



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

MORNING SESSION: 10.30 a.m. – 11.55 a.m.

Gibraltar, Wednesday, 1st October 2025

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The Gibraltar Parliament

The Parliament met at 10.30 a.m.

[MADAM SPEAKER: Hon. Judge K Ramagge GMH *in the Chair*]

[CLERK TO THE PARLIAMENT: P A Borge McCarthy Esq *in attendance*]

Order of the Day

GOVERNMENT STATEMENT

5

Clerk: Meeting of Parliament Wednesday 1st October 2025.
Suspension of Standing Orders the Hon. the Chief Minister.

10 **Chief Minister (Hon. F R Picardo):** Madam Speaker, I beg to move under Standing Order 7(3)
to suspend Standing Order 7(1) in order to proceed with a Government Statement

Madam Speaker: Those in favour? (**Members:** Aye.) Those against? Carried.

15 **Chief Minister (Hon. F R Picardo):** Madam Speaker, this morning I sought your leave to make
this statement, and I have shared a copy with the Leader of the Opposition.

Madam Speaker, it is my honour today to reflect on a landmark moment in Gibraltar's sporting
history: the successful hosting of the Netball World Youth Cup 2025.

For ten days, Gibraltar welcomed youth athletes, officials, friends and families from across the
world. We showed, as we so often do, that Gibraltar is small in size but mighty in spirit.

20 When we opened the tournament, I welcomed and thanked the nineteen visiting teams for
coming to Gibraltar, for bringing their ambition, their excitement and talent to the Rock. Their
presence was the very essence of why we undertook this challenge. What some may have seen
as a bold dream was in fact delivered as a strategic reality, made possible through the vision and
dedication of Moira Gomez and the committee of the Gibraltar Netball Association.

25 This tournament marked the return of the competition after an eight-year gap and a hiatus
caused by the global pandemic. Gibraltar had the privilege to host this revival, to stand at the
heart of Netball's youth movement. As the President of World Netball, Dame Elizabeth Nicol, said
in her opening speech, this was a very special event, not least because the 2021 edition had to be
cancelled due to COVID.

30 We are proud to have hosted the return, Madam Speaker, and we are proud that Gibraltar will
always be remembered as the place where the World Youth Cup was reborn.

35 Madam Speaker, none of this would have been possible without the vision and tireless
determination of Moira Gomez, President of Gibraltar Netball, and the Netball Committee. It was
her passion, advocacy and relentless drive—often driving her way into my office over the past
three years—that brought this tournament to Gibraltar. She has not only given us this world-stage
moment but has also built Netball into the second-largest sporting association on the Rock, with
more than 1,100 members.

I ask this House to join me in recording our deepest thanks to Moira, as a community, for her outstanding service to sport and to Gibraltar.

40 Today we congratulate Australia, who were crowned champions of the Netball World Youth Cup 2025 after defeating New Zealand in the final by sixty-three goals to forty-eight. Their performance was exemplary, and I extend my sincere congratulations to them, to New Zealand as worthy finalists, and to all participating teams.

45 Madam Speaker, I had the opportunity to watch the final. It was absolutely riveting—an exciting match indeed. To Team Gibraltar, the Champions, our home team: thank you. You competed with courage, with dignity and with heart. You represented our community, and although the results may not always have gone your way, you earned the respect of all those attending from around the world.

50 I also thank the spectators, the schools and families who turned out in force. Their support gave energy to the courts and voice to our hosting.

One of the lasting memories of the event will be the anthem *Mighty as a Rock*, written by Simon Dumas and performed live at the opening ceremony by him together with the Gibraltar Choir Collective, which included some well-known faces in this place, Madam Speaker. The song captured the spirit of our nation and echoed through every venue, reminding all who heard it that
55 Gibraltar may be small in size but is mighty in heart.

We also heard moving renditions of our national anthem performed beautifully by Andrea Simpson and Nathan Payas. Their voices showcased the depth of local talent and added dignity and pride to the occasion.

60 Our thanks also go to the local dance groups who brought colour, rhythm and energy to the ceremonies, to the sponsors whose support made this tournament possible, and to Dame Elizabeth Nicol for joining us here in Gibraltar. Her presence underscored the international importance of the event.

We must also place on record our gratitude for Gibraltar's brilliant sporting facilities. It is thanks to the investment that we have made in world-class venues that we are able to host this World
65 Cup so successfully. These facilities are not just bricks and mortar. They are stages on which our young people can aspire, where international athletes can compete, and where Gibraltar can shine, Madam Speaker.

I look forward with confidence to Gibraltar hosting many more events of this kind in the future, bringing people from all over the world to our shores.

70 This competition reflected exactly what Gibraltar is about. In hosting this tournament, in uniting volunteers, players, officials, sponsors, supporters and fans, we showed the world once again what happens when Gibraltar comes together—because together we rise.

We cannot let this moment pass without acknowledging the extraordinary work behind the scenes, Madam Speaker. Departments across the Government, the GSLA, from logistics to security
75 and hospitality, teamed up with Gibraltar Netball volunteers, sponsors and local businesses—all of them doing their little bit. Every shuttle bus, every court, every opening-ceremony moment, every detail, all contributed to the success we celebrate today.

We now carry forward this legacy. Hosting this Cup strengthens our capacity to host world-class events in other sports. It deepens sporting interest among our youth. It enhances our
80 facilities and our institutional confidence, and it sends a clear message: when Gibraltar plots a course, we can execute it with professionalism and pride.

In closing, Madam Speaker, I ask the House to record its thanks to all the athletes, officials, volunteers, sponsors, staff and to all who witnessed and supported the event. Let this Cup be not
85 an end point but the springboard for youth sport, for international engagement, and for Gibraltar remaining visible on the world stage.

The one thing that is essential, Madam Speaker, and which I do recommit the Government to—especially after this weekend's event—is seeking to deliver, during the lifetime of this Parliament, at last a home for Netball in Gibraltar.

Thank you, Madam Speaker, for permission to make this statement.

90 **Hon. Dr K Azopardi:** Madam Speaker, may I associate myself with the remarks of the Chief Minister on his statement. I thank him for sending me his statement.

It is a joy to see Gibraltar being used for sports tourism, and for young people to enjoy themselves from different nations participating at the highest level—as indeed this was. Certainly, on this side of the House I want to associate myself fully with the remarks of the Chief Minister.

95 I also wish to congratulate the organisers from Gibraltar Netball, and Moira Gomez specifically, for the reasons that the Chief Minister has outlined. It was fantastic to see the Gibraltar team compete at the highest level, and for Gibraltar to be the host nation for a tournament of such quality.

The Gibraltar team did Gibraltar proud. It was a credit to Gibraltar in the way the players conducted themselves, both on and off the court. They were ambassadors for Gibraltar.

100 We congratulate Australia for winning such a tight contest at the highest level against their great rivals New Zealand. We also thank the organisers at all levels—the GSLA, all Government departments, and everyone who played a part, from those working at ticketing level to those who entertained the crowd at various matches.

105 The venues worked, and the synergies of having so many nations in Gibraltar worked equally well. It was, I think, a source of pride for everyone in Gibraltar to see the tournament succeed so fully over the past couple of weeks.

So, Madam Speaker, on this side of the House we again associate ourselves with the remarks of the Chief Minister and place on record our thanks to everyone who worked very hard to make this tournament a reality.

