



PROCEEDINGS OF THE GIBRALTAR PARLIAMENT

MORNING SESSION: 10.02 a.m. – 11.43 a.m.

Gibraltar, Wednesday, 24th September 2025

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The Gibraltar Parliament

The Parliament met at 10.02 a.m.

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

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

PRAYER

Madam Speaker

Order of the Day

GOVERNMENT MOTIONS

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Clerk: Meeting of Parliament, Wednesday the 24th of September 2025.

Madam Speaker: Yes, the Hon. the Chief Minister.

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Hon. Chief Minister (F R Picardo): Thank You Madam Speaker. Well, continuing on the Motion on the Order Paper standing in my name, Madam Speaker, as I told the House yesterday, I now intend to go into the detail of those areas of the report, the 2018/2019 Principal Orders Report, which the Government takes factual and legal issue. Just to quickly summarise yesterday, what I told the House was that we saw how the Constitution establishes the office of the Principal Auditor and provides for his appointment by the SAC, the Specified Appointments Commission. It provides for his remuneration as a first charge on the consolidated fund and then it sets him up as an officer of this Parliament.

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We also saw what he is empowered and required to do under the Constitution. We went through the Public Finance (Control and Audit) Act and what powers and obligations it gives to the auditor. Just pause there, Madam Speaker.

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When we are talking about laws and statutory rights, we are talking about the rights under the Public Finance (Control and Audit) Act; they are quite different to constitutional rights, which are the rights under the Constitution. Then we also reviewed the case law that sets out the interpretations of that Constitution and that statute and explained in the jurisprudence of this area of law, what an auditor cannot comment on, namely policy matters.

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And that whether or not an auditor is biased is determined based on the objective view of a fair-minded and well-informed observer and not that auditor's own protestations as his own subjective position, etc. That was the case of Porter and McGill that I took you through. And we saw, Madam Speaker, that objective judgement on bias is therefore made in respect of the output of an auditor, not who an auditor is and what he says.

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In this case, Madam Speaker, what we are dealing with is the fruit of the former Principal Auditor's work, which is the 2018/2019 report. We also looked then at the relevant standards of

professional conduct applicable to auditors in Gibraltar, in the UK and internationally. I then, Madam Speaker, gave all of the details of that legal analysis throughout my address. And we ended up by looking at that perfect, clean bill of health, unqualified audit opinion that the report gives the GSLP Liberal Government for the financial year 2018/2019. And so today, Madam Speaker, I want to go on to address the relevant parts of the report which the Government takes issue with. It is at this juncture, Madam Speaker, that I can now turn to analyse the detail of the principal areas of concern for my Government.

The first of the areas that I am going to look at is the question of the accounts of the Gibraltar Savings Bank. I call that, Madam Speaker, an easy one. Madam Speaker, this is a fundamental difference of understanding as to whether the Gibraltar Savings Bank accounts should be delivered to Parliament rather than being published by the Minister with responsibility for the Savings Bank, who would then decide when the accounts should be published in the Gazette. Essentially, Madam Speaker, this is a question that turns on an interpretation of Section 12 of the Savings Bank Act. In support of the Government's position, Section 12 of the Savings Bank Act prescribes that the Principal Auditor, from time to time, audits the annual accounts of the GSB and that the accounts are, once audited and certified, laid before the Minister with responsibility for the Savings Bank, not later than the 31st day of October in each year and published in the Gibraltar Gazette. It is important that we look at the section in its entirety.

The section says this:

Annual accounts of the revenue and expenditure of the Savings Bank and of the deposits received and repaid and interest credited to the depositors during the year ended on the 31st day of March, together with a statement of the assets and liabilities of the Savings Bank, shall be audited and certified by the Principal Auditor in compliance with any relevant and applicable standards and be laid before the Minister, not later than the 31st day of October, ensuing in every year, and be published in the Gazette.

The language is pretty clear.

Madam Speaker, for the anoraks, both inside and outside the room, amongst whom I, of course, proudly count myself, prior to the financial year 2018/2019, the statutory deadline for submitting the audited accounts of the Savings Bank was actually the 31st of August, two months earlier. The relevant amendment was in Bill No. 17 of 2019, which was passed on the 1st of April of 2019.

But notwithstanding the crystal-clear provisions of the Gibraltar Savings Bank Act, the report provides that the former Principal Auditor took a different view. Now, you will recall, Madam Speaker, that we looked yesterday in detail at many things that an auditor could not do. Not this auditor, an auditor cannot do. In particular, a public auditor. So, you may ask yourself whether, in fact, I am going to take you now to a policy matter, which I was very clear that the case law shows an auditor, in particular a public auditor, cannot deal with.

In fact, there was not just case law. There was, in the UK-specific legislation and specific guidance from the National Audit Office, that said an auditor cannot, in particular a public auditor, interfere, comment on policy. So if I am telling you there is a difference of opinion, you must, I assume, Madam Speaker, be thinking that I am going to tell you that there is a policy issue in play here and that the auditor should not have taken a different view to a Government policy. And yet, Madam Speaker, this case is not a case of an auditor taking issue with a policy. This is actually a completely different order of magnitude. Madam Speaker, here the report sets up its author in conflict, not with something as mundane as a policy, not with something as ethereal as a Government.

Here, the author is challenging a law and an author, who is a Member of this Parliament, challenging a law of this place because what you can read in the report, Madam Speaker, is a position which contradicts the legislation.

This is not a difference of opinion with me, with the Minister for the Savings Bank, or with you, although I will come to the detail of those differences of opinion. This is the auditor saying something which is different to what the letter of the law says. Let us look at the detail of that.

In paragraph 2.7.30 of the report, you will see the auditor's version of what he believes, and he tells us in his report, Section 12 of the Gibraltar Savings Bank Act should provide. He says:

In my previous report to Parliament, I reported I had written to the Accountant General on the 19th January 2023 informing her that in my view once the auditor's examination of the Gibraltar Savings Bank accounts has been finalised and the accounts certified by me, the accounts should be published in the Gazette immediately and without delay.

Well, that is his view. It is his view. But, Madam Speaker, the report goes on to set out what the views of its author are about what should be the position of publication. The report, Madam Speaker, is in effect a policy position of a public auditor on what the author believes is his, in his view, better view to the position set out not just by the policymaker, who is the Minister here. Matters do not rest there. It is a conflict between the terms of the report and the legislation.

Indeed, Madam Speaker, you have what in our view is, given the case law that I told you about yesterday, that a public auditor cannot tread into questioning a policy, an unlawful, therefore, questioning of the Minister's policy as to when publication should occur. And then, Madam Speaker, in 2.7.44, it is crucial to note the conflict is not with the Minister or with the law.

I mean, having taken on the law itself, having taken on, I mean, I do not think anybody has ever suggested that there needed to be a jurisprudence to say that public auditors could not act contrary to the law and could not purport to challenge the law. They might give an opinion on whether laws should be changed, but not that they are going to require things to be done contrary to an existing law. But then, not just then challenging the policy of the Minister, which there is case law saying he cannot do, which the NAO guidelines say he cannot do, the NAO law would say he cannot do, then the conflict is with you, Madam Speaker.

That paragraph of the report sets out that you supported the Government's position, not unsurprisingly, given that all we were doing was reciting the law, and responded to him, to the author, in the following terms in respect of an exchange of correspondence, which is published in the report.

Given the provisions of the Gibraltar Constitution Order 2006 and the Gibraltar Savings Bank Act 1935 as discussed, and taking into account parliamentary procedure, Rule 12 of the Gibraltar Parliament Standing Rules and Orders is best interpreted as meaning that the Principal Auditor and the Ombudsman may present their reports to the Clerk, who then notifies the Government of their wish to have their reports presented to Parliament through the relevant Minister.

