

**REPORT OF THE INVESTIGATING OFFICER APPOINTED UNDER TERMS OF REFERENCE DATED 14 NOVEMBER 2023 BY THE CHIEF MINISTER TO INVESTIGATE COMPLAINTS DATED 28 OCTOBER 2023 AND 8 NOVEMBER 2023 BY MEMBERS OF THE HEALTH SERVICES CONSULTATIVE COMMITTEE (“HSCC”) IN RESPECT OF THE CONDUCT OF HEALTH SERVICES MINISTER LAWRIE HOOPER MHK AND HEALTH SERVICES MEMBER MS TANYA AUGUST-HANSON MLC**

***Introduction***

1. The Department of Health and Social Care (“DHSC” or “Department”) is a creature of statute and is governed by the National Health Services Act 2001 (“the 2001 Act”). The 2001 Act was amended in 2021 by the Manx Care Act which established Manx Care as a statutory body. The Department has a duty to bestow upon Manx Care such functions as it wishes Manx Care to carry out on its behalf. This division of responsibility arises largely from the adoption by Tynwald of the recommendations contained within a report into health services in the Isle of Man by Sir Jonathan Michael in 2019 which, amongst other things, recommended that the setting of priorities and the development of policy in both health and social care should be separated from the delivery of services. He suggested a single public sector organisation to be known as Manx Care which would be responsible for the delivery and/or commissioning from other providers of all required health and care services. Sir Jonathan commented that this approach would differ from the current model in England whereby the commissioning and delivery of services are still separated by primary legislation.
2. The Government has adopted this approach and in general terms it means that the Department continues to set policy but Manx Care now delivers health services to the Isle of Man community.
3. Section 2 of the 2001 Act resulted in the establishment of the Health Services Consultative Committee (HSCC). So far as is relevant to this Report, Section 2 provides: -
  - (1) The Department shall establish a body with whom it shall consult on:-
    - (a) such general matters relating to the services provided under this Act and the Manx Care Act 2021; and
    - (b) such questions relating to those matters as the Department may refer to it.
  - (2) The body established under sub-section (1) may tender to the Department its views on any general matters relating to services provided under this Act and the Manx Care Act 2021; and
  - (3) In exercising its functions under this Act and the Manx Care Act 2021 the Department shall have regard to any views given by [the HSCC] pursuant to sub-sections (1) and (2).

4. At all relevant times until October 2023 the HSCC was governed by regulations created in 2012 – The Health Services Consultative Committee Constitution Regulations 2012 (“the 2012 Regulations”).
5. Insofar as those regulations are relevant to this investigation they state, amongst other things, as follows: -
  - (i) The functions of the HSCC are those described in Section 2 of the 2001 Act and in the Regulations.
  - (ii) The HSCC shall comprise 9 persons appointed by the Appointments Commission.
  - (iii) Members are appointed for 3 years.
  - (iv) Members are eligible for re-appointment but may not serve more than 9 consecutive years.
  - (v) The Civil Service Commission appoints a Secretary of the Committee.
  - (vi) Meetings must take place no less frequently than every 13 weeks.
  - (vii) The Committee shall meet the Minister and the Member for Health and officers nominated by the DHSC’s Chief Executive Officer no less frequently than 3 times each year.
  - (viii) Each member of the HSCC shall have particular responsibility for scrutinising the activity, performance and quality of up to three areas of the health services provided under the 2001 Act or the mandate under the Manx Care Act.
  - (ix) The HSCC shall submit an Annual Report to the Department and to the Members of Tynwald on the discharge of its functions under the Act and the Regulations.

***The Relevant Parties***

6. Lawrie Hooper MHK is and was at all relevant times in 2023 the Minister for Health & Social Care.
7. Ms Tanya August-Hanson MLC is a Member of the Legislative Council and at the material times was the Member for Health & Social Care.
8. The HSCC is made up of 9 members. In the first half of 2023 they were Andrew Cole (Chair), Judy Thornley, Louise Strickett, Carol Bamford, Jim Riley, Margaret Simpson, Mike Johnson, Lee Clarke and Annette Baker. [REDACTED] was the Secretary to the HSCC at all relevant times. The Secretary is not a member.
9. On 26 June there was a meeting between members of the HSCC, Minister Hooper, Ms August-Hanson and officers of the DHSC, the main purpose of which was to discuss the Annual Report

of the HSCC for the year 2022-2023. [REDACTED]

[REDACTED] The 2023 Annual Report covers the period 1 April 2022 to 31 March 2023. There is no statutory requirement for it to be laid before Tynwald. Regulation 15 of the 2012 Regulations requires the Annual Report to be submitted to the Department and to Members of Tynwald "on the discharge of its [HSCC's] functions under the Act and under the Regulations." The year's work of the HSCC that would be the subject of the 2023 Report would have been concluded on 31 March 2023 but there would still be work required to gather together the individual reports and collate them into the Annual Report. In the circumstances that happened the Annual Report was sent in final form to the Department and to Members of Tynwald before the meeting on 26 June 2023. In some previous years the Minister for the DHSC (for example Minister Ashford) sponsored the report so it could be laid before Tynwald.