110
Hon. Chief Minister: Well, Madam Speaker, I am very grateful to the hon. Gentleman for those words of association with everything that I have said in particular his reference to the magnificent sporting facilities that we have spent so much money on and they spend so much time criticising us for given that it is that investment which they spend so much time criticising us for that enables us to host the sort of events that we have hosted like the Netball Youth World Cup and I hope that that is a reflection that hon. Members opposite are realising how wrong they were in making that criticism when they made it.

120
PAPERS TO BE LAID

Clerk: Papers to be Laid, the Hon. the Chief Minister.

125 **Chief Minister (Hon. F R Picardo):** Madam Speaker, I have the honour to lay on the table the Ombudsman's Annual Report for the year ending 31st December 2024.

Madam Speaker: Ordered to lie.

130 Alright, we will now continue hearing from the Chief Minister on the subject of the motion that is before the House.

GOVERNMENT MOTIONS

135 **Chief Minister (Hon. F R Picardo):** Thank you, Madam Speaker. So, I do not think I need to do too much of a summary of where we are. On the first day, we went through the legal underpinning of the role of the Ombudsman. On the second, we started to look at some of the detail. We continued on the third day to look at more of that detail, and today I intend to look in greater detail also at the part of the report that deals with the question of a Public Accounts Committee.

After today, Madam Speaker, when we adjourn, I expect to come back to continue to deal with other aspects of the report in the coming days. It is important that I do that, Madam Speaker, and give this the detailed attention that I am giving it, because of the nature of the criticism contained in the report: its unfairness, its bias and its *ultra vires* nature in terms of the powers of the Ombudsman—so, the powers of the Principal Auditor.

Madam Speaker so now, dealing with another of the principal areas of concern for the Government—and what is clearly the high-water mark for the Government—of our assertion of the failures of the report, there are inherently two types of failures that I am going to be dealing with today, Madam Speaker.

The first is the obvious failure to refrain from commenting on matters of policy—that is about jurisdiction. I have dealt with the law on that during my address on the first day. I will deal with some elements of the law on that today again when I go to the relevant parts of the report.

The second is to have taken the step into commenting on policy in a manner that is, to boot—which is a posh way of saying *encima*, Madam Speaker, as we would say in Spanish—biased between the two main political groups contesting the last General Election. That, Madam Speaker, is directly and unanswerably reflected in the report in these recommendations that I am dealing with today, which are contained in the report about a Public Accounts Committee having to be established by the Parliament.

Within the context, Madam Speaker, of Gibraltarian politics, it is not surprising, of course, that leading counsel in London has advised the Government and has felt it appropriate to describe this aspect of the report as ‘incendiary’. Of course it is incendiary, Madam Speaker, when a constitutionally independent officer, who is a Member of this Parliament under the terms of the Constitution, exceeds the power given to him under the Constitution and comments on something in a manner that is *ultra vires* and, to boot—that is to say *encima*—does so by taking one of the sides of this House, you could not get anything more improper, more illegal, more unconstitutional, more biased and more incendiary.

It is absolutely incendiary, Madam Speaker, for an allegedly impartial report to the Parliament on financial facts to make a recommendation on policy matters which adopts a party-political side on a hotly contested issue. How could it be otherwise? How could it be anything other than incendiary? Nothing could be further from the ambit of what the report is permitted to cover and what its author is entitled, as a matter of law, to comment upon in the report, and I want to be very, very clear about that.

There is no right or desire on the part of the Government to stifle any citizen’s freedom of speech—far from it, Madam Speaker. The author of the report is entitled, in his personal capacity, to say what he likes, when he likes, to whom he likes, in his personal capacity. That personal capacity is also protected under the Constitution. We all have rights under the Constitution.

Chapter 1 of the Constitution, Madam Speaker—Section 10 of the Constitution, Madam Speaker—sets out that right which we know as the freedom of speech, which is actually referred to in legal terms as the freedom of expression. There it is in Section 10 of the Constitution and that section, Madam Speaker, as I had cause to consider yesterday, is curtailed only by the provisions of the Defamation Act and parts of the Crimes Act.

You cannot say things which you know are untrue about people. You cannot say things which are libellous or slanderous about people—slanderous if you say them; libellous if you write them down or if you publish them in a video. You cannot say things which are racist, or which are sexist, which bring about hate. You might have the freedom of speech—the freedom of expression—but you cannot use it to say things which are libellous, slanderous or (under the Crimes Act), Madam Speaker.

But the protections on independence that the Constitution provides also require adherence to serious responsibilities. And those, Madam Speaker, are just as applicable to the post as the protections which are equally applicable to the post and which so many like to refer to.

So, constitutional officers are independent, and nobody shall interfere with them in the exercise of their independence. But they are given that protection, and they are given that

independence in respect of the things that they can legally comment upon. Nobody, because they are constitutionally independent and protected, has the right to say things which none of us has the right to say.

And indeed, in those roles, we have the right to say the things which we are permitted to say and to talk about. Because Madam Speaker, in life—as in the Constitution—no one, not even the King, gets benefits without obligations, Madam Speaker. That is the reality. That is how society and community work. That is how our laws interact with each other, and I am surprised that I am having to set that out. But even that is under challenge today. Even that is under challenge.

And the holder, Madam Speaker—from time to time—of the post of Principal Auditor is no exception to that rule. He is no different to all of us, Madam Speaker.

And hence, Madam Speaker, the huge importance of the rules that I referred the House to in my address on the first day, when I dealt with the legal underpinning of the role of Principal Auditor: what the Principal Auditor can comment on according to the law; what the Principal Auditor cannot comment on according to the law. Not because the Chief Minister and the Government do not like what is in this report. Not because the public might be fascinated by this sort of comment and that sort of comment—we will deal with all of that, Madam Speaker. But it has got nothing to do with hon. Members in this place on that side or on this side. This is law which is beyond us. This is judge-made law from the turn of the century, all through the last century and this century. This is interpretation of what those powers are—where, if you stray beyond them, you are not acting as a Principal Auditor, because that is not what a Principal Auditor can do.

And to an extent, Madam Speaker, these are not just obligations on public auditors; they are also obligations in respect of all auditors, even commercial auditors, Madam Speaker. But here we are dealing with public auditors. Public auditors have protections under, for example—in our case—the Constitution, that a commercial auditor does not have.

So, it is very important, Madam Speaker, that I remind the House of that relevant legal backdrop. It is essential that I do so. I remind the House, Madam Speaker, that I told you in the case of *The Crown v Roberts* in 1908, Lord Justice Farwell clarified specifically that auditors cannot exercise control over questions of policy but are entitled to challenge administrative actions—auditors generally, auditors generally. And in that case, Madam Speaker, the judge actually went on to illustrate his distinction. He said that the establishment of a works committee—sounds like a Public Accounts Committee—the establishment of a works committee is a policy matter beyond the auditor's remit, whereas the payment of abnormally high wages by such a committee falls within the scope of administration and cannot be scrutinised.

So, Madam Speaker, in the same way, the establishment of a Public Accounts Committee is not a matter for an auditor. It is the issue of what a committee does with money that an auditor is able to address—if a committee like that were to deal with money. Not whether, or if, such a committee should—or, indeed, quoting the report, *must*—be established.

Ironically, Madam Speaker, although that rule which I referred you to in *Roberts* relates to auditors generally, it was actually in a case about a public auditor under the Public Health Act in the UK. In another case, *Roberts v Hopwood*, it was confirmed that auditors are bound to ensure that payments are lawful and proper but must refrain from interfering with policy decisions. One hopes, Madam Speaker, it was a different Roberts, and that he did not have to be told twice by the High Court.

