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THE  
**DR GIRALDI HOME  
INQUIRY**



# **REPORT**

**VOLUME 4**



**THE DR GIRALDI HOME INQUIRY  
REPORT**

AN INQUIRY COMMISSIONED UNDER THE PROVISIONS OF THE  
COMMISSIONS OF INQUIRY ACT

**RT HON SIR JONATHAN PARKER**

VOLUME 4



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## **EXECUTIVE SUMMARY**

**NOTE:** This Executive Summary should not be regarded as a substitute for reading the Report. It is strongly recommended that those intending to read this summary should first read the Introduction to the Report and Chapter 1 of the Report, in order to familiarise themselves with the general background to this summary. The evidence and findings made by the Inquiry are set out in Chapters 1-15 of the Report. A summary of the findings made in relation to the 22 Issues investigated by the Inquiry is set out in Chapter 16.

### **1. The origin of the Inquiry**

In November 2004 the Social Services Agency (“SSA”), the forerunner of the Care Agency, appointed Joanna Hernandez to the post of Manager of the Dr Giraldi Home (“the Home”) under a one-year contract. The contract was not renewed, and in January 2006 Joanna Hernandez commenced proceedings against the SSA in the Gibraltar Industrial Tribunal claiming that she had been unfairly dismissed. The SSA initially defended the claim, and witness statements were duly filed on behalf of both parties. The witness statements filed on behalf of Joanna Hernandez contained a number of allegations of mismanagement, misconduct and malpractice (including abuse) at the Home: allegations which were denied by the SSA. The SSA took a preliminary point of law, based on the interpretation of the relevant legislation, to the effect that Joanna Hernandez was not entitled to bring a claim of unfair dismissal. The preliminary point failed before the Industrial Tribunal, the Supreme Court and the Court of Appeal for Gibraltar. Subsequently the SSA elected not to defend the claim, and at the substantive hearing of the claim the Industrial Tribunal duly found that Joanna Hernandez had been unfairly dismissed and awarded her compensation. In so doing, the Industrial Tribunal did not find it necessary to examine the evidence relating to the allegations contained in the witness statements filed on behalf of Joanna Hernandez. Thus her claim succeeded without those allegations having been the subject of any judicial investigation.

Over the ensuing years there were repeated calls for a public inquiry into those allegations, and into the responses of the relevant authorities and agencies to them. In October 2012 the Government of Gibraltar established this Inquiry, and appointed me as Chairman. The Inquiry’s Terms of Reference are set out in Annex 1 to the Report (to which reference should be made).

### **2. The scope of the Inquiry**

Paragraph 2 of the Terms of Reference gave me power to extend the scope of the Inquiry to include such other matters relating to the Home as I should consider appropriate. To assist me in deciding what (if any) other matters should be investigated, the Inquiry invited representations

on that subject from the public. However, that invitation elicited only one response, namely from Mr Maurice Valarino. At the first preliminary hearing Mr Valarino (acting in person) made a submission relating to the terms of one of the issues listed in the draft List of Issues: a submission which, on reconsideration, I accepted, and the List of Issues was amended accordingly. I am grateful to Mr Valarino for his submission, as I am for his attendance throughout the hearings of the Inquiry.

The Inquiry held two preliminary hearings in public, at which a number of individuals who were, or who might be, in some way implicated or concerned in the matters to be investigated by the Inquiry (including Joanna Hernandez) were represented by counsel. Also represented at those hearings were the Care Agency (as successor to the SSA), the Royal Gibraltar Police (“the RGP”), the Attorney-General and the Gibraltar Disability Society (“the GDS”).

At the preliminary hearings, submissions were invited as to the issues which should be investigated by the Inquiry and as to the period to be covered by that investigation. In the event a List of Issues was finalised (see Annex 2 to the Report), and it was decided that the period to be covered by the Inquiry’s investigation should extend from November 2002 (when the SSA took over responsibility for the running of the Home) to date, but with the proviso that the Inquiry should also investigate allegations made by Mandy Spencer (formerly Spencer-Ball), who was Manager of the Home from November 2000 to November 2002, relating to the operation of the Home during her time as manager.

Three important limitations on the scope of the Inquiry must be noted.

First, the Inquiry’s Terms of Reference do not extend to the making of recommendations. The remit of the Inquiry is limited to finding the relevant facts and reporting those findings to Government. It is for others to consider what (if any) recommendations should be made, in the light of my findings.

Second, it is not the function of the Inquiry, under its Terms of Reference, to inquire into decisions taken by Government or its agencies as to the allocation of public funds.

Third, the Inquiry is not in any sense a re-run of Joanna Hernandez’ claim of unfair dismissal. The Report makes no finding as to the reasonableness or otherwise of the SSA’ s decision not to renew her contract, or as to the merits or otherwise of her claim in law; nor does it seek in any way to second-guess the decision of the Industrial Tribunal. The only link between the proceedings in the Industrial Tribunal and the Inquiry lies in the allegations relating to the operation of the Home contained in the witness statements filed in those proceedings on behalf of Joanna Hernandez, and in the conduct of the relevant authorities and agencies in response to, or otherwise in relation to, such allegations.

### 3. The substantive hearing of the Inquiry

The substantive hearing of the Inquiry took place in public over seventeen days in October 2013, and a further two days (for closing submissions from counsel) in December 2013. A number of individuals who were implicated or concerned in the matters to be investigated by the Inquiry (including Joanna Hernandez) were represented by counsel at that hearing. In addition, the Care Agency, the RGP, the Attorney-General, and the GDS were separately represented by counsel. Counsel for the GDS was present throughout the substantive hearing in order to ensure that the interests of residents at the Home and users of its respite service were properly respected and protected. She played an active part in the hearing and made closing submissions on behalf of the residents.

In his closing written submissions, counsel for Joanna Hernandez submitted that the Inquiry was not human rights compliant in that (among other things) residents had been “shut out of the process” (a reference to the fact that only one resident had provided a witness statement to the Inquiry). In response, counsel for the Care Agency confirmed that the Care Agency had been closely involved (together with counsel to the Inquiry) in the process of assessing the capability of residents to give evidence to the Inquiry and their willingness to do so, and that the process had been conducted appropriately, with sensitivity and care. Counsel for the GDS agreed that it was not in the best interests of residents for them to give evidence to the Inquiry unless they were able and willing to do so.

In the course of the hearing, the Inquiry heard evidence from a total of 63 witnesses, including The Hon. Joe Bossano MP, The Hon. Sir Peter Caruana KCMG QC MP and the Attorney-General. Throughout the hearing, all participants (including counsel) did their best to preserve confidentiality as to the identity of service users (i.e. residents at the Home and users of its respite service) by referring to them by letter rather than by name: a practice which had been suggested by counsel for the GDS on the basis that to refer to residents by name would be likely to cause them distress. The same practice is adopted in the Report.

In addition to hearing oral evidence, the Inquiry had available to it a mass of documentary evidence. This evidence was also disclosed to counsel for the various parties appearing before the Inquiry, save only to the extent that disclosure of it would have run the risk of prejudicing the privacy of service users and/or medical confidentiality. Counsel for the various parties represented before the Inquiry had the opportunity to ask counsel to the Inquiry to put particular questions to witnesses, and/or to question witnesses themselves on matters relevant to the Inquiry’s investigation (subject always to my overall discretion, as Chairman, as to whether and to what extent to allow such questions to be put).

Makers of witness statements filed in the Industrial Tribunal proceedings on behalf of Joanna Hernandez which contained no criticisms of the operation of the Home, and/or the contents of which did not call for further elaboration or investigation, were not invited to attend the substantive hearing to give oral evidence as their attendance was considered unnecessary. Subject to that, all makers of such witness statements were invited by the Inquiry to elaborate on

their witness statements if they wished to do so, and to attend the substantive hearing to give oral evidence. Some of the invitees failed to respond to the invitation; others declined; and in three cases invitees informed the Inquiry that they wished their witness statements to be treated as withdrawn. The remainder accepted the Inquiry's invitation.

#### **4. The principal findings in the Report**

In reviewing the evidence, and in setting out my findings on that evidence, the Report adopts a broadly chronological approach. The same broad approach is adopted in this Executive Summary. This section of the Executive Summary is accordingly divided into sub-sections, as follows:

- a. The early days: November 2000 to November 2004.
- b. The Joanna Hernandez era: November 2004 to November 2005.
- c. Issues at the Home: late 2005/early 2006.
- d. The proceedings in the Industrial Tribunal: January 2006 to April 2008.
- e. Allegations of abuse made by residents in 2004.
- f. Incidents relating to Resident L's medication (2008/9).
- g. Resident L's allegations of abuse.
- h. The Home: 2006 to date
- i. Epilogue and Conclusions.

##### **a. The early days: November 2000 to November 2004**

###### ***(i) General findings***

The general picture which emerges from the evidence as a whole is of a dedicated staff doing their best in difficult circumstances to provide as high a standard of care as possible for service users.

Shortage of staff was a serious and chronic problem, which added to the pressure on management and staff (including support workers).

Greater training of staff would also have been beneficial.

In referring to staff shortages and to training of staff I bear well in mind that employing more staff (particularly more highly-trained staff), and/or providing more training for existing staff, would have involved greater expenditure of public funds; and that budgetary priorities may have militated against doing so. That, however, is a matter for Government, not for the Inquiry. What can be said is that it is clear on the evidence that the presence of a larger and better trained staff in the Home would have benefited service users and staff alike.

Members of staff did their best to keep the minds of service users usefully occupied so far as possible (given the numbers of staff available at any one time and the various duties – including household chores – which members of staff had, in practice, to perform), and to create as normal a family atmosphere as was possible in the circumstances.

Consumption of alcohol by service users was properly monitored by the staff, having regard to the health and welfare of those wishing to consume alcohol, and respecting their rights so far as possible and so far as consistent with the health, welfare and rights of other service users.

So far as the evidence goes, matters which called for disciplinary action were duly dealt with.

During this period no “care plans” (in the sense of formal and comprehensive care plans which included input from social workers) were in place for service users.