10. A feature of the 26 June meeting is that it was delayed. Relevant parts of the timeline prepared by [REDACTED] read as follows:-
  - (i) 6 June 2023 an embargoed copy of the Annual Report was sent to the Tynwald office. It was marked for no distribution (to MHK's) prior to 16 June which was the date set for the Annual Report meeting with the Minister.
  - (ii) 12 June 2023 the DHSC Secretary acknowledged receipt of the full Annual Report.
  - (iii) 15 June 2023 full distribution to Tynwald Members.
  - (iv) 26 June 2023 the delayed meeting was held with the Minister. It should have been held on 15 June 2023.
11. Although previous Ministers, including Minister Ashford, had sponsored the laying before Tynwald of the Annual Report, Mr. Hooper on this occasion did not agree to sponsor the Report. There is no requirement in the legislation or the regulations for the Report to be laid before Tynwald.

### ***The Complaints***

12. Apart from the actual complaint dated 28 October 2023 there was to be more fall-out from or consequent upon the meeting on 26 June 2023. [REDACTED]

13. By the Terms of Reference dated 14 November 2023 my brief is to establish the facts surrounding the following allegations against Minister Hooper and Ms August-Hanson, such allegations having been contained in the letter of Complaint addressed to the Chief Minister by the HSCC dated 28 October 2023. There is one complaint against Minister Hooper and one single complaint against Ms August-Hanson arising from their alleged conduct at the meeting with the HSCC members on 26 June 2023. The second matter complained of against the Minister is that made by [REDACTED] and relates to the Minister's alleged conduct before the House of Keys on 31 October 2023 where it is said he used his platform in the House of Keys to "wrongly accuse an independent committee of lying in its Annual Report."
14. The specific wording of each limb of the Complaint as contained in the Terms of Reference is as follows:-

*"The investigation is to establish the facts surrounding the following allegations;*

- (i) *that the Minister for Health & Social Care Hon L Hooper MHK has "... broken the Nolan principles and ministerial code on 26 June by exhibiting intimidating and bullying behaviour" in a meeting on 26 June 2023 as alleged by the Health Services Consultative Committee within the Letter of Complaint dated 28 October 2023;*
- (ii) *that the Member for Health & Social Care Ms T August-Hanson MLC has "... broken the Nolan principles and ministerial code on 26 June by exhibiting intimidating and bullying behaviour" in a meeting on 26 June 2023 as alleged by the Health Services Consultative Committee within the Letter of Complaint dated 28 October 2023;*
- (iii) *that the Minister for Health & Social Care Hon L Hooper MHK, broke the Government Code in the House of Keys on Tuesday 31 October 2023 using the platform "to wrongly accuse an independent committee of lying in its Annual Report" as alleged by the Vice-Chair of the Committee to the Chief Minister on 8 November 2023.*

#### ***The Function of the HSCC***

15. The starting point is the 2001 Act which at Section 2 mandates that the Department must establish a body with whom it shall consult on general matters relating to the services provided by the DHSC as the Department might refer to it. That body is the HSCC. By Section 2 the HSCC is at liberty to tender to the Department its views on any general matters relating to services under the 2001 Act and this was extended to include services provided under the Manx Care Act 2021. The Department has to have regard to the views expressed by the HSCC.
16. The 2012 Regulations, amongst other things, prescribe that each member of the HSCC shall be responsible for "scrutinising the activity, performance and quality of up to three areas of health services provided." Each member has to submit a report on the areas for which they

are responsible at every meeting of the Committee. The Committee has to submit an Annual Report to the Department and to the Members of Tynwald on the discharge of its functions (for that reporting year) under the Act and the Regulations.

17. It seems clear that the duties bestowed on the individual members to scrutinise the activity, performance and quality of the health care services provided by the Department (now through Manx Care) must require those members to be critical where necessary of the services – otherwise the HSCC would seem to have no effective purpose. A feature of Mr. Hooper’s reign as minister (although it may well have arisen previous to that) is a dispute over the meaning of the word “*services*”. This is considered later.