That is about reports generally.

In this regard, however, it is important to note that Parliament does not set the agenda for meetings, nor does it control the business timetable,

you told him. Not satisfied, Madam Speaker, with your interpretation in that respect, as to whether he could cause publication of the Savings Bank Accounts by forcing them to be laid in this Parliament, and not satisfied with your interpretation, which, in the Government's respectful view, is the correct interpretation, Madam Speaker.

The report then sets out the former Principal Auditor's reply as follows:

In the final analysis...

and this is at paragraph 2.7.46:

I expressed my concern to the Speaker that in regard to my request to have the Principal Auditor's report on the GSB accounts for the financial year ended 31st March 2024 tabled in Parliament, she had chosen to ask the Clerk of the Parliament to pass my report to Government for them to action, when, as I had already mentioned, it is a matter solely for Parliament to action by proceeding to lay my report at the next sitting of Parliament, and in this way uphold my constitutional independence and my position as an Officer of the Parliament.

Madam Speaker, I am surprised the report does not say that you have acted unconstitutionally, but we will come to how easily the author seems to spread allegations of that sort inappropriately in a few moments. I continue the quote, Madam Speaker:

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I therefore reiterated my request to the Speaker that she kindly proceed to lay the Gibraltar Savings Bank Act accounts for the financial year ended 31st March 2024 in Parliament in accordance with Section 74(2) of the Gibraltar Constitution.

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Something, Madam Speaker, that you did not do because you continue to prefer your own view. And, of course, Madam Speaker, that view, which is expressed at 2.7.46 of the report, despite being so trenchantly expressed, is not a binding finding on you. It is a view. Despite it being expressed, Madam Speaker, in a letter to you, which reads almost as an instruction of what you should do, but you are not bound to follow that instruction. Of course, you too are independent.

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It is not just a Principal Auditor that is constitutionally independent. So are you, Madam Speaker. You do not need me to tell you that, as all hon. Members of this House know. You have a different view, for good reason... You have expressed it, and you have stuck to it. And important, Madam Speaker, that I should set out that you reached that view, which I read in the report, and had been alerted to by your ruling in this House, without any discussion with me or with the Minister for the Savings Bank.

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In fact, Madam Speaker, I think we all found out about that together. All hon. Members and the committee found out about that together when you made a ruling about this matter. What is also worth mentioning, Madam Speaker, is that I have asked the House to confirm when that communication referred to in the report was received in this House.

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Paragraph 2.7.38 of the report is when the author of the report sets out what he did in respect of the letter that he sent you. It starts...

On 30 May 2025, I replied to the Speaker.

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Obviously, Madam Speaker, I have already referred to that date in letters from the former Principal Auditor on that date. A very busy day for the author of the report. Hon. Members will recall that I referred already to another lengthy letter sent on that date at 4.15pm, which I will deal with later on when I get to the relevant part of the facts. In respect of this communication with you, Madam Speaker, what is clear is that the report is explicit as to when it was sent. Now, remember, Madam Speaker, this is a report that is designed to test the accuracy of things that we do. And when we get a number wrong or a date wrong, the report will tell us the Government misreported a date, a time, a number.

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This is the check. So, paragraph 2.7.38 reads as follows.

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On 30 May 2025, I replied to the Speaker informing her that all the Government and statutory accounts that I audit are required to be tabled in Parliament with a view that they are made public.

And then the whole of the letter, in effect, set out in the report, culminating in the part that I read you earlier. In fact, Madam Speaker, I have enquired of you and of your office as to the date of that communication. The stark reality is that the report is wrong.

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The reply that 2.7.38 says, *on 30 May 2025, I replied to the Speaker*, was not sent on that date. Well, at least it was not received in this House on that date by email. In fact, it was not received until 14 minutes past 8 p.m. on Saturday 31 May. Not 30 May.

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In fact, only 3 hours and 46 minutes before the final second on which the author of the report will be holding office under the Constitution. But the more interesting point is that the letter to which you are referred in the report, Madam Speaker, does appear to be dated 30 May. So, it appears that what we have is a backdated communication sent by the author of the report and referred to by its backdated date in the report instead of accurately being referred to by its

actual sent date. Backdating is not best practice, Madam Speaker. It is certainly not something which indicates transparency or accountability.

In fact, quite the opposite. So, let us be clear, Madam Speaker. The report contains many errors we have pointed out publicly and more that I will address in coming days.

I have just dealt with this issue of the position under Section 12 of the Savings Bank Act. I will have a little more to say about that in a minute. But in looking at the detail of how the report recites the difference of opinion that the author has with the legislation and with the interpretation of the legislation by you and by the Minister, we have also identified a backdating of communications.

That is, Madam Speaker, if I may put it no higher or lower than this, hugely disappointing. So, Madam Speaker, turning now to the substance of the issue that was in dispute between you and the former Principal Auditor as author of the report and indeed between him and the Minister for the Savings Bank, let us analyse the position set out in the report.

The policy position that the Minister was taking, which was simply to say that he was following the letter of the legislation. I mean, it is hardly a strange policy to have and the position that you set out as Speaker of this House, which you recited in the exchange of correspondence that you referred to us in one of your rulings.

First, Madam Speaker, let us remind ourselves. It is the law, the Gibraltar Savings Bank Act, that provides in Section 35 that the audited and certified annual accounts of revenue and expenditures of the Savings Bank shall be laid, it does not say before Parliament, Madam Speaker, shall be laid before the Minister not later than the 31st day of October and be published in the Gazette. Madam Speaker, the statutory language is unequivocal.

Well, the Principal Auditor is responsible for auditing and certifying the accounts because that is what the section says, it is the Minister for the Savings Bank that receives them, and he bears the obligation of ensuring their publication.

The law is clear. Deliver to the Minister, then publication in the Gazette. That is what the law says.

The Act contains no provision conferring upon any public auditor in Gibraltar none whatsoever, a right to table the accounts directly or to control the timing of their publication. Although Madam Speaker, the practice is built up that the author of the report includes them in his report. Nobody has complained about that. We have not said that a Principal Auditor cannot do that. He can put in his report the fruit of his work if he wishes to do so. But he cannot require that the Minister do something which is his power under the law at a time that he says the Minister must.

He can opine that it would be better to do it at a particular moment or not for purposes of efficiency, but he cannot direct a Minister to publish in a way that is not provided for in the law, let alone direct or instruct you to do so. The author of the report claims that as an Officer of the Parliament he has a constitutional right to insist that his report on the Savings Bank accounts be tabled directly in the Parliament.

That is what it amounts to and in support of that theory, Madam Speaker, he relies on Section 74(2) of the Constitution which states that the Principal Auditor shall submit and lay his reports plural, before the Parliament. Well, Madam Speaker, I venture to suggest that actually he might even have a better argument which I have not seen deployed in the report.

Namely, Madam Speaker, as I told the Parliament yesterday, the Constitution is the principal and overriding enactment. And if there is a conflict between the Constitution and an earlier or indeed even later Act, it would be the Constitution that prevails. This is the 1935 Act.

Change the Constitution, you might need to read the 1935 Act in a different way because the Constitution provides otherwise but if the Constitution provides otherwise. Not because you want the Constitution to provide otherwise, and it does not.

Because the fact is that there is no conflict between Section 74 of the Constitution and Section 12 of the Savings Bank Act. There is nothing in Section 74 of the Constitution that allows a Principal Auditor, past, present or future, to argue that the awards public accounts of Gibraltar include the accounts of the Gibraltar Savings Bank. These are not public accounts.

Indeed, Madam Speaker, an argument could be run, although I am not going to adopt this argument, but an argument could be run, that although the managers of the bank are the Government, the shareholders are its depositors. Although Madam Speaker, I will not say I accept or prefer that position. The fact is that the accounts of the Savings Bank are not the accounts of any agency or authority.