Record-keeping and control of paperwork was not as efficiently carried out as it should have been. Missing paperwork was a real and continuing problem. The frequent changes in management personnel contributed to this problem, not only because such changes involved a degree of disruption to the smooth running of the Home but also because handovers between one Manager and the next were carried out in a relatively perfunctory manner, to the extent that they were carried out at all.

There were also continuing problems throughout this period in relation to the management of petty cash.

Lack of control of medication was also a continuing problem during this period. On one occasion, a resident was given a repeat dose by a carer coming on shift who did not know (and had not checked) whether the dose had already been given. On other occasions, a resident was either under- or over-medicated. These incidents demonstrate that procedures in relation to the control of medication during this period could and should have been improved. Improvements were made during this period, but problems continued into 2005.

The physical facilities at Bishop Healy (which was used by the Home as a temporary measure following flooding at the premises at Smith Dorrien Avenue) were inadequate. Particular examples of poor facilities were lack of handrails on the stairs, lack of a bathroom hoist, inadequate fire safety arrangements, and the occasional presence of rats in the kitchen.

Some witnesses criticised the physical facilities in Flat 3 at Smith Dorrien Avenue (the respite flat). While no doubt facilities of a higher standard could have been provided had funds been available for that purpose, the facilities in Flat 3 were adequate.

An allegation that the Home was “in chaos” is rejected. Throughout the period there were experienced carers working in the Home, and I am satisfied that the staff did the best they could, in difficult circumstances, to provide the best possible care for service users.

*(ii) Specific findings*

I am satisfied that in discharging her duties as Deputy Manager Sharon Berini acted professionally throughout. If and to the extent that members of staff may have taken umbrage in the face of the exercise of her authority as Deputy Manager, that is a reflection on them, not on her.

I am satisfied that Sharon Berini dealt with all members of staff fairly. Allegations that she bullied members of staff are rejected.

A number of relatives of residents gave evidence as to their relationship with members of staff (in particular, with Sharon Berini and Marie Gomez). There are liable to be tensions in any relationship between relative and carer. Hence it is understandable that Sharon Berini's attempts to organise the staff rotas for the respite service as appropriately and effectively as possible should have led some relatives to mistrust her. However, allegations that she lied to relatives about who was available to man the respite service are rejected. She was doing her best to ensure the best possible care for respite users.

As to the relationship between relatives and Marie Gomez, I find that Marie Gomez did her best to accommodate the wishes of relatives where possible.

An incident when a carer slapped a resident across the face was an act of abuse for which the carer was subsequently dismissed. However, I have seen no evidence of the existence of a culture amongst the staff whereby incidents of that nature would have been tolerated.

An allegation that members of staff forced the head of a young resident into a freezer is rejected: such an incident never occurred.

The same applies to an allegation that a carer mimicked a sexual act with a male resident. I have no hesitation in accepting the denial of the carer concerned that she ever conducted herself in that manner. The allegation is untrue.

There is no evidence that members of staff stole food provided for residents. On the contrary, members of staff used to bring their own food into the Home for consumption not only by them but also by residents.

An allegation that two named carers had to dispose of cocaine in the possession of another carer down the toilet in the Home is also rejected. There was no credible evidence that this ever happened.

As to the various allegations made by Mandy Spencer (all of which relate to the period of her managership, from November 2000 to November 2002), my principal findings are as follows:

- Mandy Spencer tried her best to improve standards of care in the Home, but found it difficult to exert her authority effectively due to her lack of leadership skills.

- To persuade carers more experienced than her to adopt different practices or to implement new policies required a strength of character and purpose which she did not possess.
- Her allegations that she was bullied or manipulated by members of staff are rejected.
- The behaviour towards her of those members of staff whom she specifically criticises was never other than professional.
- There is no credible evidence to support her allegation that members of staff were generally unwilling to report incidents for fear of repercussions.
- Her allegation that an incident occurred on a trip to Lourdes in 2001 involving sexual misconduct between carers is rejected. The alleged incident never occurred.
- Her allegation that two named carers were complicit in misappropriating her passport is also rejected.
- Her evidence as to an incident on 27 January 2002 when a named carer attended at the Home the worse for drink was significantly exaggerated. Nonetheless, the behaviour of the carer on that occasion was wholly inexcusable and he was rightly given a final written warning in respect of it.
- Her evidence of an incident when a child resident was made to stand with books on his hands as a punishment is accepted. This was an act of abuse by an inexperienced carer. The carer in question was rightly reprimanded and duly apologised.
- A number of further allegations of relatively minor shortcomings in the care provided to service users are also rejected.

#### **b. The Joanna Hernandez era: November 2004 to November 2005**

The task facing Joanna Hernandez on her appointment as Manager was undoubtedly a difficult and challenging one. She had no previous experience of managing a care home, and she lacked the requisite managerial and technical skills.

Joanna Hernandez worked hard to try to improve conditions in the Home, but she was seriously lacking in “effective people skills”. This was a significant factor when it came to introducing new policies and practices in the Home

Joanna Hernandez’ allegation that she was completely unsupported by management is rejected. Support was offered to her, by management and staff, to the extent that she wished to avail herself of it. The allegation that early in Joanna Hernandez’ managership Isabella Tosso (the then CEO of the SSA) gave instructions that Joanna Hernandez was not to be supported by social workers is also rejected. It would have made no sense for such an instruction to have been issued at that time, when all concerned in her appointment were naturally keen that she should have all the support she needed in meeting the challenges which faced her: challenges of a kind which she had not previously experienced. On the other hand, in the aftermath of her June 2005 “investigation” (as to which, see below) it would not have been at all surprising had

Isabella Tosso taken the view that it was preferable that any future concerns of social workers should be routed through their own line manager, rather than through Joanna Hernandez.

It appears from an attendance note of a meeting attended by (among others) Isabella Tosso and Yvette Del Agua (the then Minister for Social Affairs) in December 2006 that at that stage the SSA was of the view that it had not supported Joanna Hernandez sufficiently. Nonetheless, I am satisfied that Marie Gomez (then Team Leader) and the staff at the Home – in particular, Sharon Berini (then Deputy Manager) and Sean Matto (a senior carer) – tried their best to support Joanna Hernandez, at least until the time when relations between members of staff were poisoned by her June 2005 “investigation”.

Joanna Hernandez’ allegation that staff at the Home did not give priority to caring for residents, and the associated implication that service users were treated as “silly little children or adult imbeciles”, is a travesty of the truth and an insult to the efforts of dedicated members of staff. Her allegations that the Home was in “virtual chaos”, and that the entire culture at the Home was one of “institutionalised, historic malpractices”, are also rejected. Experienced carers such as Sharon Berini and Sean Matto would not have allowed themselves to be associated with such a situation. Nor would they have allowed any sexual, physical, verbal or emotional abuse of service users to take place in the Home.

Joanna Hernandez’ allegation that she felt that she “was being kept in the dark” is rejected. By no later than the end of December 2004 she was fully informed as to the policies and procedures to be followed at the Home. Had she genuinely felt that she was being kept in the dark in relation to any aspect of the running of the Home, she would have said so at the time and the contemporary documentation would have recorded it.

Shortage of staff continued to be a serious problem during this period, leading on occasion to the respite service being temporarily suspended. Joanna Hernandez complained strongly about this problem to Isabella Tosso, recommending that additional staff (including support staff) be employed, but there is no evidence to suggest that her recommendation was accepted by the SSA. Joanna Hernandez’ efforts in this respect were supported by Sean Matto in a contemporary report in which he described the effects of the shortage of staff on service users as “at best unfair, and at worst abusive”.

The problem of staff shortages continued for the entirety of Joanna Hernandez’ time as Manager. It had a direct impact on the standard of care which members of staff were able to provide for service users. On the other hand, it was not the case that (as alleged) there were not enough members of staff to meet the minimum needs of service users. Through the commitment and hard work of the staff, the minimum needs of service users were met and the essential work was done. However, with greater numbers of staff a higher standard of care could have been provided.



Shortage of staff also resulted in members of staff becoming seriously overstretched – a problem which was compounded by high levels of sick leave, with many members of staff suffering from stress.

The widespread use of support workers made the task of setting staff rotas even more difficult.

As to Joanna Hernandez' evidence of an occasion when she witnessed members of staff eating food which was intended to residents, whilst I cannot rule out the possibility that this may have occurred occasionally I am satisfied that there was no general practice or culture to that effect.

Throughout this period there were continuing problems in relation to the control of medication, and in relation to lack of security.

Management of petty cash continued to be a serious problem throughout the period of Joanna Hernandez' managership, despite her attempts to resolve it. However, there was no evidence of theft or misappropriation of petty cash by any member of staff. Rather, the problem lay in the need to keep a full account of petty cash expended.

I accept Joanna Hernandez' evidence that she attempted to improve the physical facilities at the Home, and that she introduced a number of improvements to the running of the Home (including arranging for regular group meetings with relatives of service users).

I reject Joanna Hernandez' allegation that Sharon Berini and other members of staff were undermining the management of the Home, bullying their teams and dragging down the standard of care in the Home. The evidence is to the contrary. Sharon Berini and the senior members of staff were doing their best to maintain standards of care in the Home.

Although initially Joanna Hernandez and Sharon Berini enjoyed good working relations, that relationship broke down following a meeting in April or May 2005 at which certain members of staff (including Sharon Berini, Sean Matto and Nigel Bassadone (another carer)), expressed opposition to Joanna Hernandez' decisions to change the rotas and to reorganise the various teams of carers. Joanna Hernandez perceived this opposition to her decisions as obstructive and as undermining her authority. This was a misperception on Joanna Hernandez' part. The conduct of those present at the meeting was entirely professional.

The fact that Joanna Hernandez subsequently excluded Sharon Berini from a coffee morning with relatives is testimony to the degree of mistrust which Joanna Hernandez felt towards Sharon Berini by that time: a mistrust for which there was no rational justification.

An allegation by Joanna Hernandez that Sharon Berini stole, or otherwise misappropriated, an incident report is rejected.

On 15 May 2005 Nigel Bassadone arrived unannounced at Bishop Healy in the small hours looking for his bunch of keys, which he then found in a car at the Home. He did not (as alleged) ask if he could stay the rest of the night at the Home, nor did he do so<sup>1525</sup>.

