authority, whom Mr Levy believed to be the Chief Secretary [T/16/212.12].
- 10.57 It was put to Mr Levy that one of the reasons he had been chosen to advise upon the setting up of 36 North was that he could use his very close personal and professional connection with Mr Picardo to facilitate the transfer – the 'migration' – of the contract from Bland to 36 North. He replied: *'In this case somebody else had more access than I had, clearly'*, subsequently clarifying that he was referring to Mr Gaggero [T/8/128.8]. I took this to be an illuminating aside of the way that he thought that this deal has been done, as if he ruefully reflected that it seemed to him that Mr Gaggero had more influence with the

Chief Minister than he had, because Mr Gaggero had kept the contract whereas Mr Levy and Hassans/36 North had not been successful in having it transferred. The same point was reflected by Mr Picardo accepting, in answer to a question by Mr Sareen (on behalf of the Former Operation Delhi Defendants), that in 2018 Mr Gaggero had more access to him than Mr Levy did [T/17/76.16].

- 10.58 Mr Levy said that many people in Gibraltar had Mr Picardo's WhatsApp number and rang him for different things. He stated that Chief Ministers in Gibraltar were often approached by ordinary people and dealt with them frequently [T/16/128.17].
- 10.59 When asked whether he ever considered if he was receiving information from the Chief Minister which ordinary people would not receive, Mr Levy said he had enough experience to know where the red lines were, which he said were *'to be careful not to ask for any information which is not publicly available'* [T/16/129.6].
- 10.60 So, Mr Levy's attitude was that it was up to Mr Picardo himself to decide whether it was proper for him to act, or to continue to act. It was not for him (Mr Levy) to do so. Everyone who spoke to Mr Picardo took the same view: the red lines were for him to draw and for him to keep. This approach, I observe, casts a particular burden and responsibility on the Chief Minister.

MY COMMENTS ON THE BACKGROUND

- 10.61 My Terms of Reference are to inquire into the reasons and circumstances of Mr McGrail's retirement. The progress of the investigation of Operation Delhi, the allegations of *'sabotage'* of NSCIS and particularly the matters considered by the RGP when deciding to treat Mr Levy as a suspect and to apply for the search warrant at Hassans are plainly relevant to the Inquiry, as will become clear.
- 10.62 I have outlined the background of the setting up of 36 North and the attempts

to obtain the transfer of the NSCIS contract to them only because I do not think that what followed can be understood without it. But, as I explained above, I do not think that it is relevant to the reasons or circumstances of Mr McGrail's retirement for me to pass judgment upon whether Mr Picardo was in breach of the Ministerial Codes or the Nolan Principles, or whether his conduct was improper or inappropriate *at that time*. I have set out the facts in so far as I find them to be, and in so far as they are relevant to the Inquiry. I have set out the rival arguments. I am unwilling to go further.

FOUR PRELIMINARY MATTERS

THE RELATIONSHIP BETWEEN MR PICARDO AND MR LEVY

- 10.63 I cannot properly describe the course of the police investigation known as Operation Delhi without first explaining the close business and personal relationship between Mr Picardo and Mr Levy. Mr Picardo sets this out in his witness statement (Picardo 1 para 38 [A190]). I will summarise the position. He has known Mr Levy most of his life. Their families have a long association. Mr Levy was the senior partner at Hassans when Mr Picardo joined the firm immediately after qualifying. They have often worked together. But they are more than just professional colleagues – Mr Picardo regards him as his ‘mentor’, a political supporter and a close personal friend. Mr Gibbs KC, on behalf of Mr Richardson, said that Mr Picardo was Mr Levy's protégé [T/2/50.20]. I think that description is entirely appropriate.
- 10.64 Mr Picardo holds Mr Levy in the highest regard as a lawyer, one of Gibraltar's leading lawyers in the field of financial services: Gibraltar's ‘Rainmaker’, as he called him in the course of his evidence [T/16/300.25]. He respects him as a leader of the Jewish community and as one of Gibraltar's leading citizens (Picardo 1 para 38 [A190]). Being close friends, and professional colleagues, Mr Picardo says that he frequently met Mr Levy at official, professional and social gatherings and they often spoke together; he has always made clear that they continued to do so throughout the police investigation (Picardo 3

paras 5-8 [A233]).

- 10.65 It is argued by Mr Wagner on Mr McGrail's behalf that this personal relationship coloured Mr Picardo's approach to the whole of the police investigation into Mr Levy's business dealings. It is argued that Mr Picardo was determined to do what he could to protect his mentor, friend and colleague, and that this explains what they describe as his hostility to the application for the search warrant against Mr Levy, and to the visit to Hassans to execute it. Mr Wagner argues it explains why Mr Picardo wanted Mr McGrail's dismissal and, it is argued, it led eventually to the discontinuance of the prosecution against the Former Operation Delhi Defendants (McGrail Closing para 14).
- 10.66 I will have this relationship very much in mind as I consider in detail the sequence of events leading to Mr McGrail's retirement.

MR MCGRAIL'S RECORD WITH THE RGP

- 10.67 There is another aspect of the general background which I need to record.
- 10.68 Mr McGrail served in the RGP for 35 years. The closing submissions on his behalf claim – quite rightly – that he had '*a distinguished and decorated career, unblemished by any disciplinary or other sanctions against him*' (closing submissions, para 9). I accept that he was popular with colleagues and had good working relationships with the leading members of the Gibraltar community, including Mr Llamas, Mr Rocca, Mr Pyle, Mr Gonçalves and Dr Britto (both Chairs of the GPA) and – at least before 12 May 2020 – Mr Picardo. They have spoken of his high levels of integrity and ethics (McGrail Closing para 10). Mr Ullger, now Commissioner of Police, described him as being very professional and hard working [T/13/18.12]. As is argued on his behalf, this is important background to balance against the criticisms made of him.
- 10.69 In coming to the conclusion that I set out in the last paragraph, I make clear that I have not overlooked a criticism made of Mr McGrail many years ago, which was drawn to my attention by Mr Morello. It is now so long ago that it

would be inappropriate to give it currency by repeating it and I decline to do so. The matter to which he referred is completely outweighed by the character evidence in his favour and I attach no weight to it at all.

THE RELATIONSHIP BETWEEN MR MCGRAIL AND MR ULLGER

10.70 One other matter to which I should refer is the extent of the close personal friendship between Mr McGrail and Mr Ullger. Although it was always clear to me that Mr McGrail and Mr Ullger were at one time very good friends, even ‘*best friends*’, as Mr Ullger put it [T/13/79.12], the recent disclosures by the RGP show that they expressed this in emphatic terms in messages between them. No one criticises the fact of this relationship. When considering the exchanges between them, to which I will from time to time refer, I will therefore bear in mind that they were more than professional colleagues, but I do not consider that this relationship has any particular significance in the sequence of events leading to Mr McGrail’s retirement.

10.71 The Former Operation Delhi Defendants have observed in their submissions for the Reconvened Hearing that the investigation into the retention and destruction of evidence by Mr McGrail was ‘*carried on under the ultimate authority of Mr Ullger*’ (para 28). I have borne this in mind, but I do not consider that his personal friendship with Mr McGrail adversely affected, influenced or coloured the investigation. (I deal with this topic in the Annex, in the section on disclosure by the RGP.)

DISCLOSURE ISSUES RELATING TO MR MCGRAIL AND THE RGP

10.72 During the Main Inquiry Hearing, various issues were raised about the extent of the disclosure made by the RGP, by Mr McGrail and by other senior, and former senior RGP officers. For example, the Government Parties and the Former Operation Delhi Defendants noted the RGP’s failure to locate Mr McGrail’s day books, desktop or laptop (the latter of which was found after the Main Inquiry Hearing). At the time, however, the question of missing messages between Mr McGrail and other RGP officers, and between various RGP

officers, was not canvassed in any detail. It was only after the Main Inquiry Hearing, in September 2024, that the RGP disclosed its first batch of WhatsApp messages.

- 10.73 In these circumstances, in November, the Government Parties made an application to reconvene the Inquiry by way of an oral hearing. They submitted that there had been ‘failures’ by the RGP to disclose relevant material (including WhatsApp messages between several of the senior RGP officers) at the proper time and not until after the deadline for written closing submissions, and a failure to disclose other messages at all. They also alleged a similar ‘failure’ by Mr McGrail to disclose any WhatsApp messages with RGP officers. They contended that this deprived them of the opportunity to question Mr McGrail, and maybe others, upon the material disclosed and upon the alleged failures to disclose other material. They even alleged that these alleged ‘failures’ might impact upon Mr McGrail’s credibility.
- 10.74 In their opening submissions for the Reconvened Hearing (para 8), the Government Parties allege, in stark terms, that, *‘on its own case (which it offers as an explanation and justification for non-disclosure), [the RGP] and all its most senior officers have succeeded in deleting or losing access to all WhatsApps between themselves in respect of relevant periods on all RGP mobile devices.’* They point out that by the end of the oral hearings in May 2024, although Mr Richardson had made some disclosures from his personal device no other serving or retired officer of the RGP had disclosed any WhatsApp messages. That was even though it was now clear that many relevant messages still existed and were accessible. Furthermore, again as the Government Parties point out, Mr McGrail had not (and still has not) disclosed any WhatsApp messages with RGP officers at all.
- 10.75 They contrasted these failures with the trenchant and sustained attacks made on behalf of Mr McGrail upon Mr Picardo and Mr Levy for their alleged failures to disclose the WhatsApp messages passing between them, which – they

suggested – showed Mr McGrail to be applying ‘*double standards*’. However, both the RGP and Mr McGrail maintained that they had given comprehensive disclosure, and had assisted the Inquiry comprehensively and proactively throughout.

- 10.76 It was to allow these points to be developed that I ruled that the Inquiry should be reconvened.⁶ (I will deal later with the alleged failures of disclosure by Mr Picardo and Mr Levy.) Having heard further evidence on the issue of the alleged late disclosure by the RGP and their deletions of other messages, and having heard submissions upon them, I am now in a position to set out my findings. However, I think that it would be better not to interrupt the narrative by doing so here; I deal with them in the extensive Annex 1 appended to the end of the Report.

THE START OF THE CRIMINAL INVESTIGATION

THE COMPLAINT AND THE FIRST STEPS IN THE INVESTIGATION

- 10.77 Mr McGrail’s day books as Commissioner of Police include notes of two meetings he had with Mr Gaggero on 27 September and 22 October 2018 to discuss the situation between Bland and 36 North [C7034, C7036]. By letter dated 18 December 2018, Mr Gaggero provided further information, which Mr McGrail regarded as a formal written complaint of those matters [B5190]. Mr Gaggero alleged that there had been hacking or ‘sabotage’ of NSCIS by Mr Cornelio (he believed with Mr Perez’s knowledge). He alleged that this was committed with the intent of causing serious failings to the system, with resulting damage to the security of Gibraltar. He said that they hoped thereby to demonstrate that Bland were not able properly or efficiently to manage the system, thereby making it more likely that the Government would transfer the

⁶ <https://coircomp.gi/wp-content/uploads/2025/02/2025-02-10-Ruling-on-application-to-reconvene.pdf>

system to their company 36 North, who they claimed would be able to deliver a more efficient system, more cheaply.

- 10.78 Mr Gaggero's complaint prompted Mr McGrail to initiate a criminal investigation, which was allocated the name 'Operation Delhi'. Mr McGrail's evidence was that the investigation was commenced on the back of the second meeting, where Mr Gaggero asserted that he had uncovered potential criminality [T/6/126.1]. Mr McGrail's note of that second meeting in his day book – a scanned copy of only three pages of which has been traced – records Mr Gaggero stating that PriceWaterhouseCoopers, cyber experts engaged by Bland, had discovered '*serious hacking of the NSCIS platform using Tommy Cornelio's credentials*' [C7036]. He appointed Supt Paul Richardson, the Divisional Head of Crime, to be the Senior Investigating Officer (the 'SIO').
- 10.79 After 36 years of loyal service to the RGP, Mr Richardson is now retired. So that he could properly deal with the facts of this important, complex and high-profile investigation, and to deal with the many questions put to him by the Inquiry, the RGP allowed him to access the files of the operation which he directed for so long. From the material he consulted he has provided two substantive witness statements running to 22 pages, dealing with the detail of the investigation and questions put to him by the Inquiry.
- 10.80 Mr Richardson kept a record of his dealings with the Investigation in his 'Delhi day book' [C1645]. Most, but not all, of the entries were entirely contemporaneous, as he explained [T/4/9.5]. I am not going to go through every entry that he made, nor am I going to detail every meeting that he had; I will focus only on such events as seem to me to have a direct bearing on the sequence of events that led to Mr McGrail's retirement.
- 10.81 When necessary, Mr Richardson refreshed his memory from contemporaneous records, and most particularly, from his Delhi day book. He was able to give reasons for all the operational decisions that he made, whilst readily making sensible concessions, when he could see in the light of

experience that things could have been done differently. He has answered every question put to him both by the Inquiry team in preparation and by the advocates at the hearing. He gave carefully considered answers. He was, as it seems to me, a most impressive witness and a highly competent officer. I am grateful to him for the trouble that he has taken to assist the Inquiry. I make no criticism of him.

- 10.82 The day-to-day conduct of the investigation was managed by the Officer in Charge; since May 2019, this role was undertaken by Supt Wyan. He gave frequent, often daily, operational reports to Mr Richardson, who provided strategic direction to the investigation.
- 10.83 Supt Wyan was another very careful witness and a highly competent officer. He kept brief notes of the meetings which he attended, but they were not in any sense minutes of the meetings. He was assisted by DC (later DS) Paul Clarke, who worked more or less full time on Operation Delhi, and also gave evidence to the Inquiry in three witness statements and oral testimony.
- 10.84 There is some debate – even dispute – as to the part that Mr McGrail played in the investigation of Operation Delhi. His evidence was that he was ‘*simply not involved*’ in the day-to-day investigation [T/6/150.14]. He said that he had only a general overview. He did not have what he called a ‘*hands on*’ role in this investigation [T/8/15.25]. He trusted Mr Richardson to take operational decisions [T/8/23.2]. He pointed out – correctly, I observe – that he did not draft the critical documents setting out the allegations against Mr Levy, being the NDM Assessment, the Charging Report, the plan for action against Mr Levy, or the application for the warrants. Further, he did not attend either of the critical meetings with Mr Rocca [T/8/23.4].
- 10.85 Mr Richardson had an office just along the corridor from Mr McGrail; Mr Richardson said that they frequently spoke about the general progress of the investigation but because these reports were informal and because no formal advice was given or policy decisions were taken, they were not recorded. Nor

in my view did they need to be. After the arrests of the four suspects in May 2019, Operation Delhi was discussed at weekly meetings of the Senior Management Team (Richardson 2 para 13 [A1286]). He said that Mr McGrail had only had an indirect oversight of the investigation; he did not play an active or direct part in the investigation other than in the calls with Mr Gaggero at the very beginning [T/4/7.6].

10.86 Supt Wyan said that, so far as he knew, Mr McGrail was not involved in any decision-making in the investigation [T/5/115.3].

10.87 However, the Former Operation Delhi Defendants argue the Mr McGrail was involved in operational decisions. They refer, for instance, to a meeting with Mr Gaggero on 8 January 2019 [C1659], to various short exchanges with Mr Richardson following the arrest of the Former Operation Delhi Defendants (who sent him a summary of the relevant text messages passing between Mr Sanchez and Mr Cornelio), to a conversation with Mr Rocca on 27 January 2020 [B749], to a letter to the Financial Secretary on 8 April 2020 [B5050], and to a conference call with Mr Gaggero on 7 May 2020 [C1789]. I do not think these were examples of his general and frequent involvement in the investigation. I think they were but isolated instances of his overall interest and supervision of the investigation, as I think will become clear as I examine the narrative of events.

10.88 I will seek to identify Mr McGrail's involvement in the investigation as I detail its course, but on the evidence which I have heard, I am satisfied that he was in no sense driving the investigation.

THE NARRATIVE CONTINUED

THE ARREST OF THE FORMER OPERATION DELHI DEFENDANTS

10.89 On 10 May 2019, the police executed search warrants at the registered offices of 36 North and at the home addresses of Thomas Cornelio, John Perez and Eddie Asquez, each of whom was arrested, and their electronic devices were

seized for examination (Perez 1 para 44 [A1239]).

THE ROLE OF MR GAGGERO

- 10.90 On 10 May 2019 [C7003], Mr Richardson exchanged WhatsApp messages with Mr McGrail, informing him that Mr Perez, Mr Cornelio and Mr Asquez were all under arrest. Mr McGrail stated that the forensics on the devices had to be very thorough, and then asked how the interviews were going. When informed who was acting for the suspects, he expressed surprise that Hassans were not representing all three of them. He then asked whether Mr Gaggero had been informed and what his reaction had been, to which Mr Richardson responded saying that he thought that Mr Gaggero should be kept at ‘*arm’s length*’. Mr McGrail replied proposing that Mr Gaggero be given a ‘*courtesy call*’ to inform him of the arrests. I consider that this was a perfectly proper step to take: the police have a duty to keep complainants, such as Mr Gaggero, informed of the progress of the investigation. Nevertheless, Mr Richardson said that he was unable to do so as he was tied up monitoring a ‘*dynamic situation*’, and recommended informing Mr Gaggero once the individuals had been bailed, which Mr McGrail accepted.
- 10.91 It has been alleged by the Former Operation Delhi Defendants, and indeed by Mr Picardo and Mr Levy, that the investigation was driven, or even effectively directed, by Mr Gaggero, the Chair of Bland (Perez 1 para 5 [A1233]; Cornelio 1 para 5 [A1261]; Sanchez 1 para 5 [1272]; Hassans submissions para 27, [T/16/189.10]). Mr Richardson gave clear evidence that it was not [T/4/185.16]. I will come in due course to the visit by the RGP to Hassans offices on 12 May with the search warrant, but, during the course of that visit, Mr Richardson told Mr Levy: ‘*I can assure you, with my hand on my heart, that nobody has interfered at all, with ... my conduct in this investigation*’ [B3475]. I think that he was alluding to this suggestion that Mr Gaggero had done just that. I am sure that Mr Richardson was telling the truth when he said that he had not. Mr Levy’s response at the time was: ‘*I accept your ... words. The*

question is whether there were other interferences. Not with you.'

- 10.92 Inquiring further into this allegation seems to me to be way outside my Terms of Reference, and I did not allow this topic to be explored further. I therefore deliberately avoid making any findings on this point.

11 MAY 2019, MR MCGRAIL EMAILED MR PICARDO (AND OTHERS)

- 10.93 The day after the arrests (11 May 2019) Mr McGrail emailed Mr Picardo, Mr Llamas, Mr Rocca, the Minister of Justice (Mr Neil Costa), the Chief Secretary (Mr Darren Grech) and the Financial Secretary (Mr Albert Mena). He informed them, in very general terms, that following a complaint by Mr Gaggero, and the arrest of the three ex-Bland Group employees the day before, the police investigation had '*revealed issues of serious concern*', on which he needed to brief them, '*the sooner the better*'; he gave no further details in the email [C2221]. He was particularly concerned that there was no leak to alert Caine Sanchez, who was abroad and had not yet been arrested [T/8/34.1]. Later that day, he separately sent a WhatsApp message to Mr Picardo asking to brief him '*on a case*', which he described as '*important and sensitive*'; he then gave no further details to him either [B649]. He asked that the recipients did not share this information with others.

THE KNOWLEDGE OF MR GAGGERO FOLLOWING THE EARLIER ARREST

- 10.94 Mr Gaggero gave evidence that on 10 May, the day of the arrests of Mr Cornelio and Mr Perez, he met Mr Picardo by chance in the street and told him '*that there was progress in the investigation and that actions had been taken that day*' (Gaggero 1 para 79 [A1375]). Mr Picardo's evidence was that Mr Gaggero had said to him '*Today's the day. They're going to be arrested*' [T/16/189.10]. The question then arises how Mr Gaggero knew this. Mr Gaggero's evidence was that Mr Richardson informed Mr Gaggero of the arrests of Mr Perez and Mr Cornelio on 10 May. Mr Gaggero further says that Mr Richardson expressed his upset to Mr Gaggero that he passed this confidential information to Mr Picardo (Gaggero 1 paras 78-80 [A1374-5]). The Former Operation Delhi

Defendants argue that if the RGP had told Mr Gaggero of the arrests in advance, it supports their contention that Mr Gaggero was hand in glove with the RGP (Former Operation Delhi Defendants closing para 64).

10.95 Mr Richardson's recollection is different. He did not deny that he did speak to Mr Gaggero from time to time; for example, he gave him various updates about the interviews and bail. His day book also contains a record of a phone call that took place on 11 May 2019, in which Mr Gaggero informed Mr Richardson that he had '*heard of arrests from employee*' [C1733]. He also said that he was in contact with Mr Gaggero at the time of the arrests because Mr Gaggero intended to commence civil proceedings, but Mr Richardson had asked him to delay this until after the suspects had been arrested, interviewed and bailed (Richardson 2 para 18(g), [A1291]; Richardson 3 para 51 [A1433]). Mr McGrail had asked Mr Richardson to tell Mr Gaggero of the arrests, but he wanted to speak to Mr Gaggero only after the suspects had been bailed [T/4/16.7]. He noted that according to his day book, he did not speak to Mr Gaggero until 11 May 2019, the day after the arrests, and that if Mr Gaggero had heard of arrests, he had not heard from him but from an employee at Bland. So, he thought that Mr Gaggero was confused about the source of his information [T/4/15.22].

10.96 I accept Mr Richardson's account. I do not think that this episode provides any evidence to suggest that Mr Gaggero was driving, still less directing, the investigation.

13 MAY 2019: MEETING BETWEEN MR MCGRAIL AND MR PICARDO AND OTHERS

10.97 The meeting requested by Mr McGrail (in his email of 11 May) took place two days later, on 13 May 2019. Mr McGrail was accompanied by Mr Richardson; Mr Picardo was accompanied by Mr Rocca, Mr Costa (the then Minister of Justice), Mr Mena and Mr Grech. There was some conflict of evidence as to whether Mr Llamas was at this meeting or not, but I am satisfied that he was

in London and did not attend. As was common at such meetings, there were no formal minutes, but Mr Richardson took brief notes in his Delhi day book [C1735]; these notes were for his own personal use, they were not circulated afterwards for approval (the same applies to every reference which I later make to his Delhi day book).

- 10.98 At this meeting, Mr McGrail gave details of the criminal investigation into suspected sabotage/hacking of the NSCIS platform (McGrail 1 paras 8-10 [A3-4], Llamas 1 para 17 [A274]). He outlined the evidence against Caine Sanchez, a senior civil servant, whom they decided to recall from the UK, where he was on business (Sanchez 1 para 56 [A1281-2]). There is a conflict of evidence about what Mr McGrail said about Mr Levy. Mr McGrail stated that he told the meeting that Mr Levy was a '*person of interest*' [T/8/45.1]. He said that he was, at that time, not aware that '*the Chief Minister had involvement in the setting up of 36 North*' [T/8/35.3]. He said that if he had known all of these facts, it would have made him '*rethink*' what information – if any – that he gave to Mr Picardo [T/8/38.9].
- 10.99 Mr Picardo did not give a detailed account of the meeting, but he said that if there was evidence of corruption in respect of a Government officer or office, the Government would be a complainant (Picardo 1 para 32 [A188]), which Mr McGrail confirmed (McGrail 1 para 10 [A3-4]). Although there was no discussion at that meeting of any action then proposed against Mr Levy, Mr Picardo said that he thought that the RGP needed to talk to Mr Levy about NSCIS and its transfer from Bland to 36 North. He realised therefore that the police would need to speak to the senior partner at Hassans (who was Mr Levy) [T/16/159.9]. Mr Richardson also recalled Mr Picardo saying this (Richardson 1 para 60 [A1435]). When the Inquiry asked Mr Picardo about that comment, he stated that he believed he was suggesting that the RGP should establish contact with Mr Levy to '*ensure that they were engaging on the issues that were relevant to Hassans and which they were raising at that meeting*' (Picardo 3 para 3 [A232]).

10.100 By contrast, Mr Rocca says he could not recall Mr Picardo saying the RGP should speak to Hassans, or any link of Hassans being mentioned in that meeting [T/10/14.21; 15.16].

10.101 Mr Llamas gave evidence about this meeting, mistakenly believing that he had been there. He said that Mr McGrail referred to Hassans' shares in 36 North and that Mr Levy was mentioned in communications with the three suspects and was potentially '*a person of interest*' to the investigation (Llamas 1 para 18 [A18]). Incidentally, Mr McGrail himself agreed with this account [T/8/42.9]. But Mr Llamas's memory about the meeting must be wrong, because he was not there. When this was put to him, he said that Mr Rocca must have told him what had passed at the meeting, and he must have remembered the briefing which Mr Rocca had given him [T/12/64.12]. I accept this explanation.

14 MAY 2019: ARREST OF CAINE SANCHEZ

10.102 Following the meeting of 13 May 2019, Caine Sanchez was recalled from London. The next day (14 May) he was arrested on his return to Gibraltar. The police then executed a search warrant at his home and seized his electronic devices, only to find that he had deleted – or '*wiped*' – the exchanges which he had with the other Former Operation Delhi Defendants and with Mr Levy [T/4/109.9]. However, the RGP managed to recover some of those emails, and Mr Richardson believed that one of those recovered emails was the email which had indicated Mr Levy's involvement with the Former Operation Delhi Defendants [T/4/212.18]. It is also evident from the Information laid before the Magistrate in the applications for the search warrants (paras 45, 46, 57 [[B3213]] and the interview plan prepared by Mr Wyan on 17 May 2020 (paras 3, 5, 6, 18, 19, 41 [B3336, 3338, 3341]) that the RGP obtained an email and text messages between Mr Sanchez and Mr Levy. This has a relevance to the application for the search warrant later granted against Mr Levy, to which I will return.

THE EXCHANGES BETWEEN THE FORMER OPERATION DELHI
DEFENDANTS, MR LEVY AND MR PICARDO

- 10.103 Following the arrest of Thomas Cornelio, John Perez, Eddie Asquez and Caine Sanchez, the RGP conducted a forensic examination of their electronic devices, which they had seized from them. Those examinations revealed at least some of the communications between them and Mr Levy, which eventually led Mr Richardson to suspect Mr Levy to be guilty of a conspiracy to defraud.
- 10.104 These exchanges were considered by Supt Wyan when preparing the NDM Assessment on 25 February 2020 [B3452]. They were considered again by Mr Richardson when preparing the Charging Report on 18 March 2020 [B3614]. They were finally considered by DS Clarke when he prepared the Information in early May 2020 (the '**Information**' is the term given to the application for the search warrant) [B3773]. I will examine the conclusions to which the police came on each occasion when they considered these exchanges.
- 10.105 I need now to set out the exchanges on which the police relied. However, in doing so, I am alert to the danger of taking any one exchange out of context. In the schedule attached to the NDM Assessment, dated 25 February 2020 (to which I will shortly turn), the police set out the text of 31 such messages, but there were many more; they critically rely on four such messages, which I now set out.
- 10.106 On the 19 October 2018, Mr Cornelio wrote to Mr Levy saying, *'Morning James. Very confidential. Note Gaggero has brought in a forensic team of six to look at anything John and I may have done to tamper with the system etc. Gaggero is going all out it seems'* [B3461].
- 10.107 On the same day (19 October 2018), Mr Cornelio wrote to Mr Perez saying, *'Spoke to James [i.e. Mr Levy] ref forensic team confidentially. Spoke to him on the telephone. Call me and I can discuss. He says not to worry. I am very concerned they will try an prove i (sic.) have acted to sabotage the system in*

any way etc.’ [B3461].

10.108 On 3 May 2019, Mr Cornelio wrote a text to Mr Levy to the effect that there were serious failures in NSCIS. *‘Dear James, the national security system [redacted]. Can I email the CM once again to meet me? He cannot allow this to continue’ [B3462].*

10.109 On 11 April 2019, Mr Cornelio sent another text to Mr Levy which reads as follows: *‘I am preparing a report for Caine/Albert Mena with regards to the failures of the National Security platform [redacted]. Lesley is preparing a legal letter for your review in an attempt to speed up the process. This is ok?’.*

10.110 He went on to say: *‘We are going to have a field day on the national security report..just wait until you see it. For now I am reviewing every single module 1 by 1. [redacted].’ [B3461]*

10.111 The relevance of these exchanges to the police investigation is that Mr Cornelio, Mr Perez and Mr Sanchez could point to alleged serious damage resulting to NSCIS while it was being managed by Bland as a reason to argue for the transfer the management of the system from Bland to 36 North. Indeed, the more serious the damage perceived by the decision-makers in Government, the greater the leverage.

10.112 There were also messages passing between Mr Cornelio and Mr Levy, which the investigating officers alleged amounted to encouraging him to use his influence with Mr Picardo to make proposals for the migration of the contract from Bland to 36 North.

10.113 They are set out at paras 74 – 83 of the application for the search warrant (at [B3740]) as follows (although the final message is from Mr Perez to Mr Levy):

‘74. On the 21st August [2018], whilst still in the consultancy period, Cornelio wrote, “Dear James, would it be possible to sit down with you or the CM to try and move forward with out

(sic) projects? I currently have a lot of work on hold pending this decision.”

75. On the 29th August 2018 he similarly wrote, “Dear James, please try and get me a 10 min slot for me to meet the CM. I believe I am best placed to explain the entire situation and advise the best technical solution possible.”

76. On the 12th September 2018 Cornelio wrote to Levy and attached a letter to be used by the Chief Minister to terminate the Bland contracts. This letter was addressed to James Gaggero of Bland and was titled “Termination of NSCIS, DSS, BCA, ETB and Education contracts (“the contracts”).” It explained, “Bland Limited has failed to perform its obligations under the Contracts and is therefore in repudiatory breach... In the circumstances, please accept this letter as HMGOG’s termination of the Contracts with immediate effect.”

77. On the 23rd September 2018 Cornelio wrote, “Attached is a letter which may be of use to the GoG in order to proceed with the new platform we have offered them.”

78. By the 27th December 2018 Cornelio was concerned that the Chief Minister would not be transferring the contract to 36 North. In response Levy wrote, “I don’t think he will transfer the contracts back to 36 North. We have to work on alternatives. I am happy to help ...”

79. On the 18th February 2019 he wrote to Levy saying, “Any merit in me writing to the CM directly to request he meet with me. I miss my contracts.”

80. On the 26th March 2019 he wrote, “Perhaps CM would be willing to put the National Security system out for tender next month.”

81. On the 27th March 2019 Cornelio again asked, “Do you think there is any chance of getting national security contract back at some point?” Despite his answer on the 27th December 2018. Levy responded, “Yes.”

82. On the 3rd May 2018 Cornelio wrote again saying, “Dear James, [redacted text]. Can I email the CM once again to meet me? He cannot allow this to continue.”

83. On the 9th October 2018 Perez wrote to Levy stating, “James thank you so much for this morning. I am sure our sessions will become more enjoyable as we set [off] in our journey. With regards to dropping Fabian a note, let’s give him a bit more time. As the pressure will naturally surface through his law enforcement heads.”

MR LEVY’S DEFENCE

10.114 Having set out the case as presented by the RGP that there were reasonable grounds to suspect Mr Levy, I think it only fair to him to point out that much later, after the police had obtained a search warrant against him, Mr Levy gave a statement to the police in which he forcefully denied having any knowledge of the damage allegedly caused to NSCIS by sabotage.

10.115 Under the heading, ‘Any knowledge that he may have with regard to the tampering with and/or sabotage of the NSCIS platform’, Mr Levy wrote [B5238]:

‘39. I had no knowledge of, or reason to suspect, any tampering with and/ or sabotage of the NSCIS system as alleged. The first time I recall becoming aware of the alleged

tampering/ sabotage was after [Mr Perez] and [Mr Cornelio] were arrested when I was informed by them of what was being alleged and they strongly denied that any tampering or sabotage had taken place.

40. I note from paragraph 12 of the Pre-Interview Disclosure document that it is alleged that I became aware that Digital Forensic experts were conducting an investigation. As far as I recall, I only became aware that Digital Forensic experts were conducting an investigation when [Mr Perez] and [Mr Cornelio] told me after they were arrested and released on police bail. I was never aware of any alleged plan to sabotage the NSCIS platform or any computer misuse offences, nor would I countenance such behaviour.'

10.116 He amplified this in the course of his evidence to the Inquiry when he said that he 'certainly' did not believe that Mr Cornelio's conduct was to sabotage rather than to maintain the NSCIS [T/8/127.4].

10.117 He said that he thought that the problems that Bland were experiencing in providing the service was bad for Gibraltar, and that he thought it could provide a possibility for 36 North, but it did not exercise his mind hugely. He was not indifferent to whether they got the contract, but '*when I saw the friction I felt it was best to step aside and let the two parties work together*' [T/8/219.17].

THE POSITION OF THE FORMER OPERATION DELHI DEFENDANTS

10.118 It is also important to make clear that the Former Operation Delhi Defendants have always denied that they tampered with or sabotaged the NSCIS platform. They have always protested their innocence. Their case is that they regret that the criminal proceedings against them were discontinued, as they were looking forward to the opportunity to vindicate and exonerate themselves.

Indeed, they assert that there is no evidence that there was any ‘*tampering*’ with the system at all, let alone sabotage. They rely on the fact that the expert witness instructed by the prosecution was not able to confirm that any such sabotage had taken place [A1244, 1248, 1250]. They have commenced proceedings under section 589(2) of the Criminal Procedure and Evidence Act 2011 to recover the costs they incurred in defending themselves against charges which they claim were not made in good faith.

10.119 I have taken the view that the strength of the case against them – or the weakness, as they contend it to be – is not relevant to the Terms of Reference as it does not bear directly upon the circumstances of Mr McGrail’s retirement and, therefore, I have not permitted them to develop these arguments in the Inquiry. Quite understandably, this is a decision which they regret but which counsel on their behalf has respected, whilst making helpful suggestions to the Inquiry Team during the hearings.

THE PROGRESS OF THE INVESTIGATION

A CHANGE OF FOCUS BY THE RGP TO THE MAINTENANCE CONTRACT

10.120 Supt Wyan, who is incidentally a qualified lawyer, realised the problems which were caused by the unresolved dispute between the Government and Bland over the ownership of the intellectual property rights of the NSCIS platform. There was no written record of the contract by which the platform was created and maintained by Bland, nor of its terms, so it was, and remains, uncertain whether the intellectual property rights in NSCIS were owned by the Government or by Bland. In a criminal trial, therefore, even if the other elements of the alleged conspiracy to defraud could be proved, he foresaw problems in proving that the Former Operation Delhi Defendants planned to deprive Bland of a proprietary right in the platform, which was required for a conspiracy to defraud. Accordingly, he ingeniously suggested that a ‘*fallback position*’, which might pose ‘*less of an issue*’, would be to allege a conspiracy to deprive Bland not of the benefit of the NSCIS platform itself, but of the

maintenance contract for the NSCIS platform. On 15 November 2019, at a meeting with Mr Richardson and DS Clarke (logged at [B3100]), he proposed this as a way forward. His proposal was accepted, and later approved by Mr Rocca.

- 10.121 The Former Operation Delhi Defendants submit that this fallback position is also deeply flawed, since there was no written contract for the maintenance of the system. They contend that it is questionable whether Bland had any proprietary right in a series of alleged periodic maintenance contracts which they claimed the Government would be entitled to either terminate or award to a different party [T/20/172.5]. This difficult and complex legal point does not bear upon the circumstances of Mr McGrail's retirement; therefore, it is not relevant for the purposes of the Inquiry and it is not necessary for me to determine it.

4 SEPTEMBER 2019: MEETING BETWEEN POLICE AND DPP FOR LEGAL ADVICE

- 10.122 I need not detail the progress of the investigation over the next few months, but on 4 September 2019, DCI Brian Finlayson (accompanied by Supt Wyan and DS Paul Clarke) met Mr Rocca for legal advice in relation to Operation Delhi (Mr Richardson was not there). Supt Wyan took notes of this meeting [B3087; B3195; B3870]. They discussed whether the investigation revealed evidence of a conspiracy to defraud and debated whether '*to take the NSCIS contract from Bland amounted to a conspiracy to defraud...*', or whether it was '*simply a commercial dispute and a civil action [was] appropriate*' [B3087]. They did not then determine the answer to that critical question. There was no reference, at that meeting, of Mr Levy coming under suspicion.

DISCIPLINARY PROCEEDINGS AGAINST CAINE SANCHEZ

- 10.123 I need to digress briefly to consider the position of Caine Sanchez. I have already explained that he had been arrested and released on bail. He was later charged. In the middle of October 2019, Mr Grech sought the advice of Mr

DeVincenzi, then a Senior Advisory Counsel within the Government Legal Service, as to the appropriate disciplinary proceedings to be taken against him. Mr DeVincenzi told the Inquiry that he did not know a great deal about the criminal case against Mr Sanchez, but was supportive of the view that some disciplinary action should be taken, and did not have a strong view as to whether the disciplinary proceedings contemplated were to be concurrent with the prosecution or replace it [T/11/6.12].

- 10.124 This has a relevance to a later exchange between the RGP and Mr Llamas about these disciplinary proceedings, to which I will come in due course.

JANUARY - FEBRUARY 2020: FURTHER CONSIDERATION OF THE CASE

- 10.125 Having reviewed the evidence, on 13 January 2020, Supt Wyan identified 51 possible offences against the Former Operation Delhi Defendants, which were *‘to be selected based upon the advice of DPP’* (log at [B3716]).
- 10.126 On 17 January 2020, Supt Wyan and DS Clarke met Mr Rocca to discuss the *‘formulation of charges’* [B3106]. Although, by this date, the police regarded Mr Levy as a potential suspect, there was no discussion at this meeting of the evidence which was alleged to bear against him. The DPP advised that the RGP obtain expert evidence on the allegation of *‘hacking’* into the NSCIS computer. This, I comment, was good advice: the fact of hacking, or sabotage, could be proved by, or inferred from, other evidence. However, expert evidence could have helped to tend to prove, or to disprove, that it had taken place.
- 10.127 On 21 January 2020, Mr Richardson, Mr Field, Supt Wyan and DS Clarke met to discuss Operation Delhi. Supt Wyan’s note records: *‘Charges – over 50 possible charges identified (predominantly computer misuse). To be refined down’* [B3717]. Supt Wyan took the view that he should identify any and all possible charges, and others should select which should be pursued [T/5/132.19, B3716]. I consider this to be a sensible approach, for which he

should not be criticised.

CONSIDERATION OF THE ROLE OF MR LEVY

- 10.128 On 12 February 2020, Supt Wyan sent a list of the questions to Mr Richardson which he suggested should be put to Mr Levy when he was interviewed under caution and asked him for a discussion on how he wished to proceed [B3262].
- 10.129 On 18 February, Mr Richardson discussed the case against Mr Levy with Supt Wyan. They concluded that they had *'reasonable grounds to suspect that James Levy, Thomas Cornelio, John Perez, and Caine Sanchez conspired to defraud Bland of the NSCIS maintenance contract.'* He added that *'There is a fine line between sharp business practice and unethical/criminal conduct. It is necessary to put questions to [Mr Levy] formally in interview to determine where this conduct lies'* [A1427]. I observe that he was contemplating putting questions to Mr Levy in an interview under caution as a suspect, not neutrally as a witness.

MR PICARDO WAS A WITNESS IN THE INVESTIGATION, NOT 'A PERSON OF INTEREST'

- 10.130 Supt Wyan made quite clear when he gave evidence that Mr Picardo was always considered to be a witness. When he wrote in his briefing to Mr Richardson on 7 June 2020 [B3142] that *'[Mr Picardo was] still to be spoken to'*, he meant that he was to be spoken to as a witness, not as a suspect [T/5/215.5-20].
- 10.131 The RGP decided that the question of Mr Picardo giving a statement would be *'considered after Levy was dealt with'* (see the log entry for 28 October 2020, [B3165]). Mr Picardo was later invited by the RGP to make a statement in the investigation, as a witness, and he did do on 25 June 2021 [B1109].
- 10.132 Occasional references were made during the Inquiry to Mr Picardo having been a *'person of interest'* in the investigation of Operation Delhi. Mr McGrail's evidence is that he said, in terms, at the meeting on 13 May 2019 that Mr Levy

was ‘a person of interest’ [T/8/45.1]; there were other such references elsewhere in the evidence. However, there is no such category recognised by the Police Codes of Conduct or indeed by the law. I think the phrase is commonly used to describe two quite different categories of person. The first category is a person whom the police consider might have some relevant evidence about a crime; such a person is better described as a potential witness. The second category is a person whom the police consider might have participated in an offence, but that the evidence presently available falls below that required formally to classify them as a suspect. The danger is that describing someone in the first category as ‘a person of interest’ can be misinterpreted as putting them in the second category. The casual use of the phrase, without proper definition, can, therefore, be misleading and unfair. The RGP has now recognised this and indicated that it will remedy the position.

- 10.133 It was claimed on behalf of Mr McGrail in written submissions for the Second Preliminary Hearing (para 34) that: ‘*The Chief Minister was a person of interest in the investigation*’, and that ‘*he was potentially implicated in the criminal investigation*’. This was followed by alleging in the opening submissions for the Main Inquiry Hearing (at para 18) that ‘*the Chief Minister had lengthy, private discussions with the lawyer of a criminal suspect, his personal friend, in an (sic.) criminal investigation in which [Mr Picardo] was potentially implicated and certainly had a strong personal and financial interest in the outcome of, about how to prevent the RGP proceeding with a search warrant and at the same time how to remove the RGP Commissioner.*’ The allegation then being made by Mr McGrail was that Mr Picardo was trying to prevent the RGP from executing the search warrant in order to protect himself, rather than seeking to protect Mr Levy. But this line of attack was not really pursued in questioning or indeed in Mr Wagner’s closing address. As I make clear later in the Report, I reject the suggestion that Mr Picardo was seeking to put an end to the entire investigation, let alone that he was doing so because he was

personally '*potentially implicated*' in any offence. Mr Picardo was never a suspect; nothing I have seen leads me to suggest that he should have been treated as such. Therefore, no one should refer to Mr Picardo as being a '*person of interest*', without making clear that he fell into the first category, but not the second. I therefore reject the allegations to which I referred at the beginning of this paragraph.

THE NATIONAL DECISION MODEL ASSESSMENT

10.134 Mr Richardson discussed with Mr Yeats how he should proceed with the investigation against Mr Levy. Mr Yeats advised him to use the National Decision Model Assessment ('**NDM Assessment**') to record his decision to treat Mr Levy as a suspect, setting out the reasons on which his decision was based (Richardson 3 paragraphs 12-13 [A1427]). Mr Richardson accepted that advice and prepared the NDM Assessment regarding '*the involvement of [James] Levy in 36 North*' [B3452]. He had some assistance from Supt Wyan, particularly on the passage dealing with the elements of the offence of conspiracy to defraud [T/5/172.5].

10.135 In the NDM Assessment, Mr Richardson summarised the evidence as follows:

- a. An examination of the messages between Mr Cornelio, Mr Perez and Mr Sanchez showed that each had been communicating with Mr Levy about the NSCIS platform.
- b. Evidence of communication from Sanchez to Mr Levy showed that a civil servant was passing on confidential information to him about NSCIS and offering him '*good proposals for investment*'.
- c. Evidence of communication from Mr Cornelio or Mr Perez to Mr Levy suggested that he (Mr Levy) was in a position of influence with Mr Picardo, and he was often requested (by Mr Cornelio or Mr Perez) to arrange meetings, or to disclose or find out what was being decided with regard to 36 North's bid to take over the NSCIS platform.

10.136 The report concluded (at paragraph 19 [B3454]) that: *‘There is a significant amount of evidence that suggests that [Mr Levy] was acting unethically in his dealings regarding the NSCIS platform. The question is whether this unethical behaviour is dishonest and crosses the line into the realms of criminality’.*

10.137 Mr Richardson set out (at paragraph 23 [B3454]) in bullet points the grounds for suspecting that Mr Levy had been acting dishonestly to secure the transfer of the NSCIS maintenance contract from Bland to 36 North and thereby to benefit financially. Those grounds were as follows:

- a. He was receiving business proposals and information directly from a civil servant.
- b. He was aware that (other) business initiated by Bland was being taken by 36 North, in particular with Carnival Cruises and the west African state of Sao Tome and Principe.
- c. He was aware that Mr Cornelio continued to access the NSCIS after he had terminated his consultancy with Bland and that this information was being withheld from Bland.
- d. He was aware that Mr Cornelio had accessed the NSCIS and performed a full review despite not being contracted by Bland to maintain it.
- e. He contacted and facilitated access to Mr Picardo with a view to discussing 36 North and the NSCIS platform.
- f. In October 2018 he spoke to Mr Cornelio about Bland having engaged a forensic team to investigate whether Cornelio had tampered with the system (and it was therefore reasonable to suspect that Cornelio had informed him that he had been sabotaging the system), and yet he continued to support Cornelio and 36 North and did not distance himself from that conduct.

10.138 The critical passage is paragraph (f) above. To quote it directly: *‘In October*

2018, [Mr Levy] spoke to [Mr Cornelio] about the forensic team investigating whether he was tampering with the system. It is reasonable to suggest that [Mr Cornelio] informed him that he had been sabotaging the system. Despite this information, [Mr Levy] continued to support [Mr Cornelio] and 36N in obtaining the platform and did not distance himself from this conduct' [B3455].

10.139 Mr Richardson, therefore, concluded that the RGP *'have reasonable grounds to suspect that [Mr Levy] has dishonestly used his influence with the [Chief Minister], [Caine Sanchez] and possibly [another] to induce the relevant persons to transfer the maintenance contract of the NSCIS platform from Bland to 36N, a company in which he holds a 10.56% personal stake'* (at paragraph 24(a), [B3455]). However, I should point out that the NDM also concluded that there was no evidence that Mr Picardo or Mr Mena were aware that Mr Cornelio had compromised the operation of the NSCIS by sabotage, as is alleged.

10.140 Further (at paragraph 24(c)), Mr Richardson concluded that the investigating officers: *'... have reasonable grounds to suspect that an offence of conspiracy to defraud has been committed'* by Mr Levy; and *'[i]n the absence of anything to the contrary, the evidence suggests that [Mr Levy] took part in this conspiracy with [Perez, Cornelio and Sanchez].'*

10.141 At paragraph 25, Mr Richardson advised that *'In order to investigate this matter it is necessary to obtain further evidence by: (a) Interviewing [Mr Levy] and (b) Conducting a digital examination of the devices that he used to communicate with the other relevant parties.'* [B3455]

10.142 At paragraph 31, he wrote that *'The seizure of the digital devices referred to in paragraph 25b should be by search warrant obtained in advance of approaching [Mr Levy] for interview'* [B3456]. I interpose that he was plainly contemplating that Mr Levy should be interviewed under caution as a suspect and not just as a witness.

10.143 Mr Richardson recognised at paragraph 33 that: *‘The examination of any content seized from JL may be complicated by claims of legal privilege. In that event the material will be reviewed by a lawyer first using keyword searches provided. We do not however believe that JL maintained a lawyer client relationship with any other person linked to this investigation and his dealings with them appear to be restricted to a business relationship.’* [B3456].

10.144 He recommended that the warrant should be restricted to mobile devices only, as that was the predominant means of communication between them (paragraph 34 [B3456]).

10.145 Further, he observed, *‘Given the political sensitivities and potential reluctance for a [Justice of the Peace to] issue a warrant for Hassan Law practice the warrant should be requested from the Chief Justice.’* [B3456]. Mr Wyan explained in the course of his evidence that he understood the political sensitivities to relate to the well-known links between Hassans and Mr Picardo and with others in the Government [T/5/174.1, 223.15].

10.146 He also advised that officers attending Hassans with the warrant should wear body worn cameras during the investigation, as it was *‘expected that any allegation of impropriety or illegality will be vigorously attacked using Hassans considerable legal resources’*, and also *‘To protect the integrity of the investigation and avoid any misconstruing on the actual words said during the police intervention’* at Hassans (paragraph 39 [B3456]).

THE EVIDENCE GIVEN AT THE INQUIRY ON THE NDM ASSESSMENT

10.147 When giving evidence at the Inquiry, Mr Richardson said that he still maintained that the grounds for suspicion identified in the NDM Assessment were sufficient but, with the benefit of hindsight, he thought that the entry containing the grounds as set out was *‘not as comprehensive as it could have been’*, and could have made reference to the exchanges between some of the suspects and Mr Levy [T/4/28.19].

10.148 He was asked about his decision not to arrest Mr Levy, whereas he had arrested the other suspects. He said that some time had elapsed since their arrests (back in May 2019) and therefore he thought that the same dangers of their not attending, or of conferring between themselves, or of losing evidence, did not apply. He did consider, however, that there remained a risk of Mr Levy destroying evidence [T/4/30.6].

CONCLUSIONS ON THE NDM ASSESSMENT

10.149 Mr Richardson's focus was on the messages of 19 October 2018, and the conversation between Mr Cornelio and Mr Levy which followed, which (at the risk of repetition) I set out again: *'Morning James. Very confidential. Note Gaggero has brought in a forensic team of six to look at anything John and I may have done to tamper with the system etc. Gaggero is going all out it seems'* [B3461].

10.150 That same day (19 October 2018), Mr Cornelio messaged Mr Perez in these terms: *'Spoke to James ref forensic team confidentially. Spoke to him on the telephone. Call me and I can discuss. He says not to worry. I am very concerned they will try to prove I have acted to sabotage the system in anyway etc.'* [B3461]

10.151 It seems to me that Mr Richardson's approach (*'it is reasonable to suggest that [Mr Cornelio] informed him that he had been sabotaging the system'* [B3455]) is not the correct approach to the question. It should have been to ask whether the inference might reasonably be drawn from this brief exchange that Mr Cornelio had told Mr Levy that he (Mr Cornelio) had *'sabotaged'* the system. This is a rather different question.

10.152 Mr Levy was not copied into the message between Mr Cornelio and Mr Perez, so it cannot be used directly against him to suggest that he knew that Mr Cornelio had sabotaged the NSCIS. Furthermore, Mr Cornelio saying that Bland were trying *'to prove [that Mr Cornelio had] acted to sabotage the*

system in any way etc', is not an admission that he did sabotage the system; indeed, he might have been suggesting that Bland were trying to prove something which he (Mr Cornelio) knew to be untrue. This is a possible alternative interpretation, which is not canvassed in the NDM; nor, I might add, does it later appear either in the Charging Report or the application for the search warrant.

MR MCGRAIL'S RESPONSE TO THE NDM ASSESSMENT

10.153 On 25 February 2020, Mr Richardson sent the NDM assessment to Mr McGrail, who had played no part in drafting it [B3272]. Mr Richardson did not send it to Mr Rocca until a month later, on 1 April 2020 [B3610].

10.154 Nor, of course, did he send it to Mr Picardo; this may seem an obvious point, but it is worth making here, because it is a point to which I will return.

10.155 On 1 March 2020 [B3272], Mr McGrail emailed Mr Richardson saying that, on the basis of the information in NDM Assessment, he supported, in principle, the suggested course of action, including proceeding by way of search warrant, but that the tactical detail of how they intended to achieve the objectives would be the subject of further consideration, '*to safeguard operational security*'. He wrote, further, that '*given the complex nature of this investigation and the reputational risks at stake, I would ask that you consult with the DPP to ensure our intended activity is legally supported*'. Mr Richardson replied that he would raise the matter with the DPP.

10.156 I observe that the phrase '*intended activity*' used by Mr McGrail in his email is imprecise; applying for, and executing, a search warrant at Mr Levy's offices and at his home were among Mr Richardson's '*intended activities*'. In oral evidence, Mr McGrail confirmed that he had read the document in sufficient detail on his phone on a Sunday morning, and that when he said that he supported the suggested course of action he meant (a) the assessment that the team had arrived at that Mr Levy had questions to answer as a suspect,

and (b) that it was going to be approached with a search warrant [T/6/165.5]. However, Mr McGrail said in his evidence to the Inquiry that the RGP was not asking for Mr Rocca's approval of or consent to seeking a search warrant, which he considered to be an operational matter for the RGP and one which did not require Mr Rocca's approval, but rather '*consulting*' or '*[running] it past him*' [T/6/166.6].

3 MARCH 2020: MEETING BETWEEN MR RICHARDSON AND MR ROCCA

10.157 Following these exchanges, on 3 March 2020, Mr Richardson (accompanied by Supt Wyan) met Mr Rocca (accompanied by Mr Mark Zammit, Crown Counsel). Mr Richardson requested advice as to whether the involvement of Mr Levy amounted to a criminal offence. Mr Richardson and Mr Rocca did not believe the NDM was provided to Mr Rocca before or at the meeting [T/4/38.2, T/10/22.11], but Mr Wyan believed that Mr Richardson went through the NDM during the meeting, and Mr Richardson said that he may have referred to it [T/5/150.21, T/4/38.14]. Mr Richardson said that '*the DPP inclined to the view that [Mr Levy's] involvement in Operation Delhi arose from sharp business practice*' (Richardson 3 paragraph 14 [A1427]). Mr Wyan's evidence was that he recalled Mr Rocca disagreeing with the RGP's position that Mr Levy's conduct amounted to a criminal offence (Wyan 1 paragraph 44 [A1046]). The DPP agreed that he and Mr Zammit gave advice at the meeting that Mr Levy's actions amounted to sharp business practice [T/10/21.11, 24.15], explaining that '*we had no evidence to suggest [Mr Levy] had been involved or had knowledge of the computer hacking or any improper conduct that had been alleged*' [T/10/25.12]. As a result of that Mr Richardson offered to provide Mr Rocca with a more detailed summary of the evidence, so that '*he could hopefully draw the same conclusion we did*' (Richardson 3 paragraph 15 [A1428]; Wyan 1 paragraph 44 [A1046]; [T/4/39.12]).

THE CHARGING REPORT

10.158 It was as a result of the meeting on 3 March 2020 that, on 18 March, Supt Wyan

prepared the Charging Report (sometimes referred to as the Charging Advice) [B3612], which he described in paragraph 1 of the document as an '*extended summary of evidence in respect of Operation Delhi*'. Despite the title, he did not intend that the Report should then be used as the basis for considering the charges to lay against Mr Levy [T/4/43.5, T/5/161.16] (a decision on charging does not normally take place until later in the process, after arrest and interview).

10.159 On 19 March 2020, he sent the draft Report to Mr Richardson and DC Clarke, stating '*it is intended that this document should be sent to the DPP in order to obtain legal advice on charging*' [B3275]. Mr Richardson suggested certain amendments, which Supt Wyan made. Supt Wyan then re-circulated it on 24 March 2020 [B3274]. Although the Report was addressed to '*The Commissioner of Police*', that was apparently the nominal heading of every formal report [T/4/41.7] and it does not mean that the report was sent to him personally. Mr McGrail says he does not remember receiving it, however, he gave evidence that, although he had no involvement in drafting the Charging Report, he did recall being briefed about it by DS Clarke [T/6/169.9; T/8/23.12; T/8/105.24; B3855].

10.160 Supt Wyan identified 76 possible charges. He said his role was to identify each instance of a possible offence, and then he would put that before the OCPL or Mr Rocca, for them to make a determination of the charges they felt was justified or should be put before a jury [T/5/151.13]. He was not recommending that each of these 76 charges should go to trial.

10.161 In relation to Mr Levy and Mr Perez, a single joint charge of conspiracy to defraud was identified; in relation to Mr Cornelio and Mr Sanchez, computer misuse offences were also identified. Mr Levy was never suspected of complicity in the computer misuse offences. The Charging Report made the following allegations against Mr Levy:

- a. That he was involved in the planning by Mr Cornelio and Mr Perez to

dishonestly appropriate the NSCIS maintenance contract from Bland Ltd [B3629].

- b. That he assisted Mr Cornelio and Mr Perez to apply pressure on the Government with the intention that the NSCIS maintenance contract would be transferred to 36 North (in which Mr Levy held a 10% beneficial interest) [B3629].
- c. Under the heading ‘Knowledge of Computer Misuse Offences – Levy’, that *‘The evidence indicates that Levy discussed the forensic team with Mr Cornelio and that he had given him advice about the situation’* [B3630].

10.162 The Report focused on the two messages from which it suggested that Mr Levy’s knowledge of the alleged sabotage to NSCIS could be inferred [B3630]:

Paragraph 132: *‘On the 19th October 2018 Mr Cornelio wrote to Levy saying, “Morning James. Very confidential. Note Gaggero has brought in a forensic team of six to look at anything John and I may have done to tamper with the system etc. Gaggero is going all out it seems.”’*

Paragraph 133: *‘In a text to Perez the same day Mr Cornelio stated that he had spoken to Levy and was told not to worry.’*

10.163 The report alleges that by 2019 Mr Levy was in no doubt that Mr Cornelio and 36 North had not been contracted to maintain the NSCIS platform but, despite this fact, he did not question Mr Cornelio accessing the system until as late as April 2019. The Report referred to two pieces of evidence:

Paragraph 136: *‘On the 11th April 2019 Mr Cornelio wrote to Levy, “I am preparing a report for Caine/Albert Mena [redacted text]. Lesley is preparing a legal letter for your review in an attempt to speed up the process. This is ok?” ... He went on to say, ‘We are going to have a field*

day on the national security report. Just wait until you see it. For now, I am reviewing every single module 1 by 1. [Redacted text].’ [B3630]

Paragraph 137: *‘On the 23rd April 2019 [Cornelio] wrote to Levy, “Note I provided Albert Mena with a report on the National Security system. Has he made any comment to you about this? The report would have been delivered to him via Caine.”’ [B3630]*

- 10.164 The Report concluded by asking *‘whether, based on the above evidence, there are reasonable grounds to suspect that Levy has committed: (a) the offence of conspiracy to defraud; and/or (b) any other criminal offences’*. It added that: *‘In the event that there are reasonable grounds to suspect Levy has committed any offence, the police will consider whether it is necessary to conduct further investigations in the form of search warrants / interview under caution.’* (paragraphs 338-9 [B3666]). The Report recommended that advice be sought from the DPP *‘as to what charges should be preferred’* [B3612].

COMMENT ON THE CHARGING REPORT

- 10.165 The case against Mr Levy depends on the inferences to be drawn from his failure to respond to the information that Bland had appointed a forensic team to look at what Mr Cornelio and Perez *‘may have done to tamper with the system’* at Bland. The case for the prosecution is that, if Mr Levy did not know of the tampering, the information that Bland had appointed a forensic team to look at what Mr Cornelio and Mr Perez may have done to tamper with the system would have rung loud alarm bells and prompted anxious messages. But apparently not only did it not do so, but – at least according to Mr Cornelio – Mr Levy had told them not to worry. The prosecution’s suggestion is that no innocent person would give reassurance to this alarming news.
- 10.166 Furthermore, as they suggested Mr Levy well knew, Mr Cornelio had been explicitly denied access to the NSCIS system on 4 October 2018, and yet the emails sent in April 2019 suggested that he was still accessing the system,

which again appeared to prompt no questions from Mr Levy, let alone alarm.

- 10.167 Mr Richardson suggested in the course of his evidence that the case against Mr Levy could have been put more comprehensively and with rather greater clarity by a lawyer experienced in such matters [T/4/28.19, 51.9, 108.6]. It seems to me that, upon the evidence then available, Mr Richardson took the view that there were reasonable grounds to suspect Mr Levy of conspiracy to defraud in good faith, and concluded that there were questions for Mr Levy to answer. Indeed, neither Mr Rocca nor Mr Llamas challenged this proposition at the time (although it was – and is – strongly contested by Mr Levy, by the Former Operation Delhi Defendants and indeed by Mr Picardo). This is, of course, quite different from saying the grounds for suspicion were correct.

THE CHARGING REPORT SENT TO MR ROCCA

- 10.168 Under cover of an email dated 1 April 2020 [B3610], Mr Richardson sent the Charging Report to Mr Rocca, together with the NDM Assessment.
- 10.169 Mr Richardson explained in his covering email to Mr Rocca that, at their last meeting on 3 March 2020, ‘*differing views*’ had been expressed as to some of the ‘*criminality identified*’, particularly with regard to the conspiracy to defraud, and therefore a full Charging Report had been prepared to allow him to consider the ‘*key evidence*’ so that he could ‘*make an informed decision*’. He wrote that he had written in the NDM Assessment of the need to interview Mr Levy under caution as a suspect, and had set out his ‘*rationale*’. Mr Richardson wrote that he was seeking the DPP’s ‘*advice on whether the charges that we propose are warranted by the evidence, whether there is a reasonable prospect of conviction, and (given the inherent political nature of this investigation) that it is in the public interest to proceed. In addition, and in respect of James Levy, we are seeking legal advice as to whether there are reasonable grounds to suspect that he has committed the offence as alleged*’, which he identified as a conspiracy to defraud [B3610]. He confirmed in the course of his oral evidence that he was not seeking legal advice on the steps

proposed in the NDM Assessment, but he did point out their intended course of action [T/4/53.11].

10.170 The Report was not sent to Mr Llamas, either then or later. Again, I make the obvious point – but it is a something to which I will need to return – that this very detailed analysis of the evidence was not sent to Mr Picardo either.

10.171 I have already pointed out that, in the earlier NDM Assessment, Mr Richardson had written that he intended to apply for a search warrant against Mr Levy, but in this letter to Mr Rocca, he did not ask for advice on that point. Mr Richardson explained to the Inquiry that he did not do so because he needed legal advice upon the sufficiency of the evidence, and whether to apply for a search warrant was not a matter for Mr Rocca's legal advice but an operational decision for the police and only for the police to consider [T/4/48.18, 49.20, 51.6]. He said that he intended to apply for a search warrant to seize and examine Mr Levy's devices, so as to reveal what had passed between him and the Former Operation Delhi Defendants and to interview him under caution [T/5/80.25].

THE PAPERS CONSIDERED BY CROWN COUNSEL

10.172 Mr Rocca said that Mr Richardson's request for advice was '*a strange sort of request because it is not something I have ever seen or seen since. Whether we treat someone as a suspect or not is not really a matter we are tasked with. But I understood because it was given the sensitivities of who it involved ... and I suppose Mr Richardson wanted that reassurance, particularly in relation to the public interest I assume*' [T/10/151.15].

10.173 The DPP sent the Charging Report to Mr Mark Zammit, one of the OCPL's Crown Counsel, and asked him to look at the matter independently, with the intention of comparing notes as to their conclusions [T/10/29.16]. Mr Zammit was experienced in criminal matters and had already attended several meetings with the police concerning Operation Delhi. I do not know what

instructions Mr Zammit received, but nothing in writing has been disclosed (although Mr Zammit referred to the *'report / papers submitted by Supt. Richardson'*, which appears to be a reference to the Charging Report submitted to Mr Rocca on 1 April 2020 [B3610]). He gave his views in a short email dated 6 April 2020, which, when printed out, extends to just one page [C7038]. I do not know how much time he was able to spend on this matter between 1 and 6 April 2020. He advised that: *'with regards to the proposed joint Conspiracy charges and subject to clarification of some evidential aspects there is sufficient evidence for the matter to be left to a jury. While the case may not be the strongest the fact is that there is a realistic prospect of conviction'*. Further, *'as the evidence stands there are reasonable grounds to question Levy; not least because any replies may actually rule him out of the conspiracy where as, at the moment, there is a lingering suspicion and there is evidence which could be interpreted to incriminate him.'*

10.174 In an email of only one and a half lines, Mr Rocca replied [C7037] to Mr Zammit that same day that *'he did not disagree'* with this view. This is hardly a ringing endorsement in the context of having authorised the continuance of perhaps the highest profile criminal case in Gibraltar for many decades (although in evidence Mr Rocca stated that Mr Zammit's email *'corresponded exactly with my views'* [T/10/29.24]). Mr Rocca later told the Inquiry by email dated 15 August 2024 that the Inquiry had been provided with all relevant correspondence, but that he and Mr Zammit had spoken at length about the case throughout.

10.175 I am reluctant, indeed unwilling, to criticise Mr Zammit, who no doubt did what was asked of him and followed the practice in the OCPL at the time. Given the importance and complexity of the investigation, Mr Rocca, or someone in the OCPL, or even someone external to the OCPL, should have prepared a detailed written advice at this stage. Plainly, this internal email would not have sufficed in itself as a detailed advice (and nor was it purporting to be so); it does not refer to a single piece of evidence, nor to a single witness statement,

nor even to a single document. Among other points:

- a. It does not even refer to the charge being a conspiracy to defraud, nor suggest how it might be alleged that the elements of the offence, including 'dishonesty', might be proved against Mr Levy.
- b. It does not explain how it is to be proved that he knew or believed of the computer hacking or sabotage.
- c. It does not deal with any problems resulting from the absence of a written contract, including whether Bland continued to have any rights in the contract to maintain NCSIS.
- d. It does not mention the absence of expert evidence, which Mr Rocca had recommended in January.
- e. It does not make clear how his conduct went beyond '*sharp business practice*'.

These are all among the issues that merited anxious consideration in a detailed written advice. In questioning, Mr Rocca accepted that he would generally have reduced advice of this sort to writing, and in retrospect wished he had [T/10/163.14].

- 10.176 It is contended on Mr Rocca's behalf that it was unnecessary for a lawyer from the OCPL to review the evidence and to state the facts because such a review had been made by the RGP in the Charging Advice. But, in my opinion, the OCPL should have critically reviewed the material gathered by the RGP, and examined their reasoning, and not merely accepted it. Mr Rocca further contends that a formal written advice from the OCPL was not necessary because all the problems had been canvassed with the RGP at their frequent meetings. But, as I have pointed out, although some of these problems had been identified at those meetings, many of the acute problems remained unresolved.

10.177 Furthermore, because no accurate minutes were kept of these meetings, it is often unclear what was decided. The DPP and Mr Zammit may have had frequent discussions between themselves about the case, but nothing was rendered into writing. We do not know what Mr Zammit was asked to advise upon, nor when, nor what advice he gave. We do not know which problems he identified, nor how he suggested that they might be overcome. The whole process lacks transparency. There is no proper audit trail of the decisions made, nor the reason upon which those decisions were made. This may make it harder to review the soundness of the advice; this handicaps both those who might seek to challenge the advice but also, I observe, those who might seek to uphold it.

10.178 I spent a lifetime practising in the criminal courts in the UK, much of it prosecuting. I then spent twenty years and more trying such cases. I realise that there is a danger of my simply recommending as a general practice what I have spent a lifetime doing, but, as it seems to me, the procedures adopted in this case were not an appropriate way to consider a high profile, factually complex case, which bristled with very knotty legal problems, affecting the security systems of Gibraltar and attended with risks of causing damage to the reputations and economic interests of Mr Levy, Hassans and even Gibraltar.

10.179 In my opinion, detailed written instructions should have been drawn up by the RGP identifying the problems, and then a formal, detailed, written opinion should have been sought from a leading practitioner in the field (not necessarily from within the OCPL), to advise generally on all points. Such a written advice should have included:

- a. A factual summary, with a review of the evidence and an assessment of its strengths and weaknesses.
- b. An analysis of legal elements of the offences proposed.

- c. The application of the elements of those offences to the facts of the case, with an assessment of the prospects of proving them with the evidence available, against each defendant.
- d. An 'Advice on evidence' identifying further evidence to be obtained or further investigative work that should be undertaken.
- e. A schedule of proposed charges, with a statement of the offence and drafted particulars.

10.180 If this had been done, I think that many of the subsequent problems might have been avoided. Some – perhaps all – of the problems might have been capable of resolution, but some problems might have been recognised to be insoluble.

10.181 Further advice should have been sought before the application for a search warrant was made; I will come to that point later.

10.182 I think that Mr Rocca should have realised that the investigation of Operation Delhi and the proposed criminal prosecution raised highly complex problems of fact, law and considerations of public policy with which his small department may not have been equipped to deal. He should have considered asking for help and advice from outside the OCPL (and perhaps even from outside Gibraltar).

DEVELOPMENTS IN EARLY APRIL 2020

DISCUSSION BETWEEN MR ROCCA AND MR LLAMAS

10.183 On 6 April 2020, a lawyer for one of the Former Operation Delhi Defendants made submissions to the RGP, copied to Mr Llamas and Mr Rocca, about extending their bail [C3313]. Mr Llamas replied to Mr Rocca alone that he was '*not sighted on this*' [C3312] – plainly meaning that he knew nothing about it.

10.184 According to Mr Llamas, this email then triggered a further exchange and conversation with Mr Rocca [T/11/173.21]. Mr Rocca replied: '*This is*

something we are going to have to discuss soon because it does have very serious implications in terms of people that might get dragged in' [C3312]. Mr Rocca stated in evidence that he was referring to '*a whole litany of persons*' – Mr Sanchez, Mr Perez, Mr Gaggero, Mr Levy, and another civil servant (whom I need not name, since no further action was taken against him) [T/10/34.21]. Mr Rocca made clear that he was not here referring to Mr Picardo [T/10/36.2].

10.185 During the conversation, Mr Rocca confirmed to Mr Llamas that Hassans held shares in the rival company seeking to obtain the NSCIS contract; that Mr Levy was potentially a '*person of interest*'; that a senior civil servant was one of the suspects; that another senior civil servant might be implicated; and that the ownership of the NSCIS was contested (Llamas 1 para 22 [A276]). Mr Llamas stated that this raised matters which were of considerable public importance and also had the potential to cause serious reputational damage to Gibraltar, at a time of on-going negotiations with the EU and Spain on vital matters, including the fact that there had been serious failures of the national security system and Mr Levy being a person of interest (Llamas 1 paras 22 and 24 [A275-6]). He said that Mr Rocca told him that there were 76 proposed charges, which he considered to be '*excessive*', '*wholly inappropriate*' and '*needed to be rationalised, ideally after dealing with the issue of ownership of the NSCIS platform which was still 'live'...*'. He said that it was clear to both of them that '*the ownership of the platform was key to the viability of a number of the proposed charges ...*' (Llamas 1 para 23 [A275]).

10.186 Mr Rocca confirmed in the course of his evidence that this was his view, and also stressed that the ownership issue was very important to the prosecution [T/10/37.5; 39.25]. However, he clarified that the excessive number of charges related wholly to the computer misuse offences, and ownership was not key to the viability of the conspiracy charge against Mr Levy, who was not charged with the computer misuse charges [T/10/41.5; 41.19].

10.187 Mr Rocca explained that the purpose of this discussion with Mr Llamas was to

discuss the national security issues and the people involved, but not to alert him to the fact that the RGP intended to proceed by way of warrant [T/10/158.16].

10.188 In questioning, Mr Llamas agreed that Mr Rocca did not tell him that the RGP intended to seek search warrants against Mr Levy [T/11/176.11]. Mr Santos, however, referred him to his letter to the GPA of 5 June 2020 [C4732], which stated that *'the DPP explained to me ... that the RGP were thinking of issuing search warrants against James Levy QC. I was alarmed, both by the number of charges (which would be quite inappropriate in any prosecution) and also by the proposal to obtain and issue a search warrant against a senior lawyer without first seeking voluntary co-operation or voluntary production of evidence'* [T/11/176.12]. Mr Llamas said that he was surprised to read this, as his *'very clear recollection'* was that the conversation with Mr Rocca was all about rationalisation and ownership [T/11/178.19]. He later considered (on the second day of his evidence) that the witness statement was more likely to be accurate than the letter, even though the letter was more contemporaneous, stating that he had been *'reminded'* by his lawyer the previous evening that his lawyers had drafted the letter on the basis of a factual timeline that he had provided to them [T/12/1.16] and that in the letter he had confused the 7 April meeting and the subsequent meetings with Mr Rocca and the RGP in May 2020 [T/12/111.19].

10.189 Mr Llamas said that he did not apply his mind to the question of whether the number of charges was inappropriate, and simply followed Mr Rocca's advice on this [T/11/179.6]. He said that, despite Mr Rocca's email, the *'people who might get dragged in'* were not discussed, or were not the main topic discussed [T/12/107.4].

10.190 In his written evidence, he had said that he and Mr Rocca agreed to seek a meeting with Mr McGrail about the quantity and rationalisation of charges (Llamas 1 para 27 [A277]). Mr Rocca did not recall reaching this agreement

[T/10/43.14]. In questioning, Mr Llamas said that he (rather than Mr Rocca) sought the meeting with Mr McGrail because of: (1) the complexity of the case; (2) the implications for Gibraltar's reputation and Spain's potential exploitation of an opportunity to tarnish it; and (3) because he had a meeting scheduled with Mr McGrail about the Incident at Sea on the following day (8 April 2020), and he took that opportunity [T/11/183.1, 185.13].

10.191 I do not think that this meeting has any particular significance. The meeting the next day between Mr Llamas and Mr McGrail is far more important and gives rise to one of the serious conflicts of evidence.

LACK OF MINUTES OF MEETINGS

10.192 Before I proceed with the narrative, I need to make a general point, which I do not want to repeat when dealing with each and every important meeting. That is the fact that, time and again, the key players to critical meetings did not take proper and accurate notes or minutes, still less did they circulate them afterwards for approval. This failure has given rise to needless arguments as to what was decided, when it should have been clear from accurate contemporaneous notes. The brief notes taken by Supt Wyan, and by Mr Richardson in his Delhi day book, of the meetings between the RGP officers with Mr Rocca, are no more than trigger notes for their own recollections, and some were not contemporaneous. Furthermore, Mr Rocca did not even keep a file note himself, either of the meetings on 3 March or 8 April, nor did he follow them up with any written advice. His junior might have kept some notes, but none have been preserved.

10.193 Neither Mr Picardo nor Mr Llamas have produced notes of the meetings they attended on a range of issues under Inquiry (save for Mr Picardo's non-contemporaneous note of the 18 May 2020 meeting, to which I will return). Mr Llamas seemed also to say that he did not do so as a matter of practice, rather suggesting that he was too busy to do so. In my opinion, it is a matter of professional duty to take accurate notes of legal consultations. The failure

properly to note the meeting of 7 April is a particularly relevant example of this failing. Even if the press of business is such that they could not take notes themselves, they should have tasked someone else to be present to take a note and then circulated a copy of the note for approval or amendment.

CONTACT BETWEEN MR LLAMAS AND MR MCGRAIL BETWEEN 13 MAY 2019 AND 7 APRIL 2020

ALLEGED MEETINGS BETWEEN MR MCGRAIL AND MR LLAMAS

- 10.194 I will come shortly to the meeting that Mr McGrail had with Mr Picardo and Mr Llamas on 12 May. However, at 22.05 on that evening, after the troubled meeting which he had had that afternoon when he knew that his conduct was being challenged, he wrote an email [B74] to himself to serve as a record of what had passed. I am cautious about accepting it as an uninfluenced contemporaneous record, since there is plainly a risk that it is self-serving. The note is entitled '*Op. Delhi*'. The relevant extract reads as follows: '*For quite some time, I have been meeting with ... Mr Llamas, at his request, to discuss matters relating to this investigation*'; adding that '*At most of these meetings with the [Attorney-General], particularly the latter ones, I have been accompanied by Supt Richardson*'.
- 10.195 In the letter (which I will also consider in detail in due course) written on 29 May by Gomez & Co, the lawyers acting on Mr McGrail's behalf, it was alleged that '*For many months*', Mr Llamas '*has been trying (unsuccessfully, we might add) to persuade Mr. McGrail to change his and the RGP's approach to the investigation which would either lead to it being dropped entirely or [to] certain suspects not being prosecuted*' [C4490].
- 10.196 Mr McGrail repeated these allegations when he gave evidence to the Inquiry. He said that this occurred on 13 May 2019 and 7 May 2020, and that he provided '*briefings*' to Mr Llamas, '*on a few occasions when [Mr Llamas] brought it up and ... off the back*' of meetings on other subjects, particularly the Incident at Sea, and that Mr Llamas enquired about what evidence they

were coming across, which Mr McGrail disclosed verbally to him, albeit briefly (McGrail 1 para 12 [A4]). He said that Mr Llamas ‘*expressed an interest*’ in the case, and ‘*was keen to be told of the evidence the RGP was uncovering*’ (McGrail 5 para 122 [A167-8]), and that Mr Llamas expressed concern over how the matter was being managed internally by the Government and ‘*the consequent potential embarrassment to the administration*’ (McGrail 1 para 13 [A4]). In oral evidence he said that these briefings took place at the end of other meetings on different subjects, and he did not take notes of what was discussed [T/6/136.18]. He said that he believed that Mr Llamas was interfering improperly in the investigation and had actively sought to discourage him, and the RGP, from pursuing the investigation (McGrail 5 para 180 [A179], [C4584]).

- 10.197 However, there is no record or note of any other meeting or conversation or any exchange of messages, digital or otherwise, about Operation Delhi passing between Mr McGrail and Mr Llamas between the 13 May 2019 meeting and the meeting of 7 April 2020. Neither Mr Richardson (whom Mr McGrail alleges accompanied him at such meetings) nor Supt Wyan has spoken of any such meeting, still less of any such interference. Indeed, Mr Richardson said that there were no such meetings as he would have recorded them in his notes [T/4/54.2]. Mr McGrail has been unable – even when pressed – to give the dates of any occasion on which he alleges they spoke, or communicated, except to say that they were ‘*on the back*’ of other meetings with Mr Llamas about other matters; there is no record of any such conversations. When it was put to him that Mr Richardson’s evidence was that there were no such meetings, because he would have recorded them, Mr McGrail said: ‘*I’m not going to dispute that. ... what I’m saying is that we met with [Mr Llamas], and Mr Richardson has alluded to certain meetings that he came along with me. Whether he was aware that this was spoken to me or not, but I definitely attended meetings in the past – not necessarily specific to Delhi*’ [T/6/147.4]. Perhaps most significantly, there is no note that Mr McGrail made any protest

at the meeting of 7 April, when – if he is right – the so-called interference must have been going on for ‘*months*’.

10.198 Mr Llamas’s evidence is that they had no meetings, he made no enquiries of Mr McGrail, and Mr McGrail provided him with ‘*no briefings in relation to Op Delhi of any specific or substantive kind*’, but that he ‘*cannot completely rule out the possibility*’ that there might have been superficial, brief and perfunctory exchanges about Operation Delhi in a chance encounter at other meetings (Llamas 2 para 7 [A299]). He says that nothing occurred between them such as Mr McGrail now suggests. Mr Llamas’s evidence is that he did not have any ‘*substantial meaningful*’ contact with Mr McGrail about Operation Delhi until 7 April 2020; he accepts that he might have asked for occasional updates but these conversations were ‘*at most ... a light touch*’ [T/11/158.1], and the impression of frequent discussions on the point, to impede or frustrate the investigation, is quite wrong.

10.199 After I consider the meeting on 7 April 2020, I will outline my conclusions on this allegation of interference against Mr Llamas.

7 APRIL 2020: MEETING BETWEEN MR LLAMAS AND MR MCGRAIL

INTRODUCTION

10.200 I come to the meeting on 7 April between Mr Llamas and Mr McGrail. This was conducted by video, since Gibraltar was then in the first Covid ‘lockdown’. Mr Richardson had erroneously noted this meeting as taking place on 4 May, but he now accepts that the meeting took place on 7 April [T/4/57.3], and I shall proceed on that basis (he said that the entry in his notes for this meeting was pieced together after 12 May 2020 [T/4/59.4]).

10.201 Mr Rocca was on leave and therefore did not attend that meeting; indeed, he told the Inquiry that he did not know that the meeting was to take place [T/10/44.3; 45.14]. I do not think that it was constitutionally inappropriate for Mr Llamas to hold this meeting because, despite the creation of the post of

DPP, the Attorney-General remains the head of the prosecution service. However, there seems to me to be force in the criticisms made on behalf of Mr McGrail (for example, at McGrail Closing, para 18.2) that Mr Llamas should not have proceeded with the meeting when he was inexperienced in the criminal law and did not have a working knowledge of Operation Delhi, nor was he familiar with the legal or evidential problems which it presented. He should have waited until Mr Rocca was back on duty.

10.202 Mr McGrail was accompanied by Mr Richardson. Mr Llamas was accompanied by Mr DeVincenzi. There are conflicting accounts of that meeting, which I must try to resolve but – yet again – there is no proper minute of this discussion.

10.203 This meeting is central to Issue 5.2, which (at the risk of repetition) reads as follows: *‘Was the RGP’s intention to execute the search warrants on 12 May 2020 contrary to an agreement or understanding with the AG and/or the DPP?’*

THE ACCOUNT OF MR LLAMAS

10.204 According to Mr Llamas, this was the first meeting or discussion that he had with Mr McGrail concerning Operation Delhi other than the 13 May 2019 meeting which I have referred to above (Llamas 1 para 28 [A277]). Mr Llamas, when he gave evidence in person to the Inquiry, explained that he believed the principal purpose of the meeting on 7 April was to discuss the Incident at Sea but, he said, *‘on the back of that meeting’*, he raised some of the issues concerning Operation Delhi which Mr Rocca had mentioned to him the day before, which were concerning him [T/11/186.23, 187.21].

10.205 He said that he was *‘was deeply concerned that the RGP were proceeding without first resolving the ownership dispute’* over the intellectual property rights to the NSCIS platform, since it seemed to him that this *‘would likely have an impact on some of the proposed charges’* (Llamas 1 para 29 [A277]) – if the rights to the platform were owned by the Government, it would plainly

affect the viability of the computer misuse charges based on the proposition that the rights were owned by Bland (Llamas 1 para 23 [A276]). He said that he was also concerned that 76 proposed charges seemed wholly excessive and spoke of the *'general wisdom of focusing charges appropriately'* (Llamas 1 para 29 [A277]).

10.206 In a later statement he said that he was:

'only concerned about the ownership/rationalisation issues and it should have been abundantly clear to [Mr McGrail] from that meeting how sensitive this investigation was... and that he would not take such draconian and disproportionate action as executing search warrants on James Levy without first having bottomed out the issue of ownership of the platform/rationalisation of the charges.' (Llamas 2 para 26 [A304-5])

10.207 Mr Llamas said that during this meeting Mr McGrail said that Mr Picardo, another Minister, a member of the Opposition and the Financial Secretary were all partners of Hassans (Llamas 1 para 30 [A278]). Mr Llamas interpreted this to mean that, through their partnerships in that law firm, and by that law firm's shareholding in 36 North Limited, each had an indirect ownership interest in that company; and, although it did not appear that *'there was any suggestion made of possible wrongdoing on their part'*, it was clear to Mr Llamas *'that there were obvious potential reputational issues for Gibraltar'* (Llamas 1 para 30 [A278]). He said that he was, therefore, concerned as to the possible diplomatic ramifications in Gibraltar's relations with Spain, and he advised *'that the investigation [of Operation Delhi] should proceed and be conducted prudently and with tremendous care'* (Llamas 1 para 29 [A277]).

10.208 Mr Llamas wrote in his statement that:

'There was nothing in what I said, or in the manner in which I said it, that Mr McGrail, DS Richardson or anyone else in the RGP could reasonably or properly have interpreted as interference or pressure to stop the investigation or change its course or approach, or anything other than entirely appropriate advice and assistance in the context of those specific issues. And nor did Mr McGrail suggest otherwise to me.' (Llamas 1 para 33 [A278])

10.209 In questioning, he elaborated on this and referred, for the first time, to concerns about Mr McGrail's *'policing method and style'* arising from his conduct during the Airport Incident [T/12/122.16]. He was pressed about this; it was put to him that giving advice to experienced officers to act *'prudently'* and *'with tremendous care'* amounts to improper interference to back off the investigation. He suggested that he was not giving this as legal advice in his capacity as Attorney-General, but *'friendly advice'*, since he was acutely aware of what he perceived to be the risk of serious reputational dangers to Gibraltar, which he thought might work to Gibraltar's disadvantage at a time of sensitive diplomatic negotiations with Spain. He did not accept that he was putting inappropriate political pressure to bear upon this police investigation [T/12/120.5].

10.210 There is, therefore, a keen dispute as to what Mr Llamas had in mind when he told Mr McGrail to proceed *'prudently'* and with *'tremendous care'*. Was this a stark warning not to tangle with Mr Levy and other powerful men in Gibraltar, with the implied threat of adverse consequences if they did so? Alternatively, was Mr Llamas, as he repeatedly said in the course of his evidence, merely advising Mr McGrail to proceed, but with care and caution, as the investigation into the alleged hacking of NSCIS platform might be manipulated by interests inimical to Gibraltar to undermine the continuing negotiations to devise immigration control arrangements? The Government Parties argue that Mr Llamas was *'best placed to know and understand what may be sensitive to*

this crucial public interest of Gibraltar, this being a particular concern to him, since he was effectively conducting those negotiations on behalf of Gibraltar (closing submissions following the Reconvened Hearing, para 8).

10.211 For my part, I do not think that he was just giving ‘friendly advice’; he was giving advice as Attorney-General and telling police officers investigating misconduct by Mr Levy and others to proceed with caution. Taken entirely out of context, this might be interpreted as an attempted interference with the investigation. However, at the time, neither Mr McGrail nor Mr Richardson took it to be such (at [T/5/3.1] and [T/7/164.23 -165.6] respectively). I am sure that he did not intend it as such.

10.212 In his second affidavit, Mr Llamas said that there was only a passing reference to Mr Levy made by Mr McGrail, who observed that he hoped he (Mr Levy) would assist the investigation. Mr Llamas did not remember any further discussion about Mr Levy (Llamas 2 para 16 [A302]). When he was examined at the Inquiry hearings, he was shown the letter he wrote to the GPA on 5 June [C4732-3], to which I will come in due course. In that letter, he referred to the conversation that he had had with Mr Rocca the day before (being 6 April), in which he said that he *‘was alarmed ... by the proposal to obtain and issue a search warrant against a senior lawyer without first seeking voluntary co-operation or voluntary production of evidence’*. His concern was *‘that such warrants should reflect the reality of the risk of destruction of evidence’*, whereas Mr Levy *‘had been aware of the RGPs interest in him for many months, and had had plenty of opportunity to destroy evidence if he were minded or inclined to do so’*. He said that at the meeting with Mr McGrail on 7 April they *‘also discussed, in the terms that [he had] described above, the proposal to obtain and execute a search warrant against Mr Levy’*.

10.213 As I have stated above, he sought to distance himself from that letter by initially saying that he was *‘surprised’* to read its content, and on the following day of his evidence clarifying that he had been *‘reminded’* by his lawyer the

previous evening that his lawyers had drafted the letter on the basis of a factual timeline that he had provided to them [T/12/1.16], and that in the letter he had confused the 7 April meeting and the subsequent meetings with Mr Rocca and the RGP in May 2020 [T/12/111.19]. It was to deal with this point that he offered to disclose the timeline he had given to his lawyers in June 2020 [C7040]. The timeline does deal with this meeting, but it does not refer to a conversation between Mr Llamas and Mr McGrail about the search warrant or Mr Levy. Therefore, he says this supports his claim that he did not give these instructions. I am, however, unable to make a finding on this point without seeing all of the privileged communications.

