



**GOVERNMENT OF GIBRALTAR
PRESS OFFICE
No.6 Convent Place
Gibraltar
Tel: 20070071; Fax: 20074524**

PRESS RELEASE

No. 96/2008

Date. 23rd April 2008

Page 1 of 2

The Government has noted and given due consideration to the ruling of Mr Isaac Massias, Chairman of the Industrial Tribunal in the case brought by Ms Joanna Hernandez against the Social Services Agency.

The Government is neither a party to the proceedings nor Ms Hernandez's employer. Ms Hernandez was an employee of the Social Services Agency, which is a separate statutory agency. Employees of the Social Services Agency are not Civil Servants.

Having ruled that it was not possible for Ms Hernandez to be re-employed by the Social Services Agency, Mr Massias then recommended that Ms Hernandez be "found an alternative position in another Government department". This recommendation reflects the misconception that the Social Services Agency is itself a Government Department. Nor does the recommendation accommodate the fact that there are specific recruitment and entry procedures for the Civil Service. The Government is further advised that Mr Massias' ruling is also wrong in law because the Government is not an "associate employer" for the purposes of the Employment Act. It was therefore not properly open to the Tribunal to make that recommendation.

Accordingly, were Mr Massias' recommendation binding on the Government, the Government would appeal against that part of his ruling. However, Mr Massias' recommendation is not binding on the Government, and the Government will therefore not accept or act on that recommendation for the reasons stated above.

In these circumstances, the Government particularly regrets the inappropriate statement in Mr Massias's ruling that "the Tribunal is sure that the Respondent will do what is right and just in accordance with the high standards and behaviour that all citizens of Gibraltar expect from its Government". The Respondent is the Social Services Agency, not the Government. In any case, the Government rejects the clear implication that failure to accept the Chairman's legally flawed and impractical recommendation would represent a failure by the Government to do what is "right and just". Such an evaluation is outside the scope of Mr Massias' competence as Chairman of the Industrial Tribunal.

If Ms Hernandez wishes to obtain a job in the Civil Service in the future, she will have to apply for vacancies, like any other citizen, when jobs are advertised to the general public. The Civil Service recruitment process cannot properly be circumvented in the way that the Chairman of the Tribunal recommends.

Nor, in any case, is there in the Civil Service, a position for a disability residential home manager of the same "scale, conditions, rights and level of responsibility" as the one Ms Hernandez held in the Agency. Accordingly, quite apart from all the other reasons for its rejection by the Government, Mr Massias' recommendation is totally impractical.

The Government always seeks "to do what is right and just in accordance with the high standards" that it sets for itself and which should properly and reasonably be expected of it. Contrary to Mr Massias' insinuation to the contrary, the test of whether the high standards are met is not the acceptance or rejection by the Government of his recommendation.