



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

EVENING SESSION: 5.55 p.m. – 7.03 p.m.

Gibraltar, Thursday, 15th March 2012

The Gibraltar Parliament

The Parliament met at 5.55 p.m.

[MR SPEAKER: Hon. H K Budhrani QC *in the Chair*]

[CLERK TO THE PARLIAMENT: M L Farrell Esq RD *in attendance*]

Questions for Oral Answer

CHIEF MINISTER

Government payments made to SP (Butchers) Limited in 2008 Investigation by Principal Auditor

Clerk: Question 328 the Hon. P R Caruana.

Hon. P R Caruana: Yes, will the Chief Minister... can the Chief Minister say why the Government

5 thought it necessary or appropriate to ask the Principal Auditor to look into payments made by the Government in 2008 to SP (Butchers) Limited?

Clerk: Answer, the Hon. the Chief Minister.

10 **Hon. Chief Minister (Hon. F R Picardo):** Mr Speaker, the Government identified the issue of the payments to SP (Butchers) as a result of pointed questions posed by the *Gibraltar Chronicle* on this matter.

15 As a result, it came to our attention that, apart from the acquisition of the units in and around the public market, a substantial amount was also paid, namely £220,000 in respect of the determination of a licence on the East Side. Because we could not find anyone in Government who could explain to us the value for money in paying £220,000 for a licence that could have been determined with a letter sent by e-mail for nothing, or by post for 10p, the matter has been referred to the Principal Auditor for his views.

20 **Hon. P R Caruana:** Mr Speaker, does the hon. Member acknowledge that the payments to SP (Butchers), which is a company originally owned by the father and now, I believe, by the wife of Mr Reyes, who was then Minister and is now a Member of the Opposition, and has been carrying on as a butchers in the Gibraltar markets for many, many decades... that the Opposition elicited the information of payments made by the Government to this company in a Parliamentary question in 2008, when they were then the Opposition and we were then in Government? Is he aware of that?

25 **Hon. Chief Minister:** Mr Speaker, I believe that is correct in respect of the payments relating to the market stalls but not the payments relating to the plot on the East Side.

Hon. P R Caruana: Yes, so the referral to the Principal Auditor then does not refer to the stalls in the market or, rather, better still, the sheds in the market?

30 **Hon. Chief Minister:** Mr Speaker, other than that those were two connected transactions.

35 **Hon. P R Caruana:** Because, of course, you see, both the Principal Auditor and, indeed, the Opposition have had notice of those payments since 2008 and I was just wondering why, having asked the question and got the information in 2008, it takes them 4 years to decide that there is something suspicious worth investigating?

40 Certainly, the Principal Auditor, who audits the accounts of the Government and is aware of all the payments that are made using public funds, and certifies the account, and certifies the accounts of the Government and all its companies, he has never thought that there was anything untoward about any of these payments. Yet now, four years after there is evidence of pay... well, evidently, I presume, as publicly given in answer to a question, the hon. Members must know that, as part of the policy of exposing the city walls and... I beg your pardon?

45 **Hon. Chief Minister:** If the hon. Gentleman would give way... (**Hon. P R Caruana:** Yes.)

Not the payment in respect of the licence on the East Side, Mr Speaker. That is the issue that I alluded to before.

Hon. P R Caruana: I hope that if the Principal Auditor needs any information it will be happily given to him, that these were connected transactions, because one part of the business was not viable without the other.

50 **Hon. Chief Minister:** Mr Speaker, I am sure that if the Principal Auditor feels that he needs to speak to those who were involved in respect of the transactions he will do so.

55 My answer in respect of the question referred to the East Side aspect of it for a purpose, and to the fact that it was a licence that could have been determined by a letter for a purpose, because that is the issue that raised the value for money question for us.

Hon. P R Caruana: I see. It's a value for money issue.

**Non-EU spouses of Gibraltarians
Issue of five-year residence permits**

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Clerk: Question 329, the Hon. P R Caruana.

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Hon. P R Caruana: Mr Speaker, will the Chief Minister say on what terms will five-year residence permits be automatically issued to non-EU spouses of Gibraltarians?

Clerk: Answer, the Hon. the Chief Minister.

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Hon. Chief Minister (Hon. F R Picardo): Mr Speaker, as has been the case until now for all EU citizens *except* Gibraltarians, ironically, five-year residence permits will be automatically issued to non-EU spouses of Gibraltarians under the following terms. That the relationship is genuine, that the marriage has to be valid and subsist through the period of the permit or permits and accommodation has to be suitable, and the tenancy has to be approved by a relevant landlord. This will end the discrimination against Gibraltarians in this sense Mr Speaker. I know the hon. Gentleman will recall that the way that the law was drafted, all EU citizens resident in Gibraltar, *except* Gibraltarians, have this right and Gibraltarians enjoyed it only for a period of six months for their spouses instead of five months and therefore by doing –

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Hon. J J Bossano: Five years.

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Hon. Chief Minister: – it in this way, we put Gibraltarians on the same footing as other EU nationals receiving or bringing their non-EU spouses.

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Hon. P R Caruana: Mr Speaker, will the hon. Member acknowledge that the rights of non-EU spouses of EU citizens in Gibraltar, in other words the other category in whose favour there was alleged discrimination compared to Gibraltar, that that was a matter of EU law and not something that was chosen, so EU law gives that right? But the EU legal right is linked to their status as workers in Gibraltar and to the fact that they hold jobs in Gibraltar, so it was not a right indefinitely for five years, it was forfeitable on loss of employment. That is the EU regime.

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Now, by extending it to non-EU spouses of Gibraltarians – and we have had brief debates on this issue before in this House – where the practice was to do the permit for 6 months *and*, provided the marriage and the relationship subsisted because, of course, Mr Speaker, if there is a *successful* relationship, it doesn't matter whether it is 6 months, 6 years or 60 years, the longer the better, if it's based on...

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The danger is, and this is what I would ask the hon. Member to keep under constant review, because we began to see an increase in the trend, especially on the basis of internet-based relationships, whereby this was just being used as a side door into Gibraltar and that, shortly after, the relationship would breakdown, thereby suggesting that one party to the relationship – obviously the non-Gibraltar party to the relationship – was using this, as has been the experience in England – and they have had to clamp down on it, too – as a means of gaining entry into Gibraltar. So the 6 month rule, as he will be aware, was 6 months but conditional upon the relationship persisting in terms of cohabitation, and I think I have correctly understood the hon. Member to say that they have attached the same conditions to the five year rule. So it is not five years, it is five years or if there is a break up, whichever is the shorter of the two. Obligated to him.

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Hon. Chief Minister: Yes, Mr. Speaker, that is correct and I am not suggesting that he changed the law of Gibraltar to discriminate against Gibraltarians. It is clear that the rules that gave greater rights to EU citizens came in through the EU legislative route.