10.214 I come now to another contentious passage of Mr Llamas's evidence. He wrote that:

'After a long, and from my recollection, amicable discussion, we reached what, for me, was a very clear understanding between us, namely, that the RGP would not take further action until they had (i) clarified the question of the ownership of the NSCIS platform (ii) rationalised the charges (which the DPP had told me was extremely possible to do), and (iii) whereupon Mr McGrail would meet with me and the DPP before taking any further steps. It was clear beyond peradventure that nothing, other than what we agreed to, would happen until we met again.' (Llamas 1 para 32 [A278])

10.215 However, when he gave in his evidence to the Inquiry in person, he rather retreated from this position. Mr Santos asked him to explain how the agreement was '*clear beyond peradventure*'. He replied that it was rare that he would take the step to speak to the Commissioner about a criminal investigation, and '*If I have called him in to tell him "Ian, be careful, take tremendous care with this investigation", that meant ... as a minimum ... "Don't take any radical steps, not any major steps in the investigation until*

you've done this"...' [T/11/191.10]. He said this was *'Just pure advice, which obviously he chose to ignore, which is fine, but that is all I was doing'* [T/191.15]. He added that he thought the agreement was *'obvious from the context of the meeting... We did not shake hands over it, we did not say 'We've reached this agreement. Come back to me.' No, but I thought the context of the meeting was one in which he would have understood that he would certainly speak to the DPP or me again if a radical, big step in the investigation was going to take place'* [T/11/195.19]. He then accepted that this *'understanding'* or agreement was more an implication or inference to be drawn from the circumstance than an express agreement [T/11/196.6].

- 10.216 In the timeline prepared for Mr Llamas's lawyers (mentioned above), he addressed the meeting of 7 April 2020 and described the agreement as *'a clear agreement'* which was *'beyond peradventure'* [C7041].

MR MCGRAIL'S ACCOUNT OF THIS MEETING

- 10.217 Mr McGrail, in his witness statement, does not refer to the 7 April 2020 meeting by date, which I consider to be rather strange considering how important the meeting was.

- 10.218 However, he states that Mr Llamas was *'fully aware that [Mr Levy] was a subject of interest in the investigation but we had not discussed when he was going to be dealt with'*, and (echoing Mr Llamas's evidence to similar effect), that he (Mr McGrail) had said that *'I was hopeful that [Mr Levy] would provide an account that would clarify many of the suspicions that hung over him'* (McGrail 1 para 20 [A6]). He further said that *'As the investigation was approaching its conclusion the [Attorney-General] advised that he want to be consulted on the charges that we were considering to proffer'* (McGrail 1 para 21 [A6]). Mr McGrail says that he agreed with Mr Llamas to consider sample charges, and that he asked Mr Llamas to explain his reasons for streamlining 80 charges to 25 or 17 (McGrail 1 para 21 [A6]). McGrail states that he considered this discussion to be premature, as charges could not be finalised

until all enquiries with suspects had been closed, including interviewing Mr Levy (McGrail 1 para 22 [A7]). He states that *‘that particular meeting ended with the [Mr Llamas] asking us to revert to see him once we had listed all the charges that had been uncovered’* (McGrail 1 para 22 [A7]).

10.219 In oral evidence, Mr McGrail denied that he agreed to rationalise the charges before taking any further steps in the investigation [T/6/180.19]. He said that the RGP *‘went to that meeting knowing that we had to do what he was saying’*, and that rationalising the charges was not going to be a contentious issue for them [T/6/183.21]. He was adamant that there was *‘absolutely no arrangement’* of the sort alleged by Mr Llamas [T/6/185.3]. He denied that Mr Llamas had asked him to pause the investigation before taking any steps at the 7 April meeting [T/6/186.7].

10.220 Mr McGrail’s position on this issue generally is therefore that nothing that he said at this meeting could have given rise to any such understanding as Mr Llamas asserts.

10.221 Curiously, however, Mr McGrail’s first witness statement suggests that in a meeting between him and Mr Llamas on an unspecified date, Mr Llamas *‘also advised that the investigation should not progress until such time as the question of ownership of the NSCIS platform was clarified’* (McGrail 1 para 16 [A5]). Mr McGrail could not remember the date of this conversation [T/6/138.9], but said that it *‘can’t have been’* the meeting of 7 April 2020 [T/6/140.12] and must have been before that date [T/6/141.25].

THE ACCOUNT OF MR RICHARDSON

10.222 Mr Richardson was called to the meeting on 7 April at short notice, and therefore he did not have his Delhi day book with him, which is why it contains no record of this meeting and why he was originally uncertain about the date of the meeting [T/6/58.15]. It was not until some six weeks later, perhaps on or about 22 May, and after he knew that Mr Picardo was alleging that he had

lost confidence in Mr McGrail, that he made his note in a Timeline (copied at [A1436]), although he did not think that he knew at the time of drafting the note that there was a dispute between Mr Llamas and Mr McGrail about the so-called understanding or agreement [T/6/63.17]. So, this is not a contemporaneous note, and must therefore be treated with some caution. I shall summarise his account.

- 10.223 He said that Mr Llamas had called the meeting because he was advising the Government with regard to ownership of the platform, and the Government had no written record of the ownership of the NSCIS. Mr Llamas asked the police to reduce the number of charges and '*to whittle out those that depend on ownership and then see what remains*' (Richardson 3 para 66 [A1436]). He told the Inquiry that he took this to be a suggestion and not a direction [T/4/64.3]. He confirmed that he and Mr McGrail were open to undertaking that exercise and had already discussed it with Mr Rocca [T/4/64.20].
- 10.224 His written evidence was that he did not recall any agreement being reached that the RGP would not take any further action until they had clarified the question of ownership and rationalised the number of charges, nor did he remember agreeing that nothing would happen until they met with Mr Llamas again (Richardson 3 para 71 [A1437]).
- 10.225 His note, which as I have said was not contemporaneous, also does not record any such understanding being reached. Mr Richardson says that if any such understanding had been reached, he would have recorded it. Furthermore, he would have discussed it with Supt Wyan and indeed with Mr Rocca, and he did none of these things. Therefore, he confidently asserts that there was no such understanding (Richardson 3 para 72 [A1437]). Furthermore, he says that he would never have applied for a search warrant contrary to a specific understanding that he had reached with Mr Llamas not to do so without further consulting him (Richardson 3 para 73 [A1437]). He observed – to my mind convincingly in what was an obviously spontaneous

aside – that to do so ‘*would have ended his career*’ [T/4/69.16].

10.226 I am confident that neither Mr Richardson nor Supt Wyan would have applied for a search warrant against Mr Levy if they had been told by the Attorney-General not to do so before consulting further with him.

10.227 Mr Richardson mentioned in oral evidence one other matter at the same meeting which concerned him, which he understood was the proposal by Mr Llamas that Caine Sanchez, a senior civil servant (whom the police had already arrested and were later to charge with conspiracy to defraud) could be dealt with by way of disciplinary proceedings [T/4/194.22]. Mr McGrail also alleged that Mr Llamas had raised the same point during ‘*at least two of the meetings*’ he had with Mr Llamas (McGrail 1 para 15 [A5]). Mr Richardson understood that the disciplinary proceedings were to be instead of the criminal proceedings. He said that at the 7 April meeting when he protested that Mr Sanchez was corrupt and that he should be prosecuted, Mr Llamas said he was ‘*shocked*’ at such a suggestion [T/4/195.4; T/5/68.16].

10.228 Mr Richardson was challenged on this version of events by Sir Peter Caruana who pointed out that – six weeks later – he made only a very short note of this exchange which read as follows: ‘*CS was corrupt from what we had seen*’ [A1436]. In that note, Mr Richardson also wrote that he apologised to Mr Llamas for being ‘*frank*’, which Mr Llamas said he welcomed ([T/5/3.14]; Richardson 3 para 66 [A1436]). Mr Llamas denied this (Llamas 2 paras 8-10 [A300]; [T/11/159.25]). Sir Peter Caruana also pointed out that Mr DeVincenzi had not referred to such an exchange in his evidence, and that Mr Richardson had not mentioned the alleged suggestion by Mr Llamas in his evidence or note. Mr Richardson said his brief notes, made six weeks later, contained notes with references to Mr Sanchez and to the same conversation [T/5/5.16].

10.229 The WhatsApps disclosed after the Main Inquiry Hearing show that on 7 May 2020 Mr McGrail messaged Mr Ullger stating that: ‘*The irony is they want to report this to us but want to keep Caine sanches (sic.) internal*’ [E716]. This

lends some support to Mr McGrail's version of events that his impression was that: *'Mr Llamas has a view that Caine Sanchez should be dealt with internally via civil service disciplinary mechanisms'* [B74].

- 10.230 Notwithstanding that, I am not confident that Mr Richardson's memory of this point, relying on notes made six weeks later, is correct; I think that he could easily have misunderstood – or misremembered – this position. I think that it was always the intention of Mr Llamas and the Government Legal Service to run the disciplinary proceedings concurrently with – and not instead of – the criminal proceedings.

THE ACCOUNT OF MR DEVINCENZI

- 10.231 I turn to consider the evidence of Mr DeVincenzi, who was also present at the meeting. In his first statement (DeVincenzi 1 para 11 [A1300]) he gave an account of that meeting in these terms, which I quote in full:

'The focus of the meeting was possible charges against various individuals allegedly connected with the NSCIS matter, including Mr Sanchez. The Attorney-General inquired about the significant number of charges, and expressed concern that these should probably be rationalised, noting that this was a matter for the police to consider and decide (or words to that effect). It was also mentioned during the meeting that Mr James Levy was being investigated. The Attorney-General asked Mr McGrail to keep him informed until they could next meet'.

- 10.232 I comment that this account did not record the understanding – let alone an understanding *'clear beyond peradventure'* – that the police would take no further step in the investigation before consulting again with Mr Llamas.
- 10.233 The Inquiry team, having noted this omission, asked Mr DeVincenzi to provide further particulars of this conversation, which he did by way of a second

affidavit, dated 25 August 2023 (DeVincenzi 2 [A1304]). In that further statement, he said that he was asked to join the meeting at short notice, without any prior knowledge of the investigation and, he added, he did not take notes. He remembered Mr Llamas advising that there were too many charges and remained concerned about the evidence of ownership of the NSCIS platform (DeVincenzi 2 paras 3-4 [A1304-5]). Mr DeVincenzi still did not recall anything in the nature of the understanding relied on by Mr Llamas, though he did recall that Mr McGrail and Mr Richardson *'said they would report back to the Attorney-General and the DPP'* (DeVincenzi 2 para 4 [A1305]). This version accords far more closely to Mr McGrail's version than to Mr Llamas's.

- 10.234 In his evidence to the Inquiry, Mr DeVincenzi said that his recollection of this meeting was *'hazy and indistinct'* [T/11/98.8]. However, he clearly remembered a discussion about reducing the number of charges, and he also remembered the importance of attempting to resolve the outstanding issue of the ownership of NSCIS. This, he said, *'was something they could look at and perhaps do better at'* [T/11/23.1]. He did not recall Mr McGrail agreeing not to take any steps until he next met with Mr Llamas; rather, he agreed *'to update him, to keep him informed. The language may have been wide enough to accommodate that, but I don't recall it being that specific'* [T/11/19.1]. He said that he was not surprised that the RGP had sought to execute the warrant given what had been discussed, and he did not believe that Mr McGrail had broken an agreement reached at this meeting by doing so [T/11/39.7]. He subsequently elaborated as follows:

'My best recollection about the undertaking was that the Commissioner certainly had made some undertaking to keep the AG informed. ...the wording may have been wide enough to be interpreted as something more than just an update, you know, "Keep me updated," et cetera, but that is the impression I took from it, which was that it was a firm

commitment to update, to keep the AG informed. It may have been more but I don't recollect it that way.' [T/11/98.11]

10.235 As referred to above, Mr Llamas prepared a draft timeline on the events for his lawyers. He sent the draft to Mr DeVincenzi, who commented on this paragraph with the 'suggestion', as follows: '*I appreciate that the [Commissioner] ... may have thought that the understanding we reached was limited to the exercise regarding the rationalisation of the charges against the individuals who were the principal subject of our discussion*' [C7041]. This 'suggestion' plainly supports Mr DeVincenzi's evidence that there was no firm agreement that the RGP would take no further action without referring back to Mr Llamas. But Mr DeVincenzi also proposed the insertion of the following sentence: '*However, even if this was the case, it was implicit that no action on the case more broadly would take place without my being informed.*' That might be interpreted as suggesting that he (Mr DeVincenzi) then thought that an agreement could be implied from the meeting, although that goes further than Mr DeVincenzi's evidence to the Inquiry, a point to which I return below.

SUPT WYAN

10.236 Although Mr DeVincenzi believed that Supt Wyan attended this meeting (DeVincenzi 1 para 11 [A1300]), Supt Wyan is sure that he did not [T/5/163.5]. If he was there, he would have taken notes, and he did not do so. I do not think, therefore, that DI Wyan was present at this meeting. However, I think it is relevant that after the meeting, Mr Richardson did not canvass with Supt Wyan the problems which would have arisen if Mr McGrail had given an undertaking in the terms alleged by Mr Llamas [T/5/163.19].

ACTIONS FOLLOWING THIS MEETING

10.237 Mr DeVincenzi said that after the meeting, he discussed with Mr Llamas the number of charges (DeVincenzi 2 para 5 [A1305]), but he did not think that Mr Llamas was under the impression that no steps were being taken in the investigation at the time [T/11/26.12]. He said that after this meeting, Mr

Llamas had told him that *'he held significant doubts about the professional competence of the RGP team in charge of the investigation and drafting the charges.'* Indeed, he said that Mr Llamas took a dim view of the RGP officers, describing them as *'payasos'* [T/11/26.24]. The literal translation of this Spanish word is *'clowns'*. When taxed with this remark, Mr Llamas considered this to be a casual remark made among colleagues perhaps in *'exasperation'*, not to be taken seriously, which he now greatly regretted and publicly apologised for. Indeed, he thought it unfair to him that Mr DeVincenzi mentioned this at all [T/12/24.25]. But I observe that Mr DeVincenzi had taken an oath to tell the *'whole truth'*, and he should not be criticised for doing so.

- 10.238 In support of his account of the meeting and understanding of the agreement, Mr Llamas referred to a letter sent by Mr McGrail to the Financial Secretary the following day (8 April) which requested a witness statement from the Government on the issue of the ownership of the intellectual property of the NSCIS. The letter referred to the issue of the ownership of the NSCIS and stated: *'The Director of Public Prosecutions has advised that the issue of ownership of the platform is integral to the prosecution of the case...'* [B1901]. But I do not think that this letter supports Mr Llamas's position on the serious issue of fact, namely, whether there was such an understanding as he now claims.

CONCLUSION

- 10.239 The rival versions of this meeting were canvassed at the meeting between Mr McGrail, Mr Llamas and Mr Picardo on 12 May (to which I will come in due course). Mr Llamas also forcefully stated his position at the meeting which he had with Mr McGrail on 13 May (to which I will also come in due course).
- 10.240 In my opinion, the preponderance of evidence points strongly to the finding that the main topics discussed at the meeting on 7 April were the excessive number of proposed charges and the problems presented to the prosecution by the uncertainty to the ownership of the rights in the NSCIS program. Of

those present, only Mr Llamas alleges that they reached the ‘*understanding*’ to which he refers. I comment that Mr Llamas did not make a contemporaneous note of this meeting, nor did he write any memorandum after the meeting to record this understanding, let alone send it to Mr McGrail, which surely he would have done if such an unusual and significant understanding had been reached in such a high-profile case. He explains that he never takes notes, but that does not come to his aid on this point. Furthermore, in his live evidence to the Inquiry he rather retreated from this position and suggested that the agreement was not made expressly but was rather to be implied from what had happened.

10.241 Furthermore, surely Mr DeVincenzi would have remembered if such an understanding had been reached in such emphatic terms, and he does not. However, his evidence is that an agreement that no action on the case would take place without Mr Llamas being informed ‘*was implicit*’ from what was discussed (the emphasis by underlining is mine). I comment that it is entirely unsatisfactory that Mr McGrail was left to imply such an agreement from the meeting.

10.242 Mr McGrail denies that any such understanding was reached. He adds that it would have been improper for him to do so, since the progression of the investigation, and whether to apply for a search warrant, was an operational matter for the RGP, upon which he would not seek advice from the Attorney-General.

10.243 It seems to me that it would be very unlikely that Mr McGrail would commit himself to the RGP taking no further action in the case without consulting Mr Llamas again. To do so would amount to a serious – and probably unjustified and possibly unlawful – restriction on the operational powers of the police. Furthermore, if there was such an undertaking, how could Mr McGrail properly deal with an unexpected sudden development – or even crisis – of the type which often arises in criminal investigations? In my judgement, Mr McGrail’s

version, and indeed his reasoning, seem to me to be compelling.

10.244 Accordingly, I simply do not accept that Mr McGrail gave such an undertaking as Mr Llamas asserts; indeed, I am sure that he did not. Mr Llamas may have thought that it was clear from what was said that the RGP would not take any further action without further consulting with him, but I think it was far from clear; he is either mistaken in his recollection or has simply misunderstood or misinterpreted what was said.

10.245 I return to Issue 5.2, which reads: *‘Was the RGP’s intention to execute the search warrants on 12 May 2020 contrary to an agreement or understanding with the AG and/or the DPP?’* For the reasons which I have sought to set out in detail, my answer to this question insofar as it concerns the Attorney-General is an emphatic ‘no’.

HAD MR LLAMAS ‘INTERFERED’ IN THE INVESTIGATION, AT THIS STAGE?

10.246 Mr DeVincenzi said – perceptively as it seems to me – that, at some point after that meeting on 7 April and by 5 May, he began to realise that there was what he called a ‘risk’ that Mr Llamas might be ‘importuned’ – his word – either by Mr Levy, or by Mr Picardo, or by both, and that Mr Llamas needed to be alert to those risks [T/11/29.22]. This was, he thought, a ‘scenario [that] could play out’ but he did not think that any inappropriate pressure thus far had been brought to bear upon the RGP by Mr Llamas [T/11/30.21, 31.15]. He reconsidered these risks after the meeting between Mr Llamas and the RGP officers on 13 May, to which I will come in due course. I note that he is considering pressure put upon Mr Llamas by others, not pressure put by him on Mr McGrail.

10.247 In my review of the evidence, I have made the point that there is no contemporaneous record of any complaint by Mr McGrail of interference by Mr Llamas until immediately after his meeting with Mr Picardo on 12 May; I find this absence very striking. Furthermore, if there had been any such

improper interference, as Mr McGrail alleges, he would surely not only have recorded that, but he would have made some protest about such interference. This may have been to Mr Llamas himself, Mr Rocca (with whom he had more frequent dealings), Mr Richardson, Supt Wyan, the RGP Senior Management Team, the GPA or even the Interim Governor. However, he did not do so.

10.248 Issue 5.3 reads: *‘Did the AG and/or CM place any or any inappropriate pressure on Mr McGrail regarding the investigation or otherwise interfere with the investigation, and in particular the RGP’s intention to execute the Search Warrants?’*

10.249 In the circumstances as I have found them to be, I simply do not accept that Mr Llamas tried to interfere with the investigation before the search warrant was granted, let alone that he did so improperly, as Mr McGrail has alleged; I therefore reject this part of his evidence. I do not think that Mr McGrail was lying, I think that in the light of what happened later, he has persuaded himself that these exchanges took place. Insofar as the Issue relates to the Attorney-General thus far (that is, prior to the grant of the search warrant), the answer is ‘no’.

10.250 I will consider later his conduct of the three meetings with the RGP on 13, 15 and 20 May.

EVENTS LEADING UP TO THE APPLICATION FOR THE SEARCH WARRANT

8 APRIL 2020: VIDEO CONFERENCE BETWEEN MR RICHARDSON AND MR ROCCA

10.251 On the following day, 8 April 2020, there was a video conference between Mr Richardson (accompanied by Supt Wyan), and Mr Rocca, who was at home on leave.

10.252 This is yet another important meeting, at which important decisions were made, which was not properly minuted at the time, leaving me to decide

between varying and conflicting recollections. Mr Richardson's Delhi day book [C1783] has a short summary of this meeting, which I note lasted less than 20 minutes. His note records that Mr Rocca had discussed the case with Mark Zammit, a Senior Crown Counsel, and they were '*v. comfortable to run w. the case on the basis of the summary of evidence provided*' and there were '*no grounds at this stage to pull any prosecution*' (though Mr Rocca did say that there was a need to reduce the number of draft charges and that '*AG would speak to COP re public interest*').

10.253 On the charge of conspiracy to defraud, Mr Rocca gave his opinion that '*there is sufficient evidence to lead a jury to a realistic prospect of conviction*'. I think he was here referring only to the case against the Former Operation Delhi Defendants, not to the case against Mr Levy, which he considered later in the conference. The conversation continued to the effect that Mr Rocca was '*always comfortable*' with the computer misuse offences, but he said there remained the issue of the ownership of the platform, which they all realised needed further investigation. (As I have already said, but it may be worth repeating, Mr Levy was never suspected of complicity in the computer misuse offences.)

10.254 There follows a rather cryptic entry: '*Re: [Mr Levy] 'Reasonable grounds to question. Would be a lingering doubt otherwise. Obligation to interview under caution*'. I asked him what he meant by this; he said that the lingering doubt was '*about whether he was involved in any of the computer misuse or conspiracy*' [T/10/58.5]. As Mr Rocca must have known, in our common law systems, a '*doubt*' – even a '*lingering doubt*' – counts in favour of the defendant; therefore, I do not think that Mr Rocca was advising that the investigation should proceed just to remove this doubt. I think the discussion is more accurately set out in Supt Wyan's note, to which I turn. I might add that Supt Wyan's note is consistent with Mr Zammit's email of 6 April 2020 that there was a '*lingering suspicion*' [C7038].

- 10.255 Supt Wyan's notes [B3198-9] are to the effect that '*Mr Levy was considered. DPP stated that there were still questions that he needed to answer. Interview under caution was appropriate*'. Furthermore, Mr Rocca '*agreed that Mr Levy should be treated as a suspect as there were questions which needed to be answered. He should be interviewed.*' When he gave evidence, Mr Rocca did not believe that Mr Richardson used the word '*suspect*', but said that '*he's a person of interest who needs to answer questions, hence ergo, I suppose, that makes him a suspect*' [T/10/65.1].
- 10.256 In so advising, Mr Rocca is not advising that the grounds were true, or correct; he is advising that in his opinion the police have presented sufficient evidence to justify Mr Levy being interviewed under caution as a suspect, not interviewed as a witness.
- 10.257 Reviewing the chronology of events, Mr Richardson says that Mr Levy was considered '*a person of interest*' by April 2019. In February 2020, the police had decided that he might be a suspect. After a review of the evidence during the video conference call with Mr Rocca on 8 April 2020, Mr Rocca confirmed that Mr Levy was a suspect (Richardson 3 para 24 [A1429]).
- 10.258 Mr Richardson gave evidence that at the end this video conference, Mr Rocca said that, although he would have preferred the police to apply for a production order, he understood the police '*rationale*' for preferring to apply for a search warrant, which was an operational decision for them. He added that whatever course the police chose to take, he would back it (Richardson 3 para 41 [A1432]). This exchange is not in his contemporaneous note [C1783], nor in his later '*timeline*' [B5506], nor in the '*Briefing Note*' he prepared for Mr McGrail on 21 April 2020 [B3681]. He cannot now remember if he passed this information on to Mr McGrail [T/4/82.11].
- 10.259 In his written statement, Supt Wyan says that he also recalled, but was not certain, that before the application for the search warrant, Mr Rocca expressed the view that whilst he would have applied for a production order

rather than a search warrant, this was an operational matter for the RGP (Wyan 3 para 31 [A1044]). Supt Wyan gives neither the date nor the occasion on which he alleges that Mr Rocca expressed this view, and neither does he base his memory on his contemporaneous note, which does not refer to this preference. He also thinks that it might have been said during the meeting of 8 April 2020, as recalled by Mr Richardson [T/5/166.17]. Supt Wyan also remembers that Mr Rocca said that if the use of a search warrant were to be challenged by judicial review, Mr Rocca would defend the RGP's position and that, in his view, they would be successful (Wyan 3 para 31 [A1044]).

10.260 In his written evidence, Mr Rocca said that his advice was not sought by the RGP on the use of a search warrant or production order in relation to Mr Levy, but that he communicated his view at a meeting on 15 May 2020 that a production order would have been the more suitable and appropriate way to proceed, but also that these were operational matters for the RGP and the RGP's position would be defensible if subjected to a judicial review (Rocca 1 para 12 [A1297]). In the course of his oral evidence to the Inquiry, he said that he *'definitely expressed the view that a production order would have been my preferred course of action'*, although he did not know if it was at the April meeting or one of the three May meetings [T/10/71.8-12]. He said that he took that view because Mr Levy had been fully aware that the Former Operation Delhi Defendants had been arrested nearly a year before and he had plenty of time to dispose of the evidence [T/10/72.5]. Furthermore, Mr Levy was an officer of the court and Mr Rocca believed that he would comply with an order served on him [T/10/73.13]. This was not – to use his words – *'a black and white position'*; but he thought that the position of the RGP, even if they sought a search warrant, was defensible [T/10/73.23].

10.261 Mr Rocca was very clear that he did not *'strongly advise against the search warrant'* [T/10/76.4], and I am sure he did not. I am also sure that when Mr Llamas later asked whether he had done so, Mr Rocca did not say that he had strongly advised against a search warrant. (I will come to this exchange later).

10.262 On 21 April 2020, Mr Richardson sent a draft ‘*Commissioner’s briefing note – DPP’s Advice on Op. Delhi*’ to Supt Wyan for fact checking [B3681]. This included a summary of the 8 April 2020 meeting which was very similar to his handwritten contemporaneous note [C1783], but it is not clear whether this note was ever sent to Mr McGrail. I need not set out the terms of that note, which I have already drawn upon when summarising the meeting of 8 April, but it does set out Mr Rocca’s advice that there were ‘*reasonable grounds to question [Mr Levy] under caution*’. The note does not refer to the application for a search warrant, nor does it record consideration of a production order, nor Mr Rocca having expressed any preference in that regard.

10.263 There was some discussion to the effect that the public interest did not require the prosecution ‘*to be pulled*’ – to repeat the expression they used; Mr Rocca said that Mr Llamas was ‘*in full agreement*’ with this view. They observed that if they ‘*need to pull in Levy, then so be it*’ [B3681]. In his evidence to the Inquiry, Mr Rocca stated that his view (with which Mr Llamas agreed) was that the public interest in the matter ‘*was so serious it needed to proceed at all costs ... Knowing who was involved, I might add. Names may come out at a later stage, fine. Political embarrassment wasn’t a matter that I was concerned with or the AG was...*’ [T/10/62.22].

10.264 I comment that this was a critical meeting at which Mr Rocca advised Mr Richardson to proceed with the investigation. Yet it lasted only 20 minutes, without any proper notes or minutes, with none of the problems to which I have adverted being discussed. I realise that this was during the Covid lockdown but a far more searching and through analysis of the case and its problems was surely required.

MR RICHARDSON REPORTS BACK TO MR MCGRAIL

10.265 Mr Richardson said that he reported back to Mr McGrail on the 8 April meeting, and he considered that this corresponded with the contents of the briefing note. He could not be sure whether he reported Mr Rocca’s preference for a

search warrant rather than a production order [T/4/82.3].

10.266 Mr McGrail gave evidence that Mr Richardson reported back to him after this conference and said that they had *'got the green light'*, which he interpreted that *'everything had been squared off'* [T/6/174.7]. Mr McGrail said that there was *'talk about the warrant.'* [T/6/174.13] I observe that all these three expressions are vague and imprecise and prompt the obvious questions: what had been given the green light? What had been squared? Moreover, what had been said about the warrant? To my mind, Mr McGrail had not asked himself any of these questions, so it is not surprising that he had not formulated precise answers.

10.267 Mr McGrail said that he understood that Mr Rocca had said that he was content to defend the warrant [T/6/175.7]. When asked whether, as far as he was aware, Mr Rocca had advised on the search warrant, Mr McGrail initially said *'No, he had not advised. They had consulted with him and he had expressed his view that his preference was this but underscoring very clearly – this is the way it was mentioned to me, underscoring very clearly that it's not a matter that he's going to get involved in'* [T/6/175.21]. Mr Santos asked Mr McGrail to elaborate on whether Mr Richardson had told him that Mr Rocca would prefer a production order. Mr McGrail replied: *'I can't put hand on heart and say that they did but it's an inference that I draw, that there was – I know they talked about the warrant and that the warrant was not an unlawful approach and that he would resist any challenge to it'* [T/6/176.12]. I observe that this was a typically imprecise answer to a carefully crafted and precise question. Mr McGrail emphasised that the main emphasis of the brief (for the meeting with Mr Rocca on 8 April) was the classification of Mr Levy as a suspect [T/6/177.10]. I think that having understood this point, he was rather less focused on other points.

10.268 I think this set the scene for his rather confused responses when he was later asked by Mr Picardo on 12 May about what Mr Rocca had approved.

A REVIEW OF THE EXCHANGES BETWEEN MR ROCCA AND THE RGP

10.269 On 20 April 2020, there was a WhatsApp call between Mr Richardson and Mr Rocca to discuss the impact of the recently introduced Covid Regulations on the Magistrates' Court. Mr Richardson noted in his Delhi day book [C1784] that they were '*waiting for JL to be processed*' and that their position was, among other things, that an '*interview of [Mr Levy was] needed*'.

10.270 Apart from this short WhatsApp exchange on 20 April, the meeting of 8 April was the last time that Mr Richardson spoke to Mr Rocca. In my judgment, during none of the exchanges, which I have now reviewed in detail, had Mr Rocca advised that the RGP should apply for a search warrant in respect of Mr Levy's office, or his home. Mr Rocca had also not been specifically asked to advise upon the point.

22 APRIL 2020: MEETING BETWEEN MR LLAMAS AND MR MCGRAIL

10.271 There was a meeting between Mr Llamas and Mr McGrail on 22 April but that was about the Incident at Sea. I have already considered this meeting, which did not concern Mr Levy or Operation Delhi, nor was either mentioned, let alone noted. I need not consider it further in this context.

22 APRIL 2020: THE INTERVIEW PLAN FOR MR LEVY

10.272 On 22 April 2020, Supt Wyan prepared a report ('**the Options Report**') to Mr Richardson in which he set out the '*options*' for the interview of Mr Levy under caution [B3278]. Although this was again nominally addressed to '*Commissioner of Police*', Mr McGrail was not personally sent this report; nor was it sent to Mr Rocca. The report set out the various options, namely, approaching Mr Levy at his residence, approaching him at his place of work, or requesting that he attend New Mole House Police Station. In relation to the latter of those options, the report stated as follows (at paragraphs 15 – 16 [B3280]):

15. *'Mr Levy could be requested to attend the police station. In doing so, he could be asked to bring any devices for analysis and to submit to an interview.'*

16. *However, this would notify Mr Levy of our intentions and would thereby risk the loss of evidence. This would be contrary to the way we have dealt with the other suspects, although we could argue that given the amount of time, he will be well aware of the arrests and of the police investigation.'*

10.273 Notwithstanding the proviso to paragraph 16, Supt Wyan concluded that the RGP should approach Mr Levy at his place of work, when Covid restrictions had been lifted. He said in evidence that since Mr Levy was suspected of acting dishonestly in connection with NSCIS, he was capable of acting dishonestly again, and would be less likely to hand over his devices voluntarily [T/5/172.4]. In the circumstances, he thought that this risk justified – and even required – applying for a search warrant. Mr Richardson strongly agreed; he thought that they could not risk losing critical evidence [T/4/91.1]. He was aware that Mr Sanchez, one of the Former Operation Delhi Defendants, had indeed *'wiped'* his telephone before it could be seized by the police; he was – understandably – reluctant to give Mr Levy the chance to do the same (Richardson 3 para 38 [A1431], [T/4/109.5]). I observe that if the RGP had applied only for a production order, and if Mr Levy had wiped his telephone, as Mr Sanchez had done, they would have been severely criticised for not having applied for a search warrant.

10.274 I comment that the observation at paragraph 16 of the Options Report would be significant if the search warrant was being reviewed by judicial review. Supt Wyan seems here to have appreciated the possible force of the argument that *'given the amount of time'* that has passed since he had become aware of the police investigation and the arrest of the others, Mr Levy had had plenty of time to dispose of any incriminating evidence and yet this counter-argument

was not set out in the application for the warrant. However, I remind myself that I am not conducting a judicial review.

10.275 Neither Mr Richardson nor Supt Wyan knew why that counterargument had not been included in the Information laid before the Stipendiary Magistrate (respectively at [T/4/90.10, T/5/176.5]).

10.276 The Options Report also stated (at paras 4-5 [B3278]):

‘Given that we suspect that an offence may have been committed, and in order to prevent loss / destruction of evidence, we would ideally secure the evidence in situ, and without giving Mr Levy prior notice of our intent. On arrival at the premises, we would therefore seek, in the first instance, to be granted access to the relevant devices without the use of the warrant. A warrant would only require execution where co-operation was not offered.’

10.277 I avoid saying that the RGP went to Hassans ‘to execute the warrant’ or that they ‘attempted to execute the warrant’; they did neither. They went with a warrant, which they intended to execute only if Mr Levy did not ‘co-operate’ – as they saw it – by handing over the devices ‘voluntarily’. Mr Richardson agreed with this recommendation [T/4/87.13].

THE APPLICATION FOR THE SEARCH WARRANT

MY APPROACH TO THE ISSUES RELATING TO THE WARRANT

10.278 It is important that I repeat, as I have done throughout the hearings and this Report, that I am charged with inquiring into the facts relevant to the reasons and circumstances leading to Mr McGrail’s retirement. I am not conducting a judicial review into the grant of the search warrant. I am not required, nor entitled, to determine the legal validity of the search warrant, and I will not do so. The Inquiry has, however, heard evidence of the factual circumstances

surrounding the consideration, the application, and the grant of the warrant, which circumstances might be relevant to the Inquiry. That some of those circumstances may co-incidentally bear upon legal validity of the search warrant is not, I think, a good reason for not examining those circumstances, which lie at the heart of one of the most contentious issues with which the Inquiry must grapple.

PRELIMINARY DISCUSSIONS

10.279 On 23 April 2020, there was a meeting (noted at [B3855]) between Mr McGrail, Mr Richardson, Mr Ullger, Supt Wyan, and DS Clarke to consider the application for the search warrant.

10.280 They decided – sensibly, as it seems to me – to base the application upon the Charging Report. DS Clarke’s note contains references to paragraph numbers, which match up with paragraph numbers from a draft of the Charging Report dated 24 March 2020 [B3612]. It appears from that note that there was a discussion relating to the Charging Advice, with a view to drafting the Information. When asked about this, DS Clarke recalled that it was ‘*rather unusual*’ for him to be asked by the Commissioner to discuss a case:

‘We were at the point of formulating a case summary as opposed to charging advice ... I was given charge of preparing a lot of the summary from the charging advice documents. And Mr McGrail basically had read through the document and had given me advice or his opinion, as shown in the paragraph numbers and the comments, of what he thought should be included or should not be included, etc. For example, the first comment being dishonesty, how he had shown his dishonesty, and civil wrongs, to expand on the civil wrongs, just by way of example.’ [T/9/7.20]

10.281 Supt Wyan reported in an email to Mr Richardson on 30 April [B3285] that he

was in the process of drafting the application for the search warrants at Hassans offices and at Mr Levy's house, and a plan for executing them. He said that he was also drafting a list of questions for Mr Levy to answer in the interview under caution, which was to follow.

- 10.282 There had been ongoing discussions about the need to make arrangements to retain an independent lawyer to review any material seized so as to protect anything which was subject to legally professional privilege. In the same email (and in a follow up on 4 May 2020 [B3284]), Supt Wyan had highlighted to Mr Richardson that they had no lawyer to review the privileged material and asked whether they should ask Mr Rocca for his advice. In fact, they did not do so, and eventually decided to ask Mr Levy for his preference [T/4/94.4].

MR MCGRAIL'S KNOWLEDGE OF THE APPLICATION FOR THE WARRANT

- 10.283 Mr McGrail did not review the application for the warrant itself. Mr Richardson did not send him a copy of the application for the search warrant and did not believe Mr McGrail had seen it [T/4/98.15].
- 10.284 However, Mr McGrail had already seen the NDM Assessment, which referred (at paragraph 31) to the need to apply for a search warrant, and had provided input at the meeting of 23 April as to the content of the Information based on having read the Charging Report, as I have explained above. Because this was such a sensitive inquiry, Mr Richardson kept him informed of developments as and when they arose and had given him both formal and informal updates. He (Mr Richardson) said that during their frequent informal meetings, they had discussed what might happen if they (the RGP) approached Mr Levy with a production order and asked him to hand over his devices, and Mr McGrail raised the possibility that he might refuse and simply walk away (Richardson 3 para 33 [A1430], [T/6/174.14]). Mr Richardson said that Mr McGrail advised him that the execution of the search warrant should be '*kept secret as far as possible until the last minute to protect the operational security of the investigation*'. He also suggested that body cameras should be deployed

when the warrant was executed '*to prevent any misunderstandings*'. Mr McGrail also advised that the application should be made to the Supreme Court, as the Charging Report had recommended (Richardson 3 para 34 [A1431]). Mr Richardson said that his plan was to apply to the Chief Justice, and he did not know why it was made instead only to the Magistrates' Court [T/4/31.9, 95.1].

10.285 Therefore, I conclude that although Mr McGrail had not seen the application for the search warrant, nor was he familiar with its precise terms, he knew that it was to be made and approved of the application in principle.

MR RICHARDSON'S KNOWLEDGE OF THE APPLICATION FOR THE WARRANT

10.286 Mr Richardson was unsure whether he read the application in detail himself, but in oral evidence he said that he believed that he had [T/4/97.20], and he also had approved the principle of applying for the search warrant and had considered the Charging Report on which it was based (Richardson 3 para 26 [A1430]). He accepts, on reflection, that it may have been better if the RGP had received legal advice [T/4/108.5], and that the application may not have gone into sufficient detail [T/4/100.18, 206.21]. I accept that if greater detail had been put into the application, this might have made out a stronger case, and might have identified and avoided what others might consider to be possible procedural flaws.

REPRESENTATION BY CROWN COUNSEL

10.287 I observe that the practice for very many years in England and Wales has been that, if the police are applying for a search warrant in a high profile case, or one which gives rise to difficult or sensitive issues, they will send a draft of the application to the CPS for advice, and the CPS will instruct an advocate to vet the application, even to suggest amendments and probably to present the case to the Court.

10.288 I know that this has not been the practice in Gibraltar. So, the draft Information was not sent Mr Rocca nor to the OCPL, and they therefore had no opportunity of advising on the application, nor were the RGP represented at the hearing. If the RGP had had the benefit of legal advice and representation, I think that many, if not all, the procedural flaws – if such they be – might have been avoided. I do not criticise Mr Richardson or any of the other officers in the team, or indeed the RGP itself, for following what was the usual practice in Gibraltar.

10.289 I will later recommend that this practice should change.

THE APPLICATION FOR THE WARRANT

10.290 Supt Wyan was off duty, self-isolating following a positive Covid test. Drafting the application for the warrant, and indeed presenting it to the Court was, therefore, delegated to DS Clarke, who based the Information on Supt Wyan's Charging Advice. In his written evidence Supt Wyan expressed a belief that he was involved in the early stages of drafting the application (Wyan 3 paras 8-9 [A1040]), but in oral evidence he said he did not believe he had drafted any of it, and he had only advised on how to start the process [T/5/181.1]. He made notes for his own purpose [D2900], which contain an entry (at [D2905]) that: the '*DPP, COP and D/Supt*' were consulted and recommended the course of action. Taken out of context, that might appear misleading, but DS Clarke explained in his evidence that he only meant that Mr Rocca had approved treating Mr Levy as a suspect, not that Mr Rocca had approved the search warrant [T/9/15.14]. He had not been told that Mr Rocca had expressed a preference for a production order [T/9/17.11].

10.291 Since applications for a search warrant must be approved by a senior officer, on 4 May 2020, DS Clarke passed the application for the warrant to DI Goldwin, who had considerable experience in applying for such warrants in the Financial Intelligence Unit [B3719]. DI Goldwin signed off the application ([B3773]; Wyan 3 para 7 [A1040]; Richardson 2 para 18(b) [A1290]). There is no evidence of how thoroughly he considered the application; I am unaware

whether he asked any questions about it, or made any alterations.

10.292 DS Clarke based the application upon information which he had *‘predominantly taken directly from the charging advice’* (Wyan 3 para 11 [A1040]). Perhaps tellingly, Supt Wyan refers in his statement to the application following a *‘template provided to officers making applications for a search warrant pursuant to Schedule 1’*, which Mr Wyan had created based upon similar templates used by officers in England and Wales (Wyan 3 para 13 [A1040]). I observe that it is helpful to have guidance, and even a template, but there is a danger that templates can be too closely followed without giving detailed consideration to the particular circumstances of the case.

10.293 I think I should spell out one important point, which otherwise might be lost: I am entirely satisfied that the application for the search warrant was made in good faith, DS Clarke genuinely believing the truth of the matters he asserted in the application.

THE LAW RELATING TO SEARCH WARRANTS AND PRODUCTION ORDERS

10.294 I turn to the application for the search warrant, which, as I indicated above, is technically known as the **‘Information’**.

10.295 I do not need to embark upon a detailed examination of law, particularly when – as here – the principles are well known and agreed. However, one of the allegations made by Mr Picardo, and by Mr Levy (and by others) against the RGP generally – and against Mr McGrail specifically – is that the RGP should have applied for a production order rather than a search warrant. Therefore, I do at least need to consider the decision to apply for a search warrant.

10.296 One of the conditions for the grant of a search warrant (under paragraph 14(d) of Schedule 1 of the Criminal Procedure and Evidence Act 2011) is that *‘service of notice of an application for an order ... may seriously prejudice the investigation’*. A person to whom a production order is issued must be given 7 days’ notice to produce the material sought. The critical question is,

therefore, whether DS Clarke reasonably believed that service of notice of the application upon Mr Levy may have caused ‘*serious prejudice*’ to the investigation. Since the RGP firmly based their belief upon the fact the Mr Levy was a ‘*suspect*’, it is first necessary to consider their belief that there were reasonable grounds to suspect him. Furthermore, before considering the grounds advanced by the RGP for suspecting Mr Levy of conspiracy to defraud, contrary to common law, I need to consider the elements of the offence.

HAD THE OFFENCE OF CONSPIRACY TO DEFRAUD AT COMMON LAW BEEN ABOLISHED?

10.297 There is an argument that the offence of conspiracy to defraud, contrary to common law, was abolished – seemingly inadvertently – by the original wording of section 35(1) of the Gibraltar Crimes Act 2011 (*‘Subject to the following provisions, the offence of conspiracy at common law is abolished’*). The existence – even the validity – of that argument might have been recognised by sections 3(1) and (2) of the Crimes and Miscellaneous Provisions (Amendment) Act 2023, which sought to ‘*revive*’ the offence following its ‘*abolition*’ by section 35(1).

10.298 On the other hand, the original wording of section 34 of the 2011 Act seems to pre-suppose the continued existence of the common law offence.

10.299 I do not propose, nor am I permitted, to rule upon these conflicting propositions. No one raised the point at the time that Mr Levy was suspected of the offence, or even by the time of Mr McGrail’s retirement. However, I observe that if the common law offence had been abolished, then the court could not lawfully have granted a search warrant on the basis that he was suspected of having committed an offence which no longer existed.

DEFINING THE OFFENCE

10.300 I turn then to define the offence. In general terms, a conspiracy to defraud,

contrary to common law, is an agreement between two or more persons dishonestly to act so as to achieve an unlawful purpose, or to achieve a lawful purpose by unlawful means, thereby causing economic loss to another or gain to oneself or to others.

10.301 I seek to apply these general principles to the facts of this case. Although there was a long course of dealing between Bland and the Government by which Bland managed the NSCIS platform on behalf of the Government, for which the Government made periodic payments, there was no written contract spelling out the precise rights and duties of the parties. In particular, there was no written agreement as to the ownership of the intellectual property rights of the NSCIS platform. To put it simply: Bland believed that it belonged to them, on the grounds that their employees had devised and developed the system in the course of their employment with them; the Government believed that it belonged to them, on the grounds that they had commissioned the platform and had paid for it. As it seems to me, both beliefs were honestly held, arguably on reasonable grounds; it is not for me to say which argument was right, and I deliberately avoid doing so.

10.302 In these circumstances, it seems to me that it would not be sufficient to sustain this charge against Mr Levy if he merely assisted Mr Cornelio and Mr Perez to set up the company 36 North, or other related companies, or if he interceded on their behalf with Mr Picardo in an attempt to persuade him to award the contract for the future maintenance of the NSCIS platform to 36 North, or to other related companies, rather than to Bland. If this is all that Mr Levy had done – and if he was unaware that Mr Cornelio had sabotaged NSCIS – his actions would not have been inherently unlawful; nor would such conduct necessarily involve the use of any unlawful means by him. Indeed, such actions are the lifeblood of free market competition, on which Gibraltar has become prosperous, and which is protected by various conventions. It is not for me to say whether Mr Levy's conduct amounted to '*sharp or unethical business practice*', as some who considered it seem to have thought. But

even if it did, that is not sufficient, because the charge is only made out if Mr Levy was assisting in dishonestly transferring the business from Bland to 36 North, or to other related companies.

10.303 In this case, as it seems to me, Mr Levy would be dishonest, and acting unlawfully, only if it be proved that he acted as he did – or continued to act as he did – either by: (a) knowing or believing that such defects and outages as had occurred whilst Bland were operating the NSCIS platform had been deliberately caused by Mr Cornelio, with Mr Perez’s connivance; or (b) knowing that Mr Cornelio had continued improperly to access the NSCIS platform after he had left Bland, without any proper or lawful authority to do so, intending unlawfully to use those defects and outages to bring pressure on Mr Picardo to transfer the business from Bland to 36 North.

10.304 I will turn presently to consider whether the RGP were right to apply for a search warrant rather than a production order, but since they firmly based their decision to do so on the fact that Mr Levy was then a suspect, I must consider whether they reasonably believed there was evidence to give rise to the reasonable suspicion that: (1) Mr Levy knew or believed that such defects and outages as had occurred whilst Bland were operating the NSCIS platform had been deliberately caused by Mr Cornelio, with Mr Perez’s connivance, (2) with that knowledge or belief, he continued to assist Cornelio and Perez act in transferring the business from Bland to 36 North and, (3) in doing so, he was acting dishonestly.

THE GROUNDS PUT FORWARD FOR SUSPECTING MR LEVY OF THE OFFENCE

10.305 The application set out, at some length, the evidence relied upon; it concluded (at paragraph 319 [B3243]):

‘The above paragraphs demonstrate Levy was involved in the plan to remove the NSCIS contract from Bland at an early stage:

- a. *Messages between Levy and Sanchez show communication discussing moving the contract away from Bland in early 2018. (Paras 45 to 47)*
- b. *Levy was instrumental in the creation of 36 North. Firstly, by owning 32% of shares of Astelon Ltd, who in turn own 33% of shares of 36 North. (Paras 31 to 32) On behalf of Hassans, he injected a large sum of money into 36 North.*
- c. *He was using his influence with Mr Picardo to the advantage of 36 North.*
- d. *He was regularly contacting both Cornelio and Perez in relation to 36 North whilst they were still employed by Bland and following their resignations. (Paras 61 to 89).*
- e. *Communications show he was aware of the Computer Misuse Offences committed by Cornelio. (Paras 99 to 100).'*

10.306 As it seems to me, the critical allegation is at sub-paragraph (e) which asserts that Mr Levy was aware of the computer misuse offences committed by Mr Cornelio, and refers back to paragraphs 99 and 100.

10.307 Paragraph 101 [B3218] reads as follows: *‘The evidence indicates that Levy discussed the forensic team with Cornelio and that he had given him advice about the situation.’* This is based on the messages of 19 October 2018 (to which I have already referred). Paragraph 100 refers to the message which Mr Cornelio sent to Mr Perez that same day (to which I have also already referred).

10.308 As I have already set out when considering the same passages in the context of the NDM Assessment and the Charging Report, in my judgment, DS Clarke concluded in good faith that there were sufficient grounds to amount to reasonable grounds to suspect Mr Levy of these offences, and to interview him under caution, about his response (or rather his apparent lack of concern

about the development raised in Cornelio's message to him on 19 October 2018).

THE REASONS GIVEN FOR APPLYING FOR A SEARCH WARRANT

10.309 I now turn to consider the reasons given for applying for a search warrant.

10.310 The justification given by DS Clarke (at paragraph 324 of the Information [3244-5]) was that *'the material sought is held by a subject in this case and it is feared that if notice was given ... [he] would destroy, alter, deface or conceal the material sought'*.

10.311 At paragraph 326, he wrote [B3245] that serving notice of a production order may seriously prejudice the investigation because:

'In the circumstances it is highly likely that they would destroy, alter, deface or conceal the material sought because it is evidence sought by the [Officer in Charge] which may prove their involvement in the offence.'

10.312 Here, DS Clarke had merely made a bare assertion of likelihood, as he might have been encouraged to do by the template on which he was relying, without providing any explanation for that likelihood or belief. Of course, I appreciate that the fact that the application is directed at a suspect is a highly relevant consideration, but that factor is not determinative. If this was an application for judicial review it might be relevant to point out that there was no attempt in the Information to analyse the particular risks presented by this particular suspect in these particular circumstances.

10.313 Mr Richardson regretted that he had not received legal advice, which he thought might have strengthened the application. He sought to explain and justify that his decision to apply for a search warrant was because the application *'would be determined without notice [to Mr Levy]. An application for a production order would have been determined on notice [to Mr Levy], giving rise to a risk that Mr Levy might be forewarned'* (Richardson 1 para 17

[A1290]). He repeated and amplified this in his later statement (Richardson 2 paras 37-8 [A1431]): *'The decision to apply for a warrant was made due to [Mr Levy's] status as a suspect. ... We decided not to apply for a production order against either [Mr Levy] or his firm because such an application is required to be on notice. Had [Mr Levy] been alerted there was a risk that evidence might be tampered with or lost' or even that it 'might have resulted in him arranging for his devices to be professionally wiped', thereby destroying evidence.*

10.314 He repeated this in the course of his evidence to the Inquiry. He said that he had discussed this with Supt Wyan, and they decided to proceed with a warrant because they feared that there was a reasonable chance of losing evidence if they proceeded on notice [T/4/90.21]. He also stressed the seriousness of the offence, as the computer sabotage had threatened the security systems protecting Gibraltar [T/4/108.20].

10.315 Supt Wyan made the same point (Wyan 3 para 23 [A1042]) in a slightly different way, he said that: *'By virtue of his status as a suspect, and as set out above, it was extremely unlikely that he [Mr Levy] would provide evidence of his own wrongdoing to police.'*

10.316 But their reasoning would apply to all suspects and would mean that production orders would never be obtained against suspects. It seems to me, however, that both might have spelt out another point, which was firmly in their minds, namely that there was strong evidence that another suspect, Mr Sanchez, a senior civil servant, also of apparent respectability, without a criminal record, had *'wiped'* his telephone, so as to remove all messages before he was arrested ([B3069], [B278]), including messages between him and Mr Levy. The application could have submitted that there was a risk of Mr Levy doing the same. Mr Richardson told the Inquiry that: *'I think we took the view that, once bitten twice shy, if we don't take these devices immediately there is a risk that those will also be deleted'* [T/5/81.5].

10.317 On the other hand, the Information did not identify the counter arguments that

Mr Levy had known of the investigation for months, and certainly since the arrest of the Former Operation Delhi Defendants back in May the year before, and if he was minded to destroy or remove evidence of his dealings with them he could have done so already. Supt Wyan himself recognised the existence of this point in the 'Options Report', which he sent to Mr Richardson on 22 April 2020 (which I have already addressed), in which he canvassed the possibility that Mr Levy could be asked to attend the police station, bringing his devices with him. He recognised, however, that that would notify Mr Levy of their intentions and would thereby risk the loss of evidence. Although, he said, it would be contrary to the way the RGP had dealt with the other suspects, it could be argued that given the amount of time, he would be well aware of the arrests and of the police investigation [B3280].

10.318 There is a further point: both Mr Richardson and Supt Wyan knew that Mr Rocca favoured a production order. In my opinion, it could be argued that Mr Richardson and Supt Wyan should have ensured that the concern voiced by Mr Rocca was spelt out in the application, and they did not. I do not blame them personally for this omission because it resulted from the practice of such applications being drafted by the police without the benefit of legal advice.

10.319 In the course of the Inquiry hearing, Mr Richardson said it was possible that Mr Rocca's preference was discussed at the hearing of the application for the warrant, but he did not have a note of the hearing and did not remember any questions being asked at all [T/4/115.4, 120.4]. DS Clarke said that the Magistrate had asked '*a couple of points to – to clarify the evidence I had told him, rather than anything ...outside of the evidence*', and that it could have taken a matter of seconds [T/9/35.11]. Since there is no record of that point being made, and no one actually remembers the point being made, I am sure that it was not. I think that this was unfortunate. As it seems to me, if the Magistrate had been told that Mr Rocca favoured an application for a production order rather than a search warrant, he might have hesitated before

granting the warrant. He might even have called for the RGP to be legally represented, perhaps even by Mr Rocca himself, so that this point could be properly considered.

OTHER COUNTER ARGUMENTS

10.320 Nor does the Information stress Mr Levy's standing in Gibraltar. At paragraph 41 [B3736], DS Clarke observed, almost in passing, that he '*... is extremely influential in Gibraltar with very close connections to the Chief Minister and other HMGoG ministers. He is a senior partner of Hassans and has significant financial capabilities available to him*'. But apart from the casual reference, the application does not pose the counter argument which might be presented by his good character and standing in the legal profession, or in the community in Gibraltar.

10.321 Supt Wyan acknowledged that the application did not put forward this counter argument. Indeed, he sought to turn it on its head by saying that with Mr Levy's position and status, it was equally arguable that he had considerably more to lose than others if he were to be found guilty, and therefore was more likely to destroy or conceal evidence (Wyan 3 para 25 [A1043]). He suggests that this argument may favour obtaining a search warrant over a production order. I find this argument unpersuasive. Plainly, neither Mr Levy's standing in the legal profession nor his position as a prominent citizen of Gibraltar can give an immunity against the proper processes of the law, particularly when he was himself a suspect. However, Mr Levy's standing in the legal profession and in the community should have been spelt out in the application as a factor to put in the balance when considering whether to grant the application.

MR LEVY'S ANSWER

10.322 Mr Levy indignantly asserts that the fears that he would destroy documents were '*entirely baseless*' [T/8/146.17]. He says that '*as a professional officer of the court*' he would never thwart an order of the court in that manner [T/8/148.9]. In my opinion, that he was an officer of the court is but one of the

relevant considerations; that he was suspected of serious crime is another highly relevant consideration. Being an officer of the court does not grant an immunity against a search warrant if the other circumstances would justify – or even require – the making of such an order.

LEGALLY PRIVILEGED AND OTHER SENSITIVE MATERIAL

10.323 It is argued against the warrant that its terms were too wide, with the result that they would be bound to include material to which legal professional privilege would inevitably attach, affecting many other clients of Hassans, or which was confidential or sensitive for some other reason. It is argued that these risks were not adequately stressed in the application or spelt out with sufficient clarity on the face of the warrant.

10.324 On the other hand, DS Clarke recognised that such material would be present and that the material seized would have to be reviewed by an independent lawyer [T/9/21.7]. The RGP even recognised that it might be better to allow Mr Levy himself to recommend a lawyer from the UK to do so [T/4/30.19]. Although, having regard to the Covid restrictions in place at the time, I think this was a far greater problem than was realised at the time.

10.325 I have identified this problem with the application and with the warrant. However, I do not propose to determine these issues, which would be highly relevant if I were conducting a judicial review, which I am not, as I have frequently said.

EXPERT EVIDENCE

10.326 I turn to another point. The Former Operation Delhi Defendants, and Mr Levy himself, are critical that despite Mr Rocca's recommendation on 17 January 2020 that the RGP should obtain expert evidence, no such evidence had been obtained by the time that of the application (Hassans Closing para 25; Former Operation Delhi Defendants Closing para 8). The absence of any such evidence is not referred to in the application.

10.327 Bland had obtained a report from PriceWaterhouseCoopers [B5215], but that would not qualify as expert evidence admissible in the criminal courts. The RGP had approached the National Crime Agency, but they were unable to provide such a report [T/5/108.10]. Later, the RGP did obtain an expert report, which they subsequently disclosed as '*unused material*' (Perez 1 para 56 [A1244]).

10.328 I have made it very clear that it is no part of my duty to inquire into the reasons and circumstances of Mr McGrail's retirement to determine whether there was, or was not, sabotage or hacking into the NSCIS system. I have therefore taken the view that whether any inference can, or should be drawn from the state, or absence, of the expert evidence is also quite irrelevant to my purposes.

10.329 I draw attention to this point, only to show that I am aware of it and to give – yet again – my reasons for not venturing any comment or opinion upon it.

COMMENT ON THE APPLICATION FOR THE WARRANT

10.330 Applications made to the courts for search warrants, without notice, cast upon the applicant a heavy burden to disclose all relevant material to the court, and particularly those which might be used to argue against that grant, so that the judge (or magistrate) is aware of all the relevant circumstances before deciding whether to grant the application. I have already said that my Commission does not require – and indeed does not permit – me to rule as to legality of the warrant. However, I have found facts which might lead others to consider that the application for the search warrant, as presented to the court, had some procedural flaws.

10.331 In fact, no application for judicial review was made; but it does not follow that the warrants were lawful. There may be reasons why Mr Levy did not then initiate proceedings. Mr Baglietto KC, acting for Mr Levy, said that they did not do so having regard to the attendant publicity, the cost and the work involved

[T/9/119.11]; I think it likely that the first of those three reasons carried far more weight with him than the second and third. I will return to this point.

10.332 Furthermore, the possible procedural flaws in the application for the warrant are relevant also because doubts as to its legality (to the extent that they were held at the time) might, at least in part, explain why Mr Picardo, Mr Llamas, Mr Baglietto, and indeed Mr Levy, acted as they did in the days and weeks that followed. I accept Mr Baglietto and Mr Levy were entitled to mount a robust defence to the warrant, but their sincere and reasonable belief that there might have been some flaws in the procedure would not justify inappropriate interference.

10.333 On the other hand, the RGP contends that there were grounds on which the warrant could properly have been granted, and that if all these matters had been properly and fully spelt out in the application, the Stipendiary Magistrate could still have granted the warrant (but I do not decide the point).

THE HEARING IN THE MAGISTRATES' COURT

THE HEARING

10.334 Although Mr Richardson had contemplated applying to the Supreme Court, on 6 May, the application was in fact listed before the then Stipendiary Magistrate, Mr Pitto. This was because DS Clarke was advised to do so by DI Goldwin in Supt Wyan's absence [T/9/30.9].

10.335 Mr Richardson, DI Goldwin and DS Clarke attended the hearing (Supt Wyan was still self-isolating with Covid symptoms). As I have already said, the RGP were not represented by counsel instructed by the OCPL. The application had been submitted to the Court in advance.

10.336 It was not then the practice in Gibraltar to record applications for warrants, and no such record was made. That practice has now changed. I recommend that, as a matter of practice, all hearings for a search warrant (and perhaps for

a production order as well) should be recorded so that there can be no dispute about what was said, as has been the practice in England and Wales for some years. I suggest that it is particularly important that applications made without notice are recorded.

10.337 DS Clarke gave evidence to the Inquiry that the application took about two hours, but he also said that he read the Information in its entirety to the Magistrate (Clarke 1 para 10 [A1048]). Since it was 38 pages long, this can hardly have left any time for the Magistrate to ask questions; indeed, no one remembers any specific question that he asked at all. DS Clarke thought that the questions might only have lasted ‘seconds’ [T/9/35.17]; he said that if the Magistrate did ask any questions, he gave no information over and above what he had already written in the application [T/9/37.1]. DS Clarke had a place in his notes for ‘*questions asked*’, which he left blank [T/9/36.3]. He said that he was the only police officer to speak [T/9/47.16]. The Magistrate did not ask any questions about the suggestion that Mr Levy might destroy evidence, nor about why a search warrant had been preferred over a production order [T/9/31.7-38.3].

10.338 I note that Mr Richardson said in the meeting on 13 May (which I will return to) that the Magistrate asked ‘*how we would deal with the legally privileged material*’ [B213], and he also said in his written evidence that DS Clarke had answered questions raised by the Magistrate (Richardson 2 para 18(d) [1290]), but no one, not even Mr Richardson [T/4/120.4], now remembers that question being asked.

THE MAGISTRATE’S RULING

10.339 I come then to consider the Magistrate’s ruling by which he granted the warrant. The written record of his reasons [C6728] was not drafted until 13 May, after the police had called to execute the warrant, and after complaints had been made as to its illegality, and indeed after Mr Baglietto on Mr Levy’s behalf had asked for a copy of the ruling, that very morning. The reasons given

are very brief; that is not in itself a fatal flaw, but it does not suggest that the Magistrate examined the grounds critically.

10.340 He *'was satisfied that the evidence presented disclosed sufficient grounds on which the warrants could be issued. The evidence pointed to the existence of a conspiracy involving Mr Levy as a participant'* and *'... issuing the warrants was justified in order to obtain and preserve existence (sic) necessary for the police investigation. The evidence showed complete and incomplete exchanges between Mr Levy and his alleged co-conspirators currently under investigation.'* I think *'existence'* must have been a typo for *'evidence'*.

10.341 It is, perhaps, not surprising that he did not consider whether it might have been more appropriate to apply for a production order rather than a search warrant instead, since the application had not addressed this issue beyond a bare assertion that a production order may risk serious prejudice to the investigation.

LATER AMENDMENT TO THE SEARCH WARRANT

10.342 The following day (7 May) DS Clarke successfully applied to the Magistrates' Court to have the material sought under the warrant amended by adding another paragraph seeking: *'Any documentation relating to 36 North Limited, Astelon Limited and/or Icode Limited whether held digitally or otherwise'* [B3602]. I think, possibly unintentionally, this amendment may have greatly increased the volume of material which was covered by the warrant.

THE APPLICATION FOR THE WARRANT WAS NOT SENT TO MR PICARDO

10.343 Sometimes, it is worth spelling out an obvious point, which otherwise might be lost: of course, no one sent the application for the search warrant to Mr Picardo. It was – literally and legally – none of his business. This is a point to which I will return.

CONFERENCE CALL WITH MR GAGGERO

10.344 I interpose that on 7 May 2020, there was a conference call between Mr McGrail and Mr Gaggero, which Mr Richardson noted in his Delhi day book [C1789]. Mr McGrail told Mr Gaggero that '*V. sensitive exec. action pending – not to be discussed by iphone*'. The '*v. sensitive exec. action*' was plainly the pending execution of the search warrant, which had been granted the day before (and was amended on the same day). Mr McGrail explained that it was necessary to keep Mr Gaggero informed of progress [T/6/161.15]. Whilst I understand the importance of keeping Mr Gaggero, as the complainant in the proceedings, informed of the progress of the investigation, I think Mr McGrail should have waited until the police had called at Hassans before telling – or at least hinting – that the RGP were about to take some executive action.

10.345 There follows in Mr Richardson's day book some entries relating to the '*Grey Man*' [C1790], which are difficult to interpret, but Mr Richardson understood this to be the name by which Mr Gaggero referred to Mr Levy [T/4/122.10]. I have made very clear that I will not make any findings, nor entertain submissions, on whether Mr Gaggero was – or was not – influencing police actions.

COMMUNICATIONS BETWEEN MR PICARDO AND MR LEVY BEFORE 12 MAY 2020

MR PICARDO'S EVIDENCE

10.346 I have always recognised that it was important to ascertain the contact between Mr Picardo and Mr Levy. Mr Picardo's evidence has evolved through various affidavits and was a topic on which he was questioned at the hearings. Rather than simply summarising his final position, I think it would be more revealing to outline his developing position, which I base on the chronology helpfully drawn upon by CTI in their Facts Schedule. (I will turn later to the communications between Mr Picardo and Mr Baglietto).

- 10.347 In his first affidavit, Mr Picardo says that Mr McGrail first briefed him about Operation Delhi on 13 May 2019 (Picardo 1 para 30 [A188]); this is the meeting which I have already dealt. He then said that he became aware ‘*from Mr Levy himself*’ that he was one of the persons who was ‘*of interest*’ to investigators (Picardo 1 paras 38-9 [A190]), but he did not then say when or how Mr Levy informed him; although he later said in his second affidavit (Picardo 2 para 14.2 [A226]) that he believes it was long after 11 May 2019. In his first statement, he gave no further details about the communications which he had had with Mr Levy.
- 10.348 Mr McGrail had alleged in his third affidavit (McGrail 3 para 137 [A100]) that he knew that Mr Picardo was in contact with Mr Levy while Hassans were threatening litigation (against the RGP following the grant of the search warrant). Mr Picardo responded to these allegations in his second affidavit (Picardo 2 para 10 [A224]). He said that it appeared that Mr McGrail was insinuating that he (Mr Picardo) was ‘*in cahoots*’ with Mr Levy in relation to that litigation. Mr Picardo said that he had communications with Mr Levy ‘*about these claims*’, but none of them in any way amounted to ‘*encouraging, supporting or otherwise promoting*’ Mr Levy’s claims, although he did think it was right for Mr Levy to challenge the issue of the warrant.
- 10.349 Following a specific request by the Inquiry to provide dates and times of any conversations between him and Mr Levy on the topic of his status as a person of interest (I have addressed this terminology above) in the Operation Delhi investigation and the search warrants, Mr Picardo provided further details of his contact with Mr Levy in his third affidavit (Picardo 3 paras 5-17 [A233-5]). He said that he had discussed with Mr Levy the fact that the RGP had suggested that he might be ‘*a person of interest*’ in the investigation ‘*on a very large number of occasions*’. He could not say when these calls took place, nor how long they took, because there were so many calls. There were no notes of the discussions because the issue was raised with Mr Levy when Mr Picardo spoke to him, which more often than not was ‘*during informal telephone*

conversations'. He had consistently told Mr Levy that he *'was sure that the investigation would exonerate him given that, from what I knew of him, I was sure that he would not have acted in a manner which was contrary to law'*.

10.350 Mr Picardo was asked about this at the Inquiry hearings and confirmed this account.

10.351 Mr Picardo said that Mr Levy had raised the matter with him as Mr Levy thought the investigation was unfair and motivated by a competitor (who he subsequently identified as Mr Gaggero), but that Mr Levy did not ask him for help [T/16/143.18]. He said that although the conversations concerned the police wanting to talk to Mr Levy, he did not *'think the conversations were about [the] investigation'* [T/17/85.9]. Therefore, his evidence was that he knew that Mr Levy *'had a search warrant executed in respect of him and that there were questions that he had to answer'* [T/17/168.1].

10.352 He said that he *'frequently discussed'* with Mr Levy the issue of the search warrants. There are no notes of these *'informal telephone conversations'*. There were *'no meetings in my office such as may have resulted in a note of it'*.

10.353 These conversations, he said, were *'entirely proper, natural and appropriate, not least given my very close friendship and relationship with him.'* He said that his office *'does not disqualify me from doing so, still less does it require me to engage in an unnatural omission to do so to avoid the speculative and reckless suspicions of Mr McGrail or anyone else.'* I will deal with his account of the conversation between Mr Levy and Mr Picardo on 12 May 2020, when I later deal with the visit of the RGP to Hassans offices. Similarly, I will deal with the meeting that he had with Mr Levy and Mr Baglietto on 17 May 2020 when I reach that point in my chronological narrative.

10.354 I think that I should not move on without pointing out that, in due course, on 28 October 2020, the RGP wrote to Mr Levy to say that he was no longer

considered a suspect [C5177]. He had, in effect, been ‘*exonerated*’, as Mr Picardo had accurately foreseen, but I do not think that I should wait until I reach October 2020 in my chronological review (many pages hence) to point this out.

MR LEVY’S EVIDENCE

10.355 Mr Levy said in the course of his oral evidence that he recalled discussing his status as a person of interest to the RGP with Mr Picardo ‘*once or twice*’, but not on numerous occasions [T/8/140.1]. He also did not recall the actual phrase ‘*person of interest*’ [T/8/141.5].

10.356 This evidence is in striking contrast to Mr Picardo’s account; they cannot both be right. I consider it to be far more likely that Mr Picardo’s version is right: there is no reason why he would speak of these many telephone calls if they had not happened. I do not think that Mr Levy was lying when he said they only spoke once or twice. Since I am not satisfied that he was lying, I think it more likely that he must have forgotten.

WHEN DID MR LEVY REALISE THAT HE HAD BECOME A ‘SUSPECT’?

10.357 Mr Levy did not formally become a suspect until the meeting between the RGP and Mr Rocca on 8 April 2020 (with which I have already dealt). For obvious reasons, it is not the practice for the police to notify suspects of their changed status. Mr Levy’s evidence was that he was unaware that he was a suspect until 12 May [T/8.134.23], and there is no evidence to the contrary. It must follow that Mr Picardo cannot have known that he was a suspect before 12 May.

DIGITAL MESSAGES PASSING BETWEEN MR PICARDO AND MR LEVY

10.358 During the Main Inquiry Hearing, various issues were raised about the extent of the disclosure made by Mr Picardo, Mr Levy and Mr Baglietto. In particular, after May 2019, Mr Picardo and Mr Levy, who had previously been in frequent contact by WhatsApp, changed their means of communication from

WhatsApp (of which there would be a record), to *'discussion'* or *'conversation'* by word of mouth (of which there would be no record). Further, neither Mr Levy nor Mr Baglietto disclosed any WhatsApp messages to the Inquiry prior to the Main Inquiry Hearing, although Mr Baglietto subsequently disclosed a small number of SMS messages, and Mr Levy subsequently disclosed a small number of WhatsApp messages. I deal with the submissions made on these points in Annex 2 of the Report. In summary, I decline to draw an inference against Mr Picardo and Mr Levy for the change in their communication patterns, nor against Mr Levy or Mr Baglietto for the absence of messages on their phones.

CHAPTER 11:

OPERATION DELHI FROM 12 MAY 2020

THE POLICE VISIT HASSANS WITH THE SEARCH WARRANT

MR MCGRAIL NOTIFIES MR PICARDO AND MR LLAMAS

11.1 On 12 May, Mr Richardson with Supt Wyan and other RGP officers went to Hassans' offices with the warrant. Mr Richardson and Mr McGrail both recall that Mr Richardson texted Mr McGrail stating that he was about to execute the warrants (McGrail 1 para 29 [A9]; [T/6/202.5]; Richardson 2 para 18(f) [A1291]). That was not strictly accurate since, in accordance with the plans which had been agreed between Mr Richardson and Supt Wyan, he would execute the warrant only if Mr Levy would not hand over his devices 'voluntarily' [B3278; T/4/89.1]. Further, as I explain in the Annex to this Report, that message was not produced to the Inquiry by Mr McGrail, Mr Richardson, or the RGP, and still cannot be located. However, I am satisfied that it was sent and received.

11.2 At 12.25, Mr McGrail messaged Mr Picardo:

'before you hear it from anyone else I want to inform you that detectives are executing a search warrant at Hassans for (JL) in relation to the case against Perez, Cornelio and Sanchez. It's been done in the most discreet of ways and we're hoping there is co-operation.' [B1432]

11.3 At 12.34, Mr Picardo responded to this effect:

'... I think that is a bad decision. A search warrant should only have been sought if you believed that the person in question was not going to cooperate and will try to destroy evidence. If, as you say, you are hoping for cooperation, especially in a case involving a senior Silk and head of Gibraltar's largest legal firm, you should, in my view, first have sought to contact

that person and obtain cooperation. Given my close personal relationship with [Mr Levy], I won't comment further.' [B1432]

- 11.4 As I shall later point out, Mr Picardo did not long keep his very proper resolution not to comment further.
- 11.5 Mr Picardo explained that he sent this message because he thought that there was what he called '*a jurisdictional risk*' in the execution of a search warrant at Hassans because '*Gibraltar's reputation was in play*' [T/16/166.12]. He also stated that when he sent this message, he had '*no reason to believe the investigation was of Mr Levy*' [C4748]. In any event, I do not consider this short comment by Mr Picardo to be an interference in the investigation.
- 11.6 By WhatsApp (at 12.26), Mr McGrail texted Mr Llamas informing him that officers were executing a warrant at Hassans [C6925]. Mr Llamas said that this message '*took me by surprise as it was a clear violation of what Mr McGrail and I had agreed in our meeting of 7 April 2020*' (Llamas 1 para 38 [A280]). At 12.28, Mr Llamas replied: '*Ian, we had agreed that you would come to me with a rationalisation of charges before doing anything?*' [C6925-6]. At 12.29, Mr McGrail replied to Mr Llamas: '*We agreed we'd do that when all the loose ends were tied up and this included the enquiries with [Mr Levy]*' [C6926]. At 12.30, Mr Llamas replied, '*No, that was not what we agreed*' [C6926]. Mr McGrail said that Mr Llamas had '*completely misconstrued the situation*' [T/6/193.22]. This short exchange identified an important issue of fact between them, which I have already resolved (preferring Mr McGrail's version).
- 11.7 At 12.29, Mr Llamas messaged Mr Picardo asking '*Are you free? 2 mins?*' [B1417]. Mr Picardo's evidence was that he then spoke to Mr Llamas, but he does not remember if it was a telephone call or face-to-face [T/16/164.15]; Mr Llamas believes it was in person [T/11/203.23]. In any event, they spoke, obviously, to discuss these developments.

THE POLICE ARRIVE AT HASSANS

11.8 Meanwhile, at about 12.30, Mr Richardson and Supt Wyan attended Hassans, with the search warrants [B3497]. They were in plain clothes, to avoid attracting attention to their visit. Mr Levy was at home. At 12.46, Mr Richardson spoke to Mr Chincotta, the Managing Partner at Hassans, who was in the offices and contacted Mr Levy at 12.50 [B3497]. Mr Richardson spoke to Mr Levy on the phone and asked Mr Levy to come to the offices of Hassans. Supt Wyan's note recorded that: *'JL upset. States there will be repercussions. PR says that he needs to follow up inquiry. JL says he will call back.'* [B3497]. However, Mr Levy's evidence is that Mr Richardson told him that *'if you don't come now, there will be consequences'* [T/8/144.3]. Mr Levy called back at 13.05 and stated that he would attend.

MR LEVY RANG MR PICARDO

11.9 Mr Levy told the Inquiry that, as he walked to his office, which is only ten minutes' walk away from his house [B3484], he rang some of his children to tell them what was happening. He also called two friends who were barristers in England [T/8/157.25]. He then called Mr Picardo *'as a friend'* [T/8/158.5]. He says they spoke for about two minutes; he told Mr Picardo that he was on his way to Hassans offices *'to deal with a warrant'* [T/8/157.6-17]. He says that he did not ask Mr Picardo to do anything, since there was nothing he could have done [T/8/225.24, 226.20]. He recalled that Mr Picardo *'expressed consternation in relation to the warrant'* [T/8/159.9].

11.10 Mr Picardo dealt with this call in his third statement (Picardo 3 para 12 [A234]) in response to further questions from the Inquiry Team: *'I recall ... that I spoke to Mr Levy on the telephone on the 12th of May. I do not recall the time at which I spoke to him. I expressed to Mr Levy my consternation at how the Police had acted in executing a Search Warrant at his home'*. Mr Picardo did not recall whether he spoke to Mr Levy before or after speaking to Mr McGrail

[T/16/237.25]. He described Mr Levy's mood as being '*a combination of incensed and depressed about what was happening*' [T/16/239.7].

- 11.11 One of the questions which arises is why Mr Levy made this call to Mr Picardo: was he hoping – indeed intending – that Mr Picardo should use his political influence upon the prosecution to protect him from the execution of the warrant and from all the consequences that might follow, or was he just seeking advice and comfort from his friend?
- 11.12 Mr Levy said that he did not communicate with Mr Picardo when he was at his office with the RGP officers (Levy 2 para 9.6 [A1515]). This is not inconsistent with his evidence that he rang Mr Picardo whilst on his way to meet the RGP officers at Hassans offices on 12 May [T/8/157.3].
- 11.13 At the invitation of Mr McGrail's lawyers, the Inquiry Team also asked Mr Picardo whether he spoke to Mr Levy that day, 12 May, and in particular between 12.20 to 13.00. Mr Picardo confirmed that he did speak to Mr Levy, although he cannot remember the time of the call (Picardo 3 para 12 [A234]). He added that the incoming telecom records for that day no longer exist, but that none of his outgoing calls from 12.20 to 13.00 were to Mr Levy (Picardo 3 para 14 [A235]). He readily accepts that on that day, and indeed on many subsequent occasions, he discussed the issue of the search warrant with Mr Levy, and told him that he considered the police action to be unnecessary, inappropriate and indeed unlawful. He still strongly holds this view and maintains and considers he is quite entitled to hold it (Picardo 3 para 8, 12 [A233-4]). I will later consider the propriety of these calls.

MR LEVY TWICE CALLED MR LLAMAS

- 11.14 At 12.57, Mr Levy made a 'missed call' to Mr Llamas (Llamas 1 para 48 [A282]). He rang again at 13.07, which was another '*missed call*' (Llamas 1 para 48 [A282]). At 14.49, Mr Llamas replied by text stating '*James just seen your missed call*' [E1136]. So, having spoken to the Chief Minister, Mr Levy was

seeking to speak to the Attorney-General. This is an unusual sequence of events by a person suspected of serious crime, but on the other hand, it is no doubt unusual for someone suspected of serious crime to be a personal friend of the Attorney-General and the Chief Minister.

THE DISCUSSION IN THE HASSANS BOARDROOM

- 11.15 I return to what happened at Hassans' offices. The police wore body cameras to record what happened but the cameras were not activated until after Mr Levy had arrived and the police spoke to him in the boardroom. Mr Levy gave evidence that before the RGP started the bodyworn cameras, Mr Richardson informed him that '*advice had been obtained at the highest level*', which Mr Levy understood to be the DPP [T/8/143.23-144.21]. But this exchange is not on the recording.
- 11.16 Mr Richardson did not remember saying this to Mr Levy but he gave evidence that he told Mr Chincotta (the Managing Partner of Hassans) '*in the lift on the way down*' that the RGP would not have acted on their suspicions without taking advice '*at a high level*' [T/4/133.5] and perhaps even '*at the highest level*' [T/4/133.25], although he did not make clear to whom he was referring. I cannot now make a clear finding of fact as to precisely when or to whom Mr Richardson spoke, but I am satisfied that he told either Mr Levy or Mr Chincotta that the RGP were acting on advice taken at a '*high level*' or even at '*the highest level*'. Since Mr Levy and Mr Chincotta spoke to each other about what had happened, I do not think it matters to whom Mr Richardson spoke, since whatever the source of the information, Mr Levy was left believing that this was indeed the position.
- 11.17 Mr Levy went with Mr Richardson and Supt Wyan to the boardroom; what passed between them was then filmed, recorded and later transcribed [B3463]. At 13.30, they cautioned Mr Levy (although they stated that it was not a police interview under caution), and read out a prepared summary of the facts alleged against him, which included this allegation: '*... the evidence*

gathered so far indicates that you may have been involved in conspiring to dishonestly obtain the NSCIS maintenance contract [B3464]. Having outlined their allegations, the document continued that they *'were keeping an open mind and that any explanation that he provided may cause the investigation to proceed in a different direction'*. This approach was echoed in a passage in the letter [B3301], which they handed to Mr Levy. Mr Richardson continued that they wanted *'to give you an opportunity to give your version of events, your account which may shed a completely different light on this'* [B3464]. Having cautioned him and spelt out the allegations, Mr Levy must then have realised that he was a suspect. I accept that there is no evidence that he knew this beforehand.

- 11.18 They then asked for him to produce his mobile telephone, laptop and iPad [B3465-6]. Mr Richardson also handed him a document [B3465, B5391-2] which invited him to attend at New Mole House police station for a voluntary interview under caution on Monday 18 May. The document set out a list of the topics about which they intended to ask him, including his role at Hassans, 36 North, Astelon Ltd, communications with Mr Cornelio, Mr Perez and Sanchez and NSCIS. The list included, at item 9: *'Communication with the Chief Minister in relation to any of the above'*. That topic becomes important, as I shall explain when I come to consider the later meetings that Mr McGrail and Mr Richardson had with Mr Llamas and others.
- 11.19 That document ends with the advice, or warning: *'This is an ongoing police investigation, and the information provided herein must not be disclosed to any third party without authority of the RGP'* [B5392]. That also has a relevance, to which I will return.
- 11.20 Mr Levy argued that they *'should never have got a warrant against... an officer of the court'* [B3486]. He repeatedly described the warrant as being *'flawed'*, *'very misconceived'*, *'unlawful'* and an *'abuse of process'* [B3467; B3468; B3470; B3474; B3479; B3486].

- 11.21 Mr Levy variously claimed during his exchanges with Mr Richardson that: *‘there is something very dark in this investigation and we are going to get to the bottom of it’* [B3479]; that he was *‘going to challenge you much deeper than this’* [B3488]; *‘There is going to be a lot coming out of here because I know a lot’* [B3492] and *‘I have evidence that it is being influenced and you know what, you know that Mr Gaggero is very important. I also get evidence and I intend to bring it out and I intend to make a very big thing about the involvement of people who should not have been involved....’* [B3468]. I think these were all references to the power which he believed Mr Gaggero exercised in Gibraltar, and indeed over the RGP and the investigation process, about which I deliberately make no finding.
- 11.22 It was in answer to these allegations that Mr Richardson said, *‘I can assure you, with my hand on my heart, that nobody has interfered at all with ... my conduct of this investigation’* [B3475]. I think he was seeking to refute the implied allegations made against Mr Gaggero.
- 11.23 Later at 14.50 [B3498], Mr Richardson went with Mr Levy to his home; he personally conducted what he called *‘a rudimentary and cursory’* search of Mr Levy’s work and home offices [B3446]. I think he did this so as formally to comply with what he believed was his duty. This visit was not recorded by the body worn camera, but nothing turns on that. They then returned to Hassans’ offices.
- 11.24 After consultation in private with Mr Chincotta, and after speaking to leading counsel in the UK, Mr Levy said that although he had been advised that the execution of a warrant was unlawful and an abuse of process, he had also been advised that the means to challenge it was by later legal action [B3486]. In the circumstances, he decided that he would surrender his devices, but he reserved his right to challenge the legality of the warrant later [B3486]. Mr Levy said that, even though he had been advised that the warrant should not have been obtained against an officer of the court, he would comply with what was

asked of him, but he claimed privilege in respect of client material which was located on his devices [B3486]. He said that any such material should be vetted by independent counsel [B3486]; he had earlier expressed a preference that such counsel would be from the UK [B3466]. He asked for prior notice before the examination took place, *'to see whether I want to take it to court'* [B3486].

- 11.25 He arranged for his IT technician to create a backup, agreed to hand over his telephone and iPad *'voluntarily'* [B3486], and signed a *'consent form'*. Mr Levy had repeatedly made clear throughout their exchanges that he was willing to hand over his devices *'voluntarily'*, but I think that although this is how the police described the procedure, it is rather strained usage of the word *'voluntarily'*, since he handed it over under compulsion and with protest and only to avoid the warrant being executed, with all the consequential adverse publicity.
- 11.26 Mr Richardson later pointed out that it had taken nine hours of persuading for Mr Levy to decide to hand his telephone over [B3536]. If that was intended as criticism, I do not accept it: Mr Levy was quite entitled to seek legal advice, and to take time to decide what course of action to follow, and it took *'quite a bit of time'* to back up the systems [T/8/161.1].
- 11.27 As Mr Levy himself conceded at the time, I think it only fair to point out with respect to Mr Richardson and to Supt Wyan, that the transcript records that the tone of the visit was *'sensitive'* and *'respectful'* [B3467; B3486; B3491; B3494-5]. Mr Levy repeated these points in his evidence to the Inquiry when he said the officers were *'always courteous'* [T/8/151.15].

MR MCGRAIL CALLED TO A MEETING WITH MR PICARDO

- 11.28 Mr Picardo's evidence was that just after sending his response to Mr McGrail at 12:34, he was told that Mr McGrail was in the Convent on an *'unrelated matter'* and he therefore asked Mr McGrail to come up to his office, which he

did (Picardo 1 para 41 [A191]). In evidence, he clarified that *‘some minutes had passed’* [T/16/175.4]. He explained that even though he had said that he would not comment further, he saw fit to call Mr McGrail as he wanted more information, *‘because this was jurisdictionally important: Gibraltar’s reputation was potentially going to be tarnished by this action...’* [T/16/175.4]. Mr McGrail said that he had been called out from a Covid meeting with the Minister of Justice and asked to go and see the Chief Minister and the Attorney-General, which he did (McGrail 1 para 32 [A9]).

11.29 There is a conflict as to what was said at that meeting.

MR PICARDO’S ACCOUNT

11.30 Mr Picardo says that he was angry from the time of receiving the message [T/16/169.10, 178.25]. He was angry and seriously concerned about the effect of the RGP’s actions (Picardo 1 para 47 [A192]). He said that he did not know whether the police were still at Hassans during this meeting, but he *‘approached this on the basis that the warrant had been executed’* [T/16/198.20]. He told Mr McGrail that he believed that *‘the RGP had not acted properly in the execution of a search warrant in respect of a senior lawyer like Mr Levy’*, and said that he was not making the point because he was close to Mr Levy, as he would make the same point about other senior lawyers (Picardo 1 paras 44, 47 [A191-2]). Mr Picardo accepted that he made *‘[his] strength of feeling very clear...’* [T/16/177.13] and that he used *‘firm and forthright language’* (Picardo 1 para 44 [A191]); he even concedes that his statements were *‘robust’* and *‘very likely laced with expletives’* (Picardo 1 para 51 [A193]). He did not accept that he *‘berated’* Mr McGrail ([T/16/177.13]), as Mr McGrail alleges, and which I will turn to below.

11.31 A Commissioner of Police, with a lifetime’s exposure to life on the streets, is perhaps better able to withstand abuse than others; Mr Picardo observed – accurately, I think – that Mr McGrail was *‘not a shrinking violet’* [T/16/178.17]. However, such language should not nowadays be directed at anyone in the

workplace; it cannot be justified simply on the grounds that it was directed at an experienced Commissioner of Police.

