IN THE SUPREME COURT OF GIBRALTAR

2026/MISC/005

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN:

THE KING ON THE APPLICATION OF FABIAN PICARDO, KC MP, CHIEF MINISTER

Claimant

-and-

SIR PETER OPENSHAW, DL

Defendant

CLAIMANT'S SKELETON ARGUMENT

For rolled-up hearing before Dudley CJ commencing 9 November 2026

References to other documents are in the following style

- *the Core Documents Bundle in the style* **[CDB/tab/page no.]**
- *the (electronic-only) Comprehensive Bundle are in the style* **[CEB/ tab/page no.]**
- *the Joint Authorities Bundle are in the style* **[AB/tab no./page no.]**
- *the Inquiry Report are in the style* **[R/para no.]**
- *Claimant's Statement of Facts and Grounds are in the style* **[SFG/para no.]**
- *Defendant's Summary Grounds are in the style* **[DSG/para no.]**

Suggested pre-reading by judge:

(a) C's Statement of Facts and Grounds;

(b) this Skeleton Argument.

Estimated Reading time: 1 day (7 hours)

About this Skeleton Argument:

*The subject-matter and nature of this claim required the Statement of Facts and Grounds ("**SFG**") to set out the facts, grounds, evidence, argument and law relating to the claim. This Skeleton Argument exceeds 25-page maximum permitted with the permission of the court. Because of the nature of this claim, this Skeleton supplements the SFG.*

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Introduction

1. This is claim for judicial review of certain findings, decisions and comments (together, "**Challenged Findings**" or "**findings**" and individually, "**finding**") of the Defendant, as Chairman (and sole panel member) ("**D**") relating to the Claimant ("**C**") in the Final Report dated 6.11.2025 ("**the Report"**) of the Inquiry into the reasons and circumstances leading to Mr Ian McGrail ("**IM**") ceasing to be the Commissioner of Police in June 2020 by taking early retirement ("**terms of reference**") convened by LN2022/034 dated 4.2.2022 ("**the Inquiry**").

2. The legal basis for the challenge is that the Challenged Findings are unlawful by reason of, variously, irrationality or unreasonableness ("**irrationality**"), illegality and breach of natural justice. The Inquiry's findings had to be "lawful" i.e. *lawfully made* failing which they are invalid.

3. The evidence in support of this claim is C's witness statement dated 4.2.2026 **[CEB/7/135]**. That places before this court all the written and oral (thru transcripts) evidence in the Inquiry at exhibits FP4 to FP25 **[CEB/11/854]-[CEB/32/18159]**. The Report is exhibit FP1 **[CEB/8/141-846]** and the terms of reference are exhibit FP2 **[CEB/9/847]**.

A. APPLICABLE LEGAL PRINCIPLES

A1. The Report can be challenged by judicial review

4. *All the Challenged Findings are "decisions"*. The Report is judicially reviewable (even though it does not determine the C's civil or criminal legal rights or obligations) if it is reached in a procedurally defective or otherwise unlawful way.[1] Findings and comments in the Report are "decisions" for the purposes of susceptibility to judicial review even though they be only statements of opinion.[2] This is especially so because the Challenged Findings damage the reputation of C, a person directly concerned in the inquiry.[3]

5. *Natural justice requirement*. In an investigative jurisdiction e.g., a public inquiry, the rules of natural justice require[4] that the person making a finding in the exercise of such a jurisdiction must base his decision upon evidence that has some probative value i.e., the finding **must be based upon some material that tends logically to show the existence of facts consistent with the finding and that the reasoning supportive of the finding, if it be disclosed, is not logically self-contradictory**. There must be probative evidence of fact to sustain a finding, at least by inference, before it can be made.

6. *Reputation of the decisionmaker is irrelevant*. It is "essential" that the Court should be prepared to exercise its well-recognised role on applications for judicial review of an Inquiry Report regardless of the distinction of the decisionmaker[5] (i.e. Sir Peter Openshaw, DL, who is a respected and experienced judge). As with appeals from judgments of respected and experienced judges in civil litigation, this does not impugn D himself or his reputation.[6]

7. *Standing of C*. C is and was at all material times the Chief Minister of Gibraltar whose conduct has been central to the matters inquired into by the Inquiry. The Report makes several harshly worded, critical findings and comments in relation to C, without any or sufficient legal justification, that seriously impugn his integrity and the propriety of his conduct and which have severely and unlawfully injured his reputation both professionally as a politician and a lawyer, and personally, and accordingly have interfered with both his constitutional/ECHR and common law right to respect for his reputation without proper lawful justification. C is therefore directly affected by the Challenged Findings in the Report and has a sufficient interest in the matter to which the Claim relates to bring this claim.

A2. The special significance of damage to a person's reputation

8. The reason for exercising the power of judicial review is stronger if the reputation of a person directly concerned in the inquiry is damaged.[7] *Both* the public interest and the interests of C require that any criticism of C that damages his reputation is *made upon a proper legal basis*.[8] These principles have recently been confirmed by the Privy Council.[9] "The more finality there is in the conclusions reached by a commission and reflected in its inquiry report and the greater the strength of their expression, the more that is required to be done by the commission to ensure that the process is fair; and vice versa".[10]

9. C has a right, both at common law and under the Constitution not to have his reputation injured ***without sufficient justification***. Severe criticism in a public inquiry accompanied by wide publicity affects that right.[11]

10. In addition, s.7(1) of the Constitution, reflecting art. 8 of the ECHR, protects every person's right to respect for his *private* life, which includes the right to respect for a person's reputation.[12] "*Private* life" includes business or *professional* relationships and reputations, particularly where the consequences of injury to reputation to a person's private life *are serious*. The ECtHR has accepted that for the purposes of art. 8, the exercise of public duties by a politician is akin to a "professional occupation".[13] This is especially so when the findings "touched on a wider ethical aspect of his personality and character and cast aspersions on his moral values".[14]

S.18(8) of the Constitution requires the Court to take into account the jurisprudence of the ECtHR when determining any question in connection with a constitutional right.

11. C was at all material times, and still is, a politician exercising a public function. He is also a lawyer by profession and expects shortly to return to private legal practice. The test of "seriousness" of injury to his reputation is plainly met in respect of the Challenged Findings.

12. The more substantial the interference with human rights the more the court will require by way of justification before it is satisfied that the decision is reasonable.[15] Far from the court's power to intervene to protect a person's reputation not being just "in theory", as posited by D in **[DSG/40],** it engages the need for **'anxious scrutiny'** by the court of the decision to ensure that there is indeed "compelling justification" without which "it is not open to the decisionmaker to risk interfering with fundamental rights".[16] With respect, the Challenged Findings are the antithesis of "*compelling justification*". The "*highest standards of reasoning*" must be applied by a decisionmaker before inferring dishonesty.[17]

13. It is therefore unlawful for D to make findings that are incompatible with an ECHR (or Constitutional) right of C i.e., without proper legal justification. It is axiomatic that a decision in the Report that is unlawful applying judicial review grounds, would, if it interferes with (injures) C's right to respect for his reputation, ***also*** therefore be unlawful under the Constitution since there would necessarily be "no sufficient justification" for it.

14. D's submission **[DSG/44]** that C should 'wear' the criticisms in the Challenged Findings because he is a senior politician is not sustainable considering the applicable case law. C's public statements in this respect are none to the point.

A3. Applicable legal principles on which the parties are agreed

15. The substantive content of the Report, which include decisions, comments and criticisms ("**decisions**") can be judicially reviewed by the court on usual JR grounds,[18] including lack of probative evidence and self-contradictory (or otherwise logically fallacious) reasoning.[19] The court may quash decisions where (1) the procedure by which such findings were reached was unlawful *or* (2) primary facts were found that were not supported by any probative evidence or (3) the reasoning by which the decision-maker justified inferences of fact that he had drawn is self-contradictory or otherwise based upon an evident logical fallacy.[20] Internally inconsistent reasoning amounts to irrationality.[21]

16. The nature and purpose of judicial review proceedings is to challenge the *legal validity* of a decision, not for the court to form and substitute its own view of the merits of the decision. "Disagreement on the appropriate weight is never, ***on its own***, a proper basis for a public law challenge"[22] (Our emphasis). The court should only explore the evidence to the extent required "to see if the decision is vitiated by…legal deficiencies."[23]

17. Decisions outside the terms of reference of the Inquiry are ultra vires (and thus unlawful) and the words "leading to" in the terms of reference reinforced the need for a link between the reasons and the circumstances of IM ceasing to be Commissioner of Police.

A4. Areas of apparent disagreement between the parties as to applicable legal principles

"A technical, legalistic and forensic attack"

18. D is wrong to criticise the claim on the basis that it is "*a forensic attack on specific passages of the Report*" and that C's grounds are "*semantic and technical*" or "*legalistic*". It is re-assuring that D consider the grounds to be these things. They are what a challenge to the Report on C's Grounds needs to be if it is to succeed. Obviously, the challenge is to "specific passages of the Report". That is what and where the Challenged Findings are.

19. D is wrong to rely on Lady Simler's words in *Pyaneandee* at [53] **[DSG/42]** to the effect that the Report's contents should be read as a whole and not parsed. C agrees. But the meaning and purport of that passage avails C not D. C's forensic analysis of the findings against the evidence and other findings does not constitute parsing the findings in the sense that Lady Simler was cautioning against.

Distinction between procedural and substantive content challenge

20. D's attempt to distinguish by reference to the reported cases between procedural challenges and challenges to substantive content ("*as in Mahon, their* [the court's] *reasons for doing so focused on unfairness in the Inquiry's process, not errors in the Commission's substantive reasoning*" **[DSG/8.1]**) is misconceived and entirely unsupported by the case law (which is clearly to contrary effect):

    20.1 The cases make no such distinction. All of *Mahon*[24]*, R (E7) v Holland*[25]*, Peters v Davidson*[26]*, Pyaneandee*[27] and *Landreville*[28] were cases that involved challenges to the *substantive findings* of reports of Inquiries and not just on procedural grounds. Indeed, in *Mahon,* the lawfulness of substantive findings of the report were successfully challenged because (as alleged in our case) they were *based upon an illogical conclusion* and *self-*

contradictory and unsupported by evidence[29] and drew improper conclusions from such statements of fact to the detriment of C.

20.2 The use to which D seeks to put *R (E7) v Holland* is wrong and, far from availing him, serves C's case: it was a case in which the court rejected the JR claim because the Inquiry had rejected one account and accepted another *for which there was more than sufficient evidence*. That is uncontroversial. Our case is: no evidence to sustain and/or the evidence was to the contrary of the Challenged Findings. D's review of and attempt to distinguish the cases is none to the point and does not avail him. Counsel for C will review the cases in this respect at the trial of the action.

20.3 In judicial review, the court is concerned only with *how* the decision is taken. Decisions taken in breach of any of the grounds of judicial review are a failure of the *process* by which it was taken.

<u>*Weight and sufficiency of evidence.*</u>

21. It simplistic and wrong to criticise the claim on the basis that it amounts to an impermissible challenge to 'weight' of evidence (if that were the Claim, which is not the case).[30] The law has moved on from *Council of Civil Service Unions* [1985]: "*The common law of judicial review in England and Wales has not stood still in recent years… They* [the courts] *continue to abstain from merits review – in effect, retaking the decision on the facts* ***– but in appropriate classes of case they will today look very closely at the process by which facts have been ascertained and at the logic of the inferences drawn from them****."*[31] [our emphasis]

22. The court may explore the evidence to see if the decision is vitiated by legal deficiency[32]. While the question of weight between competing considerations is normally a matter for the decision-maker rather than the review court, 'reasonableness' reviews involve considerations of "**weight and balance**", with the intensity of the scrutiny and the weight to be given to any primary decision maker's view depending on the context.[33]

23. What is reasonable depends upon the subject-matter and nature of the decision.[34] "*The more substantial the interference with human rights the more the court will require by way of justification before it is satisfied that the decision is reasonable*".[35] The "*highest standards of reasoning*" must be applied by a decisionmaker before inferring dishonesty.[36] The impugned findings fail to meet this test.

24. The court will intervene where the facts found, taken as a whole, could not reasonably warrant the conclusion of the decisionmaker. The evidence must be *sufficient*.[37] **If the weight of facts pointing to one course of action is overwhelming, then a decision the other way cannot be upheld.**[38]

25. Some categories of cases will require the court to subject a decision to the more rigorous examination e.g., "fundamental rights cases" in which the complaint is of interference with a person's fundamental rights (i.e. a right under the ECHR and/or the Gibraltar Constitution), e.g. to respect for reputation, ***as is the case in this Claim***. Such cases require "*anxious scrutiny*" by the judicial review court which goes beyond conventional Wednesbury unreasonableness.[39] The seriousness of the impugned findings and their effect on the C's reputation in this case are self-evident.