That case applies directly, Madam Speaker, and therefore applies as much to private-sector auditors as it does to our public-sector auditor. It applies, Madam Speaker, to the output that we are reading in the report before the House.

That which has been codified, as I told the House, Madam Speaker, at Section 6(2) of the UK National Audit Act 1983, which, I told the House, explicitly stipulates that the power to examine by an auditor in the UK shall not be construed as entitling the Comptroller and Auditor General to question the merits of a policy objective of any department, authority or body in respect of which an examination is carried out.

You will also, no doubt, remember, Madam Speaker, that this has also been set out in Section 7ZA(5) of the 1983 Act in the UK, which makes clear that the Comptroller and Auditor General is not entitled to question:

- 245 (a) the merits of the policy objective of any relevant authority in respect of which an examination is carried out; or
 (b) the merits of Government policy.

250 Codification in the UK of the common law as it was and is in respect of Gibraltar—that is why the Gibraltar principle says: I look at the UK codes because, although we do not have the same exact statutory provision, those statutory provisions are born from the same exact common law principles that apply.

255 You will recall, Madam Speaker, this is also, in fact, reflected in the NAO Code of Practice—which is the public auditors' Code of Practice that we are told auditors, public auditors around the Overseas Territories, look at. That Code, at 1.7, says it is not part of the auditor's responsibilities to question the merits of policy; and at 3.13, in reviewing the audited body's value-for-money arrangements, it is not part of the auditor's function to question the merits of the audited body's policy decisions.

 Could not be clearer, Madam Speaker.

260 So, with that refreshed in our minds, let us turn to the report and look at what it says and how it has transgressed those lines.

 The report says this: 'The Public Accounts Committee is a key institution of parliamentary systems around the world, especially in countries that operate under the Westminster Parliamentary model.' Madam Speaker, this is at paragraph 6.3.3.

265 When comparing Gibraltar to other similar-sized and smaller Overseas Territories, such as St Helena, for instance, with a population of less than 5,000, it is notable that all have established Public Accounts Committees within their parliamentary structures. Gibraltar is currently the only UK Overseas Territory without this committee. I am aware and respect that there is not full support in Parliament for setting up a Public Accounts Committee in Gibraltar.
270 Nevertheless, I must again insist...

—it is an important word, Madam Speaker—

275 I must again insist and call upon Parliament to consider setting up this Standing Committee of the House to further strengthen accountability, transparency and responsible financial management.

280 Madam Speaker, there can be no clearer statement which offends both of the key principles I have just taken the House through: in terms of comment on matters of policy—that an auditor's report should not stray into matters of policy; and that a Principal Auditor, as I told the House on the first day when I went through, in particular, *Porter and McGill*, must be independent and impartial and must be seen to be independent and impartial. Nothing could be clearer, Madam Speaker.

285 And so much then, Madam Speaker, for the report referring to the author respecting the views of parliamentarians, because it is not, Madam Speaker—as the report says in paragraph 6.3.4—that there is

not full support

in the Parliament for a Public Accounts Committee, because to say there is

290 not full support

suggests that there is majority support, but not unanimous support. But that is not the position, Madam Speaker: there is no majority at all in this Parliament for a Public Accounts Committee, let alone unanimity, Madam Speaker. But the author of the report has not respected that; the report does not respect that. The author has not respected that policymaking is the prerogative of the House by majority—which is the established way that legislatures work in democracies, not just in the Overseas Territories, bigger or smaller; in the Commonwealth, bigger or smaller; in the world, Madam Speaker.

Since a man sat on a rock in central Greece and explained the principle of democracy, it has worked on the basis that the person who has more is the one that sets the policy. And—sorry to go back to basics, Madam Speaker, on democracy—but I do have to remind the House, and some elements of the public, I think, of the basics, because some people seem to have gone off on tangents suggesting that the Principal Auditor, from time to time—whoever he may be—is the only person in town who speaks from St Peter’s Chair and cannot be challenged.

So, having corrected that already and shown that public auditors are challengeable in court, people, it appears, need to be reminded of how democracy works. It is a numbers game. It is a majority game and here, the author of the report has not respected the legislative majority, Madam Speaker. He has not respected the policymaking prerogative of the executive branch.

And what is worse, Madam Speaker—much, much worse; much, much worse—the author of the report has not respected the electorate. The report does not respect the obligation not to question policy. It falls on the side of one party over another and, in that way, it also fails the test of bias.

And then, to make matters even worse, the report fails to respect the public—the electorate—and their choices, for the reasons I am going to show, Madam Speaker because, indeed, everyone in this place, at least, will remember what the parties represented here have had to say on this subject at successive general elections, I assume. It is a key dividing line between the political parties; a key issue that has been debated in the programmes on the national broadcaster in the run-up to the general election.

Hon. Members, I assume, need not be reminded that the GSLP and Liberal parties have consistently taken the position that a Public Accounts Committee in Gibraltar is unnecessary. In our last election manifesto, we said this:

The policy (that niggling word again, Madam Speaker): the policy of the GSLP–Liberals on the establishment of a Public Accounts Committee in the Gibraltar Parliament remains unchanged. In the past, such a committee existed for only one term because it became clear it was not suited to the size of our democracy and the way that our Parliament works. The Gibraltar Parliament already enjoys the power to examine expenditure in detail, both during the Budget debate and outside it. It is important to stress that the GSD do not make full use of the tools available to them at the moment in this respect. The establishment of a Public Accounts Committee chaired by an Opposition MP would lead to controlling officers and other civil servants being grilled in public by the Opposition. We believe that Ministers should be answerable to the electorate in Parliament for the performance of their departments and that civil servants should not be on the front line. We want to shield public servants from this unnecessary and unpleasant cross-examination.

Hon. Members opposite took to the people a dramatically different view in the last election manifesto. The GSD said this—the last election manifesto, which again did not prevail: the fourth consecutive failed GSD manifesto, which contained, for the fourth time, this policy which was rejected by the public. I think it was contained in every GSD manifesto since 1992—when they win elections they do not implement it; when they lose elections, they still have it.

We are the only UK Overseas Territory without a Public Accounts Committee.

That is in their manifesto, Madam Speaker but actually, does it not sound a lot like what I have just read you from the report, Madam Speaker? Look at what the report says, Madam Speaker:

When comparing Gibraltar to other similarly sized and smaller Overseas Territories, such as St Helena, for instance, with a population of less than 5,000, it is notable that all have established Public Accounts Committees within their parliamentary structures. Gibraltar is currently the only UK Overseas Territory without this committee.

350 The GSD manifesto reads like the Principal Auditor's report—hang on, Madam Speaker, the Principal Auditor's report came later; I should have corrected myself—the Principal Auditor's report reads like the GSD manifesto:

355 'We are the only UK Overseas Territory without a Public Accounts Committee.'

That is the GSD manifesto, Madam Speaker - I know it is confusing. I want to make sure you know which is which.

360 We will ensure the establishment of a Public Accounts Committee in Parliament to scrutinise Government expenditure.

—sounds a lot like, Madam Speaker, the thing that I just read you from the Principal Auditor's report:

365 I must again insist and call upon Parliament to consider setting up the Standing Committee of the House to further strengthen accountability, transparency and responsible financial management.

Almost interchangeable.