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There is one difference now, Mr Speaker, between Gibraltarians and non-Gibraltarians bringing their non-EU spouses. He has alluded to it but I am happy to sort of dwell on it, which is that, a Gibraltarian will not be required to be in employment for that right to kick in, but they will have the same condition attached to their spouse's work permit, namely that they have to remain in the relationship for the period of five years, subject to such review as it may be possible to do of those things.

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It is as we debated when we were on opposite sides of each other, a very difficult issue to keep under review because it is not easy for the Chief Minister of Gibraltar, or for the Principal Immigration Officer to determine whether a marriage is genuine or not, and I am sure he has come across some fairly heartbreaking

115 cases, as I have already, and saw when I was Leader of the Opposition, of Gibraltarians who believe that they are in loving relationships, although the objective evidence suggests the contrary.

120 **Taxpayers' payment to OEM**
GSD agreed settlement of claims

Clerk: Question 330, the Hon P R Caruana.

125 **Hon. P R Caruana:** Mr Speaker, will the Chief Minister say on what basis the Government thinks that the GSD appears to have agreed that the taxpayer would pay nearly £7 million to OEM as full and final settlement of all claims?

Clerk: Answer, the Hon. the Chief Minister.

130 **Hon. Chief Minister (Hon F R Picardo):** Mr Speaker, on the basis of the correspondence between his office and the liquidator of OEM, which discloses that, prior to the Election, a position had been reached which was agreeable to both those parties, with the previous Government proposing to make a payment of £6,977,738 to OEM's liquidator as full and final settlement of all claims.

135 **Hon. P R Caruana:** Yes, Mr Speaker, he may have seen what I believe is a draft letter to that effect, but is he aware – and perhaps we ought to discuss this in a different forum, because they must make their own policy decision, about whether they think that these monies should be paid or not – that, although these discussions are with the liquidator, they are effectively for the benefit of the bank that funded the first stages of the project and it raises questions about the extent of the bloody nose that we are happy for that bank to suffer?

140 There are policy decisions for the Government to make, then, legitimate ones, and they could legitimately come to a different one to the one that we came. But this goes back to much longer than before the last Election. This goes back to a couple of years ago, or at least 18 months ago.

145 The reason why I ask on what basis is this: is he aware that the original commitment was that the Government would not wish to keep the benefit of value for work that had been done and paid from that source, and would return that money, *provided* that the costs of the project did not exceed the sale proceeds. In other words, the Government would not make a profit on the development and keep the financier of the first phase of it out of pocket.

150 There is a link between, and, certainly it is true that there was a – I cannot remember the exact timing – where the advice reaching me was that there *was* a profit. A letter was drafted, but I do not believe actually signed and sent – although I could be mistaken about that, I don't remember the exact details – and then it was countermanded, when the Financial Secretary discovered that, in fact, there was not a profit in that amount and that, therefore, the original term of the commitment of the Government, which was that it would be paid, provided that there was surplus in the proceeds of the sale over the final costs of the development, in fact that had not happened – that there was not that degree of surplus, or *any* degree of surplus.

155 This is why I ask whether the basis... It is just that the statement that I read from the Government leads me to believe that the Government – the new Government – thinks that there is a hard and fast commitment to make this payment. The hon. Members could certainly justify a decision to make that payment, on the grounds that, if they were interested and we could discuss privately or, equally, make a contrary decision, but there is no contractual commitment to pay the money.

160 That is the purpose of asking on what basis they think... His use of words leads me to believe that he thought there was an absolute commitment to make the payment. I assume that he will have discussed this matter with the Financial Secretary, who will share with him the content of the last two meetings I had with the Financial Secretary on this subject, which is where I left it and which is what raised the concern and the doubt, which is why we did not proceed with the payments.

165 **Hon. Chief Minister:** Mr Speaker, the hon. Gentleman rightly refers to our press release as saying that it *appeared* that there was an agreement and that we were not saying actually that there *was* an agreement.

170 Mr Speaker, I have no problem in informing the hon. Gentleman that I received a letter from the Liquidator of OEM on 17th January 2012. That letter says this – and I have got an extra copy of this, so I am quite happy to give him this at the end of this session –

175 'I have been in negotiation with the previous administration over a period of time and, prior to the recent elections, had reached a position which was agreeable to both parties, with the previous Government proposing to make a payment of the amount of £6,977,000 as full and final settlement of all claims.'

And what I have, Mr Speaker, is a draft letter, as he rightly says, sent to the Liquidator by his private secretary, saying:

180 'Please find attached a draft text of GoG's letter to you. Please confirm that you are content to proceed on this basis. The Chief Minister has asked whether you would be able to come in tomorrow at 9.15 to finalise this matter.'

That was on 1st December, and the reply from the Liquidator, that very day, a few hours later, saying:

185 'I am pleased to confirm I have received the approval of the committee of inspection to agree to the terms set out in the Government's draft letter.'

190 What we are saying, Mr Speaker, is that there *appears* to be an agreement, but not that there *is* an agreement, (**Hon. P R Caruana:** I see.) and I am very happy, Mr Speaker, to have the opportunity to talk to him about this.

We will, of course, make our own decision about whether there is an agreement and whether there should be an agreement and I will let him have a copy of this bundle of correspondence, which was sent to me by the Liquidator, just so that he understands that I have not had access to *his* correspondence files. The Liquidator has sent me a bundle of the exchanges of correspondence going back, I think, to the first exchange he had with him in, if he will allow me, sometime in early 2010.

200 **Hon. P R Caruana:** Yes, well, Mr Speaker, I am very happy to give the hon. Member a full briefing – and he can make of it what he pleases, it is a large sum of money – explain to him the circumstances in which the Government took the view that it would be right to pay, that that draft letter was formulated on receipt of financial statistics, in relation to the OEM projects as a whole, that showed that the Government was in profit, which was the terms of the original letter of commitment with OEM, only to pay profit over in payment of the monies that they had invested, but not to make...

205 Now, since that letter was drafted – and this was in the last couple of days before the elections – news came up from the Finance Ministry, to the effect that, in fact, there had been a miscalculation of the accounting of the OEM projects – and that, in fact, there wasn't the profit – all of this information is available to him: it is in the Finance Ministry, not in my D files – that there was, in fact, not the profit that the Government had been advised there was and that, therefore, the original commitment of the Government, which was to pay this money to the extent that there was profit... In other words, the Government's original position was, when we took over this development, there had already been a few million pounds worth of work done, which had been funded effectively by Barclays Bank, and we said well, look, we are not going to pocket the benefit of that work for nothing, sell the properties, including the value of that, and keep the profit and then keep the bank – who were secured creditors of OEM – out of their money, whilst the Government counts the profit that it has made, in part relying on that inherited paid-for work. So, we agreed, in writing – and there should be letters which the Financial Secretary can make available. There, will be letters on the file, which commits the Government to pay. They are here ... I have not had the chance...

210 **Hon. Chief Minister:** If the hon. Gentleman will give way... those exchanges and the calculation of the 6-9-7-7 (**Hon. P R Caruana:** Yes.) is based on that premise, the agreement is based on that premise, and hence why we are saying appears to be...