Joanna Hernandez gave evidence about an incident when she was telephoned by the head teacher at St Martin's School and asked to collect a young resident due to his challenging behaviour. The resident in question suffers from autism and associated disorders. The carer responsible for that resident was Nigel Bassadone, and he was present at the school with the resident. Joanna Hernandez acted with the best of motives in collecting the resident in her car and taking him back to Bishop Healy, but her criticisms of Nigel Bassadone's care of the resident on that occasion are rejected. The incident does, however, provide a vivid illustration of the challenges which face those whose job it is to care for individuals with disabilities such as those from which the resident in question suffers.

Evidence to the effect that that same resident was abused by a named carer by hitting him on his face and/or throwing water over him is rejected. The incident described in that evidence never occurred. For the carer in question to have acted in that manner would have been totally out of character. It follows that Joanna Hernandez' decision not to pursue the matter further was the right decision in the circumstances.

On one occasion, another resident was locked in his bedroom in the dark. That was inexcusable conduct by the carer responsible, but the evidence is that such conduct was "stopped".

Joanna Hernandez gave evidence that shortly before she took up her appointment she was shown a room adjacent to the manager's office at Smith Dorrien Avenue which, she was told, had been in use for years as a "punishment room"; and that one of the first things she did was to have the room "pulled down". The impression given by that evidence is that as at November 2004 a "punishment room" was not only physically in existence but was currently being used as such. That is a false impression. I find, on the basis of the totality of the evidence presented to the Inquiry on this topic (evidence which is exhaustively reviewed in the Report) that at some time in or about 1999 or 2000 a room was designated as a room to be used for "time out" (i.e. as a room where residents presenting challenging behaviour could be taken to calm down), but that it has not been used for that purpose at any time during the period which the Inquiry is concerned to investigate (i.e. since November 2002). Throughout that period, the room in question has been used as a store-room. Nor was there a "punishment room" (in the sense in which Joanna Hernandez has used that expression) in any of the other premises in which the Home operated.

In the course of her evidence, Joanna Hernandez made serious allegations in relation to the care provided to two male residents, Resident Z and Resident AE.

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<sup>1525</sup> I accepted that he was not given a verbal or written warning in relation to this incident.

Resident Z was about seven years old in 2005. He suffers from a severe form of epilepsy, and presented with challenging behaviour which included frequent swearing, scratching and violent outbursts which would develop suddenly and unpredictably.

I find Joanna Hernandez' evidence as to the condition of Resident Z's flat at Merlot House and as to the care provided to him to be exaggerated to the point of being seriously misleading. Her evidence in these respects was corroborated in part by Resident Z's mother and grandmother. However, whilst acquitting them entirely of any attempt to mislead the Inquiry, I find that their respective recollections of issues which have arisen from time to time between them and the staff at the Home as to the care provided to Resident Z have been significantly affected by the tensions which are bound to exist between members of staff and relatives, to the point where I am unable to rely on their evidence save where it is corroborated by other witnesses whose evidence I accept.

Resident Z's carer at the time gave evidence to the Inquiry, and I accept his evidence. He admitted that on one occasion when returning with another young resident from a trip to Morocco he was found to be in possession of a small amount of cannabis, for which he received a police caution. He rightly acknowledged in his evidence to the Inquiry that this was the lowest point of his career, and an inexcusable lapse on his part from the standard of conduct expected of any member of the public, let alone of a carer acting in the course of his employment. That said, I found him to be an intelligent and frank witness, with a full appreciation of the needs of residents and of the best way to meet those needs consistently with the level of resources available at the time. His approach towards Resident Z was thoughtful, intelligent and caring.

I also accept the evidence of the social worker with responsibility for Resident Z. She told the Inquiry that while Resident Z's flat was not particularly child focused or friendly, its physical facilities were adequate and the level of hygiene at the flat was of a satisfactory standard. As to the care provided to Resident Z, she said that it was of a satisfactory standard. She did not observe any incidents of abuse or cruelty towards him, or any instances of misconduct by members of staff. Had she done so, she would have reported it.

Resident AE was about twenty years old in 2005. He had a weight problem which required careful monitoring. He also presented with challenging behaviour, which included very severe aggressive outbursts. He was sometimes violent with members of staff; biting them, spitting at them, and on occasion smearing them with faeces.

In the course of her evidence, Joanna Hernandez said that she was horrified at the conditions in which Resident AE was living. She described the flat in which he was living as being in an appalling state. She went on to express strong criticisms of the standard of care provided by the carer with responsibility for Resident AE.

I accept the evidence of Resident AE's carer, and I reject as untrue Joanna Hernandez' evidence in relation to Resident AE wherever it conflicts with the carer's evidence. I find that the staff (and in particular the carer in question) were doing their very best to cope with Resident AE's

challenging behaviour, and to provide him with as full and independent a life as possible, consistently with his disability (including his weight problem) and given the resources available.

Over the weekend of 11/12 June 2005 Joanna Hernandez (and others) contacted a number of members of staff and invited them to attend at the Home to make statements expressing their concerns about the operation of the Home, and, in particular, any complaints they might have in relation to Sharon Berini and/or Nigel Bassadone. This was Joanna Hernandez' June 2005 "investigation", referred to above.

Some of those contacted agreed to do so; others declined. Those who attended the Home to make statements were told that the meeting was highly confidential; some were asked to use the back entrance to the building so that they would not be seen. They were asked whether they had seen Sharon Berini or Nigel Bassadone doing anything which they did not like, and if they had ever felt bullied, abused or intimidated by them. This led to the making of a number of statements (referred to in the Report as the June 2005 statements) critical of Sharon Berini and Nigel Bassadone. All this was done deliberately behind their backs. It was a covert exercise, orchestrated by Joanna Hernandez and designed to elicit enough material critical of Sharon Berini and Nigel Bassadone to support a campaign to have them sacked. As such, it was nothing short of a disgrace. I agree with Sharon Berini's description of it as a "witch hunt".

On 12 June 2005, in furtherance of her campaign, Joanna Hernandez wrote to Isabella Tosso and Marie Gomez referring to the statements which she had obtained and inviting them to interdict (suspend) Sharon Berini and Nigel Bassadone immediately for "gross misconduct". The letter was delivered on 17 June 2005, together with a further letter and the statements. (Sharon Berini did not see the statements until more than a year later, by which time she had left the SSA and joined the RGP).

Isabella Tosso took the view that she should not comment on the contents of the statements as the process by which they had been obtained was (among other things) inappropriate, covert, and non-compliant with the prescribed disciplinary process; and that Joanna Hernandez' disregard of that disciplinary process raised serious doubts as to her competence to investigate concerns in a fair, transparent and procedurally correct manner. I agree with that view.

I reject Joanna Hernandez' contention that the process which she had undertaken over the weekend of 11/12 June 2005 had been previously authorised by Isabella Tosso at a meeting between them on 8 June 2005. The minutes of that meeting refer to "disciplinary procedures", yet the process which Joanna Hernandez undertook over that weekend cannot be so described, for the reasons given by Isabella Tosso. Moreover, I am satisfied that someone of Joanna Hernandez' intelligence must have fully appreciated that. I accordingly conclude that her attempt to rely on what Isabella Tosso said to her at their earlier meeting as authorising what she did over that weekend is no more than a spurious attempt on Joanna Hernandez' part to justify, *ex post facto*, a process which she well knew at the time was both unjustifiable and unfair, and which would inevitably exacerbate an already delicate situation in the Home.

The makers of the June 2005 statements clearly felt a strong personal antipathy towards Sharon Berini, and they found it difficult, if not impossible, to accept her style of management. Equally, other members of staff took a contrary view: hence a number of the June 2005 statements make allegations of favouritism on the part of Sharon Berini. However, to the extent that an “us and them” culture existed among members of staff, this was largely attributable to Joanna Hernandez’ inability to deal objectively with the expression by members of staff of views which happened to be contrary to, or at variance with, her own. The introduction of new policies and procedures by a newly appointed and inexperienced Manager – in this case Joanna Hernandez – required a sensitive and conciliatory approach on her part. Instead, her decision to embark on her June 2005 “investigation”, far from being sensitive or conciliatory, was calculated to aggravate the situation by promoting just the kind of “us and them” culture of which the makers of such statements complained.

As a result of Joanna Hernandez’ June 2005 “investigation”, the atmosphere among the staff in the Home was fraught, to say the least. One could hardly expect it to be otherwise. I accept Joanna Hernandez’ evidence that she felt that her authority had suffered as a result of that “investigation”, but I reject her evidence that she was bullied, “cohered”, intimidated or disempowered by any member of staff or management. I also reject her evidence that she was given “no support whatsoever”.

Sharon Berini did not bully members of staff at the Home. On the other hand, Joanna Hernandez’ bullying manner often resulted in members of staff not turning up for work or taking time off work due to stress.

I reject Joanna Hernandez’ allegation that Yvette Del Agua pressured Isabella Tosso and/or Marie Gomez into threatening Joanna Hernandez with losing her job and her career. I find that allegation to be wholly without foundation.

In a letter to Joanna Hernandez dated 11 August 2005 Isabella Tosso described the June 2005 “investigation” as “blatant victimisation and unfair treatment of a member of staff in contravention [of] the [SSA’s] Policies and Procedures”. However, she went on to say that she was prepared to forego instigating disciplinary proceedings. In the event, no disciplinary proceedings were taken against Joanna Hernandez in respect of her June 2005 “investigation”.

Isabella Tosso’s handling of the matter of Joanna Hernandez’ June 2005 “investigation” left much to be desired. She ought to have taken a much stronger line in support of Sharon Berini, who had indeed been “victimised” in a completely unacceptable manner, and who was understandably nursing a strong sense of grievance at the way she had been treated. I find it hard to envisage any process more calculated to damage staff relations and staff morale, and hence (inevitably) the efficient and harmonious operation of the Home in the best interests of residents and respite users, than the vindictive and clandestine process which Joanna Hernandez saw fit to conduct against Sharon Berini. Joanna Hernandez’ criticisms of Sharon Berini are clearly coloured by an irrational distrust of Sharon Berini’s motives, coupled with a desire to see the back of her.