26. The DSG ignores this legal principle in favour of the erroneously incomplete view that "weight" is a matter for D and not reviewable and C's claim is therefore "hopeless". This is wrong. Evidence must be *sufficiently probative* of the fact found or inference made. If not, the court may quash the decision if no reasonable tribunal could have regarded it as *sufficient* to warrant such a finding.[40]

27. It is therefore not correct that "weight" to be placed on evidence is irrelevant to judicial review. As the case cited by D himself states: "Disagreement on the appropriate weight is never, ***on its own***, a proper basis for a public law challenge" (Our emphasis). [41] That is uncontroversial, but does not dispose of this claim as D appears to think.

The test of irrationality

28. D states **[DSG/34]** that a finding of fact is irrational "**only**" if it is "*so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it"*[42] (per Lord Diplock). This, does not convey the state of the current law and cannot be relied on to the effect that D deploys it:

    28.1 First, as the court is no doubt aware, this simply means "unreasonableness". What is required before a court will intervene on this ground is that the decision is one "outside the limits of reason"[43] or "outside the range of reasonable decisions open to a decision maker."[44]

    28.2 Lord Diplock's words should not be mischaracterised to suggest that the bar is higher or more offensive to or critical of the decisionmaker than it is. As has been stated, the word

irrationality "*wrongly casts doubt on the mental capacity of the decisionmaker*" and "*the use of a term redolent of severe criticism carries with it the danger that a court may not intervene in a case where intervention is needed*"[45] (which is why the term "unreasonableness" is now preferred). In the UK Supreme Court, it has been expressed thus: "*…In modern terms, and with respect to Lord Diplock, "irrationality" as a ground of review can surely hold its own without the underpinning of such elusive and subjective concepts as judicial "outrage" (whether by reference to logical or moral standards)*."[46]

28.3 A decision is irrational (unreasonable) if there is a flaw in the underlying reasoning that 'robs the decision of logic'[47], such as where there is a logical or methodological error in the reasoning[48]; where the conclusion does not follow from the evidence, or there is "an unexpected leap in the reasoning which fails to justify the conclusion"[49]; is based on 'a criterion so nebulous as to be unlikely to produce any result other than one which is arbitrary or whimsical'[50]; or 'lacks logic to such a degree as to be unreasonable'[51]

A5. Remedies

29. In so far as concerns remedies, the usual remedy for a person who is aggrieved that his reputation has been damaged by a demonstrably unreasonable conclusion on the facts is to seek a declaration to that effect which can extend to excising or setting aside paragraphs from the Report, in effect setting them aside or declaring them to be invalid[52] or for orders that the findings should be set aside and for declarations that they had been made in excess of jurisdiction and in circumstances involving unfairness and breaches of the rules of natural justice.[53]

B. OVERARCHING GROUNDS [SFG/46]

30. It is a fundamental premise of many of the Challenged Findings that in doing the things for which he is criticised in those findings, C's *motive* was to protect his friend, Mr James Levy KC ("**Mr Levy**") from that investigation or from the likely consequences of the warrant being executed or his phones being interrogated **[R/11.85] ("the Motive Finding")** and that these things constituted interference or attempted interference in the Op Delhi investigation, or were otherwise improper or grossly improper.

B1. C's supposed motive to protect Mr Levy

31. It is C's case that, in addition to those identified below in respect of each finding, the following are grounds of irrationality applicable to each of the **First to Twelfth Findings**:[1]

    31.1 It is irrational to conclude *both* (i) that C's motive was to protect Mr Levy by seeking IM's removal as COP and (ii) that, having supposedly achieved his objective to remove IM when retired on 9 June 2020) C took no steps thereafter to interfere or attempt to interfere in the Op Delhi investigation to achieve the protection of Mr Levy from it or from the interrogation of his devices. D found as a fact that after IM's retirement, the RGP continued to conduct the investigation as they pleased (as they had done before his retirement and made the decisions (i) to interrogate or not Mr Levy's devices and (ii) to charge or not Mr Levy entirely without interference or attempted interference from anybody (including C) **[R/12.391-2] [R/12.417] [R/12.436]**.

    31.2 If C did not interfere or attempt to interfere in the Op Delhi investigation to protect Mr Levy from anything *after* IM's retirement, it is irrational to infer (without evidence to that effect) that that had been C's motive *before* the retirement. Mr Levy's supposed need for that protection did not change on 9 June by reason of IM's retirement or otherwise.

    31.3 In contrast, D's finding that after IM's retirement C did not interfere or attempt to interfere in the investigation sustains the objective truth of C's evidence (that D chose to reject without the existence of evidence to the contrary effect) that he had lost confidence in IM because of his genuinely and honestly held belief (which D found to be a fact) that IM had lied to him, in his office, about the advice received from the DPP – and not out of any motivation to protect his 'friend and mentor' Mr Levy.

    31.4 This ground of irrationality is referred to elsewhere in this Skeleton as "**the irrationality of the Motive Finding**".

32. D manifestly fails **[see DSG/65]** to address and meet this ground of challenge. To the contrary, what he says sustains C's challenge to it. All the cited purported justifications for the finding are complete speculation, not based on any evidence or other findings and none of those speculations were ever put to C during the hearing or in the Maxwellisation Letter.

[1] To avoid repetition, we deal with it generally here and invite the court to apply it also to each of those Findings.

B2. Absence of a relevant act of interference – conflation of intention (motive) and act

33. In any event, the Motive Finding does not and is not in law capable of itself sustaining a finding of attempted interference in the Op Delhi police investigation because:

33.1 C's *motive* for doing a particular act must be distinguished from the nature of the act itself. Interference in a police investigation is a form of perverting the course of justice. It is well established in the law that interference requires not just an *intention* (or motive) to interfere but also an *act* that itself has a *tendency* to interfere.[54] The desire to protect Mr Levy is not an act. But you need both. It is a feature of the Challenged Findings that D has conflated them into one by equating motive (intention) with act tending to interfere.

33.2 In this respect, preparatory acts do not suffice. So even if D's finding that C was "moving to protect Mr Levy from the consequences of the execution of the warrant and the interrogation of his devices", were (which it is submitted is not the case) capable of being 'an act' it would still not suffice to sustain a finding of attempted interference.[55] The crucial question is whether C had "embarked upon [the interference] proper",[56] which C plainly had not and which D did not find him to have done.

33.3 Nor is D's fatal legal error saved by finding that it was an *attempt* to interfere. The courts have established that the concept of attempt to pervert the course of justice (interfere in a police investigation, in our case) is inappropriate because it could mislead: the word is convenient for use **in a case where it cannot be proved that the course of justice was actually perverted**, but it does no more than describe a substantive offence which consists of conduct which (i) has tendency and (ii) is intended to pervert the course of justice.[57]

33.4 This ground of irrationality is referred to elsewhere in this Skeleton Argument as "**the absence of a relevant *act***" and we indicate below the Challenged Findings to which it applies.

B3. Inconsistency of findings

34. Some of the Challenged Finding are contradictory of and inconsistent with other findings by D, in that similar conduct and/or conduct motivated by the Motive Finding are inconsistently found to be and not found to be attempted interference in the Op Delhi investigation, namely, the First to Fifth are (or risk being) attempted interference but the Sixth to Eleventh Findings are found to be improper or grossly improper conduct, but not interference or attempted

interference. This ground of irrationality is referred to elsewhere in this Skeleton Argument as "**the General Inconsistency**" and we indicate below the Challenged Findings to which it applies.

C. CHALLENGE TO FINDINGS RELATING TO ATTEMPTED INTERFERENCE IN THE OP DELHI INVESTIGATION

C1. First Challenged Findings – interference in the Op Delhi investigation at the meeting with IM on 12 May 2020 ("the 12th May Meeting") [SFG/17-22]

35. **Background facts.** On 12 May 2020, the RGP attended at the offices of Hassans and Mr Levy's home to execute a search warrant against him in relation to the RGP's Operation Delhi Investigation ("**Op Delhi**"). Shortly after the RGP officers arrived at the offices of Hassans, IM sent a WhatsApp message to C informing him that "*detectives are executing a search warrant at Hassans for (JL)*". C responded: "*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.*" C then called IM to a meeting ("**the 12 May Meeting**") at which (what D has found to be) the 'berating' of IM by C took place.

36. **Challenged Findings**: "*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.*" **[Rep/11.85]** and **[R/0.100]**

"*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.*" **[R/11.87]** and **[R/0.101].**

37. **Ground 1: Irrationality**. These findings are challenged on the grounds that they are unreasonable/irrational because:

What the 'berating' consisted of – there was no "act" of interference

37.1 The 'berating' was not about interfering with the execution of the warrant. D **specifically rejected** the allegation that the 'berating' was to bring about, or even to attempt to bring about the abandonment of or to otherwise interfere in the execution of the search warrant against Mr Levy, then in progress **[R/11.74]** and **[R/11.78]**.

37.2 Having rejected and excluded the possibility that he had attempted to interfere by stopping the execution of the search warrant, D did not make any finding, nor cite and accept any evidence by IM or anyone else to the effect that C attempted to interfere with the investigation in the 12 May Meeting *by any other manner or means*.

37.3 In **[DSG/50a]** D says that he found that "*through the berating, C was moving to protect Mr Levy…from the likely consequences of the warrant being executed, or his phones being interrogated*". This quotation is incomplete. In full it reads: "*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*." (our emphasis) **[R/11.85]** and **[R/0.100]**

37.4 But this is not, and is not capable of being, a finding of any other ***manner or means of interference or attempted interference*** in the investigation. The consequences of this are fatal to lawfulness of the finds, because:

(i) It is a statement of what D thinks was C's ***motive*** for acting as he did in the 12 May Meeting (in which he nevertheless found that there had been no interference). Elsewhere **[in DSG/51],** when seeking to defend the vires of the finding, D accepts this, saying that C used the 'jurisdiction' argument "*to explain* ***why*** *he stepped in to defend Mr Levy*" (our emphasis). Although C rejects the notion that he "stepped in to defend Mr Levy", the use of the word "why" (which means *motive*) not "*how*" (which describes manner or means of interference) is telling. In this respect, preparatory acts do not suffice. So even if D's finding that C was "moving to protect Mr Levy from the consequences of the execution of the warrant and the interrogation of his devices", were (which it is submitted is not the case) capable of being 'an act' it would still; not suffice to sustain a finding of attempted interference.[58] The crucial question is whether C had 'embarked upon [the interference] proper".[59] C's *motive* for doing as he did during the 12 May Meeting is not an act of "interference".

(ii) D has found that there was no interference (i.e., no act that had a tendency to interfere) but that there was an intention (i.e. motive) to protect Mr Levy. The desire to protect Mr Levy is not an act. You need both. D has conflated them into one by equating motive (intention) with act tending to interfere.

(iii) Accordingly, D's construct to this effect [**DSG/50a]** does not avail the purpose to which he seeks to put it. And there is no *other* (even purported) finding of any other manner or means of attempted interference (i.e., act) on 12 May. In short: if there was no act that had a tendency to interfere there can be no attempted interference however much there may have been (which C rejects) a motive or desire or intention to protect Mr Levy. The finding is, on the authorities, conceptually unsustainable in law. This engages the absence of a relevant *act* submission in para 33 above.

37.5 The 12th May Meeting was about the appropriateness of a search warrant (while it was happening) as opposed to a production order. Without derogating from para 37.4 above, if the (legally required) ***act*** of "attempted interference" was not to prevent the execution of the warrant, it is fanciful and irrational to posit (let alone 'find'), without evidence, that it was interference in some other (unspecified) way. There was no evidence whatsoever before the inquiry (or finding by D) that C then or later (ever) tried to influence the police to prevent the execution of the warrant or the examination of Mr Levy's devices or indeed, that he ever interacted with the police at all in relation to the investigation. Indeed, D found that after IM's retirement the investigation continued without interference or attempted interference from anyone (including C) **[R/12.391-2] [R/12.417] [R/12.436].** There was, accordingly, no rational basis on which D could infer that C was *"moving to protect Mr Levy… from the likely consequences of"* the execution of the search warrant and interrogation of the devices, which C never tried to influence the police not to do.