- 11.32 In his later letter of 5 June [C4739], Mr Picardo wrote that he considered the search warrant was *'of dubious legality, abusive, unprecedented in policing in Gibraltar, incompatible with public confidence in policing and the good name and reputation of Gibraltar as a business and finance centre.'* He was then expressing these strong opinions without any knowledge of the facts alleged against Mr Levy, still less the evidence on which it was based [T/17/65.1]. As I have already said, at this stage, he had not seen the NDM Assessment, or the Charging Report, still less the Information. Now, having read the evidence, he has firmed up his views: he says that the warrant was granted on the *'flimsiest of evidence'* [T/16/182.13].
- 11.33 Mr Picardo says that he explained to Mr McGrail the possible problems which he foresaw might result from the execution of the search warrant, including the seizure of legally privileged material, and of the personal and confidential information of many other persons, including clients (Picardo 1 para 45 [A192]).
- 11.34 He says that he also told Mr McGrail that the Government might face financial consequences from claims for damages for breaches of privacy, confidentiality and other claims, that officers of the court were required to cooperate with orders of the court such as production orders, and that he believed Mr McGrail knew that his position was that the investigation should of course continue and that if evidence was found of corruption by a civil servant, he had been clear that the Government would be the complainant (Picardo 1 para 47 [A192]).
- 11.35 Mr McGrail responded that the warrant had been granted, after a judicial hearing, by a Magistrate. Mr Picardo, relying on his experience as a criminal law advocate many years before, considered that warrants were routinely granted, without careful legal analysis (Picardo 1 para 48 [A193]).

11.36 Mr Picardo also claimed that Mr McGrail first said that he had taken the advice of the Attorney-General *'on this matter'*. Mr Llamas, who was present in the room, said that he had not so advised (Picardo 1 para 49 [A193]).

11.37 Furthermore, Mr Picardo claimed that Mr Llamas had said, during that meeting, that Mr McGrail had indeed sought his advice in respect of the police investigation into this matter and had agreed that there should be *'no further actions in that respect without them speaking further'* (Picardo 1 para 50 [A193]). I have already rejected this claim as I reviewed the evidence relating to the meeting on 7 April and I need not repeat it here.

11.38 Mr Picardo continued:

'Mr McGrail then insisted that he had sought the advice of the Director of Public Prosecutions on whether to obtain a search warrant or a production order for Mr Levy. Mr McGrail then specifically told me that the advice of the DPP was that they should proceed by way of search warrant. The Attorney-General said he did not believe that the DPP had given such advice'.

Mr Picardo says that he too expressed disbelief at the DPP giving such advice, but that if it had done so, then he would have to disagree with the DPP too (Picardo 1 para 49 [A193]).

11.39 Mr Picardo confirmed that Mr McGrail specifically used the word *'warrant'*, and not *'intervention'* as had been suggested to him [T/16/206.13]. Furthermore, Mr Picardo confirmed that Mr McGrail had said that the DPP had advised that Mr Levy should be treated as a suspect, that the DPP had been advising throughout, and that they had been consulted in respect of the grounds on which to deal with Mr Levy [T/16/206.25; T/16/209.13; T/17/189.18].

- 11.40 As if to confirm his understanding of what Mr McGrail had said, immediately after the meeting, Mr Picardo asked Mr Llamas to check with Mr Rocca whether he had advised the RGP to apply for a search warrant (Picardo 1 para 54 [A194]). (I will consider later the exchange between Mr Llamas and Mr Rocca.)

MR LLAMAS'S ACCOUNT

- 11.41 I turn to Mr Llamas's account of that meeting, which largely mirrored Mr Picardo's account.
- 11.42 Mr Llamas said that Mr Picardo was angry and expressed his views to Mr McGrail in robust and no uncertain terms (Llamas 1 para 40 [A280]). Mr Llamas thought that *'berating is putting it too far. It was a difficult exchange. It was uncomfortable. The Chief Minister was angry...'* [T/11/209.3]. Anyway, he observed, Mr McGrail was a tough man, and could take it; indeed, he pointed out that Mr McGrail robustly defended his position [T/11/209.7]. He agreed that he did not intervene, but said that it was *'a very intense exchange between them both'* which was *'very fast and did not last very long'* [T/11/210.6].
- 11.43 He denied that he had joined in the criticism of Mr McGrail; indeed, he said he hardly spoke [T/11/210.15]. He accepted that he did not intervene to calm things down. However, he did say that he felt *'very uncomfortable that night'* [T/12/83.21], and that *'maybe that was an exchange that should not have happened thinking about it in hindsight'* [T/12/81.20].
- 11.44 Mr Llamas said that Mr Picardo said that the RGP's decision to execute the search warrants on Mr Levy was wholly inappropriate and ill-advised. He told Mr McGrail that Mr Levy was a highly respected member of Gibraltar society, the head of the Jewish community. He added that Mr Levy, and indeed Mr Picardo and Mr Llamas himself, were all officers of the court and, as such, were always under a duty to cooperate with the court and that he could not

therefore understand why the RGP had not approached Mr Levy in a less invasive way, such as by way of a production order (Llamas 1 para 40 [A280]).

- 11.45 Mr Picardo told Mr McGrail that he did not want him to think that he was reacting in this manner because of his strong ties to Mr Levy but that he would have reacted in the same manner had the search warrants been executed against any other senior member of the Bar (Llamas 1 para 40 [A280-1]).
- 11.46 Mr Picardo also expressed concern that personal devices belonging to Mr Levy had been seized, since they were likely to contain legally privileged material and, possibly, sensitive personal information. He told Mr McGrail that the Government might face claims for damages for breaches of privacy (Llamas 1 para 41 [A281]).
- 11.47 Mr Llamas recollects that Mr McGrail defended his decision on two grounds. First, he stated that the warrants had been granted by a judge who must have therefore been satisfied that the relevant threshold was met. Mr Picardo replied that that did not address the fact that the RGP had conspicuously failed to ask Mr Levy voluntarily to produce the documents and devices and that warrants were, in any event, normally granted without detailed legal examination (Llamas 1 para 42 [A281]).
- 11.48 Then Mr McGrail said that he had been taking advice from the Attorney-General and intimated that he (the Attorney-General) had approved of the course of action the RGP had taken. Mr Llamas says that he was '*startled*' by this assertion, which, he said, was totally untrue, and that he said so. Mr Llamas said that they had only discussed the investigation once, at the meeting of 7 April 2020, during which he said that they had not discussed the issue of a search warrant on Mr Levy at all (Llamas 1 para 43 [A291]).
- 11.49 Mr Llamas said that Mr McGrail then said that he '*had been taking advice from the DPP and that the DPP had advised him that the RGP should proceed by way of a search warrant*' (Llamas 1 para 44 [A281]). Mr Llamas said that Mr

McGrail specifically referred to a ‘*warrant*’, not ‘*intervention*’ [T/11/213.24, 214.8], and not just whether to treat Mr Levy as a suspect [T/11/214.10]. He recalled that Mr McGrail said that the DPP ‘*had advised that the RGP should proceed by way of search warrant*’ but he could not remember whether Mr McGrail had said that the DPP had been advising throughout [T/11/214.16].

- 11.50 Mr Llamas and Mr Picardo told Mr McGrail that they found it very difficult to believe that he could have received such advice from the DPP (Llamas 1 para 44 [A281]).
- 11.51 Mr Llamas then referred to the understanding that he had reached with Mr McGrail at their meeting of 7 April 2020, that Mr McGrail would take no further action until the charges had been rationalised. Mr Llamas said that he told Mr McGrail that there had been a breach of trust between them since he had acted in complete disregard of what they had agreed (Llamas 1 para 45 [A281]). I have already rejected his account of the meeting of 7 April.
- 11.52 After Mr McGrail left the meeting, Mr Picardo asked Mr Llamas to ask Mr Rocca whether it was true that he had advised the RGP to apply for a search warrant against Mr Levy (Llamas 1 para 46 [A281]). (As I have already written, I will consider later the exchange between Mr Llamas and Mr Rocca.)

MR MCGRAIL’S ACCOUNT

- 11.53 I turn to Mr McGrail’s account of this meeting. Mr McGrail described the tone of the meeting as a ‘*dressing down*’ (McGrail 1 para 32 [A10]); he thought that he was being ‘*reprimanded*’, ‘*berated*’ and even ‘*chastise[d]*’ (McGrail 1 para 35, 45 [A11, A14]; McGrail 2 para 4 [A47]); he accused Mr Picardo of being ‘*very angry*’, that his tone was ‘*arrogant*’ (McGrail 1 para 33 [A10]).
- 11.54 Mr McGrail said that the tone of the meeting was emotional and angry. He said ‘*The Chief Minister steamed into that room with ... flared nostrils, disjointed face, and really let rip.*’ [T/6/196.12]. In evidence, he elaborated that Mr Picardo had been the ‘*principal berater*’ but Mr Llamas had berated him ‘*to a*

lesser extent' and that Mr Llamas had not intervened to stop the berating [T/6/228.12; T/7/98.18].

- 11.55 Later that evening (at 22.05 on 12 May), Mr McGrail wrote an email to himself [B74], on which he relies, and which he seems to have drawn upon when he wrote his statement (McGrail 1 para 33-44 [A11-14]). I accept that this account was made when he knew that his actions had already been the subject of vigorous criticism. On the other hand, I accept that he did not yet know that he was being accused of lying, but he would know if he had lied. I am alert to the dangers of this account being self-serving.
- 11.56 He said that Mr Picardo described the situation as a '*complete blunder*' and asked '*Why go with a warrant?*' (McGrail 1 para 32 [A10]; [B75]).
- 11.57 Mr Picardo questioned why it was necessary to obtain a warrant at all. He asked whether he suspected Mr Levy of committing a crime; he pointed out that he was a senior Silk, the head of the Jewish community, the head of the biggest law firm in Gibraltar, and an officer of the court, with a very good reputation as a lawyer. He asked if Mr McGrail was suggesting that Mr Levy would destroy or dispose of evidence, and was '*very angry that he had obtained a warrant without considering a voluntary hand over of the material*' ([B75], McGrail 1 para 32 [A10]). Mr McGrail countered that by saying that he was suspected of serious crime.
- 11.58 Mr McGrail alleges that Mr Picardo said there would be '*consequences*' if he was right, in that the RGP had not conducted themselves properly [B75]. Mr McGrail took this to be more than just putting pressure upon him, amounting to a threat (McGrail 1 para 34 [A11]). Mr Picardo said by referring to '*consequences*', he meant that there would be possible legal action by Mr Levy and Hassans against the RGP on the grounds that the warrant had been granted unlawfully, with consequences to the taxpayers of Gibraltar (Picardo 2 para 13 [A226]). When questioned about this at the Inquiry, Mr McGrail said he thought this meant that his '*head was on the line*' [T/6/196.20]. I thought it

striking that when Mr McGrail was giving his account to the Inquiry about this threat – as he perceived it – he was close to breaking down; his reaction was, as it seemed to me, plainly genuine. I have no doubt that he was telling the truth about his reaction at the time.

- 11.59 As to whether Mr McGrail had said that he consulted the Attorney-General about the warrant, Mr McGrail explained that the DPP, and the newly created OCPL, had their offices in the Attorney-General's chambers, and the police, when consulting the DPP or the OCPL, referred to this as consulting the '*Attorney-General's chambers*'. He therefore suggested that he might have said that he had advice from the '*Attorney-General's chambers*'. But his position is that he could not remember saying Mr Llamas had personally advised on the application for a search warrant (McGrail 5 para 114-5 [A165]). However, he argues that it would have been illogical for him to have said the RGP received advice from the Attorney-General when this was not the case, and he would not make such a claim when Mr Llamas was there in person to refute it (McGrail 5 para 115 [A166]). By contrast, Mr Picardo stated that Mr McGrail referred to the Attorney-General and thought that Mr McGrail gesticulated toward him [T/16/206.2]. Mr Llamas also did not recall a reference to the Attorney-General's Chambers, and stated '*he referred to me or else I would not have intervened*' [T/11/212.16]. I think that Mr Picardo and Mr Llamas might have misunderstood what Mr McGrail was saying; I am not satisfied that Mr McGrail said that the Attorney-General had personally advised the RGP to apply for a search warrant.
- 11.60 Mr McGrail also denies that he said that the DPP had advised that the application for the search warrant should be made.
- 11.61 Mr McGrail has addressed this point in three of his statements to the Inquiry. In his first statement, he stated: '*I advised him that the warrant had been signed by a judge who was satisfied with the information which had been laid*

before him and that all the grounds to deal with JL had been consulted with the DPP (McGrail 1 para 33 [A10]).

- 11.62 In his third statement, he stated: *'what I was referring to was that the status of "suspect" for JL had been the subject of consultation and agreement with the DPP who had advised the team generally on the investigation throughout'* (McGrail 3 para 147(iii)(e) [A119]). In his fifth statement he gives this version: *'what I said was that the DPP had been advising the investigating team throughout the course of the investigation ... and that he was privy to the evidence involving Mr Levy and that he agreed with this classification as a suspect'* (McGrail 5 para 117 [A166]). He added that: *'...it was my understanding via Superintendent Richardson that even though the DPP did not advise on the warrant, he told the investigating officers that he would defend any potential challenge if any arose from the RGP's actions'* (McGrail 5 para 117 [A166]).
- 11.63 He does not claim now to remember the precise words he used [T/6/198.24] but he wrote in the email to himself later that night that *'all the grounds (sic.) to deal with [Mr Levy] had been consulted with DPP (sic.)'* [B76]. Another version of this – to the same effect – was: *'All I can say is that I told him: 'Look, I am not shrugging responsibility here but the team has been consulting with the DPP on this'.'* [T/6/199.1]. I will return below to two further accounts which Mr McGrail gave the following day about what he had told Mr Picardo (the one to Mr Llamas after their meeting on 13 May, and the one to Mr Richardson in the car returning from that meeting).
- 11.64 He accepted that he did not make it clear that the DPP had not advised on the warrant [T/6/200.10], but he maintains that Mr Picardo and Mr Llamas misinterpreted what he said [T/6/199.20].
- 11.65 Mr Picardo questioned whether there were proper safeguards for legally privileged material which had been seized; Mr McGrail says that he gave

assurances that the material seized would be treated in accordance with the procedures in the Codes of Conduct (McGrail 1 para 36 [A11]).

- 11.66 Mr McGrail pointed out that the warrant had been granted by a judge, who was satisfied upon the information put before him that it was appropriate to issue the warrant. According to him, Mr Picardo responded that it was very easy to obtain a search warrant and that the police had been wrongly advised (McGrail 1 para 33 [A10], [B76]). Mr Picardo also made other criticisms: he told Mr McGrail that he should have made Mr Llamas aware of the application for the warrant, since the Attorney-General was the Leader of the Bar in Gibraltar and the head of the Bar's Disciplinary Committee (McGrail 1 para 35 [A11]). In answer to that, Mr McGrail considered that it was entirely inappropriate, and '*not the norm*', to give Mr Llamas advance notice of a police operation to execute a search warrant (McGrail 1 para 35 [A11]). Mr McGrail says that another line of attack by Mr Picardo was that the RGP was being used by Mr Gaggero and by Bland to pursue a criminal case, whereas this was essentially a commercial dispute (McGrail 1 para 38 [A12]).
- 11.67 Mr Picardo was also concerned about reputational damage to Gibraltar, since the news that a warrant had been executed at the offices of Gibraltar's most senior silk would get out (McGrail 1 paras 32 and 41 [A10]). Mr Picardo pointed out that there had already been questions asked in the Spanish Parliament about the collision at sea, which had occurred on 8 March (McGrail 1 para 41 [A13]). Mr McGrail's response was that he was fully aware of the potential reputational damage that might result, but he stood by the investigating team. He maintained that the police had been following proper lines of enquiry, that they had acted appropriately, '*without fear or favour*', as he put it, in what he considered to be '*a thorough and worthwhile investigation*' (McGrail 1 para 43 [A14]).
- 11.68 Mr McGrail felt that Mr Picardo was questioning what he considered to be operational decisions taken by the RGP, in the course of an ongoing criminal

investigation, which he did not think to be appropriate (McGrail 1 para 33 [A10]). Indeed, he thought that it amounted to *an inappropriate interference with the operational independence of the Police, designed to cause me to halt the actions of Superintendent Richardson and his team* (McGrail 5 para 119 [A167]).

11.69 Indeed, he even thought that Mr Picardo was suggesting that he should recall Mr Richardson and his team from Hassans offices; I address this allegation in the next section. Mr Picardo rejected that he was raising points about an operational matter, since he says that Mr McGrail had told him the warrant had already been executed and as far as he was concerned *‘the horse had bolted’* [T/16/181.13, 198.20]. Mr McGrail disputes that, since he was called to the Chief Minister’s offices within a few minutes of the police entering Hassans offices, and so says that they must have known that the search warrant was *‘just happening’* [T/7/161.6].

11.70 He said that Mr Llamas alleged, in a *‘highly emotional tone’*, that he (Mr McGrail) had *‘betrayed him’* in executing the warrant contrary to his agreement not to do so without further consultation between them (McGrail 1 para 43 [A13]). Mr McGrail contends that there was no such agreement, as I have already set out above.

11.71 Mr McGrail said that he left the Cabinet room *‘quite shaken and in utter disbelief’*; he explained that he had expected *‘reactions post to the search warrants being executed’*, but he did not *‘anticipate the level of chastisement’* to which he was subjected (McGrail 1 para 45 [A14]).

MR MCGRAIL’S LATE ALLEGATION OF A PARTICULAR ‘INTERFERENCE’

11.72 I need to deal with a particular allegation which Mr McGrail made of interference.

11.73 He was asked: *‘... did the Chief Minister or the Attorney-General make any attempt whatsoever on 12 May to stop the RGP doing as it pleased in relation*

to the execution of the search warrant?’ He replied: ‘They did, in my interpretation, by applying the pressure that they did, with the threat included. I took it to mean that I should call back the officers from the offices of Hassans, that I should stop the activity against [Mr Levy]’ [T/7/160.14-161.10].

- 11.74 If Mr McGrail’s understanding was right, this would represent a very serious attempt to interfere with the investigation. I do not accept this interpretation. In my judgement, if Mr Picardo had seriously intended to require the recall the RGP officers from Hassans offices, he would have said so: his manner is usually to speak bluntly.
- 11.75 Moreover, in his email to himself [B75] prepared on 12 May 2020, Mr McGrail gave a detailed account of the events of that day; he said, in terms, that he *‘felt the CM was questioning an operational decision on a live criminal matter and that this was not appropriate’*, but he makes no mention that he interpreted what happened to be an attempt to persuade him to call back the officers and abandon the execution of the warrant.
- 11.76 Furthermore, Mr McGrail has filed seven witness statements. It was not until his fifth affidavit in August 2023 that he made this allegation (*‘I took their rebuke to be ... designed to cause me to halt the actions of Superintendent Richardson and his team’*: McGrail 5 para 119 [A167]), having in his previous witness statements dealt at length with the *‘berating’*, without having made any allegation that he should recall the officers.
- 11.77 Mr Richardson gave evidence that whilst he was still at Hassans offices, dealing with Mr Levy, he received a call from Mr McGrail which he left the room to take: *‘Mr McGrail had said that he had the dressing down of his career by a Chief Minister and wanted me to come back to brief him [i.e. Mr McGrail]...’* [T/5/11.24]. So, according to Mr Richardson, he was called out by Mr McGrail to hear his complaints about the *‘berating’*, not to hear complaints that Mr Picardo was seeking his recall. Indeed, he said, in terms, that he *‘wouldn’t say that that was an interference though in the investigation’*

[T/5/15.7]. Indeed, he confirmed that ‘*The execution of the search warrant or non-execution of the search warrant as it happened, did go as we had planned*’ [T/5/11.15] – that is to say, without interference.

- 11.78 I conclude that Mr Picardo did not do, or say, anything at that meeting that could reasonably be interpreted as a request, instruction or threat, to recall the RGP officers from Hassans. I, therefore, reject this specific allegation.

MY CONCLUSIONS ON THE 12 MAY 2020 MEETING

- 11.79 Mr Picardo was asked by Mr Wagner, on behalf of Mr McGrail, what he hoped to achieve by calling Mr McGrail into his office on 12 May [T/17/164.8]. Mr Picardo replied that he wanted to know why the police had proceeded against Mr Levy at Hassans offices by way of a search warrant rather than by way of a production order [T/17/165.1]. He maintained that he had a right to express his views about the search warrant, and that ‘*the high office that I held (and continue to hold) does not disqualify me from doing so*’ (Picardo 3 para 17 [A235])). He was, he argues, protecting the reputation of Gibraltar. He maintains that he is entitled to protect the reputation of Gibraltar; he calls this the ‘*jurisdictional*’ risk [T/17.164.12, T/16/166.9, T/16/175.19, T/16/195.22]. He also did not think that Mr McGrail ‘*appreciated the negative effects to Gibraltar’s international reputation, as both a finance centre and a properly policed jurisdiction*’ (Picardo 1 para 53 [A194]; T/16/173.25).
- 11.80 Mr Picardo accepted in his evidence that there were ‘*red lines*’ [T/16/91.17], but he does not accept that he crossed them when making the decision on the 36 North contract [T/16/114.16]. He also asserted more generally that he believed he acted at all times in accordance with the Nolan principles and Ministerial Code [T/16/95.16; T/17/45.24].
- 11.81 From the evidence, it appears that Mr Picardo believes that he has every right to complain about the police, in such terms as he likes and in such

circumstances as he likes (see, e.g., Picardo 3 paras 8 and 17 [A233, 235], and his letter to Dr Britto of 5 June 2020 [C4748]).

- 11.82 It seems to me to be significant that Mr Picardo's first observation when he learnt that the police had attended at Hassans to execute the warrant was to declare: '*Given my close personal relationship with [James Levy], I won 't comment further*' [B1432]; but he did not long hold to this resolution.
- 11.83 Even whilst the RGP officers were still at Hassans with the search warrant, Mr Picardo, as the Chief Minister, summoned the Commissioner of Police to his office and '*berated*' him in immoderate terms for the actions of the RGP. The description '*berated*' is entirely appropriate. The Chief Minister in Gibraltar has no legal standing in, still less statutory responsibility for, criminal investigations or prosecutions.
- 11.84 Therefore, as I have found, Mr McGrail told Mr Picardo that the RGP were about to enter Hassans with a search warrant granted against Mr Levy personally and in respect of his office at Hassans. Mr Levy was the senior partner in Hassans, a firm in which Mr Picardo remained a partner. The warrant had been granted by a Magistrate, who had considered the 38-page Information, whereas Mr Picardo then knew nothing of the evidence against Mr Levy. Furthermore, as he well knew, the whole police investigation was directed at attempts that had been made by 36 North to obtain the transfer the NSCIS contract from Bland – attempts of which Mr Picardo had been kept informed by the participants, as I have set out in earlier sections. 36 North was a company in which he indirectly held a small interest, a company in which Mr Levy had a larger interest, and a company of which Hassans owned fully one third.
- 11.85 The Government Parties submit that '*The operational independence of the RGP cuts both ways*' (closing submissions following the Reconvened Hearing, para 4.5). I accept that the Chief Minister is entitled to be critical, even highly critical, of the RGP's decisions, and even of their operational decisions. That

is part of the democratic process. However, there is a point when criticism risks becoming interference; that point is easier to recognise than to define. In my opinion, this is the first point at which Mr Picardo plainly crossed that line. I reject Mr Picardo's defence of his actions. I do not think that he was protecting the reputation of Gibraltar; I think it far more likely that he was moving to protect Mr Levy, his life-time friend and '*mentor*', from the likely consequences of the warrant being executed or his phones being interrogated.

- 11.86 I specifically reject the '*jurisdictional*' argument on which Mr Picardo relies. I do not entirely accept the submission put forward by Mr Wagner (closing submissions, para 34.2). However, I do accept that to equate the personal interests of a small circle of rich, powerful and influential individuals in Gibraltar, many of whom are professional colleagues (or former professional colleagues), and even friends, with the interests of Gibraltar itself, may tend to encourage or to conceal misconduct or inappropriate and improper interference in official business or public affairs. Otherwise, any action taken to protect those individuals, or their interests, could then be justified as protecting '*the jurisdiction*'. This cannot be right, because then the ends will always justify the means, and those individuals and their interests, will always be protected.
- 11.87 I find that the meeting on 12 May was a grossly improper attempt to interfere in a legitimate police investigation and operation. That Mr Picardo still seeks to defend his actions, that he thinks that he was within his rights, is not mitigation. Indeed, it makes it much worse.
- 11.88 I move on to consider whether this meeting of 12 May had any direct effect on the course of the investigation: certainly, it affected Mr McGrail, who said that he was quite shaken and in utter disbelief at what had happened (McGrail 1 para 45 [A14]).

- 11.89 Mr Ullger was asked: ‘... are you aware that the search warrant execution changed as a result of the dressing down?’ He replied: ‘I think one of the biggest failings in our investigation was not executing that warrant, sir, and it has been a matter that we have discussed on a few occasions in our debriefs’. He was then asked whether he acknowledged that ‘whatever happened or did not happen in the attempted execution of a warrant was an RGP decision in accordance with the options plan that Mr Wyan had created?’ To which he replied: ‘Exactly, it was’ [T/13/180.5].
- 11.90 I conclude that, however improper it was to summon Mr McGrail, and however improper it was to ‘berate’ him, neither action in fact interfered with the visit of the RGP to Hassans; they carried on precisely as had been planned. I conclude that there was no actual interference with the RGP’s actions on 12 May.
- 11.91 I move on to consider the position of Mr Llamas. Mr McGrail asserts that he joined in the ‘berating’ (albeit that Mr Picardo was the principal ‘berater’) [T/6/228.12]. Mr Llamas denies this; indeed, he said that he hardly spoke [T/11/210.15], although he did accept he had not intervened to stop Mr Picardo [T/11/210.6]. I note that in the email to himself, sent on the evening of 12 May, Mr McGrail complains not about what Mr Llamas said but about his ‘demeanour’ [B76], which rather suggests that he said nothing beyond the exchange about their alleged agreement and otherwise remained a passive witness or spectator to what was going on.
- 11.92 Mr Llamas did eventually concede that ‘with hindsight’ this was an exchange which ‘maybe’ should not have happened [T/12/81.20]. I had at one time considered whether Mr Llamas should have intervened to stop the berating. He has claimed that the events of the afternoon of 12 May happened so quickly that he did not have sufficient time to reflect on what was taking place [T/12/177.18]. On further consideration, I think that perhaps there is some force in this, so I do not therefore criticise him for not doing so.

THE MEETING BETWEEN MR LLAMAS AND MR ROCCA

- 11.93 Directly after the meeting between Mr Picardo, Mr Llamas and Mr McGrail had finished, at 13.49, Mr Llamas messaged Mr Rocca and asked if he could come to see him; he replied that he would be there in 20 minutes [C6854].
- 11.94 There are no notes of what was said between them. Mr Rocca gave evidence to the Inquiry, and his recollection is that he was ‘called’ by Mr Llamas rather than there having been a meeting between them, commenting that possibly he was called by Mr Llamas before going to see him (Rocca 1 para 13 [A1297], [T/10/85.18]). He said that he told Mr Llamas *‘that my advice had not been sought and that it was unlikely that [the RGP] would ever do so in such circumstances as these were operational matters for the RGP’* (Rocca 1 para 13 [A1297]). Mr Rocca did not recall telling Mr Llamas that he had expressed a preference for a production order, or that Mr Levy should be interviewed under caution [T/10/86.10, 174.8]. Mr Rocca added, *‘I recall that I informed him that I was aware that they had been considering making an appropriate application but that that was all’* (Rocca 1 para 13 [A1297]).
- 11.95 Mr Llamas stated that he asked Mr Rocca whether he had advised that the RGP should proceed by warrant, and *‘he answered that specific question with a ‘no’’* [T/11/215.17]. Mr Llamas later agreed that *‘what he said ... was that he had not advised on a search warrant’* [T/10/217.1]. He was emphatic that Mr Rocca did not say that he *‘strongly advised against a search warrant’* [T/11/216.10].
- 11.96 Mr Rocca, I observe, was an impressive witness: fair, considered and nothing that he said was in conflict with the contemporaneous documents. There is no indication that he ever advised the RGP to apply for a warrant, and I am sure he did not. He most certainly did not strongly advise against a search warrant.

MR LLAMAS REPORTS THIS CONVERSATION TO MR PICARDO

11.97 I now set out three text messages [B1417] exchanged between Mr Llamas and Mr Picardo later that afternoon.

11.98 At 15.41, Mr Llamas texted Mr Picardo: *'Spoken to DPP. He is categorical that whilst he told RGP that an interview with JL would likely be necessary, he strongly advised against a search warrant.'*

11.99 But, as I have already found, Mr Rocca had not *'strongly advised against the warrant'*, nor had he said that he had. Mr Llamas had seriously misreported what he had been told by Mr Rocca. In his evidence, Mr Llamas sought to explain this error by saying that he *'got confused'* [T/11/216.10].

11.100 It was a very regrettable confusion because the assertion that the DPP had *'strongly advised against the search warrant'* was, as it seems to me, part of the basis on which Mr Picardo decided that Mr McGrail had lied. This point was put to Mr Picardo; he accepted that *'strongly advising against'* was different to *'not advising'*. But, as he put it, that did *'not vitiate the lie that I was told by Ian McGrail'* [T/16/211.4]. He went on to say that:

'If they had acted contrary to advice of course it would be worse. If they have acted with advice it is not worse, but that does not go to the issue. I was lied to by the most senior law enforcement official in Gibraltar, to my face, in my office, about something that affected the reputation of the jurisdiction. And none of those degrees of advised, strongly advised, didn't advise, get him off the hook for lying to me.'
[T/16/212.5-13]

11.101 At 15.42, Mr Picardo replied to Mr Llamas: *'Pues entonces nos mintio a los dos'*; being interpreted as *'well then, he lied to us both'* [B1417].

11.102 At 15.43, Mr Llamas replied to Mr Picardo: *‘Exactly he certainly gave us the impression that sw [search warrant] decision was sanctioned by DPP.’* [B1417]

11.103 I observe that the expression *‘gave us the impression that...’* is rather different from saying in clear unqualified terms that Mr McGrail stated that as a fact. This point was also put to Mr Picardo; he accepted that Mr Llamas’s text *‘he gave us the impression’* was *‘maybe’* different to saying that Mr McGrail expressly said the warrant was sanctioned by the DPP, but he explained that *‘that’s probably just Michael’s shorthand 2 hours later. I remember distinctly what Ian McGrail said to me. I don’t think I will ever forget that meeting.’* [T/16/214.7].

11.104 What Mr Llamas told Mr Picardo about the advice which the DPP had given about the warrant was plainly confidential. In my opinion, Mr Picardo was not free to share that advice with anyone else beyond what was required by his official role, and he most certainly was not free to share it with the lawyer representing Mr Levy, a point to which I shall return.

DID MR PICARDO TELL OTHERS OF MR LLAMAS’S MISUNDERSTANDING?

11.105 As Mr Wagner points out in his closing submissions (para 49.9), Mr Llamas’s error, and the failure to correct it, had serious implications. Mr Picardo told others that the DPP had advised against the warrant [T/17/205.18]; he certainly told Mr Baglietto and/or Mr Levy, and Mr Pyle.

11.106 Mr Llamas realised during his meeting with Mr Rocca on 13 May (to which I turn below) that he must have misunderstood what Mr Rocca had told him the day before [T/12/136.15]. He said that he then corrected the position with Mr Picardo, but did not know exactly when he did so; he said: *‘I would be very surprised if I didn’t tell him ... on the 13th itself or on the 14th but I haven’t found any evidence of that.’* [T/12/138.21]. He said [T/12/13.20] that he had corrected the position by (at the latest) 18 May and relied on *‘the Chief*

Minister's records of his meeting with Mr Pyle on 18 May where he uses an expression on the lines: 'He has misled us'. I think that this must be a reference to the informal record of meeting [C3991], which states '(c) *The Chief Minister also shared another event occurring last week which had left him also in a situation where the Commissioner had expressly misled him and which left him unable to believe the Commissioner.*' Perhaps Mr Llamas did correct the position with Mr Picardo, and he might have done so by 18 May – as Mr Picardo says he did – but I do not think that this extract confirms that he did so, let alone that he had done so by that date.

11.107 In his evidence, Mr Picardo accepted that Mr Llamas had told him '*during the course of the following day or later that day*' that he (Mr Llamas) had misquoted Mr Rocca; he had done so, he thought, '*24/48 hours after that original meeting*' [T/16/213.4-13]. Having been told of this mistake, Mr Picardo gave evidence that he '*corrected it*' to those he had shared the mistake with [T/17/205.18]; but he did not say to whom, when, or by what means this correction had been made.

11.108 It is unclear what Hassans understood, because they wrote in their letter to Mr Llamas of 15 May that: '*There can be little surprise that, as we believe is the case, the DPP advised the Commissioner against the making of these applications*' [C3802], which position they contrasted with '*the clear misrepresentation that the warrants had been applied for on the advice of the DPP*' [C3808]. They were presumably here referring to what Mr Richardson had said at the time of the visit to Hassans. Furthermore, in their letter to Mr McGrail on 20 May, they repeated that:

'I also note from your letter that the DPP's advice was not sought on the application for search warrants. This was contrary to what Mr Levy was led to believe by Detective Superintendent Richardson, and contrary to what we understand was the position.' [B5444]

11.109 For his part, Mr Pyle continued to believe that the RGP had applied for the warrant, contrary to legal advice. By the email dated 21 May 2020 [C4234], Mr Pyle reported to the FCDO in London that Mr McGrail had mishandled ‘*a high-profile ongoing investigation*’ in which he ‘*apparently went against advice of the Attorney General and Director of Public Prosecutions*’. Even as late as 9 June (the day after Mr McGrail retired), Mr Pyle sent a ‘Diplomatic Telegram’ to the FCDO [C4914] repeating that Mr McGrail ‘*went against the advice of the AG and DPP in an ongoing and high-profile investigation.*’ Mr Llamas accepted that he did not correct the position with Mr Pyle directly, stating: ‘*I had corrected the position with the person to whom I had made the misrepresentation. I had not even known that that had been communicated to Mr Pyle.*’ [T/12/142.13]. In questioning by Mr Wagner at the hearings, Mr Pyle accepted that this mistake formed part of the basis of his decision regarding Mr McGrail’s retirement [T/19/200.21]. Indeed, he went so far as to accept Mr Wagner’s description of this error as amounting to ‘*a fundamental flaw in the reasoning*’ [T/19/201.23].

11.110 I do not accept Mr Wagner’s submission that it was likely that Mr Picardo had deliberately failed to make this correction clear (closing submissions, para 49.9), but he certainly failed to do so effectively.

DID MR MCGRAIL MISLEAD MR PICARDO?

INTRODUCTION

11.111 Issue 5.1 asks: ‘*Did Mr McGrail seek or receive advice from the Director of Public Prosecutions (**DPP**) or the AG regarding the Search Warrants, and did Mr McGrail accurately communicate any advice from the DPP or the AG on the Search Warrants (or lack thereof) to the CM and/or AG?*’

11.112 I have already given a lengthy narrative answer to the first part of this question; I come now to the second part.

MR PICARDO'S ACCOUNT

11.113 I have set out Mr Picardo's evidence in some detail. I accept that Mr Picardo genuinely believed – and still believes – that Mr McGrail told him that the DPP had advised the RGP to apply for the search warrant and that this was a deliberate lie.

11.114 I accept that Mr Picardo gave his evidence with confidence. Furthermore, he has been consistent: he has always said that Mr McGrail lied. But long experience in the courts has led me to conclude that confidence in the accuracy of one's own recollections is not always a signpost to reliability. To put it another way, confident witnesses are not always reliable, nor does it make them any more reliable that they have always thought that they were right.

11.115 I also think that Mr Picardo's anger throughout that meeting is likely to have made him prone to misunderstand or misinterpret what Mr McGrail said. I turn therefore to examine the contemporaneous documents to see if there is any support for one version over another.

11.116 Mr Wagner argues against Mr Picardo that he did not give a written account of his version until he wrote to the GPA on 5 June [C4734] (McGrail closing para 46.3). He suggests that he could have done so, for example, in the text message he sent to Mr Pyle on 14 May, in his note to Mr Pyle about the Police Act, or in his note of the meeting with Dr Britto (I will detail all of these communications in due course). I do not consider this to be a point of substance since he complained to Mr Llamas by text (at 15:42 that same afternoon) [B1417] and orally to many other people (indeed he says to '*all and sundry*') within a very short time afterwards that Mr McGrail had lied [T/16/270.16]. Indeed, although he has not always given a full account of what happened to everyone to whom he wrote, he has been entirely consistent: he has always said that Mr McGrail told him a lie. But he did not make clear to

Hassans or to Mr Pyle that there had been a misunderstanding about whether the DPP had advised Mr McGrail against applying for a search warrant.

MR LLAMAS'S ACCOUNT

11.117 I return to Mr Llamas's account. In his WhatsApp message, sent to Mr Picardo at 15.43, Mr Llamas wrote that: '*... he certainly gave us the impression that [the search warrant] was sanctioned by DPP*' [B1417]. I have already observed that the expression '*gave us the impression that ...*' is different from saying in clear unqualified terms that Mr McGrail stated as a fact that the DPP had positively advised in favour of the search warrant. Mr Llamas sought to explain what seems to me to be an important distinction as being the result of him using '*loose language*' [T/11/218.7]. I did not find this explanation very convincing; he struck me as being precise in his speech, like many lawyers. I do not think that he is given to '*loose language*'.

MR MCGRAIL CALLS A MEETING OF THE SENIOR COMMAND TEAM

11.118 Mr McGrail says that after he returned to New Mole House, he spoke to the Senior Command team [T/6/208.21]. He said that then, and frequently thereafter, he complained to his colleagues about what had happened and how things were panning out [T/23/79.14]. He did not do so at formal or minuted meetings, '*they were more conversations and me providing an update of how things were panning out and we were bouncing off views*' [T/23/173.7]. Mr Ullger confirmed that such meetings took place, but he could not provide the dates [T/22/253.23]. Mr Richardson agreed that there were a number of meetings '*almost daily*' about Mr McGrail's dressing down including the meetings on 13, 15 and 20 May, but they were updates, not minuted meetings [T/23/207.18]. Mr Richardson did not record any allegation of interference in his day books, a point to which I will return below [T/23/215.22].

MCGRAIL'S EMAIL TO HIMSELF

11.119 Later that evening (12 May) Mr McGrail made notes on his laptop of the meeting he had had with Mr Picardo and Mr Llamas, which he emailed to himself at 22.05 ([T/6/194.4]; [B74]). He later drew from his account of what happened when preparing his evidence for the Inquiry.

11.120 The following day (13 May, at 12.20), he made minor amendments to the email, which he emailed to himself [B78], together with some supplementary points, which I will summarise:

- a. He wrote that Mr Picardo had asserted very forcefully that the allegations being investigated, particularly the conspiracy to defraud offence, did not meet the criminal liability threshold but rather that they are civil in nature. Mr McGrail answered that by pointing out that Mr Picardo *'has not been privy to the evidence secured during the 12+ month long investigation'* and he (Mr McGrail) therefore *'cannot comprehend his forceful views'*.
- b. He also wrote that Mr Picardo stated *'that police officers and lawyers are officers of the court (he included himself), that the approach taken by the investigating team against a fellow officer of the court was not ethical, proper or correct'* and that the RGP *'cannot with a wide brush ... sweep up whatever we want under the search warrant'*. Mr McGrail wrote that he told Mr Picardo it *'was not the case, that an (sic) sensitive legally privileged material would not be handled or examined by us, this would be done by external counsel'* and that this would be explained to Mr Levy. Mr Picardo responded: *'that's what you say'*. Mr McGrail responded that *'you will have to trust me'*. Mr Picardo said that he communicated with Mr Levy a lot and *'he'd only been in contact with him that morning discussing the reopening of places of worship'*.
- c. Mr McGrail described Mr Picardo's *'behaviour as a total affront to the operational independence of the RGP and it is deeply regrettable that I*

have to resort to speed type out these notes to safeguard myself from any possible reprisal, wherever that may come from, if indeed it comes and in what shape it manifests itself.

- d. He then referred to the email that he had received from Mr Llamas the night before. He added that he would '*keep adding notes as the mater develops*', although he did not do so.

11.121 The Government Parties questioned whether these emails were genuine (Government closing para 129.6), with the implication that Mr McGrail forged the dates. But the Government's theory that the date of the email could have been doctored by changing the time on the laptop used to send the email was disproved by the Report by the RGP's Digital Forensics Unit (see Exhibit 9 of Yeats 4 [E47]). At page 45, the examiner explained the tests conducted; he '*concluded the test by showing that the time and date on the email was indeed correct despite changing it locally on the laptop. This is because the time and date is recoded as per the host server.*'

11.122 The Government Parties have submitted a list of supposed matters which they allege could not have been known to Mr McGrail on the evening of 12 May (closing submissions, para 129.3). I do not think, in the light of the report from the IT Unit, that it is necessary to deal with them and dismiss them one by one – as I could have done. I have no doubt, and I find as a fact, that these emails were genuine and were sent at the time apparent on the face of them. In the circumstances, this email, with its minor amendments made the following day, is his almost contemporaneous account of what happened on that day.

MR MCGRAIL'S OTHER ACCOUNTS OF THE MEETING

11.123 I have already canvassed what Mr McGrail now says about the meeting of 12 May. I have also already referred to the account which he gave in the email to himself that evening to the effect that '*all the grounds to deal with* [Mr Levy]

had been consulted with the DPP' [B76]. I have already said that I am alert to the dangers that this version is self-serving.

11.124 However, there are two further accounts which Mr McGrail gave of the meeting, to which I now turn.

11.125 First, after the meeting with the RGP on 13 May (to which I will come later), when the other officers had left and Mr McGrail and Mr Llamas were alone together, Mr Llamas referred to what had been said at the meeting with Mr Picardo the day before. He said that Mr Picardo was adamant that Mr McGrail had said to both of them that he was acting on the advice of the DPP. Mr McGrail said that had '*never been privy to*' the conversations between the RGP team and the DPP, but that the DPP '*has been advising the team*'. He said that he could not remember the words used but '*this matter had been dealt with in consultation in the DPP*', and '*I'm referring to an investigation and a... relationship that has been back and forth on a number of ... times. That is what I'm referring*' [B225-6]. Of course, I have not overlooked the fact that he knew that this conversation was being recorded, so there is a clear risk that he was deliberately giving a favourable version.

11.126 Later, he said that Mr Richardson '*has told me that ... there was conversations about the search warrant*' [B226].

11.127 The second account to consider is that which Mr McGrail gave to Mr Richardson in his car after their meeting with Mr Llamas on 13 May. I will examine in greater detail how this came about but he covertly recorded the meeting with Mr Llamas on his mobile telephone and kept recording as he and Mr Richardson drove away from the meeting. It is not clear to me whether he forgot that the telephone was still recording, or if he remembered that it was still recording and trimmed his version accordingly. The relevant part of this exchange, with many pauses and hesitations, is not entirely coherent, but for what is it worth, it reads as follows [C6928]:

Mr McGrail: 'the AG ... wanted to clarify that he says that I said at yesterday's meeting that the DPP had advised on the warrant.'

Supt Richardson: 'No, the DPP hasn't advised on the warrant.'

Mr McGrail: 'And I said no. I didn't mean that ... this is not a question of shrugging responsibility, we have actually been engaged with the DPP, and I have his advice on the question of having to do ... these ... interventions, now he has taken that as in the DPP advising that on the warrant ...'

Supt Richardson: 'He didn't agree with that course of action but said it's a decision for us and I said we will agree to disagree on that I am not a lawyer and he is not a policeman...'

11.128 It was this version which gave rise to the suggestion in questioning that Mr McGrail used the word '*interventions*' at the meeting with Mr Picardo and Mr Llamas on 12 May (see, for example [T/6/235.17]).

CONCLUSION

11.129 Mr Picardo was in a towering rage caused by the RGP having, as he saw it, improperly obtained a search warrant against Mr Levy, his friend and mentor. The mood of the meeting was fraught and over-charged with emotion. I consider the circumstances gave rise to an obvious risk of misunderstanding and misinterpretation.

11.130 I do not think it is now possible to determine the precise words that Mr McGrail used. Indeed, I would be speculating if I sought to do so. I am satisfied that Mr McGrail sought to justify the actions of the RGP by saying something about their engagement with the DPP; he might even have said in general terms that the RGP had been advised by the DPP. However, I am not satisfied that said in clear and unambiguous terms that the DPP had advised in favour of a search

warrant; indeed, I am satisfied that he did not say that. I conclude that Mr McGrail did his best to summarise what he understood to be the advice that Mr Rocca had given to Mr Richardson. Had he been given advance notice of the question, he could have asked Mr Richardson for a considered and detailed response. I accept that what he said might have been unintentionally misleading but I am quite satisfied that he did not deliberately give an untrue version. He did not lie.

- 11.131 However, I also accept that Mr Picardo genuinely believed – and still believes – that Mr McGrail told him that the DPP had advised the RGP to apply for the search warrant and that he genuinely concluded that this was a deliberate lie, but he had misunderstood what Mr McGrail had said. It follows that his approach to Mr McGrail thereafter was in part based upon a misunderstanding. This was to have most regrettable consequences as this contributed to his decision that Mr McGrail had to go, to which he turned his mind almost immediately, as I shall show.

LATER EVENTS: THE FALLOUT FROM THE WARRANT

CONTACT BETWEEN MR LEVY AND MR LLAMAS

- 11.132 I have already written that even whilst the police were still at his offices on the 12 May, Mr Levy twice rang Mr Llamas (at 12.57 and 13.07), but those calls were unanswered (Llamas 1 para 48 [A282]). At 14.49, Mr Llamas messaged Mr Levy stating *‘just seen your missed call’* [E1136]. They did later speak on the telephone. Mr Llamas’s evidence is that *‘whilst being respectful’* – as he put it – Mr Levy *‘complained to me about the way he had been treated by the RGP... I listened to what he had to say and told him that the DPP was handling this matter and that he should speak to him, which I believe he did’* (Llamas 1 para 48 [A282]).

- 11.133 It would, I observe, be exceedingly unusual in the UK for a person suspected of serious crime to ring up the Attorney-General personally to complain about

the way he had been treated by the police. Still less for the Attorney-General to consider it appropriate to respond to such a call. But the professional and social conventions in Gibraltar, with a very small population, are necessarily very different: all lawyers, including the law officers, are personally known to each other. The Attorney-General is widely regarded by legal practitioners in Gibraltar as *'the guardian of the public interest'* and may be seen by some of them as the appropriate person to approach in the event of any allegation of abuse of power or process by the RGP.

11.134 Mr Llamas contends that it would be most unusual, and even professionally discourteous, for him, as Attorney-General, to decline to take, or not to return, a call from *'a senior member of the Bar'*, whom he knew well. I accept Mr Llamas's evidence that he told Mr Levy *'that the DPP was handling this matter and that he should speak to him'* and that he believed that he did so. Mr Llamas does not consider that it was inappropriate for him to have taken the call, or to have responded to Mr Levy as he did.

11.135 However, in my opinion, here the call was being made not by Mr Levy *'as a senior member of the Bar'*, in the course of his professional duty representing a client. It was being made personally as a suspect against whom the courts in Gibraltar had issued a search warrant. In my opinion, Mr Llamas should have exercised extreme caution before responding to such a call and he should have realised that taking a call in these circumstances was unwise and liable to give rise to misinterpretation, as indeed it did. The observations in this paragraph are directed towards the conduct of Mr Llamas in accepting and answering the call from Mr Levy, rather than towards Mr Levy in making the call, which he believes he was entitled to do.

MR MCGRAIL TRIES TO CONTACT DR BRITTO

11.136 At 14.20, after the meeting with Mr Picardo had ended, Mr McGrail messaged Dr Joey Britto (Chair of the GPA) stating, *'Joey – sorry for the bother. But I*

urgently need to speak to you face to face.' Dr Britto did not reply to that message [C6571].

11.137 Mr McGrail explained that he requested to meet Dr Britto because he *'needed to inform someone independent and in authority of the concerns [he] held about the inappropriate interference with a live criminal investigation'* (McGrail 1 para 48 [A15]). Mr McGrail does not recall whether he met Dr Britto that day or on the following day (McGrail 1 para 48 [A15]), but if his reference in his email to himself of 12 May 2020 [B76] is right, he must have met Dr Britto that same afternoon.

11.138 Dr Britto does not accept that he met Mr McGrail on 12 May; his evidence was that he only heard about Operation Delhi at their meeting on 15 May 2020 (Britto 1 para 10 [A321]). In questioning, he accepted *'there's a remote chance it was on the 12th, but my records show that it was on the 15th ...'* [T/15/65.12].

11.139 Furthermore, Mr McGrail's next WhatsApp to Dr Britto, on 13 May 2020 (also at [C6571]), reads: *'Joey - met with Ag & others to discuss the matter. I can provide you with a quick update over the phone if you want or would you rather I leave it for Friday when we meet'* (my emphasis). His reference to *'the matter'* would mean nothing to Dr Britto unless they had spoken about it earlier, as McGrail says they did. In my view, this strongly supports Mr McGrail's version that they did meet on 12 May.

11.140 Regardless of whether they met that day or in the following days, it is, I think, significant that very shortly after the meeting with Mr Picardo had finished, Mr McGrail was trying to contact Dr Britto. I am sure that he was seeking to do so to complain about what he contended was Mr Picardo's *'inappropriate interference with a live criminal investigation'*.

DID MR PICARDO KNOW THAT MR LEVY WAS A SUSPECT?

11.141 One important question is when Mr Picardo realised that Mr Levy was a suspect. It was a question put to Mr Picardo several times during the course of his evidence. Let me summarise some of his replies.

11.142 In his first statement, Mr Picardo stated that he *'became aware from Mr Levy himself that he was one of the persons who was "of interest" to investigators'* (Picardo 1 para 39 [A190]). In his third statement, Mr Picardo expanded that *'I recall that I discussed with Mr James Levy KC on a very large number of occasions the fact that the RGP had suggested that he might be a person of interest in the investigation. ... I consistently replied to him that I was sure that the investigation would exonerate him given that, from what I knew of him, I was sure that he would not have acted in a manner which was contrary to law.'* (Picardo 3 para 5 [A233]).

11.143 In oral evidence, he also stated that *'long before' 12 May 2020, he knew that the 'police might want to speak to' Mr Levy. 'There was the phrase, "a person of interest"... that does not mean "suspect" and does not mean "witness", it is a phrase which perhaps is a hybrid for the fork in the road between one person being determined to be one thing or the other, no?'* [T/16/141.19].

11.144 I asked him more than once: *'Did you know he was a suspect in that case?'* To which he first replied: *'No, I didn't.'* [T/16/164.2].

11.145 A bit later, there was this exchange between us [T/16/167.6]:

Q: *'But you did not know he was a suspect?'*

A: *'Sorry?'*

Q: *'You did not know he was a suspect at the time.'*

A: *'But search warrants are not executed against people who are not suspects. By that stage I was starting to become concerned that he might be a suspect.'* ...

Q: *'But you did not know he was a suspect?'*

A: *'Well I didn't know because I wouldn't know.'*

Q: *'You did not need to confirm that...'*

A: *'What I'm trying to get across is that people wouldn't tell me whether someone was or was not a suspect. What Mr McGrail tells me in his texts suggests that he isn't, but execution of a search warrant points towards him being ... put it this way, I'll use the words of the DPP: having questions to answer.'*

11.146 Then, as he was being asked what Mr McGrail told him and Mr Llamas during their meeting on 12 May, there was this exchange [T/16/206.22]:

Q: *'Did he state that the DPP had advised on whether to treat Mr Levy as a suspect?'*

A: *'I believe ... let me tell you very honestly. I believe that he said, ... , that James had questions to answer. But you know, I've heard that phrase afterwards so I may be imputing it to him then. But he certainly didn't use the word 'suspect' because that would have stood out like a sore thumb to me and he didn't use that word.'*

Q: *'Why would it have stood out like a sore thumb?'*

A: *'Because the word 'suspect' implies a lot more than being a person of interest and it takes you from being a witness to being somebody who is involved in the criminality, who is believed to be involved in the criminality itself. And that would have struck me.'*

Q: *'But he was a suspect.'*

A: *'But I wasn't told he was.'*

Q: *'Well, on reflection do you not think that might make your intervention rather inappropriate?'*

A: *'If I had been told, then it might have made my intervention inappropriate, but I was not told and therefore I was not labouring under the apprehension that I was intervening in respect of somebody who was a suspect. Somebody having questions to answer is not somebody who is a suspect and I believe those are the words that Ian McGrail used on that day.'*

11.147 I then asked this question: *'As a matter of interest, when did you discover that he was a suspect?'* [T/16/208.4]. This exchange followed:

A: *'I don't know whether the documentary trail shows us that in any particular, um, detail, but I cannot put my finger in my mind on when I find out that he has more than just questions to answer. If that ever actually happened in that way.'*

Q: *'You did speak to Mr Levy, did you not?'*

A: *'Yes.'*

Q: *'Did he not tell you, "Actually it is worse than being a person of interest, they actually suspect me?"'*

A: *'He may have done in those words, he may have done. But if you are asking me to remember those oral conversations and whether that word was used specifically, I do not remember that word being used specifically...'*

11.148 He was later asked to deal with the logical fall out from these answers by Mr Cruz [T/17/69.18]:

Q: 'If you had understood by the 12th, whether it had been the WhatsApp or the subsequent meeting with Mr McGrail or the conversation with Mr Levy, that it was a suspect, then given your answer to the chairman, was it not entirely inappropriate everything else you did after that?'

A: 'There was a lot of inconsistency in this also on the part of the RGP. For example, the reference was to Mr Levy's search warrant being obtained in the context of a case that does not name him as a defendant. If you are a suspect you are going to become a defendant. So it is also of course possible to execute search warrants against individuals to obtain evidence from them in respect of third parties, I assume. But it's some time since I practised criminal law. So I don't necessarily agree with you that there is an inconsistency in what I just said...'

11.149 He was pressed on this topic by Mr Wagner, as this further exchange shows:

Q: 'At the time in mid May when you were sending those options to Mr Baglietto, you would have known that Mr Levy was a suspect. Is that right?'

A: 'I knew what you know I knew at that time which was that he had had a search warrant in respect of him and that there were questions that he had to answer.'

Q: 'Mr Baglietto must have told you in one of your myriad conversations that Mr Levy was a suspect.'

A: 'You're making an assumption about the things that Mr Baglietto would have said during the course of those meetings. I can't recall it in order to be able to give you truthful evidence that he did or that he did not.'

Q: *'No. Did Mr Levy tell you he was suspected of criminal offences?'*

A: *'I believe that he may have said words that suggested that he felt it was grossly unfair that there was any suggestion that he might have been involved in anything that was criminal.'*

Q: *'So he said to you words to the effect of ... sorry, he said to you something which made you realise he was suspected of criminal behaviour.'*

A: *'No, he said the things I have told you he said to me.'*

Q: *'Yes, but if he said to you, "It is absurd that I could be accused of any criminal offence", you knew that he was accused of some sort of criminal offence. Is that fair?'*

A: *'He was never accused of any criminal offence.'*

Q: *'Suspected. Do you agree?'*

A: *'I don't necessarily agree with your characterisation.'*

Q: *'So you are saying you did not know he was suspected of a criminal offence.'*

A: *'No, I'm telling you that I knew that the police wanted to interrogate his devices and there had to be a reason for that.'*

Q: *'Yes.'*

A: *'And that his view was that that was entirely misconceived and I think the way that he has expressed it here is the way that he expressed it to me and to others, namely that this was fundamentally flawed. [...]'*

Q: ‘... The point is at the very least would you accept that by mid May you knew he could be a suspect?’

A: ‘I knew by then that the search warrant had been executed against him, and I have told you about what I think about who search warrants are executed against.’ [T/17/168.21]

11.150 I comment from these exchanges that Mr Picardo was unable, or unwilling, to give a straight answer to a question which is very easy to understand. Since Mr Levy did himself not know until 12 May that he was a suspect, Mr Picardo cannot have known it either at that time. I also accept that Mr McGrail did not spell out to him during the course of that fraught meeting on 12 May that Mr Levy was now a suspect. But I draw the inference that very shortly – probably within hours – of the police leaving Hassans offices on 12 May, Mr Picardo must have learned or deduced that Mr Levy was suspected by the RGP of being involved in a conspiracy which was alleged to have caused serious failures to the NSCIS platform, which existed to protect the security of Gibraltar.

11.151 In my judgement, henceforward, in his dealings with Mr Levy, Mr Picardo needed to proceed with extreme caution and circumspection, because any unexplained contact could have at least the appearance of an interference with the police investigation.

LATER EMAIL EXCHANGES BETWEEN MR MCGRAIL AND MR LLAMAS

11.152 Later that evening (12 May), there was an exchange of WhatsApp messages between Mr McGrail and Mr Llamas (Llamas 1 para 47 [A282]).

11.153 At 18.33, Mr McGrail emailed Mr Llamas saying: *‘Michael – we are both disappointed but I just can’t leave the matter as it is. I’d like to meet face to face. We have to work together & your wrong impressions about me need clearing up.’*

11.154 Mr Llamas replied (at 18.41) that it would ‘... *not be constructive to meet*’. He maintained that ‘*it was abundantly clear what we had agreed and there is therefore very little to discuss about that. All I have tried to do is to help you in all of this and to protect Gibraltar plc which is what I have spent all my life doing. I feel very, very let down. A serious breach of trust has occurred.*’ He explained that ‘*Gibraltar plc*’ is a term used ‘*by many people in Gibraltar, whether accurately or not, to express the public interest of Gibraltar, the collective interest of Gibraltar*’ [T/12/157.3].

11.155 Mr McGrail replied to Mr Llamas (at 18.43): ‘*I respect your view not to meet but totally refute any breach of trust. We’ll agree to disagree.*’

OBJECTIONS BY MR LEVY TO THE WARRANT

SHOULD MR BAGLIETTO HAVE ACTED AT ALL ON BEHALF OF MR LEVY?

11.156 Before I come to consider the next step in the sequence of events, namely, the written protest by Mr Lewis Baglietto, on behalf of Mr Levy, I will address a suggestion made by Mr Wagner during questioning [T/9/179.21]. Namely, that it was inappropriate for Mr Baglietto, as a partner in Hassans and a shareholder in 36 North (by way of his share of Astelon), to have acted for Mr Levy at all, when the search warrant arose from Mr Levy’s dealings with 36 North.

11.157 The evidence suggests that Mr Baglietto played no part in setting up 36 North. He had what he described as ‘*a very small*’ shareholding [T/9/52.5] (it was less than 1%). Mr Baglietto said that he never spoke to anybody about the shareholding in 36 North [T/9/53.14]. Mr Levy added that he and two other partners made the decision to invest in 36 North, and that Mr Baglietto was not one of those two [T/8/209.1]. Mr Baglietto said that within the allocation of work in the partnership, he was not involved in this type of commercial business [T/9/51.23]. He said that (prior to representing Mr Levy) he did not know that Hassans had lent nearly half a million pounds to 36 North, nor that

they had granted them a further loan facility [T/9/54.18, 55.10]. Until the visit of the police to Hassans on 12 May, he said that he was only ‘*vaguely aware*’ of 36 North, or his shareholding in it; it was – as he put it – ‘*not on his radar*’ [T/9/52.18, 53.13]. All this I readily accept.

11.158 Mr Baglietto said that he was the Head of Litigation at Hassans and had acted as such for 20 odd years. He was very experienced in public law and in judicial review. I also accept that over many years he has built a reputation for professional competence and integrity. He said that on that afternoon, he was presented with the ‘*bombshell*’ – as he described it – of the police visit to the offices with the search warrant. In these circumstances, he said that he did not give a minute’s thought to his small financial interest in 36 North, of which he was only vaguely aware [T/9/57.11]. His ‘*instinct*’ – as he put it – was to act to immediately ‘*sort this out*’, so as to rectify what he saw as a ‘*gross injustice*’ [T/9/58.3]. He thought that the police had acted in an ‘*unduly draconian and oppressive*’ manner [T/9/58.11]. Mr Levy also stated that he did not consider whether Mr Baglietto might be conflicted because he too owned a stake in Astelon [T/8/164.6]. He did not see the relevance of the fact that Mr Baglietto was also a shareholder because by that time 36 North did not have any contract following Mr Picardo’s decision to give it to another party [T/8/234.22].

11.159 Mr Baglietto stressed that he was not acting alone because he had retained leading counsel in London, with whom he had ‘*constant engagement*’ [T/9/58.19] and ‘*detached support*’ [T/9/59.23]. He also added that on 12 May 2020, Gibraltar was in the midst of the Covid restrictions, appearing to suggest that it would not have been easy to pass on the case to an external lawyer [T/9/58.16].

11.160 I accept that it is often wiser to be represented by an independent lawyer, so as to give more objective advice, but I do not think that it was improper or inappropriate for him to act for Mr Levy in these circumstances. I reject the

suggestion that he should not have acted for Mr Levy at all, provided that he maintained proper professional standards and boundaries.

11.161 I now return to the events of 12 May.

THE PROTEST BY MR BAGLIETTO TO MR LLAMAS

11.162 Both Mr Baglietto and Mr Llamas said that they might have spoken by telephone during the course of that day (12 May). Mr Baglietto stated that *'it is likely that I would have called [Mr Llamas] on 12 May 2020 to initially protest about the obtaining of the warrants, to express my concerns for the protection of the material taken by the RGP and also to let him know that we would be writing to him.'* (Baglietto 1 para 4.2 [A1520]). Mr Llamas had written in his statement that: *'while it is possible that I may have spoken to Lewis Baglietto ... on 12 May, it would have been to take a call from him saying how aggrieved James Levy was and that the letter/email (subsequently received at 23:03 hours) was coming. I was certainly not "talking to Mr Baglietto" other than to that extent'* (Llamas 2 para 28 [A305]). Mr Llamas confirmed that in his evidence at the hearing [T/12/92.21]. I accept this in relation to their contact on 12 May.

11.163 Very late that evening (12 May at 23.03 [B1902]) Mr Baglietto emailed a complaint to Mr Llamas. Formally starting the letter: *'Dear Attorney'*.

11.164 I could perhaps understand if, in his indignation, Mr Baglietto had sent off an email of protest to the RGP, or to the Commissioner of Police, or even to Mr Rocca, but to send an email, late at night, to the Attorney-General, whom he knew well as a personal colleague, at least risks the appearance of suggesting that he was hoping for some personal preference. On the other hand, Mr Llamas, and indeed Mr Levy himself, strongly defend this action, asserting that any lawyer in Gibraltar is entitled to make representations to the Attorney-General on any matter of law, including matters relating to criminal

prosecutions ([T/8/166.18], [T/12/254.12]). Asked about this practice, Mr Llamas said *'it happens'* [T/12/254.24]; I am satisfied that it does.

- 11.165 When asked about his email at the Main Inquiry Hearing, Mr Baglietto said that he had *'serious misgivings as to the [RGP's] conduct'*, therefore, he decided not to write to them, and his *'recourse [was] therefore to the Attorney-General as the Crown's most senior legal adviser and it was also regarding the public interest'* [T/9/62.6]. He said that he was writing to Mr Llamas as Attorney-General because he was – as he put it – the *'guardian of the public interest'* and *'one of the guardians of the rule of law'* [T/9/71.6], and the head of the prosecution service, and it was entirely appropriate to raise the matter with him. I have noted that he addressed the letter *'Dear Attorney'* perhaps being consistent with writing to him as the Attorney-General not as a personal friend.
- 11.166 In the circumstances, I do not criticise Mr Baglietto for writing to the Attorney-General, but I observe that the fact that Mr Baglietto was a professional colleague of Mr Llamas should have caused him to hesitate and reflect before appealing to him personally, which was likely to – and in fact did – give the appearance that this close circle of professional colleagues were seeking to sort this perceived problem out between themselves. I will return to this issue later in the course of the Report.
- 11.167 Mr Baglietto did not then have a copy of the application for the warrant, so he did not know the grounds on which it had been sought, and therefore he could only object on general principles to the grant of the warrant. He alleged this to be an *'apparent gross abuse of power'* by the RGP. He claimed that the issue of a search warrant was *'unnecessary, oppressive and highly distressing to Mr Levy and his family'* and that it *'directly impugned Mr Levy's reputation and dignity as an officer of the court'*. Mr Baglietto requested *'urgent intervention with a view to ensuring that all the seized material is returned forthwith'*,

pointing out – no doubt correctly – that the devices seized ‘*contain a vast amount of privileged and irrelevant information*’ [B1902].

11.168 I do not think that, in the circumstances, the content or tone of the letter can be criticised; he was forcefully, but reasonably, presenting the case on Mr Levy’s behalf, as he was entitled to do.

11.169 He sent as an attachment to his email the invitation which Mr Richardson had handed to Mr Levy to attend a voluntary interview (Baglietto 2 para 4 [A1544]).

MR LLAMAS’S REACTION TO MR BAGLIETTO’S EMAIL

11.170 At 23.12, immediately after receiving this email, Mr Llamas forwarded that email to Mr McGrail, suggesting that he should meet Mr Baglietto to discuss the matter [B3293]. Mr Llamas replied to Mr Baglietto at 23.16 confirming that he had suggested a meeting with Mr McGrail [C3525].

11.171 The following morning at 08.27, Mr Llamas sent a further email to Mr Baglietto confirming that Mr McGrail was ‘*amenable*’ to meeting later in the day [C3665].

11.172 At 10.49, Mr Llamas emailed Mr McGrail seeking to expedite the meeting with Mr Baglietto and suggesting they meet at midday. Having considered this, and taken advice from other senior officers [T/6/232.19], Mr McGrail replied (at 11.27, [C3663-4]) to the effect that he considered that it would not be appropriate for the Commissioner of Police and the Attorney-General to meet with Mr Baglietto, who was representing Mr Levy, a suspect in a live criminal investigation, particularly as Mr Baglietto was likely to represent him in the formal police interview under caution, then scheduled for the following week. He said that he was working on a substantive response to Mr Baglietto’s message.

11.173 Although Mr Baglietto was entitled to seek a meeting with Mr Llamas, and Mr Llamas replied that he could form his own views as to ‘*what is, or is not, appropriate*’ (at 11.56, [C3663]), I think that Mr McGrail’s objection to this

meeting was well founded, precisely for the reasons he gave. Mr McGrail did, however, – sensibly as it seems to me – state that he was preparing a substantive response and offered to meet Mr Llamas to discuss the preparation of legal arguments for any potential legal challenge that there might be to the execution of the warrant [C3664].

11.174 Mr Llamas said that despite Mr McGrail's comments, he still thought it appropriate to meet Mr Baglietto, since '*it was crisis management at that stage*' [T/11/224.19]. He was later questioned to spell out what the '*crisis*' was, to which he was referring; he appeared to suggest it was the very serious allegations made against the RGP and Mr Richardson in the Hassans letter [T/12/98.12]. He then stated that '*crisis*' could be the wrong word, but there was a situation that Mr McGrail wanted to discuss [T/12/99.1].

Mr Baglietto requested a copy of the application for the search warrant

11.175 On 13 May, Mr Baglietto sent a letter to the Clerk of the Magistrates' Court alleging that: '*the search warrant raises huge questions of abuse of law/misfeasance in public office which is extremely worrying*' and requesting a copy of the application for the warrant, a transcript or note of the hearing and a copy of the ruling granting the warrant [C3672].

11.176 I think that the receipt of this letter is likely to have triggered the statement of reasons provided by the Stipendiary Magistrate, which it will be recalled, was dated 13 May [C6728], and might explain its terseness.

Mr McGrail wrote to Mr Llamas justifying the RGP position

11.177 At 14.12, on 13 May, Mr McGrail sent a detailed email [B1907] to Mr Llamas replying to the allegations made by Mr Baglietto. He justified the application for the search warrant rather than a production order on the grounds that: (i) search warrants had been executed upon the other suspects in the case; (ii) it was necessary to seize Mr Levy's devices, without giving him notice; and (iii) a production order would require notice to Mr Levy which might have disclosed

details of the investigation and thereby potentially compromised lines of questioning.

- 11.178 He also made the point that the detailed application was considered by the Stipendiary Magistrate in a hearing which exceeded 90 minutes (DC Clarke's evidence is that it was nearly two hours: Clarke 1 para 10 [A1058]). This, I comment, is not such a good point as he suggested, because nearly all this time was taken by the Magistrate requiring DC Clarke to read the 38-page application aloud [T/9/31.21].

CONTACT BETWEEN MR BAGLIETTO AND MR PICARDO

- 11.179 On the afternoon of 13 May, Mr Baglietto sent Mr Picardo two WhatsApp messages asking to speak (at 12.36 and 15.50); they seem to have spoken shortly afterwards [B1422]. Mr Picardo said that they probably discussed '*the disgraceful way in which the police had abused their powers in seeking to obtain a search warrant when a production order should have been pursued, which was my view.*' [T/16/245.25]. He added that he would have spoken to Mr Baglietto a '*myriad*' of times [T/17/155.5]. He agreed that during this time he proposed a number of ideas to Mr Baglietto about points that could be made against the warrant [T/17/156.5]. I will later examine each of these instances that can be identified.
- 11.180 He said that he could not recall whether, in these conversations, Mr Baglietto mentioned to him that Mr Levy was a suspect [T/17/169.4]. But whether he did or not is beside the point, because both then knew perfectly well that he was a suspect.
- 11.181 Mr Llamas had already spoken to Mr Picardo and given him confidential information in his capacity as Chief Minister about the warrant issued against Mr Levy, who was suspected of a very serious offence arising from serious failures of NSCIS. I comment that, in my opinion, Mr Picardo, after he had received that confidential information, should not be speaking to the lawyer

then representing Mr Levy in connection with that suspected offence. That Mr Baglietto and Mr Levy were both personal friends and fellow partners of Hassans makes it doubly objectionable that Mr Picardo revealed this information. There was a very high risk of Mr Picardo's duties as Chief Minister conflicting with his interests as a friend and business partner of Mr Baglietto and Mr Levy. I will return to this point. I will also consider Mr Baglietto's position after I have reviewed Mr Picardo's '*proposals*', and after I have set out the evidence of the visit that Mr Baglietto made with Mr Levy to Mr Picardo's private home a few days later on 17 May.

13 MAY 2020: FIRST MEETING BETWEEN THE RGP AND MR LLAMAS

11.182 I come now to the first meeting, which took place on the afternoon of 13 May, between Mr McGrail (accompanied by Mr Richardson) and Mr Llamas (accompanied by Mr Rocca and Lloyd DeVincenzi, Senior Crown Counsel). Further meetings between them took place on the 15 and 20 May, to which I will come later.

MR MCGRAIL COVERTLY RECORDS THE MEETING

11.183 Mr McGrail covertly recorded that meeting, and the later meetings between them on his mobile telephone. He did not tell anyone that he was doing so, including his colleague Mr Richardson (although he did later tell Mr Richardson that he was recording the second and third meetings [T/4/139.12]). Mr McGrail did not ask the others to consent to the recording because, he said, they would then have been on their guard, and '*the conversation would not have been held in the same open candid manner*' [T/6/239.7]. He explained that the tone of the meeting with Mr Picardo and Mr Llamas the day before – the '*berating*' as he called it – had caused him to feel '*vulnerable, extremely worried.*' [T/6/238.1]. He said that he thought that these powerful figures '*were batting for Mr Levy*' [T/6/238.9]. He thought that his professional integrity had been called into question and that his personal position was '*at some risk*' (McGrail 2 para 4 [A47]). He sought to justify the

recording on the grounds that he was protecting his interests and indeed the interests of the RGP. He claimed that he gave no consideration to whether the recording was lawful [T/6/240.6]. Mr Wagner submits that the recordings have aided the Inquiry's work and avoided potential conflicts of evidence (closing submissions, para 144).

11.184 Even when he made his first witness statement, he did not disclose that he had the benefit of the transcript of his recording, whereas others did not have that benefit when they made their first statements.

11.185 There is – rather surprisingly, I might observe – no equivalent in Gibraltar of the Regulation of Investigatory Powers Act, passed by the UK Parliament in 2000. However, covert recording of such meetings may be a breach of various data protection provisions. I deliberately make no ruling or determination on this point. Sir Peter Caruana has variously described the covert recording of meetings with senior law officers as unethical, improper, unprofessional, even '*reprehensible*' (closing submissions, para 130.6). He suggested that it is contrary to various – admittedly rather vague – provisions of the RGP Code of Ethics, which encouraged every officer '*always to do the right thing*'; to be '*open and transparent*' and to '*treat everyone with respect*' [T/4/249.1]. His ultimate formulation was that the covert recording was '*unethical*' [T/24/11.19].

11.186 Mr Llamas variously described the covert recording as being a '*betrayal*', '*unacceptable*' and '*unbecoming*' [T/11/227.3].

11.187 Mr Rocca said he was shocked to learn that the meetings had been recorded [T/10/92.14]. He also thought it to be a breach of trust and even felt '*betrayed*' [T/10/92.19].

11.188 Mr Cooper KC, on behalf of the Former Operation Delhi Defendants, in his closing submissions at the Reconvened Hearing (para 25), made the further

point that Mr McGrail did not even volunteer the fact of these covert recordings during the disclosure process of their impending criminal trial.

11.189 I have found the relevant facts as I am required to do. I will leave it to others to come to their own conclusions whether it was, as Sir Peter contends, unethical, or whether, as Mr McGrail contends, what he did was, if not strictly lawful, at least understandable in the circumstances.

11.190 As it turned out, it was a great advantage to the Inquiry to have a recording of what passed, because no one can now dispute what was said, but there is a remarkable difference of approach to the nature, tone and even the purpose and result of these meetings.

MY APPROACH TO THE MEETINGS

11.191 There are several different versions of the transcript. The first version was produced by Mr McGrail; this was not surprising since he had made the recordings. Since some of the exchanges are in Spanish, he also produced a translated version (exhibited at [B169] – [B231]), which I have used. During the course of the Inquiry hearings on 22 April 2024, the lawyers for the Government Parties wrote to the Inquiry stating that they considered there to be *‘a number of inaccuracies/transcription errors in the transcripts’* of the meetings on 13, 15 and 20 May, and accordingly they had proposed track changes to the transcripts. The Inquiry Team has received the amendments proposed by the Government Parties, and concluded that there were no material differences in the translations which affect my conclusions below.

11.192 Having listened to all three meetings, I think that they are better considered separately, and chronologically. I will comment upon my conclusions having reviewed each of the three meetings.

11.193 My first observation of the meetings, and it applies to all of them, is that there was no agenda; no one chaired the meeting, with the result that discussion was not properly structured and several contributors rather rambled. The

transcript of the first meeting on 13 May covers all of 63 pages. The same point applies, with less force, to the other two meetings.

11.194 I now seek to summarise this first meeting, on 13 May. I will try to avoid the danger of taking extracts out of context. However, space does not allow me to cover every point; I will address only the most important ones.

11.195 Mr Llamas made clear in many passages that he did not agree with the decision of the RGP to apply for the search warrant; indeed, almost the first thing that he said was to ask Mr McGrail why had had applied for a search warrant [B169]. Mr McGrail answered that he did not expect that Mr Levy would hand anything over willingly [B170].

11.196 Mr McGrail, no doubt reflecting on what Mr Llamas had said the day before about their meeting of 7 April, said that *'it would not make any sense whatsoever to propose charges'* until Mr Levy had been interviewed under caution. Mr Llamas countered that Mr McGrail had broken what he alleged was *'an agreement'* they had then made not to take any further step in the investigation until the charges had been *'rationalised'* and until they had further discussed the matter. Mr McGrail did not agree with that proposition and forcefully defended the thoroughness and professionalism of the investigation. Mr Llamas said he did not want to discuss that issue further at this meeting. This exchange (which starts at [B170]) took some time, but it is a matter which I have already covered, and I need not go over this ground again. I have already concluded that there was no such agreement or understanding as Mr Llamas alleges.

11.197 The DPP felt that the purpose of the three meetings was genuinely to decide what they – the prosecution – should do next and was an attempt to defuse the situation [T/10/94.3, 94.22]. His impression was that he was present at the meetings because he was the experienced criminal law practitioner, which Mr Llamas was not [T/10/94.23]. He entirely rejected the suggestion put to him that he was merely the *'mouthpiece'* of Mr Llamas [T/10/95.9]. He said at the

meeting that he personally thought that *‘the warrant should [have] come, if at all, post to interview’*, but he thought that their decision to apply for a search warrant was an operational decision [B173]. He also defended the integrity of the investigation [B172]. Furthermore, he agreed with the decision to treat Mr Levy as a suspect and that he *‘needed to be asked questions’* [B173].

11.198 Mr DeVincenzi considered the mood of the meeting was *‘subdued and tense’*; but, as to Mr Llamas’s conduct generally, he did not think that Mr Llamas was trying to *‘cajole or to pressurise’* the RGP officers (DeVincenzi 1 para 17 [A1301]; [T/11/92.21]). He did not get the sense that Mr Llamas was trying to curtail the RGP’s freedom of action in their investigation [T/11/92.17. He did, however, add that he wondered whether Mr Llamas was showing *‘deference’* to Mr Levy [T/11/93.5].

11.199 Mr Richardson and Mr McGrail strongly defended the RGP’s application for the search warrant. They maintained that there were reasonable grounds to suspect Mr Levy. Furthermore, as they explained, the application for the warrant went to *‘great lengths’* to set out the terms of the investigation [B196]. They stressed that the Stipendiary Magistrate had accepted their submissions and granted the warrant [B197]. Mr McGrail told the Inquiry that he also thought that Mr Llamas was (together with Mr Picardo) *‘batting for Mr Levy’* [T/6/328.9]; that he was not supportive of the RGP and even that he was *‘not being impartial’* [T/7/13.12; 16.18]. He stated that Mr Llamas said that *‘pursuing the line of enquiry with [Mr Levy] would mean going to war and Hassans were going to bring 10 QCs from London and every single breath we took was going to be challenged whether justifiably or not’* (McGrail 1 para 59.9 [A23]). Mr Richardson said that he did feel, during the course of the meetings with Mr Llamas, that he was *‘being put under pressure to adopt a different procedure with Mr Levy than we would have done with other people’* [T/4/143.16], and Mr McGrail agreed, stating that Mr Llamas was *‘steering this away from Mr Levy’* [T/7/23.11; see also T/7/22.21]. Mr Wyan said that although

he had some ‘*concerns*’ and he did feel like the RGP were being influenced by Mr Llamas, he did not think he was being ‘*put under pressure*’ [T/5/211.19].

11.200 There was a long discussion to ensure the safeguarding of any legally privileged material on the devices seized, which it was agreed should remain, unexamined, in a sealed bag until it could be vetted by independent counsel chosen by Mr Levy [B204].

11.201 Another topic raised by Mr Llamas was the suggestion that he had heard that the prosecution was, in effect, being influenced by Mr Gaggero and that the RGP had been ‘*lumbered*’ into the investigation by Mr Gaggero, the Chair of Bland [B182]. Mr Richardson and Mr McGrail indignantly denied that [B183].

11.202 I turn to Mr Llamas’s defence of Mr Picardo. Mr Richardson set the scene: he explained that there were messages which the Former Operation Delhi Defendants had exchanged between themselves, and indeed also with Mr Levy himself, which tended to suggest that they were ‘*seek[ing] Jaime’s influence with the Chief Minister to get him an appointment*’ (that is, hoping, and expecting, that Mr Levy would use his influence with Mr Picardo to transfer the NSCIS contract from Bland to 36 North) [B180]. In a document handed to Mr Levy on 12 May titled ‘*Voluntary Attendance for Police Interview Under Caution*’, Mr Richardson had listed as Item 9 in the list of issues he wanted to question Mr Levy about in interview: ‘*Communication with the Chief Minister in relation to any of the above*’ [C3522].

11.203 Mr Llamas took strong exception to the Chief Minister’s title being included in that document. Indeed, he went so far as to say that the only reason he was at the meeting was to deal with Item 9 on the Voluntary Attendance letter, which he described as ‘*highly sensitive*’ [B188].

11.204 I quote what he said (at page [B188]):

‘In my view it’s ... completely unjust, unjustifiable to me that this man should be even appearing on a formal document. ...

if it's not legitimate, I want that to disappear immediately. My concern here is the reputation of this jurisdiction and that passes to the reputation of our Chief Minister. Especially in this moment in time. And for that I shall fight until I die.'

- 11.205 Mr Llamas suggested that he was seeking to protect not Mr Picardo as a man, but the office of the Chief Minister (and ultimately the reputation of Gibraltar as a jurisdiction), *'from allegations on "flimsy" grounds'* (Llamas 2 para 33 [A306]). In his live evidence at the Inquiry, Mr Llamas referred to Gibraltar being *'at a very critical moment in our history where we are trying to negotiate an extremely difficult treaty setting out our future relationship with the EU'*, and maintained that the interview would not be curtailed in any way if the words *'Chief Minister'* were removed and replaced by the words *'any other person'*. He argued that the police would still be able to ask Mr Levy about his communications with Mr Picardo, who came within the formula *'any other person'*, but the office of the Chief Minister would have been removed from the document [T/11/232.11].
- 11.206 It was immediately after this exchange, and whilst they were still discussing the document that named the Chief Minister, that Mr McGrail observed: *'the thing is you have the magic wand here. You have it.'* [B188]. Mr Llamas immediately responded: *'I am sure, and if that's the case, I would ask you to get it out of this as soon as possible'* [B188] (the emphasis by underlining is mine).
- 11.207 The first question which arises from this exchange is what Mr McGrail meant by his remark. It was initially suggested on behalf of Mr McGrail that the *'magic wand'* to which he referred was Mr Llamas's power to discontinue the investigation (opening submissions, para 108.3.1(b)). However in closing submissions, Mr Wagner submitted instead that it was a reference to the DPP's discretion not to proceed with any prosecution (para 55.5.1(c), 55.5.2(a)). The point is effectively the same, since he is referring to various

powers that the Attorney-General or the DPP had to stop the case. That Mr McGrail was here referring to such a power is echoed in references which he made elsewhere in this meeting. Thus, at [B180], Mr McGrail said: ‘... *I cannot pull it, you can. You can, Michael*’. Later (at [B222]), he contemplated that the investigating officers considering what Mr Levy had said in his forthcoming interview under caution might take the view that:

‘it puts a spanner in the works, and the DPP says, looks this isn’t so clear anymore. And you don’t want to run with it. If that is the advice that you give to me. I would like that advice in writing, and therefore, that would be the end of the matter for me. ... Do you get me? That would be the end of the matter for me, but what I cannot say is nothing is going to happen with this.’

11.208 In these circumstances, even before the Reconvened Hearing, I had the impression that when Mr McGrail referred to the ‘*magic wand*’, he was deliberately hinting at such a power in order to see what reaction it prompted. He was, of course, well aware that he was recording the exchange. My impression was confirmed at the Reconvened Hearing, when Mr McGrail gave evidence that going into the meeting with Mr Llamas, he believed Mr Llamas would say ‘*Ian, look, thank you very much for investigating this. Whatever you are going to bring to me, irrespective of whether there is evidence or not, I will not prosecute*’. Mr McGrail said ‘*That is why I mentioned to him the question of the magic wand...*’ [T/24/76.15].

11.209 The second question is: even if, as I have found, Mr McGrail was referring to some power to halt the investigation or the prosecution, did Mr Llamas realise that he had suddenly changed the subject? In my opinion, Mr Llamas gave no indication whatsoever that he thought that Mr McGrail had floated the possibility of his halting the investigation; I think that he ignored Mr McGrail’s remark entirely and was continuing their previous exchange about removing

the Chief Minister's name from the document. The Government Parties support this interpretation by contending (closing submissions, para 150.2(iii)) that Mr Llamas's request to Mr McGrail '*to get it out of this as soon as possible*' (the passage I emphasised above), obviously refers to Mr McGrail removing the Chief Minister's name from the document, which he (Mr McGrail) could do, and could not possibly refer to discontinuing the prosecution, which Mr McGrail could not do.

11.210 In my view, the interpretation put upon this response by Mr Llamas by the Government Parties is far more likely to be correct. In my opinion, even if Mr McGrail was referring to the exercise of some power to stop the prosecution, Mr Llamas had not then understood that and he was not responding to that reference. In the event, I attach no significance to this remark at all; it is one of the many diversions and footnotes to the Inquiry which do not justify further consideration. I have mentioned the point, but I will move on.

11.211 A bit later (page [B189]), Mr Llamas returned to this theme of the Chief Minister:

'Do you realise how damaging if this came out? The reference to the Chief Minister is ... maybe completely unjustified. ... It's the perception ... that is potentially very damaging and that [is] what I wanted to avert, from the beginning.'

11.212 He returned to the position of the Chief Minister again. He observed (at [B222]) that the threshold for his entering a nolle prosequi was '*extremely, extremely high*' and it was something that he would '*rather not do*', but if he felt that '*a prosecution, exposes the Chief Minister ... on grounds, which are flimsy, I'll stop it. I clearly tell you so.*' I observe evidential insufficiency is always a good reason to decide not to proceed with a prosecution.

11.213 So far as Mr Llamas was concerned, whilst he did not agree with the decision to obtain the search warrants, he knew that the RGP's proposed interview with

Mr Levy was to take place on Monday (18 May), with the *'confirmation that no-one is going to touch the phone for seven days'* [B223].

THE LETTER FROM MR BAGLIETTO

11.214 During the course of that meeting [B131], a letter was received from Mr Baglietto addressed to Mr Richardson (copied to Mr Llamas) [B5400] which asked for the immediate return of Mr Levy's devices, which he had handed over voluntarily the day before. (It was this letter which referred to the RGP having received advice *'at the highest level'*; a point with which I have already dealt.) The letter warned – by implication, if not expressly – of judicial review proceedings and requested disclosure of documents and records in advance of the RGP's interview with James Levy [B5400]. A good deal of the time at the meeting was spent discussing how best to reply to the letter. The letter in reply [B3303], to which I will come in due course, was sent the next day. Incidentally, I point out that Mr Llamas did say (at [B193]) that *'Lewis Baglietto has called'* and *'he was made aware of this meeting'*.

11.215 It seems to me (although I do not decide the point) that from that point onwards, if the RGP did not execute the warrant, they were obliged to return the devices, since the consent which Mr Levy had given had been withdrawn.

