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Ms Joanna Hernandez v Social Services Agency

The Government regrets the continued politicking by the GSLP in relation to this Industrial Tribunal case, which has itself been conducted by Mr Bossano in a highly political manner.

The statement by the Opposition that the Government is the employer of persons employed directly by the Gibraltar Development Corporation, the Gibraltar Health Authority, the Elderly Care Agency and the Social Services Agency is wholly untrue, and since the Opposition knows this, the Government concludes that their statement is a deliberate misrepresentation to further mislead public opinion for political gain. It is therefore the Opposition and not (as they allege) the Government that is being economical with the truth.

There are hundreds of workers in Government funded and controlled statutory bodies, and indeed in Government owned companies who, like Ms Hernandez, are not Government employees for any purpose, including all purposes connected to the Employment Act. So, for example, direct employees of such bodies cannot be transferred to Civil Service posts in the Government. All Government employees are civil servants (i.e. Crown officers). Employees of statutory bodies, such as the Social Services Agency are not.

The Government's decision not to accept the Tribunal's recommendation to employ Ms Hernandez in the Government in no way signals disrespect for the Tribunal. Because it is only a recommendation, the Government is specifically free not to accept it without it signalling any such disrespect. If the position were otherwise, the law would simply provide for the Tribunal to make a binding order to that effect, which the law specifically does not provide,

saying that the Tribunal can only make a recommendation on the question of re-employment. It is in the very nature of a recommendation that it can properly be either accepted or not accepted. This is in contrast to the question of financial compensation where the law stipulates that the Tribunal makes binding orders.

It is therefore ridiculous political opportunism to suggest that rejection of the Tribunal's recommendation is disrespect of the Tribunal. Indeed, it was because of institutional respect for the Tribunal that the Government thought it appropriate to make a public statement explaining why it felt it could not accept the Tribunal's non-binding recommendation.

For the reasons stated in the Government's initial statement it is neither possible nor appropriate for the Government to accept the Tribunal's recommendation to directly allocate a job to Ms Hernandez in a Government Department. The fact that the government, as would be true of any other litigant or citizen, does not agree with a Tribunal's or Court's ruling or thinks it to be erroneous, does not indicate disrespect for that Tribunal or Court.