220 **Hon. P R Caruana:** Alright, alright. Now, there is –

Hon. Chief Minister: Almost what the hon. Gentleman is saying – if he will indulge me – is that the Government said, 'look, you can have a *quantum meruit* of the work done.'

225 **Hon. P R Caruana:** Absolutely, so long as it can be paid for out of profit. Now, and indeed, we were sent up statements of account, which showed there was this degree of profit, that draft letter was issued on the basis of them, and then the financial statements were countermanded and the profit, in fact did not exist, for reasons of a mistaken calculation that had been made at technical level.

230 So the question now facing the new Government – as, indeed, it would have faced us, if we had been re-elected – is, do you, nevertheless, pay the Liquidator, in order to avoid the loss being suffered by the Bank, or do you take the view that, in fact, the circumstances of the payment have not materialised. Of course, the Liquidator has his own legal arguments, which are based on the terms of the licence agreements.

That is the situation, Mr Speaker, but it will require careful consideration by the hon. Members opposite.

235 **Hon. Chief Minister:** And those arguments, if the hon. Gentleman will permit me to say, were rejected in the correspondence, and it was only – I hesitate to say *ex gratia* – that the Government was agreeing to make the payment, but not based on the representations set out in the early correspondence from the Liquidator of what the claim of rights might have been.

240 **Hon. P R Caruana:** Correct. The Government's position was there is no claim of right in the circumstances that have happened under the licence agreements, but we will not enrich ourselves. In other words, the Government does not seek to benefit unfairly from profit made, selling assets part of which have been built with money provided by the party in question and that that would not be the case, provided that the Government could pay for it of the excess of sale proceeds over final building costs.

245 Initially, we were told that that difference existed, and we were then told that it did not exist. So the hon. Members now have a difficult policy decision. Certainly, I am happy to say privately to the hon. Member how I would have resolved that, had I been re-elected, but it's very much a question... The point of the question is simply to indicate to the hon. Member that I do not believe that, in the circumstances as they finally were shown to exist, there is a binding commitment on the part of the Government. Which is not to say that I don't think the Government should pay.

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Hon. Chief Minister: Which is not to say what, sorry?

255 **Hon. P R Caruana:** Which is not to say, which is not to say that I do not think that the Government should pay, I think there are issues on both sides of that question which the hon. Members will have to weigh up for themselves, in terms of the relationship between Gibraltar and that organisation.

260 **Hon. Chief Minister:** Yes, Mr Speaker, I think that is the position as we understand it as well, that there is no finalised agreement, no executed, no enforceable agreement.

I did not appreciate the exact reasons why we had not got to the final stage, but I could see that there was an agreement to agree almost, but not a fixed agreement that the Liquidator might have been able to hold the Government of Gibraltar to.

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**Previous Government payments to Haymills and OEM
Investigation by Principal Auditor.**

270 **Clerk:** Question 331, the Hon. P R Caruana.

Hon. P R Caruana: Mr Speaker, will the Chief Minister say why the Government considered it necessary or appropriate to ask the Principal Auditor to conduct what the Chief Minister calls a 'forensic audit' of payments made by the previous Government to Haymills and OEM, and what are the terms of reference?

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Clerk: Answer, the Hon. the Chief Minister.

Hon. Chief Minister (Hon. F R Picardo): Mr Speaker, because it was a manifesto commitment reflecting our consistent position since 2009.

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Hon. P R Caruana: Mr Speaker, the word ‘forensic’ suggests investigative.

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Now, the Principal Auditor, as the hon. Member knows, audits or procures others to audit, if he doesn’t want to audit it themselves, the accounts of the Government and of all Government Companies and Agencies, and things of that sort. Does the hon. Member agree, that the Principal Auditor would have seen all the payments made, and that the use of the word ‘forensic’ as an adjective to the noun ‘audit’, adds nothing to the matter? The Principal Auditor has audited the accounts of the companies in question – accounts are a statement of expenditure and of revenue – and he will have seen all the payments in and out in respect of this scheme.

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I accept that it was a manifesto commitment about which they made quite a lot of fuss, both in the run up to the Election and, indeed, earlier on. Does the hon. Member agree that the phrase ‘forensic audit’, alarmist and colourful as it is, adds nothing to the phrase ‘audit of payments’, which is what the Principal Auditor does habitually and as a matter of statutory obligation, anyway?

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Hon. Chief Minister: Well, Mr Speaker, obviously not, because the choice of words was made, not considering that the word ‘forensic’ was simply there to be alarmist, but because it has another meaning, which is that it is a *tracing* of payments, not just an understanding of what payments have been made, which is what the Auditor will already have checked, in other words the Auditor, as part of his annual recurring work, looks at payments that the Government makes and decides whether they are appropriate or not.

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We are asking now whether he will make a forensic audit – which he has agreed to do – and which, of course, as the hon. Gentleman will know, there is no in-house expertise to do it, it is very likely that he will have to procure the services of forensic auditors to have this work carried out, to understand and trace the payments and see what they were used for.

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I know that the hon. Gentleman found himself in a difficult situation in respect of these matters, and I don’t envy him. He was providing affordable housing, the developer that was providing it collapsed, and the constructors that were involved also collapsed. So it is not as if we are saying that the hon. Gentleman was embarked in an endeavour that was anything other than designed to better the lives of those who would become owners in the co-ownership regime, despite the fact that those buildings now, as constructed, have so many problems with them.

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But we are very concerned about those payments which were made, in particular because the hon. Gentleman will know, when we were first having this exchange of press releases in 2009, when the issue arose, it had become apparent that, I think, Haymills, which is in liquidation, and one of the other companies, might have had great arrears of PAYE and Social Insurance and collapsed, in receipt of payments from the Government directly, without any regard to those PAYE and Social Security arrears, even with monies which would have been held in retention having been paid to them. Those are the issues that we want a forensic audit of, they are the issues that were the exchanges of press releases in August 2009.

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Hon. P R Caruana: Mr Speaker, the hon. Member must believe that they were payments that were made, other than in relation to the construction of the projects, on architects’ certificates. Is this what the hon. Member believes that they were, they were payments made from public funds that were not due to the contractor?

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Hon. Chief Minister: Mr Speaker, I do not believe or disbelieve anything, I just want to understand where that public money has gone. It may be that it has gone into a black hole, which is a company in liquidation. But the hon. Gentleman will recall that he did not just pay the amounts due, he also, well I say *he*, I mean the Government of which he was the chief political individual responsible, made payments even of the amounts retained, the 10% that would have usually been the retention amount which would have been paid a period after the completion of construction, were released to this company that was involved in the building and etc.

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Now the hon. Gentleman will know that a number of entities which owe, or corporate entities, that owe PAYE or Social Security to the Government when they provide services to the Government, or when they receive payments that originate with the Government, have large amounts of those payments or the whole of those payments, retained by the Government, set off against the amounts due in respect of PAYE and Social Security and, in this instance, not only did that not happen, but the company went into liquidation owing many millions and received also the 10% retention, so those are really the principal headline issues, if there are any other issues I suppose the auditor will pick them up.