In October 2005 Joanna Hernandez prepared a lengthy report in which she painted a bleak picture of the Home during the period since she became Manager. I accept the criticisms contained in that report only to the extent that they reflect a continuation of the shortcomings identified earlier as existing when she took up her appointment as Manager, or to the extent that they are corroborated by the evidence of Debbie Guinn (a senior social worker) referred to below.

On 24 October 2005 Joanna Hernandez was informed by Isabella Tosso that her contract would not be renewed. Her employment by the SSA accordingly terminated on 22 November 2005, and she ceased being Manager of the Home on that date. In due course she was replaced as Manager by Iain McNeil.

### **c. Issues at the Home: late 2005/early 2006**

In late 2005 Isabella Tosso commissioned a review of working practices in the Home, to be conducted by two social workers under the supervision of Debbie Guinn.

In an email to Marie Gomez dated 11 October 2005 Debbie Guinn (whose evidence I accept without qualification) identified a number of continuing shortcomings in the operation of the Home, including:

- staff shortages;
- high levels of sickness and annual leave;
- lack of formal care plans;
- little ongoing training for staff;
- lack of supervision of staff;
- lack of documentary records containing basic information concerning residents;
- “difficulties and discrepancies around the completion of some of the medication records, the administration of medication and recording of medical appointments and changes to medication programmes”; and
- the fact that the Manager and Deputy Manager were rarely able to leave their offices, resulting in a lack of monitoring of practice and procedures and an inconsistency of care within the different flats.

At the same time, Debbie Guinn identified some items of “good news”, including:

- the existence of structures which enabled the social work team to have direct contact with members of staff and service users;
- a good reaction from staff to the increased input from social workers;
- improvements in communication; and

- the fact that members of staff felt more part of a team and more valued.

The lengthy written reports by the two Social Workers working under Debbie Guinn, namely Jennifer Poole and Elizabeth Harrison, identified shortcomings broadly similar to those listed in Debbie Guinn's email. In her evidence to the Inquiry (which I accept), Jennifer Poole said that in 2005 the Home lacked a satisfactory regime with regard to the control of medication. She went on:

“Only one individual was required to sign the medication record sheets ... so sometimes someone would sign and then forget to give the medication. The medication cupboard was locked but the keys would go from person to person. Sometimes the keys would go missing and on occasion the cupboard was left open.”

In February or March 2006 Debbie Guinn wrote reports on each of the flats at the Home, in the nature of an overview of the reports provided by Jennifer Poole and Elizabeth Harrison. The general picture which Debbie Guinn paints in her reports (which are exhaustively reviewed in my Report) is of an operation still bedevilled by shortage of staff (aggravated by high levels of sick leave), with committed care workers struggling to deliver the best possible care to service users, some of whom presented with challenging (and in at least one case violent and/or abusive) behaviour and others of whom tended to treat the Home like a hotel. Added to that, the Manager and Deputy Manager had only limited time available to oversee the day-to-day operation of the Home, due to the amount of paperwork which they were required to undertake.

Isabella Tosso was aware of the problems in the Home, and was concerned to try to resolve them so far as possible. In April 2006 she instructed Iain McNeil (who had succeeded Joanna Hernandez as Manager) to draw up a Business Plan. In the event, the final version of the Business Plan (which was dated July 2006) was the joint work of Iain McNeil and Sharon Berini.

The Business Plan was a constructive and comprehensive blueprint for the running of the Home. It covered in exhaustive detail all aspects of the services provided by the Home, setting standards and identifying points for action. It would be all too easy to dismiss the Business Plan as no more than an extensive wish list. However, it was in my judgment a significant and constructive attempt to chart the course of the Home for the future.

In relation to medication, the Business Plan recommended (among other things):

- that a record be kept of current medication for each service user;
- that medication should be administered by a medical practitioner or a registered nurse;
- that nursing staff should abide by accepted standards for the administration of medication; and
- that staff should receive accredited medication training.

The Inquiry received written and oral evidence from Simy Herbert, an enrolled nurse, who began working at the Home as a supply worker in August 2005. She also made a witness statement in the Industrial Tribunal proceedings (her 2006 witness statement).

Both in her 2006 witness statement and in her evidence to the Inquiry, Simy Herbert was strongly critical of (among other things) the practices and procedures in the Home relating to the control and administration of medication. In giving her evidence, she exhibited deep feelings of bitterness and resentment stemming from an occasion when she was temporarily suspended for allegedly abusing a resident: a charge which she vehemently denies. Those feelings unwittingly coloured her evidence, distorting her recollection and prompting her to resort to exaggeration and the use of unjustifiably emotive language. In giving her evidence, she displayed a tendency to over-react to relatively minor incidents and to elevate them into examples of misconduct on the part of the other members of staff involved, leading her to make exaggerated accusations against the Home. I have no doubt that in so doing she was expressing her genuine feelings. Nonetheless, the existence of this tendency is an additional reason why I must treat her evidence with caution, save where it is corroborated by the evidence of other witnesses whose evidence I accept.

In consequence, I accept her evidence in relation to the administration of medication only to the extent that it is corroborated by the evidence of Debbie Guinn and Jennifer Poole (see above). That said, I have no doubt that she was justified in drawing the Inquiry's attention to issues regarding medication at the Home.

In her evidence to the Inquiry, Simy Herbert alleged that members of staff used to speak disrespectfully to residents. I do not doubt that that may have happened on occasion, and clearly it should not have happened. However, it is necessary to bear in mind the challenging nature of the work which the staff had to undertake, and the very considerable pressure under which they were working.

Simy Herbert made a number of other criticisms of the operation of the Home. I accept those criticisms only to the extent that they are corroborated by other witnesses whose evidence I accept. In particular, I reject her evidence that there were difficulties in obtaining follow-up medical treatment and/or dental care for residents; and that there was a need for greater input from a dietician. It may well be that on occasion there were practical difficulties in arranging follow-up medical treatment for residents, but there is no evidence that residents were not given proper access to medical advice and treatment. Nor have I seen any evidence from other witnesses that residents' dental care was neglected. As to their diet, I am satisfied that it was more than adequate. I have seen no evidence that any resident was under-nourished or subjected to an unhealthy dietary regime.

As to Simy Herbert's evidence of her dealings with Yvette Del Agua, I find Simy Herbert's recollection to be significantly at fault in that respect. I accept the evidence of Yvette Del Agua. I find that there was a chance meeting between them outside British Home Stores at which Simy Herbert complained about the suspension of her contract. She went on to allege



that the Home was “a time bomb waiting to explode” and that medication was not being properly administered. On returning to her office, Yvette Del Agua contacted Isabella Tosso and expressed her concerns about Simy Herbert’s allegations. She also arranged for Simy Herbert to attend a meeting with her at her office at Governor’s Parade. Isabella Tosso and Marie Gomez were also present at that meeting. Much of the meeting was taken up with Simy Herbert’s complaint about the suspension of her contract; so much so that this appeared to Yvette Del Agua to be Simy Herbert’s only concern. Yvette Del Agua asked her to give examples of her allegation that the Home was a time bomb waiting to explode, but she failed to do so. As Yvette Del Agua put it in evidence:

“Mrs Herbert did not provide me with a single shred of evidence, example or illustration to substantiate her allegation that [the Home] was “a time bomb waiting to explode”, even after I repeatedly prompted her to do so”.

#### **d. The proceedings in the Industrial Tribunal: January 2006 to April 2008**

##### *The procedural history*

The procedural history of Joanna Hernandez’ claim of unfair dismissal against the SSA is not the subject of contention. The proceedings were commenced by Joanna Hernandez in the Gibraltar Industrial Tribunal on **26 January 2006**. The SSA responded by advancing a preliminary point of law to the effect that Joanna Hernandez was not entitled to bring a claim of unfair dismissal as she had not been “continuously employed [by the SSA] for a period of not less than 52 weeks ending with the effective date of termination”, as required by the relevant legislation. On **26 April 2006** the Industrial Tribunal set the preliminary point down for hearing and directed exchange of witness statements in relation to the substantive claim.

On **9 June 2006** the SSA filed witness statements (including a witness statement by Isabella Tosso) in opposition to the claim. On **27 September 2006** Joanna Hernandez filed witness statements in support of her claim (the 2006 witness statements). On **12 December 2006** the Industrial Tribunal ruled against the SSA on the preliminary point, holding that Joanna Hernandez was entitled to bring a claim of unfair dismissal against the SSA. The SSA’s appeal against that ruling was dismissed by the Supreme Court (Schofield CJ) on **13 April 2007**. The SSA appealed against Schofield CJ’s decision to the Court of Appeal for Gibraltar. On **10 October 2007** the Court of Appeal dismissed the SSA’s appeal. Joanna Hernandez’ claim against the SSA accordingly continued.

The substantive hearing of the claim took place in the Industrial Tribunal on **7 April 2008**. At that hearing (at which the Hon. Joe Bossano appeared for Joanna Hernandez and Mark Isola QC appeared for the SSA), Mark Isola QC informed the Tribunal that the SSA would not be leading evidence in opposition to the claim. He informed the Industrial Tribunal that this was due (among other things) to the fact that the SSA had been unable to contact Isabella Tosso, and that she was consequently unavailable to give evidence as to the reasons why the SSA had decided to

dismiss Joanna Hernandez as Manager of the Home and as to the reasonableness of that decision. The Industrial Tribunal duly found that Joanna Hernandez had been unfairly dismissed. In so doing it did not examine any of the witness statements which had been filed. It went on to make a non-binding recommendation of re-engagement, and awarded Joanna Hernandez compensation.

### *The evidence of Joe Bossano*

On the first day of the substantive hearing of this Inquiry (30 September 2013), Joe Bossano provided a witness statement.

In his witness statement, he brought to the Inquiry's notice the fact that Joanna Hernandez' Union, the TGWU, had declined to fund her claim, notwithstanding that she had been advised by her lawyers that it stood a better than 50 per cent chance of success. In paragraph 12 of his witness statement he said this:

"12. I bring this fact to the notice of the Inquiry because I truly believe that from the outset attempts [have] been made to influence people to prevent the substance of the circumstances and reasons that led to [Joanna Hernandez]' dismissal being put in the public domain. There has been considerable pressure exerted on individuals. Whilst this is not necessarily evidence that the allegations that have been made are true, it raises the question as to who were the interested parties that did not want the case in the Industrial Tribunal to proceed, and thus avoid the reasons for the dismissal to be aired [publicly]. Clearly [Joanna Hernandez] was not the party who was trying to stop the case."