And then their manifesto goes on:

370 The Public Accounts Committee will be chaired by a Member of the Opposition. The GSLP—Liberals have refused to establish a Public Accounts Committee and are philosophically against its creation.

At least they have understood that now, Madam Speaker.

375 If the Opposition refuses to participate in such a committee for their own party-political reasons.

—that is to say, our deeply held beliefs—

380 we will

—I continue quoting—

385 appoint a majority of independent persons to serve on the Public Accounts Committee and it will be chaired by a person independent of the Government.

That is their manifesto.

390 Well, Madam Speaker, against that backdrop, when you have seen the two manifestos and I have shown you how similar the GSD manifesto—Madam Speaker, to what the Principal Auditor's report said for 2018/2019 on that subject—I assume it was not surprising to anyone that that recommendation drew a sharp response from me, because I had to say this in public, and it is fundamental that I set out what I said in public here on the record of Hansard.

395 I have sought and won,

Madam Speaker, I said,

400 on four separate occasions, the support of the Gibraltar electorate for a policy on the Public Accounts Committee. The role of the Principal Auditor is to audit the public accounts of Gibraltar independently. It is not, on any interpretation, Madam Speaker, to give his opinion on what policies the Government should or should not adopt—especially when the view he decides to remark upon is party-political and against the express policy of the

Government which the public have selected at a general election 20 months ago. This illustrates the former Principal Auditor's party-political bias to an unprecedented degree.'

405 That is a Government press release, Madam Speaker.

But, in fact, Madam Speaker, a full and proper analysis should not end there, because, returning to what the report says, there is reference in it by the author as follows—which it is important we look at—at 6.3.4, and I have read this before, but it is important I read it again:

410 I am aware and respect that there is not full support in Parliament for setting up a Public Accounts Committee in Gibraltar.

Well, I have looked at this business of the 'full support'. Nevertheless—three key words then appear, Madam Speaker—

415 I. Must. Again. Insist.

Those are imperative terms, said to us by the constitutionally independent Member of this Parliament, that is the Principal Auditor from time to time. He says:

420 Nevertheless, I must again insist and call upon Parliament to consider setting up the Standing Committee of the House to further strengthen accountability, transparency and responsible financial management.

425 There is a reason, Madam Speaker, for the author's use of the word 'again'—again. In fact, Madam Speaker, perhaps you might want to cast your mind back, and you may recall that in the 2017/2018 report—which was delivered in one bundle of joy with the 2016/2017 report—there was also a reference to a Public Accounts Committee. In fact, Madam Speaker, it was in a slightly different style but to the same effect as the 2017/2018 report. In that report—the earlier report—the reference was as follows, at 6.3.5:

430 As Principal Auditor, I cannot disagree more with the Commission on Democratic and Parliamentary Reform's conclusion and recommendation to Parliament. The Commission's view that a Public Accounts Committee is unnecessary, given that Opposition Members have the opportunity to examine Government expenditure and debate the Principal Auditor's report, is, with the utmost respect to the Commission, fundamentally flawed.

435 Well, Madam Speaker, the Commission was set up to advise the Parliament on policy. The Commission was not *ultra vires* in giving that opinion. The 2017/2018 report was *ultra vires* in containing that opinion. The 2018/2019 report is *ultra vires* in containing an opinion in respect of policy matters.

440 But how disrespectful, Madam Speaker, of the author of the 2017/2018 report of a Commission that was established with Adolfo Canepa as its head—a man who has been Chief Minister of Gibraltar, Leader of the Opposition in Gibraltar, Minister in Gibraltar, Speaker in Gibraltar, Madam Speaker. Incredible, Madam Speaker.

445 The Commission reasoned its views. It included not just Adolfo Canepa; Mr Charles Gomez; the Hon. George Mascarenhas; Mr Robert Vasquez, then QC, now KC; and the Hon. Fabian Vinet—three established and long-serving parliamentarians, all with extensive Government experience. One of them, Mr Vinet, having defended manifestos that called for the establishment of a Public Accounts Committee. One of them, Mr Mascarenhas, having been a Minister in the Government that was in office at the time that the Public Accounts Committee was established in Gibraltar. 450 Indeed, so was Adolfo Canepa. Two staunchly independent lawyers, Madam Speaker—Mr Gomez and Mr Vasquez—both of whom have repeatedly failed to be elected to this Parliament when they have sought the support of the public.

So, people with huge parliamentary experience; people who have served in Governments subject to a Public Accounts Committee in Gibraltar and who have defended manifestos for a Public Accounts Committee in Gibraltar; and people with repeated experience of being rejected 455

by the public in their repeated failed attempts to be elected into Parliament. You cannot call that committee, Madam Speaker—that Commission—an establishment stitch-up by the GSLP, if you tried. One GSD Minister; two AACR Ministers; and two staunchly independent lawyers.

And what does that Commission do? That Commission's report says 'no' to a Public Accounts Committee.

But what does the report do in 2017/2018 and in 2018/2019? Well, in the first one, it says it respects the Commission's opinion but then totally trashes and disregards it—although the Commission's role is to advise on that policy, and the report's role is not to tread on policymaking.

But Madam Speaker, let us look at what the Commission actually said at 2.8 on Standing Committees:

We have considered whether there is a need for an increase in the number of parliamentary Standing Committees, and whether one of these should be a general-purpose committee. The Standing Orders only make provision for one Standing Committee, that is to say, a Standing Rules Committee. We have also considered whether a Public Accounts Committee should be reintroduced, as it existed from 1980 to 1984. The Committee was composed of two Opposition Members—one of whom was their Chair—and two Government Members. There have been varied views from respondents, but in the main there has been support for a Public Accounts Committee, and there have been suggestions that such a Committee should be chaired by a Deputy Speaker and that backbenchers should form the backbone of that Committee. We are of the view that the 1980 to 1984 Public Accounts Committee proved ineffective, impractical and unworkable, particularly because Ministers were expected to scrutinise and question senior executives of their ministerial colleagues' departments. If a Public Accounts Committee were to be set up, it would be essential for Government backbenchers to take the place of Ministers. We have concluded that there is no need to establish a general-purpose Standing Committee, nor a Public Accounts Committee, given that Opposition Members have every opportunity to examine Government expenditure in detail, as well as debating the report from the Principal Auditor on the Government's accounts for every financial year.

That is the advice of a Committee set up specifically to advise this Parliament on its procedures, its Standing Rules, and whether it should have a Public Accounts Committee. That is what the whole House has accepted, Madam Speaker, when we made reference as a Select Committee dealing with these issues—because there was no dissenting opinion there, Madam Speaker—and when we had a Select Committee, the only recommendation we made to the Parliament dealt with backbenchers, with one dissenting opinion, which was the hon. Lady Malin Hassan Naon, who is no longer with us.

Well, Madam Speaker, in his earlier report—not the 2018/2019 report that we are looking at under the motion—in the 2017/2018 report at 6.3.5, we are told by the author of that report why he rejects the Canepa Commission's views. He says this, and I quote:

I reject it because, in parliamentary debates, much as Opposition Members question Government Ministers on matters raised in my report, the issues are debated at a superficial level.

Says the author.

In comparison to the probing and extensive scrutiny undertaken by a Public Accounts Committee, although I appreciate there is a certain level of enquiry and debate in Parliament on the Principal Auditor's report, this is not enough and does not go deep enough to scrutinise and report on the many issues raised and areas of concern highlighted in the Principal Auditor's report. As a result, Gibraltar continues to underperform when it comes to legislative scrutiny of audit reports.