### ***The Government Code***

18. The Government Code 2017 was updated in October 2022. It adopts the seven principles of public life set out in the first report of the Nolan Committee (“the Nolan Principles”) and the principles of ministerial conduct. The principles most relevant to this Complaint are that holders of a public office must submit themselves to whatever scrutiny is appropriate to their office and should promote the Nolan Principles by leadership and example. Members of Tynwald should maintain good working relationships and should seek to maintain “*a constructive working relationship with all staff.*” Members are expected to maintain a professional and courteous demeanour, be clear and concise without being abrupt and maintain appropriate courtesies at all times. These principles are said to apply to members’ relationships with staff. It must be that best practice dictates they apply to colleagues and working partners as well.
19. There is a policy against bullying and harassment. Members are stated to accept the definitions of bullying and harassment which are “*work place bullying is repeated inappropriate behaviour, direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment, which could reasonably be regarded as undermining the individual’s right to dignity at work. An isolated incident of the behaviour described in this definition may be an affront to dignity at work but as a one-off incident is not considered to be bullying.*”
20. The definition of harassment is not relevant to this Inquiry because harassment does not form part of the Complaint (for good reason). Part of the Complaint is that the Members of the HSCC who were at the meeting on 26 June were subjected to intimidation by the Minister and Ms August-Hanson. That is considered below.

### ***The 26 June Meeting***

21. The first Complaint against both Minister Hooper and Ms August-Hanson addresses their behaviour in the meeting on 26 June 2023. That meeting was one of the required statutory

meetings between the HSCC and the Department and the Minister and, on this occasion, was principally for the purpose of discussing the Annual Report of the HSCC which, by the time of the meeting, had been signed off and circulated to Members of Tynwald. It [REDACTED]

[REDACTED] The HSCC is mandated to meet with the Minister, Member and officers at least three times each year. The 26 June meeting was one such meeting but the principal purpose was for the Minister to provide feedback on the Committee's Annual Report for 2022/2023. The Committee's position is that there had been meetings with the relevant DHSC personnel prior to the publication of the 2023 Annual Report.

22. The complaint about Minister Hooper allegedly lying before the House of Keys on 31 October 2023 was addressed in a letter from [REDACTED] of the HSCC on 8 November 2023 originally to Member Chris Thomas MHK and subsequently forwarded to the Chief Minister. [REDACTED]

[REDACTED]

The question is whether this statement of itself was untrue and as such did it breach the Ministerial Code.

**Fact Gathering**

23. The meeting on 26 June was the second year that an Annual Report was presented to Minister Hooper and it transpires that the equivalent meeting for the previous year had been "challenging".
24. Once appointed to carry out this investigation by the Terms of Reference I contacted the then Chair of the HSCC, [REDACTED] had intended getting a list of members and their contact details so I could interview each of them separately to obtain their evidence. I was aware that the evidence in relation to the House of Keys complaint would largely be obtained from [REDACTED] At this point I was more concerned with evidence regarding what happened at [REDACTED]

the 26 June meeting at w[REDACTED]

the second attempt at formulating a complaint in relation to the 26 June meeting. An earlier complaint dated 7 July 2023 was signed by [REDACTED]

After the Complaint was sent to the Chief Minister I [REDACTED] had second thoughts about supporting it and wished his name to be withdrawn from the Complaint. He saw the Chief Minister on 25 July 2023. The Chief Minister requested that the Complaint be re-submitted if that was what the HSCC wanted to do and, i [REDACTED]

[REDACTED] In an email dated 7 November 2023 to the Chief Minister's Office [REDACTED]

25. On approaching [REDACTED] she informed me that the HSCC was having one of its monthly meetings on 16 November (the following day). She could not attend that meeting but invited me to attend to let the members know how I intended to carry out the investigation and what I required them to do. I attended the meeting, at which the following members and the [REDACTED]

26. On reading the 28 October Complaint I was concerned that there was little actual evidence in it that supported a claim of bullying and intimidation. I therefore told the meeting in the 15 or 20 minutes I was there that I needed first-hand evidence of what was said and done at the meeting which they claimed supported the Complaint.

27. The Complaint itself does refer to some limited evidence [REDACTED]

28. As a result of my request for evidence I received a series of relevant witness statements. With the permission of the HSCC members all of these were subsequently shared with Mr. Hooper and Ms August-Hanson so that they would be able to understand what was being said against them.

***The HSCC Evidence***

29. Before reviewing the witness statements submitted by the HSCC members I was provided with an undated document entitled "*Members Comments Re 26 June Minister Meeting with the HSCC regarding 2022-23 Annual Report*". In that document five questions were posed to the various Members.