He went on to express concerns as to the procedural tactics adopted by the SSA in raising the preliminary point of law and in pursuing it as far as the Court of Appeal, suggesting that the SSA's reason for taking that course was (as he put it in paragraph 27 of his witness statement):

"... to suppress the information in [the witness statements filed on behalf of Joanna Hernandez] and prevent them being made public."

In paragraphs 25 and 26 of his witness statement he said this:

"25. In my years of dealing with employers, I have never known of any other case of an employer going to such lengths, and incurring such a level of expenditure, to prevent the hearing of a case. This is more so in a case where the employer was defending the claim on the grounds of inability by the employee to perform the work and claiming to have the evidence to prove this inability.

26. In my opinion, and based on my experience, an employer that does everything possible to prevent a hearing in such circumstances does so because he does not want the evidence in support of the claimant to be in the public domain."

He also described the SSA's assertion that it had not been able to contact Isabella Tosso as untrue, saying this (in paragraph 28 of his witness statement):

“28. .... Initially the [SSA] said time was needed to contact her in order to arrange for her to attend as their principal witness. At a later stage she was supposed to be on a cruise in New Zealand and then they allegedly lost track of her. The excuses were to my knowledge not true since during the period when they could not find her, Ms Tosso was in London and in contact with a colleague in the [SSA], Ms Marie Gomez, with whom she discussed the fact that the Tribunal case of Mrs Hernandez, had not been settled.”

In his oral evidence, Joe Bossano accepted that he was unable to provide any tangible facts to support the assertion in paragraph 12 of his witness statement that there had been “considerable pressure exerted on individuals”, but he attributed this to the fact that (as he put it) “the people who are pressured are the people who are scared of being intimidated”. Hence (he said), his assertion was no more than a belief on his part, albeit one which was based on his knowledge and experience of dealing with people in unfair dismissal cases and as a politician with forty-one years’ experience.

As to the proceedings themselves, he described the preliminary point taken (unsuccessfully) by the SSA as a thoroughly spurious point, notwithstanding that in a written Advice dated 23 December 2006 UK counsel had expressed the view that although on balance the SSA’s argument on the preliminary point was likely to fail, it was nevertheless a “respectable” argument. Joe Bossano maintained that the SSA’s decision to appeal on that point was “not a logical one”.

Joe Bossano readily acknowledged in his oral evidence that he was not accusing Mark Isola QC of having done anything wrong, and that Mark Isola QC was merely acting on instructions. However, he reiterated his suspicions as to the Government’s motives in giving Mark Isola QC those instructions.

As to the availability or otherwise of Isabella Tosso to give evidence to the Industrial Tribunal, he said that to his knowledge she was contactable “all the time”.

### *The issues raised by Joe Bossano’s suspicions*

The first issue, chronologically, is whether improper pressure was applied to certain individuals in relation to the TGWU’s decision not to fund Joanna Hernandez’ claim. No evidence has been presented to the Inquiry to support that suspicion. The cupboard is completely bare in that respect. I accordingly find that suspicion to be unfounded.

As to Joe Bossano’s suspicions in relation to the conduct of the SSA’s defence to Joanna Hernandez’ claim, the fundamental issues raised by those suspicions are:

- (1) whether there was a conspiracy by members of Government – in particular, Sir Peter (the then Chief Minister), Yvette Del Agua, and Jaime Netto (who succeeded Yvette Del Agua as Minister for Social Services), but possibly including others – to prevent

- the allegations in the witness statements filed on behalf of Joanna Hernandez being put in the public domain, and/or being subjected to judicial investigation; and
- (2) if so, what (if anything) was done in pursuance of that conspiracy.

The resolution of these issues requires a consideration of two particular aspects of the proceedings: first, the SSA's decision to take the preliminary point of law and to pursue it as far as the Court of Appeal, and secondly the reasons for the SSA's subsequent decision not to lead evidence at the substantive hearing.

In investigating these issues I received (in addition to the written and oral evidence of Joe Bossano and Joanna Hernandez) oral evidence from Sir Peter, and written and oral evidence from Mark Isola QC, Yvette Del Agua, Jaime Netto, Marie Gomez and Chris Wilson (the CEO of the SSA at the time of the substantive hearing). I also examined a considerable amount of contemporary documentary evidence.

### *The evidence of Sir Peter*

In his oral evidence Sir Peter recalled that he was kept generally in touch with the progress of the proceedings. As to the SSA's decision to appeal against the Industrial Tribunal's ruling on the preliminary point, he said this:

"To the extent that I was being asked to express a view on whether we should continue to take [the preliminary point], I think my views were clear. .... If you could win quickly, easily and more cheaply by establishing that your opponent does not have the right to have you in the [Industrial] Tribunal, I don't see why the Crown should forego that opportunity any more than any other litigant. .... And it seemed to me also that there was some virtue in having this matter established for the benefit of the public service as an employer generally and others. .... Those were the two issues, I think. But I think the most important one was that we should not forego an opportunity for a quick win ... if [that opportunity] existed. And it turned out not to be so."

As to the decision to appeal the preliminary point to the Court of Appeal, Sir Peter said this:

"I took the view that the point was worth one more outing in a court, if only to (a) maximise our opportunity of a quick and easy win and (b) to establish the point ... authoritatively."

He went on to say that an appeal from the Court of Appeal to the Privy Council was "never even contemplated", so far as he could recall.

Asked whether he knew of the SSA's decision not to lead evidence at the substantive hearing in the Industrial Tribunal, Sir Peter said he knew of it; and that he had proceeded on the assumption that Isabella Tosso's availability to give evidence at the hearing was "absolutely key", in that if she were unavailable the case would be "lost for certain". Accordingly, he agreed that the SSA should not lead evidence if that was what it felt was the best course for it to take.

Asked whether he had given instructions that investigation of the allegations in the witness statements filed on behalf of Joanna Hernandez should be obstructed, he replied:

“Certainly not. .... I never did. I find the [suggestion] quite extraordinary. .... [It] would have required the police and the Attorney-General to do my bidding, which evidently they didn’t because the matters were thoroughly investigated in any event. But to the extent that the [Inquiry] is interested whether I unsuccessfully attempted to prevent investigations, the answer is no.”

Sir Peter went on to deny that he had masterminded a strategy aimed at delaying or blocking the Industrial Tribunal proceedings. He added this:

“I’m aware of the suggestion that the issue of the appeal was somehow to prevent the matters from coming to light. If the Government had been in anything that it did motivated by a desire to prevent matters that were not immediately relevant, or perhaps damaging matters to the [SSA], from coming to light, [there] had always from the very beginning [been] an easy device with which to bring it about, namely not to contest and to concede the unfair dismissal claim. And we never did that. We could at any time have prevented the alleged feared publicity by simply not contesting the Industrial Tribunal and writing a cheque with taxpayers’ money for £30,000 odd, or whatever the maximum then was at that time, which the Government didn’t do.”

When I put to him Joe Bossano’s suspicion that the SSA had taken and pursued the preliminary point in order to create delay in the hope that Joanna Hernandez would give up, with the result that the claim would never be heard, Sir Peter replied:

“I don’t know what arrangements she had for the hearing in the Supreme Court and the Court of Appeal. I can see that that might be a burden to an employee litigant. But ... there was never any linkage in terms of motivation. .... One thing is to go for a quick win, and [another] thing is to out-financial-power your opponent. I don’t think that was the Government’s intention. .... But we would certainly have liked to win the preliminary point and avoid having to go to a full trial. That is undoubtedly true.”

As to the availability or otherwise of Isabella Tosso to give evidence, he said that he had not himself made any attempts to contact her, and that in about March 2008 he was told that she would not be available. He went on to say that he had concluded that that was effectively fatal to the defence of the claim; and that that was the reason for the decision not to lead evidence at the substantive hearing.

I accept Sir Peter’s evidence.

### *The evidence of Mark Isola QC*

As to the preliminary point of law, Mark Isola QC considered the point to be arguable, although likely to fail. UK counsel took in effect the same view, albeit describing the argument as “respectable”.

In his witness statement Mark Isola QC set out at length the reasons why he had advised the SSA not to dispute Joanna Hernandez’ claim, “regardless of whether Ms Hernandez was

competent to satisfactorily carry out the role of manager of [the Home]”. He said that even if Isabella Tosso had been available to give evidence as to Joanna Hernandez’ performance as Manager, there were a number of issues of procedural fairness which needed to be addressed by the SSA in order to show that it had acted fairly and reasonably in dismissing her. He listed a number of difficulties which the SSA would, in his view, face in addressing these issues.

In the course of his oral evidence he was asked whether he had ever met Sir Peter, when he was Chief Minister, in relation to Joanna Hernandez’ claim. He replied:

“To the best of my recollection, no. But I did meet him on several occasions on other matters I was dealing with over a very long period of time. .... [B]ut I don’t believe I met with him specifically on this claim. But I wouldn’t exclude either that he might have commented about this claim because it was ... very heavily publicised.”

As to the availability of Isabella Tosso, he said he had hoped that she would be available, and that he had believed that “certain persons were trying to make contact with her”.

Asked about the importance of having Isabella Tosso available to give evidence at the substantive hearing, he said that her absence would make the defence of the claim more difficult, in that there was a real need for the decision-maker to be present to explain the reasons for the decision to dismiss the complainant (Joanna Hernandez).

I accept Mark Isola QC’s evidence.

### ***The evidence of Yvette Del Agua***

In her oral evidence, Yvette Del Agua said that Isabella Tosso had from time to time sought her advice on some issues relating to Joanna Hernandez’ claim, and that she in turn had from time to time consulted the Chief Minister. She went on to say that she had considered it appropriate to involve the Chief Minister in relation to a possible appeal from the ruling of the Industrial Tribunal on the preliminary point of law not only because he was a lawyer, but also because any appeal would raise questions of funding.

She denied that she wanted to suppress or “bury” the allegations in the witness statements filed on behalf of Joanna Hernandez, or that there was any strategy or conspiracy to delay or obstruct the Industrial Tribunal proceedings.

I accept Yvette Del Agua’s evidence.