Well, Madam Speaker, I assume—I think we can all safely assume and agree—the fact that we are taking enough time over the 2018/2019 report so that nobody can consider that we are being superficial in our analysis of it. No one can argue, I hope by the end of this debate, that I have been superficial in dealing with the issues in the 2018/2019 report.

But Madam Speaker, the author continues to take the view that the Commission's view can be disregarded. The earlier report also says this—Notwithstanding, at 6.3.7:

Notwithstanding the Commission on Democratic and Parliamentary Reform recommendations to Parliament, it is my view that there is a critical need for a Select Committee, in the form of a Public Accounts Committee, to be established in the Gibraltar Parliament.

515 Well, Madam Speaker, I must say, with the very greatest of respect, that is a policy view. There is no constitutional power to tell us that view. But he continues:

I can truly say that this is not only my view, but has been the professional view of all five previous individual Principal Auditors during the last 40 years, whom I have had the privilege to work with.

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He tells us.

Well, Madam Speaker, ironically none of them ever said that publicly, because they knew they should not. So, we will just have to take the author's word for it. And, by the way, I do not doubt the author's word that that is what the former Principal Auditors may have told him. But the point is that those earlier Auditors, for 40 years, understood the basic reason why they could not say this in public: because it was policy and not their purview to opine upon. They might have said it after they retired. They might have joined a political party. They might have written a letter to the *Chronicle*. They might have led a political party and called it the Public Accounts Committee Party. They could do all of that, in exercise of their rights as individuals under the Constitution. But, as Principal Auditors, they knew they could not put that into their report. It is Auditor 101, Madam Speaker, that you could not do that.

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But the report—the earlier report—actually went on, despite that, and said this at 6.3.9:

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I therefore kindly urge Parliament to give serious consideration to the reinstatement of a Standing Committee of the House in the form of a Public Accounts Committee, following best practice in the United Kingdom, the Commonwealth and indeed every prominent state in the Western world, to oversee Government accounts and ensure transparency and accountability in Government financial operations.

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Well, Madam Speaker, that was the earlier report—the 2017/2018 report. Madam Speaker, that report was received by the Government in December 2023—two months after the last Election. The Hon. Leader of the Opposition has been quoted, I think even in this place, as saying that if that earlier report had been published before the 2023 Election, he would have won it.

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Well, Madam Speaker, I genuinely doubt that. I mean, an Auditor's report would not have cured the problems one of his candidates had with anti-Semitism, or the £100,000 of taxpayers' money lost by another one of his candidates on one phone call whilst pretending to be concerned about public money. But that is what the Leader of the Opposition has said: that if the 2016/2017, 2017/2018 report had been published before the Election in 2023, he would have won it.

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But, Madam Speaker, with no Election between the publication of that report in December 2023 and the current report, what is it that could have happened, Madam Speaker? Reading the two reports—what happened?

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Well, cast your mind back, Madam Speaker, to one of your earliest, no doubt painful, memories of a debate of a motion in this House. On 14 February 2024—the 14th of February, Madam Speaker, a day when he obviously had nothing better to write—the Hon. Mr Clinton moved a motion in part which read as follows:

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This House furthermore resolves that a Standing Committee be created to be designated as the Public Accounts Committee for the examination of the accounts shown; the appropriation of sums granted by Parliament to meet the public expenditure; and of such other accounts laid before Parliament as the Committee may think fit; to consist of four Members, two of whom shall be nominated by the Chief Minister and two of whom shall be nominated by the Leader of the Opposition, who shall be nominated at the commencement of every session—and of whom two shall be a quorum—and with the Chair to be held by an Opposition Member.

Madam Speaker, the House met at 3 p.m. on Monday 26 February to debate that Private Member's Motion. We dealt with a Communication from the Chair—from you—and with a

Ministerial Statement from me. The only other thing on the agenda was the hon. Member's Valentine's Day motion. We started at 3 p.m.; we ended at twenty past eleven at night. We spent eight hours debating up and down and round the Houses.

The House, Madam Speaker, at the prompt of the Hon. Mr Clinton, had—within two months of the report delivered in December 2023—dealt with the entreaty from the author of the earlier report to, in his words, 'kindly urge Parliament to give serious consideration to the reinstatement of a Standing Committee of the House in the form of a Public Accounts Committee', which is what he said in his earlier report.

After eight hours of debate, Madam Speaker, the House found its voice, as ever in a democracy, through the Government majority. Nobody should be surprised at that. On this issue, Madam Speaker, the motion was amended in many respects—because the motion dealt with other issues—but on this issue the motion was amended, and it said this:

This House furthermore resolves that it is democratically right and essential to respect the fact that at the last Election the electorate selected a very clear policy set out on page 40 of the Election-winning GSLP–Liberal manifesto, which specifically provides that there should not be a Standing Committee created to be designated the Public Accounts Committee.

In fact, Madam Speaker, the House would not have been able to do anything else if it was going to uphold the will of the people expressed in the General Election held only five months before, in October 2023. It would have been a scandal, democratically, if the House had passed a motion which went against the policy of the Government that had won the Election five months earlier—expressly saying it was doing it to defend Public Servants. And Public Servants might have rioted, saying: '*What, now I am going to come to be cross-examined by Members of Parliament when you expressly promised—and I voted for you because you said—we were not going to do that?*' People might have been entitled to say: '*The Principal Auditor puts in the report something he is not entitled to put in the report because it is a policy issue; a Member of the Opposition puts a motion in the Parliament and you accept it, when you procured my vote telling me the opposite.*' It would have been a democratic scandal, Madam Speaker. They, having won the vote and our support for the establishment of the Public Accounts Committee, would have said: '*And, by the way, you have broken your manifesto commitment.*' It is that clear, Madam Speaker. It goes to the root of democratic consent to that extent.

But, ironically, Madam Speaker, when that motion was before the House and it was amended, the House also called upon the Office of the Principal Auditor to investigate, with the full co-operation of the Government, a number of contracts which we argued had been procured improperly. I have the original motion on Valentine's Day from the Hon. Mr Clinton. I have the amended motion of 26 February, Madam Speaker. Nothing has happened after a motion of this Parliament calling for an investigation of contracts improperly procured. When the House calls for that and seeks that from the Principal Auditor, that is no interference with his work, Madam Speaker, to ask him to do something. But nothing has happened in that respect.

But the fascinating thing, Madam Speaker—ignoring that for now at least—the fascinating thing, Madam Speaker, is that the 2018–19 report that we are considering ignores this motion completely, on the Public Accounts Committee. It does not refer to it. It turns a Nelsonian blind eye to a motion of this Parliament. It fails to consider the things that were debated in this Parliament. It does not recite it; it has no regard for it, Madam Speaker—a motion of this Parliament which says the opposite of what the earlier report says and what is in the report now before the House.

It is remarkable, Madam Speaker, that that should be the case. How can the report issued on 31 May 2025 completely ignore a motion debated in this House—of which the author of the report is a Member—and which deals with exactly the issue in question? In fact, the motion before the House was born from a comment in his earlier report asking the House to consider the

establishment of the Committee, and, in fact, his later report deals with it in a manner which is the opposite of the apparently heartfelt recommendation of the author of the report.