They are not the public accounts of Gibraltar. Public accounts of Gibraltar are the accounts of the Government. Agencies, Madam Speaker, have the word agency in their name. Authorities have the word authority in their name. Courts have the word courts in their name.

Those are the accounts that Section 74 provides for.

The public accounts of Gibraltar, including the accounts of the agencies, the authorities and the courts. Conversely, Madam Speaker, banks have the word bank in their name. So, Madam Speaker, whether it is a regulated bank or it is a statutory bank, the Gibraltar Savings Bank Act makes it a statutory bank.

The Gibraltar Savings Bank is not an agency, an authority or a court. Neither are its accounts, by any stretch of the imagination, part of the public accounts of Gibraltar. So, any auditor, Madam Speaker, must read his empowering instrument in its proper context.

And the words of the Constitution must be given their plain and ordinary meaning. Of course, Section 74(1) defines the auditor's constitutional remit and as I have already explained yesterday at the start of my address, it is to audit and report on the public accounts of Gibraltar, the courts and all authorities and offices of Government.

The reports referred to in Section 74(2) are his audit reports made under 74(1). Madam Speaker, these reports are different and not the same to the reports that he is preparing under a different enactment. The Principal Auditor of Gibraltar does not prepare the accounts of the Gibraltar Savings Bank under Section 74 of the Constitution. He audits them under Section 12 of the Gibraltar Savings Bank Act.

So, Madam Speaker, it is clear that the 1935 Act provides separate and specifically a regime for the preparation, certification, laying and publication of the Savings Bank audited accounts and it places the responsibility for publication on the Minister. And indeed, further, the interpretation of the Government is reinforced by the Standing Rules and Orders of Parliament.

Rule 12(1) of which provides that all papers shall be presented to the Parliament by a Minister. The sole exception, Madam Speaker, is in Rule 12(3) that provides that *the Principal Auditor and the Ombudsman may present their annual reports to the Parliament through the Clerk*. A separate issue for another debate.

But, Madam Speaker, their annual reports are the ones that can be presented, because the word is may, to the Parliament through the Clerk. Madam Speaker, we can have a different debate about whether they should be tabled directly, or they should be tabled through me. I know that we are in communication with the Leader of the Opposition and the new Principal Auditor in respect of that.

But none of that involves any discussion about any right of any past, present or future Principal Auditor to have the right to present not their annual reports, but the audited accounts of the Gibraltar Savings Bank for publication in this way. I mean, Madam Speaker, one would have thought it was perfectly plain that the exception does not extend to the statutory accounts of the Savings Bank, which are self-evidently not the Auditor's annual report. Accordingly, Madam Speaker, the position is clearly that the exception does not apply, and the general rule governs that the Savings Bank statutory accounts must be presented to the responsible Minister for him to publish in the Gazette.

The law does not say when they should be published in the Gazette. I know that the Father of the House has a strongly held view in that respect, which he has set out in Parliament before and which he will no doubt be referring us to later. But Madam Speaker, you said something during the course of your exchange of letters, and I think you have said in the course of your rulings here also, unless I have just read it so many times that I have imagined you saying it.

But you said this in your letter to the Principal Auditor, which is set out in the Principal Auditor's report, his actual annual report.

300 Parliament does not set the agenda for meetings, nor does it control the business timetable.

Madam Speaker, I think respectfully that point is well made, and it accurately reflects even the Westminster practice.

305 Under the Westminster model of Government and Parliament, Government business takes precedence in Parliament, subject only to limited exceptions. Further still, the courts in the United Kingdom have confirmed that the question of what is laid before Parliament and when are matters of internal parliamentary procedure and are not for external officers to dictate. Remember again, Madam Speaker, that the author of the external audit report on the Government is obviously and performe an external officer to the Government.

310 Now this is an extremely important point. It is wholly germane to this issue that I am setting out at the moment. I want to be clear with the House in setting out a further decision of the Court which is exactly on point, and which is relevant.

In *Bradlow v. Gossett* in 1884, Mr. Justice Stevens in the Court's Queen's Bench Division said this:

315 The House of Commons has the exclusive power of interpreting the statute so far as the regulation of its own proceedings within its own walls is concerned and that, even if that interpretation should be erroneous, this Court has no power to interfere with directly or indirectly.

320 If I may put it differently, Madam Speaker, your word as to procedure once you have ruled is the law.

In *British Railways Board and Picking* in 1974, the Court of Appeal considered the matter again and Lord Morris said this:

325 The function of the Court is to construe and apply the enactments of Parliament. The Court has no concern with the manner in which Parliament, or its officers carry out its Standing Orders to perform these functions.

330 Therefore, Madam Speaker, the authorities indisputably confirm that internal parliamentary procedure including the tabling of documents and the scheduling of business is for Parliament itself through its Standing Orders and not for external officers such as the Principal Auditor to dictate.

335 Hang on, you might say, Madam Speaker, but the Principal Auditor is a Member of this Parliament. He is therefore not externally trying to dictate. Yes, he is a Member of this Parliament, but not in his capacity as the Auditor of the Gibraltar Savings Bank because that he is doing not in his constitutional role, he is doing that under his statutory obligation to audit the Savings Bank which tells him, in the law, what he has to do with those audited accounts.

340 If the Principal Auditor, Madam Speaker, were free to impose his own will on Parliament and to tell us when things have to be done, well, Madam Speaker, that would make the office of the Principal Auditor the most powerful office in the land for a simple reason. He would be the only Member of this Parliament who could decide without requiring a majority what happens and when. On this analysis, Madam Speaker, therefore, we believe that your interpretation is therefore undoubtedly correct in law and consistent with constitutional practice both in Gibraltar and in the United Kingdom. And the procedure referred to in the report is flawed and erroneous in our respectful view.

345 Section 12 of the Savings Bank Act expressly places the duty to lay and publish the accounts upon the Minister and it leaves to him the discretion of when they should be published. The standing orders confirm that, say, for the Auditor's Annual Report, papers must be presented to Parliament by a Minister, although we can even consider how best to deal with annual reports in the future.

Section 74 of the Constitution secures the Auditor's independence in carrying out his audits and preparing his reports, but it does not displace the statutory scheme governing the laying of the Savings Bank Act accounts in Parliament. Madam Speaker, the Principal Order's independence, therefore, remains wholly guaranteed in that he can audit and report his findings freely, but the formal act of laying those accounts before Parliament and officially publish them is a task assigned by law to the Minister. This is not an assignment to the Minister by operation of policy.

The policy is when he decides to publish, but the designation of the Minister as the person who receives the accounts is set out in the law, and even that, even that, the report seeks to challenge.

On a straightforward analysis of constitutional convention and the relevant case law, it is the Government, and not Parliament nor the courts, that determines Parliament's agenda. I hope nobody needs to be persuaded of that, Madam Speaker.

It follows, Madam Speaker, that the report is wrong in law in suggesting otherwise. It is wrong, in fact, in referring to the wrong date to an important piece of correspondence between you and the author of the report. So important, in fact, Madam Speaker, that the whole text of the correspondence between you is set out by the author of the report.

And in this respect, Madam Speaker, in the Government's view and in the view of the legal advice we have received, this criticism in the report both of you and of us should be withdrawn or rejected. The amendment that I will make to the Motion as drafted will include a reference to this part of the report, therefore being rejected by the House.

Remarkably, Madam Speaker, I would say that that was probably the easiest and less controversial of the issues that I have to deal with. Just a small matter of the former Principal Auditor backdating a letter and telling us it was sent on the day it was not sent and challenging what has been set out in law since 1935. No more than that. But I will need to move on now, Madam Speaker, to a much more serious issue in the report.