### ***The evidence of Jaime Netto***

Asked by counsel for Joanna Hernandez whether he felt that he had used his best endeavours to contact Isabella Tosso, he replied:

“No, because I wouldn’t have been involved in the actual nitty gritty of the preparation or putting forward the case [before] the Industrial Tribunal. .... That would have been a matter for our lawyer, it would have been a matter for senior management, but certainly not for me.”

Asked by counsel for Joanna Hernandez whether he was aware that Marie Gomez and Isabella Tosso were “very close friends”, he replied:

“No, I wouldn’t, because I never had the opportunity of meeting Mrs Tosso, bearing in mind that by the time I got on the scene [a reference to the point of time at which he succeeded Yvette Del Agua as Minister for Social Services] Mrs Tosso wasn’t in Gibraltar... I can’t even put a face to the name of Mrs Tosso.”

I accept Jaime Netto’s evidence.

### *The evidence of Chris Wilson*

In February 2007 Chris Wilson succeeded Isabella Tosso as interim CEO of the SSA. He continued in that post until March 2009.

In paragraph 11 of his witness statement he says this:

“11. .... During this period [i.e. the period leading up to the Industrial Tribunal hearing] it became clear that it was impossible to get hold of Ms Tosso, who was no longer in Gibraltar and not answering emails, despite attempts by both Mr Isola ... and myself to contact her. ....”

That is the only reference which Chris Wilson makes in his witness statement to the non-availability of Isabella Tosso. Moreover, his reference to attempts by Mark Isola QC to contact Isabella Tosso is misleading in so far as it suggests that both he and Mark Isola QC were attempting to locate her. Mark Isola QC naturally left it to Chris Wilson to attempt to make contact with her.

In his oral evidence, Chris Wilson confirmed that he had no personal knowledge of the issues raised in the Industrial Tribunal proceedings.

As to the non-availability of Isabella Tosso, he said that he knew she had returned to the UK. He said that he had an email address for her, and possibly a Gibraltar mobile telephone number, but that he did not have her postal address in the UK. He said that he had sent emails to the email address which he had been given, but had received no response. He accepted that “it was possible” that some people in the SSA had known where she was, and that he had tried to find out by asking them. He said that he personally did not take any further step to try to obtain her contact details. He said that he thought he must have asked Marie Gomez where she was, and that she had said that she did not know.

Chris Wilson went on to confirm (and I accept) that he never gave instructions to delay the substantive hearing of Joanna Hernandez' claim and that it was not his objective to prevent investigation of the allegations contained in the witness statements filed on behalf of Joanna Hernandez.

When referred to email correspondence which had taken place between Marie Gomez and Isabella Tosso (as to which, see below), he said he was aware that they were on very friendly terms.

In answer to questions from me, Chris Wilson said that although he presumed that Isabella Tosso had family in Gibraltar, he had not tried to find out whether this was so; that he had not made inquiries of her neighbours in Gibraltar as to her whereabouts; and that he did not think that anyone else had made such inquiries.

Chris Wilson's evidence in relation to the availability of Isabella Tosso was singularly unhelpful. He wholly failed to give that matter the importance it deserved, or to treat it with an appropriate degree of urgency. The fact that he made no effort himself to discover how to contact Isabella Tosso beyond making inquiries of some of his colleagues demonstrated a quite remarkable degree of passivity on his part. That said, I find that he asked Marie Gomez whether she knew how to contact Isabella Tosso, and that her response was that she did not.

### *The evidence of Marie Gomez*

Marie Gomez told the Inquiry that she had not "seen or heard of Ms Tosso since 2007". That is inconsistent with the fact that the latest in the series of emails referred to earlier was an email from Isabella Tosso to her dated 12 August 2008 in which Isabella Tosso described her as "my friend", and signed off with kisses.

Asked whether she was aware at the time of the substantive hearing that the fact that Isabella Tosso would not be available to give evidence meant that the SSA would not be in a position to defend Joanna Hernandez' claim, Marie Gomez said (in effect) that she was too busy with her work to think about anything else. I do not believe that answer.

In the course of their email correspondence, Isabella Tosso gave Marie Gomez her office telephone number in the UK. Asked why she had not tried to contact Isabella Tosso on that number, Marie Gomez replied:

"To tell you the truth I did not even realise I had the office number. I probably scanned through the email and just, you know, went on working. I was too busy."

I do not believe that answer.



Marie Gomez went on to give a number of equally evasive answers to questions from counsel. They demonstrate beyond any doubt that during the period leading up to the substantive hearing on 9 April 2008 Marie Gomez not only knew how to contact Isabella Tosso but was in regular contact with her; and that they remained in contact thereafter. Her repeated attempts to disguise this obvious fact in her oral evidence cannot be attributed to a faulty recollection: her evidence on this aspect represented, for whatever reason, a deliberate attempt to mislead the Inquiry.

### *Findings*

As to the preliminary point of law taken by the SSA, the initial decision to take it before the Industrial Tribunal, and the subsequent decisions to pursue it to appeal (first to the Supreme Court and then to the Court of Appeal), were entirely legitimate decisions in the context of hostile litigation. They were made in good faith, in the hope (as Sir Peter put it) of a quick and easy win. The fact that in the event that hope was disappointed does not taint those decisions. Little is certain in litigation, and both Mark Isola QC and UK counsel had advised that the point was arguable.

As to the general conduct of the SSA's defence to Joanna Hernandez' claim, culminating in its decision not to lead evidence at the substantive hearing, I find that there was no conspiracy by anyone in Government, or indeed anyone else, to prevent the allegations in the witness statements filed on behalf of Joanna Hernandez from being put into the public domain and/or becoming the subject of judicial investigation, whether by delaying or obstructing the hearing of the claim, or by stifling the claim by prolonging the proceedings unnecessarily, or by any other means. Had that been the Government's motive it could, as Sir Peter said, have easily been achieved at any stage in the proceedings by capitulating and paying compensation to Joanna Hernandez.

As to the unavailability of Isabella Tosso, there is no evidence that Chris Wilson's passive attitude in relation to her unavailability represented a deliberate attempt on his part to prevent or delay discovery of her whereabouts. I am satisfied that it was simply a case of slackness and inefficiency on his part. Sir Peter was presented with a *fait accompli* in this respect. It was not for him, as Chief Minister, to take active steps to try to locate her: that was the responsibility of Chris Wilson – a responsibility which he signally failed to discharge. The eventual decision not to lead evidence in defence of Joanna Hernandez' claim was made in good faith on the basis that Isabella Tosso was not available to give evidence. That was the information which had been presented to Government: those were the instructions which Mark Isola QC had been given.

Accordingly, I find Joe Bossano's suspicions in relation to the conduct of the Industrial Tribunal proceedings to be unfounded in every respect.

**e. Allegations of abuse made by residents in 2004**

In late 2004 Resident T, a female resident then aged about 49, alleged (among other things) that two of her carers had on a number of occasions incited Resident AA, a male resident then aged between 49 and 56 (the evidence was not clear on this point<sup>1526</sup>), to make approaches of a sexual nature towards her. Resident T said that she had reported this conduct to the senior support worker responsible for her care, but that the senior support worker had not believed her. Following the making of that allegation, the three employees (i.e. the two carers and the senior support worker) – each of whom denied Resident T’s allegations – were suspended, and the matter was reported to the RGP.

In December 2004 Resident T was interviewed by the RGP. In interview, she repeated her allegation of sexual abuse, and she also made allegations relating to the care of another female resident, Resident J. In March 2005 the RGP referred the matter to counsel at the Attorney-General’s Chambers seeking advice as to whether Resident T’s allegations disclosed conduct of a criminal nature; and, if so, whether the matter should proceed to a criminal prosecution or whether it might be preferable for the matter to be resolved by an internal disciplinary process.

In April 2005 the three suspended employees were interviewed under caution by the RGP. In interview, the senior support worker and one of the two carers repeated their denials; the other care worker, on the advice of his lawyer, restricted himself to making no comment.

On 3 May 2005 a medical practitioner assessed Resident AA as having a mental age of 4 or 5 years, and as being unable to recall events accurately in terms of when they occurred. He went on to describe Resident AA as being “easily persuaded or confused into incorrect conclusions so that his testimony could be most unreliable unless elicited in a carefully controlled non-threatening way”.

On 16 May 2005 Giselle Carreras, the SSA psychologist, reported the results of a “therapeutic session” which she had held with Resident AA. She reported a number of statements by Resident AA which were critical of his carers. However, the report does not record any statements by Resident AA which might possibly be interpreted as referring to conduct of a sexual nature. She assessed Resident AA as having an educational and intellectual capacity equivalent to that of a child aged between 3 and 5 years. She reported that although Resident AA could be “physically annoying towards others”, there was no recorded evidence of sexual promiscuity or any other “alarming or anti-social behaviour” on his part. She concluded that there was a “most minimal” possibility that Resident AA would have himself initiated any sexual conduct towards Resident T, but that there was an “extremely high” possibility that Resident AA was “proposed, suggested or enticed in the alleged sexual conduct towards [Resident T]”. She

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<sup>1526</sup> The Psychological Report on Resident AA prepared in May 2005 states that he was 49 years old, but says his date of birth was in 1949.

also agreed with the opinion of the consultant psychiatrist as to the reliability of any court testimony by Resident AA.

Giselle Carreras' Report contains no detail as to the manner in which, or the terms in which, she elicited from Resident AA the statements quoted in the Report.

On 10 June 2005 Crown Counsel in the Attorney-General's Chambers informed the RGP that, after considering (among other things) the evidence supplied by Resident T and the Reports by Giselle Carreras on Residents T and AA, the Attorney-General was of the opinion that were the matter to go to trial there would be no realistic prospect of a conviction. Internal disciplinary proceedings were commenced against the three suspended employees, but the proceedings were not followed through to a conclusion.

The substantive hearing of the disciplinary proceedings was due to take place on 13 December 2005. However, in late 2005 the Transport and General Workers Union, on behalf of the three employees, had complained to the Government that they had effectively been placed "in limbo" for nearly a year, and that no disciplinary hearing had as yet taken place. Ernest Montado, the then Chief Secretary, was asked by the Government to look into the matter.