335 **Hon. P R Caruana:** Oh I see, so the hon. Member is not concerned about *improper* payments but whether the payments that were made were made in circumstances when they should have been made, as opposed to circumstances in which they should not have been made.

340 **Hon. Chief Minister:** Well, Mr Speaker I do not know whether any payment was proper or improper, and I do not want to prejudge the outcome of the forensic audit. We will see what that says.

But, Mr Speaker, I think I have been pretty clear about what the concerns were, and our press releases, in particular, at the time which I have had cause to look at, and refresh my memory on as a result of his question, I thought were also pretty clear. We had the usual exchange, it was August, he didn't reply, but when he came back from holiday in October he told me to do my homework, you know, that sort of usual exchange that we used to have in public!

Those are the issues which led to the manifesto commitment and this is the implementation of that commitment.

350 **Hon. P R Caruana:** But does the hon. Member not accept that the Principal Auditor and, indeed, the accountant, the auditors of this, of these companies, audit and certify the accounts as being correct and the payments reflected in it as being due and payable, and have not qualified the accounts?

Apart from the political cut and thrust, which I am perfectly happy to submit to, as being political cut and thrust, I am just interested to know why the hon. Member *particularly* wants a forensic audit about this particular, as opposed to any of the... You know, the Government has made £4 or 5 hundred million worth of payments in capital projects over the last few years, and is just curious that the hon. Members get, sort of, excited about this one – unless they have a reason to think otherwise. I mean if there *were* something untoward, something that would justify a *forensic audit*, would the hon. Member not have expected the Principal Auditor to have raised the alarm already?

I mean, if the hon. Member is saying, well, did the Government release retention payments sooner than it should have, or did the Government make payments due under a construction contract without withholding, without deducting, things for unpaid PAYE and Social Security, well, I mean, those are issues in which there can be a multiplicity of views. But why does that require a forensic audit? The auditor of the company will tell you whether the Government made these payments and the Government's own accountant, internal, will tell you whether, at the time that the Government made these payments, the recipient was, or was not, in arrears of Social Insurance contributions.

All I am trying to understand... If the hon. Member says to me, look, this is what we said and this is what we are doing, I understand that – he is obviously keen to do what he said he was going to do. I am just interested, more technically than that, to understand why the hon. Member feels that the use of the word 'forensic' adds *anything* to the audit that the Principal Auditor presumably has already done, in respect of payments that go back this number of years.

370 **Hon. Chief Minister:** No, Mr Speaker, for this reason... I mean, if he cares to go back to August and October, as I am suggesting that he should, he will see that that is exactly what we were saying – we need a forensic audit because these companies have gone into liquidation owing very many millions of pounds in terms of PAYE and Social Security.

Most of the companies that the hon. Gentleman dealt with – and I know that people say that, you know, it was the kiss of death towards the end, because Bruesa also I think had its own problems, after having dealt with his administration, but that was in Spain and not here.

380 In relation to Haymills, I think it is the *only* company – and when I say Haymills, it includes the wider family, I think Labour Hire was also a company involved in that – which was mentioned in the press releases, of a company exclusively in receipt of Government payments – and I say Government not knowing whether it was also GRP, which may have been why the Auditor may not have been able to look into these issues before, because it is a wholly owned company of the Government. These payments were being made into these companies and, at one stage, I think the hon. Gentleman was paying into the company £50,000 a month. He was almost becoming the paymaster of the company, in the sense that he was paying the payroll of the company in order to keep the developments going. As it turned out, when the liquidations came, that is what happened when GGCC was created – the men were transferred in and the hon. Gentleman (*Interjection by Hon. J J Bossano*) carried on making those payments on a monthly basis.

385 So, Mr Speaker, those are our concerns. I thought we had set them out very clearly, the hon. Gentleman

390 set out his position then, we said that when we were elected we would look into these things and have a forensic audit of what these payments were used for, and how it was that retention monies were paid out before construction was finished, let alone after the period post completion of construction and how it was that these companies were receiving payments, and not having applied to them the rules that the Tax Office tends to apply in respect of others.

395 I am happy to refresh his memory. The hon. Gentleman at the time said:

‘There is only one rule for tax defaulters, and its being applied across the board to everyone’

400 and we said, well, how can that be? Those were the issues in debate and live at the time. The relevant period is – if he wants to look it up – 14th October 2009, 18th August 2009, 7th August 2009, when these exchanges were being had by us in the press. That is exactly what we said we would do and what we are asking the Auditor to do.

405 **Hon. P R Caruana:** Would the hon. Member make available to the Opposition a copy of the terms of reference of this.

410 **Hon. Chief Minister:** Well, Mr Speaker, yes. I note that he asked for those terms of reference and that we haven’t actually set out what those were, we have simply not wanted to say to the Auditor you do things in a particular way or now that we have had the debate already about his independence, we have just said to him that we think there should be a forensic audit into these payments, it’s up to him how widely he goes or how narrowly he goes. (*Interjection by Hon. P R Caruana*) He knows what our concerns are because those are the concerns set out publicly.

415 **Hon. P R Caruana:** Correct me if I’m wrong – I am relying on my memory now, I do not have it in front of me – does the Government’s last press release on the matter not make reference to the terms of reference?

420 I had a statement in front of me when I formulated the question. Perhaps it doesn’t. I think it says something about the terms of reference are being drawn up, or have been drawn up, or something like that? I think it says something to that effect, that the terms of reference have been or are being drawn up, or are now ready or something like that.

Hon. Chief Minister: Mr Speaker, I have got the same here and it doesn’t mention terms of reference that I can see.

425 **Hon. P R Caruana:** If I come across it, I can write to him... [*Inaudible*] ...if they don’t exist, then they don’t exist...

430 **Hon. Chief Minister:** If such a press statement existed then it would be inaccurate, in the sense that when we have asked the Principal Auditor to do the audit, we have not wanted to restrict him to anything too wide or to anything too narrow. He is able, as we debated before, for all the reasons we were debating before, to take such steps as he wishes in that respect.

435 Mr Speaker, he would also be free to come back to us and say, having looked at this in some more detail, I do not think there is any need for a forensic audit because you are using the word ‘forensic’ in an alarmist way, again juxtaposing it to the other noun, but so be it, Mr Speaker. It is up to him. (*Interjection by Hon. P R Caruana*)

It is up to him. He may wish to say so publicly if he decides to do so. But the hon. Gentlemen can look at the press statements that I have referred him to and he can see what the logic was in what we were saying then.

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**Gibraltar Pensioners’ Association
Government policy on payments to retired private sector workers.**

Clerk: Question 332, the Hon. P R Caruana.

445 **Hon. P R Caruana:** Mr Speaker, will the Chief Minister say whether it is the policy of the Government to make Government-funded payments to retired private sector workers with no occupational pension or only a small pension, as demanded by the Gibraltar Pensioners' Association?