37.6 None of the other matters listed in **[DSG/50]** can, in the light of the evidence, provide rational/reasonable underpinning to this finding, for reasons explained in C's SFG, through which counsel will take the Court at trial. This is true, not least, of the surprising reference in **[DSG/50a]** to "*direct threats of 'consequences'*" given that D made no decision/finding that C had threatened IM with any personal consequences.

37.7 D found that the 'berating' was in the terms and manner of its delivery and ***not*** in the ***content*** of what was said by C. As to content of the 'berating' (search warrant v production order), D found (see para 37.11 below), rightly, that C was entitled to express even strong criticism **[R/11.85]**. As to terms and manner of delivery, he found: *"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*". **[R/11.31].** In other words, unacceptable workplace language, not an act tending

to interfere (the substantive act was the criticism, which D found that C was entitled to make).

37.8 This engages the Irrationality of the Motive Finding submission in para 31 above.

The finding was premised on a manifest error

37.9 In addition to being premised on a manifest error of law (as to what can be an attempt to interfere) the finding was, in any event premised on a manifest error by D (which he now admits) as *to the evidence* relied on to sustain it, namely, that IM had told the C during the meeting that the DPP had said that Mr Levy should be treated as a suspect. In fact, the evidence and D's own finding was to the contrary, namely, that C did not become aware that Mr Levy was or may be a suspect until *after* the 12th May Meeting.

37.10 This is not, as D now argues **[DSG/52]**, an "immaterial" error. The finding is key to the very premise on which D based his finding of *attempted interference* in the investigation on 12th May by seeking ("moving") to protect Mr Levy (who C could not rationally have been thought to believe needed protection if he did not know that he was a suspect). D found ***as a fact*** that C did not know that Mr Levy was a suspect until after the 12 May Meeting but nevertheless made the contrary fact (that C did know that) the basis of his reasoning for this highly damaging finding. It is not legally open to D to explain away an obvious internal inconsistency of findings (which is a classic judicial review ground) by an ex post facto statement that it was a "drafting slipup" but that "he had the point clear in his mind". It is mistake of (existing) fact i.e., as to the availability of evidence on a particular matter. The mistake is established (i.e., uncontentious, and objectively verifiable), C is not responsible for it and it has played a material part in D's decision-making reasoning. It is accordingly unlawful[60]

D found that C was entitled to criticise the RGP's decision

37.11 D found that "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*"* **[R/11.85]**. *Criticism* cannot and does not cease to be a democratic process entitlement on the part of the C to become *attempted interference*, still less *a grossly improper attempt at interference* in a police investigation, simply because it is delivered in manner and language that is thought to be inelegant and inappropriate or angrily.

37.12 The finding has no regard whatsoever to the fact that the content of the berating, namely, that recourse to a *production order* rather than a *search warrant* was the proper course to have followed initially, is a perfectly reasonable and legitimate view as D himself found at **[R/11.391]** and the AG and DPP shared.

37.13 Most recently in *R (Andrew Mountbatten-Windsor) v Central Criminal Court and CC Thames Valley Police*[61], a search warrant was invalid because "*the judge could not properly have been satisfied that there were reasonable grounds for believing that the material to be searched for did not consist of or include items subject to legal privilege or Special Procedure material. This is because the presence of material subject to legal privilege was expressly envisaged in the application for the search warrants and because it was inherent in the nature of the alleged offences under investigation misconduct in public office, that the material was likely to be in the possession of a person namely Mr Mountbatten-Windsor, who had acquired or created it in circumstances which would make it Special Procedure material. Such non-compliance with section 8(1)(d) of PACE is sufficient to make the warrants unlawful.*" The parallels are obvious.

37.14 The notion that the "berating" found by D constitutes the "*point when criticism risks becoming interference"* (and in the case of the 12 May Meeting became) attempted interference in the Investigation is (apart from a legal impossibility) based on an error of fact and reasoning, relying on an inversion of the evidence, which robs the decision of logical integrity and factual basis.

38. **<u>Ground 2 (Natural Justice)</u>:** The findings are also challenged on the ground that they have been arrived at in breach of the applicable principles of natural justice because:

38.1 there is no probative fact found by D (and no evidence on which he could have done so) to sustain them, namely some way (other than attempting to interfere with the execution of the search warrant on 12 May, which D explicitly found did NOT occur) that was capable of constituting and constituted an *act* of interference with the Investigation. Without finding such an act, D could not lawfully make a finding of "attempted interference".

38.2 The findings are also contrary to the evidence that C did nothing to interfere with RGP's freedom or decision in relation to the execution of the warrant and the examination of Mr Levy's devices after the 12 May meeting.

39. **<u>Ground 3 (Illegality)</u>:** The findings are further challenged on the grounds that they are fatally tainted by illegality because:

    39.1 The finding in **[R/11.87]** 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"* is gratuitously critical comment that is completely irrelevant to and unnecessary to discharge the terms of reference and accordingly outside the scope of his commission and ultra vires.

    39.2 The First Challenged Findings interfere with the C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law and, because, for all the reasons already stated they were unlawfully made, they have no lawful justification.

C2. The Second Challenged Finding – rejection of C's 'jurisdiction argument' in relation to the 12 May 2020 Meeting [SFG 23-28]

40. **Background facts**. D noted C's evidence that he had asked IM to come to the 12 May Meeting "*as he wanted more information, 'because this was jurisdictionally important: Gibraltar's reputation was potentially going to be tarnished by this action*…'" **[R/11.29].** D also noted IM's evidence to similar effect: "*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*" **[R/11.67].**

41. **Identification and purport of Second Challenged Finding**. The parts of the Report that constitute the Second Challenged Findings are in **[R/11.85], [R/11.86] and [R/0.100]** and are identified and recited in **[SFG 23]**. Their purport is that D rejected that C was motivated by protecting the reputation of Gibraltar because it cannot be right to equate the interests of Gibraltar with those of a small circle of rich, powerful and influential individuals. He therefore thought 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".

42. **Ground 1 – Irrationality**. The Second Challenged Finding is unsupported by evidence, contrary to the evidence, lacking in logical integrity, arbitrary and contradictory of other findings by D and therefore unreasonable (irrational) because:

42.1 First, D again conflates acts (tending to interfere) and intention (motive) to wrongly find "attempted interference" contrary to the applicable principles. D finds attempted interference without an 'act' of interference on the basis of rejecting C's motive for calling IM to the 12th May Meeting and inferring (arbitrarily to boot) a different *motive* for doing so. This engages the absence of a relevant *act* submission in para 33 above.

42.2 Second, C found as a 'general point' that "*the personal interests of a small circle of rich, powerful and influential individuals in Gibraltar"* (whether friends or professional colleagues or not) cannot be "equated" with the interests of Gibraltar. This is wrong for the following reasons:

(i) It is wrong and irrational to base a decision on the premise that the public interest of Gibraltar cannot equate to or coincide with the interests of a "a small circle of rich, powerful and influential individuals", and even of friends and/or past or present professional colleagues of the Chief Minister. They often do. If the finding were rational and correct, it would never be possible for a Chief Minister to protect Gibraltar's public interests where "*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*" are involved and might also be protected. That is plainly wrong.

(ii) The fact that the purported defence of a legitimate public interest is open to be abused in the manner that D describes, does not mean either that there is no such public interest nor that it cannot be lawfully advocated for and protected for fear of the possibility of abuse. That is true of all powers and responsibilities. D has fallen into error in this respect by equating one thing with the other.

(iii) In **[DSG/53a]**, D seeks to rebut this ground by arguing that in saying this he was only "making a general point" of what "may" tend to conceal misconduct and not applying it as the premise for his rejection that C was motivated by any genuine concern for the public interest. Respectfully, this proposition is not sustainable. The entire second paragraph of the Second Challenged Finding betrays this argument, not least: "*This cannot be right, because then the ends will* ***always*** *justify the means, and those individuals and their interests, will always be protected"* [our emphasis]. Accordingly, C's "general point" finding, which would "always" be the case, was the very premise of D's rejection of C's 'jurisdiction protection' motivation.

42.3 Third, the findings are also contrary to the evidence, because IM himself acknowledged that the RGP's execution of the warrant against Mr Levy and Hassans engaged the public interest. He alerted C, Min Justice and AG because of the significance and public impact of the action, thereby acknowledging the width of the public interest engaged. In the email to himself on 12 May 2020, IM said that he would be informing the CM, AG and Min Justice of this action "*given the delicate nature of the intervention*". IM gave oral evidence to the same effect.

42.4 Fourth, D found **[R/11.150]** that at the time of the 12 May Meeting C could not and did not know that Mr Levy was then a suspect. That finding is logically contradictory of the finding that rather than protecting the jurisdiction "*it is 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*". There is no logical basis, still less evidence for D's inference. If C did not know Mr Levy was a suspect, how can it be inferred that he believed Mr Levy (rather than the jurisdiction) need protection?

42.5 This engages the Irrationality of the Motive Finding submission in para 31 above.

43. **Ground 2 – Natural justice**.

43.1 There was no probative evidence that at the 12th May Meeting C was moving to protect Mr Levy, and it is contrary to logic and the evidence. D's own case sustains this Ground. According to D **[DSG/53c]**, the "ample evidence" to sustain this finding consists of: (i) the fact that C *later* "devoted significant energy to devising strategies on how Mr Levy might stop his phone from being examined", the strength of C's reaction on 12 May (both of which are equally consistent with wanting to protect the jurisdiction) and "corroborative evidence" i.e., messaging and meeting with Mr Baglietto and Mr Levy.

43.2 None of this is probative evidence to sustain the inference that on 12 May, C (whom D found did not then try to have the warrant execution stopped) was not motivated by concern for Gibraltar's reputation and finance centre but by "moving to protect Mr Levy". In rejecting his sworn testimony in this respect, D effectively found C to be lying on oath. The requirement of "the highest standards of reasoning" (given finding of dishonesty) and "compelling justification" (given serious injury to C's reputation) are evidently not met.

44. **Ground 3 – Illegality**. The findings are fatally tainted by illegality because:

44.1 The Second Challenged Finding is irrelevant to the reasons or circumstances leading to IM's retirement and thus outside the scope of his terms of reference, and thus ultra vires.

44.2 The findings also interfere with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law without lawful justification due to their unlawfulness.

C3. Third Challenged Findings: Interference with the Investigation by referring Mr Baglietto to the Police (Discipline) Regulations [SFG 29-34]

45. **Background.** The Third Challenged Findings are based entirely on a WhatsApp message at 16:55 on 14 May 2020 by C to Lewis Baglietto in which C said: *'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.'* **[para 11.297].** The Third Challenged Findings are D's findings in relation to this message.

46. **Identification and purport of Third Challenged Finding**. The parts of the Report that constitute the Third Challenged Findings are in **[R/ 11.301], [R/11.303], [R/ 0.112], and [R/ 11.304]** and are identified and recited in [**SFG 56]**. Their purport is that in the WhatsApp message to Mr Baglietto C was proposing the removal of IM and purported (erroneously) to reject C's explanation that that it referred to the removal of Mr Richardson (which had not been C's explanation). D found that regardless of which of the two C was referring to, it was a grossly improper attempt by Mr Picardo at interference with the investigation. All this after D had rejected C's actual explanation for sending the message.

47. **Ground 1 – Irrationality**. The Third Challenged Findings are arrived at in the absence of any or adequate evidence and logical integrity, are contrary to the evidence before the Inquiry and are therefore unreasonable or irrational for the following reasons:

47.1 The findings are based on an entirely false evidential and factual premise, namely, that the message was about C ***proposing*** the "removal" (or dismissal) of one or other of IM or Mr Richardson, or indeed about the 'removal' (or dismissal) of anyone, still less of Mr Richardson while he remained the investigator of Op Delhi. Once again, D made a finding based on his own error as to evidence. D relies for that premise on C's oral evidence at [T/16/255.8], but far from sustaining the premise that demonstrates its incorrectness and error **[CEB/27/17791]**.

47.2 D does not say on what basis he *"think[s] it far more likely that he was referring to IM"* and, in any case, there was no evidence to this effect nor any probative fact from which D could infer it. It is an entirely arbitrary opinion of D.

47.3 The finding further ignores that the Police Regulations do not apply to the Commissioner of Police (which D acknowledges **[R/11.301]** that Mr Picardo explained that "he well knew" without D making any finding rejecting this fact).