Because additionally, the report raises an issue involving the Savings Bank's anti-money laundering procedures. This is a particularly important point and probably, I would say, Madam Speaker, the most important point I will deal with in the course of my address to the House in the presentation of this Motion.

Madam Speaker, in 2017, the Savings Bank Director formally requested the former Principal Auditor to perform an independent audit of the Savings Bank to be conducted for the purposes of testing the policies, controls, and procedures pursuant to Section 26(1A) of the Proceeds of Crime Act 2015.

Important to remember that in that year, the Savings Bank Director formally requested, asked for, sought, invited such an audit. The Director of the Savings Bank at the time added that this independent audit would be in addition to the audit of the Savings Bank's financial statements, which is what happens under the law we just considered, which is Section 12 of the Savings Bank Act. On 13 October 2021, the former Principal Auditor submitted his said report, which highlighted that although the Savings Bank met most of its obligations under the Proceeds of Crime Act 2015 effectively and efficiently, there were various areas where there was scope for improvement. that is normal in any audit of this type. it is usual. that is 2021.

Invited by the Savings Bank to carry out this audit finds that things are working well, effectively and efficiently, some areas that require more work. It is important that all hon. Members take note of those words, that the proceeds of crime obligations in the Savings Bank were being met effectively and efficiently in 2021. In his report in that year, Madam Speaker, the Principal Auditor also underlined that despite requests over a period of a year for evidence to be presented to him to show that the Financial Secretary as a supervisory authority of the Savings Bank had complied with his obligations under the Proceeds of Crime Act and the supervisory body's powers in Regulations 2017, no information had been provided to him by the Financial Secretary and the directors of the GSB of the Savings Bank had never replied to the issues raised in the audit report. It is also important, Madam Speaker, to remember where we were then. The former Principal Auditor, as we are told in the report, was complaining that he had not had this detail, that he had

started this audit in 2019 and he had not had the detail and he was reporting in early, I think in 2021, in October.

But, Madam Speaker, where were we then? Sometimes it is easy just to refer to a date, but we were then not just dealing with Brexit, we were dealing with the withdrawal agreement, the New Year's Eve framework agreement and we were dealing with COVID, with the BEAT payments. We had shut down Gibraltar in March, we shut it down again in December and we shut it down again in 2021 and in the core of the team dealing with those issues at that time was the former Financial Secretary.

It is important to keep those things in mind, Madam Speaker. Besides the Principal Auditor's appointment to undertake the Savings Bank independent audit, the Director of the Savings Bank also simultaneously commissioned a similar audit to be undertaken by a contracted private audit firm that had experience in this field and regularly audited banks, Madam Speaker, on Process of Crime Act issues. When the former Principal Auditor, the author of the report, as he tells us in the report and as he set out in the report, found out that there was also this appointment of a private sector firm, the former Principal Auditor questioned the logic and reason to commission a parallel audit and records that no reply was forthcoming.

The report also raises concerns that the Savings Bank does not have a separate and distinct Compliance Officer. But in any event, Madam Speaker, as we can see at 2.62, the report tells us this about that audit.

In my view, it is unacceptable,

he says,

that the Chief Minister has sought to prevent the Principal Auditor from undertaking an audit which it is my right to perform under the Gibraltar Constitution and Public Finance (Control and Audit) Act.

Well, Madam Speaker, what the report is referring to there is not the audit in 2021. It is the attempted re-audit that the Principal Auditor has sought to undertake in 2025. But no longer by invitation.

Indeed, the report continues as follows.

I consider the Chief Minister's actions to be improper and unconstitutional. As indeed, Section 74(3) of the Constitution clearly states that in the exercise of his functions under this Constitution, the Principal Auditor shall not be subject to the direction or control of any other person or authority.

At 2.7.63,

Even though my intention to undertake an anti-money laundering compliance audit of the Savings Bank has been obstructed, I can report that at present, the GSB does not have an appointed Compliance Officer. I am conscious that the Director of the Savings Bank has been persistently requesting the Government to appoint a Compliance Officer, but at present, this has not yet transpired. This clearly contravenes Section 9b of the Pursuit of Crime Act, which states a relevant financial business [such as the Gibraltar Savings Bank], which is a legal person or a legal arrangement other than a trust, must appoint a director, senior manager or partner, and it shall be that person's duty to ensure compliance with Part 2 of this part of the Act.

The words Gibraltar Savings Bank were added by the author of the report in square brackets because they did not appear in the text. Madam Speaker, the report also makes the point that the Financial Secretary undertakes functions related to the Savings Bank, which, in the Principal Auditor's opinion, as author of the report, stand in conflict with his separate role as the statutorily appointed supervisory authority of the Savings Bank under the Proceeds of Crime Act. Because you see, Madam Speaker, it is not that the Savings Bank does not have a Compliance Officer, it is that the view of the former Principal Auditor as author of this report is that the structure that we

have, which is that the Financial Secretary acts as the compliance officer, is not one that he considers is appropriate.

Madam Speaker, the report goes on to state as follows:

The Financial Secretary's role as the supervisory authority of the Savings Bank under the Proceeds of Crime Act stands in conflict and is therefore incompatible with his statutory duties under the GSB and with his authorising functions relating to the withdrawal of funds and approval responsibilities in respect of large bank deposits.

Not, Madam Speaker, a binding finding, but a view expressed by the former Principal Auditor.

In my opinion, those are the right words to give, in my opinion, the Financial Secretary should not be exercising his independent role as a supervisory authority for the Savings Bank under the Proceeds of Crime Act and the supervisory body's powers Regulations 2017 and at the same time directly performing duties relating to the same bank. That is conflictive.

End of quote.

So, that is the former Principal Auditor's view as set out in the report that is laid in this House. It does not mean, Madam Speaker, I emphasise again, that the Savings Bank does not have a compliance officer. It just means that the opinion set out in the report is that for the reasons I have just given, that is not satisfactory from the point of view of the Principal Auditor. Now, Madam Speaker, as the House is aware, the Government strongly rejects this part of the report in every regard. It is our view that the views expressed in the report are legally inaccurate outside the scope of the Office and the ostensible and actual authority of the Office Holder's statutory and constitutional remit and, in our view, Madam Speaker, do not stand scrutiny. In particular, we have stated, and we state again that the Principal Auditor under our laws and under the Constitution has no legal right or mandate to conduct compliance or Proceeds of Crime Act audits of the Savings Bank.

And I am going to go into the detail of that now because it is hugely important. And, Madam Speaker, that is not just the position of the Government, it is the position confirmed by successive financial secretaries. Indeed, Madam Speaker, it is the position of successive directors of the Savings Bank, usually the Accountant General, who have in the past invited the Principal Auditor to carry out such an audit.

There, Madam Speaker, the word *invited* is essential. Madam Speaker, because it shows explicitly that the invitation was required to be issued for the Principal Auditor to be able to become involved in carrying out the Proceeds of Crime or compliance audit because he had no constitutional or other statutory right to do so. Additionally, Madam Speaker, and actually perhaps most remarkably, that is the position acknowledged by the former Principal Auditor himself, the self-same author of the 2018/2019 report.

And he said it in prior correspondence. I know, Madam Speaker, that this may seem absolutely remarkable given the sections of the report that I have just read. The allegation that I was acting unconstitutionally and improperly in stopping him from doing the Proceeds of Crime or compliance audit.

And the very grave nature of those allegations, Madam Speaker, that I acted unconstitutionally simply by saying that we considered and were advised that he had no power to undertake a POCA or compliance audit of the Savings Bank unless he was invited to do so as we had previously invited him to do so. But I will read in a few moments, Madam Speaker, to the House exactly what the same author had said in prior correspondence. It will be, Madam Speaker, I guarantee, a jaw-dropping moment when we get to it.