THE PRIVATE EXCHANGES BETWEEN MR MCGRAIL AND MR LLAMAS WHICH FOLLOWED

11.216 After the others had left the meeting, Mr Llamas asked Mr McGrail to remain, so that he could speak to him alone. Mr Llamas said (in Spanish) that they *'had a problem'* because Mr Picardo was *'adamant'* that, at their meeting the day before, Mr McGrail had said that the search warrant had been sought on the advice of the DPP [B225]. Mr McGrail that the DPP *'had been advising the team'*. Mr McGrail said that he could not remember the precise words which he used the day before, but it was true that the DPP had been consulted a number of times during the investigation [B225-6]. Mr Llamas said that he

wanted ‘to defuse’ the situation but – as he observed – it ‘was going to be a big sticking point with [the Chief Minister]’ [B226].

11.217 Later (at [B229]), he came out with another exaggerated sentiment about the office of the Chief Minister:

‘Fabian, I will ... defend to the death. ... But that’s talking about Fabian Picardo. The office of Chief Minister, [whether it’s] Picardo, [whether it’s] Azzopardi, [whether it’s] Caruana or Hassan ... I will protect them. ... I have spent my whole life defending this jurisdiction and promoting this jurisdiction as a lot of us do ... and there can be no office, more symbolic of the jurisdiction than that of the Chief Minister, I will defend it.’

11.218 Mr Llamas maintains that he was protecting the office of Chief Minister from ‘flimsy grounds’ or ‘unjustified criticism’; he said that it was not his position that he should defend the Chief Minister in all circumstances [T/11/246.9].

11.219 In his witness statement (Llamas 1 para 64.8 [A288]), Mr Llamas regretted his use of ‘over-expressive and emotional language which [was] motivated by [his] concern to protect Gibraltar from unnecessary harm’. In his closing submissions (para 144), Sir Peter Caruana suggested – no doubt correctly – that Mr Llamas now considered that these sentiments would have been ‘best avoided’, but this was not something that Mr Llamas said in the course of his evidence.

11.220 It is clear to me that Mr Llamas got carried away, no doubt because – as he described in his evidence – he perceived that the search warrants had ‘unleashed’ a ‘crisis’ (Llamas 2 para 51.2 [A312]). I accept that all he meant was that he would protect the holder of the Office of Chief Minister and the Office itself from attack or embarrassment on ‘flimsy’ or other unjustified grounds. He did not intend this extravagant and over-blown sentiment to be taken at face value; and I do not do so.

THE RECORDING IN THE CAR

11.221 I have already written how, after the meeting, Mr McGrail kept recording as he and Mr Richardson drove away from the meeting. Perhaps he did not have the opportunity surreptitiously to turn it off, since even Mr Richardson was unaware that he had been recording the meeting. The transcription of this meeting produced by Mr McGrail did not contain the conversation between Mr McGrail and Mr Richardson in the car afterwards. It was suggested by the Government Parties that this was an attempt to suppress this evidence; but Charles Gomez & Co (Mr McGrail's solicitors) disclosed the whole of the recording, including the conversation in the car, from which the Government Parties produced the further transcript. Therefore, in my view, there was no attempt to suppress this evidence; it is far more likely that they just did not attach any significance to it.

11.222 I turn to an exchange caught by this recording (the relevant extract is at [C6930-1]). Mr McGrail was speaking of the meeting, which they had just left:

Mr McGrail: '... Well ... it could have gone worse no Paul.'

Supt Richardson: 'Oh, ... I think all credit to Michael [Llamas] when you go into these things logically and rationally ... he sees the strength of the argument; he doesn't ... bully into saying this is not right; he sees the argument and tries ways around it but then accepts it.'

11.223 Mr Gibbs, on behalf of Mr Richardson, submits that this observation should not be considered in isolation, out of context. He suggests that Mr Richardson did not fully understand what was going on behind his back and he was mistaken if he thought that *'everyone was playing with an open hand'*, because they were not [T/20/78.3]. Nonetheless, what Mr Richardson said in the car was his assessment at the time of Mr Llamas's attitude at the meeting; he expressly gave *'credit'* to Mr Llamas, who he said was thinking *'logically and rationally'*, *'he sees the strength of the argument; he doesn't ... bully'*

[C6930]. This is not, to my mind, the reaction of someone who thinks that they had been subjected to improper pressure at the meeting which had only just finished.

CONCLUSION ON THE 13 MAY MEETINGS

11.224 I will comment on these meetings, after I have considered the other two meetings (on 15 and 20 May).

THE AMENDMENT OF THE PRE-INTERVIEW DISCLOSURE LIST

11.225 Following this discussion, the next day, by email (09.27, 14 May), Mr McGrail issued a revised pre-interview disclosure list, to delete the reference to the 'Chief Minister'. Item 9 now read: '*Communication with any other person in relation to any of the above*' [B3302]. Mr Richardson said that this document was amended at the insistence of Mr Llamas [T/5/88.25], as I am sure that it was, but it did not interfere in the investigation in any practical way, since the Chief Minister remained within the category of '*any other person*', about whom Mr Levy was to be questioned.

THE NARRATIVE CONTINUED

EXCHANGES BETWEEN MR LLAMAS AND MR BAGLIETTO

11.226 At 15.32 (on 13 May), Mr Baglietto asked Mr Llamas if he could call him; he then made two missed calls to Mr Llamas at 18.39 and 18.48 [C6883]. Mr Baglietto could not remember whether he managed to speak to Mr Llamas that day [T/9/63.19] nor did he recall being aware that the meeting between Mr Llamas and the RGP was taking place [T/9/65.4]. However, I note that the transcript of the 13 May meeting confirms Mr Llamas saying that he had spoken to Mr Baglietto, who was aware of this meeting [B193]. Mr Llamas gave evidence that he thinks that he did speak to Mr Baglietto, either on 13 or 14 May, who told him that, if interviewed under caution, Mr Levy would make '*no comment*' [T/11/267.3]. In the following day of evidence, Mr Llamas concluded that it was highly likely that after the 13 May meeting, he called Mr

Baglietto back and spoke to him, possibly because he had two missed calls from him [T/12/3.22]. Mr Llamas said that he and Mr Baglietto must have agreed to meet on the following day, as Mr Baglietto attended his offices the next day, and would not have done so unannounced [T/12/189.2]. (I will consider below whether a meeting in fact took place the next day).

11.227 No doubt, Mr Baglietto was pressing for a response to the letter which he had sent very late the night before.

11.228 I will consider later the propriety of these calls passing between Mr Llamas and Mr Baglietto, but I observe, yet again, that neither took a note, so I am left trying to construct what they said, when it should have been recorded by a contemporaneous note.

‘DON’T WORRY’: THE EXCHANGE BETWEEN MR LEVY AND MR LLAMAS

11.229 Later that evening (13 May, at 20.57, [C6901]), Mr Levy sent a WhatsApp message to Mr Llamas: *‘On the other matter I feel I’ve been hung out to dry.’* He then followed up with: *‘Certainly not by you’* [C6901]. Mr Llamas replied just one minute later (at 20.58): *‘Don’t worry’*. I pause to note that Mr Levy did not initially disclose this message, which the Inquiry obtained from Mr Llamas. During questioning, Mr Levy accepted that he did still have relevant messages on his mobile phone, including Mr Llamas’s *‘Don’t worry’* message [T/8/252.21]. The Inquiry team followed up in correspondence as to why this message had not been disclosed, Mr Levy’s explanation was that it had been inadvertently overlooked in Mr Levy’s response to the Inquiry’s request, and that he would not have had any concerns about disclosing the WhatsApp message in question had he recalled it at the time. If he had thought about it, he would have realised that the exchange would in any event be disclosed by Mr Llamas, as in fact happened, so he would have nothing to gain from deliberate suppression of the exchange. I therefore accept his explanation that the failure to disclose this exchange resulted from inadvertence.

- 11.230 The ‘*other matter*’ is obviously the search warrant. The reference to ‘*other*’ suggests that Mr Levy and Mr Llamas were discussing another matter simultaneously. I have previously observed – at least in my experience in the UK – that it is highly unusual for a person suspected of crime to complain personally to the Attorney-General. The question is what inference should be drawn from this reply, when – considered objectively – Mr Levy had a great deal to worry about, as Mr Llamas recognised (see below). This was not least because Mr Levy remained a person suspected of serious offences and was about to be interviewed about those offences by the RGP under caution.
- 11.231 Mr Levy explained in evidence that by sending this message he was explaining that he thought that he had been let down by the police, and that he had the expectation of being dealt with fairly by the police, but he was not dealt with fairly [T/8/246.8]. He said that he assumed that ‘*fairer minds were going to be engaged in that particular issue*’ [T/8/163.9], implying that Mr Llamas would bring his ‘*fairer mind*’ to bear upon the RGP. By this, he presumably hoped and intended that Mr Llamas would intervene on his behalf to protect him from what he considered to be a flawed investigation, but the message can also bear the appearance of suggesting that Mr Llamas, as Attorney-General, should use his influence to interfere inappropriately with a properly conducted investigation by the RGP.
- 11.232 Mr Llamas explained that he was still at his office, working late at the end of a long day on something else, and was in the office working until midnight. Knowing that he still had much work to do, he replied immediately with ‘*the first thing that came to [his] mind to just stop the exchange and not continue it*’, ‘*without commenting or being drawn into conversation with him about the matter*’ (Llamas 1 para 68 [A289])), and thereby hoping to end the exchange before it began, which – as he points out – it did [T/11/261.1-262.5].
- 11.233 He said that he was, in effect, lying to Mr Levy: ‘*because in that day’s meeting the outcome was that we were going to rebuff the letters that we were*

receiving from Hassans and that the investigation was continuing. So, there was everything for him to be worried about... [T/11/262.8]. The Government Parties therefore submit that the suggestion that he was in some way giving, or offering, protection to Mr Levy is not made out, because the investigation was indeed continuing (closing submissions, para 141.5 and 142).

11.234 I comment that many people – perhaps unwisely – believe that they are required by social convention to respond immediately to electronic messages sent personally to them, and they often do so impulsively, without reflection. Mr Llamas himself now sees that in the context of the Inquiry, the reply might seem significant and even sinister [T/11/260.19] but, he suggests, this is reading much more into the exchange than he intended or is justified.

MR MCGRAIL RESPONDED TO MR BAGLIETTO'S LETTER OF 13 MAY

11.235 On 14 May, at 10.03, Mr McGrail wrote to Mr Baglietto [B3303]. This was the letter which had been discussed at length during the meeting the day before (13 May). In his reply, Mr McGrail took issue with the claim that the application for the search warrant was excessive, unlawful and unjustified, and claimed that it was legitimate and proportionate. He did not accept that *'that there were reasonable grounds to believe that Mr Levy would have simply handed over his devices and documents'*. He still required Mr Levy to attend for a voluntary interview under caution on 18 May (which I observe he would be attending as a suspect). He attached a copy of the two warrants as granted (the original warrant of 6 May and the amended warrant of 7 May), but refused, at that stage, to provide a copy of the application. He also declined to discuss whether the RGP should have applied for a production order, rather than for a search warrant, and stated that *'although the DPP has been consulted on various non-operational issues concerning this investigation including the status of various parties he has not provided advice on the application of a search warrant which remains an operational matter'* [B3304].

A MEETING BETWEEN MR PICARDO, MR BAGLIETTO AND MOSHE LEVY

11.236 An exchange of messages [B1422] disclosed very late in the Inquiry's disclosure process showed that Mr Baglietto and Mr Picardo spoke some time on the afternoon of 13 May. It is likely that a meeting between them took place very shortly after that, attended also by Mr Moshe Levy, one of Mr Levy's sons. Moshe Levy is now a partner at Hassans; in May 2020, he was an associate lawyer (Moshe Levy 1 para 4 [A1547]). He often worked with Mr Baglietto, acting as his junior; he remembers attending a meeting with Mr Baglietto and Mr Picardo at 6 Convent Place (Moshe Levy 1 para 8 [A1547]).

11.237 Moshe Levy cannot date the meeting, which he thinks must have been sometime between 12 and 14 May (Moshe Levy 1 para 8 [A1547]). He remembers that they discussed the search warrant, but he does not remember what was said (Moshe Levy 1 para 9 [A1548]). He does, however, remember that Mr Picardo commented that if the RGP could treat a leading silk in this way, how would they treat less prominent members of the population, or words to that effect. He also remembers Mr Picardo saying this was not the only issue that he had with Mr McGrail, but that he (Mr Picardo) did not elaborate on what other issues he had (Moshe Levy 1 para 9 [A1548]). When he gave evidence, Mr Picardo said that he thought this meeting was on 14 May, as he would by then have seen the article in the Faro de Ceuta, which is why he had '*other issues*' with Mr McGrail at that time [T/16/250.6].

11.238 Mr Picardo has read Moshe Levy's account and, although he has no positive recollection of the meeting either, he is prepared to accept Moshe Levy's account [T/16/246.23, 249.19], which I accept.

11.239 I will return to the propriety of this meeting after I have considered the meeting between Mr Picardo, Mr Baglietto and Mr James Levy on 17 May.

Did Mr Llamas meet Mr Baglietto and Mr Moshe Levy?

11.240 Having so far dealt with events in a strictly chronological order, I think that the narrative will be easier to follow if I stay with the dealings between Mr Baglietto

and Mr Llamas for the next couple of days, before turning to the exchanges between Mr Picardo and Mr Pyle on 14 May.

11.241 On the morning of 14 May, Mr DeVincenzi sent a couple of WhatsApp messages [C6806] to Mr Llamas. At 12.31, he wrote: '*Lewis [Baglietto] and another gent here to see you*'. At 12.45, he made clear that '*Moshe Levy is the other gentleman*'.

11.242 Mr DeVincenzi explained in his evidence to the Inquiry that there was no receptionist on the floor where Mr DeVincenzi and Mr Llamas worked, and he supposed that he had messaged Mr Llamas to say that there were these two visitors to see him [T/11/96.4]. He said that he inferred from these messages that they met at lunchtime on 14 May (and was '*reasonably certain*' they had), but he does not know for a fact whether they did or not, and he had not joined the meeting [T/11/97.15]. He did, however, say that he was not comfortable with the suggestion that such a meeting might have taken place: '*it just didn't seem quite right to me that they were meeting with him in private*' [T/11/55.18]. I will return later to Mr DeVincenzi's views.

11.243 Mr Baglietto said he could not himself remember such a meeting on that day, although he observed that in his diary entry for that date, he had written Mr Llamas's initials [T/9/68.9]. Mr Moshe Levy also did not recall meeting with Mr Llamas on this matter, and could find no record of the meeting in his diary, emails or notepads (Moshe Levy 1 para 7 [A1547]). Furthermore, Mr Llamas was '*virtually certain*' that this meeting did not occur, and he did not recall meeting with Moshe Levy at all [T/12/5.16]. He added that surviving messages, which he produced, showed that he was picking up his son around the time (he had messaged his son at 12.53 and 13.08), thereby suggesting that there had been no such meeting [C7008].

11.244 Even if Mr Baglietto and Mr Moshe Levy did attend Mr Llamas's office with the intention of meeting him, I think the balance of evidence strongly suggests

that they did not do so on the afternoon of 14 May. I have only mentioned this exchange to show that I have not overlooked it.

ANOTHER LETTER SENT BY MR BAGLIETTO TO THE MAGISTRATES COURT

11.245 The next morning (15 May, [B3326-7]), Mr Baglietto wrote again to the Magistrates Court asking for a copy of the application for the warrant, a transcript of the hearing and the reasons for the Stipendiary Magistrate's decision.

LETTER SENT BY MR BAGLIETTO TO MR LLAMAS

11.246 On the evening of 14 May, Mr Baglietto texted Mr Llamas to say that he would send him a letter the following morning, which Mr Llamas acknowledged [C6883]. The following morning (15 May at 11.15, [C3802]), Mr Baglietto sent a detailed letter to Mr Llamas (copying Mr McGrail) in which he claimed that *'there are very good grounds for believing that the warrants were improperly procured'*, and that the warrants were likely to be declared unlawful, and therefore requesting that Mr Levy's possessions should be returned to him.

11.247 Mr McGrail copied Mr Baglietto's letter to Mr Llamas to Mr Richardson, and to other senior officers [B3306]. I think Mr McGrail was quite entitled to copy the letter as he did. Mr Richardson forwarded Mr Baglietto's letter to the Magistrates' Court to Mr Rocca seeking advice and outlining that the RGP would object to disclosure of the application. This was principally because the grounds as set out were so detailed that they would prematurely alert Mr Levy, and the Former Operation Delhi Defendants, to the evidence against them [B3326]. I consider that Mr Richardson's objections to disclosing the grounds of the application were justified, for the reasons he gave.

11.248 The letter referred to *'the clear misrepresentation that the warrants had been applied for on the advice of the DPP'* [C3808] and stated that *'there can be little surprise that, as we believe is the case, the DPP advised the Commissioner against the making of these applications'* [C3802].

11.249 Mr Baglietto was asked about the source of this information, which was – as I have already pointed out – quite untrue. He thought that he must have heard it either from Mr Picardo, or Mr Llamas, or Mr Levy [T/9/76.11]. However, he also appeared to accept Mr Llamas’s evidence that he would not have told Mr Baglietto [T/9/76.15], and also accepted Mr Levy’s evidence that he was not aware of the DPP’s advice [T/9/77.6]. Mr Llamas thought at the 15 May meeting that the information must have come from the conversation between Mr McGrail and Mr Picardo on 12 May 2020 [B277], and in evidence stated that he did not know who informed Hassans [T/12/8.16].

THE PROPRIETY OF MR PICARDO DISCLOSING ADVICE GIVEN BY THE DPP

11.250 If Mr Baglietto had not heard this from Mr Llamas, he must have heard it from Mr Picardo, as I am sure he did.

11.251 Mr Picardo repeatedly said in his evidence that he thought that he could share any information he was given by the Attorney-General, by the DPP, by Mr McGrail or by the RGP with Mr Levy, Mr Baglietto and his lawyer, and indeed with anybody else he chose, unless it was shared with him in a way that was expressly requiring him to keep it confidential or another implied duty suggesting that it should be confidential [T/16/266.14]. He later accepted, when I put an extreme example to him of the DPP’s advice on a terrorist shooting, that there are certain circumstances in which information has to be kept confidential [T/17/301.3]. So, he said, it was ‘*very likely*’ that he told both Hassans and Mr Levy, as well as ‘*everyone who talked to [him] about this*’, as soon as he was told himself that the DPP had advised the Commissioner against the making of the search warrant applications [T/16/263.20].

11.252 Mr Picardo attempted to justify this. First, he said that once Mr Llamas had informed him of Mr Rocca’s advice, he could not see ‘*an obligation to keep [it] confidential*’, unless it was ‘*shared with [him] in a way that is expressly requiring me to keep it confidential*’, and it was not; therefore, he believed that he that he ‘*was able to share that information widely...*’ [T/16/266.10]. This is

so obviously wrong that I doubt he could have believed this. Mr Llamas accepted in oral evidence that it would not be proper for a suspect to be informed as to the DPP's advice on executive action to be taken against him [T/12/8.13]. Mr Rocca stated that it would have been improper for him to divulge that information as a prosecutor to Mr Baglietto at that stage [T/10/118.2]. I do not believe that a Chief Minister should tell a suspect what advice the DPP had given about a search warrant issued against him, when such information has been provided to him in confidence and in his official capacity.

11.253 Secondly, Mr Picardo seemed to think that defendants were entitled to know the evidence against them and therefore he could tell Mr Levy anything which he learned about the case against him, stating: *'if somebody has advised that something should not be proceeded with, shouldn't it eventually be told to the defendant as unused material?'* [T/16/264.18]. He argued that RGP had *'gone outside their circle of privilege'* (by Mr McGrail telling Mr Picardo what the DPP had advised), and therefore could not have an expectation of confidentiality from him [T/16/265.2]. In criminal trials, there are detailed procedures in place to ensure that those accused of crime know the case against them, and any relevant material capable of advancing their case is disclosed. It is not the function of the Chief Minister to supplement the disclosure process by his own revelations. He actually said that he was able to share the information that Mr McGrail had told him widely with *'all and sundry'* [T/16/265.15], including, as he put it, *'Mr Smith down Main Street'* [T/17/207.23]. I find it difficult to accept that he believed such an absurd proposition. In Gibraltar, he said, *'we believe that documents should be public as soon as possible'* [T/17/299.14].

11.254 Thirdly, he said that this was *'an important issue in town'* and had what he called *'jurisdictional consequence'* [T/17/300.4].

11.255 Fourthly, he said that he was not sharing advice which the DPP had given, rather advice which he had not given; he was sharing *'the absence of advice'*. CTI pointed out in questioning Mr Picardo – in my view, quite correctly – that this reason did not work as the Hassans letter alleged that the DPP had *'advised against'* [C3802], not that the DPP had not advised at all [T/17/301.20].

11.256 Fifthly, that he was sharing the advice because it showed Mr McGrail had lied to him; *'that was a critical moment with my relationship with the RGP'* [T/16/271.1].

11.257 To tell Mr Levy what he had been told by the Attorney-General about this advice given by the DPP was a grossly improper disclosure of confidential material, which he must have known, and intended, might assist his defence to the detriment of the prosecution (although I make clear that this does not amount to a finding of civil or criminal liability). That the advice given was completely misquoted is not an excuse or justification. Having come into possession of confidential information in his role as Chief Minister, it is plainly not appropriate for Mr Picardo to tell the suspect, or his lawyer, what he believed the DPP had advised for or against, or indeed that he had not so advised.

MEETING BETWEEN MR MCGRAIL AND DR BRITTO

11.258 On 15 May, Mr McGrail went to see Dr Britto, who remembers the fact of the meeting, but he did not take notes. He remembers Mr McGrail telling him that Mr Picardo was not happy with him. He remembers Mr McGrail mentioning *'Operation Delhi'*, which was the first that he had heard of it or Mr Levy's suspected involvement. He thought it odd that Mr McGrail was telling him about the operation. He said that Mr McGrail did not give him many details, but he remembered something about Mr Levy's telephone being kept in his safe (Britto 1 para 10 [A321]).

11.259 I don't think that anything turns on this meeting, nor whether they also met on 12 May, a point with which I have already dealt.

15 MAY 2020: SECOND MEETING BETWEEN THE RGP AND MR LLAMAS

MR ROCCA AND MR LLAMAS MEET TO DISCUSS 'THE WAY FORWARD'

11.260 I come to the second meeting between the RGP and Mr Llamas, which took place on Friday 15 May. At 17.28 the evening before, and plainly in contemplation of the meeting, Mr Rocca messaged Mr Llamas [C6854] to say that he had *'been thinking about the current case and have a few ideas to discuss with you'*.

11.261 Accordingly, they met the following afternoon for twenty minutes to half an hour, just before the meeting [T/10/101.3]. Mr Rocca said that Mr Llamas was looking for ways to *'defuse the ongoing situation'* [T/10/101.10]. Mr Llamas said that Mr Rocca *'came to [him] with options that could be considered going forward'* [T/11/265.7]. Mr Rocca remembered that he did suggest *'The different ways of dealing with Mr Levy, both in relation to the documentation and the interview'* [T/10/102.19]. Neither he, nor Mr Llamas, could remember whether he had proposed that Mr Levy be invited to give an interview, but not hold it under caution [T/10/101.19; T/11/265.7], but I think it is very likely that he did. I might add that Mr Baglietto thought it was *'perfectly plausible'* that he had proposed to Mr Llamas that Mr Levy might give a voluntary statement [T/9/79.8].

A SUMMARY OF THE SECOND MEETING

11.262 At this second meeting, Mr McGrail was accompanied by Mr Richardson and Supt Wyan; Mr Llamas was accompanied by Mr Rocca. Although the note at the head of the transcript suggests that Mr DeVincenzi was also there [B270], neither he, nor Mr Richardson, remembers him being there [T/11/57.2, T/4/144.11]; I do not think that he was there.

- 11.263 Again, Mr McGrail covertly recorded this meeting [B236]. Again, I have worked from the translated transcript, which runs to 34 pages [B270-B303]; my page references are to that version.
- 11.264 Mr Llamas considered that they *'were heading towards a major collision'*, which was *'best avoided'* [B270].
- 11.265 Mr Rocca stated that they had been *'led to believe that if we go under caution he's not going to say a word, to the extent that he may not even attend'* [B271].
- 11.266 Both Mr Llamas and Mr Rocca believed that the sticking point was being interviewed under caution. The *'stigma'* of being interviewed under caution was, as Mr Llamas put it, *'very oppressive'* [B277]. *'[T]he issue here is the caution'*, said Mr Llamas [B287]; and again: *'It's just this damned, suspect caution thing'* [B290].
- 11.267 Furthermore, Mr Llamas warned that he was anticipating that Mr Levy would disrupt the prosecution of the other defendants, against whom he said the RGP had a stronger case, and would challenge *'every single breath you take'* [B290-1].
- 11.268 Given that Mr Levy may not say anything if interviewed under caution, Mr Rocca suggested that it might be better for the prosecution to get such information from Mr Levy as he was prepared to give [B272], although later he stated that *'he's not gonna say something to incriminate himself'* [B284]. Indeed, he even seemed to suggest that unless Mr Levy revealed some further incriminating evidence against himself at the interview under caution, then there might not be sufficient evidence against him to justify charging him [B271-2].
- 11.269 Mr Llamas therefore put forward the suggestion that *'the interview would still go ahead but not under caution'* [B271]. Mr Richardson immediately pointed out – quite correctly, I might add – that such a proposal would not comply with the Codes of Practice, because Mr Levy, as a suspect, could not be

interviewed except under caution. Mr Richardson also noted that he had already cautioned Mr Levy [B271].

11.270 Mr Rocca then suggested that ‘*we take a voluntary statement not under caution, as a witness*’, and suggested that if he said anything incriminating, the RGP could caution him [B272].

11.271 Then Mr Richardson ‘*had a thought*’ that Mr Levy could be asked to ‘*submit his version of events*’ in writing but without him being interviewed under caution [B273]. Mr McGrail observed that if the RGP still wanted to interview him after submitting a version in writing, they would be ‘*back to square one*’ (presumably because that interview would be under caution) [B274].

11.272 A good deal of time was spent at the hearing by counsel taking selective extracts, seeking to establish whose idea this was, and who was driving the idea. It suffices to say that after a long discussion, everyone present at the meeting agreed a compromise by which Mr Levy would not attend, as had been planned, on Monday 18 May to be interviewed as a suspect under caution, but that he would be given the opportunity to provide a written statement. He would remain a suspect, so his written statement would not be a ‘*witness statement*’. The RGP would then consider any explanation which he had given in that written statement; then, if they thought it appropriate to do so, he could still be required to attend for an interview under caution, the written statement being relevant and admissible in that interview and in any future prosecution. On the other hand, if they were satisfied by his explanation, and considered that it was no longer necessary to interview him under caution (which Mr Richardson considered ‘*very unlikely*’), then they would not do so and his status as a suspect could be reviewed [B275; B276; B293-4; B299-300]. This in fact happened, although not until many months later. This solution was accepted ‘*as an interim measure*’ (per Mr Richardson at [B276]), and such a course of action would remove the threat of judicial

review, whilst yet all options still remained open to the RGP; they would not be *'backing down'* (per Mr Llamas at [B272]).

11.273 In this fashion, an agreement as to the way forward was reached. However, both Mr Richardson and Supt Wyan commented in their evidence to the Inquiry that they were not aware of this procedure being adopted previously on these terms ([T/5/201.1], Richardson 1 para 15(b) [A1288]). They both said that while written statements were sometimes given by suspects, those statements were given during the course of the suspects being interviewed under caution, and after the suspect had refused to answer questions. Neither were aware of any previous occasion when a suspect had been permitted to give a written statement instead of being interviewed under caution.

11.274 The issue of the DPP's advice also arose during the meeting. Mr Richardson said that there was *'even a suggestion here that [the DPP] advised [the RGP] not to obtain a warrant'* [B276]. Such a claim had been made by Hassans (in their letter of 15 May, to which I have already referred [B3302]). Mr Rocca knew that he had not given such advice. He repeated what he had said at the first meeting on the 13 May: that he disagreed with the decision to apply for a search warrant, but that this was an operational matter, that he could defend the RGP's position [B283], and that he thought that *'lawfully you can justify'* applying for the warrant [B247]. I have already covered this point when I dealt with the earlier meeting on 13 May, and I need not repeat his position.

11.275 Mr Richardson was anxious to discover where the suggestion in Hassans' letter had come from. Mr Rocca was concerned that Hassans' letter might suggest that the information came from him, which he firmly denied [B277]. Mr Llamas then stated that this information *'must come from the conversation with [Mr McGrail] and the Chief Minister'* [B243], referring to the meeting on 12 May, which inference must be correct.

11.276 Mr McGrail said: *'I welcome the fact that you are consulting ... with us ... I am really, really grateful that you are consulting this and getting our views. We want to come out good of this too'* [B256]. When he was asked about this at the hearing, Mr McGrail sought to explain it by saying that he *'was being very prudent, and I was trying - very conscious that we needed bridges to be repaired, I needed to continue - hope that there was going to be support, so of course I was... hopeful.'* [T/7/25.10]. But his observation made at the time, which I quoted at the beginning of this paragraph, goes much further than repairing bridges and, to my mind, does not suggest that he saw the meeting as an inappropriate interference with the investigation.

11.277 Mr Richardson agreed that the tenor of the meeting was *'collaboratively'* exploring ways out of the legal challenge, whilst leaving the RGP free to conduct the investigation thereafter as it chose [T/5/48.23].

11.278 Mr Llamas said that he would call Mr Baglietto and tell him of their proposal [B264-5], which the Government Parties argue shows the transparency of his communications with Mr Baglietto, and that there was consensus for him doing so [T/10/237.6].

11.279 Mr Rocca said that the situation at the meeting was a bit tense, but they were trying to discuss things *'collectively, collegiately in a full and frank manner'* [T/10/104.13]. He thought the proposal was perhaps *'an option'*, which was *'not unknown'*, but whether the RGP accepted this proposal was a matter for them; they could accept it or reject it as they thought fit [T/10/107.19]. He also accepted that by discussing whether the interview should be under caution, he was getting involved in operational decisions, but stated that Mr Llamas had emphasised that these were matters entirely for the RGP [T/10/192.16].

LATER WHATSAPP EXCHANGES BETWEEN MR MCGRIL AND MR ULLGER

11.280 One of the WhatsApps disclosed after the Main Inquiry Hearing shows that at 17.45 that afternoon, after that meeting had finished, Mr Ullger texted Mr

McGrail to ask: *'How did it go?'*, plainly referring to that meeting. Within a minute, Mr McGrail replied: *'All good'ish. Too much to explain by text. Chill out. We'll chat on Monday'* [E742-3].

11.281 Mr McGrail was asked about this at the Reconvened Hearing. He said that it was *'goodish'* because he *'was expecting far worse and outcome from that meeting. It was still not ideal but in the overall negative surroundings of that meeting, it was good-ish'* [T/23/78.7]. He explained that he had expected Mr Llamas to refuse to prosecute no matter what evidence the RGP presented, and that had not happened. Therefore, the RGP investigation was *'still on some form of track'*, and therefore he saw the outcome as *'good-ish'* [T/23/75.16]. He also explained that he said *'chill out'* because he was trying to manage and alleviate Mr Ullger's concerns [T/23/78.7]. By contrast, Mr Ullger stated that if the meeting had gone badly, he would have expected Mr McGrail to have messaged to that effect or called him [T/22/189.9]. To my mind, the reference to the meeting as having been *'good-ish'*, and the advice to Mr Ullger to *'chill out'* hardly suggests the Mr McGrail then believed that Mr Llamas or Mr Rocca were attempting to interfere with the RGP investigation, let alone that they were seeking to do so improperly. I will need to return to this exchange when I review the conduct of these meetings.

11.282 The Government Parties point out that there is no complaint in any of the WhatsApp chats disclosed between Mr McGrail and other RGP officers of any alleged interference, let alone to any improper interference, nor is there any email or note of any other complaint about interference. This has some force as regards the three meetings with Mr Llamas, for if this is how Mr McGrail, or any of his colleagues, felt about the meeting at the time, they would surely have complained about it at the time in writing, and done so emphatically, and there is no record that they did so.

11.283 As I have already written, I think that it is plain from the recording of the meeting on 15 May that Mr McGrail, and the RGP officers, understood that all

their options towards Mr Levy remained open: if they were not satisfied with Mr Levy's later written statement, they could arrest him and interview him under caution. This point is made abundantly clear from a further RGP WhatsApp Chat the following day (16 May at 12.09 [E745])) when Mr McGrail wrote to Mr Ullger: *'I am hoping that JL does not force the issue where we have to end up arresting him'*.

- 11.284 Mr McGrail was asked about this exchange. He said that his recollection was that there was no intention of arresting Mr Levy, but that he *'didn't want it to get to that stage because there would be consequences to whatever actions'* followed [T/23/80.4]. He referred several times to the possible *'consequences'* that would follow if Mr Levy was arrested. He added:

'I was under threat from 12 May onwards that there would be consequences, so I try my best to be upfront and continue with my responsibilities, but eventually I ... found that I was unable to discharge them.' [T/23/81.8]

- 11.285 Asked why he was unable to continue with the process when subsequently Mr Richardson (the SIO) was able to, Mr McGrail stated:

'If the head of an organisation, like in that case myself, was scalped, that would send some shockwave down the line where who would dare to put their head over the parapet and pursue it in the way that it was being pursued when I was in office?' [T/23/128.12].

- 11.286 Notwithstanding this explanation, I conclude from all the circumstances, including the WhatsApps disclosed after the Main Inquiry Hearing, that Mr McGrail clearly understood that the course of action agreed at the meeting of 15 May left the RGP free to arrest and interview Mr Levy, if they considered it necessary to do so, but which Mr McGrail then was *'hoping'* would not be necessary. I think that the Government Parties are quite right to observe that

this seriously undermines the submission made on behalf of Mr McGrail that Mr Llamas was at these meetings interfering – and improperly interfering at that – to protect Mr Levy.

MY CONCLUSION ON THIS MEETING OF 15 MAY

11.287 As I said in relation to the first meeting on 13 May, I will comment on these three meetings between Mr Llamas and the RGP after reviewing the third meeting, which took place on 20 May.

A MEETING BETWEEN MR BAGLIETTO AND MR LLAMAS

11.288 At 19.29 that evening (15 May), Mr Baglietto messaged Mr Llamas stating, '*was asked to come over to your office*', which he did [C7047]. There are no notes of this meeting either, but Mr Baglietto's recollection is that Mr Llamas told him that, following the meeting he had had with the RGP that afternoon, they would be prepared to accept a voluntary statement from Mr Levy '*in lieu of his having to attend New Mole House*' on Monday for an interview under caution [T/9/85.23]. I accept that this is an accurate summary of that meeting.

14 MAY 2020: MR PICARDO'S DEALINGS WITH MR BAGLIETTO

11.289 I come now to the exchanges between Mr Picardo and Mr Baglietto on the afternoon and early evening of 14 May.

MR PICARDO'S JUSTIFICATION FOR DEALING WITH MR BAGLIETTO

11.290 In response to a further request by the Inquiry asking about the WhatsApp messages passing between them, Mr Picardo confirmed, for the first time in his Fourth Affidavit [A1445], that his discussions with Mr Baglietto and Mr Levy went beyond the search warrants and criminal investigation, and also addressed his loss of confidence in Mr McGrail, and even (at least with Mr Baglietto) the mechanisms by which he might be removed.

11.291 Mr Picardo gave the following evidence (Picardo 4 paras 8-18 [A1447-1448]). He said that he met with Mr Baglietto on a number of occasions during that

period but could not recall the detail of what was discussed. I comment that, yet again, no one kept a written or contemporaneous record of those meetings. He said that he shared with Mr Baglietto, who was ‘*one of [his] closest personal friends*’, his outrage at the RGP’s obtaining of a search warrant, which he considered had been obtained improperly instead of a production order. Mr Picardo set out his view that the use of the search warrant was a breach of Mr Levy’s human rights, how let down he felt by Mr McGrail, and that he would never be able to trust him again as he believed he had lied to him about the advice relating to the search warrant. He said that he discussed with Mr Baglietto ‘*at length*’ how best he should raise these issues in his representation of Mr Levy, including whether Mr Levy should be advised to judicially review the RGP’s actions.

- 11.292 Mr Picardo said that he believed that he would have shared with Mr Baglietto also ‘*the fact that I was very open with the Gibraltar Police Authority and the then Governor that Mr McGrail no longer enjoyed my confidence and my views as to the mechanisms to see Mr McGrail removed and the consequences thereof*’ (Picardo 4 para 14 [A1448]). In questioning, he explained that he shared this fact widely, not just with Mr Levy [T/16/277.25].

MR BAGLIETTO’S VERSION

- 11.293 Mr Baglietto also gave evidence of his dealings with Mr Picardo. He said that whilst he noted Mr Picardo’s evidence and the WhatsApps which he disclosed, which showed that they had conversations around the relevant time, he has no recollection of the contents of any discussions with him on the subject of the warrants (Baglietto 1 para 4.2 [A1520]).
- 11.294 He was pressed about this when he gave evidence; he said that he did not recall how much detail he gave Mr Picardo about the basis put forward by the RGP for the warrant, but ‘*I dare say it would have been quite high level and quite obvious*’ [T/9/104.1]. He did not think that he had sent a copy of the Information for the warrant to Mr Picardo, when he eventually received it

[T/9/106.2]. He thought it was '*perfectly plausible*' that Mr Picardo '*gave me a piece of his mind about being let down by Mr McGrail*', but he did not recall specific meetings or conversations [T/9/108.1]. However, he did recall Mr Picardo telling him how let down he felt with Mr McGrail and that he could no longer trust him due to his belief that he had been lied to, and he also recalled that they discussed the issue of judicial review [T/9/108.8]. Mr Baglietto also said that he does not recall ever discussing Mr McGrail's position as Commissioner of Police or the decision to invite him to retire with the Mr Picardo, Mr Llamas, or Mr Rocca, or with any other member of the Government, and acknowledged that he was not advising Mr Levy or anyone else on that matter (Baglietto para 4.9 [A1523]).

11.295 Although I have listed the topics about which Mr Baglietto says he has no recollection, and of which he has no note or record, the fact is that he now remembers almost nothing of any of these exchanges or meetings, which admittedly did take place more than four years prior to his oral evidence. On the evidence presented to me, confirmed by my impression of him as a witness, I do not think that I can go beyond concluding that he has a poor memory of these particular events, and it would, therefore, be wrong to draw an adverse inference against him.

THE FIRST SUGGESTED INTERVENTION: THE POLICE (DISCIPLINE) REGULATIONS

11.296 I have set out the written exchanges between Mr Picardo and Mr Baglietto, in so far as they have been recovered, but I observe that these exchanges start and end abruptly and I infer that there must have been conversation between them, presumably by telephone, before the extracted passage started, and probably also after it had ended.

11.297 The first extract is at 16.55 on 14 May [B1422] with a message from Mr Picardo to Mr Baglietto which reads:

'The last limb refers: Dismissal with total loss or reduction of Pension Benefits forfeiture of pension benefits will be used as a disciplinary measure only in [cases] where the Police Officer is convicted of treason or some other offence which is gravely injurious to the State or is liable to lead to serious loss of confidence in the Police Force.'

11.298 Mr Baglietto replied at 18.23 stating '*Many thanks.*' I comment that this is a rather non-committal reply, amounting to no more than a polite acknowledgement, falling far short of acceptance.

11.299 Mr Wagner pointed out that Mr Picardo was quoting from paragraph 8 of Schedule 2 of the Police (Discipline) Regulations 1991 (although the message sent did not cite the provision), which sets out the most severe disciplinary penalty available (*'Dismissal with total loss or reduction of Pension Benefits forfeiture of Pension Benefits'*). Mr Baglietto said at the Inquiry hearings that he did not know why Mr Picardo had sent him this provision [T/9/113.5]. He said that he did not think that Mr Picardo was suggesting punishment against Mr McGrail, which he would have raised under section 34 (of the Police Act) instead, but that he might have thought that this was relevant to punishment against other officers [T/9/116.15].

11.300 I put it to him that the phrase '*the last limb refers*' suggests that there must have been some previous exchange. Mr Baglietto replied that he did not recall having any discussion with Mr Picardo about disciplinary proceedings against police officers, but he did not discard the possibility that Mr Picardo had mentioned it in a conversation, and that this message was a follow up [T/9/115.2]. In the circumstances, I would only be speculating if I tried to re-construct the rest of this exchange, which I am unwilling to do.

11.301 Mr Picardo explained that, as he well knew, those Regulations do not apply to the Commissioner of Police. He said that he was not here writing about removing Mr McGrail, he was referring to removing Mr Richardson

[T/16/255.8]. He said that Mr Levy's view was that Mr Richardson was conducting the investigation in bad faith, having been induced by Bland, and had secured employment with Bland on lucrative terms. Mr Picardo said that Mr Levy was so distressed by the visit of the police with the abusive warrant that he was not thinking straight and, as a result, made this '*fanciful*' allegation [T/17/89.1]. Mr Picardo stated he '*took the view that [the allegation] was nonsensical, that there was nothing to support that suggestion*' [T/16/255.23], suggesting that he held this view even at the time. Mr Picardo seeks to defend his action in sending this message; he says Mr Baglietto was aware that Mr Levy believed that Mr Richardson was about to be employed by Bland [T/16/255.8], and set out what could happen in the event it was true [T/16/258.9].

11.302 Following this completely unexpected suggestion, Mr Richardson filed a statement entirely denying this allegation (Richardson 4 para 2 [A1551]), and no one suggests that the allegation was true. Mr Gibbs (on behalf of Mr Richardson) called it '*fantastical*' (closing submissions para 35). I observe that there is no mention of this explanation in any of Mr Picardo's written statements. Mr Levy made no mention of this rumour himself, either in his statements or when he gave evidence, nor was it even suggested to him that he had originated this baseless untruth about Mr Richardson. Nor was it mentioned by Mr Baglietto in his evidence.

Conclusion on this message

11.303 I find Mr Picardo's explanation that this message was targeted at Mr Richardson unconvincing. Even though now everyone including Mr Picardo agrees that the Regulations do not apply to the Commissioner [T/16/258.24], contrary to his evidence to the Inquiry, I think it far more likely that he was referring to Mr McGrail. It shows that he firmly had Mr McGrail in his sights.

11.304 It would be bad enough if the Chief Minister was proposing the removal of Mr McGrail, as the Commissioner of Police in overall control of the investigation

into his friend, Mr Levy, but let me consider – as he contends – that the extract was indeed directed at Mr Richardson. The position would then be that the Chief Minister is seeking to suggest to the lawyer of a man suspected of serious crime the circumstances in which Mr Richardson, the Senior Investigating Officer, in charge of the investigation of that serious crime, could be removed from office, and therefore removed from the investigation. Whether he was gunning for Mr McGrail, as Commissioner of Police, or Mr Richardson, as the Senior Investigating Officer, this was a grossly improper attempt by Mr Picardo at interference with the investigation.

11.305 I move on to consider Mr Baglietto's part in these exchanges. I have noted that he did not suggest or hint at Mr McGrail's removal in any of his numerous letters of complaint to the RGP, or to Mr Llamas. Mr Llamas, who had many dealings with him, has not said that Mr Baglietto ever sought Mr McGrail's removal. There is no evidence that Mr Baglietto was seeking, or even suggested, Mr McGrail's removal in these exchanges. Furthermore, he showed no interest whatsoever in Mr Picardo's sinister suggestion. I, therefore, make no criticism of Mr Baglietto for receiving this message.

A FURTHER SUGGESTED INTERVENTION: THE RECOVERY OF THE DEVICES UNDER SECTION 76 OF THE POLICE ACT

11.306 Later that evening, at 18.41 and 18.42, Mr Picardo messaged Mr Baglietto with another idea that had occurred to him. He wrote as follows:

'Section 76 Police Act'; 'Power to make orders with respect to property in possession of Police. 76. Where any property has come into the possession of the Police in connection with any criminal charge or under any statutory provision or rule of law, the magistrates' court may, on the application either by member of the Force or by a claimant of the property make an order for the delivery of the property to the person appearing to the court to be the owner thereof, or, if the owner cannot be

ascertained, make such order with respect to the property as the court may think fit.' [B1422]

11.307 Plainly, Mr Picardo was suggesting that one possible way for Mr Baglietto to retrieve Mr Levy's devices from the RGP would be to apply to the Magistrates' Court under section 76 of the Police Act. Mr Picardo agreed this was '*very likely a proposal in respect of Mr Levy's phone*' [T/16/260.8].

11.308 At 18.45, Mr Baglietto replied: '*Thanks, we are drafting letter. Let me think about this provision but we prefer not to have to go to court but for CPO to return due to clear unlawfulness*' [B1422]. He made no other reply, but he said in evidence that he had '*no issue*' if Mr Picardo wanted to send him this message [T/9/120.13].

11.309 Indeed, the next day, he did write a letter to that effect [C3802], which I have addressed above. At 18.54, Mr Picardo replied: '*Yes. I understand.*' [B1422]

Comment on this message

11.310 The Chief Minister has no official or statutory function in the investigation or prosecution of crime. Mr Picardo reminded the Inquiry that he is a qualified lawyer; he sought to justify his conduct by saying that the law is public and, he maintained, sharing it with another lawyer was not '*outside the bounds of that which one should be free to be able to do*' [T/16/262.8]. He saw nothing wrong in giving the benefit of his advice to a lawyer, even though that lawyer was acting for his old friend and mentor. He did accept that there was a '*tension*' between proposing an application to the police, and on the other hand, needing to foot the bill of any such application as Minister of Finance, but he maintained that this tension had been brought about by the RGP's actions [T/16/261.25].

11.311 Here, the Chief Minister of Gibraltar is suggesting to the lawyer of a man (who was then suspected of serious crime involving the security systems protecting Gibraltar) how he might retrieve his client's mobile from the police to prevent

them from interrogating it, which they were very anxious to do. Again, one only needs to set out this proposition to demonstrate its gross impropriety. That the lawyer, and indeed the suspect, were Mr Picardo's great friends and business partners, merely makes the position worse.

11.312 Again, I make no criticism of Mr Baglietto, who received this unwanted observation, without accepting it. I think that the last thing that he would advise his client to do would be to go to court and seek, in the course of a contested public hearing, to retrieve the devices.

17 MAY 2020: MR PICARDO MEETS MR BAGLIETTO AND MR LEVY

THE NARRATIVE

11.313 The disclosed log of calls and messages between Mr Baglietto and Mr Picardo [B1422] shows that at 23.20 late on the evening of 16 May, Mr Baglietto messaged Mr Picardo asking if they could speak some time the next morning [B1422]. He did so in these terms: *'Bro. Sorry to disturb but can we speak some time tomorrow. morning?'* Contrary to the submissions made on behalf of Mr McGrail, I do not attach any significance to the familiar greeting *'Bro'*. After some further exchanges the following morning, none of which give any indication of what he wanted to speak about, they agreed to meet at 12 noon, at Mr Picardo's private house. After some delays, caused by a conference with his London counsel over-running, at 14.03 on the afternoon of 17 May, Mr Baglietto sent a further message to the effect that he was then picking Mr Levy up in his car, to drive him to the meeting, which he then did [B1423].

11.314 Mr Picardo did not disclose the fact of this meeting until very shortly before the Main Inquiry Hearing. He had not mentioned it in any of his earlier affidavits. He did not mention it even in his Third Affidavit, written in response to the Inquiry specifically asking him about his contact with Mr Levy. Mr Santos asked Mr Picardo why the meeting was not mentioned in this Affidavit. Mr Picardo responded that it fitted within paragraph 11, in which he had stated

that '[his] frequent conversations with Mr Levy KC about the search warrants were mostly telephonic and, as I have already said, there was no record beyond those already disclosed... There were no meetings in my office such as may have resulted in a note of it' (Picardo 3 para 11 [A234]). Mr Picardo maintained that paragraph 11 did not exclude events like the meeting of 17 May [T/16/233.25, 234.23], and that it was one of the 'conversations' referred to in that paragraph [T/16/235.3].

11.315 In his Fourth Affidavit, in which Mr Picardo mentioned the meeting for the first time, he said that he was assisted in his recollection by the exchange of WhatsApp messages recently disclosed by his lawyers (Picardo 4 paras 9-10 [A1447]). He said that he recalled seeing Mr Levy on one occasion, accompanied by Mr Baglietto, at his (Mr Picardo's) home (Picardo 4 para 15 [A1448]). Mr Picardo sought to justify this omission from his earlier statements by saying that the meeting on 17 May was about Mr Levy, and '*not a meeting about Mr McGrail*' [T/16/274.11]. He then later said that he did not recall this meeting when drafting his Third Affidavit, and added '*If I had to recall every time I have spoken to James Levy, met James Levy and in particular met him on a Sunday, ... I would spend the rest of my days and would not be finished by the time I died at 120*' [T/17/147.9].

11.316 I find his explanation implausible. A personal meeting with two of his great friends (and two fellow partners of Hassans), Mr Levy and Mr Baglietto, at this time of Mr Levy's personal crisis, when Mr Picardo was already making moves against Mr McGrail, during the height of the Covid pandemic, would surely be highly memorable. I conclude that he deliberately did not disclose the fact of this meeting until his Third Affidavit (and even then did not directly reference or give evidence about the meeting in the body of that Affidavit), because he knew that others would find it to be deeply inappropriate.

11.317 I turn to his account of the meeting. He said that Mr Levy was '*both incensed but also deeply embarrassed by the events*' (Picardo 4 para 16 [A1448]). They

discussed *'how legally improper'* the RGP's actions had been, *'how outraged I was by the fact that I believed that Mr McGrail had lied to me'* and *'my subsequent complete loss of confidence in him'* (Picardo 4 para 17 [A1448]). He said that the key issue in the meeting was that Mr Levy wanted to offer his resignation as the Chair of Gibraltar Community Care Trust (one of Gibraltar's principal charities, to which Mr Levy had given valuable service over many years), but he (Mr Picardo) did not consider that to be necessary because he continued to have full confidence in him and his integrity (Picardo 4 para 18 [A1448]). In questioning, Mr Picardo denied that the true purpose of the meeting was to discuss the search warrants and his loss of confidence in Mr McGrail. He stated: *'we would have discussed the search warrant. We would also have discussed my loss of confidence in Mr McGrail but principally what we were discussing was James being convinced he had to leave as Chairman of Community Care Trust...'* [T/16/282.4].

11.318 Mr Levy also denied ever discussing Mr McGrail's position as Commissioner of Police or the decision to invite him to retire with either Mr Picardo, Mr Llamas or Mr Baglietto [T/8/185.6]. He denied seeking to remove Mr McGrail from his post and said that he was not involved in the process (Levy 2 para 9.8 [A1516]). He added that he was not aware that Mr Picardo had lost confidence in Mr McGrail and was implementing the section 34 process; indeed, he said that he had no knowledge of Mr Picardo's concerns about Mr McGrail [T/8/185.16].

11.319 Mr Picardo said that he often sees people at home [T/16/284.4]. He maintains that he was quite entitled to speak to Mr Levy about the search warrant and was quite unapologetic that he had done so.

11.320 Mr Levy also told the Inquiry that the main purpose of the meeting was for him to offer to resign from his position as the Chairman of the Community Care Trust, which he felt that he ought to do, because he was concerned that the search warrant could have an effect on the charity [T/8/181.21]. He later

added that they discussed '*police powers*', but not the warrant [T/8/184.8]. He stated that Mr Baglietto came to the meeting '*to help me as a person. I was in a very bad state.*' [T/8/249.12]. Despite his suggestion that Mr Baglietto was there only as a friend and supporter, in my view, he was still acting as his lawyer in connection with the warrant. I comment that Mr Levy had not disclosed the fact of this meeting in any of his earlier statements either. I conclude that he also knew that it was entirely inappropriate that he was meeting the Chief Minister, in secret, to discuss the police investigation.

11.321 Mr Baglietto was only lately required to make a statement, so he cannot be criticised for failing to mention this meeting beforehand. I am satisfied that Mr Baglietto was attending this meeting as a lawyer acting on behalf of Mr Levy; it was therefore best professional practice to keep notes, which he did not do, so he had to rely on his memory. He accepted that the WhatsApp messages now disclosed suggest that he spoke to Mr Picardo on 17 May, but he says that he has no recollection of that conversation (Baglietto 1 para 10 [A1525]). He could not recall the details or content of this meeting [T/9/132.22-136.13]. Nor could he remember whether the purpose of the meeting was to discuss Mr Levy's role on the charity, although he had a hazy recollection of Mr Levy's concern about that at around that time [T/9/136.14]. Although he had demonstrated a poor memory of other events, I find his total failure of recall of this event unconvincing; surely, he would remember a meeting with the Chief Minister, at his house, at such a critical time in the case against Mr Levy.

CONCLUSION ON THE 17 MAY MEETING

11.322 Nothing in the messages retrieved before or after the meeting gives any express indication of what the meeting was about (beyond the fact that Mr Levy was reassured by it). There is, I observe, no mention whatsoever in any of the retrieved exchanges between Mr Picardo, Mr Levy or Mr Baglietto about the Gibraltar Community Care Trust. Even if they did mention the charity, which I accept they might have done, in passing, I am satisfied that the real

reason for the meeting was to discuss some aspect of the crisis which Mr Levy was then facing as a result of Operation Delhi, and that Mr Baglietto was there acting as Mr Levy's lawyer in the matter.

11.323 I comment that, here, we have Mr Picardo, as Chief Minister, meeting a person then suspected of serious crime, arising from the misuse of the NSCIS platform, intended to protect the security of Gibraltar, with the lawyer acting for him, at his own home, without any record or minute of the meeting. It is no excuse that all three were old friends; indeed, it makes it rather worse, since that is a further reason why they should not have been discussing this matter at all. This was a grossly improper meeting, which should never have taken place.

11.324 Mr Baglietto was asked whether he thought there was anything improper in this meeting. He explained – and sought to excuse – his own conduct generally by saying, as others have done, that Mr Picardo would be '*aware of his boundaries*' [T/9/182.10]. If Mr Picardo was aware of the boundaries, which I doubt, he had yet again chosen to break them.

11.325 It is suggested on behalf of Hassans (in the written representations by Mr Friedman KC on their behalf) that I should be aware of the local culture and practice of Gibraltar because he says there is otherwise the risk of misunderstanding or failing to appreciate what he calls the '*positive attributes of flexibility and face to face accountability with its citizens*' in '*the small city state*' of Gibraltar, with a '*small pool of political, legal and business actors*' (para 86).

11.326 I understand that there are social, cultural, religious and familial links which connect so many strands of the small community of Gibraltar. Where everyone may meet anyone in the street on an almost daily basis, there is naturally a much more informal relationship between ministers and citizens. In one sense, such informality encourages and celebrates social cohesion, and can serve to promote and foster the efficient conduct of business. But –

as it seems to me – there is a risk that such contacts, which are not minuted or recorded, can give rise to the inappropriate communications of confidential information, to the granting of inappropriate favours, and to the creation of inappropriate reciprocal obligations. There is also a serious risk that in such informal meetings, conflicts of interest are not properly identified and are therefore not only not avoided but unconsciously promoted. Official business is best conducted through official channels, noted at the time, or at least recorded or confirmed by contemporaneous messages exchanged immediately afterwards. Private meetings of public and influential figures, particularly when old friends and business partners, discussing public affairs, without any proper note, lack transparency and are bound – at the very least – to give rise to the suggestion or appearance of impropriety.

- 11.327 If, as I think is suggested – or at least implied – on behalf of Hassans, the local *‘culture and practice’* in Gibraltar has been for a *‘small pool of political, legal and business actors’* to conduct public business at such informal meetings, in private, without note or record, then I think that the culture and practice should change. It is out of step with modern standards of accountability and transparency, of which Gibraltar, as a progressive and prosperous democracy, should be an exemplar.
- 11.328 Of course, in appropriate circumstances, in public and business affairs, there is a place for confidentiality, and sometimes even for secrecy, but propriety should then be preserved by the keeping of an accurate but confidential note, kept in suitably secure conditions.
- 11.329 I therefore make these criticisms of both Mr Baglietto and Mr Levy. No proper safeguards were applied to the meeting of 17 May. I do not accept their suggested defence that they were following local culture and practice. Both are Leading Counsel, they should both have been alive to the danger that such a meeting, taking place in the Chief Minister’s private house, without any note or record was – at the very least – likely to bear the appearance of old friends,

at the very heart of power and influence in Gibraltar, seeking to affect the course of a police investigation so as to protect Mr Levy from the consequences of a warrant issued by the courts. It is not, therefore, surprising that Mr Picardo and Mr Levy were reluctant to disclose the fact of this meeting, which they must have realised should never have taken place.

THE 'WRITTEN STATEMENT'

MR BAGLIETTO AGREES THAT MR LEVY WILL PROVIDE A WRITTEN STATEMENT

11.330 I continue the narrative. Either during the meeting or immediately after he left the meeting at the Chief Minister's house on 17 May, at 14.51 [C3938], Mr Baglietto sent an email to Mr Llamas (copied to Mr McGrail) to the effect that following *'your confirmation that the Commissioner would be content with a written statement from Mr Levy ... Mr Levy will give a written statement'* and that, in the circumstances, he would not be attending for the interview under caution, which was scheduled for the following day.

11.331 I think the inevitable and irresistible conclusion is that this was the main topic discussed at the meeting with Mr Picardo only an hour or so beforehand.

11.332 If this conclusion is right, as I find to be, it must follow that Mr Picardo had thereby given his approval to the proposal of a written statement (which as I set out above, was made, and agreed, at the meeting between the RGP and Mr Llamas on 15 May). Of course, it was improper that he did so.

11.333 The very next day, Mr Picardo set in train the events which were to result in Mr McGrail's *'retirement'*.

MR LLAMAS'S RESPONSE

11.334 A few minutes later (14.56), Mr Llamas replied to Mr Baglietto (also copying Mr McGrail): *'Many thanks for your email, the contents of which are noted and are consistent with what I communicated to you on Friday afternoon'* [C3938].

This must have been a reference to their meeting on the night of Friday 15 May, discussed above.

11.335 Mr Llamas was not present at that meeting of 17 May; indeed, he said that he did not know that it had taken place [T/12/12.12]. He was asked whether he thought it was right for Mr Picardo to meet a suspect in these circumstances; he said it was a '*matter for [Mr Picardo]*' [T/12/12.21]. But he cannot be criticised for this meeting, in which he took no part and of which he had no contemporaneous knowledge.

THE RGP'S RESPONSE: THE INTERVIEW UNDER CAUTION DID NOT PROCEED

11.336 Mr McGrail forwarded this email to Mr Richardson and to Supt Wyan, who responded with some caution (15.43, [B3345]) that:

'we have to be careful that this agreement is not manipulated. We have said that we will consider a written account prior to proceeding to interview. But not that we will accept a statement in lieu of any interview. His status at the moment remains that of a suspect. Whether he will be accepted as a witness will have to be determined on its merits once we have had time to consider the content of the statement in the context of the prosecution as a whole. We do not want it suggested that he is a witness already.'

11.337 In my opinion, Supt Wyan had quite rightly – and perceptively – identified the dangers. Two minutes later (at 15.45), he sent his plan for interviewing Mr Levy, as a suspect, to Mr Richardson [B3334].

11.338 Mr Richardson forwarded the exchange between Mr Llamas and Mr Baglietto to Mr Rocca and stated that certain parts of the email highlighted in yellow '*do not reflect my recollection of our meeting*' [C3944]. Mr Rocca responded, having consulted with Mr Llamas, that '*There is nothing in the emails to*

suggest that the RGP will not, if it sees fit at a subsequent date, interview Mr Levy and that ... option remains on the table... [C3943]. This recognised that the agreement at the meeting of 15 May, kept all options open: if the RGP were not satisfied by Mr Levy's written statement, they could still move on to interview him under caution.

FURTHER SUGGESTED INTERVENTIONS SENT BY MR PICARDO

11.339 I come now to another couple of suggested interventions which Mr Picardo sent later on 17 May.

11.340 At 22.48, he sent a message to Mr Llamas (at [B1418]) with an attachment (at [C6761]). The message reads: *'That is page 13 of the HMIC report published last week. Look at the bit I have highlighted in red. Boom'*. The attachment is an extract from the HMIC report into the RGP; the passage underlined in red reads: *'We found officers using their personal devices to examine offenders' telephones. This isn't good practice and doesn't meet best evidence standards.'*

11.341 Plainly, the exclamation *'Boom'* was meant to express emphasis and satisfaction that he had found something particularly significant. Mr Picardo said in his evidence to the Inquiry that he sent the message because it showed that the RGP's practices in relation to seized electronic communication did not meet the standards of good practice, which *'went to the very core of the issue that was in play; Mr Levy's electronic communications device being in the hands of the RGP'* [T/16/292.12].

11.342 At 23.39, Mr Llamas replied to Mr Picardo: *'Hardly encouraging. I understand that technical experts can say when a telephone has been accessed or otherwise tampered with'* [B1418].

11.343 At the same time, Mr Picardo sent the same message, with the same attachment, to Mr Baglietto [B1423]. Mr Picardo sought to justify this message

by saying that he was not assisting Hassans with its intended claims, as he was referring to open and public sources of information [T/16/294.8].

11.344 Just a few minutes later, (at 22.52), Mr Baglietto replied to Mr Picardo: *'Shocking but sadly doesn't come as a surprise! Thanks for your time today, bro. I think it reassured him a lot!'* [B1422].

11.345 At 23.02, Mr Picardo replied to Mr Baglietto: *'I think the above is of major (sic.) to the issues raised this week. It will be important. Remember the HMIC report is public.'* [B1422]. Plainly, the *'the above'* is the extract highlighted in red and *'issues raised last week'*, relate to the seizure of Mr Levy's devices by the RGP.

11.346 At 23.03, Mr Baglietto replied to Mr Picardo: *'Yes, excellent. We can put it to good use for sure!'* [B1423].

11.347 At 23.10, Mr Picardo replied to Mr Baglietto: *'I have sent to JL. Let me know if he sees it'*. [B1423]. This communication between Mr Picardo and Mr Levy has not been disclosed; Mr Picardo suggested that he potentially sent it by email, and thought he may have delivered a full copy of the HMIC report by hand to Mr Levy [T/16/294.18].

11.348 At 23.12, Mr Baglietto replied to Mr Picardo with a *'thumbs up'* emoji [B1423].

11.349 In evidence, Mr Baglietto said that he did not know why Mr Picardo had sent this extract and he could not recall what his reference to Mr Levy being reassured was about, but suggested that *'if they were discussing Community Care ... and the Chief Minister had reassured Mr Levy that he hadn't lost confidence in him ... that would have been quite reassuring to Mr Levy'* [T/9/147.2, T/9/149.10]. He said he did not think the reassurance would have been in relation to the search warrant, and that he did not know *'what reassurance the Chief Minister could give Mr Levy about the search warrant'* [T/9/150.1]. Mr Picardo sought to suggest that Mr Levy was reassured that his probity and standing in the community was intact; he said people continued

to hold him in high regard, and it was not necessary for him to resign from the Charity [T/16/291.10].

11.350 I do not accept this explanation. Mr Levy was not, I think, ‘reassured’ because of exchanges he had with Mr Picardo about the Gibraltar Community Care Trust; as it seems to me, he was reassured about what he had heard Mr Picardo say of his approach to Mr McGrail and to Operation Delhi.

Comment on this exchange

11.351 So, as with the messages he sent on 14 May regarding pension entitlements, Mr Picardo, as Chief Minister, was again canvassing ideas with the lawyer of a man suspected of serious crime as to how his interests could best be protected or advanced. Here, the only relevance of this extract from the HMIC Report to the effect that RGP officers have been ‘*using their personal devices to examine offenders’ phones*’ is to deploy it as an argument to use against the RGP having access to Mr Levy’s telephones. I consider that here again, Mr Picardo is improperly attempting to protect his friend and mentor from the consequences of a warrant lawfully issued.

A LATER EXCHANGE: FOR THE ATTORNEY-GENERAL TO TAKE OVER AND DISCONTINUE THE PROCEEDINGS

11.352 After midnight (now on 18 May), Mr Picardo came up with yet another idea [B1418]. At 00.36, he sent Mr Llamas an image [C6763], being a copy of section 59 of the Gibraltar Constitution, subsection (2) of which reads as follows:

‘(2) The Attorney-General shall have power in any case in which he considers it desirable to do so-...

(a) to institute and undertake criminal proceedings before any court of law...;

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority

...

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings ...'

11.353 Mr Llamas replied directly (at 00.37): '(2)(b)?' [B1418]. Obviously, he is seeking to identify the sub-section to which Mr Picardo is referring. A few minutes later (00.49), Mr Picardo replied: *'Exactly. In re a search warrant as a 'proceeding'* [B1418]. To which (at 00.52), Mr Llamas replied *'We need to check what 'such' means in that context'* [B1418].

11.354 There the exchange ended.

Comment on this exchange

11.355 Mr Picardo accepted that one of the things he was doing was proposing to Mr Llamas that he exercise his constitutional power to take over and continue the search warrant proceedings against Mr Levy [T/16/297.21]. He then accepted that he was also suggesting Mr Llamas could *'potentially'* discontinue the search warrant proceedings [T/16/298.15], although he subsequently clarified that he was alerting Mr Llamas to his power to potentially exercise it if he considered it appropriate [T/16/299.7]. He stated in evidence that he was referring to the search warrant proceedings, not the Operation Delhi investigation [T/16/298.6].

11.356 He suggested that there was nothing inappropriate about *'rais[ing] such issues'* with the Attorney-General, or referring him to powers set out in the Constitution in *'the circumstances that appertained that day'* and given his *'jurisdictional concern'* [T/16/299.13]. It was in this context that he added that Mr Levy was not just his friend, but *'Gibraltar's biggest rainmaker'* and *'one of the greatest sources of business for the finance centre'* [T/16/300.23]. He maintains that by protecting Mr Levy, he was acting in the public interest to

protect the wider economic interests of Gibraltar. He sometimes called this the '*jurisdictional*' point [T/299.17].

11.357 In my opinion, here, Mr Picardo, as Chief Minister, is canvassing the possibility that Mr Llamas should take over the process of the RGP executing the search warrant under section 2(b) of the Constitution, and then discontinuing the '*proceeding*' for the search warrant under 2(c). This would presumably be by applying to the Magistrates' Court to withdraw the warrant. I am not called upon to determine whether section 59(2)(b) and (c) of the Constitution permits such a course in relation to a search warrant, but to my mind this is another grossly improper attempt by Mr Picardo to interfere in an active criminal investigation by the RGP, to protect his friend and mentor, Mr Levy.

11.358 Mr Llamas said that this message was completely unsolicited, sent late at night, and he took no account of it [T/12/19.1-20.6]. He did not accept that they were '*discussing*' the matter at all [T/12/20.17]. He merely acknowledged receipt of the message but when doing so stated they would need to check the meaning of the provision. Although he said they needed to research whether the application for, and execution of, a search warrant was a '*proceeding*' covered by the Act, there is no evidence that he did so.

18 MAY 2020: THE INTERVIEW WITH MR LEVY DID NOT PROCEED

11.359 In accordance with the agreement between Mr Llamas, Mr Rocca and the RGP, the interview of Mr Levy under caution which had been proposed for 18 May did not proceed. That morning, Mr Baglietto emailed Mr McGrail referring to '*Mr Levy's witness statement*' and asking whether he should liaise with Mr Richardson [B5439].

11.360 Mr Llamas gave evidence that this did not reflect what he told Hassans, which was that the RGP would accept not a '*witness statement*'; but a '*written statement*' [T/12/15.23], which would not affect his status as a suspect. Mr Llamas explained that this was the '*first step to try to elicit evidence from Mr*

Levy without prejudice to any lines of enquiries that the RGP may wish to seek thereafter' [T/12/230.20]. Later that morning, Mr McGrail replied to Mr Baglietto confirming that Mr Levy should provide a written statement by 26 May, dealing with the topics identified in the pre-interview disclosure document. He added: *'Once we receive the statement, we would then reconsider whether we would require further particulars or the need to interview Mr Levy. As we have repeatedly said we are keeping an open mind...'* [C3998].

20 MAY 2020: THE THIRD MEETING BETWEEN THE RGP AND MR LLAMAS

- 11.361 On 20 May 2020, Mr Baglietto sent a further letter to Mr McGrail [B5443] asking him to reconsider his position on providing the application documents. The letter acknowledged *'your confirmation that Mr Levy is to provide a written statement'* but sought confirmation that *'he will not be interviewed under caution at a later stage'*. The letter stated that they *'presume[d]'* Mr Levy was no longer suspected, as *'otherwise he would not have been offered the opportunity of instead providing a written statement'*, but were he to become a suspect and be interviewed under caution *'he would then have lost, in relation to the pre-existing statement, the procedural protections that the law allows for suspected persons...'*. They were seeking to draw the erroneous inference that the RGP considered that Mr Levy was no longer a suspect.
- 11.362 On the morning of 20 May, there was a third meeting between Mr McGrail (accompanied by Mr Richardson and Supt Wyan) and Mr Llamas (accompanied by Mr Rocca) to discuss this latest letter. Again, Mr McGrail covertly recorded it [B321].
- 11.363 This meeting did not take matters very much further. They canvassed again a number of themes familiar from the earlier meetings on the 13 and 15 May, with which I have already dealt.

- 11.364 Mr Llamas asked how to respond to Hassans' latest letter and proposed responding that the RGP was seeking to engage in a cooperative process and would not argue every point made by Hassans. Mr Rocca advised that they respond with '*a little bit of a smack*', warning Hassans to '*tread carefully*' [B321]. Mr Llamas again stressed that for Hassans the telephone was '*a massive issue*' [B323].
- 11.365 Mr Llamas said that he had spoken to Mr Baglietto, and he thought that Mr Baglietto would '*welcome*' the idea of the written statement instead of an interview under caution [B326].
- 11.366 Mr McGrail said that they had agreed to accept an '*unsolicited account*' from Mr Levy because it was better to have some account in writing rather than a no comment interview (which would provide no further information at all) [B327] but that he feared that they had '*bent over*' for him, '*which they would not normally have done*' [B322]. He was concerned that, as a result, Hassans were now suggesting that the RGP were not treating Mr Levy as if he was a suspect, which the RGP had never agreed to [B321]. Mr Richardson similarly expressed concerns that Hassans had '*turned that on its head*' [B322]. As I have explained above, at this point, Mr Levy was and remained a suspect and if, later, it was necessary to interview him, he would be interviewed as a suspect under caution. Both Mr Llamas and Mr Rocca firmly agreed with the proposition; Mr Rocca suggested that the letter clarify that Mr Levy was still under suspicion [B327], and Mr Llamas confirmed he told Hassans the RGP had agreed to try a written statement [B322].
- 11.367 They also considered Hassans' demand for disclosure of the application for the search warrant. Mr Rocca suggested meeting the following day to consider possible redactions [B331].
- 11.368 Mr Rocca again said that the search warrant was a matter '*for the RGP and their operational functions*' [B325].

11.369 Mr Richardson pointed out that the warrant would expire after 30 days and time was running against them, and he doubted whether the court would grant a second warrant if they had allowed the first to lapse [B325].

11.370 In respect of the meeting on 20 May, Supt Wyan said that he did not feel pressured [T/5/207/1-11]. Indeed, he confirmed that at that meeting, Mr Llamas was *'offering his support'* and that *'there were subsequent supports from the DPP...'* [T/5/224].

THE FOLLOW UP TO THIS MEETING

11.371 Between 13.00 and 13.43, there were two messages and two missed calls as Mr Llamas and Mr Baglietto tried to make contact with each other [C6883]. It would seem, therefore, that Mr Llamas and Mr Baglietto did speak after the meeting which Mr Llamas had just had with the RGP. I infer that they discussed the proposal which had been made at the meeting, as Mr Llamas confirmed in his evidence. He stated that he called Mr Baglietto to tell him *'we were not impressed by what they had done in their latest letter'* (meaning the reference to a *'witness statement'* rather than *'written statement'*) [T/12/13.8].

11.372 At 17.13, that same day, Mr McGrail emailed Mr Llamas with a draft response to the Hassans letter, which he had drafted in consultation with Mr Rocca [C4131]. Mr Llamas replied with minor changes [C4130]. In this letter, Mr McGrail proposed that Mr Levy's material would not be examined without giving Hassans 7 days' notice in advance [C4132].

11.373 Although slightly out of sequence, it is convenient here to mention that on 21 May (at 09:08), Mr McGrail, repeating the position he had taken in the meeting, wrote to Mr Baglietto, reiterating the RGP's belief that their actions in applying for the search warrant were lawful [C4149]. The letter indicated that the police would not examine Mr Levy's devices without giving 7 days' notice and confirmed that he continued to be a suspect in the investigation and the RGP

reserved its right to interview him under caution at any time [C4150]. Ultimately, Mr Baglietto was shown a redacted version of the application documents on 27 May 2020 [C4614] and a less redacted version on 1 June 2020 [C4655].

REFLECTIONS ON THE THREE MEETINGS

11.374 I now turn to reflect upon these three meetings between the RGP and Mr Llamas.

THE POSITION OF THE PARTICIPANTS

11.375 Mr McGrail considered that Mr Llamas was attempting to influence or pressure him not to interview Mr Levy under caution [T/7/22.21]. But even he referred to Mr Llamas (at [B329]) as *'brokering'* the discussions between Hassans and the RGP. He said that a large part of the meetings was devoted to the concerns, worries even, which he and Mr Richardson had about the allegations of criminal misfeasance which Hassans were making in terms. He thought they were *'bartering ... trying to get the best outcomes, as a result of those threats'* [T/7/20.6]. He considered that in the second meeting there was an element of *'massaging'* but by the third meeting he had *'relented and reluctantly consented'* [T/7/170.17].

11.376 Mr Llamas, however, was strongly of the opinion that Mr McGrail *'considered that he was immune to having his actions disapproved of or criticised and ... he equated both to improper interference with the conduct of a criminal investigation and a violation of police independence'* (Llamas 1 para 59 [A285]). He denied that he was seeking to influence or interfere in the investigation [T/11/228.13]. He denied pressuring the RGP and stated: *'this was a collegiate exercise between all of us'* [T/11/271.1]. He robustly rejected the suggestion that it was inappropriate for him to be advising the RGP how to proceed, whilst at the same time being in separate communication with Mr Baglietto about how to respond to the RGP, taking the view that it was part of his role to *'manage the situation'* [T/11/254.6; T/12/14.12] – as he put it. Sir

Peter Caruana stressed in closing submissions that Mr Llamas had made very clear to each side that he was speaking to the other (para 139, by reference to [B264; B265; B312]), and Mr Llamas said that his contacts with Mr Baglietto were agreed in the meetings with the RGP and it was *'very transparent'*. Furthermore, he stressed that the RGP were – and remained – free to take whatever action they thought fit [T/12/154.20]. Therefore, Mr Llamas saw nothing wrong in acting as a go-between to achieve a result agreeable to both sides (but I make clear that the description of him as such is my interpretation and not an expression he used himself).

11.377 Mr Rocca thought that *'the meetings were just a general discussion amongst five senior law enforcement people... about what do we do next. ... I think there was an attempt to defuse an unfortunate situation, really. I think it was no more than that'* [T/10/94.3]. He stressed that the RGP were at liberty to disagree with proposals [T/10/119.15, 121.3]. He said that *'there was no agenda to push this one way or the other'*. They were motivated by *'the desire to resolve an issue as easily as possible because we didn't want to be embroiled in six months of JR stalling the investigation and impacting potentially on everything.'* [T/10/188.10]. They had *'a full and frank exchange of views of how best to deal with this matter going forward'* [T/10/189.14]. Later he said: *'The four of us - senior officer, Commissioner of Police, Superintendent, Attorney-General and DPP - were having a full and frank discussion on the options'* [T/10/193.16].

11.378 Mr Richardson said that during the course of those meetings, he felt that he was *'being put under pressure'* from Mr Llamas to adopt a different procedure with Mr Levy than they would have done with other people [T/4/143.16]. He said that the meeting on 13 May *'was a very highly charged'* meeting and *'although I didn't know what had happened, I sensed that there was something seriously wrong with what was happening'* [T/4/247.4]. Reflecting on the eventual position, Mr Richardson commented that, so far as he was aware, *'this was the first time we had allowed a suspect to provide a statement before*

interview’ (Richardson 1 para 15(b) [A1288]). He explained that this unusual course was adopted as *‘the advice ... that we were being given was that if we tried to force the issue with Mr Levy we would not have got anything at all’*, and this was a case involving other people and a serious matter involving national security [T/4/148.12]. Whilst being alive to the drawbacks, I observe that he eventually went along with what was being suggested, reluctantly conceding that the suggested compromise was *‘the best shot’* [B301].

11.379 It was pointed out to Mr Richardson when he gave evidence at the Reconvened Hearing – quite correctly, I might add – that there was no entry in his comprehensive day book alleging political interference in the Operation Delhi investigation. He responded: *‘I haven’t said that there was political interference. What I’ve said is that I felt that we were being moved from a position that we were quite strong on to a separate position.’* [T/23/214.24]. The Government Parties claim that this is *‘hugely important evidence that flies in the face of allegations of interference’* (closing submissions following the Reconvened Hearings, para 51.3(ii)(a)). However, as Mr Richardson explained, he did not know what was going on behind the scenes [T/23/215.7]. Mr Gibbs also pointed out that Mr Picardo had drawn to Mr Baglietto’s attention a provision under which Mr Richardson *‘could have his pension attacked’* [T/24/77.7]. I comment that had Mr Richardson known that he might have taken a different view of the overall political interference in their investigation, but I think that his observation remains a valid comment on his views of these three meetings with Mr Llamas.

11.380 Mr Richardson explained his position in an exchange with Mr Gibbs (starting at [T/5/91]), which I interpret as follows. He said that he had gone into the meetings hoping and expecting to come out with the warrant intact, with access to Mr Levy’s mobile telephone, and the opportunity of interrogating the digital exchanges with the other alleged conspirators and interviewing him under caution. He contrasted these hopes with the result which, at the end of the three interviews, was that the warrant had time-expired after 30 days, Mr

Levy's mobile telephone remained locked in the Commissioner's safe until it was later released to him without examination by the RGP, and Mr Levy was allowed to make a statement, with legal advice, without ever being interviewed under caution. He thought that the upshot of these three meetings was that Mr Llamas had had his way. He said that the position of the RGP had been '*moved*' by Mr Llamas [T/5/26.18]. But he acknowledged, as he had put it, that '*We were operationally independent and so we could have taken whatever action that we considered was appropriate*' [T/5/89.25].

- 11.381 Supt Wyan was described by Mr Gibbs – perceptively, I think – as the '*most cautious and measured*' of all the witnesses who gave evidence to the Inquiry [T/21/80.10]. He said about the meeting of 15 May that '*It was strange ... it appeared to me as if the conversation revolved around a problem ... the problem being Mr Levy and the intention to interview him under caution. ...*' [T/5/195.7]. He later stated:

'I'm not sure how to explain [Mr Llamas's] conduct. I perceived it to be almost facilitation, perhaps even negotiation ... about how to deal with this particular problem. ... There was nothing that he suggested that was unlawful. What it did was take us away from established procedures.'
[T/5/197.12]

- 11.382 He later said:

'During the meetings, I didn't feel "pressure", but I would describe "influence", and I think that's borne out by ... the results of the fact that we entered knowing, being very confident in what we needed to do, and we left, and ultimately proceeded with a course of action that was highly unusual.'
[T/5/211.19]

SUBMISSIONS OF COUNSEL

- 11.383 Sir Peter Caruana, on behalf of the Government Parties, submitted that they amounted – as he put it – to ‘*entirely collaborative discussions*’ between senior police officers and senior law officers to agree upon a course of conduct as to the best way forward [T/21/219.17]. He suggested that the primary intention was to decide how to defend the RGP against the legal proceedings threatened by Hassans in respect of the grant of the search warrant (and against the RGP for alleged misfeasance). A subsidiary intention was, at the same time, to try to get as much information as possible out of Mr Levy, as to the part which he played in attempting to migrate the NSCIS contract from Bland to 36 North, which might have advanced the case against the other defendants. All this whilst leaving the RGP with the option to proceed against Mr Levy by way of an interview under caution if they thought that was the best way forward (closing submissions, para 130.3).
- 11.384 Using typically picturesque language, Sir Peter Caruana put it to Mr McGrail in questioning that there was no evidence in the transcripts, or the recordings, that the experienced RGP officers were ‘*under the cosh of improper interference*’ [T/7/177.13, T/7/178.1]. He asked Mr Llamas whether the senior police officers were effectively intimidated into agreeing, to which Mr Llamas responded that he did not think that they were people to be intimidated [T/12/242.10].
- 11.385 I have listened to the recordings of these meetings. I accept that the discussions were conversational rather than confrontational in tone. Mr Llamas was not hectoring or blustering; he did not raise his voice. But that alone does not dispose of the criticisms of his conduct made by Mr McGrail’s counsel, which I shall summarise as I interpreted them.
- 11.386 I have already commented upon the WhatsApp exchanges between Mr McGrail and Mr Ullger on 15 and 16 May, which I consider strongly refute the allegation of improper interference by Mr Llamas at these meetings.

11.387 It is argued against him that Mr Llamas had put himself in an impossible position as he attempted to balance two conflicting aims. One was his duty as Attorney-General to support the RGP in their lawful investigation to gain access to Mr Levy's devices and interview him under caution. At the same time, it was submitted that he was presenting – or even '*advocating*' – Mr Baglietto's objective, which was to prevent the RGP doing precisely that (McGrail closing submissions, para 55.6.1(a)).

11.388 It was submitted that it was not a '*crisis*' – except possibly to Mr Levy – that a search warrant had been issued against him by the court. It was not a '*crisis*' – except possibly to Mr Levy – that he was to be interviewed under caution. It would not even be a '*crisis*' – except possibly to Mr Levy – if he had failed to keep the invitation to attend at the police station for that interview, meaning that the RGP would have been entitled to arrest him and to proceed with the interview, whether or not he consented. Nor would it have been a '*crisis*', if Mr Levy had taken legal proceedings to have the warrant declared unlawful, as he was quite entitled to do, for the RGP would have been quite entitled robustly to defend those proceedings (McGrail closing submissions, para 55.6.1(f)).

11.389 It was also submitted on behalf of Mr McGrail that Mr Llamas's interventions were all made at a time when he had not seen either the NDM Assessment, or the Charging Advice, still less the Information. So, he knew almost nothing about the evidence on which the RGP were relying. Nor was he a criminal law specialist (closing submissions, para 18.2).

MY CONCLUSIONS ON THE THREE MEETINGS

11.390 The Attorney-General in Gibraltar has a different role to the Attorney-General in England and Wales. I think it was unwise, and not best professional practice, for neither him nor Mr Baglietto to have kept proper notes of their conversations, but I do not consider that there was anything inherently objectionable in his having professional exchanges with Mr Baglietto, as Mr

Levy's lawyer acting on his behalf. Mr Llamas had made very clear during these meetings that he was in contact with Mr Baglietto. I think that Mr Llamas was justified in trying to broker an agreement between the RGP and Mr Baglietto as to the way forward, particularly since both understood that that was precisely what he was trying to do.

11.391 Mr Llamas and Mr Rocca thought that the RGP should have proceeded by way of a production order rather than by way of a search warrant; that was a perfectly reasonable view to take, and they were entitled to express it.

11.392 The fact is that the RGP agreed to these proposals, which they were free to reject, if they chose to do so. If, having considered Mr Levy's written statement, there remained reasonable grounds still to suspect him, then they could still have arrested him and interviewed him under caution. The arrangement reached to avoid these perceived 'crises' may have been unprecedented, but it was not unlawful. It is said that the RGP were persuaded not to take these steps by Mr Llamas, or even that the RGP officers were, in effect, outmanoeuvred by Mr Llamas. But Mr Llamas's skilled diplomacy in brokering an arrangement, which the RGP themselves voluntarily accepted, cannot in my opinion amount to an interference with the investigation, and it did not do so.

11.393 I should perhaps say something about the various references made during these meetings to the power of the Attorney-General to enter a nolle prosequi or to terminate the investigation or prosecution by some other means. It is very striking that this was never introduced by Mr Llamas himself. It was nearly always introduced by Mr McGrail, who knew that the meeting was being recorded; it is as if he was casting a fly to see what reaction he gained. (Mr Rocca also raised it at [B157-8]). So far as Mr Llamas was concerned, Mr McGrail got no rise at all; indeed, he sometimes ignored the reference altogether. I think this topic is a distraction, without significance, and I do not propose to deal further with the matter.

11.394 Issue 5.3 asks: *‘Did the [Attorney-General] and/or [Chief Minister] place any or any inappropriate pressure on Mr McGrail regarding the investigation or otherwise interfere with the investigation, and in particular the RGP’s intention to execute the Search Warrants?’*. In my opinion, by his conduct and approach to these three meetings, in the circumstances that I have described, the Attorney-General did not do so.

11.395 Mr Picardo did not participate in these three meetings, but I am satisfied that one way or another, he was kept informed of their progress and he will have noted with satisfaction the direction that they were taking.

A FOOTNOTE TO THE MEETING ON 20 MAY 2020

11.396 On 8 May 2024, very shortly before the Main Inquiry Hearing ended, Mr McGrail’s laptop was found. The RGP analyst, DC Garcia, later examined the device and provided a report [E52] which showed that at 07.01 on the morning of 4 June 2020, just a few days before he retired, an audio file named *‘Meeting with AG & DPP 20th May’* (2020), had been deleted from this laptop. This must have been a copy of the recording of the meeting that day. The file was deleted a further two times on 23 June 2020 at 15.46 and 15.47 (which postdated Mr McGrail’s retirement), a point which I address in the Annex.

11.397 When he gave evidence at the Reconvened Hearing, Mr McGrail accepted that he must have deleted this file if the laptop was in his possession. He said that he must have exported the file to a hard drive [T/23/63.3]. This seems to me to make very clear that Mr McGrail was unwilling to leave any evidence on the RGP devices that he had recorded these meetings.

THE ADVICE GIVEN BY MR DEVINCENZI TO MR LLAMAS

11.398 I think the evidence of Mr DeVincenzi is sufficiently important to justify a digression which arose from the meeting between Mr Llamas and the RGP on 13 May, which Mr DeVincenzi had also attended.