47.4 As if to suggest that the non-application of the Police (Discipline) Regulations to the Commissioner was unknown to C at the relevant time, and thus make the Third Challenged Findings rationally possible, D says "*even though **now** everyone **including Mr Picardo** agrees that the Regulations do not apply to the Commissioner...*" (emphasis added) [**R/11.303**]. There was no evidence before the Inquiry that C did not know that, and the evidence that there was from him was that he did know, as recorded by D himself: "*Mr Picardo's explained that, **as he well knew**, those regulations do not apply to the Commissioner of Police...*" [**R/11.301**] (our emphasis in bold).

47.5 Having found (without evidence) that it is *"much more likely"* that the intended target was IM (despite the Police Regulations not applying to him as COP), on that basis D finds that *"It shows that he firmly had IM in his sights"*. This finding lacks logical integrity and is thus irrational. It is not logically possible to find something *"firmly"* on the back of something else which is only *"much more likely"*.

47.6 Whether the "target" was IM or Mr Richardson is logically irrelevant. D's finding that Mr Picardo was thereby seeking the removal of either IM or Mr Richardson ignores the fact that those Regulations gave no power to C (or to anyone one that he could direct) to do either thing. Only the Commissioner of Police or the RGP Disciplinary Board could do so. It is therefore irrational to base a finding that *C* was seeking or proposing to remove any police officer by citing the provisions of the Police Regulations.

47.7 D now argues **[DSG/55-59]** that in the text of the cited WhatsApp message to Mr Baglietto, because the word "Dismissal" is used, it is "probative and compelling evidence" that C was "proposing" that the removal or dismissal of "a police officer" "for whatever reason" was an option, albeit not by him and that "*raising the idea or route is in itself capable of being a 'grossly improper attempt' at interference, even if it was ultimately an impossibility*". But it is self-evident from the terms of the message, and the context of the

word "Dismissal" in it, that C was not in or by sending it proposing the removal or dismissal of anyone.

47.8 D again conflates act with motive. There is no act capable of 'tending to' interfere and therefore engages the absence of a relevant *act* submission in para 33 above.

47.9 This argument lacks foundational logic and is itself contradictory of and inconsistent with other findings by D. To make it (and the challenged finding itself) required D to:

(i) Once again make an error of mis-capturing and mischaracterisation of the evidence.

(ii) Assume (without and contrary to the evidence) that C did not know at the time that the Police Regulations did not apply to the Commissioner of Police.

(iii) Ignore that as the Regulation does not give C (or anyone under his influence or control) the necessary powers and that, C had no means to use the regulations as a means of implementing such an "idea or route".

(iv) Ignore that the word "dismissal" in the WhatsApp featured only because the message is a replication of the section which uses the word and in no way conveys "a proposal" by C that anyone should be dismissed.

(v) Reject, without rational logic or evidence (save D arbitrary decision to do so) C's sworn evidence as to the reason for sending this WhatsApp to Mr Baglietto.

(vi) Be internally inconsistent with another of his own findings: in **[R/11.351]** D rightly, but inconsistently with this finding, describes this same WhatsApp message as being "regarding pension entitlements", not a proposal to remove or dismiss a police officer.

47.10 This Challenged Finding also engages both the Irrationality of the Motive Finding submission in para 31 above and the General Inconsistency submission in para 34 above.

48. The rejection by D of C's sworn evidence as to his reason for sending this message necessarily imputes dishonesty to C and thereby seriously injures his reputation. But the requirement, in such circumstances of "the highest standards of reasoning" and "compelling justification" are plainly not met.

49. **Ground 2 – Illegality.** For the reasons stated above, the findings interfere with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law.

C4. Fourth Challenged Finding: Interference in the Investigation by requesting the Attorney General to consider taking over and discontinuing the warrant proceedings [SFG 35-40]

50. **Background.** At 00:36 on 18 May, C sent the AG an image of section 59 of the Constitution which sets out the AG's right to take over and continue any case. This was in reference to the search warrant against Mr Levy and the possibility of AG applying to the Magistrates' Court to withdraw the warrant. D found that C "canvassing" this possibility was to his mind 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.

51. **Identification of the Fourth Challenged Finding.** "*...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*." **[R/11.357] and [R/0.121].**

52. **Ground 1 – Irrationality.** The Fourth Challenged Finding lacks foundational logic and is irrational because:

    52.1 First, asking the Attorney General to consider if it would be proper to have recourse to section 59 and accepting his view that it was not, is not, and is not legally capable of being "*another grossly improper attempt by Mr Picardo to interfere in an active criminal investigation by the RGP*". The Chief Minister is perfectly entitled to ask the Attorney General to consider properly using his powers in support of a public interest of Gibraltar identified by the Chief Minister (or anybody else). When the AG declined to do so, C did not pursue it further. Therefore, acting entirely properly.

    52.2 Second, even if (which is not C's case) C's request to the Attorney General to consider the use of section 59 were to be inappropriate, ***it did not and could not constitute "interference" with the Investigation*** since as D himself found, a court of law would have had to accede to any such request (and thus be satisfied that it was proper to do so) and/or would have been an entirely lawful, constitutional outcome. To discontinue a search warrant procedure following a proper, lawful and judicial process cannot in any circumstances be an interference with the Investigation of which that warrant formed part. Even less so could suggesting recourse to making such an application to court constitute interference in the investigation. The finding that it did therefore lacks logic to the degree that it is unreasonable.

    52.3 Third, D makes the Fourth Challenged Finding on the basis of his mischaracterisation and misstatement (in **[R/11.356]** that Mr Picardo had said in evidence that "*Mr Levy was not*

just his friend, but Gibraltar's biggest rainmaker…." (thereby suggesting that he was seeking to protect both) and that "*he maintains that by protecting Mr Levy, he was acting in the public interest to protect the wider economic interests of Gibraltar*" i.e. the "jurisdictional argument" that D rejected. D relies for that premise on C's oral evidence at [T/16/299.17] but, far from sustaining the finding, that evidence demonstrates its incorrectness and error **[CEB/27/17802]**. Mr Picardo did not say anything to the effect that he was protecting Mr Levy. Indeed, his evidence was to the contrary.[62]

52.4 This Challenged Finding also engages all of the (i) Irrationality of the Motive Finding submission in para 31 above (ii) the absence of relevant *act* submission in para 33 above and (iii) the General Inconsistency submission in para 34 above.

53. D's entire rationale for this finding **[DSG/61]** is that he was entitled to make it because as he himself has found C to have been *motivated* by a desire to protect Mr Levy and not any concern for the public interest (itself a challenged finding – see paras 40 – 44 above), the request to the AG (who dealt with it entirely properly) was not 'proper' and constituted an attempted interference in the Op Delhi investigation. The lack of rational logic is self-evident.

54. Once again, D has fallen into legal error by conflating "motive" with an "act tending to interference" when both are required. Interference (and attempted interference) is by *acts* done with intention (motive) not by *motive* alone. An act, such as inviting the Attorney General to consider using his constitutional powers, which is (so very obviously) not of itself an interference in the police investigation in which the warrant was obtained, does not become an interference in a police investigation because it is done with the *motive* to assist the investigated party. This conflation of act and motive has again led D to wrongly find "attempted interference" contrary to the applicable principles cited there. This engages the absence of a relevant *act* submission in para 33 above.

55. Furthermore, C's reasoning in **[DSG/62]** makes C's case: D concedes that the premise of the Challenged Finding (that C was improperly protecting his friend and not the public interest of the jurisdiction) is sustained because C candidly acknowledged in oral evidence that Mr Levy is his friend and Gibraltar Finance Centre's biggest 'rainmaker'. The lack of rational logic is self-evident. But more importantly, [**in DSG/62**] D completely mischaracterises C's evidence as he having "accepted that he was acting to protect Mr Levy". This is disingenuous and incorrect [T/16/300.18] **[CEB/27/17802]**.

56. **Ground 2 – Illegality.** For the reasons stated above, the findings interfere with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law, without legal justification. The findings lack the required "compelling justification".

57. **Ground 3 – Natural Justice.** For the reasons stated in para 52.3 above, the Fourth Challenged Finding was arrived at in breach (of the Second Mahon Rule) of Natural Justice.

C5. Fifth Challenged Finding: Interference in the Investigation by 'unexplained' contacts with James Levy [SFG 41-45]

58. **Background and identification of Fifth Challenged Finding.** D drew 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.*" **[R/11.150]** ***"In my judgement, henceforward, in his dealings with Mr Levy, Mr Picardo needed to proceed with extreme caution and circumspection, because any unexplained contact would have at least the appearance of an interference with the police investigation."*** **[R/11.151]** (The words in bold type are the challenged finding). [This is also the finding by D that C did not know during the 12 May Meeting that Mr Levy was a suspect]

59. **Ground 1 – Irrationality**. The Fifth Challenged Finding lacks foundational logic, logical integrity, is an error of reasoning and arbitrary and is irrational and accordingly unlawful because the notion that contacts that are not otherwise improper, would, if unexplained, have the *appearance* of interference with the Investigation, and that any such unexplained contact is apt to be criticised, is manifestly incorrect. Contact either interferes in an investigation or it does not. The notion of "the appearance of interference" is an irrelevance, factually and legally. The Chief Minister is not logically (or otherwise) required "*to proceed with extreme caution and circumspection*" simply because otherwise proper conduct might have "the appearance" of an interference with the police investigation. Furthermore, D again conflates act with motive. There is no act capable of 'tending to' interfere and therefore the finding engages the absence of a relevant *act* submission in para 33 above.

60. **Ground 2 – Illegality.** For the reasons stated above, the Fifth Challenged Finding is fatally tainted by illegality because the finding:

60.1 is irrelevant to and thus outside the scope of the terms of reference and thus ultra vires D; and

60.2 interferes with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law without (by virtue of its unlawfulness) legal justification.

D. CHALLENGE TO FINDINGS RELATING TO OTHER IMPROPER CONDUCT IN RELATION TO OPERATION DELHI

D1. Sixth Challenged findings: Speaking to and meeting with a suspect and his lawyer about suspected offences [SFG 48-52]

61. **Identification and purport of Sixth Challenged Findings**. The parts of the Report that constitute the Sixth Challenged Findings are in **[R/11.181] [R/11.323] [R/11.324] [R/11.350]** and **[R/11.351]** and are identified and recited in **[SFG 48]**. Their purport is the fact once C knew that Mr Levy was a suspect, the meetings and/or conversations with him and/or his lawyers should not have occurred, was "grossly improper" and an improper attempt to protect his friend and mentor Mr Levy from the consequences of the search warrant. D also noted that he doubted that C was aware of applicable boundaries, but if he was he had once again chosen to break them.

62. **Ground 1 – Irrationality**. The Sixth Challenged Findings are irrational because:

62.1 No criterion is identified by reference to which the findings have been made. They are simply the opinion of D based on what he thinks is proper and not proper behaviour on the part of a Chief Minister. They are ungrounded in any established legal principle or legal provision or Parliamentary rule applicable to the Chief Minister and against which C's conduct has been or can be objectively assessed and judged. Accordingly, the findings are arbitrary.

62.2 These findings are especially unwarranted in the light of D's finding (as C had himself pointed out in his evidence) that "*The Chief Minister in Gibraltar has no legal standing in, still less statutory responsibility for, criminal investigations or prosecutions*" **[R/11.83].** The effects of this cuts both ways and there is therefore no logical or other rational reason for the findings the effect of which is to restrict C's freedom. However much the Police, prosecution services and ministers may all be or represent emanations of the Crown (as is the judiciary), police investigations and criminal prosecution are not akin to "a team

sport" in which all parts of the Crown are required to support the police or the prosecution. Indeed, the Rule of Law requires that different emanations of the Crown are and must act independent of each other and are therefore free to act, within the confines of the powers and duties of each of them – none of which C has exceeded in the actions giving rise to this finding.

62.3 These findings also engage the irrationality of motive finding submission in para 31.

63. **Ground 2 – Illegality.** These findings interfere with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law, without legal justification.

D2. Seventh Challenged findings: findings that at the 17 May Meeting C had improperly approved the proposal of a written statement by Mr Levy to the RGP [SFG 53-56]

64. **Identification and purport of Seventh Challenged Findings.** The parts of the Report that constitute the Seventh Challenged Findings are in **[R/11.330], [R/11.331] and [R/11.332]** and are identified and recited in **[SFG 53]**. Their purport is that D inferred that the main topic discussed at a meeting in C's home on 17 May with Mr Levy and Mr Baglietto had been whether, as the police had agreed he should do, Mr Levy should give a written statement to the police and not attend an interview under caution. D found that C had "approved" Mr Levy's decision to do as the police had agreed he should do and that it was "of course" improper that he did so.