For now, Madam Speaker, it is important for the House and those watching to please remember also that the reason I had said that we would not invite the Principal Auditor to undertake this POCA audit that he was seeking to carry out in 2025, a POCA compliance audit, was because we had already engaged PwC to carry out the self-same audit. We did not think it made financial sense to now have two entities carrying out the same audit. Indeed, Madam Speaker,

given that PwC had previously done this type of audit for the Savings Bank repeatedly before and had the necessary experience of carrying out such audits repeatedly for other banks also, it was not, in our view, an efficient use of money or resources.

510 It would have been, Madam Speaker, to put it another way and in topical terms in respect of the report, not value for money. It would have been a waste of time and resources. We knew we could not be far off the mark when we were saying that, Madam Speaker.

Having two auditors doing the same audit at the same time. But look at what the author of the report, the former Principal Auditor, said in a letter dated the 9th of February 2022 to the former
515 Financial Secretary. This is a direct quote from that letter.

I will read this slowly in case anybody wants to make a note. I start the quote:

It beggars belief that at the time when we were requesting him to do so, the director of the Savings Bank had already engaged the services of PwC with your consent by your own admission to undertake the same job.
520

I ask, what is the sense of having two entities undertaking the same audit review, apart from being a waste of time and resources? Where is the value for money in this for the public purse?

That, Madam Speaker, is what the former Principal Auditor said to the Financial Secretary in
525 2022 about having PwC doing a POCA compliance audit at the same time as he had been invited to do so.

The author of the report that we are debating, Madam Speaker, was saying to the Financial Secretary in 2022 it was a waste of time and resources. He was asking where is the value for money for the public purse in inviting both the Gibraltar Audit Office to carry out the POCA compliance
530 audit at the same time as having PwC undertaking such an exercise. Yet remarkably, Madam Speaker, in March 2025, three years and one month later, he is insisting, insisting on the opposite, on being appointed despite the Savings Bank having been satisfied with the work being done and undertaken by PwC.

As you can see, Madam Speaker, in 2025, we entirely agree with the position of the author of the report as he set it out in 2022 that it was a waste of time and resources to carry out the same
535 audit review with the Gibraltar Audit Office and PwC. The only surprise, Madam Speaker, is that within three years and one month, the author of the report no longer agreed with himself on what he had said in 2022. It is obvious though, Madam Speaker, that a lot must have happened in that three-year interregnum because value for money in two entities carrying out the same audit was
540 not the only thing that the author of the report seems to have changed his mind about, as we can see from the report.

Because let me be clear, my decision not to permit the POCA compliance audit of the Savings Bank outside the former Principal Auditor's remit was fully consistent with the Constitution. That is to say, the decision I communicated to the former Principal Auditor was a proper constitutional
545 decision which had nothing improper or unconstitutional about it. As a result, Madam Speaker, framing my lawful decision as unconstitutional, as the report does at 2.7.59 to 2.7.62, is factually incorrect and misleading. I assert that, Madam Speaker, not just because I am independently advised that that is the case, but because I was independently advised of that before I communicated the decision to the former Principal Auditor as set out in the report. Indeed,
550 Madam Speaker, I did not ring him to tell him. I met him, and I met him, Madam Speaker, with the Financial Secretary, with the Chief Secretary, with the Minister for the Savings Bank, and with a Private Secretary.

This was not a fly-by-night decision made as we walked along Main Street, met each other, and he said, Fabian, can I do a POCA audit of the Savings Bank? No, Tony, you cannot. PwC is already
555 doing it.

And moreover, Madam Speaker, it was not my decision to communicate. It was a decision that I reached because the Senior Officials, the Director of the Savings Bank, the Financial Secretary, were telling us that they did not believe that it made any sense for the Gibraltar Audit Office to carry out this audit, and that there was no legal imperative that they should be allowed to do so.

560 But I particularly assert my position with full confidence in this House, because what I told him, Madam Speaker, was entirely consistent with what he had said in writing about his understanding of the position.

The author of the report that says that it was unconstitutional to stop him, and improper to stop him carrying out the audit because he was entitled constitutionally to do it, had said the
565 opposite in writing himself. let us be very clear. My position was to inform the Principal Auditor, who is now the author of the report, that he had no legal rights to carry out a POCA compliance audit of the Savings Bank if he was not invited to do so.

Because you see, Madam Speaker, that is why I told you the word invitation was so important when we looked at what happened in 2019. That is how he had undertaken the earlier POCA
570 compliance audit that he had carried out - by invitation.

Madam Speaker, the report says that I acted unconstitutionally because I told the former Principal Auditor that for the reasons he had been told by officials, we would not agree to invite him to carry out the POCA compliance audit. Now let us have a look at what the author of those words had said a few years before. let us put the two relevant statements side by side and see
575 who is acting or trying to act unconstitutionally.

The words in the report, Madam Speaker, that bear repetition for the purposes of carrying out this analysis forensically, noxious though they are, read as follows at 2.7.62. I have read them before. I will read them again:

580 In my view, it is unacceptable that the Chief Minister has sought to prevent the Principal Auditor from undertaking an audit, which it is my right to perform under the Gibraltar Constitution and the Public Finance (Control and Audit) Act.

An assertion, Madam Speaker, of a constitutional right and a statutory right.

585 I consider that the Chief Minister's action to be improper and unconstitutional, as indeed Section 74(3) of the Constitution clearly states in the exercise of his functions under this Constitution, the Principal Auditor shall not be subject to the direction or control of any other person or authority.

590 Yet now look, Madam Speaker, at what the same author had said himself of his own powers in the earlier letter I have previously referred to the House. In that letter, the letter dated 9 February 2022, the former Principal Auditor said the following to the former Financial Secretary:

After agreeing with Ms. Grisel Lima...

595 Then the Director of the Savings Bank, in 2018.

...to undertake the POCA audit and in the absence of being formally engaged to undertake this task, I had on a few occasions verbally reminded the director of the GSB on the need to be formally appointed for this purpose. Needless
600 to say, because the audit is not a statutory audit for me to undertake. The onus for the audit engagement lies with the Director of the GSB and not the other way around.

Although you are correct in saying that it is not my statutory function to do this audit, I do not consider the audit we have undertaken to be an agreed upon procedures audit, but rather an independent compliance audit review
605 carried out at the request of the Director of the GSB and with my agreement.

And yet when you tell him it back, you are acting improperly and unconstitutionally. Madam Speaker, I think it is important to emphasise this morass of contradictions.

The report says at 2.7.62 that it is the author's view that it is unacceptable that the Chief
610 Minister has sought to prevent the Principal Auditor from undertaking an audit which it is his right, he says, to perform under the Gibraltar Constitution and the Public Finance (Control and Audit) Act. And as a result, he says, the Chief Minister is acting unconstitutionally. Yet the same author

writing about the same subject in a letter to the former Financial Secretary in February 2022 accurately records his position was the complete opposite.

615 In 2022, the same author said it was correct to say that it is not his statutory function to do such an audit. So in the report, Madam Speaker, the author of it says that I acted unconstitutionally because I said he had no statutory authority to carry out this audit of the Savings Bank, although I was only saying to him exactly what he had said to us. Exactly what he had said to us.

620 In fact, Madam Speaker, I can tell the House, the Hon. the Father of the House, is fully aware, as was the Chief Secretary and the Financial Secretary. I had with me the letter from the former Principal Auditor dated April 2022, when we had that meeting on 7 April. I was on the strongest possible ground.

I was communicating on behalf of the Chief Secretary, the Director of the Savings Bank, the 625 Financial Secretary and the Minister of the Savings Bank to the former Principal Auditor the thing which he had said to us. I used the exact words he used in his letter in telling him what the position was. So how on earth can somebody make a point as serious as to suggest in a report to be laid in this Parliament that I had been acting unconstitutionally by committing the grievous sin of agreeing with him?

