



## PRESS SUMMARY

### Reference to the Judicial Committee of the Privy Council pursuant to s 64 Gibraltar Constitution Order 2006 Re Chief Justice of Gibraltar

**MEMBERS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL:** Lord Phillips, Lord Hope, Lord Rodger, Lady Hale, Lord Brown, Lord Judge and Lord Clarke

#### BACKGROUND TO THE APPEAL

The Judicial Committee of the Privy Council ('the Committee') was asked to advise Her Majesty whether the Hon. Mr Justice Schofield, Chief Justice of Gibraltar, should be removed from office pursuant to s 64(2) Gibraltar Constitution Order 2006 by reason of 'inability to discharge the functions of his office... or for misbehaviour'.

The Governor had received memoranda of concern about the Chief Justice from all the Queen's Counsel in Gibraltar. He appointed an independent tribunal ('the Tribunal') and suspended the Chief Justice in September 2007. The Tribunal investigated 23 episodes between 1999 and 2007 in respect of which complaint was made of the Chief Justice's conduct. On 12 November 2008 it delivered a report to the Governor, criticising the Chief Justice in relation to all but one of the episodes and advising that the question of removal be referred to the Committee. The Governor duly made the reference.

#### ADVICE

*The Committee advised by a majority of four to three that the Chief Justice should be removed from office by reason of his inability to discharge the functions of his office. The advice of the majority (Lord Phillips, Lord Brown, Lord Judge and Lord Clarke) was given by Lord Phillips (paragraphs 1-229). The advice of the minority (Lord Hope, Lord Rodger and Lady Hale) was given by Lord Hope (paragraphs 230-270).*

#### REASONS FOR THE ADVICE

- The test for removal required the judge's shortcomings to be so serious as to destroy confidence in the judge's ability properly to perform the judicial function [paragraph 31]. There was a degree of overlap between 'misbehaviour' and 'inability' in the context of s 64(2) [201].
- A number of the criticisms made by the Tribunal were unjustified [207]. Nonetheless repeated and serious shortcomings and misjudgements in public behaviour demonstrated the defects of personality and attitude identified by the Tribunal and infringed the Bangalore Principles of Judicial Conduct 2002 [222-223]. In particular, the Chief Justice permitted himself initially implicitly and finally explicitly to be associated with unjustified accusations made by his wife that the Chief Minister was bent on hounding him from office. His conduct brought his office into disrepute and had the practical effect that he would be obliged to recuse himself from trying cases involving the Government [225].
- Although there were a number of incidents that amounted to misbehaviour, none of these was, of itself sufficiently serious to justify his dismissal from office on the ground of misconduct.

They were however incidents in a course of conduct that resulted in an inability on the part of the Chief Justice to discharge the functions of his office. Accordingly the Chief Justice should be removed [229].

- Lord Hope, Lord Rodger and Lady Hale dissented. They held that the Committee's responsibility was a heavy one and required an appropriate measure of detachment and perspective [232]. The Tribunal's approach had shown a marked lack of balance [234] and the approach of the majority of the Committee failed to give proper weight to the crucial importance of protecting senior judges against attacks by the executive upon their efforts to uphold judicial independence in their jurisdiction. Removal risked setting a dangerous precedent [235]. There was no suggestion that the Chief Justice was incapable of performing his judicial duties and there were long periods of complete normality of relations between him and the executive [246]. His ability to perform the functions of his office was to be judged by reference to his own actions, not those of his wife [260]. Judicial officers should not be removed from office save in circumstances where the integrity of the judicial function itself had been compromised [262]. Thus the Chief Justice should have been given the opportunity to resign and for no adverse inference to be drawn against him if he did so [270].

#### **NOTE**

**This summary is provided to assist in understanding the Committee's advice. It does not form part of the reasons for the advice. The full advice of the Committee is the only authoritative document.**

**Advices are public documents and are available at: [www.jcpc.gov.uk/decided-cases/index.html](http://www.jcpc.gov.uk/decided-cases/index.html)**

**The annex to the advice in this case can be found at [www.jcpc.gov.uk/ja\\_gibraltar.pdf](http://www.jcpc.gov.uk/ja_gibraltar.pdf)**