450 **Clerk:** Answer, the Hon. the Chief Minister.

Hon. Chief Minister (Hon. F R Picardo): Mr Speaker, I will answer this question together with Question 333.

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**Gibraltar Pensioners' Association
Requests made to Government**

460 **Clerk:** Question 333.

Hon. P R Caruana: Mr Speaker, will the Chief Minister say what requests were made of the Government by the Gibraltar Pensioners' Association at his recent meeting with them?

465 **Clerk:** Answer, the Hon. the Chief Minister.

Hon Chief Minister (Hon F R Picardo): Mr Speaker, on 8th February this year I had the honour to receive the Gibraltar Pensioners Association at No. 6 Convent Place. I understand that the Association had been seeking a meeting since 2003 with the previous Chief Minister, but that the meeting had not been granted despite repeated requests in the intervening 8 years.

470 I have agreed to see the GPA quarterly to review progress on issues discussed, or any new matters they may wish to raise. The agenda items listed for discussion by the GPA were as follows:

1. recognition of this Association;
2. re-introduction of WOPS or similar arrangement to provide for a scheme for widows etc;
- 475 3. a pension scheme for the private sector;
4. entering the Double Taxation Agreement – Government requested to consider – I am just reading what the agenda was that they came with;
5. accelerate the introduction of the Freedom of Information Act;
6. review of certain medical matters to improve the present arrangements;
- 480 7. bus service, review certain routes, and;
8. any other business.

I discussed the issue of private sector pensions with the GPA and I am looking forward to meeting with the Private Sector Pensioners Association also. Other than payments made to all pensioners, public or private sector, on the basis of qualification for minimum income guarantee or for additional financial support designed to ensure that the standard of living of all pensioners keeps up with the growth in the economy, as provided for specifically in our manifesto, the Government has no policy to make Government funded payments to retired private sector workers with no occupational pension or only a small pension.

485 I must tell the hon. Gentleman that the Gibraltar Pensioners Association made no demand of me to the contrary. All the GPA sought to discuss with me was the introduction of a pension scheme *for* the private sector, which is something Members opposite will know is also being promoted by officers of Unite, especially given the changes being introduced in the United Kingdom to promote pensions schemes for the private sector.

490 I want to now take this opportunity, Mr Speaker, to thank the Gibraltar Pensioners Association, the Gibraltar Senior Citizens Association and the Private Sector Pensioners Association for the hard work that they do in representing pensioners and the elderly in our community. I look forward to working with them in the next four years.

495 **Hon. P R Caruana:** Well, Mr Speaker, certainly the Gibraltar Pensioners Association had supported the Private Sector Pensioners Association in the latter's request and, on several occasions, the latter on several occasions came to see me.. They are a pretty determined group of people, who feel aggrieved that having

500 worked for private sector employers who did not provide an occupational pension for their employees, have
now reached retirement age, have *no* occupational pension or a small one, and feel aggrieved that the
Government has discriminated against them by abolishing tax on pension income, because they argue that this
505 benefits people that have a pension and is a double whammy to people who don't have a pension, because if
you have got a pension you save the tax on it and if you don't have a pension because you pay no tax there is
no tax to be exempted from.

Arguments to the effect that tax is something that you, that the Government takes from people's income
and that exempting pensions from income tax is simply saying the State doesn't want a share of your income,
is very different to discriminating against somebody who does not have a pension for reasons that are not the
510 fault of the State. And I was just wondering whether this issue had resuscitated itself, and whether, and what
the policy of the Government was. Its implicit in his answer, that although he looks forward to working with
them and congratulates them, has had the great honour to meet with them, that he, nevertheless it is *not* the
policy of the Government at this time to, to, fill any vacuum of income caused by not having a private sector
occupational pension, beyond the state pension, the minimum income and the mechanisms that already exist
515 to ensure a minimum income of elderly people.

Have I correctly understood that to have been the thrust of the answer?

Hon. Chief Minister: Yes, Mr Speaker, with the caveat that, as he knows, our manifesto contains a
statement applicable to all pensioners about keeping them in line with the growth in our economy.

520 I have seen, Mr Speaker, a copy of the newsletter which the GPA itself put out, after their meeting with
me. It was the quarterly meeting, and it says, about that meeting:

'other items raised by the Government in their manifesto, including the introduction of a pension scheme for the private sector, were
similarly discussed. The question of a private sector pension has now been taken over by the newly formed Private Sector Pensioners
525 Association, who have our support. As with our own claim –'

– which is the WOPS Claim –

'– any arrangement should be in accordance with Government directives and legislation.

530 So that is the position that they themselves are putting to their own members.

Clerk: Question 334 –

535 **Hon. Chief Minister:** Mr Speaker, I'm sorry. I should add – and I should have added it by way of
supplementary, I think it has fallen out of the first answer – that I had the honour of meeting the members of
the GPA with the Minister for Social Services and Equality.

540 **Legal action against Government**
Policy on surrendering on grounds of costs.

Clerk: Question 334, the Hon. P R Caruana.

545 **Hon. P R Caruana:** Mr Speaker, will the Chief Minister say whether it is the policy of the Government to
surrender to the claimant in every legal action in which the Government's legal costs might exceed the
potential damages claimed against the Government, regardless of the merits of the claimant's case?

550 **Clerk:** Answer, the Hon. the Chief Minister.

Hon. Chief Minister (Hon. F R Picardo): Mr Speaker, the policy of the Government is not to spend
money unnecessarily in defending cases where there is no issue of principle at stake, and where the cost of
settlement is lower than the anticipated legal costs.

555 **Hon. P R Caruana:** So the answer to my question is, yes, provided that there is no issue of principle at

stake. In other words if, if the costs might exceed the damages, they will surrender to the claimant, regardless of the merits of the claimant's case, provided that there is no issue of principle at stake. Is that what, I think that is what...

560 **Hon. Chief Minister:** No, Mr Speaker, the position is that the policy of the Government is not to spend money unnecessarily in defending cases where there is no issue of principle at stake and where the cost of settlement is lower than the anticipated legal costs.

565 **Hon. P R Caruana:** Correct. Well, that's just a way of saying yes. In other words, you will settle for a sum lower than the legal costs, regardless of the merits of the claimant's claim. Does the hon. Member not share my view, that this risks people launching into litigation against the Government, on the basis that they will get *something* by the application of this principle and that, by this principle, the Government is encouraging litigiousness, and that the Government ought not to send this signal? I specifically did not mention the case that we debated this morning although, obviously, it is the case that promotes the question, to try and separate it from the sort of emotional stuff attaching to that case – politically emotional stuff attaching to that case.

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575 Would the hon. Member consider that there is a danger in the Government signalling that you can have something – launch a claim against the Government and we will pay you some figure *less than* what we would otherwise pay in legal fees – that this will cause a *mushrooming* of litigation against the Government and that the Government needs to be aware of this, and cautious, and perhaps moderate this signal?