Ernest Montado advised Isabella Tosso that the best way forward, given the delay which had taken place, would be for her to offer to reinstate the three suspended employees on certain conditions, and he drafted a letter to that effect. Isabella Tosso accepted Ernest Montado's advice, and accordingly the scheduled hearing of the disciplinary proceedings did not take place.

On 3 January 2006 Isabella Tosso wrote to the three suspended employees in the terms of Ernest Montado's draft. In her letter she said that although she was of the view that the initial decision to suspend them was correct, nonetheless she did not consider that formal disciplinary action would be appropriate. She went on to offer to reinstate them on condition that Residents T and AA were not placed directly under their care (so far as practicable) and that for the foreseeable future their performance at work was closely monitored.

On 20 February 2006 Isabella Tosso instructed Giselle Carreras to provide a further report on how best to deliver the news of the employees' reinstatement to Residents T, AA and J. On 22 February 2006 Giselle Carreras duly produced a further report, entitled "Psychological Evaluation". In that Evaluation, Giselle Carreras described in detail interviews which she had conducted with each of the three residents, including extensive passages quoting verbatim what they had said. She concluded by recommending that a full review be conducted of the initial investigation in 2005.

The contents of Giselle Carreras' Evaluation did not serve to allay Isabella Tosso's concerns as to the effect of reinstating the three employees, and she continued to procrastinate on that issue. This prompted the Union, in May 2006, to make a further complaint to the Chief Minister about the delay in reinstating them. The Chief Minister duly referred the matter once again to Ernest Montado. That in turn led Ernest Montado to write once again to Isabella Tosso. In his letter,

he said that he had been asked to instruct her to reinstate the three carers with immediate effect. Isabella Tosso accepted that instruction, whilst remaining concerned as to the consequences of reinstating them. In a letter to Yvette Del Agua dated 2 June 2006 Isabella Tosso informed Yvette Del Agua that in reinstating the three employees she would be “unable to safeguard the welfare of the service users”.

In the event, the two carers declined the offer of reinstatement and left the Home. The senior support worker accepted the offer of reinstatement and continued in post.

On 26 September 2013 a speech therapist with training relating to the care of people with intellectual disabilities produced a Psychosocial Report on Resident T, in which she said that Resident T had no difficulty in communicating and in expressing her emotions, “but within her own reality”. She went on:

“I believe that [Resident T] is able to tell the reality of what happened to her and there seems [sic] to be actual events related to her reality (which cannot be accurately verified), it is seen both in conversation, and in her actual behaviour and body language which affected her negatively, creating stressful situations, when they occurred and when currently remembered.”

The principal witnesses who gave written and oral evidence relating to these matters were Joanna Hernandez, Giselle Carreras, Moira Elmer (Resident T’s sister), each of the three employees, Sharon Peralta (Crown Counsel), members and former members of the RGP (including Superintendent Emilio Acris), and the Attorney-General. The evidence of these witnesses is reviewed at length in the Report.

In addition, Resident T herself provided the Inquiry with a witness statement. In providing that witness statement, Resident T made clear that she did not wish to attend the Inquiry to give oral evidence: a wish which the Inquiry has respected.

In her witness statement, Resident T repeated her allegation of sexual abuse by the two carers. She said that the senior support worker was present on occasions when the abuse occurred but had done nothing to stop it. She also made a number of criticisms of the care she had received during a cruise holiday. She went on to say that she was “upset and frightened” when she learnt that the three employees were to be reinstated.

Moira Elmer gave detailed evidence of what Resident T had told her (including her account of the sexual abuse which she had suffered). She said that she visited Resident T at the Home regularly about once a week, but had never herself witnessed any incidents of bullying or abuse of Resident T. She confirmed that her evidence about such matters was based entirely on what Resident T had told her. In the course of her evidence, Moira Elmer conceded that on one occasion Resident T had falsely accused her (Moira Elmer’s) husband of making sexual advances towards her. Moira Elmer went on:

“... [N]one of us are always really truthful, but I know when she is lying and I know when she is telling the truth.”

Each of the three employees gave written and oral evidence denying all the allegations.

My findings on the totality of the evidence presented to the Inquiry on these matters may be summarised as follows:

As to the allegations against the three suspended employees:

1. The allegations are of an extremely serious nature, and accordingly cogent (i.e. strong) evidence is required in order to prove them. Given the accepted lack of capacity of Residents AA and J, proof of the allegations which they reportedly made must stand or fall by the evidence of Resident T, who claims to have witnessed the conduct which she describes. However, Resident T's allegations are not corroborated by any reliable evidence.
2. Given that (as those who know him all agree) it was not in Resident AA's nature to make advances of a sexual nature towards any female, it would have required a high degree of encouragement, not to say coercion, by his carers to cause him to indulge in a type of behaviour which he would otherwise have shunned.
3. It would also have been of assistance in assessing the credibility of Resident T's allegations for the Inquiry to have had the opportunity to consider the manner in which, and the terms in which, Giselle Carreras elicited the quoted statements of Resident T and Resident AA. However, no criticism is made of Giselle Carreras in that respect: she was following her instructions, and acting (among other things) as an advocate for the residents. Nonetheless, the lack of detail in that respect inevitably impacts on the credibility of the quoted statements.
4. Some of Resident T's quoted statements bear all the signs of exaggeration (examples are given in the Report).
5. Having carefully observed each of the three carers when giving their oral evidence I am fully satisfied that for them to have acted in the manner alleged by Resident T would have been entirely out of character.
6. As to Resident T herself, it is clear on the evidence that she was not happy in the Home and wanted to live with her sister; that she did not get on well with the other residents; that she objected to the innocent, but on occasion no doubt irritating, conduct of Resident AA (conduct which was not directed particularly towards Resident T); and that she was astute to complain about her treatment by her carers. In addition, the fact that she felt able to accuse her brother-in-law falsely of abusing her shows that her evidence may not always be reliable.

7. I bear in mind the observation of the speech therapist (quoted above) that Resident T found no difficulty in communicating her situation and emotions, “but within her own reality”.

Having anxiously considered the relevant evidence, and taking full account of the fact that I have not had the benefit of seeing and hearing Resident T give oral evidence, I find the entirety of her evidence of misbehaviour, misconduct and abuse on the part of her carers to be unreliable. I do not suggest that in making those allegations Resident T was doing anything other than describing the reality of the various incidents, *as she saw it*. In other words, I am satisfied that her evidence was “her own reality”, but I find that it was not the true reality. Having said that, I reject a suggestion made in evidence that she is a compulsive liar, and I absolve her of any intention to mislead the Inquiry.

I accept the evidence of the three employees, and I exonerate them from each and every one of the allegations which have been made against them.

As to the response of the SSA to the above allegations:

1. It was for Isabella Tosso to decide what action to take in response to the allegations against the three employees. The SSA lost no time in suspending them, and they were plainly right to do so. However, the SSA failed to follow this up by arranging a disciplinary hearing in a timely manner. It was understandable that no disciplinary hearing should take place while the allegations were being investigated by the Royal Gibraltar Police but once that investigation had concluded no time should have been lost in setting up a disciplinary hearing. In the event one was not scheduled to take place till December 2005.
2. Isabella Tosso appears to have procrastinated over whether, and if so when, to reinstate the three employees. As a result, Ernest Montado was faced with a delicate situation, in which he had to respect the competing interests of employees and service users. His compromise solution (reinstatement on conditions) was not an ideal solution, but, as he himself described it, he was doing his best to act as Solomon in difficult circumstances.
3. I accept the evidence of Natalie Tavares, Senior Social Worker, as to the approach of the Care Agency (and, previously, of the SSA) when faced with an allegation involving possible criminality by carers in relation to individuals in their care. The first step would be to hold a strategy meeting with the RGP to consider all the circumstances relating to the allegation so as to enable the RGP to consider how the matter should proceed. There would then be a follow-up meeting with the RGP at which the progress of the matter would be discussed. Generally, the Care Agency works closely with the RGP in relation to any issue as to the care provided to individuals for whose care it is responsible, as did its predecessor the SSA.

4. I also accept the evidence of Superintendent Acris that the RGP has never been instructed by anyone not to investigate cases of abuse, or indeed any other type of case.
5. Lastly, I consider the decision of the Attorney-General not to institute criminal proceedings against the three carers to have been fully justified – if not inevitable, given the quality of the available evidence.

#### **f. Incidents relating to Resident L's medication (2008/9)**

In October 2008 Resident L, a male resident then fourteen years old, was resident at a flat at Flat Bastion Road, under the care of the Children's Services section of the SSA. It is important to note that while resident at Flat Bastion Road he was not a resident of the Home. Nonetheless, given that Resident L was historically a Dr Giraldi Home resident and having been presented with evidence in relation to his care while resident at Flat Bastion Road, I consider that it is right that I should set out my findings on that evidence.

In October 2008 an unused tube of rectal Diazepam was discovered in his flat. Diazepam was not a prescribed medication for Resident L. The discovery was reported to the then Manager, Iain McNeil, who did his best, albeit unsuccessfully, to find out how it came to be there.

On 26 March 2009 two carers on night shift at the flat discovered that Resident L had managed to get hold of two bottles of Calpol and a plastic bag containing 240 Risperidone tablets from the top of the wardrobe in the flat. The carers duly reported this discovery, and Maria Elena Macias, then a Social Worker in the Children's Residential Services Department of the Care Agency, was asked to investigate. She interviewed a number of carers, and she reviewed the available documentation. She later reported that it would be difficult to prove negligence (although there was some evidence to that effect) given that, among other things, prior to 2009 staff were untrained in the administering of medication, and recording procedures were at that time "somewhat sketchy".

It is impossible on the evidence presented to the Inquiry to make a finding as to the circumstances in which the Calpol and the Risperidone were left in Resident L's flat, and thus accessible to him, when they should have been locked away in the medication cabinet. All that can safely be said is that the procedures in place at the flat for the control of medication were clearly breached in this instance.

#### **g. Resident L's allegations of abuse**

On 2 October 2009 (by which time Resident L was residing at a care home in Warwickshire, UK), the Care Agency was informed by the Manager of the care home that Resident L had made allegations of sexual abuse by individuals whom he named as "Robert" and "Vicky". The incidents in question were alleged to have occurred while he was in Gibraltar.