Well, Madam Speaker, at least in totally—and, in my view, disrespectfully—disregarding the views of the Commission on Parliamentary Reform, the author of the earlier report—who is the same author of the report that we are dealing with now—at least had regard to it and set out the findings of the Commission and said he did not agree with them, although it was *ultra vires* for him to do so, because all of this is about something that was completely *ultra vires*, outside of his remit. That was a Commission set up by Parliament to report to Parliament.

But what we were dealing with on 26 February 2024—at the specific request of the author of the report who wanted us to consider it, and at the suit of the Hon. Mr Clinton in his motion—is the whole of the Parliament specifically considering, amongst other things, the issue of a Public Accounts Committee and whether it should be established. It led us to an extensive debate. There were lengthy contributions from Members on both sides of the House. I disagreed with the things they said, but we took them into consideration, and we stayed here until almost midnight considering these matters.

A detailed debate was had. The Parliament considered—in its current, post-Election configuration—the question of whether or not we should have a Public Accounts Committee. But even if one had missed that, the matter was widely reported. That is to say, if the Officer of this Parliament—the former Principal Auditor—who urged the Parliament to consider this issue, did not realise that we had a debate on a motion from Mr Clinton—which I do not for one moment expect, but let us assume that he was one of the people who did not stay up to listen to our debate by watching it online, by hearing it; who did not read the Hansard; who did not go back to watch the YouTube of it (although it dealt with him and his recommendations)—the National Broadcaster reported as it was happening and thereafter.

So, on GBC, there is a headline for the day that says:

Parliament Debates Transparency and Scrutiny of Public Accounts Following Clinton Motion.

That is the GBC headline, and the story says this:

Parliament has debated the timing of the Principal Auditor's report, as well as the issue of whether the ROC needs a Public Accounts Committee. In a Private Member's Motion, the GSD's Roy Clinton said there was a need for a Select Committee as well as for reports to be published in a timely fashion. Sir Joe said there was not the remotest possibility that the GSLP-Liberals would break a manifesto commitment against such a committee, whilst the Chief Minister said it was shameful for the GSD to suggest the Government had deliberately delayed any reports. An amendment to the motion was put forward by Fabian Picardo which replaced the call for a Public Accounts Committee with a resolution that it is right to respect the manifesto position the GSLP-Liberals were voted in on. The debate continued until 11.20, when the amended motion was approved by Government majority with the Opposition voting against. Parliament has adjourned. Sine Die.

it is out there.

So, the author of the report did not follow the debate in this House—which I doubt, because it was a debate which he prompted in his earlier report. It was on GBC. I do not know—some people might not watch GBC. The *Gibraltar Chronicle*, by then unfortunately the only local daily, also reported, and it issued late at night, just after the end of the debate on the same day—later carried in its print editions, if not for the next day perhaps the one after, but certainly online—the following headline:

Government and Opposition Pulls Apart as MPs Debate Audit Report.

and the *Chronicle* report—I am not going to read the whole of it—says this:

If one clear thing emerged from a debate in Parliament on Monday on the Principal Auditor's report (referring to the 17–18 aspect of the report) and calls for a Public Accounts Committee.

It was this:

In the words of Dr Joseph Garcia, the Deputy Chief Minister, the two sides of the Chamber are “poles apart”. The debate was prompted by a motion tabled by GSD MP Roy Clinton calling on the Government to bring to Parliament any outstanding Supplementary Appropriation Bills and to establish a Public Accounts Committee to ensure proper financial scrutiny and oversight of public finances. At the heart of the motion was GSD criticism that deliberately engineered delays in bringing these Bills to Parliament had in turn slowed the work of the Principal Auditor and hindered the Opposition’s ability to hold Ministers to account. Mr Clinton’s motion also renewed his long-standing call, first made in 2016, for a Public Accounts Committee to be established to allow for in-depth scrutiny of public spending, including by questioning Heads of Department, to supplement the Principal Auditor’s work and strengthen accountability. By the end of the session—after a debate that commenced at 3 p.m. and ran late into the night—the motion had been amended entirely. In its place, Chief Minister Fabian Picardo tabled an alternative text that welcomed the Principal Auditor’s report and supported his work; commended the Government’s support to that end; signalled the Government would bring two outstanding Supplementary Appropriation Bills to Parliament in March; noted that the Government’s position not to establish a Public Accounts Committee was a manifesto commitment; noted that contracts to Medoc and other healthcare providers were the subject of tenders and negotiations; and called on the Principal Auditor to conduct an investigation into the legality of the contracts granted by the GSD to Master Services and for the airport tunnel roads and related works. The Government’s view was that it was tackling abuse and waste that in large part had its roots in decisions taken during the GSD’s time in office, and that many of the criticisms in the audit report highlighted by the GSD had valid and nuanced responses.

It said

A Public Accounts Committee was not necessary because it was Ministers who should be held accountable for public spending.

That is in the national daily paper. How can it be, then, Madam Speaker, that the report that we are dealing with totally ignores this debate? Totally ignores this debate. That is worse than disrespectful, Madam Speaker, to the House. Seventy-five pages of debate on Hansard—discarded. Totally, utterly, completely disregarded by a fellow Member of the Parliament on the subject that the report directly addresses, *ultra vires*, without addressing the views of the elected Members of the Parliament—those of us in the Parliament who actually represent the people; directly elected by the people.

It is important to remember that, Madam Speaker, because—look—a fourth-term Chief Minister might be made out by some to be something other than the senior, directly Elected representative of the people. But that is exactly what I am. And as Ministers, that is exactly what we all are. And as Members of the House opposite, that is exactly what Members are, Madam Speaker, in Opposition—directly Elected representatives of the people.

And from both sides, Madam Speaker, there were, of course, meritorious contributions, even though I disagreed with theirs. But there were very clear statements—if they were needed, because it is so obvious that it is not needed—but there were very clear statements that this was an issue of policy that we were poles apart on. Policy.

There are too many relevant parts of the debate to quote, Madam Speaker. I am not going to read out the seventy-five pages of the debate—they are there; they are in Hansard; they are on the record. But let us look at what the Deputy Chief Minister said in one part of his intervention—at page 33 of the Hansard for 26 February 2024, at lines 1360 onwards:

I want to move on now to make a few points about the motion,

says the Hon. Dr Garcia,

which are in the motion. For the establishment of a Public Accounts Committee—this is an issue, as has been said by all Speakers, which divides the House. The Opposition believe that such a committee is necessary. The Government maintains that it is not. It is therefore a matter of policy, a question of principle. Indeed, as Hon. Members have already heard, there is a commitment in our manifesto not to establish a Public Accounts Committee, and the suggestion that we abandon this commitment, as I said earlier, is obviously profoundly unrealistic. Moreover, it has been the consistent position of this side of the House for decades.

Short, succinct—in the usual approach of the Deputy Chief Minister—could not be clearer.

730 And then, Madam Speaker, the Father of the House, Sir Joe—speaking on my amendment—
brought his then meagre, at the time just fifty-two years of experience, Madam Speaker, to the
debate—it is now fifty-three, and growing—when he said this at page 77 of the Hansard, at line
355:

735 Well, if the hon. Members believe that because the Auditor may not agree with that analysis of the management,
the Auditor is entitled to impose his views on management, on the Government, and get the policy changed, then
that is not the role of the Auditor. The role of the Auditor is to make sure, principally, that the money that this
Parliament has voted has been spent the way the book says it should be spent, which is the legal authority to use
money from the Consolidated Fund.