Hon. Chief Minister: No Mr Speaker, for a very simple reason. It will be an issue of principle that somebody who had absolutely no meritorious claim against the Government should decide that they would claim against us, *simply* because they believe that we would settle.

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Hon. P R Caruana: Mr Speaker, but the hon. Member is sort of half provoking me to alluding to the earlier case.

585 Is the hon. Member saying that he thinks that there is *merit* in the employee's claim, in the previous claim, in all the circumstances that he now knows affected that case?

Hon. Chief Minister: Mr Speaker, in respect of the previous case that we debated, I refer the hon. Gentleman to the answers that he was getting then about the nature of that, or the state at which that case is.

590 Needless to say, Mr Speaker, I do not accept his interpretation. I do not think that there will be a flood of unmeritorious cases. If there is *one* unmeritorious case, then that will be an issue of principle, *always*, because if claims have no merit and they are brought against the Government simply because people believe that we are going to be a soft touch, that is going to be an issue of principle at stake.

595 But, Mr Speaker, when there are disputes, then he will know – perhaps, 16 years out of practice, he may have forgotten – that the best advice sometimes is for people to settle, and not litigate for the sake of litigating. Mr Speaker, I have the costs that the Government has incurred in some other cases, and, compared to the damages awarded in one particular case, which is not the one that we discussed this morning, it shows that the Government, in our view, made the wrong decision. For example, in one particular case, the Government's total legal costs were £62,333: the Government folded, in that case, at the last minute, and the compensation awarded was £48,000. (**Hon. P R Caruana:** Yes.) And that was the maximum award, as I understand it, at the time.

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605 **Hon. P R Caruana:** Mr Speaker, as the hon. Member knows – and we don't want to get into that case again – (*Laughter*) the case folded, as he called it, the case folded, as he calls it, (*Interjections*) because the employer's witness would not come to the jurisdiction to take part in the proceedings. But, Mr Speaker, does the Government not understand, sticking to the generality of it, that, if there is an employee that sues his employer for unfair dismissal, the idea that, in those circumstances, the employer should pay compensation, when the employees merit has no claim, simply because it would cost more to defend the case, is a hugely dangerous precedent, which is not even put into practice by most private sector employers, who are usually more concerned to save unnecessary costs than governments deploying public funds. In other words, if you are sued by somebody for doing something that you think you were perfectly entitled to do, the idea that you pay him £48,000 in compensation, because to defend yourself against an unmeritorious claim would have cost

you £62,000, is creating a charter for unmeritorious litigation against the Government and Government-owned companies.

That is the point that I am trying to make in this question as opposed to all this morning's questions, which were much more politically driven on the facts of that case.

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Hon. Chief Minister: I am grateful to the hon. Gentleman accepting that his questions were really exactly that, just politically driven. We could see through that, and now people who are listening will know that that is exactly why it was being done. (*Interjection by Hon. P R Caruana*)

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Mr Speaker, there is a large measure of agreement across the floor of the House. Of course, it would be a hugely dangerous precedent for Government to start settling claims that have absolutely no merit. *Ergo*, there is an issue of principle at stake in any such case.

Hon. P R Caruana: And therefore the Government thinks that there is merit in this particular case, but he does not want to say that because of the *sub judice* rule.

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Mr Speaker, would the hon. Member just clarify and allow me one final supplementary, something that I was not quite clear on this morning. I am almost certain I understood the Hon. Minister to say, this morning, that the Gibraltar Bus Company was represented by Isola & Isola, Mr Mark Isola QC... (*Interjections*) No, Mr Mark Isola QC is with Isola & Isola, not with Triay, (*Interjections*) and that the advice to discontinue the case was issued by Verralls. (**A Member:** Correct.) Is that correct? So – even though Isola & Isola continued to represent the Bus Company in the conduct of that case, which I think was said this morning, that Mr Mark Isola continues to represent the Government – nevertheless, the Government withdrew the case, not on the advice of their solicitors acting in the case, but on the advice of a firm of solicitors that were not engaged – Verralls. I am just asking whether that was the correct understanding of what I heard this morning.

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Hon. Chief Minister: Mr Speaker, we are not going to get into what the correct understanding is, or is not, of what was said this morning. What was said this morning was said this morning.

Mr Costa has confirmed in this House that the case was handled by Triay & Triay, when Mr Mark Isola was there. I don't think any part of the case has been active after Mr Mark Isola QC went to Isola & Isola, and that he obtained *pro bono* advice from Verralls in respect of a particular issue in respect of that case. We will not stray further in respect of that case because we believe, as we believed this morning, that there are *sub judice* issues there.

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Hon. D A Feetham: Well, you say that. Mr Speaker, the hon. Gentleman says a particular part of that case, but can he confirm that the advice was sought on whether to discontinue the defence of the claim, (*Interjection by Hon. N F Costa*) that that was the advice, because that was the original question that my hon. and learned friend, Mr Bossino, asked this morning? Is it in relation to that that Verralls advised?

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Hon. Chief Minister: Mr Speaker, the Government is not going to go further than it already has in respect of this matter. (*Laughter*)

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And it is certainly not going to set out exactly what questions were asked of what lawyers at what time. Look, we have said what we have said; we believe that we should not be saying anything more. The hon. Gentlemen are enjoying baiting us in trying to get us to go further, but they are on a hiding to nothing. We are not going to say more. We think we have said enough already, as it is, in respect of this matter, which remains live before a tribunal in Gibraltar.

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Consolidated Fund Increase in expenditure since 8th December 2011

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Clerk: Question 335, the Hon. P R Caruana.

Hon. P R Caruana: Mr Speaker, can the Chief Minister say by how much policies and measures introduced by them since 8th December 2011 have increased Consolidated Fund expenditure so far, up to the 29th February this year?

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Clerk: Answer, the Hon. the Chief Minister.

670 **Hon. Chief Minister (Hon. F R Picardo):** Mr Speaker I will answer this question together with Questions 336 to 340 and Question 342.

675 **Government revenue and expenditure
Current figures as at 29th February 2012**

Clerk: Question 336, the Hon. P R Caruana.

680 **Hon. P R Caruana:** Mr Speaker, will the Chief Minister say what has been the overall Government revenue and expenditure in the current financial year, as of 29th February 2012?

685 **Aggregate Public Debt
Breakdown as at 29th February 2012**

Clerk: Question 337, the Hon. P R Caruana.

690 **Hon. P R Caruana:** Can the Chief Minister give a breakdown as of the 29th February 2012 of Aggregate Public Debt by bank loans and bank and each different issue of Government Debentures?

695 **Aggregate Public Debt and Government cash reserves
Figures as at 29th February 2012**

Clerk: Question 338.

700 **Hon. P R Caruana:** will the Chief Minister what was the Aggregate Public Debt and the Government cash reserves as at 29th February 2012?

705 **Gibraltar Savings Bank
Debentures issued, 15th January to 29th February 2012**

Clerk: Question 339.