EARLIER DISCUSSIONS BETWEEN MR LLAMAS AND MR DEVINCENZI

11.399 On 5 May, and on the following day, Mr DeVincenzi had discussed with Mr Llamas the constitutional role of the Attorney-General in Gibraltar, a topic in which he takes a keen interest (DeVincenzi 1 para 14-15 [A1300-1]). He was sufficiently concerned about the developing situation to draw to Mr Llamas's attention the 'Trudeau Report' into the SNC-Lavalin affair in Canada, where the Prime Minister was held to have had a conflict in interest by seeking to influence the Attorney-General of Canada to propose a deferral of the prosecution of a company. Mr DeVincenzi was drawing attention to what he perceived as a '*possible*' risk of a similar scenario developing in respect of Operation Delhi [T/11/30.21]. He did not suggest that such a risk had then eventuated.

DISCUSSIONS FOLLOWING THE MEETING OF 13 MAY

11.400 On 13 May, in a WhatsApp to Mr Llamas [C6806], Mr DeVincenzi threw out another idea, which was that Gibraltar might consider implementing a scheme to permit Deferred Prosecution Agreements, such as has been adopted in various jurisdictions, including the US, the UK and indeed in Canada. He suggested that such a scheme might be appropriate to deal with '*a future example of corporate economic crime*' which may provide '*a more subtle and proportionate tool than the nuclear noll[e]*'.

11.401 In the same message, he again referred to the Trudeau Report, stating that it was '*thoroughly worth a read for modern exposition of Shawcross doctrine and the phenomenon of Govt going to outside counsel when [they] disagree with AG*'. The Shawcross doctrine is a principle that the Attorney-General may consult Government colleagues on decisions but must ultimately make decisions independently, in their sole discretion. Mr Llamas was dismissive of this advice. He suggested that the Shawcross doctrine was not '*completely applicable*' in Gibraltar, where the Attorney-General is not a member of the Cabinet [T/11/254.19]. He considered Mr DeVincenzi to be a '*deep thinker*'

[T/11/249.9] and even *'someone who worries very much'* [T/12/183.19] and suggested that Mr DeVincenzi *'probably found the topic very interesting on an academic basis'* [T/11/250.13].

11.402 Asked about the reference to the Government using external counsel, Mr DeVincenzi said that reflected his general concern to make sure that *'lines were drawn around [the Attorney-General's] office'* [T/11/52.22]. He explained that he had written that because after the meeting he *'saw things heating up'* [T/11/47.22].

11.403 Mr DeVincenzi's evidence was as follows:

- a. He wanted Mr Llamas to *'look at what might be happening in the background ... if he needed it to gird his loins'* [T/11/31.1].
- b. He thought it was possible that he might be *'importuned'* by Mr Levy and possibly by Mr Picardo, given what was potentially at stake [T/11/29.19].
- c. He had *'a sort of building concern over time, that notions were being planted in his head that maybe he needed to push back on'* [T/11/53.6].
- d. He *'had a sense of disquiet about this whole file. I had from the beginning. I wasn't certain that the [Attorney-General] was drawing a line around his own role'* [T/11/48.24].
- e. He wanted Mr Llamas to be *'alive to what might be happening around him'* [T/11/51.7].
- f. He sensed that *'...this was not an ordinary kind of case'*, and he sensed that Mr Llamas had to deal with it *'with this with great delicacy, [to] protect the integrity of his office.'* [T/11/51.12].
- g. He qualified that he did not think that Mr Llamas would enter a nolle prosequi, but *'it just seemed like something that could be very controversial if wrongly applied...'* [T/11/49.10].

h. He thought that Mr Picardo had formed a clear view that the rights to the NSCIS contract were owned by the Government [T/11/74.13], and he had not seen any evidence that Mr Llamas had '*analysed the position and reached a considered view*' [T/11/53.6, 78.11].

11.404 Following the meeting on 13 May, Mr Llamas raised with Mr DeVincenzi the circumstances in which he could enter a nolle prosequi. Mr DeVincenzi said Mr Llamas raised with him '*the applicable legal test or threshold for a nolle prosequi*'. He said that this was an '*academic*' discussion but '*...it was against the background of protecting the jurisdiction and office of Chief Minister*' (DeVincenzi 1 para 19 [A1302]), which, I observe, was the context in which he had raised it with Mr McGrail during the meeting which they had had earlier that day. Mr Llamas did not recall this but said that Mr DeVincenzi was probably correct [T/11/249.4]. Mr Llamas said in his evidence that he was not then considering entering a nolle prosequi [T/11/249.24]. I comment that there is no evidence that he was.

11.405 Mr DeVincenzi returned to this point in June 2020, shortly after Mr McGrail's retirement, when he first learned that 36 North was at least partly owned by the partners of Hassans. He was '*deeply concerned about the implications of this information*', as he knew that Mr Picardo and others in what he called '*the political and administrative spheres of Government were themselves partners of Hassans*'. He told Mr Llamas of his concerns and advised him to be alert to the possibility '*that those with an interest in the outcome of the NSCIS matter could seek to influence the investigative or legal process, either directly or indirectly*'. He was '*especially anxious that concern for the good reputation of the jurisdiction and its offices and institutions not be exploited by anyone with an incentive to conflate Gibraltar's interests with their own*' (DeVincenzi 1 paras 21-22 [A1302-3]). He added in his evidence that when he referred to '*those with an interest in the outcome of the NSCIS matter*', he had in mind Mr Picardo and Mr Levy [T/11/63.23]; he realised that this was '*a delicate matter*' around which they needed to draw lines [T/11/62.18].

- 11.406 Mr DeVincenzi added that he did not approve of the concept of ‘*Gibraltar plc*’ (DeVincenzi 1 para 22 [A1302]), which he believed wrongly framed Gibraltar as a corporate entity and not a community ‘*whose values transcend corporate ones*’. He had, in his opinion, seen that language of Gibraltar plc ‘*be abused before*’ [T/11/65.20].
- 11.407 I accept that this particular conversation may not have taken place until June 2020 (after Mr McGrail’s retirement), but it would have taken place earlier if Mr DeVincenzi had earlier known of the connection of so many of the key players at Hassans with 36 North. Furthermore, his awareness of the risks of conflicts of interest – or at the very least to the appearance of conflicts of interest – should have been clear to all who had long been aware of their shareholding in Hassans, and in particular to Mr Picardo.
- 11.408 He was somewhat reassured when Mr Llamas told him that the RGP were aware of this ‘*nexus*’ (DeVincenzi 1 para 21 [A1302]). He had, after all, pointed out the dangers, what more could he do.
- 11.409 I consider Mr DeVincenzi to be a most impressive witness. Mr Gibbs – without exaggeration, in my opinion – described him as being ‘*intelligent, informed, disinterested and disturbed by what he saw*’ [T/21/82.16]. I consider that he was careful in the answers he gave. I characterise his approach to these circumstances as being highly principled; he had well-developed legal insights which even at the time detected the dangers presented by these conflicts of interest, and he had the courage, and good judgment, to warn Mr Llamas to be careful.
- 11.410 He made clear in answer to Sir Peter Caruana that he considered Mr Llamas to be a ‘*decent and honest person*’ and a good lawyer [T/11/92.3]. He confirmed that in the dealings that he had with Mr Llamas he gained no sense that he ‘*was trying to curtail the RGP’s freedom of action in their 16 investigations*’ or that he gained the impression that ‘*he was pressurising or cajoling or somehow abusing the status of his office*’. Nor did he give

the impression that he was '*driven by improper motives*' [T/11/92.9-21 and 93.14], which I accept.

CHAPTER 12:

THE SEQUENCE OF EVENTS LEADING TO MR MCGRAIL'S RETIREMENT

THE FIRST MOVES AGAINST MR MCGRAIL

MR PICARDO FORMULATES HIS COMPLAINT

- 12.1 I have already written in the section of the Report on the Incident at Sea that Mr Picardo received notification (through the *El Faro de Ceuta* story) of the claims being made on behalf of those who were killed or injured on 14 May.
- 12.2 That same day (14 May at 09.49), Mr Picardo sent a WhatsApp message to Mr Pyle, informing him of those claims [B1439]. Whilst Mr Picardo expressed his support for '*officers on the front line*', he explained that the legal proceedings, with the claim for damages and the attendant political problems, would cause '*huge issues*'. He wrote that he was '*starting to have huge concerns about the senior management of the RGP*'. He wrote that he would '*alert to a particular matter*' when they met.
- 12.3 Mr Picardo summarised his concerns as being: (i) '*the deaths occasioned outside of BGTW*' (in the Incident at Sea), suggesting that in any legal proceedings in Spain, the crew of the RGP launch would have no protection as police officers; (ii) '*the HMIC inspection issues*'; (iii) '*the Federation bullying allegations*'; (iv) '*the runway incident, where we had to go in to bat for them despite all aspects having clearly been mishandled by the RGP (and parts of MoD also)*'; and, (v) '*the continuing saga of the Alcaidesa claims*'. He added that '*I am starting to lose confidence here*'.
- 12.4 Mr Santos asked Mr Picardo about his reference to a '*particular matter*', and he confirmed that it was a reference to the search warrant granted against Mr Levy and the exchanges that he had had with Mr McGrail which followed [T/16/310.3]. Mr Santos then asked Mr Picardo to explain why he did not refer to any specifics, he replied:

'it's already a fairly lengthy message and, you know, typing these things with two thumbs takes some time, and there was

a lot to talk about in that respect ... I don't think I could have explained the loss of confidence I'd had in McGrail etc etc in a sentence as I have in respect of all the others.' [T/16/310.4]

- 12.5 I find this explanation unconvincing. As I will show, when considering other occasions when Mr Picardo referred to his complaints against Mr McGrail, he did not set his case concerning the search warrant out in clear terms; all the references are terse and even cryptic. I will later consider Mr Wagner's submission that he did this quite deliberately because he was unwilling to expose the real reason for his moves against Mr McGrail.
- 12.6 Mr Santos asked Mr Picardo why he stated that he was then, on 14 May, *'starting to lose confidence'*, given that his witness statement (Picardo 1 para 55 [A194]) stated that he lost all confidence in Mr McGrail on 12 May 2020. Mr Picardo replied that he *'was deliberating about all of these things in my mind, and what I should do about them...'*. He said that:
- a. He had lost confidence in Mr McGrail: *'because he lied to me ... first of all because of the reference to the Attorney-General and second because of the reference to the DPP. And when I get the information that the DPP had not given the advice ... that results in my losing confidence in him'*.
 - b. This resulted in *'a breakdown of the personal relationship'*.
 - c. He then received the article in El Faro de Ceuta and *'it's building up to be more than just a personal loss of confidence: there is more here. All of these things are happening at the same time.'*
 - d. Subsequently, on 14 May Mr McGrail gave his Viewpoint interview on the HMIC report.
 - e. *'All of these things come together in that week'* [T/16/314.24 – 315.19].

MR PYLE'S RESPONSE

- 12.7 Mr Pyle replied to Mr Picardo's WhatsApp message within nine minutes: '*Agree. As we thought at the time, wrong appointment*'; he added that '*the recruitment process ... was abject*' [B1439]. I have already canvassed the criticisms which Mr Pyle made of the process by which Mr McGrail was appointed, and I need not repeat what I have already written, as I rejected those criticisms.

MR PYLE INFORMS THE FCDO

- 12.8 On 15 May, Mr Pyle emailed the FCDO [C3799] referring to the claims arising out of the Incident at Sea. He wrote that he had told them about this the day before. He attached a copy of the newspaper article from Ceuta. He also said that he was meeting Mr Picardo later that day to discuss the claims and other issues relating to the behaviour of the RGP and in particular its leadership.
- 12.9 I comment that Mr Pyle always kept the FCDO informed of developments.

MR PYLE'S WHATSAPP MESSAGES

- 12.10 At the risk of interrupting the narrative, I need to digress to deal with a disclosure point.
- 12.11 Mr Pyle has not disclosed any WhatsApp messages to the Inquiry which, if unexplained, might seem to be strange and even significant. He was asked about this. He gave a detailed explanation. He readily admitted that he had regularly and frequently deleted such messages which he said was in accordance with FCDO policy [T/18/12.17]. He explained that if you did any work of any sensitive nature, you had to transcribe it on to a note or into a diary and then later save it as a Word file and delete the WhatsApp [T/18/12.17].
- 12.12 He said that in accordance with this policy he recorded his WhatsApp messages in a black notebook, which he would then transcribe into reports to London, then he would destroy the note and delete the WhatsApp [T/18/13.22]. He said that this was '*best practice in FCO methodology*'

[T/15/13.22]. Plainly, he was suggesting that Word files would be protected by the computer's security systems, whereas WhatsApp messages could present ongoing security risks.

- 12.13 Although I had no reason to doubt what he said, out of an abundance of caution, on 9 May 2024, STI requested Mr Pyle to provide a copy of that FCDO policy. The very next day, Peter Caruana & Co (acting for Mr Pyle and the other Government Parties) replied enclosing a copy of an extract from the FCDO policy applying at the time of Mr Pyle's service, which he had provided to them, confirming that while WhatsApp messages may be used in certain circumstances, they are only suitable for short-term or temporary communications and conversations should be deleted as soon as possible. The Inquiry subsequently contacted the FCDO to obtain a complete copy of the policy, which the FCDO provided to the Inquiry on 11 June 2024. The policy in force prior to April 2023 (entitled the '*Instant Messaging Policy*') provides that:

'All conversations by IM [Instant Messaging] should be deleted as soon as possible. If the conversations become a matter of record, they need to be manually recorded on the FCDO's IT to ensure accountability and facilitate ease of search for FOI requests.'

- 12.14 This confirms what Mr Pyle said; it explains the absence of his WhatsApp messages, which I accept. No adverse inference should therefore be drawn from the absence of WhatsApp messages being disclosed by Mr Pyle. It was Mr Pyle's practice to summarise the meetings which he attended in emails to the FCDO; where relevant, he had disclosed these emails. The criticism which I made of others for failing to take note of meetings does not therefore apply to Mr Pyle. I shall continue the narrative.

THE MEETING BETWEEN MR PICARDO AND MR PYLE

12.15 On 15 May, Mr Picardo and Mr Pyle met to discuss these matters. Mr Pyle spoke first. I summarise the account he gave in his statement (Pyle 1 para 26 [A255-6]).

- a. He said that he was as close to anger as he had ever been. He explained to Mr Picardo that for some while he had had concerns about the RGP and its leadership.
- b. He said that the Incident at Sea, which had caused the loss of two lives, was going to cause Gibraltar reputational and political damage and further demonstrated a lack of control by RGP leadership.
- c. He said that he had asked Mr McGrail numerous times where the incident had taken place, which he considered to be a simple question, concerning matters which were his direct responsibility as Governor, but it was not until 11 March that Mr McGrail told him that it was highly likely the incident took place outside BGTW.
- d. He believed that Mr McGrail had misled him by his evasive answers. Nor was he impressed with the explanation that the boat's equipment had been turned off '*in the heat of the moment*'.
- e. He said that Mr McGrail's behaviours and mannerism mirrored those that he had displayed during and after the '*airfield incident*'.
- f. He concluded that there was a culture at the RGP which was unhealthy, and it stemmed from its leadership. The Incident at Sea had turned his concerns into a firm belief that change at the RGP was needed.
- g. Mr Picardo said that he shared these concerns but that he wanted to brief him on a different issue. He said that Mr McGrail had made a serious error of judgement, in relation to an ongoing criminal investigation with regard to the execution of a search warrant against Mr

Levy and had gone against the advice of the DPP and Attorney-General and misled Mr Picardo about that. Mr Pyle was asked at the Inquiry what Mr Picardo had told him about Mr Levy and the warrant. Mr Pyle replied that he thought it was inconceivable that Mr Picardo did not spell out how he had been misled but could not remember the exact sequence or terminology [T/18/159.10], nor had he made any detailed note of what Mr Picardo had said. (I should perhaps point out that this is consistent with what Mr Pyle wrote in his letter to the GPA, dated 3 June ([C4676], to which I refer later) where he wrote that Mr Picardo had informed him of the criminal investigation during their meeting on 15 May).

- 12.16 Mr Picardo did not recall the meeting in detail but said that he did remember explaining to Mr Pyle *'the issues of the execution of the search warrant in respect of Mr Levy and [his] views in respect thereof, which was central in [his] loss of confidence in Mr McGrail...'* (Picardo 1 para 68 [A199]).
- 12.17 Mr Picardo said that he told Mr Pyle about his connection to Hassans and 36 North, which anyway were *'irrelevant ... because I had resolved that matter a year and a half before'*. Furthermore, he said, Mr Pyle knew about his connection to Mr Levy [T/16/323.13].
- 12.18 In opening submissions on behalf of Mr McGrail (at para 30), it was submitted that Mr Picardo had *'astutely raised issues such as the airport incident and recruiting a new RGP commissioner from outside of Gibraltar, which he knew would likely encourage [Mr Pyle] to join forces with him in approaching the GPA'*, and in that fashion, he *'was manipulated, and allowed himself to be manipulated'* by Mr Picardo. Sir Peter Caruana asked Mr Picardo to respond to the suggestion that he had worked *'manipulative magic'* on Mr Pyle, to which he responded with a typical folksy retort that *'the Governor is not a stove that one loads with logs'* [T/17/259.23]. He added that Mr Pyle did not require any persuasion as he was *'pushing at an open door'*; indeed, he claimed, it *'swung open before I put my fingers on it'* [T/17/255.24].

- 12.19 Mr Picardo stressed that he and Mr Pyle were agreed that, by this time, both had lost confidence in Mr McGrail. He said that [T/17/20.1] it was important to understand that:

'The Governor, who is appointed by the United Kingdom, [and] the Chief Minister, who is directly elected by universal suffrage of the people of Gibraltar, together have lost confidence in the senior law enforcement official in Gibraltar for the reasons that we have set out. That is quite seminal.'

- 12.20 Mr Pyle added in his evidence that following a long discussion about the leadership of the RGP, they both concluded that the '*coming together of issues*' and different '*matters of importance to both of us*' had caused them both to lose confidence in Mr McGrail who, as head of the RGP, should be held accountable for its failings (Pyle 1 para 26.7 [A256]; [T/18/152.21,164.9]). As a result, they agreed to ask for a meeting with Dr Joey Bitto, the Chair of the GPA, during which they would ask the GPA to call for the Commissioner of Police's retirement under section 34 of the Police Act (Pyle 1 para 13.3 [A240]).

CONSIDERATION OF THE APPROACH TO DR BRITTO AND TO THE GPA

- 12.21 That evening (15 May at 20.03, [B1440]), following his meeting with Mr Picardo earlier that day, Mr Pyle texted Mr Picardo to the effect that he did not '*see any option re [the Commissioner of Police] given the evidence*' and that he would '*... speak to [Dr Britto] carefully sometime next week*'.
- 12.22 At 20.42 (also at [B1440]), Mr Picardo replied to the effect that Mr Pyle had '*probably seen this coming*' before he (Mr Picardo) had; by '*this*' he plainly meant the circumstances which made it necessary for Mr McGrail to be compelled to retire. He went on to say that he (Mr Picardo) '*had allowed [Mr McGrail] too much of the benefit of the doubt*' and had in the process strained the most important relationship that Gibraltar had with the UK. He doubted that '*anyone would see this cumulative record of behaviour as defensible*'. He

added that the '*loss of life*' in the Incident at Sea '*puts it in a different territory*'. He felt '*like the RGP has gone backwards not forwards*'.

- 12.23 Mr Santos put it to him that this message appeared to elevate the Incident at Sea as the major reason, rather than the '*lie*'. Mr Picardo did not completely accept that; his reply was to the effect that there was one issue which matters more to him '*in terms of direct confidence*', plainly referring to the alleged lie, but in respect of other relevant matters '*then the issue that relates to loss of life has to be at the top of the list*' [T/16/325.10].
- 12.24 At 20.57 (also [B1440]), Mr Pyle texted a reply to the effect that they needed '*to approach this correctly and carefully (but that's a given in my opinion)*'.
- 12.25 The next day (16 May at 11.47, [B1441]) Mr Picardo texted Mr Pyle: '*if we are going to do this, do we very discretely (sic) at your end, line someone up. We cannot have it headless.*'
- 12.26 At 13.58 [B1441], Mr Pyle replied: '*Need to discretely (sic) bring Joey Britto into our thinking*'. The use and meaning of the word '*discretely*' (which I take to have meant '*discreetly*') was considered during the hearing. Mr Pyle might just have echoed the same word used in the previous message from Mr Picardo. However, Mr Pyle denied that he was suggesting that Mr McGrail should be removed '*discreetly*', which he said '*we were going to do... properly and correctly*' [T/18/174.21]. He said that he was referring to having a contingency for somebody to come in and help with the transitional period of Commissioner of Police [T/18/174.15] Accordingly, they agreed to arrange a meeting with Dr Britto [B1441].
- 12.27 At 14.08 (also at [B1441]), Mr Pyle, referring to Mr Picardo's observation that he would not want the RGP '*headless*', texted that he would try to speak to his OT [Overseas Territory] Police Advisor, who was based in Miami. I explain that this unexpected location for his advisor was convenient because most of the appointments on which he advises were in the Caribbean.

- 12.28 At 15.47, Mr Pyle emailed his colleague in Miami alerting him to the position [C3911] and later said that he would send a copy of the HMIC report [C3933]. The email stated: *'Basically and on a cumulative basis. Both the Chief Minister and I have lost faith in the Commissioner of Police. All highly sensitive and only the AG knows. One question is how best to quickly recruit a replacement. CM agrees we should look outside Gibraltar'*. It was put to him that this suggests that he had already decided that Mr McGrail should go, but he said it was only sensible to cover contingencies which might arise. He said he was not prejudging the processes of the GPA [T/18/173.9].

COMMENT ON THE FIRST MOVES AGAINST MR MCGRAIL

- 12.29 I pause here to summarise the position of the Government Parties and Mr McGrail as the first moves had been made against Mr McGrail.

Mr Picardo's position

- 12.30 Mr Picardo made his position very clear in his witness statement (Picardo 1 para 112-3 [A217]) that:

'after the meeting of 12 May in my office on the issue of the search warrants, I had completely lost confidence in Mr Ian McGrail's probity and integrity and competence (effectiveness). I believed that Mr McGrail had lied to me about one thing (the alleged advice on the search warrant in Operation Delhi), had misled the Governor about another (the location of the collision at sea), and I had reached the considered view that Mr McGrail had lost my trust and confidence as the Chief Minister'.

- 12.31 Mr Pyle gave evidence [T/18/152.21] that the notice of the claims arising from the Incident at Sea led to a *'coming together'* of the issues [T/18/152.21]. Both considered it was very shocking that an RGP launch, on an official patrol, which had – probably deliberately – not switched on its AIS systems, had –

perhaps deliberately but at the very least recklessly – strayed far out of BGTW into Spanish waters and had chased and collided with a RHIB, killing two Spanish citizens and injuring others, thereby causing political and diplomatic problems at a time when negotiations with Spain were at a delicate stage. This incident acted as a catalyst causing them to reflect on a number of other serious problems facing the RGP, all resulting – as they alleged – from poor leadership, for which Mr McGrail should be accountable.

12.32 It is argued by Mr Wagner on behalf of Mr McGrail that Mr Picardo did not lose confidence in Mr McGrail as a result of the so-called '*lie*' at all. He was determined that Mr McGrail should go because – and only because – Mr Picardo decided that he should take responsibility for the RGP's action in applying for a search warrant against Mr Levy, at Hassans offices, and seeking to interview him under caution, steps which he bitterly resented. Mr Wagner maintains that his campaign against Mr McGrail all stems from the grant of the warrant, which Mr Picardo and Mr Llamas were determined should not be executed, and they were equally determined that Mr Levy should not be interviewed under caution. He argues that there was no such lie, and even if Mr Picardo mistakenly but genuinely thought that there was, it was only a '*fig leaf*', a mere '*pretence*', to cover the real reason, and that the other grounds are a clever construct by Mr Picardo. That, they allege, was the reason for Mr Picardo changing his mind about the Airport Incident, and about the HMIC Report, and about the Incident at Sea; that was what caused him to '*re-write history*' – as they put it [T/3/84.21].

12.33 Mr Wagner argues that the claims relating to the Incident at Sea were not unexpected – indeed, Mr Picardo already knew about the legal claims before being forwarded the email from Mr Yeats on 20 May (closing submissions para 70.3). Mr Picardo knew that Mr Pyle was hostile to Mr McGrail, and that Mr Pyle held Mr McGrail in low regard following the Airport Incident and disapproved of Mr McGrail's appointment. Mr Wagner therefore argues that Mr Picardo gathered together a bundle of various complaints, most of which had not

previously troubled him, to persuade, to encourage – or even to ‘*manipulate*’ – Mr Pyle into joining forces to oust Mr McGrail (opening submissions para 30; closing submissions para 62.2). He is contending, in effect, that they have, between them, put together a rag-bag of complaints, many of which they had already considered and some of which were no more than makeweights.

Mr Pyle's position

- 12.34 As for Mr Pyle, Mr Wagner contends that he well knew of the criticisms in the HMIC Report and had, at least until 14 May, thought that the defects identified in the Report could be corrected by working together with Mr McGrail (closing submissions, para 92).
- 12.35 Furthermore, Mr Wagner submits that Mr Pyle believed as long ago as 9 March (the day after the Incident at Sea) that Mr McGrail had been evasive about the location of the collision. Yet, he had made no complaint to Mr McGrail about that until over two months later (closing submissions, para 76).
- 12.36 Mr Pyle, in his witness statement, had suggested that it was ‘*a remarkable coincidence*’ that Mr Picardo wanted to discuss the leadership of the RGP on 14 May, since he had also wanted to raise his own ‘*deep concerns about its leadership*’ with Mr Picardo at precisely the same time (Pyle 1 para 26 [A255]). Mr Santos asked Mr Pyle how this ‘*remarkable coincidence*’ arose, given that two months had passed since the Incident at Sea and a fortnight had passed since the HMIC Report. He replied that he thought ‘*it was probably notice of the claims* [concerning the Incident at Sea]. *The Met inspection. And as I said, that sort of coming together of issues. And I think it was beginning to sharpen my mind as to what I saw as a way forward*’ [T/18/152.21]. He accepted that his concern related more to the Incident at Sea than to the claims, which he did not regard as ‘*a self-standing issue on their own*’ [T/18/153.6].
- 12.37 Mr Pyle said that he had previously told Mr Picardo of his ‘*firm belief that the RGP needed to modernise*’ [T/18/149.12]. He said that he was sure that he would have approached Mr Picardo and taken action to remove the

Commissioner of Police if Mr Picardo had not approached him first [T/18/148.14; T/19/190.23]. He stated that he was still getting his concerns together in his mind [T/19/192.6]. Mr Santos asked whether he reached the view that there was no other option independently from Mr Picardo. He replied that the strength of Mr Picardo's feelings '*confirmed where I was heading. It may have speeded it up*' [T/18/167.2].

- 12.38 He also stated that prior to the meeting, he thought that he would have raised his concerns about Mr McGrail on his weekly teleconferences with London [T/18/146.21], although he did not produce any written confirmation of that.
- 12.39 As I have already said, Mr Wagner suggested that the explanation for his decision to act when he did was that he was being manipulated by Mr Picardo. When this suggestion was put to him by Mr Santos, Mr Pyle indignantly rebutted the suggestion that he could be manipulated or manoeuvred, praying in aid his lifetime's service in the FCDO, some of which was served in trying and testing circumstances, including in Somalia [T/18/164.19].
- 12.40 Mr Wagner's alternative submission is that Mr Pyle would not have acted as he did without the prompting by Mr Picardo but saw an '*opportunity and mutual interest*' when Mr Picardo approached him (closing submissions, para 64.4). When he gave evidence, Mr Pyle was asked to explain his reasons for acting as he did. He said that the meeting on 15 May was '*probably the first time that I was more angry than the Chief Minister*', and remembered '*the sigh of relief when I went back on the sofa and said: right, I've got that off my chest. It was quite cathartic in some way*' [T/18/165.12]. Mr Pyle had said in his witness statement that losing confidence is a gradual process. He said that his '*loss of confidence in Mr McGrail's probity and integrity, and his leadership of the RGP had been progressive over a period of time and by reason of a number of incidents and matters*' (Pyle 1, paras 13.2, 20-25 [A240]). He was, he said, '*collecting in [his] mind*' how he would approach the '*storm brewing*'

[T/19/192.10]. He explained that there was a *'coming together of the issues'*

[T/18/152.21]. Mr Pyle put his position in this extract (at [T/18/164.9-18]):

'...the lack of confidence was from both of us, for ultimately different reasons...the coincidence of timing of these matters of importance to both of us coming together at the same time ... may be coincidental, but that's all they were: there was no conspiracy or collusion in that.'

Therefore, he says, it was a coincidence that his loss of confidence arose at the same time as Mr Picardo's, who lost confidence at or about the same time, albeit for largely different reasons. Sir Peter Caruana put it to him that when Mr Picardo told him that he (Mr Picardo) had lost confidence in Mr McGrail, Mr Pyle was a *'wide-open door'*; Mr Pyle agreed with this suggestion [T/19/151.10].

12.41 I accept Mr Pyle's explanation; I reject the suggestion that he was *'manipulated'*. People often change their minds without being manipulated. It seems to me – although he did not quite put it this way himself – that the news of the claims arising from the Incident at Sea was not so much a trigger but more of a catalyst, which precipitated and accelerated the gradual change of mind, which had been developing over a period of time. I noted that during his closing submissions, Sir Peter Caruana made the same point [T/21/139.9].

12.42 I have already decided that Mr Pyle should not properly have relied on the Airport Incidents, or the Investigation of the Assault upon the helicopter crew against Mr McGrail, since he did not raise these matters at the appointment process. However, in my opinion, he had legitimate and serious complaints that on 8 and 9 March Mr McGrail did not provide the best available information to Mr Pyle about location in relation to the Incident at Sea. Furthermore, he had genuine concerns about Mr McGrail's leadership in relation to the Incident itself, which killed two men and caused such a diplomatic fallout. Moreover, he was also entitled to bring to mind the shockingly bad HMIC Report. I think that he was quite entitled to take his time

to think these matters through before coming to the conclusion that the RGP needed new leadership. I have no doubt that this was a sincerely held view. I am prepared to go further; I think that it was an entirely reasonable conclusion to reach in the circumstances of the Incident at Sea and HMIC Report.

- 12.43 I turn shortly to consider how he went about it, a process which I consider to have had some serious defects.

THE RELEVANCE OF THE HMIC REPORT

- 12.44 The case presented by Sir Peter Caruana on behalf of the Government Parties is that Mr McGrail's failure to address the issues identified in the 2016 HMIC Report contributed to the loss of confidence by both Mr Pyle and Mr Picardo. However, he accepts that that factor would not, of itself, have resulted in their seeking Mr McGrail's removal from office (closing submissions, para 199). As I have already pointed out in the section on the HMIC Report, Mr McGrail did not accept a number of the findings in the 2020 Report, and argued that the failure to implement some of the recommendations from the 2016 Report was the result of the Government's failure to provide adequate resources to do so (see, eg [T/7/219.7, T/7/220.2]). In an attempt to refute that argument, the Government claimed that after Mr McGrail's retirement, the next Commissioner, Mr Ullger made rapid progress towards implementation (closing submissions, para 210.1).
- 12.45 The Government Parties claim that the WhatsApp messages disclosed after the Main Inquiry Hearing between Mr McGrail and Mr Ullger tend to undermine Mr McGrail's case on the HMIC Report. They rely upon an exchange of messages between them on 1 June 2020, in which Mr McGrail asked: '*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*' [E767]. To which Mr Ullger replied: '*I'm doing absolutely everything I can do to push things to show that we are dealing with them proactively*' [E768].

- 12.46 The Government Parties contend that this exchange suggests that Mr McGrail was aware that there had been a lack of progress towards implementing the recommendations in the Report, and that he was attempting – as Sir Peter Caruana put it – *‘to accelerate progress at the last minute to discredit reliance on this as a reason to lose confidence in him’* (opening submissions for Reconvened Hearing para 33). Or, as Sir Peter put in in his closing submissions at the Reconvened Hearing (para 52.1(ii)), Mr McGrail realised that he had not made sufficient progress in the implementation of the 2016 Report and had *‘contrived an artificial list of issues’* to explain why not.
- 12.47 Mr McGrail’s explanation for this was that it *‘was part of my thinking at the time to deconflict any of the concerns that were being levied at me and therefore suggesting that within the next couple of weeks, if I can sit down and provide mitigating circumstances or reduce whatever tension there was, that would have helped if we could have advanced the recommendations as I was requesting.’* [T/23/115.5].
- 12.48 Mr Ullger also gave evidence about the RGP’s response to the recommendations in the HMIC Report. He said [T/22/188.2]: *‘we are trying to do absolutely everything to adopt some of the recommendations, but ... as we began to get to grips with the work that we were required to do, we started realising that the ask of Mr McGrail was too big because a lot more had to be done and it was going to take us far more time than to do the quick fixes.’* [T/22/182.16]
- 12.49 Mr Wagner argues that Mr McGrail’s reaction was understandable since on 22 May Dr Britto had specifically asked him to work upon the recommendations made in the Report (opening submissions for Reconvened Hearing, para 31, citing [C6569]).
- 12.50 I attach little weight to the points made by the Government Parties arising from the WhatsApp messages disclosed after the Main Inquiry Hearing, particularly since Mr McGrail’s alleged failure to address the issues identified

in the HMIC Report was also considered by Mr Picardo, by Mr Pyle and by the GPA to be a subsidiary factor in their alleged loss of confidence in him, and it so remained; the WhatsApp messages disclosed after the Main Inquiry Hearing do not change that.

- 12.51 For his part, Mr McGrail never accepted that all the criticisms in the HMIC report were justified, or that he had resorted to a series of quick fixes to give the impression that he was dealing with them. I think that he genuinely believed that he had tried his best to remedy such shortcomings as were capable of remedy and that he was continuing to do. I do not think that the criticisms in the HMIC Report, or the reaction of Mr Picardo, Mr Pyle or the GPA to them, played any part in his decision to retire. Nor do I think that his attempt to justify why he had not met the 2016 recommendations adversely affects his credibility on other issues, as the Government Parties contend (closing submissions for Reconvened Hearing, para 29.7).

THE APPROACH TO THE GPA

DR BRITTO INVITED TO A MEETING

- 12.52 On 16 May (at 14.07 [C3937]), Mr Pyle emailed Dr Britto inviting him to a meeting with Mr Picardo to take place on the following Monday (18 May). Mr Pyle gave him no indication whatsoever of what the meeting was about.
- 12.53 It was perfectly proper for Mr Picardo and Mr Pyle to invite the Chair of the GPA to a meeting, but it would have been much better to have given him notice of what they wanted to speak to him about. Mr Pyle later accepted that, with hindsight, it would have been helpful to have given Dr Britto some details in advance [T/18/175.20; T/19/28.2].
- 12.54 Dr Britto said that he had no idea of what this meeting would be about [T/15/69.25]. He said that before the meeting Mr Picardo had not raised any concerns with him about Mr McGrail, and Mr Pyle had only in the past raised

concerns about '*modernising the police force and how old fashioned they were...*' [T/15/70.4].

- 12.55 Although Dr Britto was surprised to receive this invitation and was '*apprehensive*' about it [T/15/69.24], I do not criticise Dr Britto for accepting it. In my opinion, he then had no grounds on which he could properly refuse and might even have been obliged to attend upon the Interim Governor when called upon to do so.

THE GIBRALTAR CONSTITUTION AND THE CREATION OF THE GPA

- 12.56 It is no part of my remit to give an exposition of the Gibraltar Constitution, but I think that I need to pause the narrative to consider the constitutional position of the GPA, which was established by section 48 of the Constitution. Section 48(1) provides that the GPA: '*shall be independent in the exercise of its functions*'.

- 12.57 The creation of the GPA was part of the carefully constructed mechanism to transfer power from the Governor and authorities in London to newly created independent bodies in Gibraltar; its independence is – or certainly should be – part of the balance of power and function between the Crown (as represented by the Governor), the Government and the RGP. It must not be told what to do either by the Governor or by the Chief Minister.

- 12.58 Issue 10 requires me to inquire into:

'The Gibraltar Police Authority's process and decision in purported compliance with Section 34 of the Police Act, and subsequent withdrawal of that decision.'

- 12.59 I will therefore turn to consider the role of the GPA in the events leading to Mr McGrail's retirement.

MR PICARDO AND MR PYLE AGREE ON THEIR AGENDA

- 12.60 It will be remembered that on 14/15 May, Mr Pyle and Mr Picardo had effectively concluded that they needed to approach the GPA to ask it to call for Mr McGrail's retirement (Pyle 1 para 13.3 [A240]).
- 12.61 At 18.47 on 17 May (which was a Sunday), Mr Pyle emailed Mr Picardo [C3953] setting out his '*thoughts*' for their meeting with Dr Britto, which was to take place the following morning (Monday 18 May). Mr Pyle referred Mr Picardo to section 34 of the Police Act which '*allows for the GPA, after consultation with us, to call upon the Commissioner to retire*'; he also pointed out that, as Governor, under section 13(1)(f) he had '*authority to call for the resignation of the Commissioner, where the Authority has failed to discharge its responsibility*'. He said that, as he saw it, it was for the GPA to take the matter forward in the first instance, and that it was important that they '*follow the process to the letter*', and suggested that they should '*therefore say to [Dr Britto] tomorrow that we have lost confidence in the Commissioner, set out why, and ask him to consider options as to the way forward*'.
- 12.62 He referred to '*the recent incident that resulted in the unfortunate deaths of two Spanish nationals*' and to the subsequent claims. He stated that he had been promised an update by email from the Metropolitan Police on their investigation into the incident.
- 12.63 Furthermore, although he had earlier referred to the need to '*follow the process to the letter, not to pre-judge and to allow the Commissioner to put forward a defence*', he wrote that he had already spoken to someone '*on how best to recruit a replacement should we end up in that space*' and '*in drawing up a job requirements/description*' [C3956]. Mr Pyle says that he was merely providing against possible contingencies but, as I have already pointed out, the email that he sent to his colleague in Miami [C3911] suggests that he had indeed already determined that – one way or another – Mr McGrail was to be compulsorily '*retired*'.

- 12.64 Very late that same night (17 May at 23.53 [C3953]), Mr Picardo emailed his reply setting out his concerns, adding in red his comments on Mr Pyle's original email. He proposed that they relay the sequence of events and '*the consequences for our confidence*' in the RGP, and particularly Mr McGrail, were best addressed directly in person by both of them with Dr Britto, to avoid any suggestion that the issue was '*somehow a product of by-gone colonialism returning in disguise*'. He went through each of five criteria, mentioned in Section 13(1)(f) of the Police Act, being: '*efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar*', and stated that they needed '*to consider whether in our consultation with the GPA we and they believe that all OR any ... of the [criteria] have been impacted*' [C3954]. He also enclosed a transcript of Mr McGrail's interview on Viewpoint on the HMIC Report.
- 12.65 He expanded on these same points in the '*second letter*' of 22 May, to which I will come shortly, so a summary of this email of 17 May will suffice.
- a. In the paragraphs headed '*1. Efficiency*' and '*2. Effectiveness*', he relied on the HMIC Report.
 - b. He dealt with '*3. Probity*' and '*4. Integrity*' together; he wrote that the Report and '*in particular its references to a failure even to understand the potential for, let alone the actual instances of, corruption ... and the matters relating to the reporting to us of the events at sea ... this is an area of huge concern*'.
 - c. Under this same heading of '*4. Integrity*', he continued as follows: '*I have shared with you also the reasons this week why I have lost confidence in the probity and integrity of the Commissioner himself (re James Levy QC warrants). As I told you, I believe that view is shared also by the Attorney-General ... This is possibly the issue of deepest concern to me as it goes to the integrity and probity of a key individual in the maintenance of the respect for the Rule of Law.*'

d. He concluded on this issue: *'I can imagine no greater concern than this in the context of my ability to discharge my oath to the Crown and to the People as Chief Minister.'* I comment that this formula of words did at least mention Mr Levy and the warrants, but it did not here spell out *'the reasons this week why [he had] lost confidence'*, let alone the *'lie'* that Mr McGrail is alleged to have told.

e. Under the heading *'5. Independence'*, he again referred to the parts of the HMIC Report that deal with the potential for corruption.

12.66 Mr Picardo's evidence to the Inquiry was that it was *'clear'* from this email that his *'concerns were caused principally from the issues arising in relation to the matter of the warrants obtained and executed in respect of Mr Levy, and that I had lost confidence in the probity and integrity of Mr McGrail'* (Picardo 1 para 73 [A202]).

12.67 Mr Picardo went on to consider the procedures that the GPA should follow [C3955]. He advised that Mr Picardo and Mr Pyle *'should at this stage limit ourselves to setting out our concerns'*. It would then be *'for the GPA to decide how to act and if they were – acting independently and in their own discretion and on proper advice – to decide that they want to engage the S. 34(1) power'*; then they would have to consult both Mr Picardo and Mr Pyle and obtain the consent of one of them. He did add that *'we'* – he meant Mr Picardo and Mr Pyle – *'would then also have the benefit of any representation that the Commissioner might have made'*. He then referred to the powers that Mr Pyle would have *'if the GPA were not to discharge their functions properly (which I have no reason to doubt they will certainly see to do ...)'*. The emphasis here is mine, because although it is perfectly proper for Mr Picardo to set out his concerns to the GPA, and perhaps even to do so forcefully, I consider this observation demonstrates that Mr Picardo, whilst ostensibly referring to the duty of the GPA to act independently, never doubted that they would not do as they were told to do – as indeed they did.

- 12.68 Early the next morning (18 May at 08.40 [C3958]), Mr Pyle replied that he agreed '*fully*' with Mr Picardo's email, including '*the importance of a joint approach*', and his preliminary views on the five criteria '*and in particular on the issue of integrity*'. They agreed that they should also seek Mr Llamas's advice on the issue.

THE ROLE PLAYED BY MR LLAMAS

- 12.69 When asked if his advice had been sought on this matter, Mr Llamas pointed out that he had no constitutional or statutory role in the GPA process and had '*very, very little*' contact with Mr Picardo on this issue [T/12/26.4]. He said that he '*was at the complete periphery of what was happening at the time*' [T/12/50.23]. He was not part of the discussions with Mr Picardo and Mr Pyle between 15 and 18 May about Mr McGrail's retirement.
- 12.70 I pause to observe that there is no evidence that they did consult Mr Llamas about section 34 until much later, when he was asked to consider the procedural errors which the GPA had made. Therefore, I find that he was not involved in the dealings that Mr Picardo and Mr Pyle had with the GPA.

18 MAY 2020: THE MEETING WITH DR BRITTO

MR PICARDO'S NOTE OF THE MEETING

- 12.71 The meeting between Mr Pyle, Mr Picardo and Dr Britto took place on the morning of 18 May at the Convent. There were no contemporaneous minutes taken of that meeting. Dr Britto had started to make notes of his own but does not believe that he recorded '*anything that was useable*' (that being his description) [T/15/74.20].
- 12.72 Shortly after the meeting, Mr Picardo exchanged emails with Dr Britto, in which he offered to prepare a note for him of the concerns which he (Mr Picardo) and Mr Pyle had expressed at the meeting. Dr Britto said that he wanted '*something to act as a summary*' of what had happened; he added that he did not '*want to get this wrong*' [B1435]. Plainly, he wanted to be able to

have a document from which he could give a full and accurate report to the members of the GPA Board when they met to discuss these matters.

12.73 Mr Picardo produced the note two days later on 20 May 2020 [B1436]. The note, headed as an '*Informal Record of Meeting with HE the Governor and the Chief Minister, Monday 18th May 2020*' [C3988], is several pages long. It is, in effect, an expanded version of the email which he had sent to Mr Pyle the night before, which he had used as an aide memoire in the meeting with Dr Britto [T/16/334.6; T/17/7.21]. Mr Pyle stated that Mr Picardo had cleared this note with him before sending it to Dr Britto (Pyle 1 para 14.5 [A241]), and he confirmed that it was an accurate record of the meeting [T/18/190.21]; although he later said that it did not reflect the full discussion [T/19/131.2, 132.20].

12.74 I will summarise it. It stated that: '*The purpose of the meeting was to express grave concerns about certain aspects of policing in Gibraltar which had come to a head in the week before*', being first the publication of the HMIC Report and, secondly, the publication of news of the filing of legal claims in Spain by the relatives of those killed and injured in the incident at sea. It then explained:

'The GPA are therefore being invited by the Governor and the Chief Minister together to consider whether they believe that all OR any (note it is a disjunctive, not a conjunctive list) of the following 5 [criteria] have been impacted.' [C3989]

12.75 The note sought to identify the Commissioner's failings under the five criteria identified by section 34(1) of the Police Act, by which, after consultation with Mr Pyle and Mr Picardo and with the agreement of both of them, the GPA may call upon the Commissioner to retire, '*in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar*'.

12.76 Under the heading '*Efficiency*' [C3989], Mr Picardo referred to the HMIC report, stating '*a large number of the findings of the Report go directly to*

efficiency...'. The Incident at Sea was given as 'further evidence of the RGP acting inefficiently by seeking to act beyond its remit and jurisdiction'. It was claimed that this would cause considerable expense, by requiring a report from the Metropolitan Police, by an investigation into Standing Operating Procedures, maybe by having to defend the RGP officers on the launch against legal proceedings in either Spain or Gibraltar, by defending the claims brought by the families of those injured or killed and perhaps by having to pay damages to them. It was said that 'all of this vitiates efficiency entirely'. Mr Picardo also foresaw that he may need to request a report under section 15(1)(a) of the Police Act.

12.77 Under the heading '*Effectiveness*' [C3990], again reference was made to unfavourable parts of the HMIC Report, and to the Incident at Sea, in which it was said that effectiveness of the RGP is '*impacted as already set out*' under the heading of Efficiency. Furthermore, it was said that, because of the damage caused by the launch, the RGP '*found itself without a key marine asset for some time*', thereby impacting upon '*its effectiveness at sea*'. Moreover, it was said that the '*Effectiveness of the RGP will now be seriously under threat given the onslaught of legal work which will be required in order to address the claims made, as well as those likely to be made, in respect of this incident.*'

12.78 Mr Picardo '*felt it was best to consider the next headings of "Probity and Integrity", together as, in his view, they are 'inextricably linked'* [C3990]. He wrote that there had been a failure '*relating to the reporting to us of the events at sea involving the death of two Spanish nationals*'. He wrote that this was:

'an area of huge concern to both the Governor and the Chief Minister. Both feel that their respective dealings with the Commissioner have left them with the sense that he is lacking in both probity and integrity in his dealings with them. The Chief Minister indicated that he had held discussions with the

Attorney-General which led him to believe that Mr Llamas felt the same way, although he obviously could not speak for him'.

- 12.79 Then, after writing of his complaints arising from the Incident at Sea, he wrote this passage, which I shall quote in full (the underlining is my emphasis):

'Mr Picardo also shared another event occurring last week which had left him also in a situation where the Commissioner had expressly misled him and which left him unable to believe the Commissioner. Mr Picardo stated that for him this is possibly the issue of deepest concern as it goes to the integrity and probity of a key individual in the maintenance of the respect for the Rule of Law. Additionally, that individual, as Commissioner is, in the Chief Minister's view, at the head of the organisation that is institutionally one of the guardians of the Rule of Law alongside the Executive and the Judiciary. For the Chief Minister, to an extent the police becomes a fourth branch of government in the maintenance and preservation of the Rule of Law. Mr Picardo stated that without the Rule of Law we are unrecognisable as a nation. Mr Picardo said that he can imagine no greater concern than this in the context of his ability to discharge his oath to the Crown and to the People as Chief Minister.'
[C3991]

- 12.80 The note concluded:

'It is now a matter for the GPA to decide how to act and to decide that they want to engage the S.34(1) power. If the GPA decide to go down this road the first step is to allow the Commissioner to make representations, if he wishes, under s34(2). It will of course be necessary for the GPA to consider

any representation that the Commissioner might make. Thereafter, if the GPA are of the view that the Commissioner should be invited to retire, then that is when they would need to consult BOTH of the Governor and Chief Minister and seek the agreement of ONE of them. The Governor and the Chief Minister would then also have the benefit of any representation that the Commissioner might have made under S.34(2) in expressing a final and firm view.' [C3992]

- 12.81 These extracts spell out the nature of the invitation, and if they had been taken at face value, would have given proper guidance to Dr Britto and to the GPA. On paper, Dr Britto recognised that he was being asked to make the decision independently. Thus, at paragraph 13 of his statement, (Britto 1 [A322]) Dr Britto said:

'13. The interim Governor and the Chief Minister stated that it was a matter for the GPA, having been appraised of these concerns, whether in its discretion, it wanted to invoke the powers vested in it pursuant to Section 34 of the Police Act 2006.'

- 12.82 Unfortunately, Dr Britto did not take this at face value, as I will set out when I come to review his live evidence of what he understood and what happened.

MR PICARDO'S ACCOUNT

- 12.83 I contrast the Chief Minister's wordy discourse on the '*Rule of Law*' in this note with the terse and vague reference to '*another event occurring last week, which had left him also in a situation where the Commissioner had expressly misled him and which left him unable to believe the Commissioner*' (the passage which I underlined above). It will be noted that he did not give any particulars whatsoever of that '*event*' or the details of the way in which he had been '*misled*'; he did not mention Mr Levy by name; he did not mention the

search warrant; he did not mention Hassans or Operation Delhi; nor, of course, did he refer to his own financial interest in Hassans or to his close friendship with Mr Levy.

- 12.84 In the course of his oral evidence to the Inquiry, Mr Picardo confirmed that the words '*another event*' were a reference to the meeting of 12 May 2020 with Mr McGrail [T/17/8.18]. But he said that he explained to Dr Britto how Mr McGrail had misled him and believed that he set out the detail about Operation Delhi, the search warrants and Mr Levy's involvement, although he could not say in what level of detail [T/17/9.2, 272.9]. He explained that he did not set out the detail of Operation Delhi in the note as '*I was needing to prepare the note and get it out to Dr Britto as soon as possible. I think at one stage he was pressing me for it ... I would have had to write a lot more...*' [T/17/9.5]. Mr Santos suggested that he still managed to produce a five-page note; Mr Picardo replied that it would have been even longer with more detail [T/17/10.3]. Mr Santos then asked whether he accepted that he included more specifics about the HMIC Report than the warrant; he replied '*the HMIC Report is a written document to which it is easy to cross refer. The other is something which I explain viva voce...*' [T/17/12.5].
- 12.85 I do not accept this explanation for failing to spell out the '*event*' to which he had referred. Mr Picardo had again glossed over what he contends was his main complaint against Mr McGrail and I find that he did so deliberately to conceal his real complaint from Dr Britto, and other members of the GPA, who would have made a much more searching enquiry had they been told the truth.
- 12.86 Mr Picardo said that Dr Britto was '*very concerned, but not surprised, when the Governor and I shared our concerns with him*' (Picardo 1 para 89 [A207]). Mr Picardo gave evidence to the Inquiry that he '*had neither the power to direct or instruct*' Dr Britto on what the GPA had to do [T/17/268.21].

12.87 Mr Picardo explained that: *'We were sharing with him why we thought they should engage that level of scrutiny of the actions of the Commissioner, and invite him to explain, but they were perfectly free to do otherwise...'* [T/17/19.2]. He added: *'we were communicating vehemently to the Chair of the GPA how we felt ... their independence does not preclude us from being forceful in the expression of our views as to how we feel about the Commissioner of Police'* [T/17/20.1].

MR PYLE'S ACCOUNT

12.88 Mr Pyle's evidence was that, at his *'request, the Chief Minister set out the issues of concern to both of us, namely the damning HMIC report ... the incident at sea involving a fatal collision ... the Police Federation allegations of bullying, ... and the mishandling of a high-profile ongoing investigation.'* (Pyle 1 para 14.4 [A240]) He said Mr Picardo referred to the criminal investigation in a *'headline'*, but not just *'bullet point'* fashion, with *'a bit of detail but without the full detail'*, but he did not believe that Mr Picardo referred to his financial interest in 36 North or his communications with the individuals concerned [T/18/179.7]. Mr Pyle *'endorsed the Chief Minister's position'* that they had both lost confidence in Mr McGrail, and said that *'there had to be accountability for the failings'*, that *'the common thread through all the issues appeared to be a lack of adequate management and leadership'* and therefore Mr McGrail had to be held accountable (Pyle 1 para 14.2 [A241]).

12.89 When asked about the reference in the Informal Record to *'another event'*, Mr Pyle confirmed that this was how this was expressed in the meeting, and it was not referred to more expressly [T/18/191.13]. Mr Pyle agreed that the short reference in the file note was not sufficient for members of the GPA to make an informed decision on the matter, but stated that *'I am absolutely certain, the GPA would have asked for more information'* [T/18/192.14]. But as events were to show, his confidence was misplaced, and they asked no questions at all.

- 12.90 He told Dr Britto that if the GPA did not deem it appropriate to call on Mr McGrail to retire, he would consider using the powers available to him under section 13(1)(f), and that, as things stood, he would need '*strong and persuasive arguments not to do so*'. He concluded by saying that his powers under section 13(1)(f) only came into play '*in default by the Authority*' (Pyle 1 para 14.3 [A241]).
- 12.91 He said that, whilst he was not looking to pre-judge the deliberations of the GPA and was mindful that the Commissioner could make representations under Section 34, the GPA should be in no doubt as to the strength of his feelings (Pyle 1 para 14.3 [A241]). He added that Dr Britto said he '*took note*' and '*could see where [they] were coming from*'; accordingly, he said that he would convene a meeting of the GPA as soon as practicable (Pyle 1 para 14.4 [A241]).
- 12.92 In questioning, Mr Pyle said that Dr Britto would have been right to think he (Mr Pyle) was very likely to use his powers, although he suggested that his '*mind was not closed*' [T/18/184.13]. Mr Pyle said that he did not intend to suggest, as Dr Britto had understood, that he would not be doing his duty if he did not invite Mr McGrail to retire, rather, he '*was stressing ... that ... the GPA will come under intense scrutiny and therefore had to get it right in terms of the process*' [T/18/185.13]. He denied that he raised section 13 deliberately to get Dr Britto to agree to the section 34 process [T/18/186.7]. He also denied that he was delivering Dr Britto a fait accompli, or that he had intended to do so [T/18/189.20].

DR BRITTO'S ACCOUNT

- 12.93 Dr Britto stated in his witness statement that Mr Picardo's informal note of the meeting accurately recorded what was said (Britto 1 para 12 [A322]) but he later qualified this general acceptance of the note.

- 12.94 Dr Britto's evidence was that he was '*shocked, surprised, more or less I didn't know what had hit me*' [T/15/72.1]. He said that the way he remembered feeling was '*they're giving me a choice*'; he then paused in his reply and added – tellingly, I thought – '*but they're not really*' [T/15/72.22]. I observe that the cold print of the transcript does not quite catch the drama of the reply, by which he plainly understood he was not being given any real choice at all.
- 12.95 Dr Britto recalled Mr Pyle saying to him that he '*wouldn't want to declare you in default*' but he would if he had to [T/15/73.10], which he interpreted as meaning that '*If you don't do your duty, then I will do mine*' [T/15/82.1]. I did not understand him here to be saying that these were the actual words that Mr Pyle used, but that is how he (Dr Britto) took it. Dr Britto said that he '*was left in no doubt that one way or another it could happen*' [T/15/81.9]. Dr Britto therefore said that he '*felt pressured – not necessarily because of being declared in default, but because of this thing about me not doing my duty properly*' [T/15/83.1].
- 12.96 In what seemed to me to be a revealing and spontaneous aside, he sought to explain that what he accepted to be his '*apologetic*' tone as the '*usual tone*', he adopted '*when dealing with my betters*', which he then corrected by saying '*Well, not my betters, but with governors and chief ministers*' [T/15/224.15]. But, in my opinion, this exchange precisely captured his attitude to this meeting and to Mr Picardo and Mr Pyle. He repeatedly said that he '*trusted*' Mr Picardo and Mr Pyle (and their offices) [T/15/202.23, 211.22, 216.12].
- 12.97 Sir Peter Caruana valiantly attempted to draw Dr Britto away from these observations by suggesting that he had been reacting to a '*the sense of occasion, the sense of deference, or perhaps even excessive deference to the office holders that you were being spoken to by rather than what they were saying to you*'; a proposition with which Dr Britto agreed [T/15/149.11]. But the damage was done; Dr Britto did show excessive deference. I comment that this was not how section 48 of the Constitution was or is meant work.

- 12.98 Dr Britto said that, prior to the meeting, he was not familiar with section 34 of the Police Act [T/15/82.17].
- 12.99 He was asked whether, having heard what was said, he had contemplated getting independent legal advice. Of course, now he regrets not taking such an obvious step, but he does not believe it ever entered his head to do so [T/15/83.23, 118.18], and certainly no one suggested at that stage that he should. He stated that, in retrospect, he would have benefitted from legal advice '*as soon as I got the call*' [T/15/142.7].
- 12.100 Dr Britto was not consistent about what he had been told about '*another event*', which is not surprising since it was glossed over in the Informal Record. He said that he could not recall any reference to Hassans or the warrant [T/15/75.7]. He recalled the reference (as in the note) to the '*mishandling of a high-profile ongoing investigation*' but said that he was not given any details [T/15/79.17]. He recalled that there may have been a reference to Mr Levy's telephone [T/15/77.9] and separately recalled that Mr McGrail had previously told him that '*the main issue was that he had somebody's phone in a safe*' [T/15/79.22]. He did not recall any reference to 36 North and there was '*definitely*' no reference to Mr Picardo's own involvement [T/15/78.14]. However, he also accepted that Mr Picardo or Mr Pyle did say that in another event occurring the previous week, Mr McGrail had misled them both and recalled that they mentioned something about Mr McGrail misleading Mr Llamas. [T/15/75.21, 154.4, 212.10].
- 12.101 Dr Britto did not ask Mr Picardo for details about the investigation during subsequent meetings and communications, and stated that this was because he trusted Mr Picardo [T/15/216.10]. Whatever is recorded in the Informal Record, he did not understand at the time that the issue of deepest concern for Mr Picardo was the 12 May meeting as it went to Mr McGrail's '*integrity and probity*' [T/15/77.14].

12.102 Dr Britto also remembers that, at some point, he was told (he believes by Mr Pyle) that '*this had to happen before the new Governor ... came in*' and that, as a result, he '*did feel pressured to do it*' [T/15/122.7]. Although it was not clear to him quite when this was said, Dr Britto plainly understood that the matter had a sense of urgency.

CONCLUSION ON THE 18 MAY MEETING

12.103 I have no hesitation in accepting Dr Britto's live evidence about this meeting. By character and personality, he was unable to resist what he felt to be the pressure being put upon him. I have already observed that although Dr Britto had been told in the written note that the decision should be taken by the GPA, that is not how Dr Britto perceived the position. He understood that he was in effect being told what to do.

12.104 I turn to another serious criticism of Mr Picardo. Quite deliberately, as it seems to me, he told Dr Britto very little about his real complaint. According to Mr Picardo, the alleged lie told by Mr McGrail was the main reason for his loss of confidence in him, yet in his Informal Record he spent five pages detailing his other – subsidiary – complaints, whilst devoting only a few vague and unspecific lines to being '*misled*'. I do not accept his explanation for not spelling out his real grievance in the note. I am bound to conclude that he did not do so because he knew that if he had set out in detail the lie which he alleged had been told to him, it would – or certainly should – have prompted a series of questions about his links to Mr Levy, to Hassans, and to 36 North and this may have exposed his lack of independence. By suppressing the truth, he was in effect suggesting a falsehood; he was in the process seeking to mislead Dr Britto and the GPA as to the reasons for his loss of confidence in Mr McGrail.

DR BRITTO GIVES NOTICE TO GPA OF EMERGENCY MEETING

12.105 Equipped with the note of what to tell them, that morning (18 May), Dr Britto emailed the members of the GPA to give notice of an '*urgent meeting*', to be

held on 21 May. Beyond giving notice of its urgency, he gave no notice of the business to be considered [C4024].

21 MAY 2020: MR PYLE'S REPORT TO THE FCDO

- 12.106 By an email dated 21 May 2020 [C4234], Mr Pyle reported the meeting of 18 May with Mr Picardo to the FCDO in London. I will summarise what he wrote. He stated that Mr Picardo had begun by setting out the issues which were concerning them, and which had caused their 'loss of confidence' in Mr McGrail 'namely the damning HMIC report, the fatal collision, Police Federation allegations of bullying' and 'the mishandling of a high-profile ongoing investigation in which the Commissioner apparently went against advice of the Attorney-General and Director of Public Prosecutions.'
- 12.107 I observe that he gave no details of the 'high-profile ongoing investigation' and – although he was repeating what he had been told [T/18/180.23] – he was quite wrong to say that Mr McGrail had gone against the advice of the Attorney-General or the DPP (a point with which I have already dealt).
- 12.108 Mr Pyle continued his report of the meeting, stating that Mr Picardo said that as a result of the matters to which he had referred, he and Mr Pyle had both lost confidence in the Commissioner and were therefore requesting the GPA to consider using the powers available to them under section 34 of the Police Act 2006 to call upon the Commissioner to retire. Mr Pyle added that, at the meeting, he had endorsed Mr Picardo's position and reported that he said that 'the collision incident alone raised grave concerns and has wide-reaching political, financial, reputational and sovereignty implications which may not go well for Gibraltar'. He had also told Dr Britto that should the GPA determine that a call for Mr McGrail to retire was not appropriate, he would consider using the powers available to him under section 13(1)(f) of the Police Act. He had added that, although he was not looking to pre-judge the deliberations of the GPA and was mindful that the Commissioner is allowed to make representations, 'as things stood, [he] would need strong and persuasive

arguments not to do so.' He had said to Dr Britto that *'the GPA should be in no doubt as to the strength of my feelings'*, and had concluded by saying that his powers under section 13(1)(f) *'only came into play "in default by the Authority" and as such, the GPA was under some scrutiny.'* He described Dr Britto as *'clearly shocked'*.

- 12.109 Mr Pyle finished by observing that Mr Picardo was *'visibly angry'* in the meeting and *'clearly worried at the political, financial and sovereignty damage the fatal collision incident could do to Gibraltar'*, and that they had agreed they needed to be *'completely at one on this'*. He concluded that *'Without doubt, the Chief Minister has the bit between his teeth and wants the Commissioner removed from his position as soon as possible.'*

THE EMERGENCY MEETING OF THE GPA AND ITS AFTERMATH

- 12.110 It is easier to follow the sequence of events if I move directly to the emergency meeting of the GPA on 21 May.

20 MAY 2020: AN EXCHANGE BETWEEN MR PICARDO AND MR GRECH

- 12.111 Mr Darren Grech, the Chief Secretary, was a member of the GPA. On the afternoon of 20 May, which was the day before the emergency meeting of the GPA, Mr Picardo messaged Mr Grech: *'Darren, when Joey speaks tomorrow at the GPA, he is going to explain my views on a sensitive subject. Your support for me on this is key. I have grave, grave concerns'* [B1426].
- 12.112 When he was asked to explain this message, Mr Picardo replied – as if this was an adequate explanation – that Mr Grech was *'my appointee'* [T/17/21.15]. When asked whether his message was consistent with the independence of the GPA, he replied that it was; he said that Mr Grech was *'exercising his functions independently'* but that did not prevent him (Mr Picardo) *'from telling them their views as to why one or another better course is to be preferred'* [T/17/21.25]. However, in my opinion, Mr Picardo did not just give Mr Grech his views; he had said that *'Your support for me on this is key'*. When

Mr Picardo said in the course of his evidence that Mr Grech was ‘my appointee’, he said it in such a manner which made clear that he believed that Mr Grech would, in these circumstances, do what he was told to do; he was trying to influence his vote to call for Mr McGrail’s retirement. I do not doubt that Mr Grech did come to his own independent judgment on what to do, but Mr Picardo’s approach to him, in these terms, when under the Constitution Mr Grech had a duty to act independently, is to my mind obviously improper.

12.113 Mr Grech replied: *‘I know and they are my concerns too for a whole range of reasons. [Thumbs up emoji] You have this support.’* [B1426].

THE ‘RETROSPECTIVE MINUTES’

12.114 The emergency meeting of the GPA was held on 21 May. Most unfortunately, there is no contemporaneous minute of the meeting, as required by section 6(4) of the Police Act. Dr Britto explained that *‘members of the GPA felt that their secretary might be compromised as she was a personal friend of Mr McGrail’s secretary’* (Britto 1 para 16 [A323]). It does not seem to have crossed anyone’s mind that any member of the GPA could have taken a minute in her place. A minute was prepared *‘retrospectively’* on legal advice [C4141], which all present later accepted to be accurate (Britto 1 para 16 [A323]).

12.115 The relevant parts of the *‘retrospective minute’* read as follows:

‘3. The Chair explained to the members what had transpired at the meeting with the Governor and relayed the information, as expressed to him, by both the Governor and Chief Minister. He explained that both the Governor and Chief Minister, in no uncertain terms, had expressed that they had lost all confidence in the Commissioner. The reasons for this are given in the file note and this was read to all present.

4. After the chair read out the file note and fully explained what had been discussed, including the fact that the

Commissioner had claimed at a previous meeting, that 'they' were trying to interfere in an investigation in which, allegedly, a senior partner in a law firm was, allegedly, involved. It was felt that the Commissioner would find it very difficult to continue to work with Government and the Governor given their lack of confidence in him and for the reasons expressed to the Chair. The GPA felt that the maritime incident seemed to be far more serious in its repercussions, overall, than we had previously been alive to and felt that this was the major factor in our decision.

5. After discussion and based on what had been expressed by the Governor and Chief Minister and the contents of the file note, it was felt that the best course of action would be to activate Section 34 of the Act and invite the Commissioner to retire but always affording him the opportunity to make representations to GPA so we could arrive at a firm and final decision and able to make recommendations to Governor. The GPA felt that this recourse was better and 'gentler' than the Governor potentially activating Section 13 which allows him to seek his resignation.'

PROCEDURAL FAILINGS

12.116 I observe that the formula '*based on what had been expressed by the Governor and by the Chief Minister and the contents of the file note*' is entirely vague as to what they were actually told by Dr Britto. Furthermore, as they later recognised themselves – the form of words at paragraph 5 makes clear that they had already decided to ask Mr McGrail to retire before giving him the opportunity of making his representations.

12.117 A further procedural failing was that the meeting was not quorate. The quorum was the Chair and five members (section 6(1) Police Act), but only four others

attended. Those members of the GPA who did not attend were subsequently told over the telephone by Dr Britto what had happened and asked what they thought (Britto 1 para 16 [A323]; [T/15/88.15]). Dr Britto's evidence was that he did not realise at the time that the GPA meeting had been inquorate; when later he realised this, he thought that any irregularity had been cured – made 'okay' as he put it – by his later telephone calls [T/15/89.15].

- 12.118 Dr Britto conceded that whatever pressure he may have felt from Mr Picardo and Mr Pyle, he did not transmit this to the other board members when they came to make the decision [T/15/150.16]. But I do not attach much weight to this concession, since Dr Britto was still personally under pressure as he was leading, and directing, the discussion.

LOSS OF CONFIDENCE AS A REASON FOR THE GPA'S DECISION

- 12.119 In seeking to explain the reasoning of the GPA, Dr Britto said that: '*the main thing was that they [Mr Picardo and Mr Pyle] had both lost confidence in the Commissioner*' [T/15/90.8].
- 12.120 As the witness statements from many members of the GPA make clear, in considering whether to exercise their powers under section 34 of the Police Act, their decision was largely based on the loss of confidence by Mr Picardo and Mr Pyle.
- 12.121 Mr Lavarello, who was not present at the meeting, agreed with this point. He accepted that the GPA was required to make a decision on Mr McGrail's retirement independently, but stated: '*I suspect in the back of our minds we were thinking: how could the Commissioner continue when he doesn't have the support of the Governor or the Chief Minister?*' [T/14/222.8]. Dr Britto accepted that this created a danger of effectively handing over the decision to Mr Pyle and Mr Picardo but, he said, this was not apparent to him at the time [T/15/95.9].

- 12.122 Sir Peter Caruana submits, on behalf of the Government Parties, that regardless of the statutory criteria as laid down in section 34, it is not realistically possible for a Commissioner of Police to properly and effectively discharge his functions, and therefore to continue in office, if he has lost the confidence of both the Governor and the Chief Minister (closing submissions para 34). He argues that the GPA recognised that, following their loss of confidence, Mr McGrail's position had effectively '*become untenable*', and since the '*loss of confidence*' was essentially the reason for the GPA's decision to ask for his retirement, their decision was inevitable and is on those grounds defensible (closing submissions paras 36, 39).
- 12.123 In opening, he had put it in an even blunter form: '*when a political power to which you are accountable expresses loss of confidence in you, you go*' [T/3/183.14]. I comment that, if that is right, then the GPA and section 34 of the Police Act are rendered entirely superfluous.
- 12.124 Section 13 of the Police Act gives a power to the Governor, but without any guidance as to how it is to be exercised and without procedural rules for its operation. Sir Peter Caruana argues that whether a court may imply a requirement of '*fair process*' into the statute is a matter of law outside the scope of the Inquiry, and in any event section 13 was not invoked (closing submissions para 41).
- 12.125 I think it would be entirely unsatisfactory if I just left the matter there. As it seems to me, it cannot be right that if the Chief Minister and the Governor merely claim and assert that they have '*lost confidence*' in the Commissioner, then the GPA must simply endorse that decision. If they did so, they would not be acting independently or fulfilling their function as is required by the Constitution. Nor do I accept that '*loss of confidence*' in this context should be considered entirely subjectively by the Chief Minister or by the Governor. The GPA surely cannot require the Commissioner's enforced retirement unless reasons for losing confidence are given and those reasons withstand

examination or scrutiny. That scrutiny should take place after the Commissioner is given a fair opportunity to make representations, which would only be fair if the reasons for the alleged loss of confidence are set out to him in advance with sufficient detail for him to be able to make a full and informed response. The matter can then be properly and fairly considered.

12.126 In any event, section 13 of the Police Act does not permit the Governor to remove the Commissioner merely if he disagrees with the GPA's conclusion – it requires a '*default*' by the GPA before the power even arises. Even then, the criteria as set out in that provision do not include '*loss of confidence*' by the Chief Minister or the Governor.

12.127 Therefore, I propose to go on to find further facts which might come into play, if – as seems to be likely, if not certain – the Supreme Court were to find that this provision must be used '*fairly*'. The requirements of fairness would surely require that the Governor acted only for some good and sufficient reasons, which he should identify. Subject to the overriding interests of public safety or security, he should also give notice of these reasons to the Commissioner, who should have the opportunity to answer by making representations in his defence. These representations should then be considered by the Governor prior to reaching a final decision.

12.128 The Government Parties seek to sidestep these procedural requirements altogether; they seek to rely upon Mr McGrail's own acceptance of what they contend to be the reality of the position (closing submissions para 37). He wrote (at McGrail 1, paragraph 101 [A42]):

'...The other part of me was saying that my time was up as it was going to be impossible to work with these officials ever again – in my view, my position was untenable but not for the reasons they claimed. I suppose by that point the loss of confidence was a mutual issue between them and I.'

12.129 I will deal later with the points which Mr McGrail was considering as the sequence of events developed.

THE INCIDENT AT SEA

12.130 Dr Britto said that whilst the HMIC Report was '*quite bad*', the members of the GPA considered it was '*more important*' that Mr Pyle was insisting that he had not been told the truth about the Incident at Sea [T/15/100.19].

12.131 The retrospective minute records that the Incident at Sea was the '*major factor*' in the GPA's decision, and the GPA noted that this '*seemed to be far more serious in its repercussions, overall, than we had previously been alive to*' [C4141]. They attached weight to Mr Pyle's claim that Mr McGrail had not been '*transparent with him as to when or where it happened exactly*' [T/15/97], although Mr Pyle had not given them any particulars of what Mr McGrail had said, or what he should have said, nor when he said it, nor when he should have said it. Dr Britto accepted that the GPA did not try to investigate Mr Pyle's claims that Mr McGrail had not been transparent about the Incident at Sea, and that he (Dr Britto) '*took his [Mr Pyle's] word*' on this issue [T/15/103.1].

12.132 They were also concerned about Gibraltar's reputation and treaty negotiations [T/15/98.1]. Dr Britto said that '*what convinced us was the gravity of the incident at sea, but also the allegation that Mr McGrail had been keeping certain information away from the Governor*' [T/15/198.13]. He said that the GPA had not discussed the Incident at Sea with Mr McGrail previously as they were waiting for the Report into the Incident [T/15/98.13].

THE HMIC REPORT

12.133 Although Dr Britto described the HMIC Report as being '*quite bad*' [T/15/101.1], and the GPA recognised that there were matters which needed to be addressed, they thought that '*the Report was ultimately fixable by putting in a lot of hard work...*' [T/15/97].

OPERATION DELHI, THE SEARCH WARRANT AND THE ALLEGED 'LIE'

12.134 I have already observed that the Informal Record provided by Mr Picardo, which Dr Britto read to the meeting, was cryptic about Operation Delhi, the search warrant and the alleged 'lie'. At the GPA meeting, Dr Britto *'explained what had been discussed, including the fact that the Commissioner had claimed at a previous meeting, that 'they' were trying to interfere in an investigation in which, allegedly, a senior partner in a law firm was, allegedly, involved'* [C4141]. Dr Britto was not entirely clear as to what level of detail he was able to provide the GPA about Operation Delhi, or the search warrant; he said, *'I think I said that ... the Chief Minister is convinced that somehow Mr McGrail lied to him'*, but he was not sure what this lie was about. He *'possibly'* linked this to the same investigation Mr McGrail complained to him about [T/15/92.11]. Dr Britto said that to the best of his recollection, he *'did refer to Mr Levy QC by name'* (Britto 1 para 19 [A323]) but he did not think it was sufficiently clear at the meeting that the allegations of Mr McGrail's misleading/lying and the involvement of Mr Levy all concerned the same matter – *'I didn't join the dots'* [T/15/94.7].

12.135 He made very clear that (Britto 1 para 25 [A324]):

'the decision by the GPA to exercise its powers under Section 34 of the Act was not based or influenced by Mr McGrail's conduct of the criminal inquiry in Operation Delhi, as alleged by Charles Gomez & Co in the 29th May 2020 Letter. The reasons for the GPA's decision were those set out ... in the minutes of the Emergency Meeting and in the Second Letter.'

12.136 With hindsight, I comment that it is remarkable – and regrettable – that no one at the meeting of the GPA asked for any further particulars of any of these matters.

12.137 I strongly agree with an answer by Mr Lavarello, who was not at the meeting, that if Operation Delhi was the reason for Mr Picardo losing confidence, it

should have played a role in the GPA's deliberations [T/14/227.2]. I also agree with the point he made that if the GPA had known about Mr Picardo's connection to the Operation Delhi investigation *'that would have probably been even more reason to go running to a lawyer'* [T/14/246.23]. He agreed with Mr Neish's suggestion in questioning that the GPA made a *'bad mistake ... in good faith, without any knowledge of Operation Delhi or any of the underlying unpleasant undercurrents'* [T/14/263.22].

- 12.138 In my view, by his cryptic reference to *'another event occurring last week'*, Mr Picardo quite deliberately and cynically did not spell out that his real grievance arose from the issue of the warrant against Mr Levy, including the alleged lie, and led the GPA to focus on a loss of confidence arising from the concerns of Mr Pyle about the Incident at Sea and, to a lesser extent, the HMIC Report. In this respect, I have no doubt that Mr Picardo deliberately underplayed his real grievance and thereby misled Dr Britto and the GPA.

THE CONCLUSION OF THE GPA

- 12.139 The GPA agreed that *'it would be more dignified for the Chair to seek a meeting with the Commissioner rather than summon him to GPA offices'* [C4141]. Dr Britto also thought that *'Mr McGrail deserved the dignity of – if he did decide to leave, of doing so on his own terms'* [T/15/96.12]. After discussion, the GPA felt that:

'the best course of action would be to activate Section 34 of the Act and invite the Commissioner to retire but always affording him the opportunity to make representations to GPA so we could arrive at a firm and final decision and able to make recommendations to Governor. The GPA felt that this recourse was better and 'gentler' than the Governor potentially activating section 13 which allows him to seek his resignation.' [C4141]

Dr Britto thought that at that stage there was a prospect of the GPA changing its views once the GPA received his representations [T/15/99.12].

LACK OF INDEPENDENCE

12.140 Dr Britto conceded that the GPA was not acting independently as it considered these matters but claimed that *'we quickly regained our independence by refusing to continue with the process'* [T/15/103.18].

12.141 Dr Britto was asked why the GPA did not carry out its own investigation of these matters; he looked surprised by the suggestion that they should have done so, pointing out that they do not have the resources, or the time, or the personnel, or the skills to carry out any investigation [T/15/85.17]. All that is true, but they could – and should – have asked searching questions about all these matters, and they did not do so. The fact is that – at least initially – they did as they were told to do.

FURTHER EXCHANGES BETWEEN MR PICARDO AND DR BRITTO

12.142 After the meeting of the GPA (at 11.58, [B1436]), Dr Britto asked to see Mr Picardo again.

12.143 So, that afternoon (21 May [A208]), Dr Britto asked Mr Picardo to confirm that Mr McGrail *'has to be given the opportunity to make representation (sic) before the invitation to retire'*. He added that he needed *'clarity'* on this point since he did not *'want to get this wrong'*. Mr Picardo confirmed that was the position, adding *'That is what you will, in effect be doing'* [A208]. Dr Britto sent Mr Picardo a draft letter to Mr McGrail, which Mr Picardo returned with suggested edits [A208-9].

12.144 It became very clear to me from Dr Britto's oral evidence to the Inquiry that having invited Mr McGrail to retire and to make representations in his defence, he hoped – and perhaps even expected – that Mr McGrail, perhaps having taken legal advice, would make representations which would then persuade the GPA that they had been wrong to ask for his retirement, with the result that

Mr McGrail could remain in post and the crisis would be over. He only recognised, far too late, that by asking him to retire before hearing his representations, they had made a procedural blunder from which there was no return.

22 MAY 2020: MR MCGRAIL MEETS DR BRITTO; THE DELIVERY OF THE 'FIRST LETTER'

12.145 The sequence of events is easier to follow if I stay with Dr Britto, the GPA and the fall out from the meeting of the GPA on 21 May.

12.146 At 09.00 on the morning of 22 May, Mr McGrail went to see Dr Britto again. There are no contemporaneous notes of this meeting, but as soon as he entered the room, Mr McGrail said that he sensed that Dr Britto was uneasy, so much so that he looked '*very pale*'. He turned on his telephone covertly to record this meeting as well, '*to safeguard [his] interests*', as he claimed (McGrail 2 para 14 [A49]). (The transcript of the recording is at [B353]).

12.147 When asked what he thought of the covert recording, Dr Britto said that he was '*disappointed*' but that – characteristically, as it seems to me – he '*wouldn't like to judge*' [T/15/106.20].

12.148 Dr Britto told Mr McGrail that he had been called to a meeting with Mr Pyle and Mr Picardo on 18 May, at which they told him that they had lost complete confidence in Mr McGrail's ability to lead and manage the RGP, and therefore they would be asking the GPA to invoke its power under section 34 of the Police Act, requiring him to retire, subject to his right to make representations [B353]. Dr Britto referred only to the '*very grave*' Incident at Sea and HMIC report [B353]; he added – truthfully but significantly – that the GPA had not previously had any concerns about Mr McGrail [B355].

12.149 Mr McGrail told him (see the transcript at [B361]) that the whole process was triggered, not as Mr Picardo claimed by the Incident at Sea, still less by the

HMIC report, but by what he claimed to be Mr Picardo's interference with the running of a police operation into the case involving Mr Levy. He stated that:

'this has all been triggered off from the impromptu meeting that I was called to in the Chief Minister's chamber with the AG. ... The fact that [the Chief Minister] has not been in agreement with the way we have been handling the case ... involving Jaime Levy. I was threatened there and then, and I was told that he was going to call up, in other words there was like, total interference with the operational running...' [B361]

12.150 During the meeting, Mr McGrail told Dr Britto that he:

'was being muscled out ... because there are other underlying issues and that is what I'm toying with. I'm toying with whether if I defend myself, I sink Gibraltar, basically, at this crucial time, or whether I take the hit and save Gibraltar. ...' [B359]

I think that even then, on 22 May, McGrail – perceptively, in my opinion – identified the dilemma which he was likely to face.

12.151 At the end of their exchange (at [B367]), Dr Britto said that he had been told that *'you had lied, you lied basically to the Chief Minister ... Or omitted the truth'*, but he was not given any particulars of the lie. When – quite reasonably – Mr McGrail asked whether it was alleged that he had lied in connection with the Collision at Sea or in the *'particular case'*, Dr Britto replied: *'In everything'*, thereby demonstrating that he had not understood from Mr Picardo the nature of his real complaint and grievance against Mr McGrail. Dr Britto said he would find out more information about the lie, but he never sought this information from Mr Picardo [T/15/114.24].

12.152 Dr Britto then handed Mr McGrail the pre-written letter (**'the first letter'**) [C4315], from which I quote:

'In view of the grave concerns expressed by both the Governor and the Chief Minister, in respect of certain aspects of policing that have led to a serious and regrettable loss of confidence in you as Commissioner, the Authority feels that it is left with no option but to exercise the powers afforded to the Authority under Section 34 (1) of the Police Act.

Given the above, the Authority invites you to retire, in the interests of policing in Gibraltar.

Please note that Section 34 (2) states that you shall have an opportunity to make representations before the Authority and that these shall, of course, be fully taken into consideration to allow the Governor, the Chief Minister and the Authority to express a firm and final view.'

12.153 The letter afforded Mr McGrail seven working days to make representations and asked that, if he required more time, to indicate this in writing. Mr McGrail complained that the process was a travesty [B362]. He appeared to be stunned and stated that he had received 'feedback' from Mr Picardo, but not Mr Pyle [B357]. He asked for further details of the allegations made against him.

12.154 I observe that no one can make focused representations unless they know precisely what is alleged against them. The expression '*grave concerns expressed by both the Governor and the Chief Minister, in respect of certain aspects of policing*' [C4315] is, as it seems to me, entirely – and unfairly – vague. There is no mention of the application for the search warrant or of Mr Levy by name, nor of the police visit to Hassans to execute the search warrant, nor the alleged 'lie', which Mr Picardo has always maintained was his main complaint against Mr McGrail. Nor, indeed, was there mention of the Incident at Sea or HMIC Report. I think that Mr McGrail was, in these circumstances,

quite entitled to challenge this letter and to require the GPA to provide proper particulars of what was being alleged against him.

12.155 Furthermore, the letter makes quite clear that the GPA had already decided to exercise the power under section 34, before asking Mr McGrail for his representations. Such an approach is, to my mind, plainly unlawful, as they later realised themselves.

12.156 Dr Britto accepted, in retrospect, that Mr McGrail should have been asked for representations before the GPA asked him to retire, but stated that when he gave him the letter and had the long conversation with him, he was convinced that he was in fact asking for representations before the GPA made any invitation to retire [T/15/106.5]. On the other hand, Mr Pyle willingly conceded that the process described in the first letter was flawed [T/18/198.11]. I make the point that the flaws in the process adopted by the GPA does not in any way supersede or excuse what I have found to be misconduct on the part of Mr Picardo.

12.157 When Mr Picardo was asked to reflect on this irregularity, he merely observed that he was not giving them legal advice; he did not want to give an opinion on whether this letter was consistent with the scheme of section 34, stating: '*I was being asked by the GPA here to assist them with their language of their letter and that's how I did it. I wasn't providing legal advice to the GPA*' [T/17/24.19]. I comment that he did not then observe that they were already set on a course which was procedurally flawed; perhaps he did not realise this himself until later.

22 MAY 2020: THE 'SECOND LETTER' SENT BY DR BRITTO

12.158 Following that meeting between Dr Britto and Mr McGrail on the morning of 22 May, there were further exchanges between Dr Britto and Mr Picardo, as Dr Britto told Mr Picardo that Mr McGrail was '*asking for details in writing*' of the allegations against him [B1437].

- 12.159 At 14.00, Dr Britto met Mr Picardo again. After that meeting, Dr Britto sent Mr Picardo a draft version of a second letter to be sent to Mr McGrail [C4310], which Mr Picardo extensively amended, adding more detail of what he called *'the case he has to meet'* [B1438].
- 12.160 It is again characteristic of Dr Britto's attitude to this process that he repeatedly apologised to Mr Picardo for having to bother him [B1437-8]. Dr Britto said that he involved Mr Picardo in drafting as he *'wanted to make sure that I was conveying what both the Governor and the Chief Minister were telling me because I was at pains to tell Mr McGrail this is not the GPA, this is them losing confidence and these are the reasons.'* [T/15/117.7]; when he says it is *'them'* losing confidence, plainly he means Mr Picardo and Mr Pyle. Dr Britto sought to justify these later exchanges by saying that Mr Picardo was the only lawyer he could ask [T/15/105.17]. In my opinion, it was entirely inappropriate for him to ask Mr Picardo for advice but plainly it did not strike him as such at the time. On the other hand, Mr Picardo most certainly should have realised that this compromised – or at least was likely to have the appearance of having compromised – the independence of the GPA.
- 12.161 After some further exchanges, Mr Picardo produced a final draft (at [C4282]), which I shall call the *'second letter'*. The amendments which he made to Dr Britto's draft are extensive; they are highlighted in yellow in the bundle. Among the additions made by Mr Picardo was this passage:

'Additionally, the Authority itself has agreed with the matters raised by the Governor and the Chief Minister and have taken the view that your position is untenable as Commissioner given that you have lost the confidence of BOTH the Governor and the Chief Minister'.

I comment that, here, Mr Picardo is not just setting out his complaints, nor Mr Pyle's complaints, still less advising on procedure – he is purporting to set out

his complaints as being the considered conclusion reached by the GPA, which I consider to be entirely inconsistent with its independence.

12.162 Mr Picardo's evidence was that his amendments were '*designed to ensure that Mr McGrail had greater information as to the reasons why the Governor and I had lost confidence in him*' and added allusions to the views of the Attorney-General (Picardo 1 para 92 [A211]). He said that: '*we were putting as much information as possible into the communication that was to go to Mr McGrail, to give him the benefit of all that information so that he understood the case he had to meet*' [T/17/27.12].

12.163 When asked to reflect whether editing this letter preserved the independence of the GPA, as the Constitution required, Mr Picardo responded that the amendments were consistent with the GPA's independence as the Authority '*independently asked me to provide them with that additional material*' [T/17/26.17]. This is disingenuous; I do not think that, even now, he recognises that Dr Britto had become rather more '*dependent*' upon Mr Picardo than '*independent*' of him.