630 How on earth could I have been acting unconstitutionally by agreeing with the author of the letter of February 2022, who is the self-same author of the report that makes the serious, baseless and utterly defamatory allegation against me that I acted unconstitutionally or improperly? It is frankly, Madam Speaker, senseless. I confess that I quote the former Principal Auditor and the author of the report when he said in one part of his communication that this just beggars belief.

635 I still do not understand this, Madam Speaker. And in particular, I do not understand how anyone might think that we would not challenge such utter nonsense in the report before the House today. How could we not challenge that?

How could we not? And in this context, Madam Speaker, the House has to understand we are dealing with matters of international importance with huge potential consequences. If it were 640 true, Madam Speaker, that a rogue Chief Minister has stood in the way of a constitutionally or statutorily empowered Principal Auditor to prevent a Proceeds of Crime Act or a compliance audit, then we should be a pariah state.

We would be the pirates that people who are enemies say that we are. Of course, it would make sense, I venture to suggest, to put us on every blacklist in the world if it were true. But that 645 has never happened here.

It could never happen here because the officials who asked me to tell the former Principal Auditor that we did not wish to invite him to carry out this POCA compliance audit would never have asked me to do so if he had a legal right to carry out such an audit, whether it was a constitutional right or a statutory right. But what is remarkable, Madam Speaker, is that this report 650 makes the extraordinary allegation against me without regard for the potential consequences for Gibraltar.

It is not an allegation against me. it is an allegation against a Gibraltar institution, the Government of Gibraltar, that one part of the constitutional edifice of Gibraltar is blocking another part of the constitutional edifice of Gibraltar from carrying out their constitutional functions.

655 The thing to now ask ourselves after hon. Members and those watching may have heard, Madam Speaker, or have heard what I have said, is what credibility can one ascribe to any part of the report if this most eye-catching and remarkable allegation, its most eye-catching complaint of interference, its most startling accusation against the highest elected politician in this nation can be shown to be, as I have shown it to be, entirely unreliable.

660 And not just because the Government's Senior Officials and Legal Advisors so advise us. Not just because the Government has a legal opinion that confirms it, but because the author of the report, making that remarkable allegation, couched in terms of a noxious, as I have described it, accusation of unconstitutionality, has himself said the opposite in writing. I mean, I do not know

whether the author of the 2018/2019 report that we are considering had forgotten his earlier authorship of the 2022 letter.

Could that be what we are dealing with? I mean, it really is remarkable, Madam Speaker. The legal position that I set out to the Principal Auditor in April 2025 is the position he set out to us. It is surely not, Madam Speaker, so outlandish or indeed unconstitutional for the Government to adopt in 2025 what its Principal Auditor had told it in 2022. It is not heinous or unconstitutional in 2025 to agree with the legal position that the Principal Auditor, the independent constitutional officer, had set out in writing in 2022. So, Madam Speaker, every Member of the House and of the community will no doubt forgive me for saying that the allegation of unconstitutionality levelled against me and therefore against the institution of Government in Gibraltar is hollow in every single material respect.

And moreover, Madam Speaker, I rely on the words of the former Principal Auditor himself in his letter of February 2022 in demonstrating that the words of the former Principal Auditor as author of the 2018/2019 report today before the House are entirely incorrect and unreliable and should be roundly rejected. Madam Speaker, that is not to say that the damage has not already been done. Of course it has.

Forget about my reputation. I have absolutely no regard for that in this respect. The allegation of unconstitutionality is rendered so ludicrous by the same author's previous statements that I am totally inured against it.

But the accusation of a Government unconstitutionally preventing a POCA compliance audit of a Government Savings Bank is so serious that it has already gone around the world. Rest assured, Madam Speaker, it is registered by concerned friends to whom we have had to explain matters, and it is registered by gleeful enemies who have used it to sharpen their cutlasses and load their cannon against us. It is that serious.

Gibraltarian ammunition for foreign cannon to fire at us. Indeed, Madam Speaker, the author of the report must have known this area to be one of high sensitivity given that the jurisdiction had been on the grey list of the Financial Action Task Force on the MoneyVal Examination. It would have been clear to anyone that the implication that a Government controlled entity does not take issues of proceeds of crime and compliance seriously has exceedingly wide implications.

Implications beyond our shores. Implications for future potential grey or black listing. So, Madam Speaker, it falls to me again having provided that background to assess some other aspects of the effect of this part of the report and what has happened now perhaps in a little bit more chronological and dispassionate order to leave the record clear, Madam Speaker.

We know that by 2021 the Gibraltar Savings Bank had been subject to two parallel compliance assessments. One by the Principal Auditor at the invitation of the GSB's Director in December 2017 pursuant to Section 26.1A of the Proceeds of Crime Act not pursuant to the Public Finance Control and Audit Act not pursuant to the Constitution pursuant to Section 26.1A of the Proceeds of Crime Act and another by PwC. Both confirmed that the Gibraltar Savings Bank was in general compliance with the Proceeds of Crime Act whilst recommending improvements. But things were being done effectively and efficiently when it came to compliance. After the POCA audit by the Audit Office the former Principal Auditor stated that the Savings Bank was generally compliant. Despite the fact that the report was of a generally compliant nature we still appointed once again PwC to treat the matter with the seriousness it deserved to get even better.

In 2025 however the former Principal Auditor sought to conduct a further anti-money laundering compliance audit of the GSB this time alleging his own constitutional authority as Principal Auditor rather than by invitation. Madam Speaker relying on legal advice not something written on the back of an envelope and at the request of Senior Officials so not at my whim or because I took that view myself I refuse consent in a meeting with the Principal Auditor on the basis that the Principal Auditor had no such constitutional or statutory power to carry out such a compliance examination under the existing legislation. Again, I had no desire, I had no wish and I had no time available to meet the former Principal Auditor for this purpose other than because I

715 was requested to do so by my Senior Officials. I was doing other things with the Deputy Chief Minister in particular in April 2025 things that thankfully bore fruit in June 2025.

I did so because Senior Officials took the view that there was an attempt at clear and previously self-admitted constitutional overreach in the actions of the former Principal Auditor. In essence, the Government's position was and remains that anti-money laundering compliance audits of the Savings Bank fall outside the Principal Auditor's remit as a constitutional officer in exercise of his constitutional powers or as a statutory officer in exercise of the public finance (control and audit) powers. And therefore, the Principal Auditor lacked a proper legal basis to insist on carrying out an audit if he had not been invited to do so.

725 But again, Madam Speaker, the people of Gibraltar should not take my statements at face value which is why I turn now to consider the relevant sections of the Proceeds of Crime Act. Section 26.1A of the Proceeds of Crime Act 2015 remember Madam Speaker that is the Act I told you the Principal Auditor had been appointed to carry out his audit when he was invited to carry it out by the Savings Bank. That section requires relevant financial businesses to maintain an independent audit function for the purposes of testing the policies, controls and procedures put in place to comply with the Act.

730 The Act does not designate the Principal Auditor to perform this function for the Savings Bank. So, there is no statutory or legal power derived from this Act or from the Public Finance Control and Audit Act that a holder of the Office of Principal Auditor can rely on to say that he has a right to carry out an audit under this law. There is certainly no constitutional right to do so because the Constitution is explicit about what it is that the Principal Auditor can and cannot do.

740 Instead, Madam Speaker, Section 29(2) of the Procedures of the Crime Act and Schedule 2 allocate supervisory responsibility to supervisory authorities but does not list or include the Principal Auditor as one of them. The Supervisory Bodies Powers Regulations 2017 at Regulation 11.2.14 empower those authorities that are listed to commission audits, require reports and enforce compliance. That does not include the Principal Auditor.