710 **Hon. P R Caruana:** Will the Chief Minister say how much by nominal value has been issued in debentures or other debt security by the Gibraltar Savings Bank from 15th January 2012 to 29th February 2012 both inclusive?

715 **Gibraltar Savings Bank
Government Debentures/Bonds purchased since 9th December 2011**

Clerk: Question 340,

720 **Hon. P R Caruana:** Can the Chief Minister say whether the Gibraltar Savings Bank has purchased or subscribed to any Gibraltar Government Debentures or Bonds since the 9th December 2011 and, if so, how

much and what were the terms of such debentures or bonds?

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Corporation Tax
Amount collected as at 29th February 2012

Clerk: Question 342.

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Hon. P R Caruana: Will the Chief Minister say how much has been collected in corporation tax as of 29th of February this financial year (1), in respect of the current tax year, and (2) in total?

Clerk: Answer, the Hon. the Chief Minister.

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Hon. Chief Minister (Hon. F R Picardo): Mr Speaker, I hand the hon. Gentleman a schedule with information requested in respect of Questions 336, 337, 338, 339 and 342. He will know that many of those figures are tentative and that they will likely be changing quite considerably, as we get to the end of the financial year and the Treasury makes the adjustments it usually makes. (*The Schedule is included at the end of the Question.*)

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Mr Speaker, in answer to Question 335, details of variances, i.e. any increases or decreases in expenditure, resulting from the policies and measures introduced by this Government since 8th December 2011, are not readily available at this stage. Any increases in Consolidated Fund expenditure, over and above that provided for in the approved estimates for this financial year – which, of course, commenced with them in office – will be reflected in a detailed statement, showing the reallocations which may be required from Head 15 in the approved estimates, where £7 million is provided for supplementary funding. Any further funding required will be reflected in the Supplementary Appropriation Bill.

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In answer to Question 340, the Gibraltar Savings Bank has not purchased or subscribed to any Gibraltar Government debentures or bonds since 9th December 2011.

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Hon. P R Caruana: Yes, Mr Speaker, but surely the hon. Members must know which of their policies they have implemented, which has had the result of increasing current expenditure. For example, the Hon. the Minister for Employment told us, if not at the last, at the last but one meeting of this Parliament, that the cost of deploying the Future Job Strategy since February was – I can't remember the figure he said – £1 million a month...

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Hon. J J Bossano: About £½ million a month.

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Hon. P R Caruana: About half a million a month. I mean that's a ballpark figure, but that is a policy initiative that has clearly had an effect on increase, may have been offset by savings and capital expenditure through frozen projects but, fine, we understand that, consolidated funds.

Surely, the hon. Member must have a list of the policies that he has implemented in the last 98 days, or whatever it now is, that have had the effect of increasing public expenditure. I cannot believe that, given the concerns that he professes to have about the state of public finances, that he has introduced policies to increase them, without keeping a tally of things that he does which have the effect of increasing annual expenditure.

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Hon. Chief Minister: Well, Mr Speaker, in fact, as he knows, these are things that will be provided for after the end of the financial year, when the actual expenditure figures have been finalised. And we have been there, really, for 98, 99 or 100 days and much of what we have done is to *stop* things which were being done by *his* administration, which is the criticism that we came under by his deputy this morning. Now, the actual spending in respect of our policies will commence when we start to see, for example, some of the capital projects in our manifesto going forward.

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A lot of the spending that there may have been, in these 100 days, may have been preparatory but is not additional, in the sense that it is simply being done by officers already in the Government like, for example,

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the Chief Technical Officer is now looking at *our* projects rather than looking at the projects that *he* had responsibility for when he was Chief Minister.

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So, Mr Speaker, I do not think it is possible to give him an answer like that, and it may be that there isn't any increase in Consolidated Fund expenditure, it may be that there is a *decrease* in Consolidated Fund expenditure, not in respect of projects, of course, but in respect of payments being made on an ongoing basis.

Mr Speaker, the hon. Gentleman knows that we would, of course, have a view ourselves of what we are spending, but the question was a very pointed one. It was asked of the Treasury, and the Treasury's view is that this cannot be provided at this stage, for this reason.

ANSWER TO QUESTION 342

Answer to Question 336

Tentative overall Revenue in the current financial year to 29th February 2012 stood at £404.9 million and tentative overall Expenditure stood at £351.6 million.

Answer to Question 337

Summary of Public Debt as at 29th February 2012

**1. Government of Gibraltar
Debentures**

	<u>Maturity Date:</u>		
Pensioners' Monthly Income Debentures		£50,361,700	
Monthly Income Debentures		£8,971,200	
Special Issue of Monthly Income Debentures 2008		£50,669,900	
Limited Issue of 3-Year Fixed Monthly Income Debentures	30/06/2012	£22,375,700	
Limited Issue of 3-Year Fixed Monthly Income Debentures	31/12/2012	£33,443,400	
Limited Issue of Fixed Monthly Income Debentures	31/12/2013	£15,188,000	
Limited Issue of Fixed Monthly Income Debentures	31/12/2015	£70,304,300	
Limited Issue of Fixed Monthly Income Debentures	28/02/2017	<u>£68,305,800</u>	
			£319,620,0

**2. Commercial Loans (Bank
Revolving Facilities)**

Barclays Bank PLC	£150,000,000	
Natwest Offshore Ltd	<u>£50,000,000</u>	
Total Commercial Loans		£200,000,0
Total Public Debt as at :	29/02/2012	<u>£519,620,0</u>

ANSWER TO QUESTION 338

As at 29th February the Aggregate Public Debt stood at £519.6 million. The Cash Reserves on that date stood at £226.5 million.

CONTD ANSWER TO QUESTION 342

Answer to Question 339

The Gibraltar Savings Bank has issued the following Debentures and Bonds from the 15th January 2012 to the 29th February 2012:

	Total Issues
Monthly Income Debentures (Issued 17 January 2012)	£330,300
3-Year Fixed Maturity Monthly Income Debentures (1 February 2015)	£1,303,300
5-Year Fixed Maturity Monthly Income Debentures (1 February 2017)	£14,228,300
10-Year Accumulator Bonds	£553,800
	<u>£16,415,700.00</u>

ANSWER TO QUESTION 342

As at 29 February 2012, Corporation Tax collected in this financial year is as follows:

	£M
Years of assessment up to and including the penultimate year prior to the deemed cessation of trade under the 2010 Act	4.2
Year of assessment under the deemed cessation of trade under the 2010 Act (period from 1 July 2010 to 31 December 2010)	4.7
Accounting periods ending in 2011	20.5
Accounting periods ending in 2012	22.2
Accounting periods ending in 2013	1.1
	<u>52.7</u>

The above figures include tax collected from companies through two advance tax payments, one on 31 August 2011 and the other on 28 February 2012. The amount of tax collected at each of these is £20.2M and £13.6M respectively.

Given that the Government has recently introduced a moratorium on surcharges arising on payments on account until 31 March 2012, the Commissioner of Income Tax has confirmed that an additional amount of tax is still to be collected in respect of those taxpayers who have withheld payment until the expiry of the moratorium.