12.164 Dr Britto, whilst giving evidence, accepted that Mr Picardo's amendments were not written in his style; but he accepted all the changes without question; he even said that he was not sure that he understood everything [T/15/121.13; 235.4; 236.12; 237.24]. Dr Britto now accepts that involving Mr Picardo in the letter was not consistent with the GPA maintaining independence [T/15/117.25], but he said that he did not realise that at the time.

12.165 Later that evening, Dr Britto sent the second letter to Mr McGrail [C4285], which I shall summarise. The letter stated that the Authority was taking '*this step*' because, Mr McGrail having lost the confidence of both Mr Pyle and Mr Picardo (with whom the GPA agreed), the GPA had taken the view that his position as Commissioner had become '*untenable*'. The letter then listed '*the main issues contributing to the loss of confidence*', which were based upon

the note of exchanges between Mr Picardo, Mr Pyle and Dr Britto on 18 May, to which I have already referred.

- 12.166 Under the heading '*Efficiency*', the letter referred to the findings of the HMIC Report which was said to be '*damning in respect of the efficiency of the RGP*'. The letter highlighted that, under section 33 of the Act, it was Mr McGrail as Commissioner of Police who was responsible for the efficient administration of the RGP. The letter refers to the '*Overview*' of the Report which specifically spelt out that the Force is not '*as effective or efficient as it could be*'. Furthermore, it stated that Mr McGrail had failed to set up a working group to implement the recommendations of the 2015/6 HMIC Report, as he had said he would do by 1 March 2019.
- 12.167 Additionally, the Incident at Sea was '*further evidence of the RGP acting inefficiently by seeking to act beyond its remit and jurisdiction*'; the incident '*has resulted not just in a diplomatic complaint filed against the United Kingdom and Gibraltar, but also to a vessel being out of action*', and raises '*questions as to standard operating procedures*'. The letter added that Mr Picardo has no confidence that he was '*provided with the information expeditiously about this very serious incident. Additionally, the Governor expressed the view that he feels he has been misled by you about this most serious incident which has resulted in loss of life.*'
- 12.168 When examined, Mr Pyle agreed that this did not set out any particulars of how Mr McGrail was said to have misled him, and that more information should have been provided [T/19/135.9, 136.21]. He even agreed with the suggestion that the letter was '*not fit for purpose*' [T/19/137.1].
- 12.169 As to '*Effectiveness*', the RGP was without the use of a vessel or some time. Further, '*the effectiveness of the RGP will also now be seriously compromised given the increased legal workload which will arise as a direct result of the claims made and all the corollary effects that they will give rise to.*' [C4286]

12.170 As to *'Probity and Integrity'*, *'Both the Governor and Chief Minister felt that their dealings with you have left them with the sense that you are lacking in both probity and integrity – the maritime incident is one case in point.'* The letter also stated: *'the Authority is informed that the Attorney-General has also expressed the same feelings.'* [C4287] In his witness statement (Picardo 1, para 92 [A211]), Mr Picardo claimed that, here, *'by adding allusion also to the views of the Attorney-General, I ensured that in the letter from the Authority to Mr McGrail he was aware that the events of the 12 May were important in the context of the loss of confidence in him'*. I will return to this so called *'allusion'* below.

12.171 This reference to the Attorney-General was added by Mr Picardo and was not in Dr Britto's original draft. This section concluded:

'The Governor and the Chief Minister expressed to the Authority that they consider that the Rule of Law in Gibraltar is compromised by the fact that they lack confidence in your probity and integrity.' [C4287]

12.172 As to *'Independence'*, the letter specified:

'the parts of the report that deal with the potential for corruption and, consequently, influence, which, given what is identified in the Report, seems not to be completely understood in the RGP. The Governor and the Chief Minister expressed the view that it is not possible for the RGP to claim that it acts independently in any investigation or matter unless it has properly addressed this recommendation that has remained outstanding for the period of your service.' [C4287]

12.173 The letter concluded that:

'It is for those reasons that we are calling upon you to retire on the interests of efficiency, effectiveness, probity, integrity and the independence of policing in Gibraltar, but before doing so are giving you an opportunity, as provided for in Section 34(2) of the Act to make representations which we shall consider.'
[C4287]

12.174 Dr Britto had sent an email to the members of the GPA updating them on his meeting with Mr McGrail [C4364]. That evening, Dr Britto sent the 'second letter' to Mr McGrail [C4376]. He subsequently sent it to the GPA members [C4377].

COMMENT ON THE SECOND LETTER

12.175 I comment that the second letter only referred expressly to the Incident at Sea and the HMIC Report.

12.176 The letter did not name Mr Levy; it did not refer to the grant of the search warrant, or to the visit to Hassans to execute the same, or to '*the lie*' which Mr Picardo alleges that Mr McGrail told. In giving evidence, Mr McGrail noted that '*what struck [him was] that the letters did not contain a reference to Delhi at all*' [T/7/43.5].

12.177 Mr Picardo stated that he did not think he needed to spell out the complaint in relation to Operation Delhi as '*by this date, Mr McGrail certainly knew how I felt, and the allusion itself [to the Attorney-General's views] was enough for Mr McGrail to know what it was that I was referring to*' [T/17/30.4]. He added: '*I don't think that Mr McGrail himself needed the position of 12 May to be made clearer. He was fully aware of that.*' [T/17/32.22].

12.178 In my judgement, if, as Mr Picardo maintains, the dominant reason for his loss of confidence was the issues arising from Operation Delhi, including the alleged lie, I consider it to be remarkable and indeed sinister that the letter does not name Mr Levy or refer to the grant of the search warrant, the visit to

Hassans, or to '*the lie*' which Mr Picardo alleges that Mr McGrail told. The letter was intended to set out, in detail, the reasons for asking the Commissioner of Police to retire, and yet it does not do so. In my opinion, an oblique and cryptic reference – or an '*allusion*' as he claimed it to be – to the views of the Attorney-General is not sufficient to explain to Mr McGrail, or to anyone else reading, the real reason for his loss of confidence. When asked, Mr Picardo denied that he was being 'coy' about 12 May in the letter [T/17/33.22]. But in my opinion, being 'coy' about the events of 12 May does not catch the significance of this omission.

12.179 Those acting for Mr McGrail argue that these absent reasons do not appear in the letter, which was largely drafted by Mr Picardo himself, because he knew that his intervention in respect of the warrant was improper and sought to exclude it from the written record (closing submissions, para 46.7). I accept this submission. The inevitable and irresistible conclusion is that Mr Picardo was using the processes of the GPA to bring about Mr McGrail's effective dismissal for reasons of his own, relating to the police investigation into Mr Levy, whilst managing the process so as to give the appearance that he was being asked to retire for other reasons, namely the Incident at Sea and the HMIC Report.

12.180 Dr Britto (at [T/15/125]) sought to answer these criticisms by saying that whatever was written in the letter, Mr McGrail knew perfectly well what the real allegations made against him were, and indeed Mr McGrail answered them in the letter written by his solicitors on 29 May (to which I will come shortly). But Mr McGrail was entitled to know the detailed grounds on which he was being required to retire; they should have been spelt out in this second letter, and they were not.

12.181 I have considered Dr Britto's answer, as set out in the last paragraph. The 'Gomez letter' of 29 May set out their complaints; they referred to '*an issue of very significant sensitivity and concern*', which '*relates to a current police*

investigation' concerning 'national security and involves an alleged criminal conspiracy which potentially reaches to the highest levels of the community' [C4572]. The letter suggested that Dr Britto knew perfectly well what the writer was referring to because it had been discussed at his meeting with Mr McGrail on 22 May. Indeed, the letter claimed that Dr Britto appreciated the significance of the criminal investigation because he had:

'also made clear to Mr McGrail that the issue of his handling of the investigation referred to above was an important factor in the decision making by the Governor and Chief Minister. He said that [Mr Llamas] had all lost confidence in him because he had "lied" about the particular operation which he strenuously denied.'

12.182 I observe that even the second letter does not suggest that Dr Britto knew any of the particulars of the alleged '*lie*', or even that it related to the search warrant granted against Mr Levy. I have already pointed out that any such particulars were omitted from the '*Informal Record*' of the meeting between Mr Picardo, Mr Pyle and Dr Britto on 18 May, nor were any such particulars discussed at the emergency meeting of the GPA on 21 May, nor were they discussed at the meeting between Mr McGrail and Dr Britto on 22 May (which Mr McGrail covertly recorded), and nor were they set out in the GPA's '*second letter*' also of 22 May. Therefore, despite the answer set out in the last paragraph, I do not think that Mr Picardo ever gave all the relevant particulars of his complaint to Dr Britto and therefore Dr Britto did not – indeed he could not – pass them onto the other members of the GPA, let alone to Mr McGrail. He was never told the full facts as alleged by Mr Picardo, and in this sense, he never did '*join the dots*'.

12.183 I accept that the Incident at Sea and the matters arising from the HMIC Report could have given rise to substantial complaints against Mr McGrail's leadership of the RGP, but that is not how matters proceeded and was

something which was not properly formulated against Mr McGrail, and of which he was given no proper notice. In my opinion, the process by which Mr Picardo and Mr Pyle raised their complaints against Mr McGrail was unfair because they provided no proper particulars of what was alleged against him and such particulars, as he was eventually given by the GPA, omitted entirely Mr Picardo's real grievance. Dr Britto was unable to explain their absence but said that there was at least an allusion to it [T/15/123.24]. As I have explained, the allusion is difficult to identify. In one sense, this omission of Operation Delhi, the warrant and the alleged 'lie' is not in the least surprising. As I have already written, Dr Britto has said, in terms, that *'the decision by the GPA to exercise its powers under Section 34 of the Act was not based or influenced by Mr McGrail's conduct of the criminal inquiry in Operation Delhi'*. He asserts that: *'the reasons for the GPA's decision were those set out ... in the minutes of the Emergency Meeting [of 21 May] and in the Second Letter'* (Britto 1 para 25 [A324]).

- 12.184 It is also worth pointing out that a number of the other reasons later relied upon by Mr Pyle did not feature in this letter either, among them the Airport Incident, the Assault on the Helicopter Pilot, and the complaints to the GPA by the GPF about alleged bullying.

MR PYLE UPDATED THE FCDO

- 12.185 At 14.21, Mr Pyle updated the FCDO by email [C4360], stating (among other things) that Mr Picardo had instructed Sir Peter Caruana to represent him. He concluded that *'There is no constitutional crisis as the Chief Minister and I are in full agreement, but ... news is likely to break and this will be a big story.'*

- 12.186 In a subsequent email to the FCDO individual, Mr Pyle wrote, at 15.53:

'It's the James Levy angle as well that is interesting. I'm also a touch nervous given that the [Chief Minister] has firmly taken the lead on a competence that is more towards us than them.'

But we've agreed this approach which on balance is right. It also raises issues about the GPA who should have been monitoring the [Commissioner of Police]. But I can't see it ending well for anyone.' [C4359]

In evidence, Mr Pyle explained that Mr Picardo had *'taken the lead'* through his subsequent engagement with Dr Britto and assisting with the correspondence [T/18/169.11], but thought more often than not that the split between his role and the Chief Minister's was 50/50 [T/18/170.18].

MR MCGRAIL CALLED A MEETING OF THE COMMAND TEAM

12.187 As a result of these developments, later that day (22 May), Mr McGrail called a meeting of the Command Team to inform them that Mr Pyle and Mr Picardo had lost confidence in him (McGrail 1 para 82 [A36]). Mr McGrail said that the reasons given to him related Operation Kram (the operational name for the Incident at Sea) and the report from HMIC, rather than Operation Delhi (Richardson 1 para 15(c) [A1289]), although Mr McGrail had made clear he did not accept that these were the true reasons. Mr Yeats gave evidence that Mr McGrail told them at that meeting that *'he was engaging with the GPA to resist him having to retire'* (Yeats 1 para 43 [A640]). So, as at 22 May, it would appear that Mr McGrail was determined to stay in post.

22 MAY 2020: MR MCGRAIL SPOKE TO MR LLAMAS

12.188 On that same day (22 May), Mr McGrail spoke to Mr Llamas on the telephone. Mr Richardson recorded what Mr McGrail said, but he was unable to record the other end of the conversation, so the recording is one-sided. An English translation of the transcript is at [C6952]. Mr McGrail complained that he felt *'completely let down ... I don't deserve this'*. He said that he didn't know what to do; he was *'at a loss, I have been attacked'*. He considered his options, which were either to *'save my skin and think about Gibraltar or create a constitutional crisis'*. He said that he felt that he was *'being pinned against the*

wall' and being made a 'scapegoat'. There is no recording of Mr Llamas's response to these complaints.

29 MAY 2020: THE 'GOMEZ LETTER'

12.189 By this time, Mr McGrail had instructed lawyers, Charles Gomez & Co (whom, for convenience and without disrespect, I will simply call '**Gomez & Co**'), to act on his behalf. By their letter of 29 May [C4477] to the GPA, Gomez & Co forcefully put Mr McGrail's case. The letter is important because it defined the issues between Mr McGrail on the one hand, and Mr Picardo, Mr Pyle and Mr Llamas on the other. For this reason, Issue 8 provides that I must inquire into:

*'The letter dated 29 May 2020 sent by Mr McGrail's lawyers
Charles Gomez and Co to the Gibraltar Police Authority...'*

12.190 The letter is 28 pages long; I do not make that point critically, but merely to point out that in my Report, it is not practicable to quote it in full. I will summarise its contents, with selective quotations.

12.191 The letter reminded the GPA of its constitutional duties (to which I have already referred) and submitted that in order to fulfil its constitutional duties, it must make its decision independently from the Governor and Chief Minister and it must not be directed by them, as to do so would be in violation of the GPA's obligations under the 2006 Act and the Constitution [C4478].

12.192 The essential complaint made by Gomez & Co is set out in this passage, dealing with the meeting between Dr Britto and Mr McGrail on 22 May [C4478]:

'The Chair told Mr McGrail that if he refused to comply with the invitation to retire then the Governor would use his powers under s.13 (1)(f) of the Police Act to call for his resignation. The decision was presented to Mr McGrail as a fait accompli. The Chair said in effect that it did not matter how he responded - the result would be the end of his career either because he would be forced to retire in accordance with [the

request of the GPA] or would be called to resign by the Governor using his power under s.13(1)(f). This is not how your power under s.34 works. It only applies if the GPA considers it is "in the interests of efficiency, effectiveness, probity, integrity, or independence of policing" to request that the Commissioner retire, following consideration of any representations made by him. If you do not properly consider these representations and do not make an independent decision you will be acting unlawfully and your decision will be vulnerable to a judicial review challenge.'

12.193 And again, at paragraph 27, writing of the same meeting [C4486]:

'The Chair made it very clear that he did not make this decision himself and that in his view the decision was entirely for the Governor and the Chief Minister to make. Although he said Mr McGrail could make representations, it was made clear to him that if he does not take the offer of retirement then the Governor will trigger his power under s.13 to call for his resignation. It is in effect, an 'offer he can't refuse' - or, to put it another way, it is the equivalent, for an office-holder, of constructive dismissal.'

12.194 Gomez & Co submitted that, in these circumstances, *'the exercise of the s.34 power vested in the GPA would be wholly unjustified and grossly procedurally unfair'* [C4569].

12.195 They made further point that: *'there is an extremely troubling aspect to this, of which the Chair is fully aware, and which concerns the rule of law in Gibraltar, and which touches on the fundamental principle of the freedom of the Royal Gibraltar Police ('RGP') to carry out criminal enquiries without interference from politicians or the Attorney-General'* [C4569]. Plainly, this was a reference to Operation Delhi, without naming it or Mr Levy.

12.196 Later in the letter, Gomez & Co explained the reason for this cryptic formula, being that it referred to what they called:

'an issue of very significant sensitivity and concern. It relates to a current police investigation. It would therefore be inappropriate to provide specific details of that investigation ... You will understand that it would not be appropriate for Mr McGrail to provide more detail of a live investigation. However, we can say that it relates to national security and involves an alleged criminal conspiracy which potentially reaches to the highest levels of the community.' [C4572]

The letter did, however, point out that Dr Britto knew perfectly well what the writer was referring to because it had been discussed at his meeting with Mr McGrail on 22 May.

12.197 This point was referred to again at paragraph 28, which reads as follows [C4578]:

'It was also made clear to Mr McGrail that the issue of his handling of the investigation referred to above was an important factor in the decision making by the Governor and Chief Minister. He said that [Mr Llamas] had all lost confidence in him (sic) because he had "lied" about the particular operation which he strenuously denied.'

12.198 The letter recounted that Mr McGrail had asked for the reasons to be put in writing so he could properly respond, and that the short 'first letter' (which was handed to him at the same meeting) *'provided no detail save for referring to "grave concerns expressed by both the Governor and the Chief Minister, in respect of certain aspects of policing that have led to a serious and regrettable loss of confidence in you."*' [C4579].

12.199 The 'second letter', which I have already summarised, gave further details, but Gomez & Co noted that it expressly referred only to the Incident at Sea and the HMIC Report, about which Mr Picardo and Mr Pyle had known for months, about which Mr McGrail had kept them fully informed, and about which he had received no criticism from them, or indeed from anyone else [C4582]. 'Oddly' – as they put it – even the second letter made no express reference to the 'vanishing reason', being a 'sensitive matter concerning an ongoing criminal investigation' which was discussed by Mr McGrail and Dr Britto in the meeting of 22 May, at which Mr McGrail had said that he understood to be the real reason for the request for him to retire, and about which, and particularly in the preceding fortnight, Mr McGrail had 'received very significant and at times intemperate private criticism from the Chief Minister and Attorney-General' [C4581-2].

12.200 The letter further alleged that: 'for many months the [Attorney-General] has been trying ... to persuade Mr McGrail to change his and the RGP's approach to the investigation which would either lead to it being dropped entirely, or certain suspects not being prosecuted' [C4582] (I might comment that this rather overstates the position, as I have found in an earlier section of the Report). Gomez & Co asserted that 'Mr McGrail has rebuffed these attempts' and made the point that 'the operational decisions in respect of this investigation have, in any event, been taken by individual officers below Mr McGrail's rank, acting professionally and appropriately' [C4582].

12.201 The letter then set out Mr McGrail's account of the events of 12 May: how, 'out of courtesy', he had notified Mr Picardo, Mr Llamas and the Minister of Justice of 'certain operational action'; how, immediately after that, both Mr Picardo and Mr Llamas messaged him to say that they disapproved of this action; how he was called to a meeting with them, in which Mr Picardo 'very severely criticised' him for the action that had been taken [C4582]. This was followed by two subsequent meetings with Mr Llamas and Mr Rocca (on 13 and 15 May respectively) where pressure was put on Mr McGrail by Mr Llamas to change

the RGP's investigative approach to the operation and he was given the strong impression that Mr Llamas was primarily concerned with protecting Mr Picardo and 'Gibraltar PLC' – to quote Mr Llamas's actual words. It was said that it was '*grossly inappropriate ... for politicians to interfere with any live criminal investigation in this way*' which '*tramples over the separation of powers*' [C4583].

12.202 Furthermore, where – as in this instance – the letter argued that:

'the Chief Minister has a personal connection to the outcome of the investigation ... his intervention [is] even more inappropriate. Not only should he not attempt to influence the investigation, but he should also completely recuse himself for any decisions or conversations which touch upon it.'
[C4583]

12.203 In the circumstances, Gomez & Co submitted that the Incident at Sea and HMIC Report were just '*a pretence*' or '*fig leaves for the real reason Mr McGrail is being pressured to retire, i.e. his (proper and reasonable) handling of a live criminal investigation*' [C4583, C4586]. The letter also stated that '*the GPA Chair confirmed to Mr McGrail at their meeting on 22nd May that his handling of the criminal investigation ... was spoken about at the Chair's meeting with the Chief Minister and Governor and was one of the reasons they had "lost confidence" in Mr McGrail.*' They suggested that a '*simple explanation*' for making no reference to the criminal investigation in either the first or second letter was that '*it was obvious to those writing the letters that if it were included it would invalidate the entire process*' [C4583].

12.204 Having made these points, the letter stressed that Mr McGrail took both the Incident at Sea and the HMIC Report extremely seriously, but he did not accept '*that either issue could be the basis of the use of the section 34 power to remove Mr McGrail from his post in the interests of "efficiency,*

effectiveness, probity, integrity, or independence of policing in Gibraltar”
[C4494].

- 12.205 The letter noted that the second letter of 22 May claimed that the Incident at Sea provided ‘*further evidence of the RGP acting inefficiently by seeking to act beyond its remit and jurisdiction*’. However, it observed that there was ‘*no explanation as to why it is suggested that the actions of individual officers reflect on Mr McGrail or are indicative of a systemic pattern of acting beyond the remit and jurisdiction of the RGP*’ [C4592]. Furthermore, the lack of particularity made it ‘*impossible to respond in any detail save to say that at Mr McGrail responded to the incident with his usual integrity and transparency*’ [C4592]. It was ‘*simply bizarre*’, ‘*premature and pre-emptive*’ to claim that Mr Pyle and Mr Picardo had lost confidence in Mr McGrail in respect of the Incident at Sea when Mr Picardo had requested, but had not yet received, the report from the Metropolitan Police. It was ‘*nonsense*’ to claim that the damage to the launch impaired the efficiency and effectiveness of the Marine Section, because they had other vessels [C4592].
- 12.206 In relation to the suggestion that Mr McGrail had misled Mr Pyle, this allegation was ‘*not particularised; it is a vague slur, without explanation*’, and in any event, the suggestion that there was inadequate communication was comprehensively ‘*debunk[ed]*’ by the section 15 report, which Mr McGrail submitted just a few days before [C4593]. Mr McGrail messaged Mr Pyle, Mr Picardo and Mr Llamas promptly after the incident, and thereafter kept them fully informed of all developments. He had later meetings with Mr Llamas to develop a working strategy to deal with the consequences of the incident. It was unfair to pass judgement on the basis of ‘*a wholly unparticularised and vague accusation*’ and premature to do so before receiving the reports from the Metropolitan Police and from the marine investigator [C4593].
- 12.207 The letter detailed Mr McGrail’s ‘*long and distinguished career*’ as a police officer and argued that that was a highly relevant factor to be borne in mind

when considering the HMIC Report [C4594]. The problems identified in the Report were '*long-standing*'; such '*flaws*' as remained in the RGP should not '*be laid at his door*', as he had been in post for only a year at the time of the inspection. Furthermore, some of problems stemmed from the lack of resources from the Government [C4594].

12.208 Insofar as it is suggested that Mr McGrail did not set up a working group, there had been unprecedented demands placed on the RGP during 2019, but '*Mr McGrail has provided the Authority and the Minister of Justice with a comprehensive road map for implementing the 2020 report*' which they had both agreed was the proper procedure. Indeed, some of the recommendations in the Report have already been met and the others are in progress; it was therefore '*irrational*' to force him to take early retirement on these grounds [C4594-5].

12.209 The letter made the point that the letter of 22 May was the first Mr McGrail had heard that either Mr Picardo or Governor or indeed any member of the Government laid the blame for any of the issues identified in the report with him, which '*again raises the strong inference that this issue is being used as a pretence to mask the real reason for attempting to remove Mr McGrail*' [C4595].

12.210 Having made these complaints, among others, the letter argued that the only rational decision for the GPA to reach was to dismiss the request of Mr Pyle and Mr Picardo. It added that it would not be possible to reach a '*just result*' unless it was to allow Mr McGrail '*to remain in post*' [C4596]. The Government Parties make the point that, as at 29 May, notwithstanding his complaints of interference with a police investigation, Mr McGrail was arguing that he should be allowed to continue as Commissioner of Police (opening submissions, para 28). This is a point with which I deal later.

12.211 The letter sought an assurance that Dr Britto would ensure that Mr Pyle was not involved in the GPA's decision-making under section 34, since there

would be a conflict between his position as (Interim) Governor, as well as his personal involvement in the background to the matter, and his decision-making as a member of the GPA [C4572]. I interpose that Mr Pyle himself had taken steps to ensure that no such conflict arose by emailing Dr Britto on 19 February 2020 (only the day after assuming the role of Interim Governor) stating:

'Why don't you send an email to all GPA members save me, stating that for as long as I am Governor, you intend to omit me from general GPA correspondence etc but that I have offered to continue to attend GPA meetings, recusing myself as necessary or at anyone's request.' [C3066]

Furthermore, Mr Pyle did not attend the GPA meeting on 21 May 2020, nor did he make any contribution to the meeting as a member of the GPA.

12.212 The letter invited the GPA to obtain independent legal advice [C4479].

12.213 Although the letter was marked '*private and confidential*', I think that Dr Britto was under a duty to forward it to Mr Picardo, Mr Llamas and to Mr Pyle (and others), and I therefore specifically reject Mr Wagner's implied criticism that he should not have done.

COMMENT ON THE GOMEZ LETTER

12.214 It is said by the Government Parties that, after this letter with its many allegations against Mr Picardo, Mr Llamas, Mr Pyle and the GPA, they believed that Mr McGrail's position had become untenable.

12.215 I do not accept this argument which, if correct, would entirely circumvent the section 34 process which requires three distinct steps, taken sequentially.

- a. The first is for the Chief Minister and/or the Governor properly to particularise their complaints.

- b. The second is for Mr McGrail to have the opportunity of making representations to answer the complaints against him.
- c. The third is for the GPA independently to consider whether they accept the grounds on which the Chief Minister and the Governor claim to have lost confidence in the Commissioner, and they should only require his retirement if those grounds are clearly set out and withstand robust examination, indeed scrutiny, and can be properly brought within the provisions of the criteria set out in section 34.

This procedure was not followed here.

12.216 For the avoidance of doubt, I do not accept the submission made by Sir Peter Caruana [T/3/183] to the effect that the Chief Minister or the Governor can simply say to the GPA, something along the lines of: *'I have lost confidence in the Commissioner, and therefore you must agree with me and require him to retire'*.

12.217 Whether section 34 is drafted with sufficient focus on such a set of circumstances is a different question with which I will not tangle at this stage.

MR PYLE UPDATES THE FCDO

12.218 On 29 May [C4652], Mr Pyle reported to the FCDO that he had received this letter. He wrote that *'Whilst [Mr Pyle] will ... consider his representations, it looks as if [he] will have to exercise [his] powers under the Police Act.'* Mr Pyle accepted that the allegations in the Gomez & Co letter were *'extremely serious allegations of political interference in an ongoing police investigation'* [T/19/177.16], but he said that he was satisfied that he could proceed with the process of removing Mr McGrail without deciding whether the allegations were true [T/19/181.7]. This was a flawed decision since there had been no independent scrutiny of the complaints made either against Mr McGrail or by him.

12.219 Mr Pyle noted that although the Gomez letter called into question his conduct and impartiality, he was certain (as was Mr Llamas) that he *'ha[d] nothing to worry about'*. He added in oral evidence that even though the GPA had not yet withdrawn the invitation to retire, he *'could see where this was going. It doesn't need a crystal ball'* [T/18/200.2]. As to his own conduct, he stated that *'I may not have got everything right'*, but that his *'conscience is clear'* [T/18/200.10].

THE GPA WITHDRAW THEIR INVITATION TO MR MCGRAIL TO RETIRE

THE GPA SEEK LEGAL ADVICE

12.220 On 1 June, having received the Gomez letter, the members of the GPA met and agreed to seek legal advice from James Neish KC (then a consultant at TSN, a well-known local law firm in Gibraltar) as to the legality of their actions. The minutes of the GPA meeting are at [C4654]. The minutes of their meeting record that the GPA refuted the suggestion in the Gomez letter that Dr Britto *'introduced the issue of the investigation into his conversation with IM, but also that he should have subsequently opted to omit it in his letter for the surreptitious reason alleged by [Mr McGrail's] lawyer'*.

12.221 Mr Neish advised that, contrary to section 34(2) of the Police Act, the GPA had wrongly invited Mr McGrail to retire following an inquorate meeting, before giving him a reasonable opportunity to make representations and without giving due consideration to such representations as he might have made. He advised that, in the circumstances, their procedures were fundamentally flawed and that any future decision by the GPA constituted by the same members would be vulnerable to challenge on grounds of bias, such that they should withdraw their invitation to Mr McGrail to retire and abandon the process altogether.

12.222 In my opinion, this advice was plainly correct, and no one has sought to disagree or argue otherwise.

5 JUNE 2020: LETTER FROM TSN TO GOMEZ & CO

12.223 The GPA accepted this advice. Accordingly, they instructed TSN to write to Gomez & Co, on their behalf, acknowledging '*certain procedural errors*', withdrawing their invitation to Mr McGrail to retire and abandoning their process, which they did by letter dated 5 June [C4742].

12.224 When asked at the hearing what '*procedural errors*' he had been referring to, Dr Britto wearily replied '*everything*' [T/15/139.22].

5 JUNE 2020: LETTERS FROM DR BRITTO

12.225 That same day, Dr Britto wrote to Mr Picardo [C4770] and Mr Pyle [C4743], on behalf of the GPA, acknowledging that their processes had been '*fundamentally flawed*' and that they should withdraw the invitation to Mr McGrail to retire. He acknowledged that the complaints made by Mr Pyle and Mr Picardo '*remain live and have to be determined*'. However, he further accepted that '*as presently constituted [the GPA] is unable to process the complaints without being vulnerable to legal challenge*', and therefore they were not prepared to do so.

12.226 After writing that letter, neither Dr Britto, nor any other member of GPA, had any further involvement in the events which led to Mr McGrail's retirement or resignation.

THE GPA IN 'DEFAULT'

12.227 Because of these procedural flaws, the GPA decided to withdraw the invitation to retire and to abandon the process altogether. The Government Parties contend that this constituted a '*default*' in that the GPA had '*failed to discharge or perform a responsibility imposed on the Authority*' under the Police Act, thereby engaging the Governor's powers under Section 13(1)(f) of the Act, and Mr Pyle was therefore entitled to proceed on that basis. I consider this to be a question of law and therefore not strictly within my Terms of Reference.

12.228 I accept that Mr Pyle's decision to consider exercising his power under section 13 of the Police Act was entirely his own. There is no evidence that he was put under any pressure by anyone else and in particular by Mr Picardo (Pyle 1 paragraph 26.1 [A257]).

12.229 But, having said that, the initiation of the process had been encouraged by Mr Picardo, who had his own agenda, as I have explained.

THE POSITION OF DR BRITTO AND THE GPA

12.230 I accept the submissions made by Mr Neish that the GPA are entitled to credit for having '*readily and unreservedly acknowledged serious mistakes*' (closing submissions, para 1). I also accept that Dr Britto and the members acted in good faith, without malice or hostility towards Mr McGrail, but the GPA did make '*serious mistakes*', for which it cannot escape criticism.

12.231 The Gomez letter effectively accused the GPA of having done what Mr Picardo and Mr Pyle wanted and reaching a decision unfairly without considering representations by the Commissioner. Dr Britto in the Inquiry hearings said that he had begun to accept that that is indeed what had happened [T/15/136.24].

12.232 The post of Chair of the GPA is a position of considerable importance given the independent function of the GPA under the Constitution. The maintenance of independence – and the appearance of independence, which is almost as important – from the Government and from the Governor requires strong leadership and a robust personality, with managerial and administrative experience and skills. Dr Britto, the Chair, had been a schoolteacher. He moved into educational administration and became the Director of Education in Gibraltar [T/15/2.10]. After his retirement, he was asked to become the Chair of the GPA, and being public-spirited and wanting – as he put it – to give something back to Gibraltar, he accepted [T/15/6.25].

- 12.233 But it appears that no one told him the extent of the administrative burden which the role involved. He was offered no induction training for his role [T/15/167.14], nor, it seems, any ongoing professional development. Although the GPA is obliged to meet only once a quarter; in fact, it meets at least once a month [T/15/8.22]. Following the creation of new policies under the direction of the new Commissioner, Mr Ullger, Dr Britto said that the position of Chair has become more or less a full-time job [T/15/3.21, 5.8]. He had no deputy, so he considered himself to be always on duty, even at weekends and when on holiday. The GPA has two typist/secretaries – the ‘*young ladies*’ as he described them in the language of a by-gone age [T/15/9.10] – but otherwise he had no administrative assistance, let alone a Chief Executive Officer [T/14/157.10]. The annual budget allows only a nominal £1000 for legal expenses; he can always ask for more, but each expense requires ad hoc approval (although this was usually granted) [T/15/12.10-14.6].
- 12.234 In the sequence of events leading to Mr McGrail's retirement, it does not appear that anyone advised him to seek independent legal advice, and he did not do so until it was too late. Furthermore, since no one had explained these matters to him, he had but an imperfect understanding or appreciation of the constitutional significance of the independence of the GPA, or of the legal framework within which the GPA worked; having said that, I point out that he took no steps to come by that understanding.
- 12.235 Dr Britto has been perfectly willing to do the job – to do his public duty as he would see it – without payment [T/15/6.25]. Dr Britto is a decent and honourable man. He seems to be universally respected. He gave entirely truthful evidence, so far as his memory of these events would allow. I have no doubt that during the sequence of events leading to Mr McGrail's retirement, he did his best, but he struggled. When pressed during his evidence to remember and explain what had happened, he said – with obvious sincerity – that ‘*I don't like conflict*’ [T/15/69.2]. I conclude that he found himself in an

unforeseen but developing crisis, which presented him with problems with which he was ill-equipped to deal.

12.236 In the same way, although there were practising lawyers on the GPA, the members all did their best within the same constraints: none had received any induction training [T/14/189.4], nor any ongoing professional development; none were paid [T/14/191.14], all had other commitments, all had the same well-meaning but under-funded administrative assistance and none were offered or received legal advice until it was too late.

12.237 As I have set out when I found the facts, the GPA were not given full particulars of the reasons by which either Mr Picardo or Mr Pyle claimed to have lost confidence in Mr McGrail; indeed, the reasons given by Mr Picardo were misleading. The GPA was not offered and did not seek legal advice until too late. They did not have the staff, the training or the experience nor expertise to challenge what they were told, which they too readily accepted.

12.238 I reject some of the more colourful epithets cast at their failures, many of which I consider to be unfair, and which I will not repeat. In the circumstances, as I have sought to explain, I consider the serious failings of the GPA to be more organisational and systemic rather than personal.

12.239 I will seek to make recommendations to avoid such a state of affairs occurring in the future.

12.240 Paragraph 10 of the List of Issues requires me to inquire into: '*The Gibraltar Police Authority's process and decision in purported compliance with Section 34 of the Police Act, and subsequent withdrawal of that decision ('the GPA Process')*', which I have sought to do by way of this lengthy narrative, with my comments and conclusions.

EVENTS AFTER THE GPA'S WITHDRAWAL

2 JUNE 2020: REQUEST FOR A MEETING BETWEEN MR PICARDO, MR PYLE AND DR BRITTO

12.241 On 2 June, Mr Picardo sent a message to Mr Pyle asking him to meet Dr Britto and Mr Llamas later that day [B1445]. Dr Britto could not remember this meeting but suggested it may have been then that he asked for legal representation; he did not recall meeting Mr Llamas [T/15/1342.1]. Mr Pyle could not remember this meeting either but was surprised if it did not go ahead; he thought that it was probably about how to respond to the Gomez letter [T/18/201.23].

3 JUNE 2020: THE LETTER FROM MR PYLE THE GPA

12.242 On 3 June, Mr Pyle responded to the Gomez letter by sending a letter to the GPA [C4675], which I shall summarise. He strongly asserted that his loss of confidence was not based on the RGP's handling of the '*so-called ongoing criminal investigation*', about which he said that he knew nothing until Mr Picardo told him on 15 May.

12.243 He wrote that he had only two concerns, which arose before the 12 May. His first concern was the Incident at Sea which, he said, '*raised grave concerns with wide-reaching political, financial, reputational and sovereignty implications. They raise very serious concerns about the leadership at the RGP.*' He considered Mr McGrail to have been '*evasive in particular in relation to the critical issue of whether or not the incident had occurred within BGTW*'. He said that he found '*this evasiveness on a key issue to demonstrate a total lack of respect to the office of Governor particularly since the [Commissioner] knew that this was the critical issue for [Mr Pyle] and for both the UK and Gibraltar Governments as far as diplomatic relations with Spain were concerned.*'

- 12.244 His second concern was the HMIC Report, which he had described as being *'quite damning'* as long ago as his email to Mr Picardo dated 30 April. Furthermore, he wrote, these *'two incidents occurred on the back of a growing unease that [he] had been feeling over the months, in particular with the numerous allegations of bullying and mismanagement that [he] had picked up on'*.
- 12.245 I comment that it is true that he had raised both matters long before he knew of the criminal investigation (although not with Mr McGrail), but he had not then pressed these concerns, nor had he raised them as complaints, let alone as such serious complaints which would lead to requiring the Commissioner to retire under section 13 of the Police Act.
- 12.246 Furthermore, he said that he found the allegations that he was or may have been *'interfering with the independence of the GPA'*, or that he was or may have been *'compromising the rule of law in Gibraltar and participating in a plot to discredit the [Commissioner] or [to] influence the ongoing criminal investigation ... [to be] entirely untrue and nothing short of a most scurrilous attack on [his] integrity'*. He said that he found *'such allegations to be malicious and entirely misplaced'*.
- 12.247 Mr Pyle wrote that the tone, style and contents of the letter *'had done nothing but cement [his] lack of confidence in the [Commissioner] and [his] concerns about the integrity, probity and independence of policing in Gibraltar...'*.

Comment on this letter

- 12.248 This letter very clearly sets out Mr Pyle's position.
- 12.249 I accept without reservation that Mr Pyle knew nothing of Operation Delhi, or the investigation of Mr Levy, or the search warrant, until he was told about it by Mr Picardo on 15 May. Indeed, he says that he did not even know the operational name for *'quite some time'* [T/18/158.16]. It could not be argued

that Mr Pyle had sought to interfere in an investigation about which he knew nothing at the material time.

12.250 Realising the force of that argument, Mr Wagner was therefore driven to a fall-back position by the time of the Main Inquiry Hearing, namely that Mr Pyle was in some way '*manipulated*' by Mr Picardo to advance his (Mr Pyle's) own complaints about the Incident at Sea and the HMIC report. I have already rejected this allegation, but I think that it is only fair to Mr Pyle to repeat my finding here.

12.251 Here, I might perhaps make another point. Whilst setting out the narrative, I have often referred to the frequent, detailed and accurate reports that Mr Pyle made to the FCDO, including giving updates on the proposal to require Mr McGrail to resign, which he enthusiastically supported. As the Government Parties submit, I think the content of these reports does rebut suggestions that Mr Pyle either allowed himself to be manipulated by Mr Picardo, or that there was an improper or corrupt conspiracy between them, or that he was seeking to rush the process through before the new Governor arrived, let alone for any improper or surreptitious reason.

12.252 I have made the point that I consider that the process under section 13 which Mr Pyle was contemplating to be unfair because it did not give Mr McGrail proper particulars of the complaints made against him. This was merely a procedural error made in good faith, and does not render Mr Pyle's conduct '*improper*'.

12.253 Mr Pyle gave honest and entirely candid evidence. He has had a distinguished career of public service, in Gibraltar and elsewhere. He is, I think, entitled to a more trenchant exoneration than my simply saying that there is no evidence that he acted improperly or corruptly. I roundly reject both suggestions. He has behaved honourably throughout.

4 JUNE 2020: MEETING BETWEEN MR PYLE, MR LLAMAS AND MR PICARDO

- 12.254 On 4 June, there was a meeting between Mr Pyle, Mr Llamas and Mr Picardo. Yet again, no minutes were kept of this meeting, but the contents of the meeting are reflected in two emails sent by Mr Pyle the following day (5 June).
- 12.255 In an email to Mr Llamas at 09:45 [C4727], Mr Pyle, set out his '*preferred course of action*', having '*reflected on the discussion*' that they had the day before. Whilst '*recognising the need to resolve this issue quickly*', his preference was to take no action until he had seen the three letters written by Dr Britto, Mr Picardo and Mr Llamas. He would then '*reflect and consider all representations*' before speaking to Mr McGrail.
- 12.256 In the course of his evidence, he agreed that he was eager to resolve the issue before Sir David Steel, the new Governor, arrived so that he did not have to deal with this problem which – to use Mr Pyle's words – was '*a complete mess of a situation*' [T/18/210.15].

5 JUNE 2020: MR PYLE UPDATED THE FCDO

- 12.257 By email dated (at 09.54 [C4725]), Mr Pyle updated the FCDO that '*... things have taken a turn for the worse.*' He pointed out that the GPA meeting was not quorate. Therefore, the GPA would have to revoke their call for Mr McGrail to retire. He wrote that Mr Llamas had advised that '*there is no point in looking to appoint new GPA members*' as they would likely be perceived as biased because of the role of the Chief Minister and the Governor in the appointment process. He rehearsed Mr Llamas's advice to the effect that '*the only way forward to secure the resignation of the Commissioner (should it be determined that it was the best way forward)*' was for him (Mr Pyle) to invoke section 13(1)(f).
- 12.258 Sir David Steel replied at 12.50 [C4771] to the effect that he had discussed the matter with the Permanent Under Secretary, and another senior official in the FCDO, and '*Both think you are doing a cracking job in difficult circumstances.*

I just hope the actions you are taking will address this issue. Take good care and an extra pair of hands to help you are flying out next Wednesday!' Mr Santos put it to Mr Pyle in questioning that this email demonstrated that Sir David Steel was willing to help address the issue on his arrival the following week and it was not imperative for Mr Pyle to have it resolved before he came. Mr Pyle disagreed and said he read the email differently [T/18/218.7].

- 12.259 Later that afternoon (at 15.09, also [C4782]), Mr Pyle sent a further update saying that he had received Mr McGrail's representations, together with the responses from Mr Picardo, Mr Llamas and Dr Britto, which he would consider over the weekend and let Mr McGrail know his '*considered determination*' on Monday.

5 JUNE 2020: THE LEGAL ADVICE OF MR LLAMAS TO MR PYLE

- 12.260 Having received the letter from the GPA withdrawing the section 34 process, which I have summarised above, at 15.54 on 5 June [C4796], Mr Pyle forwarded it to Mr Llamas for '*urgent advice on how to proceed*'. At 16.46, Mr Llamas advised Mr Pyle by email [C4796] that the GPA had withdrawn from the process of considering Mr McGrail's retirement, having accepted that their processes were '*fundamentally flawed*'; secondly, that the complaints from Mr Pyle and Mr Picardo '*remained live*'; thirdly, that the GPA as presently constituted is '*vulnerable to challenge on the grounds of bias*'.
- 12.261 Mr Llamas advised that the GPA could not be properly re-constituted, not least because new appointees would be appointed by Mr Pyle and Mr Picardo, who were the present complainants. I have already observed that Dr Britto, following advice from Mr Neish, had come to the same conclusion.
- 12.262 Therefore, he advised that, pursuant to section 13 of the Police Act, a series of powers are exercisable by the Governor where the GPA has failed to discharge or perform a responsibility imposed on it. Mr Llamas advised that the powers under section 13(1)(f) of the Police Act '*to suspend from duty or*

call for the resignation of the Commissioner' were available to Mr Pyle in the circumstances of the case.

- 12.263 Mr Llamas was asked at the hearing whether, given his own loss of confidence in Mr McGrail (as he had expressed in his letter to the GPA of 5 June), he considered suggesting that Mr Pyle seek external legal advice. He did not accept that it was necessary for him to do so; he asserted that the advice which he gave was obviously correct, and, in any event, Mr Pyle was also receiving advice from lawyers in the FCDO [T/12/43.8].
- 12.264 Mr Llamas said that apart from providing this advice, he was rather removed from the sequence of events that led to Mr McGrail's retirement; he was '*at the complete periphery*', as he put it [T/12/50.23].
- 12.265 I note that Mr Pyle, in his email to the FCDO [C4782], had written that Mr Llamas had '*accepted that there could be the perception of a conflict between his role as our [Honorary Legal Advisor] and his involvement in proceedings*' – by which he meant potential legal proceedings arising from Mr McGrail's retirement, not from Operation Delhi ([T/18/222.21]). But the Attorney-General did have the constitutional responsibility to advise the Governor, and I see no reason why Mr Llamas should not have advised on this matter and the advice which he gave seems to me to have been obviously correct. Furthermore, although the FCDO lawyers in London advised that there was a risk of legal challenge if Mr Pyle did so, they took the same view as Mr Llamas (see their email to Mr Pyle dated 7 June [B1828], in which they advised that '*... you have justifiable grounds on which to exercise your section 13(1) (f) power...*').
- 12.266 I have already found that Mr Llamas gave some legal advice in relation to the Incident at Sea and in relation to Operation Delhi, but as I find, Mr Llamas played no part in the decision by Mr Pyle and Mr Picardo that they had lost confidence in Mr McGrail or in the invitation to the GPA to consider exercising its power under section 34.

12.267 I reject entirely the suggestion that he was in some way involved in a corrupt conspiracy to remove Mr McGrail from office. I cannot put it plainer than that.

12.268 He only became involved at all at this later stage, because Mr Pyle asked him to advise whether the GPA were in 'default' and, if so, whether Mr Pyle should consider proceeding by way of section 13(1)(f).

5 JUNE 2020: MR PYLE AGAIN MET MR PICARDO AND MR LLAMAS

12.269 Later that day, having received the advice from Mr Llamas, there was another meeting between Mr Pyle, Mr Picardo and Mr Llamas. Mr Pyle's evidence is that he told them that he intended to speak to Mr McGrail later in the day, that they would meet again on 8 June to discuss the issue, and that he '*would leave Mr McGrail in no doubt that [he] would be prepared to use the powers invested in [him] as Governor under the Police Act*' (Pyle 1 para 16.3 [A243]). He said that he needed time '*to review all the papers again*' and to '*consider any further representations Mr McGrail may make*', and thought that '*a pause to reflect was the right thing to do*'. However, both he and Mr Picardo '*were keen that [Mr Pyle] should proceed quickly as [they] both wanted the matter resolved one way or the other, if possible, before the new Governor arrived on 10 June, so that his arrival and start of tenure would not be marred by such a controversial, ongoing issue*' (Pyle 1 para 16.4 [A243]).

5 JUNE 2020: THE LETTER FROM MR PICARDO TO THE GPA

12.270 By letter dated 5 June [C4744] Mr Picardo responded to the letter which Gomez & Co had sent on 29 May. I repeat that I cannot sensibly quote every letter in full (but all seven pages of Mr Picardo's letter can be read on the Inquiry's website); I will, therefore, summarise it.

12.271 He robustly refuted what he called the '*serious and vile*' allegations made against him, which he wrote were '*fanciful nonsense*' and the product of Mr McGrail's '*apparently fertile imagination*'. He suggested that the '*extraordinary nature and content*' of the letter, in itself, demonstrated the

'*obvious breakdown*' of Mr McGrail's relationship with Mr Picardo and Mr Pyle. He denied that he was '*corruptly ... interfering*' with an RGP investigation because he had '*a personal connection with the outcome*' of that investigation. He wrote that he did not know on 12 May that the investigation was focused on Mr Levy; he then thought it was focused only on Mr Cornelio, Mr Perez and Mr Sanchez. He thought that the search warrant granted against Mr Levy was '*of dubious legality, abusive, unprecedented in policing in Gibraltar, incompatible with public confidence in policing and the good name and reputation of Gibraltar as a business and finance centre*'. He maintained that, as Chief Minister, he was quite entitled to hold and to express those views to the Commissioner of Police '*on matters of policing policy in Gibraltar*'. But this was not the reason for his losing confidence in McGrail; the '*primary reason*' was that Mr McGrail had lied to him when he stated '*in explicit terms, in response to my concerns about the propriety of the warrant, that he had obtained and executed the search warrant against Mr Levy in reliance on legal advice from the Director of Public Prosecutions who had confirmed that it was appropriate to seek such a warrant and proceed in that way.*'.

- 12.272 He wrote that he had real and genuine concerns about the Incident at Sea, which had '*extremely serious external political consequences and very material potential financial consequences to the Government*', and about the HMIC Report, which related to '*the efficacy and effectiveness of the RGP, both of which are the direct, legal responsibility of the COP under the Police Act*'. These were in no way '*fig-leaves*' or a '*pretence*' to cover or impede what he called '*the RGP's proper and reasonable handling of a live criminal investigation*'.

5 JUNE 2020: LETTER FROM MR LLAMAS TO THE GPA

- 12.273 By his letter of 5 June, which I will also summarise [C4730], Mr Llamas replied to rebut what he called the '*untrue and scurrilous allegations*' made in the

letter of 29 May to the effect that, to protect Mr Picardo and 'Gibraltar PLC', he had (a) interfered in the investigation; (b) been trying for many months to persuade Mr McGrail '*change his and the RGP's approach to the investigation which would either lead to it being dropped entirely or certain suspects not being prosecuted*'; and (c) that he had '*feigned loss of confidence in the [Commissioner] as a means of disguising [his] alleged real objective ... to "nobble" the investigation and prosecution*'. I have already considered these allegations and have roundly rejected them.

12.274 Mr Llamas asserted that the Commissioner of Police was not immune to being '*strongly disapproved of*' or '*being severely criticised*', and that the Attorney-General's '*constitutional role both in relation to prosecutions... and for the rule of law ... renders proper interventions by me which may not be proper if engaged in by others*'.

12.275 He repeated his version of his meeting with Mr McGrail on 7 April 2020, which I have already largely rejected.

12.276 Mr Llamas stressed that he had always made it '*explicitly clear*' throughout that, whatever he, the Attorney-General, may have advised, '*operational matters*' were for the Commissioner himself to decide. However, he said robustly that nothing he had said to the Commissioner, or to any RGP officer, '*has been even remotely open to the possible (mis)interpretation that [he had] advised or encouraged, still less that [he had] interfered to bring about or try to bring about, the curtailment of the investigation, how it is carried out by the RGP or to prevent any person from being charged.*' He said that it was '*outrageously wrong and unfair*' for Mr McGrail to allege this, let alone that he (Mr Llamas) had '*done so repeatedly over an extended period of time*'. He said that he was '*shocked and deeply resent[s] that he has done so*' which, he said, '*necessarily deepens [his] loss of confidence in [the Commissioner] going forward*'.

5 JUNE 2020: MR MCGRAIL GIVES NOTICE OF HIS RETIREMENT BY EMAIL TO TSN

12.277 Following the withdrawal by the GPA of the '*flawed section 34 process*', within an hour of receipt of the letter from the GPA, Gomez & Co sent an email [C4801] to TSN, the lawyers for the GPA. They repeated Mr McGrail's denial that he ever lied to Mr Picardo or Mr Llamas in relation to the ongoing police investigation. They complained that he had never been given any particulars of the alleged '*lie*', with the result that he had no opportunity to address the allegations made against him. They pointed out that this '*lie*' was not alleged against him in the second letter and claimed that omission was deliberate and suggested that the inference to be drawn was that '*the matter was constitutionally improper*'.

12.278 The email finished in this manner:

'Our client is gravely concerned by how he has been treated during this process ... He is an officer of the highest standing, with an impeccable record over the past 36 years. In these circumstances, given how unfairly he has been treated and the improper pressure put upon him to alter the course of a live criminal investigation, our client feels he must apply for early retirement from the Royal Gibraltar Police.'

5 JUNE 2020: MEETING BETWEEN GOVERNOR AND MR MCGRAIL

12.279 Late that afternoon (Friday 5 June), Mr McGrail met Mr Pyle. There are no minutes of this meeting, which Mr McGrail did not covertly record. Mr McGrail handed Mr Pyle a copy of his email to TSN (dated 5 June) giving notice of his intention to apply for retirement, but Mr Pyle did not read the email until after the meeting (Pyle 1 para 17.1, 17.3 [A244]). Mr Pyle's evidence is that he said that he intended to review all the relevant papers over the weekend and, although he had not made up his mind to use the powers vested in him under section 34 to require his resignation, he '*would be prepared to do so*'. Mr

McGrail took this to be an implied threat. Mr Pyle denied that referring to section 13 was a threat to Mr McGrail to bring about his own retirement, and said '*it was stating the reality of the issue*' [T/18/224.14].

12.280 Mr Pyle had previously said that he then gave Mr McGrail copies of the three letters to the GPA (from Mr Pyle himself, from Mr Llamas and from Mr Picardo) (Pyle 1 para 17.2 [A244]). However, he later resiled and conceded, on the basis of an email he sent on 7 June 2020 [C4860]), that he might not have done so until their meeting the following Monday, 8 June [T/18/226.6].

6 JUNE 2020: MR PYLE SEEKS CONFIRMATION FROM MR MCGRAIL

12.281 The following day (6 June) [C4815], having read the email which Mr McGrail handed to him during the meeting (Pyle 1 para 17.3 [A244]), Mr Pyle wrote to Mr McGrail asking him to confirm that he intended to tender his letter of '*resignation*' on Monday, but this was an error (for which he apologised at the Main Inquiry Hearing); he meant to ask if he intended to *retire* rather than to *resign* [T/18/228.6]. He updated Mr Picardo and Mr Llamas [C4819].

LOSS OF PENSION RIGHTS

12.282 I should point out, at this juncture, that it is also very clear that Mr McGrail believed that if he was compulsorily retired by the Interim Governor calling upon him to do so under section 13(1)(f) of the Police Act, he would lose his pension rights. I have not received legal submissions on this point, and in any event, this is not a matter on which I can formally rule. Mr McGrail's evidence was that he had not taken advice on the pension point [T/7/48.6]. If he took no advice on this point, that would have been unwise. By way of example only, he said in his written statement (at McGrail 1 paragraph 100 [A42]): '*either I remained in post and was potentially suspended or called to resign (which according to the letter was what was on offer), and lose all my pension rights and years of service, or apply for early retirement which may safeguard some of my interests.*' Furthermore (at paragraph 108 [A44]): '*I had completed 36 years of service and did not want to put in jeopardy my pension entitlements*'.

12.283 He made the same point in his statement of factual position for the Second Preliminary Hearing (which I need not quote).

12.284 Although I do not doubt that he genuinely believed this, the Government Parties argue that he was completely wrong, and he did not challenge this in his closing submissions. This belief was very unfortunate because I am sure that this was one of the factors which caused him to retire '*voluntarily*' before Mr Pyle acted under section 13. I will return to this point.

7 JUNE 2020: LETTER FROM MR MCGRAIL'S LAWYERS TO MR PYLE

12.285 On 7 June, which was a Sunday, Gomez & Co wrote to Mr Pyle [C4820] strenuously objecting to what had occurred. The email argued that it would be unlawful for Mr Pyle to invoke the section 13 procedure, as it is only available if the GPA is in default. They invited Mr Pyle to recuse himself, stating '*there is no harm in waiting for the three clear days until Sir David [Steel] is sworn in*'. However, the email referred to the '*immense pressure*' upon Mr McGrail and his family and suggested that Mr McGrail could '*no longer count on the impartiality of the most senior members of Gibraltar's Government*'. It stated that Mr McGrail would not resign, but that he had been left with no choice but to apply for early retirement, if satisfactory financial terms could be agreed.

7 JUNE 2020: MR PYLE EMAILS THE FCDO

12.286 By email of 7 June (at 12.35 [C4826]), Mr Pyle wrote to the FCDO, giving what he called the '*good news*' that Mr McGrail intended to retire, which process he wanted to complete before the new Governor arrived, so as to prevent Mr McGrail withdrawing his notice of retirement and lobbying the new Governor to keep his position.

12.287 At 14.00 [C4832], the Assistant Legal Adviser at the FCDO recognised that if that situation arose, the new Governor would still have powers under section 13(1)(f) '*in the event of a stalemate*'.

12.288 At 18.08 [C4837], the Assistant Legal Adviser at the FCDO set out the various options available to Mr Pyle, noting that *'although you have justifiable grounds on which to exercise your section 13(f) power, there remains a risk that it could be challenged by the Commissioner'*, and expressing a preference for 'Option 3' – allowing Mr McGrail to apply for early retirement on terms addressed to the incoming Governor.

12.289 At 20.26, Mr Pyle wrote to the FCDO [C4845] stating that he had met with the Mr Picardo and Mr Llamas, and they had agreed *'we need to stop this and the only way to do so [is] to conclude proceedings before Sir David's swearing in on Thursday.'* He stated that he had asked Mr McGrail to see him the following day and would *'carefully get the message across that he either confirms in writing his request for early retirement with immediate effect with details to be confirmed, or I will use the powers available to me under section 13(l)(f)... We agreed that, should I have to invoke my powers, I will suspend the Commissioner with immediate effect.'* He added that Mr Picardo was *'keen that we have a clear way forward that results in the removal of the Commissioner before he meets with the Spanish on Tuesday...'*

WAS MR PYLE RUSHING TO JUDGEMENT?

12.290 Mr Wagner has suggested that Mr Pyle was improperly rushing to achieve Mr McGrail's retirement before the new Governor was due to arrive on 10 June (closing submissions, para 123.1). There are two ways to look at this.

12.291 First, Sir David Steel's email to Mr Pyle, dated 5 June [C4771], suggests that he was quite prepared to deal with the issue, if necessary; as I am sure he would have done – that would be his duty. Sir David Steel may have been able to bring a different – and independent – fresh perspective to the issue. A delay might have had the further advantage that everyone would have had time properly to formulate the allegations being made against Mr McGrail and would have allowed him time to properly defend himself. This argument was being made at the time by Gomez & Co [C4850].

12.292 On the other hand, I think Mr Pyle had a valid point when he said that he was anxious to complete the process before the new Governor arrived, otherwise Mr McGrail might have withdrawn his notice of retirement and sought to persuade the new Governor not to exercise his powers under section 13(1)(f); then they would be *'back to square one'*, as he put it [C4845]. Furthermore, Mr Pyle had already advised (in his email to the FCDO of 5 June [C4725]) that, *'...with a media storm brewing'*, he *'would like to resolve this as soon as possible and certainly before Sir David Steel arrives on Wednesday.'* Otherwise, the new Governor would start by having to take controversial executive action, which was likely to antagonise some part of public opinion in Gibraltar. Indeed, Sir David wrote to Mr Pyle on 5 June 2020, prior to his arrival, stating *'I just hope that the actions you are taking will address the issue'* [C4771].

12.293 Either course would have been reasonable, and I do not criticise Mr Pyle for taking the position that he did. He was not rushing to judgement.

8 JUNE 2020: FURTHER EXCHANGES BETWEEN MR PYLE AND MR MCGRAIL

12.294 By arrangement, Mr McGrail met Mr Pyle again on the morning of 8 June. Mr Pyle says that Mr McGrail confirmed his intention to retire, subject to terms being agreed. Mr Pyle said that the terms of Mr McGrail's retirement were a matter for the Chief Secretary, to whom he (Mr Pyle) would directly refer the matter (Pyle 1 para 18.1 [A244]).

12.295 Mr McGrail said that Mr Pyle told him that he (Mr Pyle) had taken serious offence to the allegations made in the letter of 29 May (McGrail 1 para 105 [A43]). Mr McGrail said that Mr Pyle then said that his own concerns were about the Incident at Sea and the HMIC report but that these *'overlapped'* with concerns of Mr Picardo, Mr Llamas and the GPA. Mr McGrail says that Mr Pyle was *'taken aback that [Mr McGrail] had not had notice of the particulars of the allegations against [him]'*, and accordingly gave him the *'three letters'*, which Mr McGrail had not previously seen. As I have said above, Mr Pyle now accepts

that it was at this meeting that the three letters were handed over. Mr Pyle suggested that he read those letters and return in the afternoon, but that he did not want a response from Mr McGrail on the letters.

12.296 Mr McGrail reminded him that he had already said that he would be seeking early retirement (McGrail 1 para 106 [A43]). According to Mr McGrail, Mr Pyle said that he did not have a formal request in writing, to which Mr McGrail responded – reasonably as it seems to me – that he did not intend to give formal notice of his retirement until the financial arrangements as to pension had been sorted out. Mr McGrail maintains that – with a typical bluntness of speech – he asked if Mr Pyle wanted him out, to which Mr Pyle said that he did (McGrail 1 para 107 [A44]). Mr Pyle's version is that he said that he wanted a change in leadership [T/18/234.17]; it comes to much the same thing.

12.297 Mr McGrail's evidence was that, by then, *'it dawned on [him] that [his] best option was to find the best way out before [he] was made to suffer even more'*. He said that his mental health was very badly affected. He had completed 36 years of service and did not want to jeopardise his pension entitlements (McGrail 1 para 108 [A44]).

12.298 Mr McGrail returned at 16.00 in the afternoon to offer to retire, subject to terms being agreed.

12.299 At 19.19, Mr Pyle reported this development to the FCDO [C4879]. He concluded that *'if the Commissioner did not provide a letter in writing asking for early retirement, I will call him in tomorrow and suspend him.'*

THE EXCHANGES WITH THE CHIEF SECRETARY

12.300 After consideration and some further exchanges, the Chief Secretary agreed that Mr McGrail should receive his pension, and untaken leave and time off in lieu was also to be paid (McGrail 3 para 162 [A132]).

MR MCGRAIL FORMALLY APPLIES FOR RETIREMENT

12.301 The following day (9 June), Mr McGrail emailed Mr Pyle requesting early retirement on terms that he set out in an attached letter [C4890-1]. He said that if Mr Pyle agreed to his terms, he would relinquish command of the RGP by 18.00 hours that same day. Mr Pyle accepted those terms [C4897].

MR PYLE UPDATES THE FCDO

12.302 At 12.41, Mr Pyle sent a '*Diplomatic Telegram*' to the FCDO summarising the events [C4913]. He referred to the Incident at Sea and stated that: '*This incident compounded existing concerns the Chief Minister and I had about the Commissioner. He has not acted on a 2016 HM Inspectorate of Constabulary report; there are Police Federation bullying allegations; and he went against the advice of the AG and DPP in an ongoing and high-profile investigation.*' I note, as I have observed before, that even as late as 9 June, Mr Pyle erroneously believed that, in applying for the warrant, Mr McGrail had acted against the advice of the Attorney-General and the DPP.

12.303 He observed, '*The GPA has however not covered itself in glory*', having acted without a quorum, and being '*in default*'. He sought to find some '*positives*', namely: (a) it had '*demonstrated the strength of the HMG-GoG relationship*', and '*That the CM and I have been at one throughout has averted what could have potentially resulted in a constitutional crisis*'; (b) '*The outcome also plays well into our ongoing negotiations with Spain*'; and (c) '*it has been concluded before the arrival tomorrow of Governor-Designate, Sir David Steel, who will be able to immediately set about the task, with the CM and GPA, of rebuilding the RGP.*'

COULD MR PYLE EXERCISE THE FUNCTIONS OF GOVERNOR?

THE SUBMISSION ON BEHALF OF MR MCGRAIL

12.304 I turn to another different point.

12.305 It is submitted on behalf of Mr McGrail that, at the time that Mr Pyle threatened to invoke section 13(1)(f) of the Police Act on 5 June 2020, and ever since he had been notified of Sir David Steel's appointment, Mr Pyle was not able to exercise any functions of the office of Governor under section 22(3) of the Constitution (closing submissions, para 119). That section prohibits an individual who has been temporarily discharging the functions of Governor, whilst the office of Governor was vacant, to exercise any functions of the office '*after the Governor or some other person having a prior right to perform the functions of that office has notified him that he is about to assume [...] those functions*'. Therefore, it is argued, Mr Pyle was acting unlawfully when he purported to exercise, or threatened to exercise, the powers vested in the Governor by section 13 of the Police Act (closing submissions, para 121).

12.306 The Government Parties submit that Mr Pyle, as Interim Governor, had all the Constitutional and statutory powers to act as Governor, including powers under section 13 of the Police Act, until the new Governor took office on 11 June (closing submissions, Schedule 2).

12.307 It is to deal with this point that I identified, as Issue 9:

'Mr Pyle's stated intention as to his powers under section 13 of the Police Act. This will include consideration of the relevance (if any) of Sir David Steel's imminent commencement as Governor, and particularly the date on which [Mr Pyle] learned of the date on which that was expected to occur ('the Section 13 Issue').'

SECTION 22 OF THE CONSTITUTION

12.308 Section 22 of the Constitution, headed '*Vacancy in the Office of Governor*', reads as follows:

'(1) During any period when the office of Governor is vacant or the Governor is absent from Gibraltar or is for any other

reason unable to discharge the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and discharged by such person as Her Majesty may have designated in that behalf by instructions given through a Secretary of State.

(2) Before assuming the functions of the office of Governor, any such person as aforesaid shall make the oaths directed by section 21 to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform the functions of that office has notified him that he is about to assume or resume those functions.

(4) The Governor or any other person as aforesaid shall not for the purposes of this section be regarded as absent from Gibraltar or as unable to perform the functions of the office of Governor at any time when there is a subsisting appointment of a deputy under section 23.'

THE FACTS

12.309 My Commission requires – and empowers me – ‘*to find the facts*’. The relevant facts are as follows. The appointment of Vice-Admiral Sir David Steel KCB DL as the new Governor was formally announced by the FCDO on 19 May 2020. He then arrived in Gibraltar and was sworn in as Governor on 11 June 2020.

CONCLUSION

12.310 The submission made on behalf of Mr McGrail, to the effect that section 22 deprived Mr Pyle of his authority to act as such after he heard of Sir David Steel's appointment, is – as it seems to me – a matter of law, upon which I have no power to rule, and I decline to do so.

12.311 It might, however, be helpful if I observe factually that Sir David Steel did not become the Governor until he was sworn in on 11 June and, therefore, he was not '*the Governor*' at the time that he, or the FCDO, informed Mr Pyle '*that he was about to assume*' the function of Governor. There is also, as it seems to me, a difference between notifying somebody of your future appointment, on the one hand, and on the other, notifying somebody that you are about to assume the functions of Governor. Therefore, I suggest that section 22(3) does not apply.

12.312 It seems to me that section 22 is rather awkwardly worded but it might be helpful if I observe that if the submission made on behalf of Mr McGrail is right, there would indeed be a vacancy in the position of Governor from the date of notification until the date of swearing in, with the result that if there was some emergency, requiring immediate action by '*the Governor*', there would be no one to take it. This cannot be right.

12.313 It is my opinion, therefore, that Mr Pyle, as Interim Governor, had all the Constitutional and statutory powers to act as Governor, including powers under sections 34 and 13 of the Police Act, until the new Governor took office on 11 June.

12.314 I do not think that I can take this point any further.

THE DEVELOPMENT OF MR MCGRAIL'S DECISION TO RETIRE

THE RIVAL ARGUMENTS

12.315 I turn to consider the evidence which now bears upon Mr McGrail's developing state of mind towards his retirement. The case presented by the Government Parties has always been that Mr McGrail chose to seek early retirement because he knew that once he had lost the confidence of the Chief Minister, the Governor and the GPA, his position as Commissioner had become untenable and his retirement was therefore inevitable. Sir Peter Caruana

submits that this argument has gained currency from the recent WhatsApp disclosures from the RGP; he argues that these messages:

'now show, Mr McGrail had, at least by 29 May (and probably as early as 20 May), resolved to retire and thereafter worked to ensure that he would be allowed to do so on the best financial terms. Far from seeking to stay on as Commissioner of Police, his concern was that he may not be allowed to retire but would instead be sacked. Nothing that occurred after that date when Mr McGrail decided to retire ... could have been the reason for him doing so.' (Opening submissions for the Reconvened Hearing, para 47.2)

12.316 Mr Wagner, on behalf of Mr McGrail, disputes this. He argues:

'The messages do not show that he had "resolved" to retire ... 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.' (Opening submissions for the Reconvened Hearing, para 36)

THE EVIDENCE BEARING ON HIS DEVELOPING STATE OF MIND

12.317 It would, of course, be a mistake to see the newly disclosed WhatsApp messages in isolation; they need to be seen in the context of all the evidence. I turn then to identify what I consider to be the relevant extracts to support the rival versions.

12.318 Mr Wagner points to evidence given at the Main Inquiry Hearing suggesting that Mr McGrail had foreseen that he might have to 'retire' early. Namely, in the email that he wrote to himself on the evening of 12 May, Mr McGrail was already contemplating 'possible reprisal[s]' [B77].

- 12.319 At the meeting between the RGP and Mr Llamas (and others) on 13 May 2020, Mr McGrail said that he was *'getting cornered'* and that an attempt was being made to *'muscle me out'*. He said that, *'If I have to go, I'll go, but I will leave with my head held up high'* [C3534]. This, suggests Mr Wagner, is consistent with an early realisation that he might be facing enforced retirement.
- 12.320 On 20 May, Mr Ullger messaged Mr McGrail stating: *'Let's not talk about you leaving, but just the things that we can start to turn things round for us. You have our full support and wouldn't want it any other way...'*. Mr McGrail replied *'...I am just being realistic of what is likely to happen. It's a ruthless world that these people live in – certainly not ours...'* [E747].
- 12.321 Mr Ullger stated at the Reconvened Hearing that he could not remember what made him send this message, but that there was a *'build up towards something big happening'* [T/22/190.20]. He said that by referring to *'our full support'*, he meant the support of the Command Team [T/22/191.17].
- 12.322 When Mr McGrail was asked what was *'likely to happen'*, he said that then, on 20 May, the issue of loss of confidence had not arisen [T/23/86.19]. He gave a lengthy explanation for the *'backdrop'*, including that he had been threatened by Mr Picardo about the intervention, and the response from Mr Picardo about the representation of the RGP in respect of the claims arising from the Incident at Sea. He said:

'I don't have a crystal ball; I could smell it, where this was going to or where this was heading, and I knew there and then the threat as then this not related to the Delhi investigation at all because it was only related to the collision and HMIC in sort of the periphery ... I could smell it, that he was coming for me, and I was not wrong. So, in terms of it's a ruthless world out there, I knew from previous information how the Government worked and operates. ... They fire from the hip,

they chop heads, and from what had happened on the 12th I was already seeing that shaping up.' [T/23/87.8]

This, I comment, was very typical of his wordy replies, and I cannot sensibly quote them all at such length. I shall usually confine myself to a summary with short extracts.

- 12.323 I interpret these exchanges of 20 May as Mr McGrail realising that events were turning – or being turned – against him. However, I do not think that he had then formed a settled intention to retire, and he did not know at that point that Mr Picardo and Mr Pyle were alleging that they '*had lost confidence in him*'; the first that he heard of that was from the GPA on 22 May, to which I now turn.
- 12.324 On 22 May, Mr McGrail received the two letters from the GPA, as I have set out above. Also, on that same day, Mr McGrail met Dr Britto, a meeting which Mr McGrail covertly recorded. Mr McGrail said that he was being '*muscled out*' [C4295]; he explained that he was concerned about causing a '*Constitutional crisis at such a crucial time*' for Gibraltar [T/7/47.9]. I think that shows that he was then actively considering the options open to him.
- 12.325 I have already referred to the meeting of the Command Team of the RGP which Mr McGrail called that same day. He told them that Mr Pyle and Mr Picardo had lost confidence in him, but he did not accept that the reasons which they gave (being the Incident at Sea and HMIC Report, rather than anything arising from Operation Delhi) were the true reasons. Mr Yeats said that Mr McGrail '*was engaging with the GPA to resist him having to retire*' (Yeats 1 para 43 [A555]). I think that the clear indication from this evidence is that Mr McGrail was then (as at 22 May) minded to stay; or at least hoping that this might be possible.
- 12.326 That same day (22 May), Mr McGrail spoke to Mr Llamas on the telephone; Mr Richardson recorded what Mr McGrail said. I have set out the key parts of this

phone call above. I think that this call very clearly sets out the dilemma he was then facing; in my view, he was then still undecided as to what course to take.

12.327 On 22 May, Mr Yeats asked Mr McGrail how he was; he replied '*OK, the inner peace is very powerful and helping*' but he added that – I translate from the Spanish – '*the anger is tremendous*' [E830].

12.328 On 23 May, Mr McGrail messaged Mr Richardson, asking him to arrange a meeting with '*Charlie*' [C7006]. Mr McGrail confirmed in evidence that this was a reference to Mr Charles Pitto, then the Stipendiary Magistrate [T/23/82.12]. Mr Santos asked him why he wanted to speak to Mr Pitto. He said that he did not know to whom to turn; he was wondering whether he could turn to the judiciary for help; it was, he said, '*a moment of ... in a way of desperation.*' [T/23/82.13]. He added that this followed from a conversation with his lawyers about '*a potential route to address the situation*' [T/166.14]. Mr Richardson stated that, from memory, he asked Mr Pitto whether he would meet, and he declined [T/23/206.23].

12.329 Sir Peter Caruana suggested to him that since Mr Pitto had issued the search warrant against Mr Levy, and since there was an ongoing dispute between Hassans (who were seeking disclosure of the unredacted application for the warrant) and the RGP (who were resisting that), and since Mr Pitto as the Magistrate would have to hear and determine any application, it would be wholly improper for there have been any meeting between Mr McGrail and Mr Pitto [T/23/166.19]. In my opinion, it would obviously have been entirely inappropriate for them to have met to discuss the fallout from the issue of the warrant, and perhaps it was his awareness of the perception of such a meeting that might have been the reason why Mr Pitto declined to see him. But when the suggested impropriety of this was put to Mr McGrail, he said that his purpose in seeking the meeting was '*to address the circumstances finding myself in with regards the termination of my post*'. I think that Mr McGrail wanted to turn to him for help. I found his evidence on this point entirely

convincing, and consistent with his claim that he was at the time in mental turmoil and anxiously searching for the best way forward. I am quite sure that he did not want to speak to Mr Pitto about the warrant.

12.330 Also on 23 May, Mr Richardson messaged Mr McGrail stating, *'Hey Ian. Hope you are ok. It's been a tough day, the worst in my 34 years service. It's a sad day for policing but a proud day for the police'* [C7006]. Mr Richardson explained when he gave evidence at the Reconvened Hearing that it was a sad day for policing *'Because the Commissioner of Police had been put in a position where he had to leave when he didn't want to leave and we felt abandoned and all of the senior management were very upset by the whole thing.'* [T/23/223.21]. He added – perceptively it seems to me – that it didn't make sense that the Incident at Sea and the HMIC Report were the reasons why this was happening, *'I thought it was to do with Delhi'* [T/23/224.10].

12.331 The next day (24 May), Mr McGrail messaged Mr Ullger stating: *'Longing for the nightmare to end'* [E751]. He also messaged Mr Yeats *'Longing for this nightmare to end'* [E831].

12.332 On 28 May, Mr McGrail messaged Mr Ullger stating: *'On edge. Wanting this over...'* [E756].

12.333 When he was asked to explain these remarks, Mr McGrail said that he said that he *'was between a rock and a hard place'*. He had been advised by his lawyers that the process initiated by the GPA was unlawful and could be challenged. He recognised the *'ruthlessness'* of those opposed to him but he *'still had that lingering hope'* that the GPA or someone or something else would *'deconflict the situation'* and therefore he *'still clung to that hope that [s]ome commonsense would prevail...'* [T/83/89.19-91.22].

12.334 On 28 May, Mr Ullger messaged Mr McGrail stating: *'It's so painful to see you so sad. Be strong mate, you have the admiration of all. Everyone in the command team is proud of you...'* [E756]. He explained at the Reconvened

Hearing that the Command Team was proud because Mr McGrail was a good leader [T/22/257.16].

12.335 I turn now to another recent disclosure from the RGP. At 10.33 on 29 May, the very day on which the Gomez letter was written, Mr Ullger sent a voice message to Mr McGrail outlining his account of a conversation which he (Mr Ullger) had had with Ms Samantha Sacramento (then the Minister for Justice) [E757]. The transcript of that conversation is at [E1106]. Mr Ullger said that he had told her that:

'the best scenario here was what you were looking at, was you wanted to retire now because your position was untenable with the individual, ... with all individuals for that matter and that you wanted to leave the organisation but maintaining your pay and ... to have your retirement package in two years' time...'

12.336 Mr Ullger added by text that:

'Oh and I gave her full details of the collision at sea, cos she alluded to that being an issue in cabinet. She could rationalise with our processes and couldn't see the issue. She also said that she couldn't understand the HMIC report being a precursor for this'.

Mr McGrail responded 'Many thanks. Love you mate' [E758]

12.337 Mr Ullger stated that it was his (Mr Ullger's) suggestion to speak with Ms Sacramento [T/22/195.4], and Mr McGrail confirmed that he had agreed with this [T/23/92.21]. Mr McGrail said that he *'was playing all possible cards that... were available and given my good relationship with the Minister for Justice, and if there was any possibility of deconflicting the situation ... I was doing anything that I considered could aid my situation...'* [T/23/92.21].

12.338 Mr Ullger gave the following account of the conversation which he had with Ms Sacramento:

- a. He said that he wanted *'to see if she had a take on what was happening to understand the wider government position'* [T/22/194.15].
- b. He said he approached this conversation both as Mr McGrail's friend and as Assistant Commissioner of the RGP [T/22/196.3].
- c. He wanted her to help defuse the dispute between Mr McGrail and Mr Picardo [T/22/258.19].
- d. She had told him that there had been a conversation in Cabinet about the Incident at Sea *'but she didn't go into any depth whatsoever'* [T/22/198.19].
- e. She said that the HMIC Report *'was not the best report but that it was something that we could work at together'* [T/22/198.24].
- f. Ms Sacramento said that she had not personally lost confidence in Mr McGrail [T/22/215.21]. He hoped therefore that as an important figure in Government, she might be able to support them [T/22/200.1].

12.339 Ms Sacramento's evidence is as follows:

- a. She had a very informal conversation with Mr Ullger, in which he told her that Mr McGrail was *'in a bad way after what had happened with the Chief Minister and that it had had an impact on his mental health'* (Sacramento 1 para 63 [E1081]).
- b. She felt that *'he was trying to get me to sympathise and, in some way, bridge the rift and somehow mediate the situation between the Chief Minister and Mr McGrail. To me, it was more of a general request without going into any specifics and it somehow felt like a cry for help'* (Sacramento 1 para 64 [E1082]).

- c. She *'told Mr Ullger that I was hardly in a position to call the Chief Minister, and what exactly would he propose that I tell him'* (Sacramento 1 para 66 [E1082]).
- d. She did not subsequently speak with Mr Picardo as she did *'not think it was appropriate to do so'* (Sacramento 1 para 69 [E1082]), and says that 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'* (Sacramento 1 para 8 [E1073]).

12.340 Despite this, at 20.27 that evening, Mr Ullger messaged Mr McGrail stating *'I've had a text from minister. She's tried to make contact with him but hasn't been able to see him face to face'* [E761]. I recognise that their recollections of these conversations do differ, but I do not think that anything turns on that.

12.341 As it seems to me, the importance of this point is not so much what passed at Mr Ullger's meeting with Ms Sacramento, but that Mr Ullger must have thought that, on 29 May, Mr McGrail had already decided to retire provided that suitable terms could be agreed.

12.342 At the Main Inquiry Hearing, Mr McGrail's evidence was that as of 29 May, when the Gomez letter was sent, his preference was to remain in his post rather than retire; he *'wanted to see his career through'* [T/7/43.21]. Mr Santos asked Mr McGrail what had changed between 29 May, when his solicitors had argued that he should remain in post, and 5 June, when he felt he must apply for early retirement. He replied that: *'The pressure was relentless from Mr Pyle. I was getting texts, messages, emails late evening, which all suggested that he was going to invoke his powers. By that point my wellbeing was seriously affected.'* [T/7/46.24]. Mr McGrail explained that this *'threat'* emerged *'the minute Mr Britto communicated to me that that was the option, the "nuclear option", as he explained it'*. He said that *'was alive from the minute I got the first letter'* (of 22 May) [T/7/50.14]. I do not think that he did

himself justice by this reply. He made his position clearer at the Reconvened Hearing.

12.343 Mr Santos returned to this topic when Mr McGrail gave evidence at the Reconvened Hearing. He said: *'I want to underscore that I didn't choose to retire; I was forced to retire. I was muscled out. The only two options were I followed the instructions of the GPA or I get sacked by Mr Pyle and that was a very difficult situation to deal with.'* [T/23/85.12]. Although the GPA's first letter of 22 May read, *'the Authority invites you to retire'* [C4315], Mr McGrail thought that this was *'more of an instruction'* to retire than an invitation [T/23/174.19].

12.344 Asked whether after 29 May his focus shifted to obtaining the best possible financial terms, Mr McGrail stated that *'personal terms are very important when you consider 36 long years of service to the community, to the police. I loved my job. I did not want to go'* [T/23/98.15].

12.345 Mr Santos asked Mr McGrail *'had you told Mr Ullger that your position was untenable with the Chief Minister?'* Mr McGrail replied: *'Not in those terms, no ... If anything, it was the opposite. How could I rely on Fabian Picardo, Michael Llamas, to support the police in a prosecution where they were taking the sides of the other side, of the suspects?'* (meaning, of course, Mr Levy and the Former Operation Delhi Defendants) [T/23/93.13]. However, when Mr Santos asked whether Mr McGrail had previously communicated that he thought his position was untenable, Mr Ullger replied *'we had spoken about it, yes'* [T/22/197.23].

12.346 Sir Peter Caruana put to Mr McGrail that by 29 May at the latest, he had come to a firm decision to retire. He asked Mr McGrail to identify any words in the voice note with Mr Ullger, after his meeting with Ms Sacramento, which *'are capable of meaning that you had not already decided to retire'*. Mr McGrail explained *'...the interpretation of "untenable" does not necessarily accord with yours, which is that I left because I knew that I had lost the confidence.'*

That is not the reason why I left... [T/23/158.17]. He explained his interpretation of untenable was that *'First and foremost, I had no options, no options whatsoever. Secondly ... I saw it extremely difficult, if not impossible, to be able to survive the situation ... the confidence was ... actually reversed: how could I work with somebody who was ... siding up with suspects?'* (again, meaning Mr Levy) [T/23/159.4].

12.347 Sir Peter pressed this point with Mr Ullger. He asked whether Mr Ullger agreed that the WhatsApps he had exchanged with Mr McGrail showed that he knew by 29 May that McGrail had decided to retire [T/22/232.11]. Mr Ullger agreed [T/22/232.17]. He candidly admitted that Mr McGrail's position was that *'he no longer had the confidence of the Chief Minister, of the Governor at the same time, the Attorney-General and the police authority'* [T/22/192.23]. Mr Ullger said that *'a turning point was certainly when he received the section 15 letter from the Chief Minister and the letter from the Police Authority'* [T/22/255.13 – 17]. I note that the section 15 letter had been sent with the consent of the Governor.

12.348 In other parts of his evidence, Mr Ullger was not so sure. He said that *'there was a journey taking us towards what was eventually the inevitable, and that was his retirement ... there was always hope, that hope existed in one of the conversations that I had, ... as I've explained, with Samantha Sacramento'* [T/22/233.10]. He later added: *'I am not denying the fact that Mr McGrail didn't already know where this was going to end up, but like I said, there was always hope at the end of the day where we would be able to sit round a table and discuss things...'* [T/22/237.14]. Mr Ullger added that he thought that Mr McGrail *'wanted to stay in his post'*, but at the same time he found himself in a very difficult situation that was *'untenable'*. He observed that: *'No one would want to finish their career like Mr McGrail did.'* [T/22/193.23].

12.349 Later that day (29 May), Mr McGrail messaged Mr Ullger: *'Just want to take the bend and be relieved of all of this'* [E761].

12.350 The Government Parties had originally argued that if Mr McGrail had been determined to stay on 29 May, and if after that there had been no further alleged interference in the Operation Delhi investigation, then there can have been no reason for him suddenly to change his mind and to decide on 5 June that he had to go as a result of improper interference with the ongoing investigation. But, as has become clearer in the light of the evidence disclosed since the Main Inquiry Hearing, that argument turned out to be flawed in that it presupposed that the Gomez letter accurately set out Mr McGrail's firm resolve then to stay. As it now appears, it is not at all clear to me whether on 29 May, Mr McGrail was determined to stay or whether he had already decided to retire on the best terms available.

12.351 On 30 May at 10.32, Mr McGrail messaged Mr Ullger in these terms: *'All I want is a dignified exit and not a forced one'* [E764]. When Mr McGrail was asked about this message, he said that *'I was hoping for the best but planning for the worst. So, if I had to go, I wanted to go with my head up high and in a dignified way...'* [T/23/96.25]. I think this precisely describes his state of mind. He pointed out that, even as late as 1 June, he asked Mr Ullger to do as much as he could to progress the HMIC recommendations [E767], which he pointed out – convincingly as it seems to me – *'is not the message from somebody who is certainly out. That is a message from somebody who wants to speed up and do things and still want to remain in post'* [T/23/97.7]. He added later in his evidence that *'I was more out than in and ... I was clinging on to the faintest of hopes. But if I had to go, I wanted to go with dignity...'* [T/23/161.6].

12.352 On 31 May, Mr McGrail messaged Mr Ullger: *'Can't wait to see the end of this saga.'* [E766].

12.353 Later that same day, Mr McGrail wrote to Mr Ullger asking him not to pursue the matter with Ms Sacramento, at least for the time being [E765]. Mr Ullger gave evidence that he thought that was because of advice from Mr McGrail's lawyers [T/22/201.9].

- 12.354 Even as late as 4 June, Mr McGrail wrote to Mr Ullger: *'keeping fingers crossed that some mediation starts soon between my lawyers and the other side'* [E780].
- 12.355 On the evening of 5 June, Mr McGrail sent a message to Mr Ullger saying that he was: *'Still not out of the woods. I now pray that they do not refuse my intention to retire early.'* [E784]. As I have set out above, at 17.24 that day, Gomez & Co had emailed the GPA indicating that *'given how unfairly he has been treated and the improper pressure put on him to alter the course of a live criminal investigation, our client feels he must apply for early retirement'* [C4801].
- 12.356 Mr McGrail gave evidence that stated that, even on 5 June, he thought there was *'some room for de-conflicting the situation'*, for example, that the GPA might withdraw their request [T/23/116.19]. When challenged with the fact that the GPA had already withdrawn its invitation for him to retire (which they had done at 16.28 [C4752]), Mr McGrail said he had not *'forgotten'* that; he explained that he was still threatened with the possibility that Mr Pyle would call for him to resign (rather than allowing him to retire on his own terms) [T/23/117.12]. As I have said, Gomez & Co replied requesting early retirement at 17.24 [C4801].
- 12.357 Mr McGrail stated that he had *'wanted to ask Mr Pyle to defer the matter to the arrival of the new Governor, and that was very important to me'* [T/23/92.4]. This was due to happen within a few days. Sir Peter Caruana asked how Mr McGrail's message – praying that the GPA would not refuse his intention to retire early – was consistent with waiting for the new Governor to arrive. Sir Peter asked: *'which was it? Were you hoping that they would not stop you retiring? Or were you hoping that they would do the sensible thing and make no decision until the new Governor arrived?'* Mr McGrail replied: *'If playing for time worked toward my advantage, that would have been a good option for me'* [T/23/120.16].