The Care Agency was also provided with the results of a child protection investigation carried out in relation to Resident L by Warwickshire Child Protection Services. In the course of that investigation, Resident L repeated his allegation of sexual abuse by “Robert”, and he also made a number of allegations of serious physical abuse by three of his carers at Flat Bastion Road.

On 8 October 2009 the three carers were informed of the allegations against them and suspended with immediate effect. All three denied the allegations. Each of them has given written and oral evidence to the Inquiry.

The Care Agency also informed the RGP of the allegations, and on 8 October 2009 a strategy meeting took place attended by representatives of the RGP. Each of the three carers was interviewed under caution; various search warrants were executed; and the police visited the flat at Flat Bastion Road.

On 9 November 2009 Resident L was interviewed by Warwickshire Police. In the course of the interview (which was described by the police officer who conducted it as “very difficult” as Resident L’s concentration was “not at all good”), Resident L repeated his allegations (including his allegations against his three carers).

On 23 November 2009 the Care Agency was informed by Warwickshire Police that their investigations were complete.

In May 2010 the Care Agency was informed that the RGP had concluded their investigations into the allegations made by Resident L.

In a Report dated 22 June 2010 by DC Soane, of the RGP, to the Commissioner of Police, DC Soane said this:

“At this moment in time the undersigned suggests that the investigation be drawn to a conclusion as all practicable lines of enquiry have now been completed. It cannot be ruled out that “Robert” is in fact a person that [Resident L] has met since living in the UK as no evidence has revealed any person who has had dealings with [Resident L] by the name of “Robert” whilst residing in Gibraltar.”

On 5 July 2010 DC Soane submitted his Report to the Attorney-General’s Chambers seeking confirmation that the investigation could be closed. On 28 July 2010 Crown Counsel at the Attorney-General’s Chambers responded as follows:

“Given the strength of the evidence it is submitted that should this matter proceed to [trial] there is no significant likelihood of conviction. Consequently I would suggest that no charges be preferred.”

The evidence before the Inquiry cannot justify a finding of sexual abuse of Resident L by any individual. The “Robert” and “Vicky” mentioned by Resident L remain unidentified.



As to Resident L's allegations of physical abuse by his carers, I accept the carers' evidence and I find the allegations to be entirely without foundation.

In June 2010 the Care Agency lifted the suspension of two of the three carers. One of the two carers returned to work; the other resigned. The third carer remained suspended as the investigation into the incidents relating to Resident L's medication had not as yet been resolved (see above). In May 2011 a disciplinary hearing was belatedly arranged in relation to the medication incidents, but the carer responded by complaining vehemently about the way she had been treated and giving in her notice.

#### **h. The Home: 2006 to date**

Overall, the evidence presented to the Inquiry paints a healthy picture of the current state of affairs in the Home.

There was general agreement amongst those witnesses who were in a position to give evidence about the Home during this period that structures and standards in the Home improved gradually over the period, to the point where there was general approval by those witnesses of the current state of affairs in the Home. There was also unanimous praise for the efforts and contribution of Carlos Banderas, currently Team Leader (Disability Services) (see below).

The only seriously discordant note was sounded by Gayle Everest, who gave evidence to the effect that there was no alcohol policy in place in the Home when she left in about 2011, and that residents were not allowed an appropriate degree of independence. That evidence, which is in any event contrary to the evidence of Carlos Banderas, is rejected.

During the period, there was increased input from social workers, with a social worker being allocated to each resident. This development was described in evidence as "very helpful and beneficial". Multi-agency case conferences were also set up at which information was shared, concerns were discussed and clear plans were drawn up. A system of planning meetings was introduced, at which the various services provided by the Home were reviewed.

A rolling programme for the training of existing staff was introduced, and existing systems for induction training for new staff were improved. Progress was also made in enabling service users to become more independent.

According to the evidence of Gina Llanelo, the perennial problem of staff shortages continued during the period. However, the problem has been addressed to the point where it is no longer so pressing. In consequence, the standard of care which the staff are able to offer service users is higher.

Relationships between members of staff have improved, with staff now showing a more united front: a development which is constructive for both management and service users.

As to the control of medication, following the social workers' reports in December 2005 (see above) medication procedures were tightened and arrangements were made for medication to be administered by nurses.

The physical facilities at the Home are now much better than they were in 2005.

The Home has been provided with administrative support, and in consequence administrative problems encountered in previous years have been resolved.

Since 2005 there have been no incidents of petty cash being unaccounted for, and record-keeping has improved.

The respite regime currently in place is more acceptable to relatives, and the routine in the Home is more settled now than it was in 2006.

Carlos Banderas gave written and oral evidence to the Inquiry. I accept his evidence without qualification. In his evidence (which is exhaustively reviewed in the Report) he described the current state of affairs in the Home, and the improvements which have taken place since 2009 and after he became responsible for the management of the nursing team at the Home in 2011<sup>1527</sup>. He laid particular emphasis on the introduction of a Core Training Programme, involving a three-week course to be undertaken by all new Care Agency employees. In addition, a mentoring process is in place for new members of staff at the Home. Members of staff also receive training in (among other things) manual handling and food safety.

Carlos Banderas also produced in evidence a comprehensive 227-page Manual entitled "Policy and Procedure Manual Guidance for Staff", setting out the standards of conduct and care expected of members of staff at the Home.

As to medication, he told the Inquiry that the Home's medication policy is regularly updated; that the administering of medication must be performed by two members of staff, one of whom must be a registered nurse; and that audits and stock control are also carried out by the duty registered nurse or the Manager; that keys for the medication cupboard are only held by the duty registered nurse; and that at the end of each shift the medication book must be checked by the outgoing and incoming staff members.

Regular residential environmental audits of the flats at the Home are carried out so as to ensure that appropriate standards are maintained in each flat, and a policy has been put in place which is designed to allow service users as much independence as possible in the management of their financial affairs.

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<sup>1527</sup> Albert Bruzon's witness statement also contains information in respect of the period from 2006, specifically in relation to staffing numbers, policies and procedures introduced and refurbishments at the Home.

Daily diaries are kept for each resident, and staff work on a shift pattern which allows a complete handover to take place. A written report on each service user will also be handed over at the end of each shift.

Activities, outings, holidays, social trips and events are arranged for service users. Activities include drama sessions, dance sessions, and classes in swimming and pottery.

Carlos Banderas was emphatic that having residents of differing genders living in the same flat did not give rise to problems, given the bathroom facilities; and that the staff were doing their best to make the Home feel like home for the residents.

Asked whether any incidents of abuse of service users had occurred while he was responsible for the Home, he cited a case where a carer had not thought it necessary to assess a resident who had problems with his balance. He characterised this as a case of neglect. Later in his evidence he cited a case where a member of staff had shaved the back of a service user. This was discussed with the member of staff concerned, and with the service user's relative. The relative did not wish to put in a complaint. Carlos Banderas confirmed that he had never witnessed any incidents of what he would regard as more serious abuse of service users, including abuse of a sexual nature.

As to consumption of alcohol at the Home, Carlos Banderas confirmed that there was "zero tolerance" policy in relation to the consumption of alcohol by members of staff, but that residents who expressed a wish to consume alcohol were allowed to do so where appropriate, although consumption of alcohol by residents was not encouraged and would not be permitted where it interfered with any medication.

Through Carlos Banderas' drive and dynamism, coupled with the dedication and hard work of his colleagues in management and of the care workers (both full-time and part-time), several of whom have given many years of service to the Home, the Home is now in a better state than it has been at any time during the period with which this Inquiry is concerned.

### *i. Epilogue and General Conclusions*

Finally, following my extensive review of the evidence presented to the Inquiry and my detailed findings on that evidence, I set out below a number of general conclusions based on that evidence. They are necessarily expressed in summary form, and reference should be made to the relevant Chapters of the Report for an understanding and appreciation of the factual background to them.

My general conclusions are as follows:

1. There were some instances of mismanagement, misconduct and malpractice (including abuse) at the Home, but they were infrequent and at the lower end of the scale of

seriousness. Many families had no complaints about the services provided by the Home, and some were complimentary about them.

2. Many of the allegations in the witness statements filed on behalf of Joanna Hernandez in the Industrial Tribunal in 2006 (see paragraph 1(a) of the Inquiry's Terms of Reference) were untrue, grossly exaggerated or unsubstantiated by credible evidence. As identified in the Report the same was also the case in respect of some allegations raised in more recent witness statements filed by certain individuals for the purposes of the Inquiry.
3. To the extent that such allegations were established on the evidence, the incidents in question were largely historic and infrequent, and had been dealt with at the time by management at the Home, and/or by the SSA.
4. In any event, allegations of serious misconduct or abuse were investigated by management, the SSA and the relevant authorities (including the Royal Gibraltar Police) as the case may be. There was no conspiracy to prevent such allegations being investigated or being put into the public domain. The decisions taken by the relevant authorities (including the Royal Gibraltar Police) in relation to such allegations were justified.
5. Ongoing issues relating to the operation of the Home were investigated and dealt with as they arose, in accordance with current protocols and disciplinary procedures.
6. There were issues as to management and as to the provision of facilities that needed tackling. Shortage of staff was also a continuing problem. However the Home has gradually improved during the period under review and especially after 2005/6 in terms of staffing, procedures, working practices and impact on care. Resources can always be improved but that is a matter for the Government and not for the Inquiry.
7. The efforts of staff in working in difficult and often challenging conditions to provide care to residents (including respite users) deserves to be recognised. With few exceptions (which have been dealt with), they have done sterling work in the past and continue to do so.

This Inquiry has ranged over an extensive factual area covering a lengthy period of time. Numerous incidents, or alleged incidents, have been investigated – a large proportion of which happened, or allegedly happened, many years ago. On a positive note, however, I can report that the Home is now in much better order, and is better run, than it has been at any time during the period which the Inquiry has had to investigate. From relatively modest beginnings, it is now a much more efficient and professional operation.

I end by expressing the hope that the fact that the Inquiry has, perforce, focused to a large extent on negative issues regarding the Home will not serve to obscure the importance of the

continuing work carried on at the Home for the benefit of its residents and respite users, and hence for the benefit of Gibraltar.

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