745 In practise, the Savings Bank can therefore hire qualified auditors to fulfil this obligation which it did by hiring and continue to hire PwC. By contrast, and as I have now already explained on a number of occasions Madam Speaker, the Principal Auditor's Remit derives where it does not derive from a statute from Section 74 of the Gibraltar Constitution. Sections 74(1) to (3) of the Constitution provide, as we have now looked at on a number of occasions and I am sorry to say we will be looking at on a number of more occasions, that the Principal Auditor must audit and report the public accounts of Gibraltar and all courts of law and all authorities and offices of the Government. Further, he shall submit and lay his reports before Parliament and shall not be subject to the direction or control of any other person or authority in doing so. Madam Speaker, 750 the Public Finance Control and Audit Act in Sections 60 to 62 extend the Principal Auditor's powers to audit certain corporate and statutory bodies where public funds are involved thereby allowing him to certify accounts and report on them but only where the Act or other law expressly applies. Nothing in that Act, the Public Finance Control and Audit Act, or in the Constitution at Section 74 creates a freestanding power to conduct compliance audits under the Proceeds of Crime Act which operates as a separate statutory regime.

755 Nothing there mentions the Savings Bank in that respect. Indeed, Madam Speaker, this self-same distinction was acknowledged by the former Principal Auditor himself in his February 2022 letter where he plainly conceded, quite rightly as well, that he would need to be invited under POCA Section 26(1) to do such an audit. In other words, no law, that is to say no Act of Parliament, 760 either the Process of Crime Law nor the Public Finance Control and Audit Act, and no section of the Constitution empowered the Principal Auditor to unilaterally carry out an anti-money laundering compliance review of the bank on his own motion and at his unilaterally decided insistence.

765 As a result, and quite clearly, Madam Speaker, if a Government Auditor lacks jurisdiction over a certain audit and the Government declines his request to carry it out, it cannot be correct by any definition to describe such a refusal as unconstitutional interference. let us be clear, Madam

Speaker. The Constitution does not furnish the former Principal Auditor carte blanche over any and all oversight matters that he may choose to undertake.

770 Absolutely not. The Constitution guarantees his protection against interference when he is discharging his legitimate duties in respect of specific powers. The powers he himself said he did not have under POCA and the compliance audit provisions of the Savings Bank.

The former Principal Auditor is not empowered to conduct a POCA compliance audit. Indeed, that sentence, Madam Speaker, should read that the Principal Auditor past, present, or future under the existing law is not empowered to conduct a POCA compliance audit so that he does not
775 enjoy the protection of the Constitution when he purports to carry such an audit out.

Nevertheless, Madam Speaker, the Government was not ignoring this issue and appointed a third-party firm to make sure it was addressing the issues properly and that is why it brought a firm with the appropriate experience as is PwC, one of the Big Four, and a firm that performs these audits for commercial banks not only once but three times.

780 So, we have called them in, Madam Speaker, not once at the same time as the former Principal Auditor was carrying out his initial audit by invitation, but three times since then. Like in the United Kingdom, Madam Speaker, Gibraltar applies similar public law principles, not least that the principle that a public authority must act within the powers conferred by law. Public authorities, like a Principal Auditor, cannot abrogate to themselves a function merely because they deem such
785 a function is desirable.

Madam Speaker, if wishing only made it so, life would be so much easier, but it is not quite like that. And as I have done on each and every occasion, Madam Speaker, I am not going to ask the community or Members of the House to take my arguments at face value. Again, the Government has arrived at this considered view in light of the applicable case law.

790 In the *Attorney General v Fulham Corporation*, in the Chancery Court, it was held that a council empowered to provide public wash houses could not go on to operate a commercial laundry. Even though the latter might serve the same general-purpose function, it was a qualitatively different function not authorised by Parliament. The Court held as follows, and the Judge said,

795 It appears to me to be a completely different enterprise. It is clear to me that what the Council is doing is not only the carrying on of a business of a kind, but something which is...

and this is the real point,

800 ...which is not ancillary or consequential upon that which it is entitled to do under these Acts of Parliament.

So too here, Madam Speaker. A POCA compliance audit is not ancillary to or consequential to the audit of public accounts. But rather, a separate statutory function reserved under POCA to the appropriate supervisory authority.

805 More recently, Madam Speaker, in the *Crown Public Law Project v the Lord Chancellor in 2016*, the Court of Appeal considered the matter in which the UK Supreme Court then went on to hold that even where a Minister's power is expressed in wide general terms, the exercise of that power can still be ultra-virus if it introduces a criterion or function fundamentally different from that which Parliament contemplated.

810 In this case, Madam Speaker, the Lord Chancellor tried to use a power to vary or omit services under the Legal Aid, Sentencing and Punishment of Offenders Act to impose a residence test for legal aid. The Court of Appeal held that this was ultra-virus because Parliament had only authorised regulation of services by type and importance and not the exclusion of people based on personal status. Accordingly, Madam Speaker, it is the considered view of the Government in
815 light of legal advice that it has received that the former Principal Auditor's attempt to re-characterise after his letter of February 22 said the opposite.

A POCA compliance audit as falling within his general audit of public account powers under the Public Finance (Control and Audit) Act 1977 is, was and will be, unless the law is changed, clearly

820 ultra-virus. That is to say, it was outside his powers, however drawn or defined. And his constitutional and statutory remit as defined by Section 74 of the Constitution and Sections 56 and 57 of the Public Finance (Control and Audit Act) is to audit public accounts.

825 That is his role, Madam Speaker, a hugely valuable and important role, but clearly defined and circumscribed in law. The POCA law does not draw him in and does not give him any new statutory standard. Indeed, anti-money laundering compliance oversight of relevant financial businesses, including the Savings Bank, is expressly vested in supervisory authorities, as I have told the House, under the POCA, the Proceeds of Crime Act 2015, Section 29 and Schedule 2, and operationalised through the 2017 regulations which I referred to earlier.

830 Accordingly, Madam Speaker, my refusal at the suit of relevant senior officials to permit a process of crime compliance audit did not contravene Section 74(3) of the Constitution because the Principal Auditor was not exercising a lawful function within his remit. The Government's leading counsel, Madam Speaker, is also quite clear in his qualitative assessment opining that the Government's points are soundly made. It is the view of this independent UK leading council on audit legal principles that the public accusation against me was made without legal basis and risked reputational damage and defamation, especially where the Principal Auditor's own written position set out in his letter of 9 February 2022 was that he needed to be invited to carry out an audit under Section 26 of the Proceeds of Crime Act.

840 It bears repeating, Madam Speaker, that the former Principal Auditor in that letter accepted that he did not have the authority to do this work under his then existing powers. Nothing had changed since then. And faced with this position, the former Principal Auditor sought consent instead to conduct an AML audit under his general powers set out in the Gibraltar Constitution and the Public Finance (Control and Audit) Act.

845 Those powers did not avail him of any empowerment to purport to act as he set out. Indeed, Madam Speaker, what I did was not unconstitutional. But what the former Principal Auditor was purporting to do, we are strongly advised, was outside of his constitutional powers. That is to say, Madam Speaker, he was the one who was seeking to act unconstitutionally.

850 Nonetheless, the specific requirements of the scope of the audit work that he proposed to carry out set out in his letter dated 28 March 2025 are, in fact, identical to those of the Section 26(1) Proceeds of Crime Act audit that he carried out as applicable to business, operation and internal systems. In other words, the former Principal Auditor did not even try to hide the fact that he was trying to circumvent the very powers he knew he did not have, further confirming what he had already stated in his letter of February 22.