30. The questions were: -

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The questionnaire invited any other comments.

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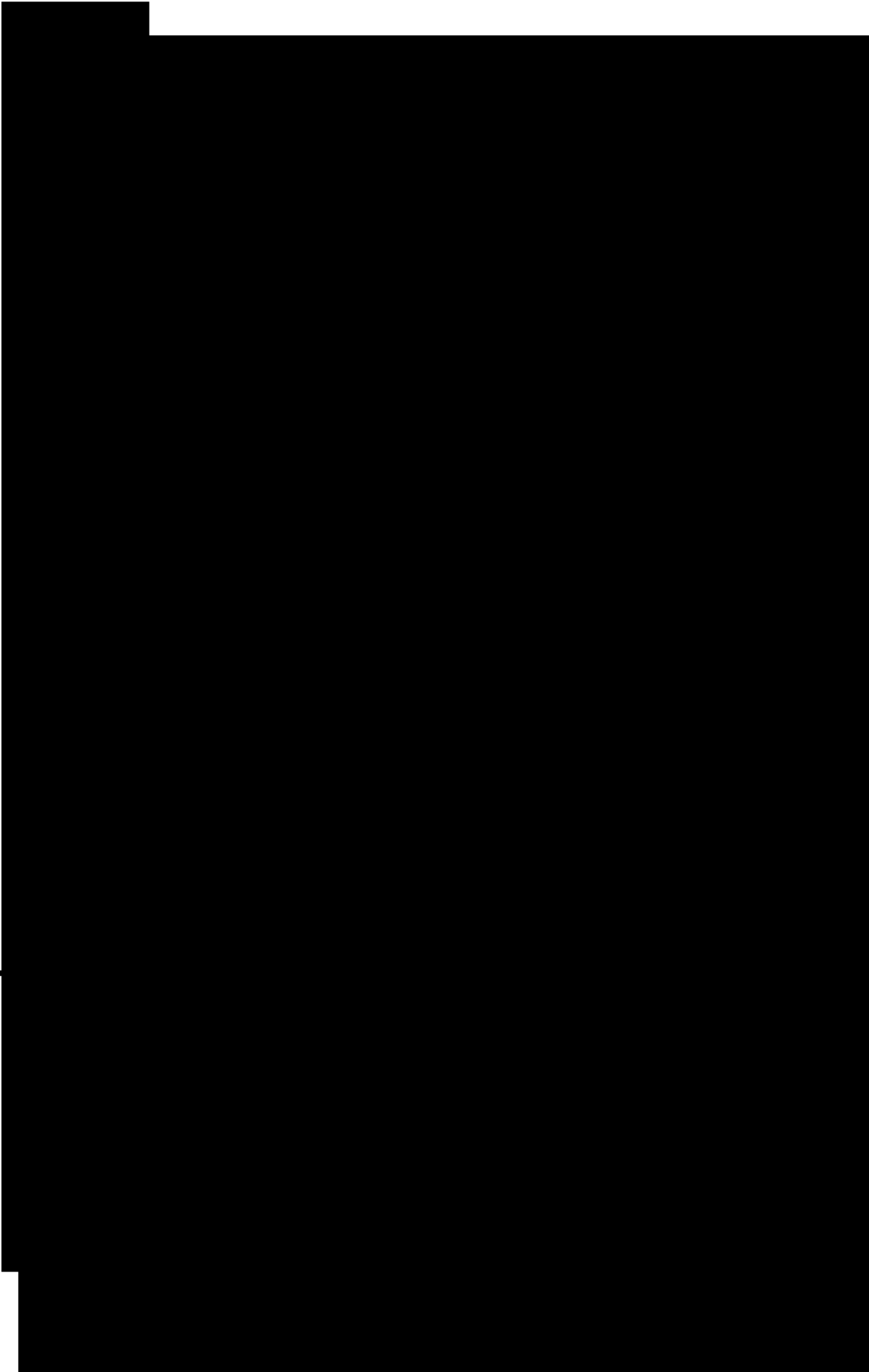
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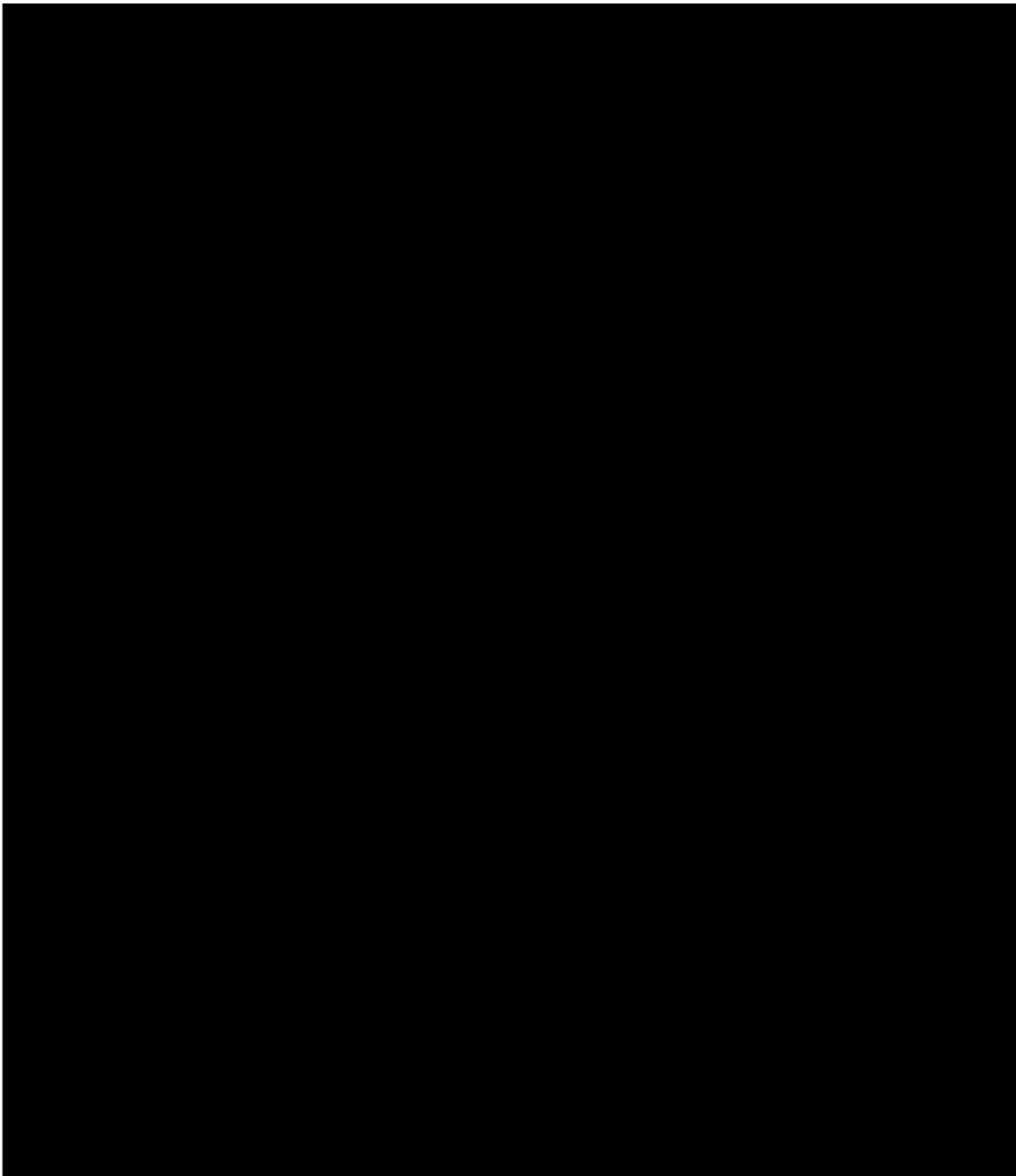