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**EU Policy of double non-taxation
Threat to economy**

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Clerk: Question 341, the Hon. P R Caruana.

Hon P R Caruana: Mr Speaker, will the Chief Minister say whether the Government has considered whether an EU policy of double non-taxation would represent a threat to our economy?

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Clerk: Answer, the Hon. the Chief Minister.

Hon. Chief Minister (Hon. F R Picardo): Mr Speaker, the Government is aware of the press release

issued by the EU Commission, by the Director General on Taxation and Customs Union, on 29th February 2012 in respect of what they call ‘tackling double non-taxation for fairer and more robust tax systems.’ A consultation paper was issued on the same date and responses have been requested by 30th May 2012.

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It is important to point out that the purpose of this consultation is to contribute to the debate, to collect relevant information and to help the Commission to develop its thinking in this area. It also states that the document does not necessarily reflect the views of the European Commission and should not be interpreted as a commitment by the Commission to any official initiative in this area.

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The consultation focuses on establishing factual examples of double non-taxation and mentions the potential harmful effects, in terms of fairness, of the tax systems and potential distortion of the internal market. This is effectively the opposite of double taxation, where tax is potentially paid twice, i.e. in this case, where tax is not paid in any country. An example of this may include a transfer pricing and unilateral advanced pricing arrangements, transactions with associated enterprises and/or countries with no, or extremely low, tax, debt financing of tax exempt income, such as the deductibility of interest on debt, with no corresponding tax on income, and the debt finances and different treatment of passive and active income.

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The Government has not yet had the opportunity to peruse this consultation paper in detail. However, we will be paying close attention to this consultation and examining any possible ramifications for Gibraltar’s tax systems.

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Hon. P R Caruana: Yes, indeed, Mr Speaker, and therein lay the purpose of asking the question. I mean I assume the hon. Members have seen the statement and, indeed, the material available on the Commission website and all of that. But, to urge the Government to keep a close eye on this. Of course it is not the position of the Opposition that the Gibraltar Government is in a position to *prevent* any such EU initiative from gathering head, but I think it’s worth keeping a very close view on, because *our* experience was that unless we engage with the UK very early on in an EU debate on these issues, there came a time when the initiative had got too much momentum and the UK really could do nothing about it, even if it had been minded to. The purpose of this is that the Government should engage with the UK Treasury on this, find common ground with them on this question, with a view to trying to get the UK to adopt a position which most fully protects the Gibraltar macro-economic interest. Which is not easy, even if you do it on a timely basis, because the UK Treasury has its own agendas and its own national policies and they frequently do not coincide with our interests. But certainly if you don’t engage them on a timely basis, even if they are *minded* to adopt a supportive position, in defence of our interests, it could be too late. So would the hon. Member accept the need to engage with this, and this is really basement, this is the first statement that has emerged from the Commission on this question, and it’s, I think the answer to my question, the second part of my question, presumably is, yes, I think a policy of double non-taxation would be considerably challenging to our economic model, and it’s worth therefore engaging at the earliest opportunity in this. Would he agree with that?

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Hon. Chief Minister: Yes, Mr Speaker, I note why the hon. Gentleman has put the question. I invite him, Mr Speaker, when he feels that there are issues like this which he needs to bring to our attention, to write to me also, even if he then also puts the question. He will get a reply and an acknowledgement within 14 days, and a substantial reply within 21 days thereafter. I guarantee that I won’t treat his letters like he treated mine!

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And if he allows me, Mr Speaker, there are some parallels with the consultation process that the Commission has launched with the issues that are arising in the Code of Conduct Group discussions about our corporate taxation regime, which includes questions about dividends and royalties etc.

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He will know that, at the time that he left office, that was an issue that was about to come on. It has come on; Gibraltar has already been before the Group. We have raised issues with the United Kingdom, as I know he was doing, to ensure that we had their support there as well. It is an issue where I think there will be a large measure of agreement across the floor of the House, as I am sure there is in respect of the proposals relating to what I call the Gaming Transaction Tax, where I know that he has been kept informed of what is happening.

I am quite happy to also keep him informed in respect of *these* issues, because these are really national issues that concern us all.

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Hon. P R Caruana: Indeed they are, Mr Speaker, and I would be very happy to be of whatever assistance he feels I can be to him on the question of the Code of Conduct consultation group, because I do not know if he is aware, or if he has been shown correspondence relating to this at the time that we ran the draft Income

Tax Act past the UK government.

855 They raised with us the issues that they thought were Code of Conduct sensitive and my recollection is –
I'm not 100%: I would have to seek access to my files to refresh my memory – But my recollection is that we
addressed each of the points that had been raised by the UK Treasury's EU tax department, in order to make
the Tax Act Code friendly, including, he will remember, taking out of the Act the whole of the anti-avoidance
provisions which, for some reason which we could never get our heads round, were thought, even though they
were there to prevent tax fraud... There was a section, several sections, in it which, for some reasons which
860 we couldn't ever fully understand, were thought to be Code unfriendly, even though they were there to make
people not escape tax through anti-avoidance.

So, whilst, certainly, the UK never guaranteed that we would have no difficulty with the Code, certainly
the Government took on board the UK's advice as to what the UK thought was –

865 **Hon. Chief Minister:** A compliance Act?

Hon. P R Caruana: – might have put the compliance of the Act in jeopardy under the Code criteria. I am
certainly happy to seek access to my files – I think I am entitled to seek access to my old files – find the
papers and perhaps then authorise that the hon. Member should have access to them, assuming that he has not
870 already had access to them!

Hon. Chief Minister: Mr Speaker, what I have had access to, I think, is a summary of the exchanges that
there were – I have not had access to the files themselves – and they have been useful in us preparing the
officials who have attended in respect of the Code Group.

875 There are now questions, this is the process, which are in the process of being answered. I am very happy
to have access to the correspondence of the hon. Gentleman, if he will allow me to have it, so I would be
grateful if he could make those communications with the Chief Secretary – he can have access to his files
according to the rules – and let me have copies of them himself or ensure that somebody else can. Of course,
if he likes, Mr Montado could have a look at that file and prepare us something which he could share with
880 him.

Hon. P R Caruana: Well, Mr Speaker, the other source of very useful information for him are the group
of professionals that supported the Government, two of them from Hassan's and another from some other
firms of accountants. They will be of considerable assistance to the hon Member on this.

885 **Hon. Chief Minister:** I am obliged, Mr Speaker.

Mr Speaker, I have the honour to move that the House do now adjourn until 10.30 tomorrow morning.

Mr Speaker: I now propose a question, which is that this House do now adjourn to Friday, 16th March
2012 at 10.30 a.m.

890 I now put the question, which is that this House do now adjourn to Friday, 16th March 2012 at 10.30 a.m.
Those in favour. (**Members:** Aye.) Those against... Passed.

This house will now adjourn to Friday, 16th March 2012 at 10.30am.

895 *The House adjourned at 7.03 p.m.*