65. **Ground 1 – Irrationality and Ground 2 – Natural Justice.** The Seventh Challenged Findings lack logical integrity and are arrived at without evidence or probative fact from which to infer them, and are therefore irrational and arrived at in breach of the principles of natural justice, because:

65.1 First, there is nothing forensically inevitable or irresistible, as D finds, simply from the chronology of events, about the conclusion to which he came. Nor that, based on that inevitability, "*it must follow*" that C "*had thereby given his approval to the proposal of a written statement*" which had already been agreed to by the RGP and the AG on 15 May. Nor was the question whether C had, at that meeting, approved the proposal of a written statement put to C or Mr Levy or Mr Baglietto (the attended of the meeting) during the oral hearings.

65.2 This finding therefore relies on multiple, overlaid, layers of supposition and arbitrary speculation. D finds that he does not accept the "explanation" that at this meeting Mr Levy was reassured about Community Care Limited. Instead, and unlawfully, he finds that "*it seems to me, he was reassured about what he had heard Mr Picardo say of his approach to IM and to Operation Delhi"* [**R/11.350**]; and because he has found that, he then finds that it is the *"inevitable and irresistible conclusion"* from Mr Baglietto's later email that this was the main topic discussed at the meeting "*from which it must follow*" that C "*had thereby given his approval to the proposal of a written statement*".

65.3 Second, D declares it improper that C should purport to give his imprimatur (itself an assumption on his part) to a decision already taken by the RGP and others. This conclusion is itself unexplained, unfair and arbitrary. It is not explained why or how it is improper for the Chief Minister to express his agreement with something that D has found that the RGP had already freely agreed to do? This lacks logical integrity.

65.4 Third, D also then immediately notes (as if to suggest that it provides foundation to his inferences) that "*the very next day Mr Picardo set in train the events which were to result in IM's retirement*" **[R/11.333]**. This is not correct, as found by D himself at **[R/12.60]** of the Report which states: "*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 IM's retirement*". That was <u>before</u> the meeting at C's home on 17th May. C says [**DSG/70**] that this "timing objection is unfounded" because "events were *set in train* when Mr Pyle invited Mr Britto to a meeting". This does not avail D. Mr Pyle "invited Mr Britto to a meeting" <u>on 16th May</u> (at 14:07) [C3910] **[CEB/13/12467]** i.e., before the 17th May meeting occurred or had even been requested (at 23:20 on 16th May) and convened [B1422] **[CEB/12/3840]**.

65.5 These findings also engage the irrationality of motive finding submission in para 31.

66. **Ground 3 – Illegality.** The Seventh Challenged Findings interfere with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law without legal justification.

67. With respect to D, nothing in **[DSG/68-70]** sustains the Seventh Challenged Findings, the principal reasons for which are not even addressed. Rather to the contrary, if those are the reasonings relied on to justify the findings, it sustains C's challenge to them.

D3. Eighth Challenged findings: findings about the reassurance given by C to Mr Levy at the 17 May Meeting [SFG 57-61]

68. **Identification of Eighth Challenged Finding:** "*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].*" **[R/11.349]** *"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 re-assured about what he had heard Mr Picardo say of his approach to IM and to Operation Delhi*." **[R/11.350]**

69. **Ground 1 – Irrationality.** The Eighth Challenged Findings lack logical integrity, are made without evidence and are arbitrary and are accordingly irrational because:

69.1 C did not give any "explanation". He gave direct evidence about what he had reassured Mr Levy about: *"Q: In what way did you reassure Mr Levy? A: My view about his probity, his standing in the community, the fact that I insisted he should not resign as Chairman of Communicare Trust [sic] and that I believed that people continued to hold him in high regard despite the manner in which the RGP had pursued their investigation."* [T/16/291.8-16] **[CEB/27/17800]**

69.2 The finding that D does not accept that "explanation" is therefore effectively a finding that C, and Mr Levy (and possibly Mr Baglietto) – the attendees at the meeting and all of them Kings Counsel – lied on oath. But there is no fact in evidence as to what was said at that meeting to the contrary from which D would be entitled to infer the fact that *"he was re-assured about what he had heard Mr Picardo say of his approach to IM and to Operation Delhi"*. That finding is entirely arbitrary.

69.3 This is a finding of dishonesty on C's part i.e., lying on oath, which "the highest standards of reasoning".[63] It also seriously damages C's reputation, which requires "compelling justification".[64] It is respectfully submitted that this high test is not met by the Eighth Challenged Findings.

69.4 This finding engages the irrationality of motive finding submission in para 31.

70. **Ground 2 – Natural Justice**. For the reasons stated above, the findings lack probative foundation and are therefore arrived at in breach of the Second Mahon Rule of Natural Justice.

71. **Ground 3 – Illegality**. For the reasons stated above, the Eighth Challenged Findings interfere with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law without legal justification.

D4. Ninth Challenged Finding: message about recovery of Mr Levy's devices from the RGP under Section 76 of the Police Act [SFG 62-66]

72. **Background.** This finding relates to a message sent by C to Mr Baglietto pointing out to him the provisions of section 76 of the Police Act under the terms of which an application can be made to court for release of property seized by the police.

73. **Identification of Ninth Challenged Finding.** *"But 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. That the lawyer, and indeed the suspect, were Mr Picardo's great friends, merely makes the position worse."* **[R/11.311] and [R/0.113]**

74. **Ground 1 – Irrationality**. The Ninth Challenged Finding is made in error of reasoning and lacks logical integrity and is irrational for the following reasons:

74.1 D does not explain why or how suggesting to a person's lawyer how someone can exercise their legal right to lawfully (i.e., under a procedure provided for by statute, pursuant to an application to the Court) retrieve property seized by the police can possibly be improper, let alone a *"gross impropriety"*. Nor why the position may be different if the person making the suggestion is the Chief Minister nor why the position would be worse if the person lawfully seeking the return of his devices is the Chief Minister's friend. No criteria are identified for this decision, which is arbitrary, wrong and unlawful.

74.2 It is not and cannot be improper, let alone a "gross impropriety" for the Chief Minister (or anyone else) to suggest to a suspect and his lawyer how the RGP – who are as independent of the Chief Minister as he is of them - can be made, lawfully and properly on the basis of statutory provisions, to give up devices by an Order of a Court after a full inter partes hearing, or be made liable for wrongly seizing the devices, or even what might be the personal consequences for police officers if they are found (by others, not by the Chief Minister) to have acted improperly. Any such outcome would necessarily be the decision of a court based on its view of Mr Levy's entitlement to return of his devices and could not in any sense be a gross impropriety for the Chief Minister to suggest.

75. None of the reasoning provided by D **[in DSG/74]** addresses or justifies the rationality of this finding. C's criticised conduct did not include any of the matters set out in in DSG/74 and therefore does not address the ground of C's challenge which is that it cannot, in any circumstances, be improper to simply bring section 76 of the Police Act to a suspect's attention. The same applies to "proposing ideas" **[in DSG/74]**. The logic is fatally flawed. The Chairman has found that C, generally, had an improper motive (i.e., to protect Mr Levy against the consequences of the warrant being executed and his devices examined) and therefore thought that he could lawfully infer from that that even proper acts are improper. This once again improperly conflates acts and motives.

76. Furthermore, on D's logic any person that seeks to avail themselves of section 76 would be acting improperly in seeking to prevent the police from interrogating a seized device given that the police will always have seized the property pursuant to a warrant obtained in an investigation.

77. This finding also engage the irrationality of motive submission in para 31.

78. **Ground 2 – Illegality.** For the reasons stated above, the Ninth Challenged Finding interferes with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law without legal justification.

D5. Tenth Challenged finding: Non-disclosure of the 17 May meeting [SFG 67-70]

79. **Background to and identification of Tenth Challenged Finding**. On 17th May C met at his home with Mr Levy and Mr Baglietto. D decided as follows: "*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*." **[R/11.314] and [R/0.116]** … "*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."* **[R/11.316] and [R/0.116]**

80. **Ground 1 (Irrationality).** The Tenth Challenged Finding is unsupported by evidence and contrary to it and therefore irrational for the following reasons:

    80.1 First, the finding that C did not disclose the fact of this meeting until very shortly before the Main Inquiry Hearing is unsupported by evidence, contrary to it and factually incorrect. In fact, the meeting was disclosed by C himself in his Third Affidavit on 15.11.2023 and the Main Inquiry Hearing was on 8.4.2024. Even if there were a material difference between disclosing a fact in the body of a witness statement or in an exhibit to it, that difference does not rationally

sustain a finding that it was disclosed in an exhibit to "*deliberately*" not disclose the fact of the meeting. The inescapable contrary reality is that it was C himself who disclosed it.

80.2 The incontrovertible evidence (noted by D during the hearing) is that it was C himself who disclosed the fact that the meeting had taken place by revealing it in an exhibit to his Third Witness Statement and. This D himself said at the hearing that, but for C's disclosure, the existence of the meeting would never have become known: [T/17/283.4.-12] **[CEB/28/17883].** Yet in the Report D finds that Mr Picardo "*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*."

80.3 Second, the supposed "delay" in disclosure "until his third affidavit" does not sustain a finding that he did not disclose "because he knew others would find it deeply inappropriate". If that had been his motivation, he would then logically not have disclosed it at all. C gained absolutely nothing in the context of the Inquiry by only "delaying" its disclosure to a date 4 months before the start of the Main Inquiry hearings.

80.4 Third, this finding is also incompatible with D's findings (and criticism of the fact) that C felt free to meet and discuss with Mr Levy and Mr Baglietto (see for example only **[R/11.319]**). That is incompatible with his finding that he deliberately wanted to conceal this meeting "*because he knew that others would find it to be deeply inappropriate*". The two cannot sit together.

80.5 Fourth, D bases this inference-based finding of motive (for deliberately not disclosing because he thought that others would find it deeply inappropriate) on another inference-based finding for which there is no evidence either, namely, that the meeting was to discuss the Investigation **[R/11.320]**.

81. **Ground 2 – Illegality.** For the reasons stated above, the Tenth Challenged Finding interferes with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law. The finding of deliberate concealment amounts to one of dishonesty and damages C's reputation. D's reasoning for the finding self-evidently fails to reach the required legal test of "highest standard of reasoning" and "compelling justification", respectively.

D6. Eleventh Challenged finding: Determination to thwart the search warrant [SFG 71-74]

82. **Identification of Eleventh Challenged Finding.** *"I have no doubt that the real reason for Mr Picardo's loss of confidence was that IM and the RGP had obtained a search warrant against his friend Mr Levy, which he was determined in one way or another to thwart."* **[R/12.369**]

83. **Ground 1 – illegality**. The finding that C was "*determined in one way or another to thwart*" the search warrant against Mr Levy because Mr Levy was his friend is contrary to the available evidence and to other findings of D, and therefore irrational, for the following reasons:

83.1 D has found that in the 12 May 2020 Meeting C made no attempt to dissuade or prevent the RGP from proceeding with the execution of the search warrant against Mr Levy. There was no evidence before the Inquiry and D did not find that that C took any step, at any time, to try to persuade IM or the RGP not to execute the warrant or examine Mr Levy's devices. It was common ground that he did not. Indeed, D has found that the RGP executed the warrant (or not) entirely as they had planned and pleased and (ii) chose not to examine the phones even when they were free to do so.

83.2 Pointing out section 76 of the Police Act to Mr Levy's lawyer and inviting the AG to consider taking over the proceedings is not attempting to "thwart the warrant" any more than if a court had made the order required in both cases the court would have "thwarted the warrant". In any event, the warrant was not in fact ever executed, since Mr Levy handed over his devices voluntarily.

83.3 This finding engages the Irrationality of Motive Finding submission in para 31 above.

84. **Ground 2 – Illegality.** For the reasons stated above, the Eleventh Challenged Finding interferes with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law without legal justification.