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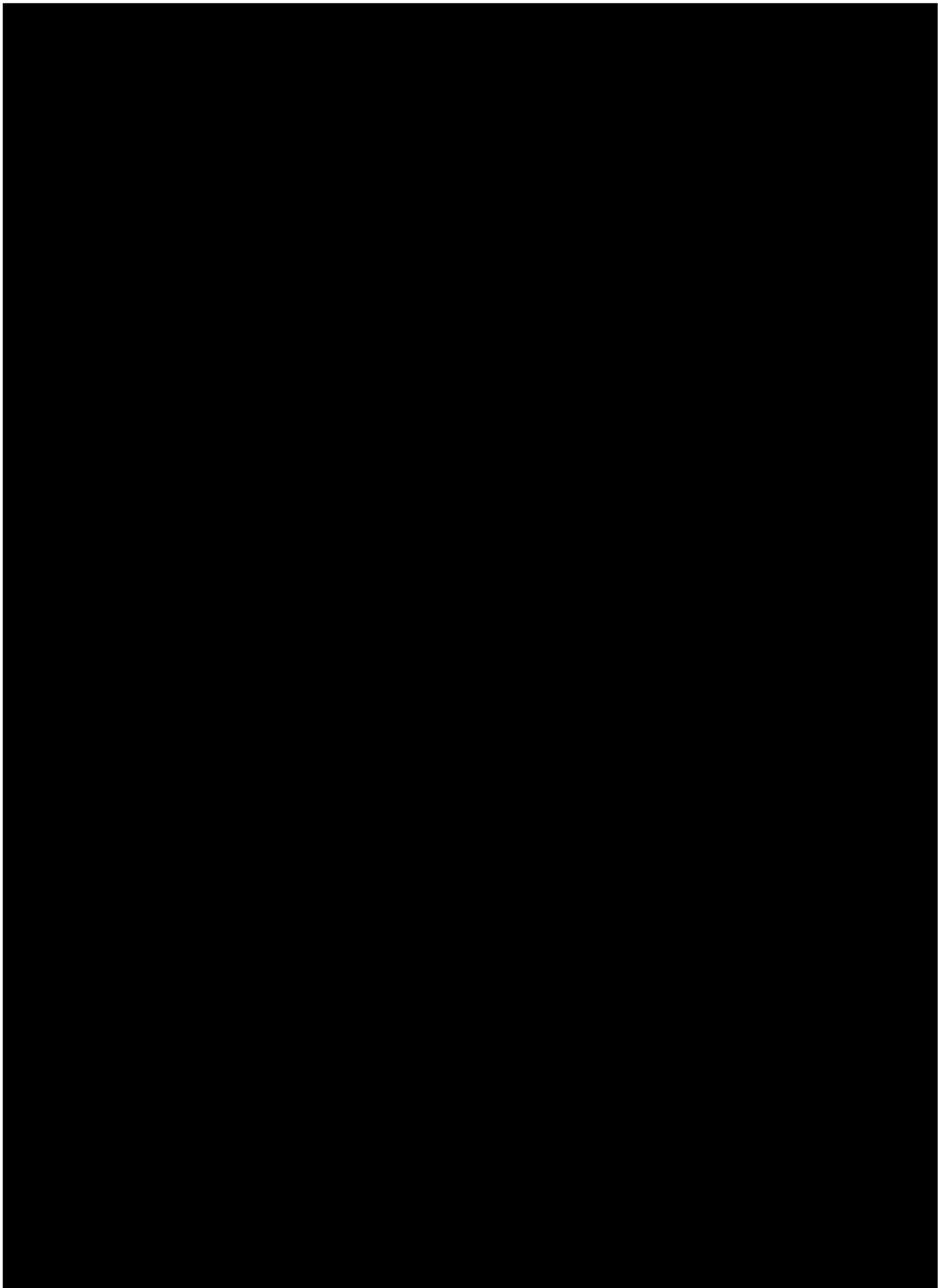
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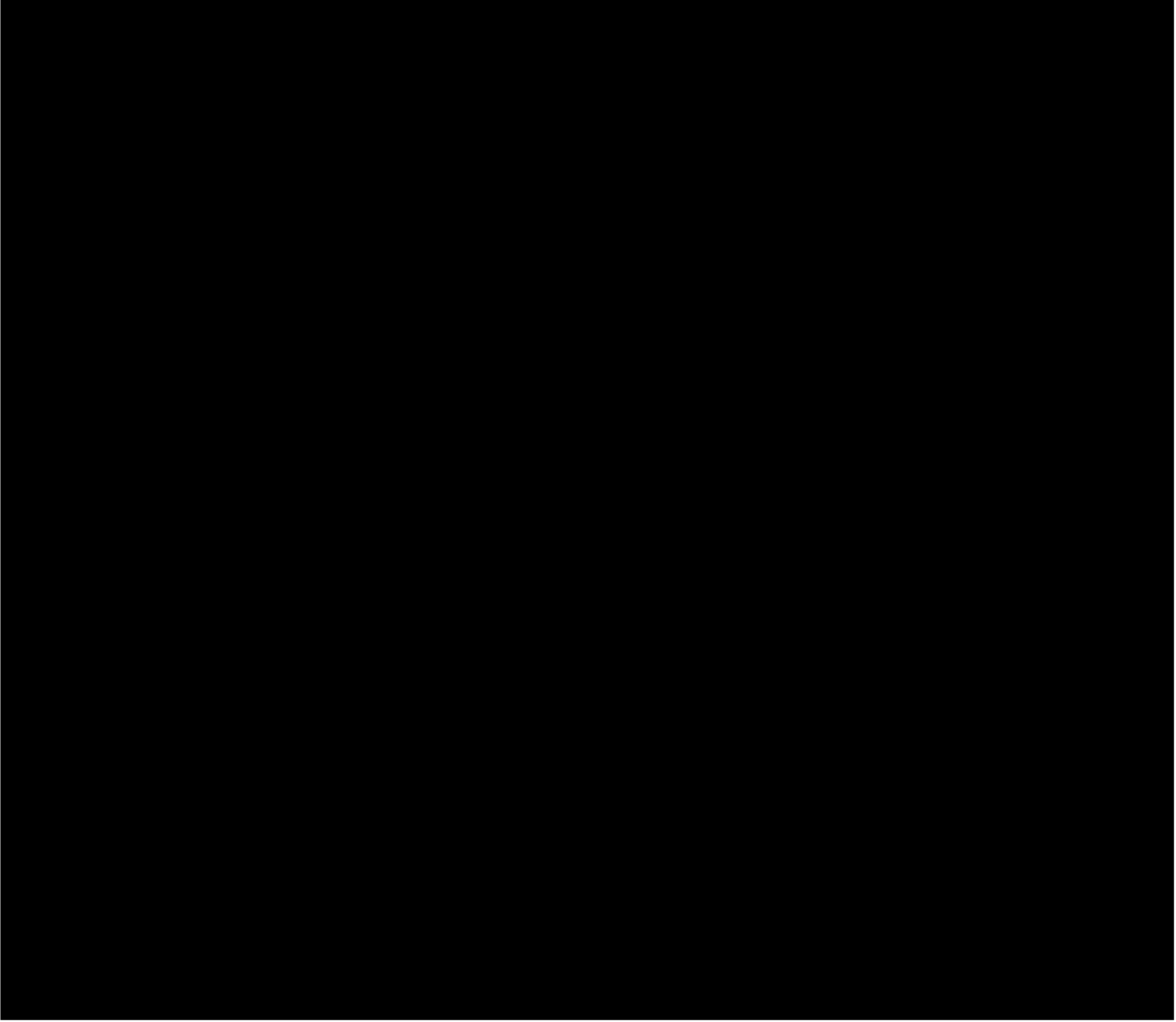