740 Clearer statements, Madam Speaker, there could not be, that this is an issue of policy—the
thing that Auditors are not competent in law to opine upon.

Indeed, Madam Speaker, Sir Joe even makes clear—should it not have been something that
the former Principal Auditor was aware of—that policy is not a matter for Auditors. He does not
go into all of the case law that I have had to go into this year, Madam Speaker, but he says: this is
a matter of policy, and, by the way, policy is not for Auditors. Auditor 101. Public Auditor 101,
745 Madam Speaker.

Surely, Madam Speaker, the author of the report heard the debate which arose from his earlier
report. If he did not know, when he compiled the 2017/2018 report, that this was a matter of
policy on which there was a huge division on both sides of the House—which, in fact, he clearly
knew—he knew by the time that the report for 2018/2019 was compiled, either from hearing the
750 debate or from reading the GBC report, or from reading the *Chronicle* report.

How can a Member of this House, in authoring and compiling an allegedly neutral, unbiased
report which sticks to the issues on which that individual is empowered to stick, fail at least to
reflect the fact and outcome of a debate prompted by his earlier report? To quote the author of
the report, Madam Speaker—to quote, respectfully and very positively, Madam Speaker, and
755 adopt his own language—I quote the former Principal Auditor, Madam Speaker: ‘It beggars belief.
It absolutely beggars belief.’

That is so wrong, Madam Speaker, that it unmasks any pretence that the report is somehow
fair, impartial or objective. It reflects a failure to address the arguments put on the very subject
which should not be in the later report. And all of this—let us remember, Madam Speaker—in
760 respect of a matter which is of policy, and he should never have been considering, let alone
opining upon. And which, he tells us, his predecessors took the view of, but never put in their
reports either.

Madam Speaker, for the Government, this is a demonstration of unfairness writ large—of a
failure of impartiality writ large, Madam Speaker. A demonstration that the report, in this section,
765 emerges as an undeniably partisan document—biased to such an extent that it vitiates its
credibility at its very root in a manner that renders it entirely indefensible in every single material
respect where it is reflecting opinion. That is, frankly, Madam Speaker, unprecedented in our
community and in our democracy.

And it marks a low point from which recovery and the regaining of confidence in the Office of
the Principal Auditor can only, in the Government’s view, come with wholesale reform of the
770 legislation to ensure that the specific provisions contained in the UK Act are specifically reflected
in the Gibraltar Act—that is to say, the provisions preventing, expressly (as already is provided for
in common law anyway), any opining on matters of policy, and setting that out specifically in law,
as they are in the United Kingdom. We can no longer rely on common law principles alone.

775 I want to be—sadly, Madam Speaker—very clear about what I am about to say next.

Our trust on this side of the House, and the trust of our supporters who have made up the
majority in this House in the past sixteen years, and at least the minority since 1984 in this House,
is broken as a result of this massive failure in the report to stick to rules on objectivity, balance,
bias and *vires*. The failure of the author of the report to adhere to the clearest applicable principles

on the rules of an Auditor's inability to opine on matters of policy has broken our faith in the current legislative scheme as to the role of the Principal Auditor under the Public Finance (Control and Audit) Act.

In coming days, Madam Speaker—ensuring that our debate on these matters can never again be described, however unfairly and however disrespectfully, as 'superficial'—I will continue to show how wrong the author of this report is also in respect of *ex gratia* payments and procurement rules, and how superficial the analysis contained in the report actually is. How wrong the author of the report is in his superficial understanding of all of those areas is to come.

But what is now clear, Madam Speaker, is that the author seems to have had a less-than-superficial understanding of his own rules and powers—blithely, blithely opining on policy when he is not legally able to do that. And any opinion in that respect should properly be expunged, in our view, as *ultra vires* and contrary to law, Madam Speaker.

And, Madam Speaker, superficially analysing the arguments for and against the Public Accounts Committee and failing to reflect the consideration of the House—of which he was a Member—of a motion dealing with exactly that issue a year before the report now before the House. Indeed, I have seldom seen a piece of work, Madam Speaker, so deficient in its analysis and so unworthy of public presentation. And that, Madam Speaker, is either because the author has intentionally ignored the work of this House in debate on the subject of the Public Accounts Committee, or because the author forgot that debate when he was compiling his clearly *ultra vires* part of his consideration of the policy matters that he is not entitled, in his official capacity, to opine upon.

So, Madam Speaker, what to make, then, of the reiterated call in the report—indeed, insistence—for that Public Accounts Committee? Let us start with the obvious points, because I am not going to just break this down before I set out what I intend to do.

First: a Principal Auditor's independence is directed to the manner in which such an officer conducts audits. To be clear, therefore, Madam Speaker, the constitutionally guaranteed independence of a public auditor does not confer any general competence to propose structural reforms of Parliament. A Principal Auditor's constitutional protection is to guarantee his or her independence in the discharge of the officer's functions, so that he cannot be controlled by me or anyone else. Nothing in the Constitution gives a Principal Auditor a role in shaping parliamentary procedure or recommending legislative reform.

By recommending the establishment of a PAC, it is the considered view of the Government that the report trespasses into policy advocacy, which lies squarely within the prerogative of the Government, this Parliament and the electorate. I repeat once again, Madam Speaker, that Gibraltar, like the United Kingdom, applies public law principles, and a public authority must act within the powers conferred by statute.

I have already taken the House, in significant detail through the course of my speech, to some of the most important legal principles that apply to the discharge of the functions of a Principal Auditor and how such an officer should fulfil his powers and duties in the light of those very same legal principles. As I have had cause already to state in respect of other areas of concern for the Government, the former Principal Auditor cannot assume a function simply because it seems desirable to him. Indeed, a constitutional and statutory officer cannot stretch general audit powers to assume a distinct, expressly regulated function.

Further, Madam Speaker, public Auditors, like judges, are expected to remain neutral, and the common law principle of procedural propriety requires that oversight bodies confine themselves to their statutory remit and lawful functions. In *The Crown v Somerset County Council ex parte Fewings* (1995), the Court emphasised that public bodies must not act in a way that frustrates or distorts their statutory purpose. Here, the insistence in paragraph 6.3.4 of the report that Parliament must—that word is a quote—*must* establish a PAC mirrored almost verbatim the Opposition's manifesto. Moreover, it ignored the motion of 26 February 2004.

Madam Speaker, I know that the Hon. Members opposite do not want to hear the explanations that I have been providing to this House during the course of my intervention on this matter so

far. It must be said, however, that for a report that is prepared by a constitutionally independent officer to espouse a position that mirrors—identically—the policy position of a political party is an extraordinary state of affairs, especially when it is set out in a report which ignores a centrally relevant debate of this House.

The analysis of the Government is that for an audit report to clearly align itself with a political party and with a political view is already an extraordinary state of affairs—even if it was ours, Madam Speaker—which becomes even more extraordinary when one considers that political position is the publicly ventilated position of the Opposition party in Parliament, and that that position is in direct contradiction with the publicly stated political position of the governing parties.

Let us speak plainly, Madam Speaker. The situation is more than just a little extraordinary. It is wrong. It is wrong in law. It is constitutionally wrong. A constitutionally independent officer should fight to preserve his impartiality and stay well above the political fray. Such an officer should always strive not just to be impartial, but to be seen to be impartial, lest the important constitutional office of which he is incumbent is tarnished by politics—as the Office of the Principal Auditor has now been tarnished, in our view, by the report.