E. CHALLENGED FINDINGS RELATING TO THE MISLEADING OF AND CONCEALMENT FROM THE GIBRALTAR POLICE AUTHORITY

E1. Twelfth Challenged findings: Deliberate concealment from and misleading of the GPA [SFG 75-86]

85. **Identification and purport of the Twelfth Challenged Findings.** The parts of the Report that constitute the Twelfth Challenged Findings are in **[R/12.67], [R/12.85], [R/12.104], [R/12.138], [R/12.104], [R/0.135], [R/12.237], [R/12.126], [R/12.178], [R/0.146] and [R/12.179]** and are identified and recited in **[SFG 75]**. Their purport is that C deliberately misled the Gibraltar Police Authority ("**GPA**") and its Chairman (Dr Joey Britto) by deliberately concealing from him C's "real reason" for his stated loss of confidence in IM. D found that C did so so that the GPA would focus on loss of confidence for Mr Pyle's other reasons and thus avoid being asked questions by the GPA, that D surmised would or should have been asked, if C had told Dr Britto about "the lie" that C believed he had been told by IM at the 12 May

Meeting, was his real grievance, which questions may have exposed C's lack of independence. C was therefore manipulating the GPA's process to bring about IM's effective dismissal for reasons of his own relating to the police investigation into Mr Levy while managing the process to give the appearance that he was being asked to retire for the other reasons.

86. **GROUND 1 – Irrationality.** The Twelfth Challenged Findings are unsupported by any evidence, are contrary to the evidence and lack logical integrity and are therefore irrational for the following reasons:

Overview

87. The evidence before the Inquiry shows, contrary to the Twelfth Challenged Findings, that–

87.1 Dr Britto and the GPA knew and were fully alive to the facts that (i) IM had to be given the opportunity to make representations and could provide explanations that would render an invitation to retire under section 34 inapplicable and (ii) that the GPA were free to make their own decision and should do so and (iii) that the Governor and C understood and accepted that fact.

87.2 Dr Britto and the GPA were aware of the direct link between C's loss of confidence in IM and the RGP's Operation Dehi Investigation and the link to Hassans and Mr Levy and C's link to Mr Levy and Hassans.

87.3 Dr Britto and the GPA "*would not have made a much more searching enquiry had they been told the truth*". They knew, and even when they were told in great detail by IM in his lawyers' letter dated 29 May 2020 to the GPA, the GPA consciously took the view that it made no difference to their decision, and that Dr Britto and the GPA were **not misled** into taking their decision by anything concealed from them by C.

As to "whilst ostensibly referring to the duty of the GPA to act independently, never doubted that they would not do as they were told to so -as indeed they did".

88. One of the Twelfth Challenged Findings is that "*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*." **[R/12.67]**. In relation to this finding:

88.1 First, there is no evidence (and indeed no reasoned finding by D) that C (or the Governor) told Dr Britto or the GPA what to do or to do as they did. To the contrary, they told them to do what they did not do, i.e. give IM the opportunity to make representations and then make their own decision about invoking their power under section 34 of the Police Act to call for him to retire.

88.2 Second, it is clear beyond any doubt from incontrovertible the evidence before the Inquiry that Dr Britto and the GPA knew and were fully alive to the facts that (i) IM had to be given the opportunity to make representations and could provide explanations that would render an invitation to retire under section 34 inapplicable and (ii) that the GPA were free to make their own decision, and should do so and (iii) that C and the Governor understood and accepted that fact (although the Governor said that he would then be minded to exercise his power under section 13 to call for IM's resignation). They knew what they had to do and felt free to do it or not do it.

88.3 Although all the evidence is to that same effect, there is one finding by D that by itself makes the Twelfth Challenged Findings completely untenable, contradictory and irrational, namely: "*It became very clear to me from Dr Britto's oral evidence to the Inquiry that having invited IM to retire and to make representations in his defence, he hoped – and perhaps even expected – that IM, 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 IM 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*". **[R/12.144]**

88.4 D cannot rationally have believed and concluded *both* this and that Mr Britto and the GPA felt compelled to "do as they were told" by C and the Governor. This finding is irreconcilable with the findings, to opposite effect that Dr Britto and the GPA did not take the Meeting Note's caution (that the GPA had to be given an opportunity to make representations before coming to their own decision) at "face value" **[R/12.81]** and **[R/12.82]**, and was "unable to resist what he felt to be the pressure being put upon him" **[R/12.103]**.

88.5 Third, there is no proper basis for D to find (without any factual basis for doing so) that C meant the very opposite of what he and the Governor told the GPA in writing. Contrary to what D concludes, what C said is that he did ***not*** doubt that the GPA would (not would

not) discharge their function properly. Not least because, as the previous paragraph makes clear, Dr Britto was clear that the GPA could and should make the decision itself.

88.6 Fourth, there is a lack of foundational logic and integrity in the decision that the fact that the GPA failed to follow the correct procedure "demonstrates" that C "never doubted" that they would not do so or make their own decision.

88.7 Fifth, as D himself found: "*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*" **[R/12.82]**. In fact, the evidence demonstrates that (contrary to D's finding) Dr Britto did indeed take the Meeting Note at face value. But, if Dr Britto "*did not take this at face value",* that is not the fault of C and does not provide a logical or rational basis for inferring against C that he knew that this would be so even as he was telling Dr Britto and the GPA the very contrary. This is most particularly so when considered with the fact that D also found that the Governor and C had indeed given Dr Britto and the GPA proper guidance as to how to proceed: "*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*" **[R/12.81]**.

88.8 Sixth, the content of the 18th May Meeting Note was shared with the rest of the members of the GPA present at the meeting and it cannot rationally be concluded, and D did not conclude, that all members of the GPA did not take the Meeting Note "at face value" or felt that they were being told what to do and being given no choice by the Governor and C. Still less could it rationally be thought that C knew (in advance) that ***all of them*** would not take the Meeting Note at face value.

88.9 Seventh, D noted that "*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*" **[R/12.118]**. Without evidence or other probative justification, and thus arbitrarily and irrationally, D dismissed this obvious impediment to the rationality of the Twelfth Challenged Finding by deciding that "*he did not attach much weight to this concession, since Dr Britto was still personally under pressure as he was leading, and directing, the discussion*." **[R/12.118]** D's failure to "attach much weight" to this concession was a serious error of reasoning and disregard for crucial evidence which led him to make the irrational finding that despite telling Dr Britto and the GPA that they had to act independently, C "*never doubted that they would not do as they were told to*

do – as indeed they did". It completely undermined the finding as regards the other GPA members. Not least, because there was no evidence at all to the contrary.

88.10 Eighth, D's serious error of reasoning is illustrated by the Minutes of the GPA meeting at which it made the decision **[R/12.115]**: "*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 the GPA so we could arrive at a firm and final decision and able to make recommendations to the Governor*."

88.11 Despite this finding being fundamentally and fatally flawed, it is key to the reasoning and rationale of D's other finding, very damaging to C's reputation, that he "deliberately misled" the GPA.

89. D's purported justifications of this finding **[in DSG/83]** fail to do so, because:

89.1 First, and perhaps most importantly, D fails to grapple with all the above reasons for irrationality. The DSG simply fails to deal with them.

89.2 Second, what D says in the first four lines of **[DSG/83]** is a complete non-sequitur. It may be evidence that C believed that the proper outcome was an invitation by the GPA to IM that he should retire, but it is ***not*** evidence that he believed that the GPA would fail to make proper inquiry or to properly follow its own procedure or that it would "do as it was told".

89.3 Third, the matters listed by D **[in DSG/83 a., b., f. and g.]**, do not provide "a rational basis for this finding", as posited, because they are matters that relate to Mr Pyle's acts and omissions and D, rightly, did not find that Mr Pyle "never doubted that they [the GPA] would not do as they were told to do". The finding to that effect against C therefore lacks foundational logic as well as being internally inconsistent.

89.4 D's statement **[in DSG/83c.]** that C "re-assured Dr Britto that he was proceeding correctly" in wrong. Nor is it correct that C "refused to give evidence" in relation to the procedural error in the GPA's draft letter but he gave evidence about the nature of the role that he had played in it.

<u>As to deliberate concealment and misleading</u>

90. **First**, C (and the Governor) had advised the GPA that they had to give IM the opportunity to make representations. Had the GPA done so, IM would then have said all the things that he said in the 29 May letter. C and the Governor were entitled to assume that the GPA would properly carry out its own statutory process, not least having been specifically reminded of it. There is

no rational basis for concluding that the Governor and C could have known that the GPA would not do so.

91. This is borne out by the evidence, and particularly by evidence (specifically accepted by D) that "*Dr Britto accepted, in retrospect, that IM should have been asked for representations before the GPA asked him to retire,* ***but stated 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]*." **[R/12.156].**

92. Similarly, the exchange of WhatsApp messages between C and Dr Britto on 21 May 2020 demonstrates that, after he had supplemented the draft letter in other respects, C suggested that Dr Britto should provide 7 days to make representations at the end of the letter and that if IM considered that he needed more time, he should request it [B1437] **[CEB/12/3855]**. This demonstrates that, despite the flaw in the letter in this respect, ***both*** Dr Britto and C thought that the procedure was being properly deployed. This simply cannot be rationally reconciled with D's finding that C knew that Dr Britto and the GPA would not follow their own proper procedure to give IM the opportunity to make representations. Even Dr Britto himself says that he thought that he was doing precisely that.

93. Therefore, C cannot rationally be thought to have had any expectation that the alleged and supposed "real reason" could be concealed from the GPA. It is fanciful to speculatively attribute to C an intention to "intentionally conceal" that which he knew would be immediately discovered (as indeed it was when IM's lawyer wrote the letter dated 29 May in response to the GPA's (flawed) letter dated 22 May).

94. It is in order to seek to overcome this otherwise insuperable obstacle to a *rational* finding to this effect that D was forced to make the equally irrational finding that C meant the very opposite of what he told Mr Britto and the GPA in the Meeting Note and, on that basis, knew or was confident that the GPA would not follow their own procedure which he himself had pointed out to them. This finding is without evidence, contrary to all the evidence and thus arbitrary.

95. **Second**, it is evident from D's finding at **[R/12.103]** that D thought that Mr Britto "*understood that he was in effect being told what to do*" by both C and the Governor. Even if (which the evidence does not sustain) Mr Britto's weakness of character may have led *him* to perceive that he was "being told what he had to do", his perception to that effect does not alter the reality which is that C (and the Governor, who unlike C is not criticised in this respect) told him that he must give IM the opportunity to make representations and then make their own decision and

did NOT tell him anything to the contrary. They were entitled to assume that the GPA would properly discharge its statutory functions in accordance with its own procedures.

96. D's failure to criticise the Governor in this respect, while correct, demonstrates the irrationality of his criticism of C for the same thing (i.e., the same approach, in the same meeting in respect of the same person).

97. **Third**, the Governor telling Dr Britto that if the GPA did not act, he was minded to exercise his own powers under section 13(1)(f) is, firstly, not "pressuring" the GPA or "telling it what to do". The GPA remained entirely free to decline (as indeed Dr Britto had told IM on 22 May that it would do, and all the evidence show they knew and felt free to do) and allow the Governor to do as he might decide. Secondly (and perhaps most importantly in this context), it is not attributable to C such as to provide justification for the "*deliberately*" concealed (or any) finding against him. Furthermore, if this was 'pressure' applied by anyone on the GPA (which is denied), it was pressure applied by the Governor, NOT C.

As to "other members of the GPA… would have made a much more searching enquiry had they been told the truth"

98. **First**, the premise of D's "finding", namely that had C told Dr Britto of the Hassans/Mr Levy connection and/or the lie "*other members of the GPA, who would have made a much more searching enquiry had they been told the truth*" (and that this was C's reason for not doing so) simply ignores the evidence and is thus irrational.

99. The evidence before the Inquiry shows plainly and incontrovertibly that Dr Britto (and therefore the GPA) were indeed aware of the Hassans/Mr Levy connection and the fact that C believed that IM had lied to him and therefore any failure by them to "*have made a much more searching enquiry"* is not the result of any failure to have *"been told the truth*" or to have it spelt out to them by C, as found by D without evidence and ignoring the evidence to the contrary. That evidence is set out in **[SFG/83.2]** and counsel will take the court through it at trial.

100. In light of these exchanges and the obvious need to bear in mind their combined effect on the state of Dr Britto's knowledge, it is submitted that it is not possible to rationally conclude that Dr Britto was not aware – from C at the 18 May meeting – that the lie related to an investigation involving Mr Levy and Hassans (of which Dr Britto – in common with all of Gibraltar – well knew that C was a partner on sabbatical). This submission is sustained by Dr Britto's own evidence of what transpired between him and IM at the meeting between them

on the on 12th or 15th May. That evidence is set out in **[SFG/83.3 (i)-(xi)]** and counsel will take the court through it at trial.