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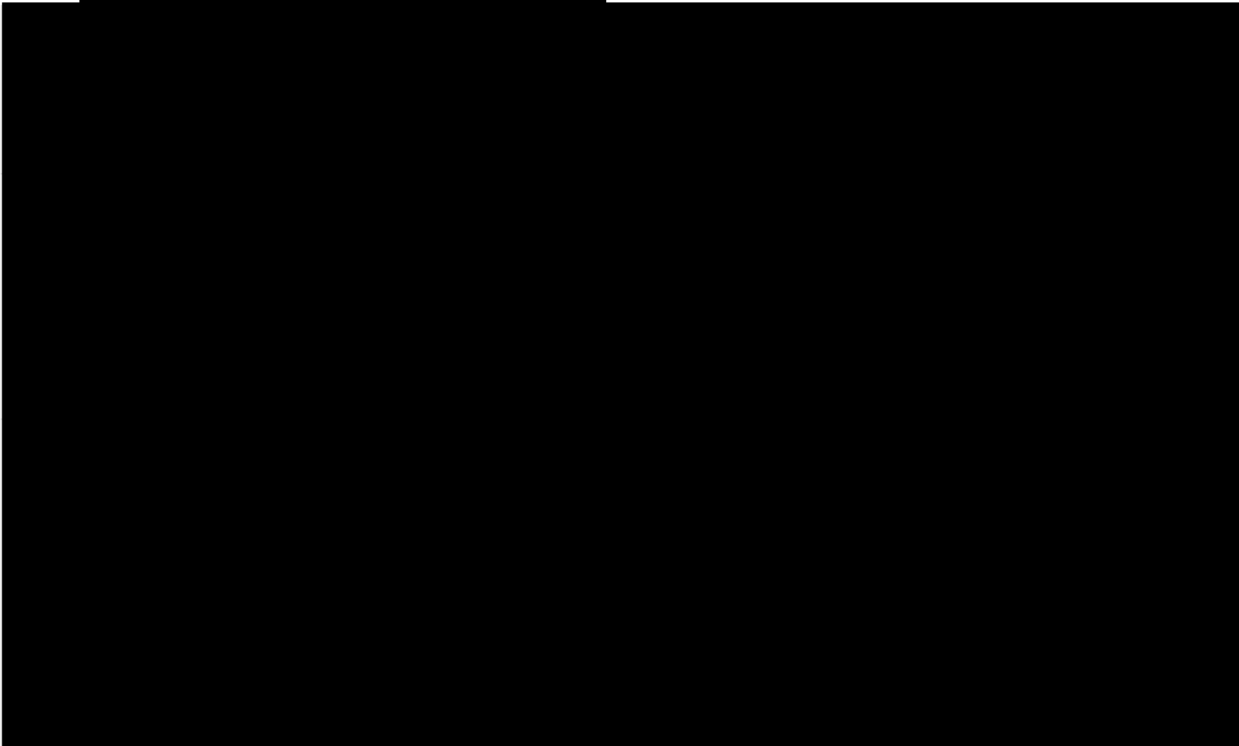