- 12.358 Once Mr McGrail had decided to retire, discussion with Mr Ullger changed to the procedure by which this would be effected. On 6 June 2020, Mr McGrail messaged Mr Ullger: *'I can't see them forcing a section 13... do you?'*. Mr McGrail replied *'At all mate. It would be a travesty if they did and really make them look bad in light of the previous attempt'* [E786]. Mr Ullger explained that by the previous *'attempt'*, he was referring to the first GPA letter [T/22/202.17].
- 12.359 Also on 6 June 2020, Mr McGrail messaged Mr Ullger stating: *'I want people to know I have done nothing wrong and want to leave with my head held up high. So yes, I will agree to a guard of honour'* [E787].
- 12.360 Overall, Mr Ullger gave evidence that he had provided Mr McGrail with *'unconditional support'* [T/22/202.22]. I do not doubt this; but I have in mind their very close friendship and the obvious loyalty which Mr Ullger then had towards him.
- 12.361 On 7 June, Mr McGrail messaged Mr Ullger: *'I am expecting to be called in by the governor...'* [E790]. He added: *'suspension or section 13 called to resign is still a possibility though if he had any sense he would not do it as he has been told it would be unlawful.'* [E791]
- 12.362 On 9 June, having earlier sent an email to all police and civilian staff at the RGP announcing his departure *'for the sake of my health and well-being'* [C4895], at 18.00, in a ceremony, he handed over the Commissioner's baton to Mr Ullger (McGrail 1 para 109 [A45]). Mr McGrail records that he was proud to have served the RGP for 36 years, but he felt sad and bitter at the way that it ended, but he knew, in his own mind, that – as he put it – his ethics and morals remained intact (McGrail 1 para 109 [A45]).

12.363 Mr Pyle [C4904] and the GPA [C5150] separately issued press releases. The Government also issued a Press Release to announce Mr McGrail's retirement as Commissioner and '*wishing him well in his retirement*'.⁷

12.364 Mr McGrail gave evidence that following his retirement, his mental health improved (McGrail 1 para 109 [A45]).

CONCLUSION ON MR MCGRAIL'S STATE OF MIND

12.365 In my judgement, it may be that as early as 22 May, when he received the GPA letters, Mr McGrail realised that he may be forced to retire. But a proper analysis of the sequence of events, including these messages, clearly reveals the dilemma which he faced. Namely: whether to stand and fight against what he considered to be a grossly unfair, unlawful and unconstitutional attempt to force him out, for improper reasons (which fight he feared he might lose, and in the process lose his pension and even cause damage to the reputation of Gibraltar); or whether to accept the inevitable, to go quietly, to retire with a pension and with at least some dignity, '*with his head held high*', and without causing a constitutional crisis. I do not think it in the least surprising that he chose the latter course. I do not think that he reached a firm and settled intention to retire until perhaps as late as 5 June. Before that, he sincerely, but perhaps increasingly unrealistically, hoped that something might turn up.

12.366 I turn now to attempt to identify the reasons why he retired.

THE FACTORS ACTING UPON MR MCGRAIL

12.367 I now move to identify the factors acting upon Mr McGrail when he offered his retirement. It is not possible to list them in any descending order of

⁷ <https://www.gibraltar.gov.gi/press-releases/retirement-of-the-commissioner-of-police-3872020-5956>.

importance, and I do not think that he could do so himself; no doubt they had a cumulative effect.

- a. The Government Parties submit that the real reason for his retirement was the realisation that he could not continue in office when he had lost the confidence of the Chief Minister, the Governor and indeed the GPA. Mr McGrail's take on this is that he was forced out – '*muscled out*' as he puts it – because Mr Picardo falsely claimed that he had lost confidence in him for the Incident at Sea and the HMIC Report, whilst suppressing the real reasons (the alleged '*lie*' and the issue of the warrant against Mr Levy).
- b. In the letter written on Mr McGrail's behalf on 5 June, in which he offered his retirement, he refers to '*the improper pressure put upon him to alter the course of a live criminal investigation*' [C4801]. Mr Wagner would put this at the top of the list; he submits that this is the real reason for his retirement.
- c. As I have already set out, in his letter of 5 June, Mr McGrail claims to have retired '*given how unfairly he has been treated*' [C4801]. He complains that he still '*did not have the full particulars*' as to why Mr Pyle and Mr Picardo had lost confidence in him (McGrail 1 para 94 [A40]); he repeated these points in his oral evidence [T/7/45.23].
- d. He faced the threat of public humiliation which would follow if he was called to resign by Mr Pyle exercising his powers under section 13. Mr McGrail said (McGrail 1 para 94 [A40]) that although he was '*somewhat relieved*' that the GPA had withdrawn the invitation for him to retire, he was '*extremely worried of the damage to [his] reputation if Mr Pyle went down this route*'.
- e. There was the effect that this was having upon his mental health, discussed above.

- f. He believed that if he retired '*voluntarily*' he would not imperil his pension, whereas if he was compelled to resign under section 13 – effectively a dismissal – he would do so. I have already considered this point: the Government Parties contend that his understanding was wrong and, although he did not formally concede the point, by the end of the Main Inquiry Hearing, Mr Wagner did not argue to the contrary.

(A) THE 'LOSS OF CONFIDENCE' ARGUMENT.

12.368 The Government Parties have argued that the real reason that Mr McGrail retired was because he recognised that once the Chief Minister and the Governor claimed that they had had '*lost confidence*' in him, his position as Commissioner of Police had become untenable and his departure from office was therefore inevitable.

12.369 As I have explained already, in my judgement, Mr Picardo and Mr Pyle should have given detailed reasons to the GPA to explain their alleged loss of confidence in Mr McGrail, and they did not do so. The GPA should then have given Mr McGrail the opportunity to make representations in answer to those reasons, and they did not do so. The GPA should then have considered those representations before coming to their own independent conclusions on whether to accept or reject the contention of Mr Picardo and Mr Pyle that their loss of confidence was a good and sufficient reason to require the Commissioner to retire, and they did not do so. Neither Mr Picardo, nor Mr Pyle, nor the GPA took any of these necessary procedural steps. For these reasons, in my view, the mere assertion by the Chief Minister or the Governor, or even by both, that they had '*lost confidence*' in the Commissioner is not, of itself, a sufficient reason for the GPA to require his retirement. I have no doubt that the real reason for Mr Picardo's loss of confidence was that Mr McGrail and the RGP had obtained a search warrant against his friend Mr Levy, which he was determined in one way or another to thwart.

12.370 I accept that one of the reasons – perhaps the dominant reason – for Mr McGrail's own decision to seek early retirement was his reluctant acceptance that he could not continue in post once the Chief Minister and the Governor had lost confidence in him. But in my opinion, the Government Parties now seek, quite wrongly, to elevate this into an acceptance on Mr McGrail's part that they, and the GPA, had followed the proper procedures to require his retirement. Mr McGrail never accepted this: he always argued that they acted improperly, unfairly and therefore unlawfully and even unconstitutionally. I conclude that one of the main reasons that he retired was that he felt under pressure to do so because he knew that the Chief Minister and the Governor has lost confidence in him, but he did so only because he knew he was being unfairly compelled to do so because neither they nor the GPA had followed the proper procedures. He was, in effect, being forced out.

12.371 I think that I should repeat that I do not consider it to be within my Terms of Reference to speculate what might have occurred if the Chief Minister, the Governor and the GPA had followed the proper procedures and relied on his alleged failures in relation to the Incident at Sea and the failures to implement the HMIC Report, and I decline to do so.

(B) 'IMPROPER PRESSURE' TO ALTER THE COURSE OF A LIVE CRIMINAL INVESTIGATION

12.372 I will turn to Mr McGrail's claim that he retired because improper pressure had been put upon him to alter the course of a live criminal investigation.

12.373 I have already rejected his claim that Mr Llamas sought '*over many months*' before their meeting on 7 April 2020 to put improper pressure upon him. I need not repeat my findings or my reasons.

12.374 I have also considered in detail, the conduct of the three meetings between the RGP and Mr Llamas on the 13, 15 and 20 May. Although there were tensions at those meetings, the fact is that Mr McGrail himself agreed with the position which they eventually reached and he understood that the RGP

remained free to proceed with the investigation against Mr Levy as they thought fit. I cannot accept that this amounts to improper pressure being put upon him to alter the course of a live criminal investigation.

12.375 I have considered his complaints about Mr Picardo's conduct on 12 May in summoning him to the meeting and '*berating*' him. This behaviour was objectionable and set Mr Picardo on course to bring about his '*retirement*'.

12.376 I have considered the four '*suggested interventions*' made by Mr Picardo variously to Mr Llamas and to Mr Baglietto; I have already said that these were improper and should never have been made. These interventions included considering the dismissal of either Mr McGrail or Mr Richardson, without pension, following a finding that they had committed some grave offence, and the Attorney-General taking over and discontinuing the proceedings.

12.377 I have considered the meeting between Mr Picardo, Mr Levy and Mr Baglietto on 17 May; I consider this to have been improper, and it should never have taken place.

12.378 I accept that Mr McGrail did not know about these suggested interventions, or about this meeting at the time that he retired. Indeed, he did not find out about them until four years later at the advanced stage of the Inquiry's disclosure. However, he did realise very clearly at the time that Mr Picardo was moving against him, and he was quite right.

12.379 The Government Parties further submit that if Mr McGrail had really thought that improper pressure was being put upon him, his duty would have been to stay in post and defend the RGP's independence by resisting that pressure, and probably to do so with a spirited defence with attendant publicity.

12.380 But these points must be set against Mr McGrail's gradual but growing realisation that Mr Picardo was machinating against him, including by putting improper pressure upon him to alter the course of a live criminal investigation, and his deteriorating mental health, which I deal with below.

(C) UNFAIR TREATMENT BY THE GPA AND MR PYLE

12.381 I will now deal with the third reason.

12.382 Mr McGrail had been treated unfairly by the GPA, who as I have found had not given him proper reasons for Mr Picardo and Mr Pyle having claimed to have lost confidence in him; and they had not asked for his representations before asking for his retirement. I accept that the GPA had acknowledged the flaws in their process and had withdrawn from the field, but in my opinion, the unfairness resulting from this process continued into the 'default' process being undertaken by Mr Pyle. In my view, Mr McGrail was not given sufficient particulars of the complaints made against him, with the unfair result that he could not properly present his defence to the allegations made against him. He was not given:

- a. Details of the respects in which Mr Pyle claimed he was misled by Mr McGrail about the location of the Incident at Sea, with particulars of the times, the nature or the extent alleged failures or misstatements, or with reference to the documents relied upon.
- b. Particulars of the extent to which he was alleged personally to be at fault in relation to the Incident at Sea; alternatively, the grounds upon which he should be accountable, or take vicarious responsibility for, the identified failings of others arising from the Incident at Sea.
- c. Reasons why he should be accountable for the faults and failings identified in the HMIC Report, and why they necessitated his retirement, when previously the GPA, Mr Picardo and Mr Pyle himself had taken the view that those could be remedied by working in co-operation with Mr McGrail.
- d. Particulars of the rumours of bullying raised by the GPF, giving names, dates and sufficient particulars by which the incidents or events could be identified.

- e. Reasons why Mr Pyle held his behaviour during the Airport Incident, and the inadequacy of the Assault Investigation, against him, when he had not raised these issues during the appointment process.
- f. The true reasons (with full particulars) why Mr Picardo had required the GPA to consider their loss of confidence in him (Mr McGrail). Specifically, Mr Picardo failed to make clear to the GPA, with proper particulars, that Mr Picardo's real complaint arose from the application by the RGP for the search warrant against Mr Levy and the 'lie' which Mr McGrail was alleged to have told to Mr Picardo and Mr Llamas at the meeting of 12 May.

12.383 None of these particulars were given by either the GPA or Mr Picardo or by Mr Pyle. In my view, this rendered the whole process leading to his retirement defective and not in accordance with section 34 of the Police Act. I accept that these procedural irregularities might have been cured by giving proper particulars, and that if they had been then a Governor might have had grounds to exercise his powers under section 13(1)(f). I do not, however, make any determination of this as no particulars were given and it is not within my Terms of Reference to speculate what might have happened if particulars had been. I therefore decline to do so.

(D) THE AVOIDANCE OF HUMILIATION AND DAMAGE TO REPUTATION

12.384 I accept that Mr McGrail was quite entitled to be '*extremely worried of the damage to [his] reputation*' if Mr Pyle was to call for his resignation (McGrail 1 para 94 [A40]). To be dismissed from the office of Commissioner of Police, after 36 years loyal service, without proper notice, would cause damage to his reputation, with attendant distress and humiliation. Mr McGrail perceived that Mr Picardo and Mr Pyle (for reasons of their own, which he did not understand – still less accept) were determined to get rid of him, so he thought it better (in my words) to jump before he was pushed, whether by suspension or a call for resignation, with consequential loss of reputation and, as he believed, also

his pension. In his witness statement (McGrail 1 para 101 [A42]), he wrote:
'The other part of me was saying that my time was up as it was going to be impossible to work with these officials ever again - in my view, my position was untenable but not for the reasons they claimed. I suppose by that point the loss of confidence was a mutual issue between them and I.'

12.385 It follows from what I have said in the last section (*'Unfair treatment by the GPA and by the Interim Governor'*) that the way in which Mr Pyle was about to use his powers under section 13(1)(f) was unfair. In the circumstances, I think that Mr McGrail was acting reasonably to pre-empt this unfairness by retiring.

(E) MR MCGRAIL'S MENTAL STATE

12.386 The Inquiry did not ask Mr McGrail to give evidence of his mental state, which we thought was a confidential matter for him to consider, but Mr McGrail voluntarily gave evidence of the stress, amounting to clinical depression, which resulted from these circumstances (McGrail 1 para 92 [A39]). No one has challenged this evidence, which I accept. He told the Inquiry, in his evidence, that the pressure upon him was *'relentless'* (McGrail 1 para 101 [A42]). He said that his well-being and mental health were seriously affected; it was, he said, as if *'a pack of wolves was hounding [him]'* [T/7/54.5]. He had told Mr Llamas on 22 May (a call which Mr Richardson had recorded) that he *'[had] been attacked'* and he was being *'pinned against the wall'* [C6952]. He also said that following his retirement, his condition improved (McGrail 1 para 109 [A45]).

12.387 I conclude that his mental state was a significant contributory factor to his retirement.

(F) THE FEAR OF LOSING HIS PENSION RIGHTS

12.388 I have no doubt that it was a powerful contributory factor in his retirement that Mr McGrail believed – probably mistakenly – that by going *'voluntarily'*, he would save his pension, whereas if he was compelled to retire, he would lose

it. It would have been, as it seems to me, very unwise of him not to seek professional advice as to whether his belief was right or wrong. I make clear that neither Mr Pyle, nor Mr Picardo, nor anyone else in the public service, contributed to his conclusion on his pension, for which he can blame no one but himself.

SUMMARY

12.389 Therefore, I find that Mr McGrail retired as a result of the cumulative effect of these factors:

- a. Although he knew that Mr Pyle and Mr Picardo claimed to have lost confidence in him, and he realised that his position had therefore become untenable, he retired only because he felt he was being unfairly and unlawfully compelled to do so. This was because neither they nor the GPA had followed the proper procedures, and because Mr Picardo had not explained the real reason for his loss of confidence, which was the application by the RGP for the search warrant against Mr Levy and the '*lie*' which Mr McGrail was alleged to have told to Mr Picardo and Mr Llamas at the meeting of 12 May.
- b. The improper pressure which he felt was being put upon him by Mr Picardo to alter the course of that live criminal investigation.
- c. The procedural unfairness of Mr Pyle failing to give him proper details of the complaints against him as he contemplated the '*default*' process under section 13(1)(f) of the Police Act.
- d. The prospect of humiliation which he faced as a result of the threat of compulsory retirement following that unfair process.
- e. His deteriorating mental health.
- f. His genuine, but probably mistaken, belief that he would lose pension rights if he did not retire '*voluntarily*' before being compelled to do so.

THE OP DELHI INVESTIGATION CONTINUED

INTRODUCTION

- 12.390 I do not consider that the '*reasons or circumstances*' surrounding Mr McGrail's retirement ended abruptly with the fact of Mr McGrail's retirement on 9 June 2020. I need therefore to examine what followed in order to consider submissions which were made as to Mr Picardo's motives for moving against Mr McGrail. It was suggested on Mr McGrail's behalf that one of his motives was to stop the investigation of Mr Levy in its tracks or, alternatively, that he intended to deter and discourage other RGP officers by indicating that if they pursued the investigation, then they may risk adverse consequences to them or their careers (closing submissions, para 58).
- 12.391 The fact is that the investigation continued, without let or hindrance. DS Clarke agreed that it had been '*unabated*' until the nolle prosequi was filed in February 2022 [T/9/45.3].
- 12.392 Mr Ullger, the Commissioner of Police at the time of the Main Inquiry Hearing, was asked about this. He said in the course of his evidence that the investigation into Operation Delhi continued '*its normal course*', without inappropriate external interference and that the decision to release Mr Levy from suspicion '*was a properly made decision uninfluenced by improper pressures from outside*' [T/13/185.8-186.8].
- 12.393 There is no evidence whatsoever of Mr Richardson or Supt Wyan, or any other RGP officer, being deterred or discouraged; they are officers of resolution and determination and would not tolerate or submit to that kind of interference and would protest if such pressure was put upon them.
- 12.394 I will therefore outline the continuation of the investigation.

THE INVESTIGATION CONTINUES

12.395 On 3 May 2024, nearly a month into the Inquiry hearing, Mr Baglietto produced a contemporaneous manuscript file note of a telephone conversation which he had had with Mr Rocca on 27 May 2020, to which he had not previously referred [B6060]. He did not share this note with Mr Rocca at the time; the note is not in any sense an agreed minute of what passed between them. Mr Baglietto says that he asked what information the RGP was prepared to disclose about the application for the warrant before Mr Levy made what he called '*his voluntary statement*' (Baglietto 2 para 11 [A1546]). Relying on his note (B6060), Mr Baglietto alleges that Mr Rocca '*agrees no risk of destruction/concealment*' (presumably by Mr Levy); and that although he (Mr Rocca) '*understands there are some q[uestion]'s to be answered*', he thought that Mr Levy '*has clear answer; Not involved in details of the many deals he's asked to take part in.*' Accordingly, Mr Rocca indicated that '*he did not think [there was] enough evid[ence] on [Mr Levy] at [the] moment to go to jury*', but the prosecution '*Still had to tick box and pursue line of enquiry as otherwise risked abuse arguments eg, why didn't you pursue that line of enquiry?*' Further, that the DPP '*still thinks there are reasonable grounds to enquire – even tho[ugh] answers will negate this.*'

12.396 At the Reconvened Hearing, Mr Wagner asked Mr Richardson if – taking the note at face value – its contents would concern him. Mr Richardson replied yes, '*because he seems to be underplaying the strength of our hand with what was then the defendant's legal counsel*' [T/23/229.9]. But, of course, Mr Richardson did not know whether the note is accurate (nor was he aware of the note until it was disclosed during the Main Inquiry Hearing).

12.397 Mr Baglietto's note was not put to Mr Rocca when he gave evidence, because it had then not been disclosed. The Inquiry later asked him to comment upon it, which he did by a further statement dated 25 February 2025 [E866]. Mr Rocca had made no contemporaneous note of the conversation and is now seeking to remember something which happened nearly five years ago, but he

says that he remembers the conversation very clearly. He says that he expressed the view that the warrant was lawful and that he would be '*vigorously defending*' any challenge to it. He remembers agreeing that he would be prepared to show Mr Baglietto a redacted version of the application. Mr Rocca also remembers that he told Mr Baglietto that the RGP wanted to ask Mr Levy questions to give his version of events, but he did not think that he went into any detail about what he considered to be operational matters. Mr Rocca accepts that he thought that the case against Mr Levy was weaker than the case against the other Former Operation Delhi Defendants, and he accepts that he might have said so, but has no positive recollection that he did so. He says that he never agreed to look at a draft of Mr Levy's written statement, and he did not do so.

12.398 Mr Rocca contends that his recollection of this conversation is supported by what he said to Mr Richardson and Supt Wyan (accompanied by Crown Counsel, Ms Gomez) when they met two days later on 29 May. According to Supt Wyan's note [B3201], which Mr Rocca accepts to be accurate, Mr Rocca again confirmed that he believed the search warrant had been lawfully obtained, and he would defend that decision, if it was challenged in the courts. Mr Rocca asserts that nothing that he said to Mr Baglietto was in conflict with what he had said to the RGP.

12.399 There is, therefore, some disagreement between Mr Baglietto and Mr Rocca as to what was said between them during their conversation. I am unable to make a finding of fact as to which version is to be preferred, but I do not think that anything directly relating to the reasons and circumstances of Mr McGrail's retirement turns on this point and I do not think that it is necessary or appropriate to take this any further. Nor did I consider that it was necessary for Mr Rocca to give evidence on this point at the Reconvened Hearing.

12.400 At that same meeting (on 29 May), Mr Rocca advised that the police were, at this stage, entitled to disclose only a redacted version of the application for

the search warrant and, in particular, excluding those parts dealing with the computer misuse offences, of which Mr Levy was not suspected [B3201]. Mr Baglietto had been provided with a redacted version of the RGP's application for the warrant two days earlier (on 27 May); following this meeting on 29 May, Mr Rocca indicated that he was in the process of finalising a further version of this document which further reduced the redactions [C4509].

12.401 On 2 June 2020, Charles Bonfante (then junior counsel for Mr Levy) emailed Mr Richardson, noting his *'helpful indication that there is no evidence to suggest that Mr Levy was involved in any planning of the alleged sabotage to the NSCIS platform'* [C4686]. That same day, Mr Baglietto attended Mr Rocca's office to view further unredacted portions of the Information document [C4670-1].

12.402 On 4 June 2020, Mr Rocca messaged Mr Richardson to the effect that he was becoming *'a bit fed up'* with Hassans *'dictating terms'* to them. Mr Richardson replied that it was *'weeks down the line and we have no account and still not opened the devices handed over voluntarily. Warrants expire Sunday and I get the impression we are being strung along. Also mindful of not pressing the issue too much for obvious reasons. ...'* [E844].

12.403 Mr Richardson was asked about this observation at the Reconvened Hearing. He explained that:

'I [got] the impression that we were being strung along by Hassans because we were told that Mr Levy was unlikely to come in for interview and therefore the best way to deal with this was to invite him to give a statement... We agreed on that. The statement then became not a voluntary statement but a witness statement ... we were waiting for the statement and there were a number of dates that were agreed that passed and we weren't making any progress.' [T/23/226.6]

Asked what he meant by 'obvious reasons' for not 'pressing the issue to much', Supt Richardson stated:

'Because the way to press the issue was to say: If we're not going to get your statement we're going to interview you under caution, and if we're going to interview you under caution the only way to do that, if he wouldn't attend voluntarily, was to effect an arrest. ... we were all trying very hard with a situation that didn't result in that. There was suggestion in those meetings that we wouldn't be able to cope with the outcome of those meetings. There was talk of ten QCs flying over and that we needed to avoid this situation.' [T/23/226.6]

So it was that the RGP did not 'press the issue'. But, as it seems to me, they had been quite free to do so, if they had thought fit.

12.404 I should perhaps add for the sake of completeness that on 22 June 2021 [E849], Mr Rocca messaged Mr Richardson, stating '*Congratulations on your retirement my friend – it's been a pleasure working with you...*'. Mr Richardson replied: '*Many thanks Christian. I really enjoyed working with you too, I will always be grateful for your advice and support...*'. Sir Peter Caruana put to Mr Richardson that this did not suggest he was harbouring any feeling that Mr Rocca had interfered in the investigation. Mr Richardson responded saying '*I felt that Mr Rocca was on our side*' [T/23/217.2].

12.405 Although in an earlier section of the Report, I did raise the question whether Mr Rocca should have sought external help and advice due to the unprecedented challenges presented by Operation Delhi, I am anxious to point out that I have made no other criticism whatsoever of Mr Rocca's role in the conduct of the prosecution of Operation Delhi, or indeed in connection with anything else.

MR LEVY'S WRITTEN STATEMENT

12.406 After further various extensions, Mr Levy produced his written statement on 9 June 2020 [B5229], in which he said that he was simply assisting in the transfer of a commercial contract, a process to which Mr Gaggero and Bland appeared to agree. I will summarise his evidence. He had been informed by Mr Cornelio and Mr Perez that the intellectual property in the NSCIS platform belonged to HMGOG. He had no knowledge, and no means of knowing, that there had been any interference or sabotage of the NSCIS platform – if indeed there had been. He would never involve himself in any improper, illegal or dishonest conduct and had not done so. He therefore robustly refuted the RGP's treatment of him as a suspect and the allegations against him.

12.407 He did not, however, consent to this written statement being used as the basis for a witness statement against the Former Operation Delhi Defendants [B3449], as he was quite entitled to do.

The case against Mr Levy was withdrawn

12.408 On 28 August 2020, Mr Richardson and Supt Wyan met Mr Rocca and Crown Counsel, Mr Zammit [B3202]. They discussed the large amount of material which had been submitted to the OCPL. After a detailed review of the evidence, including what Mr Levy had said in his written statement of 9 June, Mr Rocca agreed that there was not then sufficient evidence to provide a realistic prospect of conviction against Mr Levy. In particular, Mr Levy personally owed no contractual duty to Bland and there was little evidence that he had knowledge of the computer misuse offences [B3203]. This decision was to be reviewed after the results of further enquiries were received from the United States.

12.409 On 2 September 2020, and in response to the extended summary of evidence provided by police, Mr Rocca agreed [D7379] that there was insufficient evidence to charge Mr Levy with the offence of conspiracy to defraud, but they agreed to await information from the US before coming to a final decision.

- 12.410 On 4 September, Supt Wyan, DS Clarke, Mr Rocca and Mr Zammit met to discuss the drafting of charges against the others [B3204]. They met again on 11 September 2020 [B3205].
- 12.411 The information from the US was received on 8 September [B3156] and contained nothing to incriminate Mr Levy [B3443].
- 12.412 On 25 September, Supt Wyan and DS Paul Clarke again met with Mr Rocca and Mr Zammit to discuss the disclosure exercise [B3161].
- 12.413 On 19 October, Supt Wyan reported to Mr Richardson, concluding that *'we no longer continue to have reasonable grounds to believe that Levy committed the offence of conspiracy to defraud'* and that the material which had been taken from him on 12 May should be returned [B3443]. On 27 October, Supt Wyan produced an amended version of the Report to Mr Richardson [B3429].
- 12.414 On 28 October 2020, Supt Wyan and Mr Richardson recommended to Mr Ullger (by then the new Commissioner of Police) that Mr Levy's devices should be returned, which he duly authorised [B3165]. Accordingly, on 29 October, Supt Wyan wrote to Mr Baglietto (who was still representing Mr Levy) saying that *'Following an extensive investigation we have concluded that Mr Levy is no longer considered a suspect'*. Supt Wyan added that Mr Levy's devices were to be returned, without having been examined [C5177].
- 12.415 The point is made on behalf of Mr Levy in the representations by Hassans that all the main investigators, Mr Richardson, Supt Wyan and DS Clarke, agreed that this decision was not influenced by any undue pressure from anyone. It accorded with the opinion of Mr Rocca in the light of changed circumstances, including what Mr Levy had said in the course of his written statement.
- 12.416 I know that Mr Richardson and Supt Wyan continue to believe that this should not be seen as a vindication of his innocence, and that the investigation *'may have resulted in a different outcome had the warrant been executed and Levy*

interviewed under caution' [B3447], but this is a less than generous assessment of the position, which amounted to Mr Levy being exonerated.

12.417 I think that the Government Parties are quite right to point out that '*the investigation in Op. Delhi had continued normally after Mr McGrail's retirement and without any external interference and that the RGP had itself decided not to proceed against Mr Levy, also without external interference*' (closing submissions for the Reconvened Hearing, para 4.3).

12.418 In September 2020, Mr Cornelio, Mr Perez and Mr Sanchez were charged.

REPRESENTATIONS MADE BY MR ROCCA ON 8 MARCH 2021

12.419 On 8 March 2021, Mr Rocca emailed Mr Llamas [C5871-2] to list some of the matters, which had been drawn to his attention (mostly) by counsel for Mr Perez and Mr Cornelio. In the light of the issues to which they referred, the counsel concerned had asked Mr Llamas to '*consider whether the matter should proceed*'. Mr Rocca wrote that he wanted to bring these matters to the attention of Mr Llamas '*to give a flavour of the issue[s] and matters which are coming to the fore*', which had been raised. I stress that Mr Rocca was merely passing on the request sent to him by counsel for Mr Perez and Mr Cornelio; he was not himself accepting or adopting the reasons given, still less suggesting that the case should not proceed on those grounds.

12.420 I will summarise the reasons to which Mr Rocca referred. The RGP have been waiting for a long time for a witness statement from Mr Picardo, who would likely be required to give live evidence at the trial. The defence were seeking disclosure of communications with Mr Picardo and the Former Operation Delhi Defendants may seek to suggest that the equity partners of Hassans '*sought to benefit*'. The defence would be arguing that the prosecution of Mr Cornelio and Mr Perez was an abuse of process having regard to the preferential treatment both of Mr Levy, whose mobile was not even examined, and of Mr Sanchez, whose '*interdiction*' from working in the Civil Service was

lifted. The defence were likely to seek communications from the Financial Secretary. The evidence revealed communications between senior civil servants and Mr Perez, which it was alleged might be '*improper*'. Mr Rocca, however, pointed out that '*there is nothing in the communications that [he had] seen in relation to the [Chief Minister] or [Financial Secretary] that concern[ed him]*'.

DRAFTING MR PICARDO'S STATEMENT

12.421 On the 7 April 2021, there was a meeting between Mr Picardo (accompanied by Mr Peter Canessa, his Private Secretary) and several senior police officers (Mr Richardson, Mr Yeats and Supt Wyan), to discuss the drafting of his witness statement in relation to Operation Delhi [B3184]. According to Mr Yeats, Mr Picardo expressed his discontent at the manner in which the search for devices belonging to Mr Levy had taken place; Mr Picardo said that he had been told that the DPP had advised the investigating officers to execute a search warrant rather than a production order (Yeats 1 para 9 [A633]). Mr Picardo had subsequently been told by Mr Rocca that the opposite was the case. (I have already dealt with this point, and I need not repeat it.)

THE GOVERNMENT AS 'COMPLAINANT'

12.422 I heard some evidence given as to the Government's position as '*complainant*' in the criminal proceedings. If the topic bears at all upon the circumstances relating to Mr McGrail's retirement – which I doubt – it does so only tangentially. I will therefore give only the briefest of summaries.

12.423 The RGP had presented the case on the basis that the Government were the '*complainants*'. This seems to have been derived from a statement to that effect by the Chief Secretary, but he had not consulted Mr Picardo. Mr Picardo was unwilling to authorise the Government becoming the '*complainant*' without considering the evidence [B1125-6]. The RGP were – understandably as it seems to me – unwilling to disclose the evidence on which they relied. So, an impasse was reached, and the Chief Secretary withdrew the complaint.

12.424 I did not further examine these circumstances, which do not bear directly upon Mr McGrail's retirement, nor did I hear detailed argument on the point, so I will not pass judgement on this unfortunate and regrettable state of affairs. However, I doubt whether the Government needed to be the '*complainant*'; in all criminal proceedings (with the exception of private prosecutions) in Gibraltar, as in the UK, the prosecution is brought in the name of the Crown.

MR PICARDO'S WITNESS STATEMENT

12.425 On 25 June 2021, Mr Picardo provided a very detailed witness statement to the RGP [B1109]. He maintains that providing this statement demonstrates his continued co-operation with the investigation and disproves the suggestion that he was attempting to stop it.

12.426 It is Mr Picardo's evidence that despite Mr McGrail's statement and suggestions of improper attempts by the Government to stop the investigation of Operation Delhi, the Government continued to provide information and statements to the police and the prosecution throughout. Furthermore, the RGP completed their investigation and brought serious criminal charges against the persons to whom the complaint had related (Picardo 1 para 35 [A189]). He said that when Bland brought the contractual dispute to his attention, he intervened to ensure that the contract remained with Bland. This was despite Hassans' part ownership of 36 North Limited, and therefore his own (albeit very small) interest in it as a partner of Hassans (Picardo 1 para 36 [A189]). Therefore, he again made the point that his interventions in matters connected to the investigation have been contrary to what may be thought to have been his personal interests. He claimed that the sole consideration in his mind, as all Gibraltarians and residents of Gibraltar would expect, was the security of Gibraltar and the well-being of the People of Gibraltar (Picardo 1 para 36 [A189]).

THE 'NOLLE PROSEQUI': THE DISCONTINUANCE OF THE PROSECUTION

- 12.427 In due course, Mr Cornelio, Mr Perez and Mr Sanchez made an application to the Supreme Court for the case to be dismissed on the grounds that there was no case to answer. A hearing of that application was scheduled for March 2022, but on 21 January 2022, pursuant to section 59(2)(c) of the Gibraltar Constitution Order 2006, Mr Llamas discontinued the criminal proceedings issued against them. (There were no continuing proceedings against Mr Levy, following the decision that he was no longer a suspect).
- 12.428 Mr Llamas issued a statement to the effect that, although he had been advised by the DPP that there was sufficient evidence for there to be a realistic prospect of conviction at trial, there were matters in '*the wider public interest*' that required him to discontinue the proceedings.
- 12.429 It had been argued on behalf of Mr McGrail that it was the concerns raised by Mr Rocca, on behalf of others, in his email of 8 March 2021 and a desire to protect Mr Picardo, rather than any other genuine public interest concerns, which gave rise to Mr Llamas's discontinuance of the prosecution.
- 12.430 After argument at the Fifth Preliminary Hearing, I issued a Ruling on 9 November 2023⁸ that the reasons for the discontinuance of the prosecution against the Former Operation Delhi Defendants might be relevant to – and therefore might be within – the Inquiry's Terms of Reference, if – but only if – I came to the conclusion that Mr Llamas had improperly helped Mr Picardo to engineer Mr McGrail's dismissal. I might then be able to use that finding to infer that he had an improper motive in discontinuing the prosecution. But there is a circularity here: I would be unable to come to a conclusion about the reasons for the discontinuance of the prosecution unless and until I had already come to the conclusion that he had improperly helped Mr Picardo to

⁸ <https://coircomp.gi/wp-content/uploads/2023/11/2023-11-09-The-Commissioners-ruling-on-the-discontinuance-of-the-prosecution-002.pdf>.

engineer Mr McGrail's removal. Therefore, coming to a conclusion about the reasons for discontinuing the prosecution would not help me to decide the reasons or circumstances for Mr McGrail's retirement, which occurred fully 18 months earlier.

12.431 On another point, I ruled that the Constitution permitted the Attorney-General to be asked why he discontinued the prosecution, but that he would be entitled to refuse to answer the question. Furthermore, I ruled that he cannot be compelled to disclose documents relating to the reasons which he had. I also held that I could, if appropriate, draw inferences (adverse or otherwise) from a refusal to answer.

12.432 At the hearings, Mr Rocca gave evidence on oath that the reasons for discontinuing the prosecution were not related to the issues being investigated by this Inquiry [T/10/257.21].

12.433 At the Main Inquiry Hearing, Mr Llamas confirmed on oath that the reasons adverted to by Mr Rocca in his email of 8 March 2021 had '*absolutely nothing to do – for the reasons for my nolle*' [T/12/24.5]. He said that the decision to enter the nolle was based on matters brought to his attention in an email from Mr Rocca on 7 May 2021, which attached reports from one of the DPP's Crown Counsel [T/12/24.15]. (For the avoidance of doubt, the Inquiry has not seen the email or reports and is not entitled to see them). This seems to me to be confirmed by the disclosure of WhatsApp messages [C6874-5] passing between Mr Rocca and Mr Llamas, which show that on 4 and 7 May Mr Rocca wrote that he was anxious to discuss implications arising from some of the '*unused material*' which may have had to be disclosed to the defence during the pre-trial processes.

12.434 There is another point of some relevance. When the question of the nolle prosequi was raised at the Fifth Preliminary Hearing, the Government Parties offered to give me the reasons in confidence. For a number of reasons, which I gave in my Ruling of 9 November 2023, but which I need not repeat here, I

declined this offer. I thought it would put me, and the Inquiry Team, in a difficult, if not impossible, position. But the fact that the offer was made is significant, for the Government would hardly take that risk of my taking up the offer, unless they were confident that the reasons would be accepted. Furthermore, Mr Llamas has shared those reasons confidentially with a number of third parties including: the complainant in relation to the criminal investigation (Mr Gaggero); the Leader of the Opposition (Mr Keith Azopardi); and the then leader of the political party Together Gibraltar (Ms Marlene Hassan-Nahon) (Government closing submissions, para 151.2(iii)). This point strongly confirms the submission that the nolle was issued for reasons quite separate from the matters into which I am required to inquire.

12.435 As it turned out, at the Main Inquiry Hearing, no one sought to press the point that Mr Llamas had discontinued the prosecution for some other reason, no doubt realising that pursuing the reasons would be an unprofitable distraction from the core issues in the Inquiry, as it would have been. In the circumstances, I decline to draw any adverse inference against Mr Llamas for declining to give reasons for discontinuing the prosecution on the basis requested. The reasons for discontinuing the prosecution are not relevant to Mr McGrail's retirement, nor within the Inquiry's Terms of Reference, and I decline to rule upon it. I will say no more about it.

12.436 I should, I think, make the point stressed by Sir Peter Caruana that there is no evidence that Mr Picardo was consulted – still less that he interfered – in the process of discontinuance (closing submissions, para 151.2(ii)). I accept that submission.

12.437 I have mentioned this point only to show that it has not been overlooked.

CHAPTER 13: RECOMMENDATIONS

THE POWER TO MAKE RECOMMENDATIONS

13.1 Section 24 of the Inquiries Act 2024 provides:

‘24.(1) The chairman of an inquiry must deliver a report to the Government setting out—

(a) the facts determined by the inquiry panel;

(b) the recommendations of the panel (where the terms of reference required it to make recommendations).

(2) A report under subsection (1) may also contain anything else that the panel considers to be relevant to the terms of reference (including any recommendations the panel sees fit to make despite not being required to do so by the terms of reference).’

13.2 Although the terms of reference do not specifically ‘*require*’ me to make recommendations, section 24(2) permits me to do so as I see fit insofar as they are relevant to those terms, and I propose to do so.

CONFLICTS OF INTEREST

A FRAMEWORK FOR CONFLICTS OF INTEREST

13.3 Gibraltar has only a small resident population. Those active in its business, administration, politics and in the professions (particularly the legal profession) are necessarily even fewer in number. Among this smaller section, there are many connections, ties and loyalties arising from family, friendship, business, local schooling and even religion. The evidence I have heard strongly suggests that the existence of these connections, and the influence that they may have on the consideration of public affairs, is not always understood. Still less are these connections identified, acknowledged

or addressed. Further, just as importantly, the appearance of these connections is often not considered at all.

- 13.4 I broadly accept the submission made by those representing Mr McGrail that Gibraltar needs to establish a framework that ensures transparency, accountability, and adherence to ethical principles, thereby to safeguard the integrity of public office and to restore public confidence. They commend the Canadian Conflict of Interest Act 2006. **Recommendation 1:** I recommend, therefore, that consideration is given to whether this, or some similar legislation, is suitable for implementation in Gibraltar. I suggest that it is not a sufficient objection to such a suggestion that the Ministerial Code is already in force, because the existence of the Code of itself has proved ineffective.
- 13.5 **Recommendation 2:** In my opinion, some emphatic restatement of the principles as set out in the Ministerial Code should be enacted by law. This should:
- a. define what amounts to a conflict of interest in public affairs;
 - b. require disclosure of personal, familial, and financial interests which might influence, or might appear to influence, the consideration of official public business in a publicly available register;
 - c. establish some ethics training dealing with these principles;
 - d. provide suitable 'whistleblower protection' to those who report a conflict of interest (whether through the existing provisions of Part IVA of the Employment Act or otherwise);
 - e. establish a statutory body (with defined procedures) to inquire into alleged breaches and to sanction any breach proved; and
 - f. consider some independent oversight of these principles, including periodic (perhaps annual) audits and a public report.

PROTECTION AGAINST CONFLICTS OF INTEREST AND PROPER RECORDS OF IMPORTANT MEETINGS

- 13.6 In Gibraltar there are often meetings and discussions between people who hold one or more public roles at the same time; this gives rise to the potential for conflicts of interest, or perceptions of conflict of interest, between those who hold those different public roles, or between their duties and their relationships with friends, family members or business associates. **Recommendation 3:** I therefore recommend that three simple checks could and should be made before, during and after, any such meeting or call, where any substantive decision is being – or was – taken or discussed; those attending should go through the checklist together.
- 13.7 Each person attending such a meeting, or making such a call, should:
- a. Remind themselves, and everyone else in the meeting (or attending such a call), of the capacity in which they are participating.
 - b. Declare any conflicts of interest, or potential conflicts, or any potential perception of conflict, that may arise and satisfy themselves that they should not, by virtue of such conflict, potential conflict or perception of conflict, exclude themselves from the discussion.
 - c. Establish who is making – or will make – a note; that person will promptly circulate that note to the others who attended (usually within one working day), and any person not agreeing with the note, should promptly circulate proposed amendments (again usually within one working day).
- 13.8 I have frequently drawn attention to the fact that, time and again, the key players to critical meetings considering public affairs did not take proper and accurate notes or minutes, still less did they circulate them afterwards for approval. This failure has given rise to needless arguments as to what was

decided, when that should have been clear from accurate contemporaneous notes. I note that in a recent decision of the Supreme Court, *R (HEPTA Limited) v Minister for Crown Lands* [2024] ORD 019, the Chief Justice observed that no minutes were taken of a critical meeting; he commented ‘... *It is of course regrettable that no minutes were taken, especially given the reasonable expectation that public officials would have ensured that a formal record was kept.*’ **Recommendation 4:** I recommend that in future those attending critical meetings considering public affairs, including but not confined to the conduct of criminal investigations, take proper and accurate notes or minutes, which should be confirmed by a later exchange of emails.

THE ROLE OF THE ATTORNEY-GENERAL

- 13.9 I have recognised the difficult position taken by Mr Llamas at the three meetings with the RGP as he sought to broker an agreement between the investigating officers and those at Hassans, who were representing Mr Levy. I have not found that he acted improperly in so acting. However, the role which he took demonstrated the risks of potential conflict which might arise between (1) his duty and responsibility for instituting and undertaking criminal prosecutions and (2) his duty and responsibility as legal advisor to the Chief Minister and to the Government, and at the same as legal advisor to the Governor, where these interests might diverge, or at least may not precisely correspond.
- 13.10 **Recommendation 5:** I recommend that consideration is given to more precisely defining the Attorney-General’s role in such situations and identifying those circumstances where he might consider instructing external counsel to advise one of these parties (as is suggested in ‘*British Overseas Territories Law*’, Hendry and Dickson Hart Publishing 2018, at page 135).

CALLING FOR THE 'RETIREMENT' OR 'RESIGNATION' OF THE COMMISSIONER OF POLICE

- 13.11 The independence of the RGP, and its Commissioner, is of the highest Constitutional importance. Whilst the public interest requires the Commissioner of Police to be a person of integrity and probity, with appropriate levels of professionalism, competence, efficiency and effectiveness, it is equally plain that the Commissioner should not be removed from office without proper cause or justification. The office is not held subject to the continued approval or pleasure of the Chief Minister, or the Governor for that matter.
- 13.12 The Police (Discipline) Regulations 1991 provide a procedural code for dealing with allegations of misconduct against RGP officers, but the Regulations do not apply to the Commissioner (or to the Assistant Commissioner). No doubt there are sound reasons of public policy why this should be so, because the continued service of such officers does not solely depend upon their being found guilty of some disciplinary offence. However, the result is that the Commissioner does not have the same, or analogous, protections as are afforded to other members of the RGP. For example, under the Regulations, the subject of disciplinary proceedings must be provided with written allegations of the conduct alleged against them, disclosure of relevant material and procedural rules for the conduct of hearings and appeals. The absence of such procedural safeguards may result in unfairness to the Commissioner, and could permit – or even facilitate – the removal of a Commissioner of whom the Chief Minister or the Governor does not approve, for insufficient – or even improper – motives.
- 13.13 Furthermore, section 34 of the Police Act does not make any provision for the process or procedures to be followed either by the Chief Minister or the Governor when initiating the process under the section. Nor does section 34 set out the process or procedure which the GPA should follow when considering the exercise of its powers, let alone set out the criteria it should

apply (except for the high-level concepts of '*efficiency, effectiveness, probity, integrity [and] independence*'). Most particularly, section 34 does not expressly – and probably not implicitly either – cover the situation where – as happened here – the Chief Minister and/or the Governor claim to have '*lost confidence*' in the Commissioner. **Recommendation 5:** I recommend that, after appropriate public consultation and debate, Parliament should consider amending and updating this section to address these omissions I have highlighted.

13.14 If the GPA is proposing to act under section 34 in consultation with the Chief Minister and/or Governor, then I recommend that consideration be given to legislation and/or regulations ensuring that:

- a. such a power should only be exercised for some good, sufficient and proper reason;
- b. subject to the overriding interests of public safety or security, the Commissioner should be given written notice of the reasons relied upon;
- c. the Commissioner should be allowed sufficient time to make representations in answer to the allegations against him/her, having access to legal advice and assistance as necessary;
- d. the GPA should consider whether the allegations can be dealt with by a warning letter and to proceed to a hearing only if the allegations are so serious that there is no alternative.
- e. if there is a hearing, the Commissioner should be permitted to address the GPA personally. The GPA should have the opportunity to question the Commissioner, orally if s/he attends in person, or otherwise in writing.

- f. the GPA should then consider the representations of the Commissioner, before deciding what action to take.

13.15 The RGP has submitted (closing submissions, para 48.5) that the reasonable legal costs of the Commissioner (and presumably of the Assistant Commissioner if he/she is to be included in amended legislation) should be borne by the RGP. **Recommendation 6:** I have not invited submissions on budgetary issues, which are not within my Terms of Reference, but if the statutory regime under section 34 is to be re-considered, this is a suggestion which might usefully be looked at.

13.16 I make, in passing, another observation. The Police (Discipline) Regulations 1991 do not apply to the Commissioner or to the Assistant Commissioner (see paragraph 2). But section 34 of the Police Act applies only to the Commissioner and not to the Assistant Commissioner. There may, therefore, be an unintended gap in the legislation by failing to provide for the position of the Assistant Commissioner. **Recommendation 7:** If these provisions are to be considered, this anomaly could easily be corrected.

13.17 As with section 34, I believe it to be uncontroversial that the Governor's power to suspend or call for the resignation of the Commissioner of Police under section 13(1)(f) of the Police Act must be subject to the usual requirements of procedural fairness and natural justice. **Recommendation 8:** While I do not propose to prescribe a specific procedure to be enacted under that subsection, I similarly recommend that consideration be given, after appropriate public consultation and debate, to amending legislation or regulations that would provide for a mechanism whereby a Governor considering exercising either of the powers under section 13(1)(f) must first of all:

- a. communicate the basis for doing so to the Commissioner in writing and with sufficient particulars;

- b. permit the Commissioner a reasonable time period within which to make representations (written and/or oral) in response; and
- c. give due consideration to those representations before arriving at a final decision.

THE GIBRALTAR POLICE AUTHORITY

- 13.18 The independence of the GPA from the Government, from the Governor, from the RGP (including its Commissioner) and from other powerful influences, is an important cornerstone of the Constitution of Gibraltar. It is the duty of the Chair of the GPA to promote and to maintain that independence.
- 13.19 **Recommendation 9:** I recommend that, to fulfil these duties and responsibilities, the Chair must be sufficiently robust; they must have senior managerial and administrative experience and should be – and should demonstrably and apparently be – independent of the Government, of the Governor, of the RGP (and its Commissioner) and of other powerful influences.
- 13.20 Mr Gonçalves, a previous Chair, thought that the role required about 30 hours a week to do the work necessary [T/14/112.22]. Dr Britto thought that it had become almost a full-time job [T/15/5.16]. I consider it doubtful whether in the future persons with the necessary skills would be prepared to take on the heavy responsibility of the role, with public accountability, without appropriate remuneration. **Recommendation 10:** I, therefore, recommend that payment for this role is considered (perhaps comparable to the remuneration paid to the Chairs of similar regulatory authorities in Gibraltar).
- 13.21 Perhaps some people would be prepared to devote say, a day a month, of gratuitous public service for the good of Gibraltar to serve as members of the GPA, but I recommend that consideration also be given to making some modest payment to them (as is made to the members of similar regulatory authorities in Gibraltar).

13.22 I do not think it necessary, or even desirable, for me to recommend any particular criteria for membership of the GPA, since I consider it a strength of the GPA that members are widely drawn from across the community, to bring to bear the benefit of their different skills, experience and outlook.

Recommendation 11: However, vacancies should be advertised, candidates should be interviewed, and the process should be transparent.

13.23 I do not accept the suggestions made by the RGP that the Commissioner of Police should be consulted on the appointment of the Chair of the GPA, still less that they should attend the meetings of the GPA (even as a non-voting member). Whilst it is plainly desirable that the GPA and the Commissioner work together co-operatively, I consider that the formal implementation of these suggestions is likely to conflict with the constitutional independence of the GPA. Nor do I accept these other suggestions by the RGP in their closing submissions:

- a. That at least one member of the GPA should have experience of senior policing (at para 46.1). Whilst this may be desirable, I do not think that it should be a procedural requirement.
- b. That no one who is currently an employee, consultant or who has any other role in the public service should sit on the GPA (at para 46.2). This prohibition would be far too wide, and would exclude many suitable persons who could properly combine membership of the GPA with some other public appointment (subject to any conflict of interest).

13.24 Each member of the GPA, including the Chair, has the same duty to act independently under section 48(1) of the Constitution. Pursuant to the GPA Policy on Standards and Conflict of Interest, every member is obliged to make a declaration of interest. **Recommendation 12:** I recommend that this is done at least annually but also should be confirmed at the commencement of each meeting, with regard to the items on the agenda. I recommend that members are specifically advised that ‘interest’ here does not just mean a financial

interest but covers also any personal, business or family interest which might influence – or might give the appearance of influencing – their objectivity when decision-making.

- 13.25 **Recommendation 13:** I recommend that some more adequate resourcing be considered to provide a proper level of administrative assistance to the GPA, perhaps at the level of Higher Executive Officer (or equivalent), or even at the level of Chief Executive Officer. Such a post might be part time.
- 13.26 **Recommendation 14:** I also recommend that consideration should be given to some form of induction training, for members and staff, particularly on the constitutional importance of independence. I doubt whether picking up the necessary knowledge by serving on the GPA together with experienced members is sufficient – or even desirable. I also recommend that consideration be given to some form of periodic refresher training.
- 13.27 Although it is a common – and entirely desirable – practice for lawyers to act as unpaid or honorary legal advisers to charitable benevolent or philanthropic institutions, I think that caution is required before providing such advice to public bodies with statutory duties and responsibilities. **Recommendation 15:** I therefore recommend that the GPA, given its constitutional role, does not seek or receive gratuitous legal advice from a member of the GPA who happens to be a lawyer. I recommend that instead the GPA should be able to seek independent legal advice as and when it is needed. Although the Government has never refused to grant the funds for legal advice when the GPA has sought it, the GPA should be entitled to receive public money for necessary legal advice without having specifically to apply to the Government. In particular, I recommend that the GPA should never again consider the application of section 34 of the Police Act without independent legal advice.
- 13.28 The evidence I have heard has identified some procedural weaknesses in the GPA's practices. I make the following recommendations. **Recommendation**

16: The GPA needs to establish, or update, procedural rules, to provide, among other things:

- a. That a written agenda of the business to be considered at each meeting should be circulated to the members in advance of their meeting, together with any relevant documents to be relied upon.
- b. That no meeting, including any emergency meetings, should be called without proper notice.
- c. That no meeting should take place unless a quorum is present.
- d. That there be clear definition of the circumstances in which a member might attend remotely.
- e. That declarations of interest are properly requested, declared and recorded, at the start of each meeting.
- f. That meetings of the GPA, and its sub-committees, including informal meetings, should be properly minuted, with the minutes circulated shortly after each such meeting (perhaps within seven days), for later approval (or amendment).
- g. That the minutes of meetings should be properly and securely indexed and archived.

13.29 I do not make any recommendations relating to matters of finance or budgeting of the RGP or the GPA. These matters are obviously important but I do not consider they arise directly from my terms of reference; nor have I heard evidence or submissions on the point from all the Core Participants.

13.30 It was submitted on behalf of Mr McGrail that there should be a mechanism for independent oversight of the GPA periodically to review their performance and decisions; it was even suggested that this should be by ‘a *United Kingdom entity*’ (closing submissions on Recommendations, para 29.4). But, in my

opinion, there has to be some finality in administrative procedures, there cannot always be yet another layer of supervision and regulation. The Chair and members of the GPA have a constitutional duty to act independently. If they fail to do so, their proceedings are subject to judicial review; I consider that this ensures effective compliance with their duties. I emphatically reject the suggestion that oversight by an authority in the UK is either necessary or desirable; the authorities and the court system of Gibraltar can be relied upon to do their duty under the Constitution.

THE APPOINTMENT OF THE ‘STEERING COMMITTEE ON THE REFORM OF POLICE GOVERNANCE’

13.31 Very recently, the Governor and the Chief Minister have announced the appointment of a ‘Steering Committee on the reform of Police Governance’. The findings in my Report have identified a number of faults and flaws in the existing procedures. I hope and intend that the Recommendations which I have made in the preceding sections will give the Committee some guidance as to a possible way forward.

INVESTIGATIONS BY THE RGP

13.32 I consider that the existing demarcation between what are considered to be operational decisions for the RGP and legal decisions for the OCPL is over rigid and out-dated; indeed, the present relationship between the RGP and OCPL does not always promote reliable decision-making.

13.33 **Recommendation 17:** Whilst it is plainly of the greatest importance to preserve the operational independence of the RGP, I recommend that, in high profile, sensitive or serious cases, or cases which give rise to complex issues of fact or law, the RGP would be better placed to take informed decisions upon operational matters if they had the benefit of formal legal advice. Furthermore, they would be better placed to withstand legal challenges if they had such advice.

- 13.34 **Recommendation 18:** I recommend that any application for a search warrant in high profile, sensitive or serious cases, or cases which give rise to complex issues of fact or law, should be considered in detail by the OCPL, who should advise in writing. The advice should provide (among other things):
- a. A factual summary, with review of the evidence and an assessment of its strengths and weaknesses.
 - b. An analysis of the legal elements of the offences proposed.
 - c. An application of the legal elements of those offences to the facts of the case, with an assessment of the prospects of proving them with the evidence available, against each defendant, on each proposed charge.
 - d. An 'Advice on evidence' identifying further evidence which should be obtained or further investigative work that should be undertaken.
 - e. A schedule of proposed charges, with a statement of the offence and drafted particulars.
- 13.35 There are many templates, with helpful Guidance Notes, for various applications for search warrants and orders issued by the Criminal Procedure Rule Committee in the UK. **Recommendation 19:** I recommend that they might (with suitable amendment) be considered for adoption in Gibraltar. (It may be that the Secretary of the Rules Committee would be able and willing to assist.)
- 13.36 **Recommendation 20:** I recommend that applicants for search warrants (and similar orders) should always have in mind that templates are just that. The application should not simply quote verbatim the template, nor the statutory test, but should adapt the same to address in detail the particular circumstances of the particular case.
- 13.37 **Recommendation 21:** If Crown Counsel at the OCPL are unable to provide such advice, then I further recommend that, in an appropriate case,

experienced independent counsel should be instructed to advise, as commonly happens in the UK.

- 13.38 The approval of a draft application for a search warrant by a senior officer is not a mere formality; it is intended to be a safeguard against inadequate or defective applications. **Recommendation 22:** An application is more likely to withstand challenge if it can be shown that approval was given by a senior officer with detailed knowledge of the circumstances of the case. Failing that, another senior officer, without that knowledge, can better demonstrate that they properly understood and considered the case by asking for clarifications or amplifications or by questioning apparent errors or omissions; merely to countersign the application, without question or comment, might give rise to the appearance that this has been a formulaic ‘tick box’ exercise.
- 13.39 **Recommendation 23:** I recommend that, if the investigation of an offence requires the commissioning of an expert report, then the RGP should be able to instruct such an expert, at public expense.
- 13.40 I commend what may already be the existing practice that, if actions by the RGP are challenged in legal proceedings, by judicial review or otherwise, and if the OCPL are unwilling or unable to defend such action, then the RGP should be entitled to instruct lawyers to do so, at public expense.

THE HEARING OF THE APPLICATION FOR A SEARCH WARRANT

- 13.41 **Recommendation 24:** As to the hearing of the application, I recommend that in high profile or serious cases, or cases which give rise to complex issues of fact or law:
- a. The OCPL (or other appointed Counsel) should usually represent the RGP (or other prosecuting agency) at the hearing of the application.
 - b. The case should be listed allowing sufficient time for the Judge or Magistrate to read the application in advance and for a sufficient allowance of court time for the issues to be properly considered.

- c. It is unnecessary and wasteful of time and resources for the application to be read aloud verbatim if the application has already been read in advance.
- d. The proceedings should be recorded. This change might already have been implemented, but the practice should be formally established.

13.42 **Recommendation 25:** I also recommend that:

- a. The Judge (or Magistrate) engages with the applicant to ensure that the relevant statutory criteria have been properly considered.
- b. The Judge (or Magistrate) should give a brief judgment, which can be given orally at the time, or given later by a short, reserved judgment, demonstrating how the statutory criteria have been – or have not been – met.

THE RGP'S IT DEPARTMENT

13.43 The avoidance, detection and investigation of crime, including corruption, and the effective administration of the RGP, relies increasingly on having access to a highly skilled IT service, staffed by expert analysts. This is particularly so in Gibraltar where the economy is so reliant on high-tech industries, including e-gaming and crypto-currency, dealing with such large sums of money. At the same time, the RGP is grappling with the demands of investigating online pornography and child abuse, and the relevance of digital messages in very many other criminal investigations. The IT department of the RGP is presently staffed by just two analysts, who are employed by the Government's Information Technology and Logistics Department (ITLD) [T/22/156.16]. Mr Ullger suggested that four or five police officers would be required to do the work that is expected of that department [T/22/157.6].

Recommendation 26: It is not part of my remit to suggest what improvements should be made, particularly since this would have implications to the RGP's budget, but, to my mind, this position needs urgent reconsideration, at a high

Government level, perhaps considering the practice in comparable jurisdictions.

- 13.44 **Recommendation 27:** The RGP's request that their IT services should now be separated from the ITLD is also one matter that requires serious consideration.

THE RGP'S POLICIES TOWARDS MOBILE DEVICES

- 13.45 I note in the Annex to the Report dealing with the RGP's disclosure that, although the Mobile Device Policy (at paragraph 4.2 and 5.1) prohibited personal communication on work devices, there is no corresponding prohibition of communicating work-related messages on personal devices. This problem has now been recognised by the RGP, which it has sought to address in a draft policy for the '*Use of Personal Mobile Devices on Duty*'. I commend its attempt to bring this policy in line with similar policies brought in by similar forces.
- 13.46 The Inquiry process also exposed the flaw in paragraph 3.3 of the Policy. Senior officers accepted in their evidence to the Reconvened Hearing that, when officers surrender their mobile device, there should not be a blanket policy that data upon it should simply be deleted or wiped. They also recognised that a blanket policy of saving everything might give rise to other data protection issues, and that a new policy should be devised and implemented to ensure that any relevant and significant data stored on their device should be recognised, extracted and securely retained, and have already made progress in devising drafts.
- 13.47 This is now addressed in policies implemented by various police forces in the UK, of which the RGP, at my suggestion, have very helpfully provided several examples. I am confident that the RGP, perhaps in consultation with other comparable police forces, will now seek to identify best practice and to draft and implement a new policy to achieve this objective. I am reluctant – indeed,

I am not qualified – to give such guidance myself; I shall leave it to others to do so.

OTHER SUGGESTIONS MADE BY THE RGP

- 13.48 I make clear that I have not formally considered a number of other suggestions for recommendations made by the RGP, particularly in paragraphs 47 and 52 of their closing submissions, because in my judgment they are not relevant to my terms of reference. By not doing so, I do not intend to pass any comment whatsoever upon the merits of those suggestions, which can – and perhaps should – all be considered in any subsequent public debate.

THE REQUEST BY MR MCGRIL FOR REDRESS

- 13.49 It has been submitted on behalf of Mr McGrail that, in the circumstances as I have found them to be, I should recommend some form of redress, in the form of an apology and compensation. I have found that the process leading to Mr McGrail's retirement was procedurally defective and not in accordance with section 34 of the Police Act. It is not within my Terms of Reference to say whether that might have provided him with some legal redress. Furthermore, I have also accepted that these procedural irregularities might have been cured by giving proper particulars, and that if they had been given, then a Governor might have had grounds to exercise his powers under section 13(1)(f) to require his retirement. It is not within my Terms of Reference to speculate what might have happened if proper particulars had been given, and I have declined to do so. For these reasons, I specifically decline to recommend any form of redress, whether by way of apology or compensation.

THE 2024 INQUIRIES ACT

- 13.50 The Inquiries Act 2024 section 33 provides for the issue of rules dealing with matters of evidence and procedure, but no doubt because of the hurry in which the Act was passed, no such rules have been made, nor have any been made since. **Recommendation 28:** The Inquiry had devised its own Protocols

under the old Act but in order to avoid the need for any future Inquiry to re-invent the process, I recommend that consideration is given to the drafting and implementation of appropriate rules, for which this Inquiry's Protocols and the UK Inquiry Rules might provide suitable starting points.

ANNEX 1: RGP DISCLOSURE

INTRODUCTION

A1.1 This Inquiry was not appointed to report upon the disclosure made by the RGP and its officers, and former officers, or into data management at the RGP, or into the policies of mobile device usage by the RGP. The Inquiry was set up to find the facts and circumstances in which Mr McGrail retired. In order to do so, it was necessary to require those who held, or had held, relevant information to make a full and timely disclosure of that material to the Inquiry. In this section of the Report, I consider the problems which have arisen in the course of these disclosures. However, none of these problems were known to Mr Picardo, or to Mr Pyle, or to the GPA at the time that Mr McGrail retired; therefore, none were relied upon as a reason for requiring him to retire. These problems are only relevant insofar as they affect my ability to find the facts about the circumstances of Mr McGrail's retirement.

A1.2 With that preliminary observation, I shall explain how these issues arose. I shall not deal with every disclosure issue that has been raised but only with those which I consider to be sufficiently relevant to the matter in hand.

A1.3 As long ago as 4 April 2022, the (then) STI formally requested Mr McGrail to disclose:

'any documents (including but not limited to electronic documents such as emails, word documents, PDFs and SMS, WhatsApp or other instant messages) in your possession or control relevant to the subject matter of the Inquiry'.

A1.4 On 14 July that same year, STI made the same request to Mr Ullger, Mr Yeats, Supt Wyan and Mr Richardson (who had by then retired). Their obligation to make disclosure arose on those dates. It is important to note that the request to Mr Ullger was not made just to him in his personal capacity but also expressly to him *'in your capacity as Commissioner of Police'*. Furthermore, he was requested to:

‘produce the following documentation, which we believe to be in your possession or control, or alternatively if any of the below documentation is not in your possession or control, we ask that you indicate, to the best of your knowledge, from whom we may be able to obtain it’.

- A1.5 It will be noted that – very sensibly, as it seems to me – the request did not seek to define relevance, nor did it limit the dates within which material might be relevant; anything that was *‘relevant to the subject matter of the Inquiry’* should be disclosed. Furthermore, although it should not have been necessary to point this out, this original request for disclosure specifically referred to WhatsApp messages.
- A1.6 The RGP claimed, in their opening submissions to the Main Inquiry Hearing (at para 22), that they had made *‘comprehensive disclosure’* to the Inquiry Team. They continue to make this claim. The Main Inquiry Hearing of the Inquiry started in April 2024, it heard three days of opening submissions and 16 days of evidence, and finished on 9 May.
- A1.7 On 24 June 2024, only the day before closing submissions were due to commence, Peter Caruana & Co (on behalf of the Government Parties) wrote to the Inquiry [E305], pointing out that they had not been provided with disclosure of any WhatsApp messages between current and former senior RGP officers (other than some messages relating to the Airfield Incident [C757]). STI forwarded this email to the RGP on 27 June 2024 and requested the disclosure. STI confirmed that the RGP should provide disclosure of messages between 12 May – 9 June 2020 on matters relevant to the List of Issues. I point out this was not a new request, it was merely the repetition of requests originally made two years before, as I have already set out.
- A1.8 Further written submissions and closing oral submissions were made over two days on 25 and 26 June 2024. By then, Mr McGrail and Mr Richardson (both retired) had made some disclosures from their personal devices, but no serving

officer of the RGP had disclosed any WhatsApp messages whatsoever (even though it is now clear that many relevant messages still existed and were accessible, and many others, which might have been relevant, had been deleted). Further, Mr McGrail had not disclosed any WhatsApp messages with any other senior RGP officers at all.

- A1.9 As I elaborate upon below, in September 2024, the RGP disclosed a large number of previously undisclosed WhatsApp messages between current and former officers. In these circumstances, in November 2024, the Government Parties submitted that there had been (1) ‘failures’ by the RGP and by its officers or former officers, including Mr McGrail, to disclose relevant material at the proper time and (2) a failure to disclose other messages at all, or even to disclose that they had existed. They contended that this had deprived them of the opportunity to question Mr McGrail, and others, upon the material disclosed and upon the alleged failures to disclose other material. They also alleged that these alleged ‘failures’ might impact upon Mr McGrail’s credibility, which might adversely affect the view that I took of the evidence he gave at the Main Inquiry Hearing. Furthermore, they contrasted these ‘failures’ with the trenchant and sustained attacks made on behalf of Mr McGrail upon Mr Picardo and Mr Levy for their alleged failures to disclose the WhatsApp messages passing between them. This – they suggested – showed Mr McGrail, and other RGP officers and former officers, to be applying ‘double standards’.
- A1.10 It was to allow these points to be developed that I directed the Inquiry to be reconvened for a further short hearing (**‘the Reconvened Hearing’**) for the reasons set out in my Ruling dated 10 February 2025. I do not propose to repeat the detail of that Ruling here. The Reconvened Hearing took place on 9 – 11 April 2025. By that time, the RGP had made far more extensive disclosure of WhatsApp messages, as I will describe.
- A1.11 The further disclosure made after the hearings last year had included a good deal of material, which I consider to be significant, and to bear upon the List of Issues

and the circumstances relevant to Mr McGrail's retirement. Although the further disclosure is significant, none of it has affected any of my core findings or conclusions. I have already incorporated this material into the main body of the Report and it is unnecessary for me to go over that ground again. However – by way of short summary – I consider that there was some significant and relevant material relating to the Incident at Sea, to Mr McGrail's reaction to the HMIC Report, to his attitude to the three meetings which the RGP had with Mr Llamas, to his friendship with Mr Ullger, to his dealings with the GPF and – rather more significantly – to his developing state of mind towards his retirement.

- A1.12 Having now heard further evidence by the RGP and its officers (Mr Ullger, Mr Yeats) and former officers (Mr McGrail and Mr Richardson) on the late disclosure of some messages and the loss of others, and having heard submissions upon that evidence, I now set out my findings and explain how this state of affairs came about.

THE USE OF WHATSAPP IN THE RGP

- A1.13 Mr McGrail retired five years ago, and since then, the vulnerabilities of recording and retaining sensitive information on WhatsApp have become more widely understood. The RGP did not then have guidance on the use of WhatsApp, which now many forces in the UK provide.
- A1.14 The Inquiry has received conflicting submissions on the extent to which WhatsApp was used in the RGP in Mr McGrail's time. The actual evidence is rather sparse. Mr Yeats told the Reconvened Hearing that since most of the senior officers usually worked in office hours, and their offices were close by in the same building, most of their communications were made in person, face to face [T/22/28.4, 113.13]. Mr Ullger said much the same: that they discussed their concerns in meetings held in the Commissioner's Office and not on WhatsApp [T/22/253.23]; he said that WhatsApp messages featured little in their day-to-day business. Mr McGrail and Mr Richardson both gave evidence that the primary

means of communication was ‘*face to face*’ ([T/23/2.2], Richardson 5 para 3 [E1087]).

- A1.15 Mr Cruz, on the RGP’s behalf, has argued that the RGP does not – and did not then – conduct its business by WhatsApp (closing submissions following Reconvened Hearing, para 23). Mr Richardson also gave evidence that he would have made a note of any WhatsApp messages which were ‘*important*’ to Operation Delhi in his day book, but that during the Operation Delhi disclosure exercise he did not revisit his WhatsApps individually [T/23/188.8].
- A1.16 Sir Peter Caruana has argued that the RGP, and its officers, are now attempting to minimise the part that WhatsApps then played in carrying out their duties; he points to the examples of relevant exchanges on WhatsApps which have now been disclosed (closing submissions following Reconvened Hearing, para 42.1 to 42.5).
- A1.17 The Inquiry has received thousands, if not tens of thousands of WhatsApp messages, but they are usually – but not invariably – of an administrative nature, making arrangements or giving opinions and views.
- A1.18 When investigating criminal offences, particularly serious criminal offences, one of the standard investigative techniques is to seize the suspects’ devices and recover the messages they have been exchanging with each other, including on WhatsApp. This can often include compelling evidence of their criminal enterprise and how it was advanced. Once seized by the police, these messages, if relevant, will be served as evidence to support the prosecution (or disclosed on the basis that they might undermine the prosecution).
- A1.19 In the investigation of such cases, the WhatsApp messages between the investigating officers are never – or hardly ever – relevant, because the investigating officers do not use WhatsApp messages to exchange relevant and significant information about the case. Furthermore, the state of mind of the investigating officers is usually quite irrelevant to the disclosure process in

criminal cases. I cannot myself ever remember a case in which it was necessary for the prosecution to disclose the WhatsApp messages between the investigating officers. I accept there may have been such a case somewhere, but it would be very unusual. Indeed, Mr Ullger agreed that in theory WhatsApp messages between police officers might be disclosable [T/22/174.16].

- A1.20 The RGP initial disclosure exercise in the Inquiry therefore – understandably in my opinion – proceeded on the basis that it was highly unlikely that any relevant work-related material would be transmitted by the officers’ WhatsApps or, if it was, that it would be replicated somewhere else on the RGP systems. This, I think, is likely to have been the position with the investigation of Operation Delhi, where all the important policy developments were noted by Mr Richardson or by Supt Wyan in their very extensive day books, or in internal emails and reports.
- A1.21 It has been argued by some, most forcefully by Mr Gibbs, on behalf of Mr Richardson, that it is a ‘*false analogy*’ to compare the relevance of WhatsApp messages exchanged by the suspects of serious crime with the relevance of WhatsApp messages exchanged between the officers investigating Operation Delhi [T/24/71.2]. That may be right insofar as it concerns the criminal investigation of Operation Delhi, but I do not altogether accept that this proposition applies to the disclosure process in this Inquiry. I think that part of the problem of the initial non-disclosure in the Inquiry by the RGP and its officers arose from the failure – I think their understandable failure – to appreciate that, unlike in the usual criminal investigation, the state of mind of Mr McGrail himself as he approached retirement is one of the critical questions for me to decide. It was – or at least had the potential to be – relevant to some other issues, including his attitude towards the alleged interference with the prosecution of Operation Delhi, towards the HMIC Report, and towards his relationship with the GPF.
- A1.22 I accept entirely that the RGP faced a huge task in gathering together a mass of material, extending at least to hundreds of thousands of documents; Mr Yeats suggested that at one stage there were one and a half million documents to be

considered [T/22/118.5]. Although he was never formally appointed to do so, Mr Yeats (then Assistant Commissioner of the RGP) supervised the process [T/22/19.20]. He gave evidence about that process to the Inquiry. The RGP assembled a disclosure team consisting of four officers, overseen by senior officers, with the advice and guidance from lawyers at Cruz & Co. I accept that managing the Inquiry's requirements cast a considerable burden on them. But, for the reasons I have just given, I do not think that their processes were directed towards – let alone focused upon – the WhatsApps, because they assumed – wrongly as it turned out – that there was unlikely to be any relevant data sent or stored by WhatsApp.

THE RGP POLICY ON THE USE OF MOBILE DEVICES

A1.23 I turn now to address the RGP use of mobile devices more generally. Mr Yeats has described in his latest statements (Yeats 5 [E275] and 6 [E875]), and in his later evidence at the Reconvened Hearing, the developments in the policy which the RGP adopted towards the use of mobile devices by RGP officers, which I shall summarise. These policies have a direct bearing on what happened in the disclosure process.

THE USE OF PERSONAL DEVICES FOR WORK RELATED PURPOSES

A1.24 In July 2019, there was a data breach in which a RGP constable used his personal mobile device to capture a video of an incident, which he had taken on duty, and sent the footage to the response team's WhatsApp group. The video was then – quite inappropriately – widely shared (Yeats 6 para 7 [E877]). The RGP realised that they needed to prevent a recurrence and Mr Ullger issued a Force Order dated 18 July 2019 [E920-1], which provided:

'As a result of a change in force policy and, in order to safe guard the Organisation and officers alike on Data Protection breaches, the use of mobile phones or other personal electronic devices for work purposes will cease forthwith. This includes using said devices for taking photographs, video recordings or

dissemination of personal data via WhatsApp or other media platforms (this is not an exhaustive list). The use of the latter media platforms will be restricted to administrative purposes only, such as requesting officers to come into work, offering over time, informing of change of hours etc’.

- A1.25 In August 2019, the RGP also obtained and issued mobile devices to a select number of officers (Yeats 6 para 9 [E877]), including all of the senior officers who gave evidence to the Inquiry. These were Samsung A10 devices running the Android system and linked to a Google email address. However, the RGP did not have enough new devices to issue to everyone. Furthermore, some officers (including Mr McGrail) found the new devices difficult to use and preferred to use their old (personal) devices, with which they were familiar. The result was that the prohibition as set out in the Force Order was not followed by some of the senior officers, including Mr McGrail, Mr Ullger and Mr Richardson, and was not enforced against them.
- A1.26 The RGP also devised a ‘Mobile Device Policy’ [E319], which was based on a similar policy implemented by one of the police forces in the UK (although which one cannot now be ascertained). The policy came into effect on 30 October 2019, and was endorsed by Mr McGrail. I consider the policy in more detail below.
- A1.27 Mr McGrail set out the rationale for that policy (at McGrail 10 paragraph 6 [E1085]), as being to prevent the use of personal devices to capture any data of evidential value which might somehow end up being leaked or shared inadvertently. I comment that this was plainly a very sensible objective.
- A1.28 I noted in my Ruling ordering the Reconvened Hearing that although the Mobile Device Policy (at paragraph 4.2 and 5.1 [E322-3]) prohibits personal communication on work devices, there is no corresponding prohibition of communicating work-related messages on personal devices. This problem has now – albeit somewhat belatedly – been recognised by the RGP, which it has

sought to address in a draft policy for the ‘*Use of Personal Mobile Devices on Duty*’ (Yeats 6 para 20(d) [E879]).

THE DELETION OF DATA FROM RGP DEVICES SURRENDERED BY OFFICERS

A1.29 I turn to another problem with the Policy. It provided, at paragraph 3.3, 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’. [E321-2]

Thereafter, upon retirement or re-posting, all data, both personal and work related, on their mobile device was ‘wiped’. This was necessary because to retain it on the device would be a serious breach of data confidentiality to both the original user and the RGP.

A1.30 Furthermore, it was obviously economical to redistribute – ‘*repurpose*’ is the word used by Mr Yeats – mobile devices in this way to other officers, provided that the new user could not access personal or confidential data recorded and stored by the original user. However, the implementation of this practice had unfortunate and unforeseen consequences, as I shall make clear.

A1.31 Although, at paragraph 11.1 [E324], the Policy spelt out that the contents of a work mobile device may need to be disclosed in connection with an offence or with other legal proceedings, unfortunately, it made no provision for the data on that device to be backed up or retained in some other way, before it was wiped and then ‘*repurposed*’. Emails sent or received by the original user of the device would still be accessible on the RGP’s server, but WhatsApps or text messages sent by or to that device, and stored upon it, once wiped, would be permanently deleted from that device and would not be recoverable. The result was that even if data on that device was – or might become – relevant to the investigation or prosecution of an offence, or for any other legal proceedings, or for the purposes

of an Inquiry, it could not be accessed after the device was wiped. The RGP did not recognise this potential flaw in the Policy until it became apparent during the Inquiry process.

The transition to iPhones in November 2020

- A1.32 I will deal with Mr McGrail's devices later but, in November 2020, following a discussion between them, Mr Ullger, Mr Yeats and Mr Richardson surrendered their Samsung devices, which the RGP replaced with Apple devices, running the Apple iOS system, linked to an Apple iCloud email account created for the purpose. Mr Yeats said that this change was made because the Apple device had a more user-friendly '*interface*' [T/22/33.23]; I consider this to have been an entirely proper and sensible reason for the substitution. Pursuant to the Policy, their old Samsung devices were wiped, removing all existing data, which was not saved elsewhere; the devices were then re-issued to other officers.
- A1.33 The evidence of Mr Yeats, confirmed by the evidence of DC Garcia, the expert analyst at the RGP's Digital Forensic Unit ('**DFU**'), is that none of the data from these old Samsung work devices can now be retrieved. Furthermore, even if the Samsung devices had been backed up to the Cloud, that data would only be accessible through a Google account and the new Apple devices are accessed through an Apple account, and the RGP cannot now access the old Google account by way of their new Apple account (Yeats 6 paras 11-13 and 26 [E877-80]). All of the relevant old Google accounts are either inaccessible or contain no relevant back-up (Garcia 1 para 20 [E1071]). Therefore, since November 2020 when they surrendered their old Samsung devices, neither Mr Ullger, Mr Yeats, nor Mr Richardson have had access to the WhatsApp messages which had been stored on those devices.
- A1.34 I observe that it would have been helpful if the RGP had explained this sequence of events to the Inquiry. Indeed, it would have been helpful if they had reminded the officers from whom the Inquiry had requested disclosure, that relevant data might have been wiped from their mobile devices after they had surrendered

them. Had they done so, they might have avoided some of the problems that have now eventuated, all of which could have been dealt with at the Main Inquiry Hearing, as they should have been.

A1.35 As I said in the introduction to this section, the former STI sent letters requesting evidence and disclosure from the senior and retired RGP officers in July 2022. However, for reasons which I have explained, pursuant to the RGP policy, by that time none of the senior officers or former senior officers of the RGP (including Mr McGrail, Mr Richardson, Mr Ullger and Supt Wyan) could then access data, including WhatsApp messages, on their work devices. This data had, by then, been wiped. Mr Yeats and Mr Ullger realised right at the start of the disclosure exercise, back in 2022, that they no longer had access to these messages (see, respectively [T/22/35.8 and T/22/146.4]).

A1.36 I consider it to be unfortunate, even regrettable, that the RGP wiped the devices which the officers had handed in without making sure that they understood that the data stored upon it was to be wiped and would not be accessible in the future, and that any relevant data which might need to be disclosed the prosecution of Operation Delhi (and indeed other RGP investigations) was not preserved. I do not think that back then they could have foreseen that it might be relevant to the Inquiry, which had then been announced but not formally set up. It is particularly regrettable that no steps were taken in November 2020 to preserve the data on Mr Richardson's device, given that the Former Operation Delhi Defendants had been charged just two months beforehand.

A1.37 Furthermore, having said that, I do not accept that the data deleted necessarily included anything relevant to Operation Delhi or even to the Inquiry: it might have done; it might not have done; it would be speculative to find as a fact that there was, or even that there probably was.

A1.38 I accept that, when they surrendered their devices, each individual officer could have given some direction to ensure that the data on their device would be preserved. However, even those officers who realised that the data would be

deleted and would henceforth be inaccessible appear not to have realised that it might be relevant to the disclosure process in the criminal proceedings (still less to the Inquiry). Although Mr McGrail acknowledged that at some point they must have realised that their previous WhatsApp messages had been lost in the change from Samsung to iPhone, he stated that he could not recall being '*overly concerned about it*' [T/23/191.13]. Mr Yeats agreed that they must have realised, but attached no significance to it [T/22/101.10]. It appears that no one commented or complained, probably because they thought that nothing relevant or important was missing.

A1.39 The Inquiry process has exposed the flaw in paragraph 3.3 of the Policy. Mr Ullger and Mr Yeats accepted in their evidence to the Reconvened Hearing that, when officers surrender their mobile device, there should not be a blanket policy that data upon it should simply be deleted, or wiped. They recognised that a new policy should be devised and implemented to ensure that any relevant and significant data stored on their device should be recognised, extracted and securely retained, and have already made progress in devising drafts. This is now addressed in policies implemented by various police forces in the UK forces, of which the RGP, at my suggestion, have very helpfully provided several examples. I am confident that the RGP, perhaps in consultation with other comparable police forces, will now seek to identify best practice and to draft and implement a new policy to achieve this objective. I am reluctant – indeed I am not qualified – to give such guidance myself; I shall leave it to others to do so.

A1.40 For the sake of completeness, I note that the Government Parties have raised the '*possibility of obtaining these wiped conversations directly from WhatsApp*' (closing submissions following Reconvened Hearing, para 22.4). I do not think it proportionate to pursue this theoretical possibility, which I suggest may be more difficult, more expensive, less fruitful and to take a great deal longer than is suggested. Furthermore, if the Inquiry Team was to embark upon this process of approaching the server to try to access the lost messages of Mr McGrail and the

other RGP witnesses, I would probably have to do so with other witnesses (including Mr Levy). I do not think this is justified.

THE SMT GROUP CHAT WHATSAPP

- A1.41 I move on to a related topic. The Inquiry Team asked the RGP for an explanation why they had not disclosed any messages exchanged on the RGP Senior Management Team (**'SMT'**) Group Chat WhatsApp. This has now been explained by Mr Yeats in his latest witness statement (Yeats 6 paragraphs 21-29 [A879-80]), which I shall summarise.
- A1.42 The SMT Group Chat was created some ten years ago. It was originally linked to senior officers, on their own personal devices, and Mr McGrail disclosed some earlier examples of messages sent on the SMT chat from his personal device [C757]. From 1 January to 30 June 2020, the members of the SMT Group Chat were the Commissioner (then Mr McGrail), the Assistant Commissioner (then Mr Ullger) and the three Superintendents (Mr Richardson, Mr Tunbridge and Mr Yeats). As I have already explained, in the summer of 2019, following the data breach, the senior officers were issued with RGP work devices, and the SMT Group Chat was moved from their personal devices to their new RGP Samsung work devices.
- A1.43 As I have explained in the last section, in November 2020, the RGP replaced the Samsung work devices, used by Mr Ullger, Mr Yeats and Mr Richardson with Apple iPhones. Following this change, pursuant to the RGP Policy then in effect, the data on these devices, including the SMT Group Chat was wiped and was not backed up and the devices were then 'repurposed', and issued to other officers. The devices of Mr McGrail and Supt Tunbridge were wiped when they retired. The result is that none of the data from these old work devices can now be recovered. Therefore, the RGP cannot provide the SMT Group Chat for the period 1 January to 30 June 2020.

A1.44 As I concluded in the last section, I do not accept that the data within these WhatsApps necessarily included anything relevant to Operation Delhi or even to the Inquiry – it might have done, it might not have done. It would be speculative to find as a fact that there was relevant data, or even that there probably was.

A1.45 After the Reconvened Hearing, the RGP forwarded to the Inquiry a copy of the *‘Independent Review into the use of WhatsApp and other instant messaging applications within the police service’* by the Independent Office for Police Conduct in the UK. I have no doubt that the RGP will consider implementing its recommendations, insofar as they are relevant and practicable in Gibraltar.

DISCLOSURE BY MR MCGRAIL

HIS MOBILE DEVICES

A1.46 Mr McGrail has set out in his evidence (most recently in McGrail 9 paras 2 to 11 [E257]) the various mobile devices which he has used. I will summarise the position.

A1.47 In 2006, when Mr McGrail was promoted to the rank of Chief Inspector, the RGP provided him with the mobile device with the number *4000; the RGP paid the bill for this number, but he owned it privately. He used this number for both work and personal purposes. In my opinion, he cannot be criticised for doing so at that time, because he was only following what was then an accepted practice in the RGP.

A1.48 In 2019, following the data breach by an RGP officer (to which I have already referred), the RGP decided to separate the use of mobile devices for official and personal purposes. Pursuant to the new policy, the RGP issued a new work device to Mr McGrail with the number *9010. He then transferred his personal *4000 number to his personal account and assumed responsibility for the billing. Mr McGrail had said (in McGrail 9 para 5 [E257]) that he then began to *‘wind down’* his use of the *4000 number for official purposes but 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 he said that his use of the Samsung device *9010 *'was limited'* (McGrail 9 para 7 [E258]). He said at the Reconvened Hearing that he was *'not a technical person'*; he struggled with the controls of the new device which he found to be *'sluggish'* and *'clunky'* [T/23/25.20]. Therefore, he continued to use his personal device as his primary means of contact even upon work related business with colleagues and others [T/23/23.7], even though this was against his own Force Order.

- A1.49 Mr McGrail added that, although he did have difficulties using his new Samsung work device, he tried to develop his proficiency and therefore did use it to send some emails and text messages to colleagues (McGrail 9 para 7 [E258] and McGrail 10 para 5 [E1085]). So, he said he was using both devices to send work related messages.
- A1.50 There are indeed instances of him using both devices for work related messages, which confirms what he said. Thus, on 23 January 2020, Mr McGrail messaged Mr Ullger: *'Call me. But use the work one.'* [E377]. However, on 8 March 2020, Mr Ullger messaged Mr McGrail to say that he had given someone his (Mr McGrail's) work number, but Mr McGrail replied that it was better to call him on his personal number [E503]. On 25 March 2020, Mr McGrail messaged Mr Ullger telling him, in Spanish, to look at his other mobile phone [E550].
- A1.51 He was asked to explain why he was continuing to use his personal device for work related messages, which was in breach of the Force Order. At para 7 of McGrail 10 [E1085], he now accepts that continuing to communicate with colleagues and senior Government officials on his personal device did *'not represent best practice'* (McGrail 10 para 7 [E1085]); indeed, it did not, and it was in breach of his own Force Order. However, for reasons which I have explained, many others were doing the same thing. Although Mr McGrail did continue to use his private device to send some sensitive work-related material, I would describe this as an administrative irregularity, but I do not think that this was improper, let alone that it carries some sinister implication.