101. Despite the extent of the evidence of Mr Britto's relevant knowledge acquired at his meeting with IM on 12th or 15th May 2020, D found that nothing "*turns on this meeting, nor whether they also met on 12 May*" [**R/11.259**] Ignoring this highly probative evidence led D to a manifest error of reasoning in making the irrational Thirteenth Challenged Findings.

102. Furthermore, it is inconceivable that by 21 May members of the GPA did not know that the RGP had obtained a search warrant against and seized the devices of Mr Levy at Hassans. It was the "talk of the town". Indeed, the Minute of the GPA's meeting at which it made the decision specifically refers to the Hassans/Op Delhi link: "*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*." **[R/12.115]** By the 21 May 2020 the whole of Gibraltar knew that the RGP had "executed" a search warrant on Hassans/Mr Levy, a fact of which the court is invited to take judicial notice.

103. It is therefore clear from the above evidence that Dr Britto and the GPA were aware of the Hassans/Mr Levy connection, and that it made no difference to them. In Dr Britto's own words (as to which see para 105 below) "*nobody in the GPA said, "No, no, we shouldn't*." [T/15/126.7] **[CEB/26/17691]**.

104. **Second**, it is clear from the evidence that Dr Britto knew about the lie. If Dr Britto failed to inform the other GPA members about the lie, the consequences of that cannot be attributed (still less as "deliberate" concealment) to C. It would be absurd to attribute to C (on the basis of no evidence whatsoever) that he knew that Dr Britto would not mention the issue of a lie to the other GPA members. But, in fact, Dr Britto's oral evidence (which D found he had no hesitation in accepting) was that he "**probably did tell the GPA about the "Delhi/Chief Minister's reasons/lie**" (see **SFG/83.3 (x)**).

105. **Third**, contrary to the premise of D's criticism of C, the other members of the GPA did not make (and therefore would not have made) *"more searching enquiry had they been told the truth":* The evidence is clear: they were told and they chose not to do so. Dr Britto oral evidence (referring to IM's lawyer's letter dated 29 May 2020 providing every detail of his allegation against C, including the alleged lie and its abuse by him), [T/15/125.25-126.8] **[CEB/26/17691]**:

Q. And having received that letter were you still of the view that IM should be invited to retire?
A. Put it this way, I paid a lot of attention to Mr Gomez's letter. I read it many times and passed it over to Mr Neish for his views. And I think that what happened afterwards is nobody in the GPA said, "No, no, we shouldn't."

106. **Fourth,** the GPA Minute had made clear that the GPA made its decision principally because of deaths at sea incident, not the Op Delhi/lie issue (hence the GPA's lack of concern about those matters even after the 29 May letter spelling it all out in detail): "*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".* [**R/12.115**]. This completely undermines, to the point of rendering it irrational, D's finding that C's alleged concealment from the GPA of his "real reason" for losing confidence in IM led or caused the GPA to focus on Mr Pyle's reasons. This was logical, given that it was Mr Pyle (and not C) who had the s.13 power to call for IM's resignation.

107. **Fifth**, even after receipt of the 29 May 2020 letter, the GPA members expressed no interest in and sought no information, explanation or clarification of the "lie", the link to Hassans or the fact it had not been directly alluded to in the letter of 22 May 2020. D himself noted this fact **[R/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"*. That failure by the GPA to inquire further and the consequences thereof, even when IM's counsel had spelt out his views about the issues relating to Hassans explicitly, cannot be visited upon C as D has irrationally purported to find.

108. ***That is the point*** and not any "deliberate concealment" by C. The GPA members knew and it made no difference to them. Even after 29 May 2020 letter from Charles Gomez & Co (IM's solicitors), it made no difference to them. This is the reality, and it cannot rationally be both this and "*other members of the GPA, who would have made a much more searching enquiry had they been told*". In himself noting this, D contradicts his own finding, upon which he bases the "concealment and misleading" findings against C, that if they had been told details of the 'lie' they would have asked more searching questions. They did not. The contradiction is self-evident.

109. D now seeks to meet this ground of challenge by arguing that "r*eceiving allegations from Mr McGrail's lawyers as to what they claimed was the 'real reason' for Mr McGrail being invited to retire was no substitute for C spelling out first-hand and providing particulars as to what his real reason was."* With respect, this evidently misses the point. Whether or not it was a 'substitute', it was certainly enough to alert the GPA members to the existence of C's

supposed "real reasons" and to make the "more searching enquiry" if they had thought it apposite to do so. But they didn't. And *that* is C's point. All the GPA members (including Mr Lavarello) saw Mr Gomez's letter and therefore knew "about Operation Delhi, the search warrants and the lie to C" and did ***not*** decide or choose to make "more searching enquiries" in consequence thereof.

110. **Sixth**, for these reasons, D's finding **[R/12.138]** and **[R/0.135]** that "*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"* (emphasis added), lacks foundational logic and is contrary to the evidence. It is self-evident that the GPA were not "led" (and therefore mislead) to any such focus.

111. This finding infers dishonesty on C's part. Dishonesty may not be inferred without "the highest standards of reasoning".[65] This finding also seriously damages C's reputation and therefore his common law and Section 7 Constitutional human right to respect for his private life and therefore requires "compelling justification".[66] It is respectfully submitted that this high test is not met by the Twelfth Challenged Findings.

As to the letter being "sinister" and C manipulating the GPA process

112. In relation to the findings that "*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; it does 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 IM told.*" **[R/12.178]** and that *"The inevitable and irresistible conclusion is Mr Picardo was using the processes of the GPA to bring about IM'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."* **[R/12.179]**:

    112.1 First, D's finding that C "genuinely believed" that IM had lied to him and had done so intentionally **[R/11.113]** and **[R/11.131]** was sufficient cause for C to lose confidence in IM. Accordingly, there is no rational basis for D to also attribute to C by inference, or

for C to have or need, any concealed other (supposedly) "real" grievance, nor the desire to conceal this good grievance and reason for seeking IM's removal.

112.2 Second, nor can there be anything "sinister" in the fact that the letter does not mention Mr Levy. C had discussed the Hassans/Mr Levy connection and the fact that he had been lied to, **in Dr Britto's presence** at the 18 May meeting. Indeed, IM had informed Dr Britto of this just three days before, on 15 May. Mr Britto knew about it. There was no concealment.

112.3 C fully expected the GPA to give McGrail the opportunity to make representations as C and the Governor and they had told him he must do. Indeed, D has found that that is precisely what Dr Britto thought he was doing in the letter of 22 May, and that is precisely what he explained to IM at their 22 May meeting. In these circumstances, it is not rational to attribute to C any intention to deceive or mislead the GPA through a concealment that (i) the evidence shows never occurred and (ii) he fully expected IM to make representations about – which is exactly what transpired.

112.4 Third, the question of the precise degree (or absence) of ***detail about*** the lie is a red herring. If Dr Britto and the GPA had been interested in the ***details about*** a lie (as opposed to the ***fact of*** a lie) they had every opportunity to ask and did not do so. The only rational conclusion is that the detail made no difference to them and not that they were deliberately deceived by C.

112.5 There is therefore nothing either "inevitable" or "irresistible" about this conclusion which is contrary to all the evidence and logic and therefore irrational.

112.6 This finding also engages the Irrationality of the Motive Finding submission in para 31 above.

113. It is a pervading theme of the Twelfth Challenged Findings that C did not share the detail of the lie and the 'real reasons' for his loss confidence in IM for fear of the consequences that that might have had to the GPA's willingness to deliver the result that C wanted, namely, that they would invite IM to retire. There is a fundamental flaw of foundational logic of this finding by D in addition to all the others stated above. The Governor (who is the person with the power to call for the resignation of IM under s.13 Police Act) had told the GPA that he had lost confidence in IM for a number of reasons that had nothing to do with Op Delhi and Mr Levy and that if the GPA did not invite IM to retire, he was minded to exercise those powers. In contrast, C had no power to bring about IM's removal if the GPA did invite him to retire.

Accordingly, and especially given the Governor's constitutional status in relation to policing, it is illogical to conclude that, if the GPA had known C's supposed 'real reason', it would have altered their willingness to call for his retirement as indeed it did not when they discovered it.

114. Furthermore, even if it were true that C omitted to provide sufficient details of the lie and his real reasons, there is no rational logic for the pervading theme of D's inferences that C "deliberately concealed" them (which attributes dishonesty to C) in circumstances where it is accepted that C did inform about the fact of a lie and therefore must have known he could at any time have been asked by the GPA or anybody else to provide details of that lie and therefore his supposed 'real reasons' and their wider context.

115. **Ground 2 – Natural Justice**. For the reasons stated above, the Twelfth Challenged Findings lack foundation in probative evidence and are therefore arrived at in breach of the First Mahon Rule of Natural Justice and ignores the probative evidence to the contrary effect and is thus arrived at in breach of the Second Mahon Rule of Natural Justice.

116. **Ground 3 – Illegality.** The Twelfth Challenged Finding interferes with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law without legal justification.

F. FINDINGS RELATING TO SEQUENCE OF EVENTS LEADING TO IM'S RETIREMENT

F.1 Thirteenth Challenged finding: Findings in relation to the manner in which the S. 34 Police Act complaint was raised [SFG 75-86]

117. **Background.** S. 34 Police Act provides that the GPA may after consultation with the Governor and the Chief Minister and with the agreement of either of them, may call upon the Commissioner to retire, in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar. The section also sets out the process that needs to be followed.

118. **Identification of Thirteenth Challenged Finding:** "*In my opinion, the process by which Mr Picardo and Mr Pyle raised their complaints against IM 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*." **[para 12.183] and [para 0.147]**

119. **Ground 1 – Irrationality**. This finding is arrived at in error of reasoning, lacks logical integrity, visits manifest unfairness on C and is therefore irrational because it distorts and mischaracterises C's role and responsibilities in relation to the section 34 process:

119.1 C's role was (as D rightly recognises) as 'complainant'. The finding therefore ignores the obvious legal fact that the section 34 process is a GPA process. The complainants do not "raise their concerns" by any "process". C therefore had no obligation (at least at that stage) to give the GPA (still less IM) "proper particulars of what was alleged against him". Nor was C's failure to do so *the cause* of any injustice visited upon IM.

119.2 It was, factually and legally, for the GPA to assess the adequacy of C's and Governor's joint complaint, the extent of the information provided in support of it and to request further particulars (or to reject it) as it may have considered appropriate. C made it clear to the GPA that it was its function to do so. Indeed, Dr Britto himself acknowledged as much to IM at their meeting on 22 May, which IM covertly recorded, when, among other relevant things, he told IM that if after considering his representations and explanations they did not think that the Chief Minister's and Governor's reasons for sufficient to call for his retirement they would not do so and tell them as much.

119.3 As D himself has found: it "*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*"." **[para 12.215(c)]**

120. It is clear beyond peradventure from the evidence that such procedural injustice as has been visited on IM has been inflicted on him by the GPA. To lay the responsibility on C by reason of his alleged (found by D to be a fact) failure to properly particularise the detail of the lie that was his reason for losing confidence (when, in any event, it was the Governor's reasons that most concerned the GPA and whose power to require him to resign IM feared to the point of "jumping before he was pushed", which only the Governor could do), is to distort both the process and the causative realities of IM's retirement.

121. Accordingly, this finding is wrong, lacking in foundation in fact or logic, visits manifest unfairness on C and is thus irrational. It is also unlawful on the ground of illegality as it is based on a fundamental error of law.

122. **Ground 2 – Illegality.** The Fifteenth Challenged Finding is fatally tainted by illegality because:

122.1 It is arrived at by an error of law, namely, the role and responsibility of C as complainant under Section 34 of the Police Act.

122.2 It interferes with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law without legal justification.

F.2 Fourteenth Challenged Finding: relating to the reasons why IM retired [SFG/94-97]

123. **Identification of Fourteenth Challenged Finding:** *"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 IM was alleged to have told to Mr Picardo and Mr Llamas at the meeting of 12 May."* **[R/12.389a.]** and **[R/0.165a.]**

124. **Ground 1**: **irrationality**: The findings that IM felt compelled to retire because C had not "*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 IM was alleged to have told to Mr Picardo and Mr Llamas at the meeting of 12 May"* are contrary to the evidence before the Inquiry, lack logical integrity and are inconsistent with and contradictory with itself and other findings of D in the Report, and are therefore irrational because:

124.1 The evidence (including IM's own evidence and the evidence of his own WhatsApp messages with Mr Ullger) clearly shows (and D found) that IM retired because he feared that the ***Governor*** was about to exercise his power under s.13 of the Police Act to call upon him publicly to resign (i.e. sack him) hand he feared the humiliation and pension consequences of that so (in the words of D) "*he jumped before he was pushed*".