And, Madam Speaker, some may consider that this is not really a big issue, but it is. The moment an office is considered to be politically biased, then half—or more than half—of the fair-minded and properly informed electorate may view the report prepared by that office as tainted by political bias. Even if that were not even half of the electorate; even if it were just a part of the electorate—any relevant part of the fair-minded and properly informed electorate—then the office in question has failed to discharge its functions properly. The *Porter and McGill* test is failed.

It is the Government's view that this report fails that test in relation to this matter, abysmally; and that this part of the report falls into disrepute in that respect. That is to say, it fails both as to bias and because it addresses an *ultra vires* matter—namely, policy. It cannot survive legal scrutiny as the fruit of an officer holding the rank of Principal Auditor, who has no power to undertake such comment—and to do so in such an objectively biased manner.

As I said at the beginning of my address on the Government's motion, Madam Speaker, such a situation is highly regrettable because it means that the half of the community that views the office with suspicion will be sceptical about the contents of the report. When that happens—and I am very sorry to say, Madam Speaker, it most certainly has happened with this report—people lose trust, and they lose faith in their institutions. And, as Chief Minister of Gibraltar, this is an intolerable situation for me and for Members of my Government.

It is to protect the dignity of all constitutionally independent officers that I decided that my Government therefore had no choice but to scrutinise the report in this House, as we simply could not countenance those parts of the report that are legally and factually incorrect to stand uncorrected.

And to those who say that we are wrong to bring this motion and spend time on it—especially, Madam Speaker, some commenting lawyers, sometimes the same ones who have repeatedly failed to be elected to this place—I say that they are not just wrong; they forget the cardinal principle that both sides should be heard—always. *Audi alteram partem*. Hear, all sides. If not, Madam Speaker, there is no fairness. There is no natural justice. And there would be no fairness if this report was not challenged in this way—as it is right and essential for us to do—in order to ensure that our rights to be heard, in representation of the people, are not usurped by ill-informed social media comment on a complex and detailed matter, and on which we have been vilified by incorrect information in every respect in this report and by exceedance of jurisdiction by the officer compiling it.

It would be a joke—as we say in Spanish, *un pitorreo*—to think that we live in a place where one person is able to lay information in the public domain and that it cannot be challenged. That was the case at the time of the Inquisition, Madam Speaker, which some of those external commentators might wish us to be back at, with religion at the core of everything and their views unchallengeable. That is not where democracy is today. The fabric of our institutions could tear,

dissolve and break if the Government did not undertake the serious work of correcting the many, many incorrect legal and factual statements in this report.

We cannot accept that the errors, failings and excesses of jurisdiction in this report should go unchallenged. And why would anyone want errors and failings and excesses of jurisdiction to remain unchallenged? Who would benefit from the mistakes—from constitutional officers commenting on matters outside of the remit of their offices? How does that benefit the people? I get that it benefits the haters, Madam Speaker—the anti-GSLP-ers, the anti-Picardo bunch—but the truth would be the victim. And constitutional propriety would be the victim. And the people lose when those things are not properly protected. And however hard the fight, however sticky the argument, I—and we—are here and up for it.

At any rate, Madam Speaker, applying the *Porter and McGill* test, the Government has no doubt whatsoever—none—that a fair-minded and informed observer would conclude that there was a real possibility of bias, given the timing, language and political context of this recommendation.

Additionally, Madam Speaker, in *Secretary of State for Education v Tameside* (1977), a case I have already referred you to, the House of Lords made clear that a failure to properly inform oneself of relevant circumstances renders a decision unlawful. As the House is already aware The *Tameside* duty is rooted in the broader public law principle that decision-makers must consider all relevant facts and disregard irrelevant ones. By including partisan policy advocacy in a financial audit report, the report introduced wholly irrelevant considerations into a clearly defined statutory role.

Even the language is strikingly political. The report says, and I quote, “*I must again insist*”—as though, Madam Speaker, the former Principal Auditor, as author of the report, were empowered by law to force the Government to adopt his policy recommendations. Well, insisting does not change anything, not least the outcome of the motion that arose from a debate on this very matter in February 2024.

Madam Speaker, the former Principal Auditor is no more empowered to force the Government to adopt his policy advice than I am empowered to direct him on how to conduct his functions. It is not a binding finding. But I am entitled to rely on his sticking to his swim lane as much as he is entitled to rely on me sticking to mine. I stuck, and I stick, to mine. The report strays well outside his. It should have remained clearly in its lane, as I have always kept to mine.

But, egregiously, the report not only illustrates an exceedance of a Principal Auditor’s remit; it also politicised—heavily politicised—an office constitutionally required to remain impartial. For all the reasons I have highlighted, Madam Speaker, this is highly regrettable.

As a result of all the above, Madam Speaker, leading counsel advises that there is a strong case for this section of the Principal Auditor’s report to be withdrawn. He also opines that, as the Principal Auditor’s statements to establish a Public Accounts Committee were *ultra vires* of his authority, they exceeded the legal remit in the Constitution and in the Public Finance (Control and Audit) Act, all of which limit a public auditor to auditing accounts, not prescribing parliamentary reforms.

Mr Fisher KC further opines that, by demanding the establishment of a Public Accounts Committee, the report creates the appearance of political partisanship and risks undermining the neutrality of the audit function. On well-established authorities, this represents statutory overreach and apparent bias. Indeed, in the considered expert opinion of leading counsel, there are strong arguments in favour of the Government’s views in this respect.

Additionally, we advise that the Principal Auditor’s mandate is to examine public accounts independently, not to propose governance reforms or comment on political matters. Recommending the creation of a Public Accounts Committee intrudes into the policy-making domain reserved for the Government, Parliament and the electorate, as I have already said.

Therefore, Madam Speaker, in the considered view of expert leading counsel, the former Principal Auditor’s advocacy for a Public Accounts Committee exceeds the legal scope of the office under the statutory and constitutional provisions I have analysed. The Government’s response to

such a call demonstrates, *par excellence*, the dangers that flow when a Principal Auditor exceeds his statutory limit and becomes involved in a highly contentious political issue.

It did not escape leading counsel, Madam Speaker, that the position mirrored the GSD's policy almost verbatim and created an impossible-to-dispel appearance of partisan alignment. Indeed, Madam Speaker, the alignment of the report's commentary with the Opposition's manifesto position compromises the neutrality expected of a constitutional and statutory role.

For all those reasons, Madam Speaker, the amendment that I will propose to the motion as drafted will include a reference to this part of the report being rejected by the House as *ultra vires* the power of the Principal Auditor.

Finally, Madam Speaker, it is necessary for me to end my contribution today on this issue, as I must deal with other matters. This is such a seminal part of the report—so unashamedly demonstrating partisanship and overreach—that I have only been able to address this section today. I wanted to ensure, Madam Speaker, that no one can ever suggest we have been superficial in our analysis.

Adjournment

Chief Minister (Hon. F R Picardo): I therefore now seek to adjourn the House to address other pressing Government business and propose that the House should adjourn until tomorrow, 2nd October, at 10.30 a.m.

Madam Speaker: I now propose the question, which is that this House do now adjourn until tomorrow, 2nd October, at 10.30 a.m.

I now put the question, which is that this House do now adjourn until 2nd October at 10.30 a.m. Those in favour? (**Members:** Aye.) Those against? Passed.

This House will now adjourn until 2nd October at 10.30 a.m.

The House adjourned at 11.55 a.m.