MR MCGRAIL'S WORK DEVICE *9010

- A1.52 I turn to consider Mr McGrail's Samsung *9010 work device. When Mr McGrail retired in June 2020, he surrendered this work device to the RGP. Although there is no documentary record of this being done, Mr Yeats believed that pursuant to the RGP policy then in effect, the data then stored upon it would have been wiped; it was not backed up; that data is not now recoverable. The device would then have been '*re-purposed*' and issued to another officer (Yeats 6 paragraph 17 [E878]). I have no doubt that this is what happened.
- A1.53 Mr McGrail was a member of the SMT Group Chat. As with the other senior officers, in the summer of 2019, that Chat moved from his personal phone to the newly assigned Samsung work device. He had no particular recollection of using the SMT Group Chat. When he retired and surrendered his phone, the SMT Group Chat was deleted with the rest of the data.
- A1.54 Apart from the text from Mr Richardson to Mr McGrail on 12 May notifying him of the RGP's attendance at Hassans with the intention of executing the search warrant (which both Mr Richardson and McGrail attest was sent, and both believe must have been sent, between their work phones), I cannot say whether there had been relevant messages on this *9010 device. Maybe there were, maybe there were not. I cannot even say that it is more probable than not that there were.
- A1.55 Mr McGrail gave evidence that it '*did not feature in [his] mind at all*' that after he surrendered his work device, the data – including the SMT Group Chat – would be wiped. Therefore, he did not seek to preserve the data, nor to back it up. He explained – convincingly as it seems to me – that it never crossed his mind to do so, since he then had many other things on his mind following the circumstances in which – as he saw it – he had been forced to retire [T/23/35.14]. Afterwards, he still did not ask the RGP whether they had kept the messages on that phone, nor

ask them to do so, even though he knew: (i) that the circumstances of his departure were controversial; (ii) that his lawyers had called for an Inquiry, and that it was announced by Mr Picardo on 31 July 2020; and (iii) that, theoretically at least, in any prosecution arising out of Operation Delhi, the RGP would be under a duty to disclose any relevant material. Nor in his earlier witness statements did he even mention that he had used this work phone (and neither for that matter did Mr Richardson or any of the other RGP officers). Mr McGrail's reason for these omissions, which he repeated many times, is that it did not occur to him that the data would be wiped, and even if he did know or ought to have known, he had no reason to think that there was anything relevant on that device; indeed, he said in terms that there was nothing relevant to Operation Delhi or the Inquiry on his work device (again, with the exception of the message that Mr Richardson sent him on 12 May 2020) [T/23/37.16]. I accept his explanation.

A1.56 For the sake of completeness, I should point out that there is no record on Mr Richardson's personal *9135 device (which was preserved) of any messages exchanged with Mr McGrail on his work device *9010. Although the latter has been wiped, and the data cannot be retrieved, I conclude that there were no calls between Mr McGrail and Mr Richardson on these two devices.

MR MCGRAIL'S FAILURE TO DISCLOSE RELEVANT MESSAGES ON HIS PERSONAL DEVICE *4000

A1.57 I turn to consider Mr McGrail's personal device. I have already observed that, as long ago as 4 April 2022, the then STI formally requested Mr McGrail to disclose:

'any documents (including but not limited to electronic documents such as emails, word documents, PDFs and SMS, WhatsApp or other instant messages) in your possession or control relevant to the subject matter of the Inquiry'.

A1.58 Mr McGrail retained his personal *4000 device after his retirement and continued to use it. He filed his first witness statement on 20 June 2022 [A1], to which he

exhibited WhatsApp messages from his personal device which he exchanged with Mr Grech (the Chief Secretary) in May and June 2020 [B64-65]; with Mr Pyle in June 2020 [B66-67]; with Mr Picardo in May 2020 [B70]); with Ms Sacramento (the Minister of Justice) in May 2020 [B71]; with Mr Llamas in May 2020 [B72]; with Ms Sacramento, Mr Pyle, Mr Picardo, Mr Llamas and Dr Britto regarding the Incident at Sea [B84-98]; and in a 'Maritime Incident Group Chat' regarding the Incident at Sea with Mr Picardo, Dr Britto, Mr Carreras (of the GPA) and Mr Grech [B99-101]. Furthermore, although he stated in that witness statement that at about 12.20 on 12 May 2020 he received a text from Mr Richardson, who told him that he was about to execute the warrants (McGrail 1 para 29 [A9]), he did not disclose any messages between himself and Mr Richardson or other RGP officers.

- A1.59 Mr McGrail filed his third witness statement [A51] on 4 October 2022 to which he exhibited further WhatsApps from his personal device with Dr Britto [B415], Ms Sacramento [B470], Mr Costa [B515], Lt-Gen Davis (the former Governor) [B536], Mr Picardo [B618], Mr Pyle [B676], Mr Llamas [B681], Mr Culligan (Mr Pyle's Deputy) [B710], Mr Grech [B712] and Mr Rocca [B747].
- A1.60 During the time of his service, there were many exchanges between Mr McGrail using his *4000 device and Mr Richardson using his personal *9135 device, and with Mr Ullger on his personal *5000 device. Yet, Mr McGrail did not disclose these to the Inquiry; he maintains that he did not then realise that these exchanges might include material relevant to the Inquiry.
- A1.61 The Government Parties point out that Mr McGrail provided seven witness statements to the Inquiry before the Main Inquiry Hearing, in which he provided highly detailed information about relevant events, conversations and other people's alleged acts and omissions, but he never mentioned that he had exchanged these WhatsApp messages with Mr Ullger or with other senior RGP officers (closing submissions following the Reconvened Hearing, para 24.3). Furthermore, it was not until 2 December 2024, fully seven months after the end

of the Main Inquiry Hearing, that he explained that he had failed to recognise their relevance by reason of '*inadvertent omission*' (para 24.4). They suggest that this is not credible.

- A1.62 I should make clear that the obligation upon Mr McGrail to disclose this material was a personal obligation imposed upon him, including – but not limited to – messages on his private device. He was no longer a serving officer of the RGP, which then had no control – and probably no rights – over his private device. So, his failure to disclose these messages was a personal failure of his; it was not a failure on the part of the RGP. This is a distinction which may be of some importance to the RGP.

THE SEIZURE OF MR MCGRAIL'S PERSONAL DEVICE *4000 BY THE RGP

- A1.63 On 23 March 2023, Mr McGrail was arrested in connection with data breach allegations. Consequent to that arrest, the team led by SIO McVea seized Mr McGrail's personal *4000 device and took a forensic image of all the data on that device. From that time the RGP were in physical possession of Mr McGrail's personal device, but they did not then know what data was stored upon it; it is doubtful if, at least at the time of seizure, the RGP had any reason to think that material relevant to the Inquiry was, or even might be, stored upon it.
- A1.64 Although this is perhaps a matter of law, I do not think that the RGP could have been under a duty to consider disclosing this data to the Inquiry unless and until they realised, or ought reasonably to have realised, that the image contained, or might contain, data relevant to the Inquiry.
- A1.65 The phone was sent for imaging and analysis by the Police Service of Northern Ireland on 9 May 2023 (Yeats 5 para 6 [E276]). The image was taken not by the RGP's analyst but by the experts of the Police Service of Northern Ireland. It will be remembered that SIO McVea had previously been a Superintendent with that force, and he must have thought – wisely I suggest – that it was a prudent

precaution that the examination should be conducted by a team wholly independent of the RGP.

- A1.66 Whilst I accept that Mr McGrail himself had lost access to the data on his phone when it was seized by SIO McVea, he remained under a duty to disclose what he had lost. He could – indeed he should – have said to the Inquiry and to the RGP, that there was relevant data on his device, which ought to be disclosed. Of course, he did not do so, but for the same reason that he had not disclosed it beforehand: he did not realise that the data might include material relevant to the Inquiry.

MR MCGRAIL'S *4000 DEVICE RETURNED TO HIM

- A1.67 After SIO McVea concluded his investigation in September 2023, the RGP returned his personal *4000 device to Mr McGrail. He claimed (McGrail 9 paragraph 11 [E258]) that he has been unable to access any data from the device after its return to him because his WhatsApp account had by then been deactivated and could not be re-activated. He confirmed this in his oral evidence [T/23/17.18].
- A1.68 The Government Parties are critical of this claim by Mr McGrail that he could not access the material on the grounds that it is not confirmed by expert evidence. Mr McGrail said that he did not turn to Mr McVea or to the RGP for help to access the material, since they had just arrested him and – as he put it – '[he] *couldn't keep them further away from [him]*' [T/23/20.13]. Mr Ullger also pointed out that the IT department of the RGP is under very heavy pressure and they would not have had the capacity to re-image a device which had already been examined by the Northern Irish police, who had been engaged by SIO McVea [T/22/156.8]. It seems to me that Mr McGrail's claim that he could not access his WhatsApp account because it had been deactivated may well be correct. Moreover, I think that there was no need for him to interrogate his device, because he knew that SIO McVea had already taken an image of all the data upon it, which in due course the RGP disclosed to the Inquiry. Therefore, there was nothing on his

*4000 device which the Inquiry did not later obtain from another source. Mr McGrail said that after his arrest, his focus was very much on defending himself against the criminal allegations made against him; he was – as he put it – in ‘*survival mode*’ [T/23/17.4].

A1.69 As I have already observed, he should have disclosed these messages to the Inquiry before his device was seized upon his arrest. His obligation to disclose these messages continued. His failure to disclose the data, or at least the fact that he could no longer access it, after the device was returned to him was not a new or different failure. It was a continuation of the same failure as before; so, in my opinion, it adds little or nothing to the original failure.

MR MCGRAIL’S ‘PEN DRIVE’

A1.70 For the sake of completeness, I mention – but as no more than a mere footnote – that Mr McGrail gave evidence that in 2022 he accidentally found a pen drive in an old glasses case while he was tidying his desk at home (McGrail 4 paras 3-4 [A140]). The pen drive contained a number of messages from the RGP’s SMT WhatsApp group which were relevant to the Airport Incident [C757-847] (as well as a folder containing 42 emails also relating to the Airport Incident).

A1.71 I accept that he did find these messages, but I do not think, as was suggested, that this should somehow have prompted him to reassess the relevance of other WhatsApps on his personal phone. I consider the point to be unimportant, and I will not mention it again.

THE REASONS FOR MR MCGRAIL’S FAILURE TO DISCLOSE THESE WHATSAPPS

A1.72 I return now to consider the adequacy of the reasons for Mr McGrail’s failure to disclose these messages.

A1.73 In his written evidence to the Inquiry (McGrail 9 paras 12-13 [E259-60]), Mr McGrail explained why he did not disclose these messages before his arrest when he still had the device in his possession. He said that:

'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. 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 chatlogs 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.'

- A1.74 He was asked about this at the Reconvened Hearing. He said that, at the time of the original request for disclosure, he did not look at his WhatsApp exchanges with Mr Richardson and Mr Ullger; it just did not cross his mind that there would be anything relevant in them to the Inquiry [T/23/5.7; T/23/8.4]. He did not seek to retrieve the messages for the same reason. I infer that he might have had in the back of his mind that in ordinary criminal prosecutions WhatsApp messages between investigating officers are rarely disclosed, or indeed disclosable, for reasons that I have already explained. He said – convincingly to my mind – that he was now glad that the messages had been recovered [T/23/11.15].
- A1.75 Mr Santos asked him at the Reconvened Hearing whether he understood the disclosure request from the Inquiry made on 4 April 2022 to include any relevant WhatsApp messages, which he confirmed that he did [T/23/2.25]. He also accepted that he then had access to these messages [T/23/3.1], but confirmed that he did not check his messages with Mr Richardson at that time [T/23/8.10]. Mr Santos then asked him if he had gone through his WhatsApp messages in response to this request. He replied:

'Not in response to the disclosure. What I accessed, my phones and other data forwards as I was developing my evidence in terms of structuring my responses and so forth. So, it wasn't specifically in relation to disclosure. And so the data that I was relating to in my evidence was the one that I disclosed.'

[T/23/3.8]

A1.76 This reply, taken alone and out of context, might suggest that he was only looking for the data upon which he intended to rely in support of his case and was, therefore, deliberately overlooking data which he realised was not only relevant to the Inquiry but which was damaging to his case. Indeed, in his final submissions, on behalf of the Former Operation Delhi Defendants, Mr Cooper made just this point. However, in my experience, many witnesses, even senior police officers, do not always explain their actions with the greatest clarity. I do not think that Mr McGrail meant his answer to bear the interpretation now being put upon it. I think he now realises that at the time that he was making his witness statements he was sharply focused on what he intended to rely upon. As he put it: *'at the time of writing that statement the focus was not on the message from Mr Richardson to me but rather my communications with the officials in question, namely the Chief Minister, the Minister for Justice and the Attorney General...'* [T/23/5.7]. In my opinion, he was not then focused on the relevance to the Inquiry of his messages with other RGP officers, but he did not do so deliberately intending to suppress evidence which he knew would damage his case; he just did not realise that the other material might be relevant to the Inquiry.

A1.77 Mr Wagner argues that any failure by Mr McGrail was indeed inadvertent and that he did not deliberately withhold disclosure of any relevant messages to mislead the Inquiry. He relies upon a letter which his lawyers sent to the Inquiry on 6 July 2022, proposing that it obtain evidence from Mr Ullger and Mr Richardson, and drawing attention to the need for disclosure of text messages in their original form. Mr Wagner argues that it would be *'absurd'* – his word – to suggest Mr

McGrail would try to hide messages from the Inquiry, whilst at the same seeking to persuade the Inquiry to obtain disclosure from Mr Ullger and Mr Richardson, which would have entailed disclosure of the same messages (closing submissions following the Reconvened Hearing, para 6.4). This seems to me to be a good point.

A1.78 Then it is said on Mr McGrail's behalf that, since he did not rely on any of the exchanges with Mr Ullger in the four affidavits which he filed before his arrest, and in which he did refer to his exchanges with the others listed in the preceding paragraphs, it must follow that he did not consider them to be relevant to the Inquiry. On the other hand, it might equally be argued that to refer to the messages exchanged with others (as I have already set out), and not to refer to the messages exchanged with other RGP officers, is consistent with an intention to suppress them. The Government Parties make this very point: they argue that he has made disclosure of his messages with many others, so it is obvious that he made a deliberate decision not to disclose his messages with Mr Richardson and Mr Ullger and, in effect, that can only be driven by an intention to suppress the evidence. So, I do not find this point submitted by Mr Wagner to be at all persuasive; indeed, I consider that it cuts both ways.

A1.79 Another point made on Mr McGrail's behalf is that he made extensive disclosure to the Inquiry, including hundreds if not thousands of WhatsApp messages between him and relevant individuals; he and his legal team have answered every request for information promptly and fully. It is suggested that his conduct evinces every indication of a willingness to comply with the disclosure process, which is inconsistent with a deliberate decision wrongfully to withhold disclosure of these exchanges (opening submissions for the Reconvened Hearing, para 14). Mr McGrail himself said to the Reconvened Hearing that he had '*put his heart and soul to this Inquiry*' [T/23/12.21]. I think there is some force in this point.

- A1.80 It was further argued on his behalf that, at the time, he had other matters on his mind, namely defending himself against the allegation of other crimes made following his arrest (opening submissions for the Reconvened Hearing, para 23). I am sure he did, but he was not arrested until March 2023 and his obligation to disclose the data on his devices arose nearly a year before in April 2022. I consider that there is, therefore, some force in this point, but it is plainly not determinative.
- A1.81 Mr McGrail had also sought to rely upon a mistake made by the Inquiry Team, in that the messages disclosed by Mr Richardson between his *9135 device and Mr McGrail's *4000 device were disclosed to the Inquiry by the RGP nine months before the Main Inquiry Hearing but the Inquiry did not provide them to the Core Participants until after Mr McGrail's and Mr Richardson's evidence, with the result that they did not have the opportunity to question them on the messages at that hearing (opening submissions for the Reconvened Hearing, para 24). I do not understand how this is relevant to the issue which I am presently considering, and I reject this point.
- A1.82 I was impressed by the speed at which Mr McGrail consented to the examination of the data by the RGP; surely, if he was anxious to hide the exchanges, he would have delayed or dissembled. Moreover, if he had wanted to suppress these messages, he could have deleted them. Furthermore, although some of the exchanges with Mr Ullger about his retirement might be seen as damaging to Mr McGrail's case, in my opinion, contrary to the submission of the Government Parties, I think that other exchanges strongly bear out his account as he struggled to deal with the dilemma which he faced.
- A1.83 Sir Peter Caruana, on behalf of the Government Parties, pointed out to Mr McGrail in the course of his examination that there are WhatsApp exchanges which he had with Mr Ullger which bear upon the Incident at Sea, the HMIC Report, his dealings with the GPF, the meetings with Mr Llamas on 13, 15 and 20 May and the sequence of events leading to the Gomez letter of 29 May and which

relate directly to his retirement [T/23/162.25]. Many of these exchanges are, to my mind, plainly relevant to the Inquiry, sufficiently so for me to have incorporated many of them into the Report. It was put to him that it must have been obvious to him as an experienced investigator, and formerly the senior detective in Gibraltar, that these exchanges were relevant and ought to be disclosed [T/23/134.20].

A1.84 Mr Cooper, on behalf of the Former Operation Delhi Defendants, argues that Mr McGrail's claim that he naively failed to realise the relevance of this data does not ring true. He says that the overwhelming inference is that his failure was not innocent or inadvertent [T/24/49.4].

A1.85 Mr McGrail's answer to this challenge is that he can now understand their relevance, and he very much regrets that he did not disclose them at the time, but he just did not then appreciate their relevance. He said he had been '*kicking himself with disappointment and even a level of embarrassment*' [T/23/13.1]. He also said from time to time that he was not relying on them, so he did not think of disclosing them [T/23/6.5, 8.4], but he would not accept that he was reluctant to disclose material which might damage his case [T/23/16.13]. He conceded that some of the material provided more detail, but '*it did not alter the landscape*' [T/23/15.8].

A1.86 The same point was put to him in a variety of different ways. He maintained that he did not realise that, given Mr Richardson was the SIO in the prosecution arising from Operation Delhi, which had been '*the catalyst*' for his retirement, as Mr Santos put it, there might be relevant WhatsApps on his device [T/23/9.5]. He said that he did not believe that there might be something in the WhatsApp messages which might need to be disclosed in the prosecution process [T/23/193.6]. He did not realise that his messages with Mr Ullger, who was his best friend and second in command during this crucial period, might shed light on his developing state of mind towards his retirement [T/23/6.5; 14.8; 15.15].

OVERALL CONCLUSION IN RESPECT OF MR MCGRAIL

A1.87 Having reviewed all the relevant circumstances, and the submissions upon them, I return to the critical question: did Mr McGrail fail to disclose these messages because of an *'inadvertent omission'* or because he was deliberately suppressing relevant material, which he knew might damage his case, in order to mislead the Inquiry?

A1.88 He gave evidence at the Reconvened Hearing for nearly a whole day. He was repeatedly challenged upon his assertion that he did not appreciate the relevance of these messages. My strong impression was that he repeatedly, stoutly, but convincingly, defended his position. For the many reasons which I have canvassed at length, I conclude that the most likely explanation for Mr McGrail's failure to disclose the exchanges on his personal device with Mr Richardson and with Mr Ullger was, as he claims, because he had then overlooked their relevance; it was an *'inadvertent omission'* which he now genuinely and bitterly regrets. I would describe his approach to this exercise as being *'blinkered'*; maybe he only saw what he wanted to see, but I do not think that he deliberately closed his eyes to the possible relevance of other material. He did not recognise that some of this other material might be seen by others as being potentially damaging to his case. Accordingly, I find as a fact that he did not deliberately suppress this evidence. He did not intend to mislead the Inquiry. In the circumstances, I decline to draw any adverse inference against him for his failure to disclose this material. Furthermore, in my judgment, none of these issues adversely affect his credibility on other matters.

DISCLOSURE BY MR ULLGER

A1.89 Having considered the adequacy of Mr McGrail's reasons for his failure to disclose these messages, I turn next to consider Mr Ullger's position, because the same messages passing between him and Mr McGrail were also present on his (Mr Ullger's) personal *5000 device. For the same reasons that these

messages should have been disclosed by Mr McGrail, they should have been disclosed by Mr Ullger.

- A1.90 His main reason for not doing so was different; he said that he was unable to access any old messages on his device (this was initially reported in Mr Yeats's evidence at Yeats 5 para 5 [E276]). Mr Ullger attributed this to: '*... reasons that he does not understand but suspects that is as a result of purchasing a new device in June 2020*'. He later explained in his own evidence that he had lost messages, not just to Mr McGrail, but also to family and friends (Ullger 5 paras 20-1 [E873]). Mr Ullger confirmed this in his oral evidence [T/22/146.15]. Although Mr Ullger realised as long ago as November 2022 that he had lost these messages [T/22/146.11] and did not tell the Inquiry of the loss at the time, I have no reason to doubt this explanation, which I accept. I observe that this explanation is very similar to the explanation given by Mr Levy for his loss of data from his old device.
- A1.91 He did not disclose these messages to the Inquiry because he could not then access the messages on his phone, so had nothing to disclose (Ullger 5 para 18 [E872]). In my opinion, this was an honest mistake. I am sure that Mr Ullger was not deliberately suppressing the evidence. I might add that, even if he had been able to access the messages, he still would not have disclosed them, since – even now – (apart from the exchanges with Ms Sacramento) he does not consider the messages passing between him and Mr McGrail to be relevant. I think this would have been another honest mistake.
- A1.92 As I have already said, SIO McVea had accessed and taken an image of these exchanges between Mr McGrail's *4000 device and Mr Ullger's *5000 device, which the RGP later disclosed to the Inquiry. There is, therefore by reason of this fortunate recovery, a record of all the exchanges between Mr McGrail's personal *4000 device with Mr Ullger's *5000 device and – as it turned out – no relevant material was lost by reason of Mr Ullger's inadvertent loss of data.

DISCLOSURE BY THE RGP

DISCLOSURE OF DATA ON MR MCGRAIL'S AND MR ULLGER'S PRIVATE DEVICES

A1.93 I turn to consider whether the RGP had a duty to disclose these messages, which were then saved on Mr McGrail's private device and were – or at least had been – saved on Mr Ullger's private device.

A1.94 At a meeting with the RGP on 22 October 2022, the former STI ventured as guidance that:

'documents will be relevant if they touch upon Mr McGrail's personal conduct in relation to the discharge of his duties as RGP Commissioner, either directly or from a supervisory perspective, and more so in relation to the ... Provisional List of Issues'.

A1.95 However, as was made very clear in the letter which he sent just a fortnight later (on 4 November [E282]), this formula was *'not intended to be applied as a firm criterion or yardstick to determine relevance, but is tendered by way of informal guidance by way of assistance only'*. The letter went on to give a much broader interpretation to relevance. I am therefore not impressed by the attempts on behalf of the RGP to rely upon the definition informally given on 22 October 2022. In my opinion, the WhatsApps on Mr McGrail's personal device, of which the RGP then had an image, were plainly relevant to the Inquiry, but the RGP could not disclose something of which they were not aware. I turn, therefore, to consider if, and when, the RGP should have made the disclosure of that data.

A1.96 I add, for the sake of completeness, that neither do I accept that the RGP's late entry as a Core Participant provides any explanation for their failures of disclosure. Even if they did not have a copy of the Provisional List of Issues in July 2022, their obligation to give disclosure was a continuing one and the Provisional List of Issues was published shortly after the Second Preliminary Hearing in

October 2022. Furthermore, the request made to the RGP to provide disclosure correctly defined their duties.

The late disclosures by the RGP

A1.97 On 23 February 2024, six weeks or so before the Main Inquiry Hearing was due to start, the Inquiry sent out a further request to all Core Participants, asking if any WhatsApp messages had been deleted or lost (either automatically or manually), and requiring them to make all reasonable efforts to retrieve such messages. This request, therefore, made clear that the obligation to disclose extended also to material which the RGP officers, or former officers (including Mr McGrail) once had in their possession but had lost.

A1.98 Mr McGrail, however, still did not disclose any WhatsApps between him and Mr Richardson or between him and Mr Ullger, and nor did Mr Ullger, despite both remaining under a duty to disclose the messages which had been exchanged on their private devices.

A1.99 On 24 June 2024, six weeks or so after the Main Inquiry Hearing had ended and only the day before the closing oral submissions, the Government Parties – having realised that neither the RGP, nor any of its officers or former officers, had disclosed any WhatsApps passing between them – asked the Inquiry to pursue the matter with the RGP [E305]. I do not criticise them for not making this specific request beforehand, since the Inquiry itself had already twice made such a request, and a specific reminder should not have been necessary.

A1.100 Having received this request, by email dated 27 June [E304] the Inquiry again requested the disclosure of these WhatsApp messages by the RGP, and by its officers and former officers, by which time the oral closing submissions had just finished. The request gave the date range of 12 May to 9 June 2020.

A1.101 Mr Ullger gave evidence (Ullger 5 paragraph 21 [E873]) that it was only after he received this request that he eventually realised that he could access the messages which the Inquiry were seeking from the copy of Mr McGrail's phone

taken by Mr McVea, although he personally did not – and still does not – accept that they were materially relevant. In his oral evidence to the Reconvened Hearing, Mr Ullger stated *‘it was like a moment where it just occurred to me that we had undertaken an investigation and that there was evidence that could support the request, and I reached out to Mr McVea to see whether that existed or not’* [T/22/150.22]. I do not doubt that this was the first time that he realised he could access the WhatsApps, but he should have realised this long beforehand.

A1.102 However, having come to this belated recognition of the accessibility of these messages, he acted quickly. The very next day, on 28 June 2024, Mr Ullger emailed Mr Cruz (Counsel for the RGP) saying that he had been in touch with Mr McVea,

‘who I knew had data from Mr McGrail’s phone abstracted as a result of the criminal investigation ... he has confirmed to me that there are chats between both Mr McGrail and I during the period STI are interested in, but SIO McVea quite rightly has said that we would need to seek Mr McGrail’s authority ... can I therefore kindly ask you to reach out to Gomez & Co...?’ [E302]

A1.103 In asking for Mr McGrail’s authority for this disclosure, Mr Ullger had – I think probably correctly – identified another problem with the disclosure of this material. It had been seized by Mr McVea on behalf of the RGP, and it was retained by them, for one purpose, namely the investigation of these unrelated offences. I suggest, without deciding the issue (which is another matter of law), that probably it could not lawfully be used by the RGP for another purpose, namely examination to see if there was relevant data for disclosure to the Inquiry. Mr Ullger thought that this problem might be overcome by asking for Mr McGrail’s permission to do disclose it. The request to consent to the disclosure of the data was made by the RGP to Charles Gomez & Co, Mr McGrail’s solicitors that very

same day (28 June). On his behalf, they consented to the disclosure on 1 July [E300].

A1.104 I am not confident that all the data protection issues could be avoided simply by asking for Mr McGrail's consent because he was not the only person whose data may have been stored on the image. There could well have been material – perhaps confidential material – relating to many other people. But having pointed out this possible difficulty – without suggesting an answer – I will pass on.

A1.105 Of course, had Mr McGrail failed or refused to consent, then the RGP (or any other Core Participant for that matter) could have asked me, as Chairman of the Inquiry to direct disclosure, which no doubt I would have done, if I could have overcome the problem identified in the last paragraph. However, as it was, Mr McGrail did consent, and he did so very promptly, which I doubt he would have done if he had been deliberately trying to suppress anything.

A1.106 It will have taken some time to retrieve and examine these messages, particularly during August with summer vacations intervening. Therefore, it was not until 2 September that the RGP disclosed the WhatsApps between Mr McGrail and Mr Ullger, between Mr Richardson and Supt Wyan and between Mr McGrail and Mr Yeats; even then, that disclosure was limited to the period from 12 May to 9 June 2020 (in line with the Inquiry's request). It was not until 20 December 2024, more than three months later, upon a further request by the Inquiry to provide all messages between 1 January and 30 June 2020, that the RGP made the further disclosures of WhatsApp messages exchanged between Mr McGrail and Mr Ullger on their personal devices. The printout extends to nearly 500 pages and contained many messages relevant to the Inquiry. On the same day, the RGP also disclosed the fewer messages which Mr McGrail had exchanged with Mr Richardson and Mr Yeats.

A1.107 I have now set out how it came about that these messages were not disclosed by either Mr McGrail, or Mr Ullger or the RGP before the Main Inquiry Hearing. As I have already written, Mr Ullger should have recognised, and told the Inquiry, that

he had had exchanged many relevant messages with Mr McGrail on his personal device. In my opinion, Mr Ullger should have told the Inquiry when he realised in November 2022 that he could no longer access them because the data had been lost in the process of changing devices. In my opinion, Mr Ullger should have recognised, and told the Inquiry that, once Mr McGrail's personal phone had been seized by SIO McVea, the messages between him and Mr McGrail, which he had lost from his device, might be recovered from the image taken of the data from Mr McGrail's phone. Although there was a personal obligation upon Mr Ullger to disclose this material which had been stored on his private device, he was also a serving officer of the RGP; indeed, he was its Commissioner. In my opinion, therefore, in all these respects, this was not just a personal failure of his; it was also a failure on the part of the RGP.

OTHER ALLEGED IRREGULARITIES BY MR MCGRAIL IN THE DISCLOSURE PROCESS

A1.108 I now move on from the RGP's failures to return to consider Mr McGrail's failures.

A1.109 The Government Parties, and the Former Operation Delhi Defendants, submit that I should not consider what they say is Mr McGrail's failure to disclose the exchanges on his *4000 device in isolation, but in the context of what they allege to be other irregularities in his disclosure. Mr Cooper argues that these demonstrate Mr McGrail's '*cavalier*' attitude towards record keeping and even to the fundamentals of policing. I will now examine these other alleged irregularities in turn.

MR MCGRAIL'S DAY BOOKS

A1.110 The Inquiry did not know of the existence of his day books until Mr McGrail mentioned them during the course of his evidence at the Main Inquiry Hearing [T/6/131.11]. Mr McGrail said that on the day that he retired, he left his day books in a rucksack in his office ([T/7/1.17], [E91]). Mr Ullger gave evidence that he did not see the day books when he moved into that office upon becoming Commissioner of Police, succeeding Mr McGrail ([T/13/136.12], [E150]). Mr

Yeats submitted a witness statement on 19 June 2024 (less than a week before the closing oral submissions after the Main Inquiry Hearing) which described the efforts made to date to find the day book (Yeats 4 paras 18-19 [E4]). Despite further searches, the day books still have not been found, which is very unsatisfactory. The RGP has only recovered scanned copies of three pages of Mr McGrail's day book (dated 27 September, 12 October and 22 October 2018), which were found in an Operation Delhi disclosure file (Yeats 4 paras 18-19 [E4]).

A1.111 Mr McGrail points out that at the time of his criminal trial in June 2023 (on an entirely unrelated matter) he requested a copy of his day books from the RGP, which he believed may have assisted his defence, but the RGP could not locate them even then (McGrail 8 paras 6-11 [A1553]). I conclude that they had already been mislaid.

A1.112 The Inquiry should have been alerted to the existence of Mr McGrail's day books at the outset, given that many entries may have been relevant and may have had significant evidential value.

A1.113 I accept that Mr McGrail did leave his day books in a rucksack in his office, but even having regard to the rushed and difficult circumstances of his departure, I find that this was an unsatisfactory way of dealing with confidential material. I think that Mr McGrail should have made some better provision for their retention and storage. He was wrong to assume, as I think he must have done, that someone else within the RGP would make a suitable arrangement to do so. However, there was at that time no RGP policy for the safe surrender or storage of day books; he was the Commissioner of Police and so he had an overall responsibility for data retention and protection, but he had no direct personal responsibility for the policy. In the circumstances, I do not think that leaving his day books in a rucksack helps me to decide whether he realised that his WhatsApps might have data relevant to the Inquiry.

A1.114 I reject entirely the implication that he was deliberately putting his day books beyond recovery.

A1.115 For the RGP to misplace the day books of the former Commissioner of Police, knowing of the exceptional circumstances of his departure, suggests an administrative failing. Now, having heard these matters being canvassed at the Main Inquiry Hearing, in May 2024, the RGP adopted a new Pocket Notebook and Day Book Policy, which requires all pocket notebooks and day books to be handed in to the Information Management and Vetting Unit and securely stored by them. The GPA later endorsed this policy. The RGP has therefore recognised and corrected the administrative failings which the Inquiry process had revealed.

THE RECOVERY OF MR MCGRAIL'S LAPTOP AND DELETIONS FROM IT

A1.116 Mr McGrail told the Inquiry that he left both the desktop and laptop computer, which he had been using in his office, at New Mole House Police Station when he retired on 9 June 2020 (McGrail 8 para 5 [A1553]). Again, I am sure that he did so.

A1.117 The RGP did not, at that time, have a written log recording the movement of laptops or desktops within the RGP when an officer left the service (Yeats 4 para 15 [E4]). I consider this to have been unsatisfactory. However, the data from Mr McGrail's desktop and laptop would have been saved – and accessible – on the RGP's server. It would only be data which was saved 'locally' (i.e. only on the devices themselves) that now cannot be found and accessed. Therefore, I reject entirely the implication that he was, in some way, deliberately putting the data on his laptop beyond recovery.

A1.118 The RGP could originally find neither the desktop nor the laptop computers which Mr McGrail had been using. Following renewed searches at the time of the Main Inquiry Hearing, Mr Yeats said that, on 8 May 2024 (the penultimate day of the hearings), Mr McGrail's laptop was found. It was amongst other devices that were being cleared out of an office used by a then retired officer, Inspector Barker, but no data from Mr McGrail's use then remained on the device and therefore none was recovered (Yeats 4 paras 16-7 [E4]). DC Garcia (the RGP analyst) reported that Mr Barker had confirmed to him that he had Mr McGrail's password and access to Mr McGrail's profile and had his permission to do so,

and that he had been using the laptop for several years since early 2020 when he was staff officer to Mr McGrail and media officer, continuing to do so until his retirement in early 2024 [E48]. Mr McGrail stated in evidence that he did not specifically recall providing Mr Barker with his password, but did not dispute that he had done so. He said that Mr Barker had been his staff officer; he trusted him; they worked together on a daily basis [T/23/57.13]. I doubt whether giving him the password complies with best password security practice, but that is how they worked together.

A1.119 DC Garcia examined the device and reported [E52] that at 07.01 on the morning of 4 June 2020, just a couple of days before Mr McGrail retired, an audio file named *'Meeting with AG & DPP 20th May'* (2020), had been deleted from this laptop. I infer that this must have been a copy of the recording of the meeting which Mr McGrail had that day with Mr Llamas and Mr Rocca. It will be recalled that Mr McGrail had covertly recorded this meeting on his mobile device, which he – eventually – disclosed himself (as I have already described in the Report). Since the Inquiry has this recording from another source, its deletion has not resulted in the loss of any relevant material.

A1.120 When he gave evidence at the Reconvened Hearing, Mr McGrail accepted that he must have deleted this file [T/23/63.4]. This confirms the conclusion to which I had already come that Mr McGrail was anxious to remove any evidence that he had recorded these meetings with Mr Llamas from RGP devices; it will be remembered that he did not disclose that he had done so even when he gave an account of this meeting in his first witness statement (which he could have done even if he felt that he could not provide the recordings themselves to the Inquiry until its data protection policies were in place).

A1.121 Even though Mr McGrail's deletion of the file on 4 June was – as I find – a deliberate attempt to remove evidence that he had recorded the meeting with Mr Llamas, I do not think that it sheds any light on whether he genuinely did not

recognise that there was relevant evidence on the WhatsApps stored on his personal device.

A1.122 DC Garcia also reported that there had been two further occasions when the same file – I infer different copies of the same file – had been deleted, being at 15.46 and again at 15.47 on 23 June 2020 [E52]. This was after Mr McGrail had retired and at a time when he did not have access to the laptop. It is not clear to me by whom these deletions were made. Although these further deletions would have served Mr McGrail's purpose in removing further evidence that he had recorded this meeting, he denied that he had access to his old laptop at the time. He denied that he had asked Mr Barker to delete the file [T/23/61.14]. In the circumstances, I cannot properly infer that this was done either by Mr McGrail, or at his request.

MR MCGRAIL'S DESKTOP

A1.123 The desktop which Mr McGrail was using has not been located, and therefore no data from that has been recovered.

A1.124 Again, I conclude that Mr McGrail, and indeed the RGP, should have made some better provision for their retention and storage of his desktop. He was wrong to assume, as I think he must have done, that someone else would make a suitable arrangement to do so. That being so, I reject entirely the implication that he was deliberately putting the data on his desktop beyond recovery.

A1.125 The RGP needs to consider this administrative failing and to put in place a proper procedure for the preservation of relevant data stored on devices left behind after officers have retired or moved on.

MR MCGRAIL'S EXTERNAL HARD DRIVE

A1.126 When Mr McGrail retired from the RGP, he took away with him an external hard drive, with a backup of his emails and reports. He says that this was done with the knowledge and assistance of Mr Yeats, to protect himself and to prevent '*any data going astray because of technical glitches with the servers ... or... because*

of any outside interference' [E99]. He eventually returned this hard drive to the RGP. Mr Yeats has said that he has no recollection of this [T/22/69.7].

A1.127 He has given evidence that he did not alter, add to or delete any of the data on the hard drive before returning it [T/8/108.8], and the Inquiry has received no evidence that he did so. In the circumstances, I do not think that his action in taking the hard drive away has adversely impacted upon the Inquiry in any way. I will not comment on the propriety, or lawfulness, of his actions, which are for others to consider, but his actions in taking this hard drive do not help me as I consider his other alleged failings in the disclosure process.

DESTRUCTION OF HARD COPIES OF RELEVANT DOCUMENTS

A1.128 Mr McGrail gave evidence that when he retired, he retained a number of hard copy documents relating to Operation Delhi. He said that, since the RGP and the Inquiry had copies of the same documents, there was no need for him to keep his copies. He said that therefore he had destroyed them *'under the direction and request of the RGP'* (McGrail 8 para 12 [A1554]).

A1.129 By letter to Mr Ullger on 15 November 2022 [E99], Mr McGrail referred to the external hard drive and *'some data relating to Op Delhi (mainly correspondence I had been exchanging with Hassans)'*, and he offered to return *'the external hard drive with the data'* [E100].

A1.130 On 16 November by letter [E97], Insp Riley responded on behalf of Mr Ullger; he referred to the hard drive, and asked whether Mr McGrail had retained any copies, including hard copies, of the data on the hard drive.

A1.131 Mr McGrail answered by letter dated 18 November [E95] that he had *'retained a single copy of the documents which are listed in the attached Disclosure Lists. ... I will now be destroying these documents'*. Inspector Riley did not object to that.

A1.132 Mr McGrail also confirmed that he had *'not kept a copy of any other documents which are found in the hard drive but do not feature in the Disclosure Lists'*. But

he did not disclose, as perhaps he should have done, that he had retained hard copies of some other documents which he had in his possession at the time of his retirement. The RGP were not aware that he had any other such documents, nor that Mr McGrail intended to destroy those as well.

A1.133 Therefore, Mr McGrail had destroyed some of the hard copy documents ‘*under the direction and request of the RGP*’. However, he had destroyed those which he had kept in his possession from the time of his retirement on his own initiative, and not ‘*under the direction and request of the RGP,*’ as he had first said. Notwithstanding that, I do not think that he destroyed any evidence relevant to the Inquiry, which has not been otherwise disclosed to the Inquiry by the RGP; indeed, I find as a fact that he did not do so.

THE RECORDING OF THE MEETINGS BETWEEN THE RGP AND MR LLAMAS

A1.134 I have explained in the Report how Mr McGrail recorded three meetings which he had with Mr Llamas and Mr Rocca on the 13, 15 and 20 May. The Government Parties point out that he did not disclose the fact of his recording either at the time (except to Mr Richardson), nor indeed even as he wrote his first witness statement to the Inquiry. Even later, when eventually Mr McGrail did disclose the recordings, he did not transcribe a section of the recording of a conversation he had with Mr Richardson in the car immediately after the 13 May meeting [T/6/234.20]. The Government Parties argue that this is relevant when I come to consider the other alleged failures by Mr McGrail to make proper and timely disclosures of the relevant material. I do not accept this submission; even if his actions in recording these meetings were ‘*unethical*’, as the Government Parties now contend, it does not help me to decide why he did not disclose the data from his *4000 device.

A1.135 The same applies to Mr McGrail’s covert recording of his meeting with Dr Britto on 22 May.

MR MCGRAIL'S EMAILS TO HIMSELF ON THE 12 AND 13 MAY 2020

A1.136 I have already considered Mr McGrail's evidence that his account of the events of 12 May 2020 is borne out by emails which he sent to himself that day, and on the following day. There is no reason to repeat what I have already written. I am sure that he did write those emails on those dates, and that he has not in some way forged false dates. In my judgment, this topic has no bearing on the issues which I am now considering.

CONCLUSION ON THESE POINTS

A1.137 I have carefully considered all these other so-called failures of disclosure by Mr McGrail. For the reasons I have given, I conclude that this unhappy series of events shows that the RGP had no proper procedures or protocols for dealing with day books, or with the handover of desktops and laptops. Although as Commissioner of Police he had overall responsibility for these systems, I do not think that Mr McGrail can seriously be criticised personally for failing to notice these shortcomings in their system. Maybe he did show some laxness in taking away some data by hard drive and in destroying hard copies of some documents. However, I expressly reject the suggestion that he was '*cavalier*' towards record keeping and still less to the fundamentals of policing, which I think would imply a deliberate disregard or at least a disdainful recklessness. I do not think that accurately describes his attitude. The furthest I would go is that he showed a lack of procedural vigilance. I do not think that any of these events, even when considered cumulatively, assist me to decide whether to accept, or to reject, Mr McGrail's claim that he did not disclose the exchanges by WhatsApp on his personal device by reason of inadvertent omission.

DISCLOSURE BY MR RICHARDSON

INTRODUCTION

A1.138 I turn now to the disclosure by Mr Richardson. He has given evidence that he communicated with Mr McGrail in a variety of ways, mainly by speaking to him

face to face (their offices were close to each other in the same building), by landline phone calls, by emails and also by WhatsApp messages on their work and personal phones (Richardson 5 para 4 [E1087]). Furthermore, he made highly detailed entries in his day books, all of which were disclosed at an early stage in the disclosure process, and on which I have extensively drawn when writing the main body of the Report.

MR RICHARDSON'S WORK DEVICE *9004

A1.139 Mr Richardson surrendered his *9004 work device some time before commencing pre-retirement leave in May 2021 (Richardson 4 para 4 [E261]). Pursuant to the RGP policy then in effect, the data stored upon it would have been wiped; it was not backed up; that data is not now recoverable. The device was then '*re-purposed*' and issued to another officer. There is therefore no evidence from this device of the exchanges which Mr Richardson had with anyone, including with Mr McGrail.

A1.140 Although there might have been – I deliberately put it no higher than that – some relevant messages on their work phones, they have now been deleted and we no longer have access (or certainly cannot access them in a way which is reasonable or proportionate). I cannot now say whether the lost messages were in any way significant to the Issues, as identified by the Inquiry.

A1.141 Mr Richardson knew that the RGP were about to wipe the device which he was about to surrender [T/23/186.13]. He surrendered his device at a time when the Inquiry had been announced in Parliament (but not formally commissioned) and the prosecution based on Operation Delhi had already been the subject of a '*comprehensive disclosure exercise*' [T/23/186.25]. If he was at fault, he was following the RGP policy, and I consider the fault to be slight, and no blemish upon a long and distinguished career.

MR RICHARDSON'S PERSONAL DEVICE *9135

- A1.142 Mr Richardson, however, retained his personal device *9135, which he used to send many work-related messages, including to Mr McGrail on his personal *4000 phone. He believed that was the more usual way in which they communicated with each other [T/23/184.22].
- A1.143 On 15 June 2023 (a considerable period before the Main Inquiry Hearing) he disclosed relevant messages (at [C7002]) – he called them ‘*curated*’ messages, to exclude irrelevant messages – which he exchanged from his personal device *9135 with Mr McGrail’s personal device *4000 between 14 February 2019 and 9 June 2020. He chose 9 June as the cut-off date, that being the date of Mr McGrail’s retirement. On 21 November last year, he disclosed further ‘*curated*’ messages between 9 June and 30 June 2024, and also exchanges between Mr Richardson and Mr McGrail’s new personal phone after June 2020. In fact, there were very few, if any, significant messages during this period, which – as Mr Gibbs has submitted – rather bears out his original decision to end the disclosures on 9 June. On 3 December, he disclosed a full, unedited, log of those messages, which included exchanges with Mr McGrail; I do not think that this further disclosure revealed anything of significance which had not already been disclosed.
- A1.144 He also provided to the Inquiry all the relevant messages which he exchanged with Mr Rocca, Mr Wyan and Mr Field.
- A1.145 Mr Garcia (the RGP analyst) has confirmed that there were no deletions of messages between Mr Richardson and either Mr Wyan or Mr McGrail in the data which he examined (Garcia 1 para 17 [E1070]; Garcia 2 para 15 [E1120]). I should, however, mention one further point, if only to demonstrate that I have not overlooked it. Mr Richardson disclosed exchanges with Mr McGrail [E264-6] which include a few messages between 22 May and 9 June 2020. These messages do not appear in the report generated from the image of Mr McGrail’s phone at [E832]. DC Garcia (Garcia 2, [E1119]) was unable to explain this

discrepancy. I think this is perhaps best considered to be an unexplained anomaly; I attach no significance to it.

THE 'GAP' IN THE MESSAGES ON MR MCGRIL AND MR RICHARDSON'S PERSONAL DEVICES

A1.146 However, even the disclosures by Mr Richardson of the exchanges between his *9135 device and Mr McGrail's *4000 device, and the disclosure of the images taken by SIO McVea of the same exchanges from Mr McGrail's *4000 device, have left a gap between 30 April and 22 May 2020, during which no messages between them have been retrieved from either device. I have been asked to consider whether there is any significance in this gap and, if so, if I can properly draw any adverse inference from that.

A1.147 These dates cover part of the most critical period with which the Inquiry is concerned. Sir Peter Caruana has suggested that it is odd that there are no messages between them during the period spanning the application for – and grant of – the warrant, the visit of the RGP to Hassans and the fall-out from that visit, including the start of the process which resulted in Mr McGrail's resignation. Mr Richardson and Mr McGrail have both said that the explanation may be simple: they perhaps exchanged no messages at all on those devices during that period [T/23/52.3, 196.25]. They had offices in the same building, if they needed to speak, they spoke face to face, of which there would be no record. Therefore, they contend that there is nothing significant, let alone sinister, in this apparent 'gap'.

A1.148 Mr Richardson points out that there were '*many weeks without exchanges of WhatsApp messages between my personal phone and Mr McGrail's*' (Richardson 5 para 5 [E1088]). Indeed, the records show that there were many other such 'gaps'; they did not message each other on these devices between 18 February - 9 March; between 13 - 20 March; between 20 March - 9 April; between 9 - 30 April and between 27 May - 5 June 2020 [E264]. So, he says, there is nothing unusual, let alone sinister, in the gap.

- A1.149 Mr Richardson has given evidence that on the morning of 12 May 2020, he sent a message to Mr McGrail telling him that he had arrived at Hassans offices with the search warrant (Richardson 4 para 6 [E261]). Mr McGrail gave evidence that he received that message from Mr Richardson that he was *'about to execute the warrants'* (McGrail 1 paras 28-9 [A9]). However, there is no record of this message sent on 12 May 2020 either on the image taken of Mr McGrail's personal *4000 device by SIO McVea or on Mr Richardson's *9135 device, as he disclosed.
- A1.150 The content of the message of 12 May is not important, since all Mr Richardson said was that he was about to execute the warrant. The possible significance of this message is that it shows that there were messages passing between them relating to the warrant of which there is now no remaining record.
- A1.151 Mr Richardson was asked why he should suddenly switch from using his personal device to using his work device, when he had messaged Mr McGrail about Operation Delhi matters from his personal number before 12 May [T/23/198.17]. He answered that he was on duty, and about to enter Hassans with a warrant, therefore he *'probably made a conscious decision to send it on my work device'* [T/23/199.13]. He cannot now remember whether he sent other messages to Mr McGrail using his work phone during the periods where there were gaps of communication on their personal phones, because he did not have access to the records [T/23/198.25].
- A1.152 It seems to me, as is submitted on behalf of both Mr McGrail and Mr Richardson, that this message of 12 May must have been sent by Mr Richardson on his *9004 work device to Mr McGrail on his *9010 work device. Mr McGrail's work device was wiped when he retired in June 2020. Mr Richardson's work device was wiped at the change of RGP devices in December 2020. That would account for the fact that there is no surviving record of this message. Although Mr McGrail as Commissioner of Police signed off the policy of deleting the data, without keeping any backup, I do not think that either Mr McGrail or Mr Richardson had this policy in mind when they handed in their devices, or – even if they did – that

either of them realised that relevant data might be lost in the process. In the circumstances, I do not think that personal blame should attach to either of them for surrendering their devices.

A1.153 The upshot is that, for the reasons I have sought to identify, I conclude that there is nothing significant, let alone sinister, in this ‘gap’ in the messages between their personal devices, nor in Mr Richardson having sent the message of 12 May from his work device. I therefore decline to draw any adverse inference against either of them.

NO EXCHANGES BETWEEN MR MCGRAIL’S *4000 AND MR RICHARDSON’S *9004

A1.154 Although, of course, there is now no data recoverable from Mr Richardson’s *9004 work device, which was wiped when he retired, SIO McVea took an image of Mr McGrail’s *4000 device, and there are no exchanges between that device and Mr Richardson’s *9004 device. Mr Richardson’s evidence at the Reconvened Hearing was that it was possible that they exchanged messages between his work device and Mr Richardson’s personal device, or vice versa [T/23/184.13], but he could not say whether they did so or not.

EXCHANGES WITH MR MCGRAIL’S NEW PERSONAL DEVICE *8000

A1.155 Mr McGrail gave evidence that in late May 2020, he purchased another personal device. He said that he did not use this phone for any RGP business, and that there was no material relevant to the Inquiry on this device, and he therefore had no need to disclose any messages from it (McGrail 9 para 10(ii) [E258]). I have no reason to doubt that, and I accept his explanation. Mr Richardson disclosed some messages from his personal device to this number [E255], but none of them are of more than peripheral relevance (if any at all) to the Inquiry’s Terms of Reference.

CRITICISM BY CERTAIN COUNSEL OF MR PICARDO AND MR LEVY

A1.156 I return to a point I made in the introduction. It is argued on behalf of the Government Parties that, at the original hearings, Mr Wagner, on behalf of Mr McGrail, and Mr Gibbs, on behalf of Mr Richardson, repeatedly claimed that Mr Picardo and Mr Levy, and to some extent Mr Baglietto, were reluctant to disclose some messages passing between them, and had failed to disclose others, and that they did so deliberately, intending to suppress the truth and to mislead the Inquiry. The Government Parties argue that, by emphasising these alleged failures, Mr McGrail in particular, but other RGP officers also, were implying that they had disclosed all relevant communications and evidence. Indeed, Mr Cruz, on behalf of the RGP, still claims that the RGP has made a comprehensive and timely disclosure of all relevant material. The Government Parties argue that this displays ‘*double standards*’.

A1.157 Mr McGrail did have relevant material on his private device, which he failed to disclose, but – as I have found – that resulted from an inadvertent omission, as he claims. Mr Ullger had had relevant material on his private device, but he did not recognise that it was relevant to the Inquiry; in any event, he could not access it. He did not recognise until much later that it might be retrieved from Mr McGrail’s device. I do not think that the RGP actually realised until after the Government Parties’ renewed request of 24 June 2024 that the image which SIO McVea had taken might contain relevant material; although I think that they should have done so beforehand. The RGP had deleted the WhatsApps from the officers’ work devices but did not recognise at the time that they might have deleted relevant material.

A1.158 All this is regrettable, but I do not think that these failures of disclosure were recognised as such by the RGP or its officers, or former officers, at the time of the Main Inquiry Hearing. They cannot be said to have deliberately failed to point out something of what they were not aware. I therefore reject the suggestion that they were knowingly – let alone hypocritically – applying ‘*double standards*’.

MISCELLANEOUS OTHER TOPICS

A1.159 There are several other topics with which I need to deal, if only to dismiss them.

SUPT WYAN

A1.160 Supt Wyan has explained how, at the time that the Inquiry originally asked for disclosure, the personal mobile device which he had been using during the relevant period was ‘*non-functional*’ and he was unable to access any information on it (Wyan 4 para 6 [E1065]). DC Garcia (the RGP’s analyst) was since able to access and extract messages between him and Mr Richardson, but none are of particular significance (Wyan 4 para 10 [E1065]). In my opinion, no criticism whatsoever attaches to Supt Wyan in relation to the disclosure that he gave to the Inquiry. I mention this only for completeness.

THE SUGGESTED ‘DELETIONS’ IN THE DISCLOSED MESSAGES

A1.161 The most recent disclosures by the RGP appeared to the Inquiry Team at first sight to suggest that there might have been a number of apparent ‘*deletions*’ of WhatsApp messages between Mr McGrail and Mr Richardson, between Mr McGrail and Mr Ullger and between Mr Richardson and Supt Wyan. DC Garcia has now thoroughly investigated these apparent deletions.

A1.162 I accept his evidence that the references to ‘*deletions*’ in the forensic reports disclosed to the Inquiry in December 2024 related to deletions of entire (and unrelated) WhatsApp chats, as opposed to deletions of individual messages. Moreover, DC Garcia has given evidence (Garcia 1 para 17 [E1070]) and that there were no deletions of messages between Mr McGrail and Mr Richardson, or between Mr Richardson and Supt Wyan between 1 January and 30 June 2020. It is not necessary to describe the technical procedures which led him to this conclusion, which no one has challenged.

A1.163 In the circumstances, I am satisfied that there is no significance in these references to deletions in the forensic reports, and no one now suggests that there were deletions.

A1.164 I should mention, if only for the sake of completeness, that there were eight deleted messages between Mr McGrail and Mr Ullger: on 28 January 2020 [E400] (apparently deleted by Mr Ullger); on 29 March 2020 [E558 rows 1350-51] (apparently deleted by Mr McGrail) and on 22 April 2020 [E629 – rows 1764-1767] (apparently deleted by Mr Ullger). No one could remember what was deleted or why. There is no reason to think that they related to anything relevant to the Inquiry. I attach no significance to this matter either.

A MESSAGE OF GOODWILL FROM MR GAGGERO

A1.165 On 10 June 2020, the day after Mr McGrail retired, he received a message of good wishes and commiserations from Mr Gaggero, the Chairman of Bland [C4920]. Mr Gaggero sent this message to Mr McGrail's work email, to which he must still have had access, although he stated in evidence that access was removed either later that day or on the following day [T/23/43.15]. He sent a polite reply, and also referred to it in a WhatsApp message exchange with Mr Richardson [E256]. I attach no significance to this exchange and I draw no inferences from it. I mention it only to make clear that I had not overlooked it.

SUMMARY OF CONCLUSIONS ON DISCLOSURE ISSUES

A1.166 I summarise my main conclusions on these issues as follows:

- a. The RGP should have given clearer instructions as to the circumstances in which work-related messages could be sent on personal devices. Their failure to do so has resulted in a number of exchanges relevant to the Inquiry being sent and stored on the personal devices of Mr McGrail and Mr Ullger, which put these messages outside the RGP's official system, which the administrators could neither search nor control.
- b. The RGP should have inquired from any officers about to surrender their work device whether any data relevant to the prosecution of Operation Delhi was stored upon their work device and, if so, ensured that it was securely stored elsewhere, before deleting it. (It might have been a step too

far to hold that they should have asked whether there was – or might be – any data relevant to the Inquiry stored on their device, which had then been announced but not formally set up.)

- c. The RGP should have made clear to the Inquiry at a much earlier stage that WhatsApps, which might have contained relevant data, had been deleted when mobile devices were surrendered by officers on retirement or re-posting.
- d. The RGP should have realised earlier than they did that some data relevant to the Inquiry might be stored on (i) Mr McGrail's personal device, (ii) Mr Ullger's personal device, and (iii) later on the image which was later taken by the RGP of the data on Mr McGrail's device.
- e. The RGP should have preserved Mr McGrail's day books, as well as the data on his desktop and laptop which was saved locally.
- f. I do not think, in the light of these failings, that it can properly be said that the RGP made the '*comprehensive disclosure*' which they claimed, and which was required of them. Indeed, I find that they did not.
- g. Mr McGrail should have disclosed to the Inquiry the relevant data stored on his personal device, but his failure to do so was attributable to an '*inadvertent omission*' and not to an intention to suppress it. His failure to do so has not damaged his credibility on other matters.
- h. Mr McGrail (as a retiring senior police officer and Commissioner of Police) should have ensured that the RGP had made proper provision for the preservation of the relevant data on his day books, on his desktop and on his laptop which was saved locally.
- i. Mr McGrail should have realised that there might be relevant data on his work mobile device which would be wiped (and rendered inaccessible) after he surrendered it, and he should have asked the RGP to preserve it.

- j. I do not think that Mr McGrail's action in taking the hard drive away has adversely impacted upon the Inquiry's ability to find the facts and circumstances of his retirement. I make no findings on the propriety, or lawfulness, of his actions, which are for others to consider.
- k. Mr Ullger should have disclosed the fact that relevant data had been stored on his personal device and the fact that he could not access it because he had lost the data when he acquired a new phone. However, I accept that as soon as he actually realised that the data might be relevant and was stored on an image of Mr McGrail's personal device, which was held by the RGP, he alerted them to the fact and gave every assistance to them to recover and disclose it. He did not intend to suppress it.
- l. Having set out these failures, as I see them to be, they bear only on the disclosure process. None have any direct relevance to the Inquiry's Terms of Reference; they are not within the List of Issues and none were known to Mr Picardo, Mr Pyle or the GPA at the time Mr McGrail retired, and none have been relied upon as a reason for requiring him to retire.

THE DESTRUCTION OF SIX MOBILE PHONES AND VARIOUS DOCUMENTS

INTRODUCTION

A1.167 I need finally to deal with a series of matters recently raised by Peter Caruana & Co on behalf of the Government Parties about the destruction of mobile phones and the shredding of other documents by the RGP.

A1.168 On 20 August 2025, Peter Caruana & Co wrote to Microbusiness Solutions ('MBS'), a document management company in Gibraltar. This letter was not copied to the Inquiry. The letter stated that [E1138]:

'We are instructed by Mr Picardo that the Government has received information that in 2021 and 2023 your company undertook the destruction of devices (including mobile phones)

and/or computer hard drives on behalf of the RGP or members of its (then) Senior Management Team. As you may be aware from media coverage of the Inquiry proceedings, the unavailability of RGP communications has been a controversial matter of interest in the Inquiry. [...]

We are therefore instructed by our client to inquire of you whether you are able and willing to formally confirm the above information to our clients and, if so, to provide details of the material destroyed, as well as the dates of and circumstances leading up to its destruction, which the Government would then provide to the Inquiry. If you prefer, you could of course provide the information directly to the Inquiry...'

A1.169 Mr John Drury, the General Manager of MBS, contacted the Inquiry on 26 August 2025, referring to the letter he had received from Caruana & Co. He stated [E1140]:

'Our company Micro Business Systems has worked closely with the RGP as well as GHA and many other Government Departments providing document Management Services for the last 30 years.

As you can no doubt appreciate the services we provide and the things we see are done in the highest level of confidentiality. This is covered in an Undertaking of Confidentiality signed by every member of our team to prevent disclosure on any of the documents we are entrusted to store, digitally scan or destroy as well as The Official Secrets Act for any work undertaken for HM Government of Gibraltar.

We are at present anyway happy to provide the attached excel listing providing details of shredding jobs undertaken on behalf

of the RGP or members of its Senior Management from 2021 to 2023.

We do have work orders, email correspondence and invoicing to collaborate those jobs listed on there We would at present and in order to maintain our client confidentiality prefer not provide any further information unless it comes from an official letter from the inquiry asking us to divulge this information which our clients would understand.'

A1.170 Mr Drury attached an excel spreadsheet providing details of the shredding jobs which MBS had '*undertaken on behalf of the RGP or members of its Senior Management from 2021 to 2023*' [E1140]. The spreadsheet recorded, among other items, the destruction of:

- a. '*5 x Mobile Phones*' on 31 January 2021 with a former Higher Executive Officer, Angela Posso, named as the relevant contact.
- b. Another mobile phone (the sixth) on 2 March 2021 with Sgt Callum Bruce of the Traffic Section named as the contact.
- c. 28 hard drives, numerous cassettes, CDs, floppy discs, over 3,500 kilograms '*of paperwork*', 266.9kg of old booklets and diaries, a set of keys and a digital voice recorder between 31 January 2021 and 9 March 2023 with Angelo Posso, Sgt Bruce and four other named officers or officials named as contacts.
- d. '*10 Hard Drives*' on 21 August 2023 of '*own personal property*' for a '*High Ranking Officer*', who was un-named in the spreadsheet.

A1.171 On 12 September 2025, Caruana & Co contacted the Inquiry commenting on the spreadsheet (which presumably Mr Drury had also provided to Caruana & Co) [E1142] ('**the Caruana letter**'). The Caruana letter referred to the evidence given to the Inquiry by RGP officers that in November/December 2020 the RGP Senior

Management Team had changed their Samsung mobile phones to iPhones and that, in the process, the WhatsApp messages (including those in the SMT Chat Group) which they had exchanged had been ‘lost’ to the Inquiry. The letter observed that this change of phones and loss of data was *‘just a few weeks before the destruction of phones referred to by Mr Drury’*.

A1.172 The Caruana letter set out the contention of the Government Parties that it was *‘quite remarkable that this information about the intentional destruction of mobile phones and other material during the period 2021 to 2023 (when the Inquiry was already convened and in progress) has been suppressed by the RGP’*. It further suggested that the destruction of these six phones referred to in the spread sheet was *‘a possible explanation for the unavailability of the missing communications and computer drives which the RGP has failed to disclose’*. The letter further contended that: *‘If any of this intentionally destroyed material included the phones, hard drives and communications with which the Inquiry has been interested, and in respect of which RGP witness[es] have given other (different) explanations and evidence, that would put a very serious question mark over the narrative and evidence provided by the RGP and would completely undermine the credibility, reliability and value of their evidence’*. In the circumstances, the Caruana letter stated that the Government Parties *‘strongly believe that fairness and natural justice require the information provided by Mr. Drury to be further and forensically investigated by the Inquiry’*.

A1.173 Accordingly, by email dated 3 October, on my direction, STI wrote to Ellul & Cruz, acting for the RGP, requesting that *‘the RGP provide a witness statement and/or disclosure of any information and/or documents held by the RGP (including correspondence, by email or otherwise) as to who those mobile phones were used by, and who gave or approved the instruction for their destruction, and any other matter that you might wish to address in relation to the enclosed correspondence’* [E1146].

A1.174 Ellul & Cruz replied by email on 14 October [E1159], enclosing a witness statement by A/Supt Enriles [E1160], dated that same day. The Witness Statement exhibited a detailed report by A/Insp Bruzon, who set out in chronological order the steps he had taken to investigate these matters [E1165], together with a bundle of supporting documents of nearly 200 pages (admittedly with some duplication and title pages). I will consider separately the items listed at paragraphs (a) to (d) above.

THE FIRST FIVE MOBILE PHONES

A1.175 As to (a), Mr Bruzon, with the co-operation of Mr Drury, was able to identify the emails, the work sheets and the certificate relating to the destruction of these five mobile phones, which were confirmed by a short statement from Mr Drury (at Appendices 18 - 21 of Mr Bruzon's report). Furthermore, Mr Drury produced photographs of the five mobile phones (at Appendix 25) together with the exhibit bags, proving beyond doubt that these five phones had been seized as exhibits in the course of two separate criminal investigations by the RGP (which have been redacted to delete the names of the suspects concerned). Supt Enriles reported that one of these investigations was dated to May 2018 and the other dated as far back as February 2010. He stated that neither of these two criminal investigations were in any way related to Operation Delhi. He also stated that none of these five mobile phones destroyed were the same make and model as those issued to the Command Team prior to 2021.

A1.176 Moreover, despite thorough enquiries, I have been shown no evidence that the RGP, or any of its officers or former officers, asked – or arranged for – MBS to destroy any mobile phones which had been issued to any officer in the RGP. In particular, Mr Bruzon has found no evidence that any members of the Command Team at the time requested – or arranged – that any phones be sent for destruction. (These findings are also relevant to the sixth phone, to which I turn below).

A1.177 Therefore, I find as a fact that none of these five destroyed phones could have been – or were – used by the senior officers who gave evidence to the Inquiry.

THE SIXTH MOBILE PHONE

A1.178 I turn to the sixth mobile phone, referred to at (b) above. According to the spreadsheet provided by MBS, this was part of a large amount of material sent for destruction by Sgt Callum Bruce of the *'Traffic Section'* on 2 March 2021 which was logged by MBS as being: *'1882kg of Paperwork', '169 cassettes, 235 CDs, 29 Misc Items, 61 Floppy Discs', '28 Hard Drives'* and *'1 x Mobil (sic) Phone'*. This is a huge amount of material, being not far short of two tons.

A1.179 Mr Drury has provided a short statement (in Appendix 21) making clear that MBS has no more detailed description of any of the material which he shredded for the RGP beyond what appears on the emails and the invoices, as reproduced on the spreadsheet. However, in answer to a question put to him by Mr Bruzon, Mr Drury was able to send a series of images (copied at Appendix 29) which, although not apparently taken to show the sixth phone, do in fact show that phone in the background. It is clear from the photograph that this phone is a Samsung Edge mobile phone. Mr Drury says that this is the phone delivered as part of the lot sent by Mr Bruce.

A1.180 Mr Bruzon spoke to Mr Bruce (summarised at paragraph 1.7.5 of his report). Mr Bruce remembered that there had been an old container in the traffic compound, which he said was used to *'store'* – his word – *'lots of old documents'*, which *'he believed was from an old financial investigation'*. He said that in the container was stored more than just documentation but also *'hard drives and other computer material'*. He said that *'the container had water penetration'* and *'much of the documentation was already destroyed'*. He has no record of what was *'stored'* in the container. He had no knowledge of the mobile phone and he has no email thread of any request to him relating to the destruction of a mobile phone. He does not say so in terms but I have gained the impression that the container was standing in the compound, open to the elements. PC Peach, to

whom Mr Bruzon also spoke (summarised at paragraph 1.7.3 of his report) remembers a container in the traffic compound ‘*full of rubbish*’; I think this is a more accurate description of the position. PC Cruz told Mr Bruzon (summarised at paragraph 1.7.4 of his report) that he remembers the container in the traffic compound which was ‘*full of old paperwork ... [which] needed to be disposed of*’. Therefore, as it seems to me, ‘*stored*’ is a rather generous description of what seems to have been a container into which all manner of material was pitched, by many different officers, once it was no longer required for police purposes, without any proper record being kept of what had been discarded in this way.

A1.181 Mr Enriles wrote in his statement that ‘*the sixth mobile phone ... was believed to be an exhibit in a historical financial crime investigation as recalled by PS 29 Bruce*’ (Enriles 1 para 5 [E24]). I consider this to be a rather over-robust summary of the evidence because Mr Enriles’s note of his conversation with Mr Bruce does not refer to the sixth phone, or even to a phone specifically, stating only that the contained ‘*could have included hard drives and computer stuff also*’ [E1177]. However, it is clear from the photographs supplied by Mr Drury that this was a Samsung Edge, and Mr Enriles says in terms that ‘*This model was not purchased by the RGP for its Command Team*’. Therefore, although I cannot say where this sixth phone had come from, or who threw it into the container, or when they did so, I am satisfied that this sixth phone was not one of the phones used by the senior RGP officers who gave evidence to the Inquiry.

CONCLUSION ON THE SHREDDING OF THE MOBILE PHONES

A1.182 I therefore find as a fact that none of these six phones was used by any of the senior officers who gave evidence (whether by way of live evidence at the Inquiry hearing, or by way of written witness statement). The destruction of these phones therefore has no relevance whatsoever to the Inquiry’s Terms of Reference; it has no bearing on the disclosure made by the RGP and its officers, and former officers, or into data management at the RGP relating to the Inquiry. Accordingly, neither the evidence nor the information available to me gives any

reason to doubt the evidence given to the Inquiry by any of these officers. The suspicions of the Government Parties about the origins and fate of these six phones are therefore, as I find, quite unfounded.

THE OTHER SHREDDED MATERIAL

A1.183 I turn then to the documents, and all the other material which was shredded, which I summarised at (c) above.

A1.184 The RGP has a long-established procedure (as dictated, no doubt, by data protection obligations) for the periodic shredding of documents and other material, which are no longer required for policing purposes. On 14 January 2021, former Ms Posso sent a routine *'all staff email'* to the effect that, in accordance with those requirements, she was making arrangements to send for shredding any documents which were no longer required and asking that those who had such material should contact her [E1273]. Eight named officers supplied documents to be shredded; each has given some generic particulars of the material they supplied, which Mr Enriles summarised as being handwritten documents and old financial crime investigations (as listed in Appendix 1), booklets, diaries and personal files prior to 1982 and pocketbooks prior to 2014 (as listed in Appendix 8), old Designated Risk Management Team and Professional Standards Department documentation (as listed in Appendix 16), and old newspaper articles (as listed in Appendix 22).

A1.185 DC Ready (as directed by Mr Bruzon) spoke to Ms Posso, who told him that, after she had sent the email asking for items for disposal, *'people dumped boxes within the office'*. She observed – correctly as it seems to me that *'there was no oversight of what was being disposed of'* [E1276].

A1.186 DC Ready later spoke to Ms Charlene Dewar-Ford, who was responsible for making the payments due to MBS. She said much the same; it was, she said, a cost saving exercise *'to dispose of everything in one go'*. Officers would *'just bring in boxes of material and leave them in the office'* for collection and destruction.

She confirmed that *‘there was no oversight of what was disposed of’*, she relied on the officers to keep their own audit trail of what it was they were disposing’ [E1276].

A1.187 Mr Bruzon contacted A/DCI Tanya McLeod. Her replies are set out in Appendix 16, which I summarise. She had sent Ms Posso *‘sensitive’* material for shredding, which although she could not detail, she knew related to work in two departments and to one particular operation. I observe that neither department, nor this particular operation, had anything to do with Operation Delhi or the subject matter of the Inquiry.

A1.188 DC Ready also spoke to Leanne Desoiza, who worked in the Commissioner’s Office [E1276]. In answer to Angela Posso’s email of 14 January 2021, she had sent two boxes of material for collection and shredding. She said that because of the amount of paperwork, there was constantly documentation being sent out for shredding from the Commissioner’s Suite. She did not have *‘any oversight’* of what went into the boxes. She had no particular recollection of this particular delivery for shredding, because *‘they all merge into one’*.

A1.189 I comment that none of the officers who had sent material for shredding via Ms Posso can give anything beyond the most general description of it. However, there are several tons of this material and, of course, there is not – and could not possibly be – an inventory of each individual item sent for shredding. I have not heard submissions on this precise point but I think it reasonable to conclude that it would take many officers a very long time to catalogue it all, with no commensurate or proportionate benefit. The requirements for recording material sent for disposal was not a matter raised at the Inquiry hearings, and I therefore make no further comment.

A1.190 In the circumstances, I cannot list all the material sent for destruction. However, the thorough investigation by the RGP has found no evidence, and I have no reason to believe, that the documents sent for destruction relate in any way to Operation Delhi, or to the Inquiry’s Terms of Reference, or to any of the Issues

relating to the Inquiry. Nor is there any evidence, nor do I have any reason to believe, that anything relevant to Operation Delhi, or to the Inquiry's Terms of Reference, was sent for destruction or was destroyed.

A1.191 I appreciate that Mr Bruzon was working under pressure of time, but in my opinion, he has made a very professional and thorough investigation of all these matters. I do not think that given more time, he would be able to discover anything more of any real use. In my opinion, the time, effort and expense of further work would bring no – and certainly no commensurate or proportionate – benefit, but would add further unwanted and unnecessary delay to the delivery of the Report.

A1.192 On 17 October 2025, STI informed Caruana & Co that I considered that the RGP had conducted a thorough investigation into the allegations that relevant documents may have been destroyed, and that I did not intend to undertake any further inquiry [E1365].

THE '10 HARD DRIVES'

A1.193 I come then to item (d): the destruction on 21 August 2023 of '*10 Hard Drives*' being the '*own personal property*' of an un-named '*High Ranking Officer*'. The facts, as I find them to be, are plainly set out in an email sent by Mr Yeats, the now retired former Assistant Commissioner of the RGP, to Mr Cruz, representing the RGP, on 10 October 2025 [E1148]. I can see that no purpose would be served by asking him to repeat this information in a witness statement, which I have no doubt he would be prepared to do; this would simply cause further cost and delay, which I am anxious to avoid in order to deliver the Report as soon as possible, without incurring further unnecessary expense.

A1.194 Mr Yeats is the '*High Ranking Officer*' to which the spreadsheet refers, but this description was applied by MBS without his knowledge or consent. As I make clear in this section, Mr Yeats made an entirely personal arrangement with MBS, and was invoiced personally for it. He says that he had accumulated a number

of hard drives from various old personal computers which he had replaced or upgraded. Since he recognised that these might contain sensitive or confidential personal material, he wanted to dispose of them securely; this seems to me to be very sensible. A friend of his from the RGP, Insp Perez (now retired), had a relative who worked for MBS, and so Mr Yeats asked MBS to do the job on his behalf. It is quite clear from the contents of the emails, and the fact that he used his personal email address, that this was a private arrangement between him, acting in a purely personal capacity, and MBS. The invoice was not sent to the RGP, it was sent to him personally. He paid for it out of his personal account, using his own money. I think that Mr Yeats is quite right to contend that this personal arrangement should not have appeared in a schedule of work done by MBS on behalf of the RGP (perhaps that is why Mr Drury did not name him and anonymised him as a ‘*High Ranking Officer*’).

A1.195 The Government Parties point out that Mr Yeats sent these hard drives for shredding in August 2023. This, they say was ‘*shortly after the whistle-blower statements were circulated and became an issue to the inquiry*’. However, although there were complaints in the witness statements by the ‘whistle-blowers’ – as the Government Parties contend them to be – about some members of the Senior Management Team of the RGP, Mr Yeats was not the main focus of those complaints. Indeed, at the original hearing, no one took issue with his evidence; no one sought to question him and he was not then required to give oral evidence. It was only much later, in the autumn of 2024, long after the original hearings, when he managed the further disclosure exercise by the RGP, that his evidence became important. It was on this point that he gave evidence at the Reconvened Hearing, in April 2025. I therefore see nothing significant, let alone sinister, in his initiating this work to destroy his hard drives in August 2023.

A1.196 I am quite satisfied, therefore, that this was a private arrangement by which Mr Yeats sent hard drives of his personal computers, containing only private information, to MBS for destruction. There is no reason whatsoever to suspect, still less to believe, that Mr Yeats has arranged for the destruction of anything

that has any relevance whatsoever to the Inquiry's Terms of Reference. The destruction of these '*10 Hard Drives*' has no bearing on my investigation into the disclosure made by the RGP in the Inquiry, or into management by the RGP of data relating to the Inquiry. I am entirely satisfied by his response; no further investigation is necessary. In my opinion, the time, effort and expense of further work would bring no – and certainly no commensurate or proportionate – benefit, but would rather add further unwanted and unnecessary delay to the delivery of the Report.

A1.197 I specifically reject the suggestion, made in the Government's latest letter of 30 October 2025, that Mr Yeats should be required to give oral evidence, and to be challenged by cross-examination on this point [E1367]. This would require a further reconvened hearing, at huge expense, with a further delay of many months, with no – or at least no commensurate or proportionate – benefit.

ANNEX 2:
DISCLOSURE BY MR PICARDO,
MR LEVY AND MR BAGLIETTO

DISCLOSURE BY MR PICARDO

- A2.1 As I have mentioned in the section of the Report on Operation Delhi, no relevant messages passing between Mr Picardo and Mr Levy since May 2019 were disclosed to the Inquiry. I comment that May 2019 is a significant date in the Inquiry since it was at the meeting of 13 May 2019 that Mr McGrail first gave Mr Picardo a briefing about Operation Delhi. The Inquiry has been requiring disclosure of these messages since it started its proceedings in 2022.
- A2.2 On Saturday 4 May 2024, just two days before Mr Picardo was due to attend the Inquiry to give evidence on Monday 6 May, Peter Caruana & Co, the lawyers acting for the Government Parties, disclosed a log of WhatsApp messages passing between Mr Picardo and Mr Levy in 2018-19, which showed that they were in contact by WhatsApp during that period, usually around once a week, but sometimes more or less often than that. The lawyers accepted responsibility for this late disclosure, which they blamed on their own '*oversight*'; I accept this explanation and I cannot draw inferences against Mr Picardo for a mistake made by his lawyers. The exchanges disclosed were substantially redacted, so as to exclude irrelevant material (I should make clear that the Inquiry has approved the redactions made to the disclosed material, which exclude irrelevant material).
- A2.3 The last unredacted message was dated 2 May 2019. In questioning, Mr Picardo stated that there were no relevant WhatsApp messages after that date [T/16/227.2]. Mr Santos asked him whether he had any messages with Mr Levy in May 2020; he replied that he '*would have to look*' [T/16/229.3]. I comment that it would have been extraordinary if he had not looked before.
- A2.4 The following day at approximately 09.55, that is just five minutes before the sittings resumed at 10.00, Mr Picardo's legal team informed CTI that WhatsApp messages between Mr Levy and Mr Picardo continued beyond 2020 (and perhaps even to date) but that from March/April 2020 onwards they consisted only of

‘broadcast’ type political messages sent by Mr Picardo to many recipients at a time (i.e. not messages intended for Mr Levy alone), and nothing which was relevant to the Inquiry.

- A2.5 By email dated 7 May 2024 (at 12.06), STI required Mr Picardo to disclose any relevant messages between him and Mr Levy post March/April 2020 in unredacted form by the lunchtime adjournment so that they could be reviewed and (if appropriate) disclosed to Core Participants. On 8 May (at 18.53), STI followed up on this request and sought disclosure before close of the hearing on 9 May. On 9 May (at 09.37), Peter Caruana & Co informed STI that they had sought instructions from Mr Picardo, but he was abroad on Government business and could not be contacted. Having received no response, STI chased the matter again on 20 May (at 15.43). On 21 May (at 18.00) Mr Picardo’s lawyers provided an export of his full log of WhatsApp messages with Mr Levy, and the Inquiry team was able to confirm that all messages between Mr Picardo and Mr Levy from 20 September 2019 onwards were irrelevant broadcast messages.
- A2.6 In closing oral submissions on 26 June 2024, Mr Santos stated that the Inquiry team intended to seek an explanation from Mr Picardo as to why there were no direct messages between him and Mr Levy from September 2019 onwards other than those broadcasts.
- A2.7 STI did pursue the matter and Mr Picardo replied by way of a short statement (Picardo 5 [E839]). He referred to an answer that he had given at the Main Inquiry Hearing (T/16/227.1) to the effect that he had ‘*a lot of discussion*’ and ‘*a lot of conversation*’ with Mr Levy around the time, but these were not on WhatsApp (Picardo 5 para 3 [E840]). He did not give a reason for this change of practice. He confirmed that:

‘there were no relevant communications between him and Mr Levy on any social media platform (including but not limited to WhatsApp, Signal, Telegram), email (other than already

disclosed, if relevant) or by any other alternative means of written communication.’ (Picardo 5 para 5 [E840])

A2.8 For the sake of completeness, I add that Mr Picardo disclosed the relevant use of his mobile device ending *7022. A question was raised about his use of another number ending *0000, but he confirmed in a short statement (Picardo 6 [E1132]) that he never used that number *‘to send or receive any message in relation to any matter which is of relevance to this Inquiry’*. I accept that.

A2.9 Therefore, Mr Picardo and Mr Levy, who had previously been in frequent contact by WhatsApp, changed their means of communication from WhatsApp (of which there would be a record), to *‘discussion’* or *‘conversation’* by word of mouth (of which there would be no record). I am asked by Mr Wagner, on behalf of Mr McGrail and by others, to draw an adverse inference against them for this unexplained change of practice. Although I see the force of this argument, I am not persuaded that I should do so.

DISCLOSURE BY MR LEVY AND MR BAGLIETTO

A2.10 I can deal with Mr Levy and Mr Baglietto together, since both are partners in Hassans, and the devices which they both use in the course of their professional business are provided and serviced by Hassans’ IT Department. Neither disclosed any WhatsApp messages to the Inquiry prior to the Main Inquiry Hearing, although Mr Baglietto has subsequently disclosed a small number of SMS messages, and Mr Levy has subsequently disclosed a small number of WhatsApp messages, as explained below.

A2.11 Mr Levy’s explanation is that when the RGP took possession of his telephone on 12 May 2020, his messages were copied by Hassans IT department onto a *‘copy telephone’*. The *‘copy telephone’* stopped working and the Hassans IT Department copied the messages onto a *‘replacement telephone’*, but not all of his messages pre-dating 12 May 2020 were preserved during the transfer [T/8/199.5-201.11]. Mr Levy maintained in evidence that he had *‘not hidden any*

messages or deleted any messages' [T/8/201.18]. However, if at least some pre-2020 messages were preserved and if some of them are relevant, Mr Levy had not, at that point, disclosed any of them to the Inquiry. For example, Mr Levy stated that his messages with Mr Llamas about being '*hung out to dry*' were still on his telephone, but he had not disclosed these to the Inquiry at the time of the hearing [T/8/253.14].

A2.12 On 17 April 2024 (that is, just one day before he gave evidence), Mr Baglietto disclosed a single SMS dated 15 May 2020, which he sent to Mr Llamas: '*M, I was asked to come over to your office*' (and also the surrounding messages in that chain, with which I will deal in due course). Beyond this, Mr Baglietto has not disclosed any WhatsApp messages or SMS to the Inquiry, and states that he does not have any correspondence with Mr Picardo or Mr Llamas going back to 2020 (Baglietto 1 para 4.1 and 4.5 [A948-9]). He gave evidence that he routinely deleted old chats with clients and family members, and that '*the whole Operation Delhi saga ... insofar as it affected Mr Levy was done and dusted by October, I think it was 2020 and there was no pending litigation or any other proceedings...*' [T/9/89.12].

A2.13 Mr Baglietto gave evidence that the earliest message on his telephone with Mr Picardo is dated January 2021 [T/9/186.6]. He denied that he had deleted communications with Mr Picardo as a result of the Inquiry being called: '*I would never have done that, had the remotest inkling that those emails – that those WhatsApps were going to be relevant to this Inquiry*' [T/9/189.25]. Based on Mr Baglietto's evidence, it does not appear that there are any outstanding WhatsApp messages that he is able to disclose, without recovering deleted messages (as to which see below).

A2.14 Although there have been various hints that even now Mr Levy and Hassans are contemplating some form of action against the RGP, perhaps for misfeasance in public office, I do not think that this possibility was in his mind at the time and, although deleting messages relating to professional dealings which occurred

only a few months before is not best practice, I do not think that his actions were improper nor do I think that I should draw any inference from his deletions, and I do not do so.

- A2.15 Both Mr Levy and Mr Baglietto gave evidence that they would be willing for a member of their IT Department to provide evidence as to the missing WhatsApp messages and efforts taken to retrieve them [T/8/199.25; T/9/92.14]. A statement was provided by Arthur Mills on 5 May 2024 [A1539], which I will summarise. He said that Hassans does not – and did not – have a facility to back up lawyers’ personal data. He said that, with limited exceptions, Hassans’ IT Department has ‘*no visibility of lawyers’ personal mobile telephones*’ [A1539]. I interpret that observation to mean that they do not have access to the messages on lawyers’ personal telephones. He said that Mr Levy’s original telephone, which was eventually returned by the RGP at the end of October 2020, was ‘*wiped*’ by Hassans IT department and reused for another purpose, and later disposed of [A1540]. He said that Mr Levy did not give any instructions to preserve data on this telephone [A1541]; I comment that there was no need for him to do so, since he had been cleared from suspicion and he cannot be criticised for doing so.
- A2.16 Mr Mills the described how the copy telephone ‘*collapsed*’ in March 2023, probably as a result of a software update, and he transferred the data to the replacement telephone, which should have included all data on the copy telephone. However, he did not verify if everything had been copied, as the copy telephone became corrupted. He then wiped and disposed of the copy telephone.
- A2.17 Having thus described the migration of the data from the original telephone to the replacement, by way of the copy telephone, Mr Mills searched the replacement telephone for WhatsApp messages between Mr Levy, Mr Picardo and Mr Llamas. He reported that there were no WhatsApp messages between Mr Picardo and Mr Levy from 12 May – 9 June 2020, but there were some messages with Mr Llamas which he provided to Mr Levy [A1542].

- A2.18 Mr Levy had not disclosed these messages with Mr Llamas to the Inquiry, so on 12 August 2024 the Inquiry wrote to Hassans asking them to either confirm that those messages were not relevant to the Inquiry or disclose any relevant messages. Hassans responded on the same day stating that Mr Levy confirmed that the messages referred to were not relevant to the Inquiry. The Inquiry responded on 14 August noting that during the period in question Mr Llamas had disclosed relevant WhatsApp messages with Mr Levy, including the '*hung out to dry*' and '*don't worry*' messages, which Mr Levy had said during oral evidence were still on his phone. The Inquiry therefore asked for clarification as to why they had not yet been disclosed and again seeking their disclosure.
- A2.19 Hassans responded on 30 August stating that Mr Levy's confirmation of irrelevance on 12 August had not been intended to refer to the '*hung out to dry*' exchange, and that Mr Levy had inadvertently overlooked that exchange in his response. Hassans therefore provided a printout of that exchange, which also demonstrated that there was a missed call from Mr Levy to Mr Llamas at 13.59, and a message from Mr Llamas to Mr Levy at 14.49 stating that he had seen the missed call. Mr Levy also confirmed that the remaining WhatsApp exchanges were irrelevant.
- A2.20 Mr Mills has unsuccessfully attempted to recover missing WhatsApps from the replacement telephone, as well as from Mr Baglietto's telephone. I accept the proposal from CTI that we should leave the matter there. Although what Mr Mills has said has not been tested in the course of the Inquiry's hearings, there is no reason to doubt it, and I accept it.
- A2.21 The upshot is that Mr Mills has satisfactorily explained the absence of messages. I can take this no further and, in the circumstances, it would be wrong to draw any adverse inference against either Mr Levy or Mr Baglietto for this absence and I will not do so.