124.2 D found that IM "*retired **only** because he was being unfairly and unlawfully compelled to do so*". Only the Governor could compel him (under s.13 of the Police Act). Only the Governor had the power to compel or "push" IM. C had no such power (as IM well knew) and he therefore did not "jump" (retire) for fear of what C could do. D found this very fact:

"*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 IM was acting reasonably to pre-empt this unfairness by retiring*." **[R/12.385]**

124.3 Furthermore, D found that C had not pressurised the Governor to consider exercising his power under s.13:

> "*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]) (para 12.228). But, having said that, the initiation of the process had been encouraged by Mr Picardo, who had his own agenda, as I have explained*." **[R.12.229]**

124.4 Furthermore still, none of this was lost on the GPA itself which in the Minutes of its emergency 21 May meeting, acknowledged that after considering any representations by IM it would be able to make representations to *the Governor* and felt that "this recourse was better and 'gentler' than the Governor potentially activating Section 13 which allows him to seek his resignation." **[R/12.115]**

124.5 Nor was any of this lost on IM himself, who in oral evidence said explicitly:

> *"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]."* **[R/12.343]**

124.6 It is therefore irrational for D to attribute IM's feeling that he was being "compelled" to retire to any failure on C's part to "*follow the proper procedures*" or C's failure to explain to the GPA "*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 IM was alleged to have told to Mr Picardo and Mr Llamas at the meeting of 12 May"*.

125. **Ground 2: Illegality.** The Sixteenth Challenged Findings are fatally tainted by illegality because, by virtue of the reasons stated in paragraph 124 above the findings are irrelevant to the Inquiry's terms of reference and are thus ultra vires D and illegal, for the following reasons:

125.1 While it is not in issue that C wanted IM's removal as Commissioner of Police, whatever may have been C's motives or reasons for his loss of confidence in IM did not cause IM to feel compelled to retire.

125.2 C's motives and whether they were sufficiently articulated or particularised or not and his possible motives for not better particularising to the GPA were, in any event, irrelevant to IM's decision to apply for early retirement.

125.3 Accordingly, the Report's focus and "conclusions" relating to C's supposed concealment of his supposed "real reasons", is in any event irrelevant to the reasons

for his retirement. They therefore represent gratuitous criticism of C out with D's terms of reference and are therefore ultra vires.

125.4 They interfere with C's right to respect for his reputation contrary to Section 7 of the Constitution and Article 8 of the ECHR and the common law without legal justification.

126. In **[DSG/99]**, manifestly fails to justify the lawfulness of the Fourteenth Challenged finding. To the contrary, what he says sustains C's challenge to it. C stands by the arguments set out in **[SFG/94-97]** through which counsel will take the court at trial.

G. CONCLUSION & REMEDIES

127. It is respectfully submitted that the lawfulness of each of the Challenged Findings that impugns C's honesty must be assessed against the requirement for "*highest standards of reasoning*" and each finding that injures C's reputation against the requirement fort "compelling justification". It is respectfully submitted that they do not meet these tests.

128. Accordingly, and for all the other reasons pleaded and/or submitted on C's behalf C seeks a declaration that the Challenged Findings have been unlawfully arrived at and are legally invalid and such further or other relief as the court may think fair and just, including an order that they be set aside or quashed.

Sir Peter Caruana KCMG KC

Christopher Allan

Philip Dumas

12 October 2026

Annex - References:

[1] See headnote in *Mahon v Air New Zealand* [1984] AC 808 (Privy Council from New Zealand)
[2] *Peters v Davison* [1999] 2 NZLR 164 (Court of Appeal of New Zealand) at 186, lines 25-30.
[3] *Peters v Davison* [1998] NZAR 309 (HC) at p166.
[4] *Mahon v Air New Zealand,* ibid, at 820F -821C
[5] *R v Lord Saville of Newdigate* [2000] 1 WLR 1855 at [31]
[6] *Mahon v Air New Zealand*, [1984] AC 808, at 838C-F (Privy Council from New Zealand)
[7] *Peters v Davison* [1999] 2 NZLR 164 (Court of Appeal of New Zealand), at Headnote and page 193 line 25, page 199 line 29, page 210 line 11.
[8] *"in some situations condemnation of a person in a commission report will be scarcely distinguishable in the public mind from condemnation by a court of law... where a report calls a person's reputation into question in a direct way, both that person and the public generally have an interest in ensuring that any criticism is made upon a proper legal basis. It would be contrary to the public interest if the courts were not prepared to protect the right to reputation in such a context." Peter v Davison* at p 186.
[9] *Pyaneandee v Lam Shang Leen and Others* [2024] UKPC 27 at [53] (from the Supreme Court, Mauritius) "*In the Board's view, the first question to be asked is whether a fair-minded, detached, and objective reader would conclude that passages in an inquiry report however they might be described (whether as findings, observations, comments, remarks, or recitals of evidence), either form a component part of an adverse decision affecting an individual or adversely affect an individual's reputation. If so, judicial review will be available as a remedy where the commission has acted without jurisdiction or otherwise irrationally, unlawfully, or unfairly in breach of the principles of natural justice. It is not appropriate to parse the impugned passages in a report sentence by sentence, as both parties sought to do in this case. Rather, the impugned passages should be read as a whole to see what is conveyed to the fair-minded reader*."
[10] *Pyaneandee v Lam Shang Leen and Others*, supra, at [70]
[11] *Mahon v Air New Zealand* [1981] 1 NZLR 618 at 627 (In the New Zealand Court of Appeal, where the case is reported under the name "*Re Erebus Royal Commission; Air New Zealand v Mahon (No.2)")*, cited in *Peters v Davison* [1999]2 NZLR 164 (Court of Appeal of New Zealand) at 186, line 5.
[12] *Gunnarson v Iceland* (app no. 4591/04) 20 Oct 2004: *Chauvy v France* (App No. 64915/01) 29 Sept 2004 (ECtHR)
[13] *Ahmed v the United Kingdom* 28540/20 citing *Algirdas Butkevivius v Lithuania* no. 70489/17 at [17], 14 June 2022; *Patterson v the United Kingdom* no. 23570/22
[14] *Patterson v the United Kingdom* at [58]
[15] *R v MOD ex p Smith & Others* [1996] QB 517 per Lord Bingham. Confirmed by the Court of Appeal in *R v Lord Saville* of *Newdigate*, [2000] 1 WLR 1855 at [34].
[16] *R v Lord Saville of Newdigate* ibid, at [37]
[17] *Supperstone, Goudie & Walker Judicial Review* (7th ed.) at §8.44.
[18] C's Grounds (§7-13) and D's Summary Grounds (§3,4,10,19,21,40 and 41).
[19] *Mahon v Air New Zealand* [1984] AC 808 at 832H.
[20] *Mahon v Air New Zealand*, [1984] AC 808 at p 832H -833A (Privy Council)
[21] *R(Governing Body of X) v Office for Standards in Education, Children's Services and Skills* [2020] EWCA Civ 594 at [44]-[45].
[22] *R(Governing Body of X) v Office for Standards in Education, Children's Services and Skills* [2020] EWCA Civ 594 at [44].
[23] Reid v Secretary of State for Scotland [1999] 2 AC 512, Lord Clyde at 541E.
[24] [1984] AC 808
[25] [2014] EWHC 452 (Admin)
[26] [1999] 2 NZLR 164 (Court of Appeal of New Zealand)
[27] [2024] UKPC 27
[28] [1973] FC1223
[29] *Mahon* at 823-825 and 831-836.
[30] As the cases cited by D **[in DSG/31-33]** themselves show.
[31] *R (Q) v Secretary of State for the Home Department* [2004] QB 36 at [112].

[32] *Reid v Secretary of State for Scotland* [1999] 2 AC 512 at 541F-542A

[33] *Kennedy v Charity Commission* [2014] 2 WLR 808, 51-56; *Supperstone, Goudie & Walker Judicial Review* (7th ed.) at § 8.11 and 8.56.

[34] *Supperstone, Goudie & Walker Judicial Review* (7th ed.) at §8.39.

[35] *R v Ministry of Defence, ex p Smith* [1996] QB 517, CA.

[36] *Supperstone, Goudie & Walker Judicial Review* (7th ed.) at §8.44.

[37] R *(British Sky Broadcasting Ltd) v Central Criminal Court* [2012] 2 WLR 3288.

[38] *West Glamorgan County Council v Rafferty* [1987] 1 All ER 1005, 1021J per Ralph Gibson LJ.

[39] *Bugdaycay v Secretary of State for the Home Department* [1987] AC 514, 531 per Lord Bridge; *R (Mahmood) v Secretary of State for Home Department* [2001] 1 WLR 840, CA.

[40] For example, *R v Ealing London Borough, ex p Richardson* (1982) 4 HLR 125; the court will, if necessary, go behind the account of the facts given by the decision-maker for this purpose: *East Hampshire District Council v Secretary of State for the Environment* [1978] JPL 182; affd [1979] JPL 533; *Forkhurst v Secretary of State for the Environment and Brentwood District Council* (1982) 46 P&CR 89; *R (McNally) v Secretary of State for Education* [2002] ICR.

[41] *R(Governing Body of X) v Office for Standards in Education, Children's Services and Skills* [2020] EWCA Civ 594 at [44]-[45].

[42] Citing Lord Diplock in *Council of the Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 410D.

[43] Per Lord Cooke of Thorndon in *R v Chief Constable of Sussex, ex p International Trader's Ferry Ltd* [1999] 2 AC 418, 452 and *R v Secretary of State for the Home Department, ex p Daly* [2001] 2 AC 532 at § 32; *Supperstone, Goudie & Walker Judicial Review* (7th ed.) at §8.7.

[44] *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649 at [98]; *R (Finch) v Surrey CC* [2024] UKSC 20 per Lord Leggatt JSC at [56]

[45] *Supperstone, Goudie & Walker Judicial Review* (7th ed.) at §8.16.

[46] *R (Gallaher Group Ltd and others) v Competition and Markets Authority* [2018] UKSC 25 per Lord Carnwarth JSC at [40].

[47] *R v Parliamentary Commissioner for Administration, ex p Balchin* [1998] 1 PLR 1, QBD, 13 per Sedley J.

[48] *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649 at [98]; *R (Finch) v Surrey CC* [2024] UKSC 20 per Lord Leggatt JSC at [56].

[49] *R (Wells) v Parole Board* [2019] EWHC 2710 (admin), para33 per Saini J.

[50] *R v Bradford MBC exp Sikander Ali* [1994] ELR 299 at 308E; [1993] Lexis Citation 3427.

[51] *R (A) v Liverpool CC* [2007] EWHC 1477 (Admin) at [39]

[52] *Campbell v Mason Committee* [1990] 2 NZLR 577 and *Peters v Davison* ibid

[53] *Mahon v Air New Zealand* p819 [D-E]

[54] *R v Mahtani and Marin* [2015 Gib LR 137] at [18] citing the Jersey case of Mitchell v AG (2011 JLR 634 at paras 26-28);

[55] Section 22(1) Crimes Act; *Robinson* [1915] 2 KB 342;

[56] *Gullefer* [1930] 3All ER 882 per Lord Lane CJ.

[57] *R v Mahtani and Marin* [2015 Gib LR 137] at [18] citing the Jersey case of *Mitchell v AG* (2011 JLR 634 at paras 26-28, in turn citing *Machin* [1980] 1 WLR 767.

[58] Section 22(1) Crimes Act; *Robinson* [1915] 2 KB 342;

[59] *Gullefer* [1930] 3 All ER 882 per Lord Lane CJ.

[60] *E v Secretary of State for Home Department* [2004] EWCA Civ 49 at [66] per Carnwarth LJ

[61] AC-2026-LON-002321 (Order and Reasons dated 8 October 2026).

[62] "I was acting in the interests of Gibraltar. I wasn't acting in the interests of a friend, I wasn't acting in my business interests, I was acting in the interests of Gibraltar every time. That's why I was expending quite so much time on these issues, because I believed genuinely that the interests of Gibraltar required me to act in that way.": [T/16/301.12-20] [FP20/76]

[63] *Supperstone, Goudie & Walker Judicial Review* (7th ed.) at §8.44;

[64] *R v Lord Saville of Newdigate* ibid, at [37].

[65] *Supperstone, Goudie & Walker Judicial Review* (7th ed.) at §8.44;

[66] *R v Lord Saville of Newdigate* ibid, at [37].