855 It was on this basis that access was denied, which had little to do with limiting the Principal Auditor's rights under the Constitution, the Public Finance (Control and Audit) Act, but rather, not inviting him to carry out the Proceeds of Crime Act audit, as this work had been covered off several times by an independent international firm. Again, because that would have been simply unnecessary duplication of work. And yet, despite all that, the report nonetheless raises in this House the spectre of a Government blocking a constitutionally empowered public officer from carrying out an anti-money laundering audit.

860 As I have said, Madam Speaker, this does raise concerns about the effect of this allegation on future assessments of Gibraltar by international bodies for international compliance purposes. that is why I am setting this out clearly, Madam Speaker. We cannot sweep under the carpet that this is out there.

865 We have to now address it face on. Madam Speaker, we have all lived the consequences of grey listing. Harder access to banking, higher compliance costs for our economic operators, more cautious investment into Gibraltar.

Perhaps the most real-world effect for the normal citizen was that Revolut was not able to open new accounts for Gibraltar residents whilst we were blacklisted. let us not forget where we were at the time of grey listing. let us wind back the clock a little.

870 We were in a very delicate position with MoneyVal and the FATF fighting to have Gibraltar removed from the grey list which we had been unfairly put on account of one or two technical

points which were used to grey list us. Madam Speaker, hon. Members opposite used to think that this was so important that they were going to demand the head of the Minister for Financial Services if he did not deliver that we should be removed from those lists. A large factor that makes this community succeed, Madam Speaker, it is its vibrant economy.

875 That is how we fund our public services that we spend so much time debating. We should be spending more or less on whether we are giving enough in the Health Service, enough in Education. We get that because the economy is successful, and it produces the public finance revenue which enables us to fund those public services.

880 But those businesses rely on not being on the grey list or the blacklist. I do not think that people will readily understand Madam Speaker the implications but let me frame them for them in terms that are easier to comprehend. I repeat this because it bears repeating what the implications of being on the grey or blacklist are.

885 Banks would have difficulty with their corresponding bank relationships meaning banks considering their position in Gibraltar with the possible implications for availability of mortgages or simple banking functions. We face this when we were on the grey list if we were not to be removed. Banks like Revolut withdrawing and not opening new accounts for customers.

Financial services businesses having difficulty with their international connections having to explain the situation in Gibraltar. Borrowing in international markets becoming more expensive because of perceived risks with Gibraltar. Businesses here that operate at large scale internationally because it is viewed or we are viewed as a well-regulated centre needing to consider their presence.

890 For example, Madam Speaker hon. Members may not know indeed the whole community may not be aware, but the Minister of Financial Services has shared with me and with members of the Cabinet on Monday that roughly 35% of all dollars in actual circulation are distributed by a business in Gibraltar operating under licence from the United States Federal Reserve. 35% of all dollars in actual circulation. Those types of businesses which are very important to Gibraltar create jobs in Gibraltar leave revenue public finance revenue in Gibraltar those types of businesses might have difficulties if we go back on a grey or black list.

895 We should not be risking that in any way Madam Speaker. it is not just our future it is our children's future that is at risk. Having been on those lists the experience imposes a heightened duty of care on every responsible office holder most of all officers of this Parliament to ensure that findings read in London, Brussels, Madrid and beyond are fair proportionate and evidence based.

900 And in the end what was to be gained by this noxious, unsustainable, nonsensical allegation contained in the report that I or the Government had acted unconstitutionally to block a POCA or compliance audit what was to be gained? A headline? A happy bunch of opponents to the Government?

905 All for what Madam Speaker? In particular given that the allegation can easily be dismantled using the accuser's own written documentary trail of 36 months earlier where independent professional assurance from PwC finds compliance and the report itself records compliance and compliance which is effective and efficient it is simply in the Government's view unnecessary to proceed to cast any doubt and risk international consequences for all of us.

910 But that Madam Speaker is the sum total of what those erroneously based entirely unfair and improper sections of 2.7.49 to 2.7.65 of this report do in setting out the full attempted unjustifiable justification for what the author of the report attempted to unconstitutionally do. That is the reality.

915 Because Madam Speaker despite all the allegations the unnecessary incendiary and defamatory language against me and the reputational harm and risk to Gibraltar the report records compliance in anti-money laundering matters by the Savings Bank and in the end the allegation of unconstitutionality is rendered nonsensical when properly analysed.

920 In fact, these are the report's words not mine at 2.7.51

On the 13th of October 2021 I submitted to the directors of the Gibraltar Savings Bank my report on the audit carried out in accordance with section 26(1A) of the Proceeds of Crime Act 2015. The report highlighted that although the Gibraltar Savings Bank does meet most of its obligations under the Proceeds of Crime Act effectively and efficiently there were various areas where there was scope for improvement.

That is what you'd get in any audit that gave you a clean bill of health. That is what the audit says of every organisation that meets the highest standards in respect of anti-money laundering and compliance. that is what they say. Nothing is ever perfect.

Even if you are just shuffling two pieces of paper can you shuffle one? Instead of using a piece of paper can you use an electronic system? that is what those reports say.

Yet Madam Speaker the reputational harm caused by the words of the next paragraphs of the report are in my judgement Madam Speaker potentially without precedent in our modern history. It is that serious. That serious. No other solitary statement has inflicted comparable risk of damage on Gibraltar's good name and our ability to continue to avoid relisting in the future.

No other solitary statement by any Officer of this Parliament or by any Gibraltarian indeed I think for anybody outside of Gibraltar has inflicted comparable risk of damage on Gibraltar's good name and our ability to continue to avoid relisting in the future. It is that serious.

Worse still, the assertions in the report are for all the reasons I have already aired at great length and perhaps repeated Madam Speaker, but it bears repeating entirely factually, constitutionally and legally unfounded. Indeed, as the House will now have seen the best expose of that Madam Speaker is the former Principal Auditor's own letter of February 2022. Madam Speaker if this were not so serious it would be nothing short of laughable.

But it is serious Madam Speaker very serious because such insinuations however laughable, nonsensical and unsustainable however contradictory in the mouth of the very author of them damage Gibraltar's reputation. They unsettle relationships with counterparts and institutions. As a result, Madam Speaker unchecked, unchallenged, this nonsense risks real livelihoods. For what purpose Madam Speaker? In the end for what? That is what I ask myself.

To have a pop at me? To show a good old tassel between constitutional office holders having a go at each other? To assert independence?

I confess Madam Speaker that three months on from having read the report for the first time I will not pretend to have been able to understand. Be that as it may Madam Speaker for all of the reasons that I have explained and also as stated in the professional opinion of Mr. Fisher KC the former Principal Auditor's criticism in this section of the report should be rejected. For that reason, Madam Speaker, the amendment that I will propose to make of the motion as drafted will include a reference to this part of the report therefore being rejected by the House.

Finally, Madam Speaker, I think it is necessary for me to end my contribution for today on this issue. It is important that I should spend time now on the issues relating to treaty texts that are currently the subject of ongoing negotiations. I am happy to inform the House that after the conclusion of yesterday's proceedings I sent both the Hon. the Deputy Chief Minister and the Leader of the Opposition my verbatim speaking note although of course it has to be checked against delivery.

It is my intention to do so today again although I understand that the Leader of the Opposition is arriving in Gibraltar later today and happily the Deputy Chief Minister is back with us in Gibraltar after a very successful attendance at the Liberal Party conference in Bournemouth. I therefore now move Madam Speaker that the House should therefore adjourn now until tomorrow at 10 a.m.

Adjournment

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Madam Speaker: I now propose the question, which is that this House do adjourn to tomorrow morning at 10 a.m. I now put the question, which is that this House should adjourn to tomorrow morning at 10 a.m. Those in favour? (**Members:** Aye.) Those against? Passed.

This House will now adjourn to tomorrow morning at 10 a.m.

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The House adjourned at 11.43 a.m.