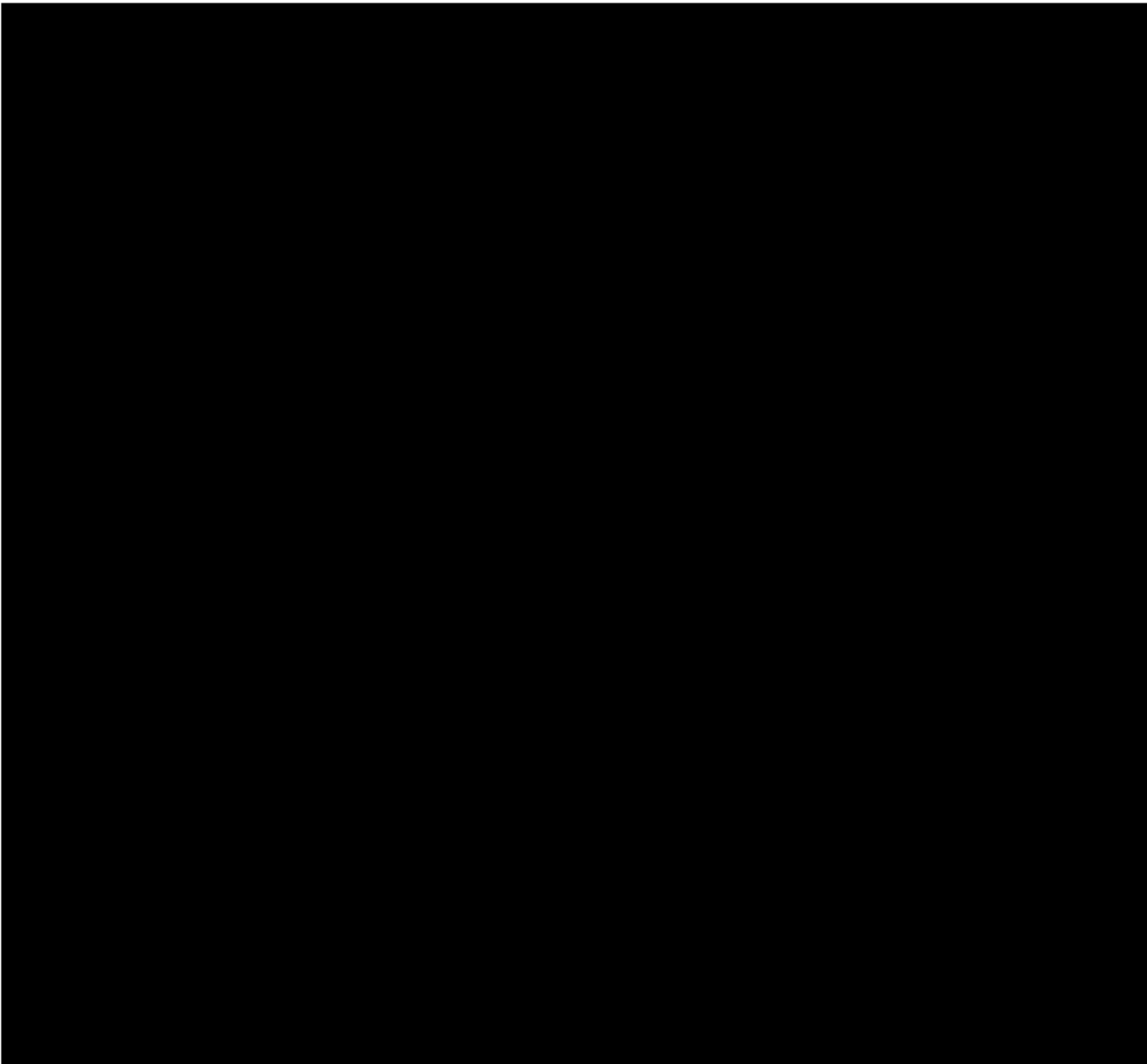
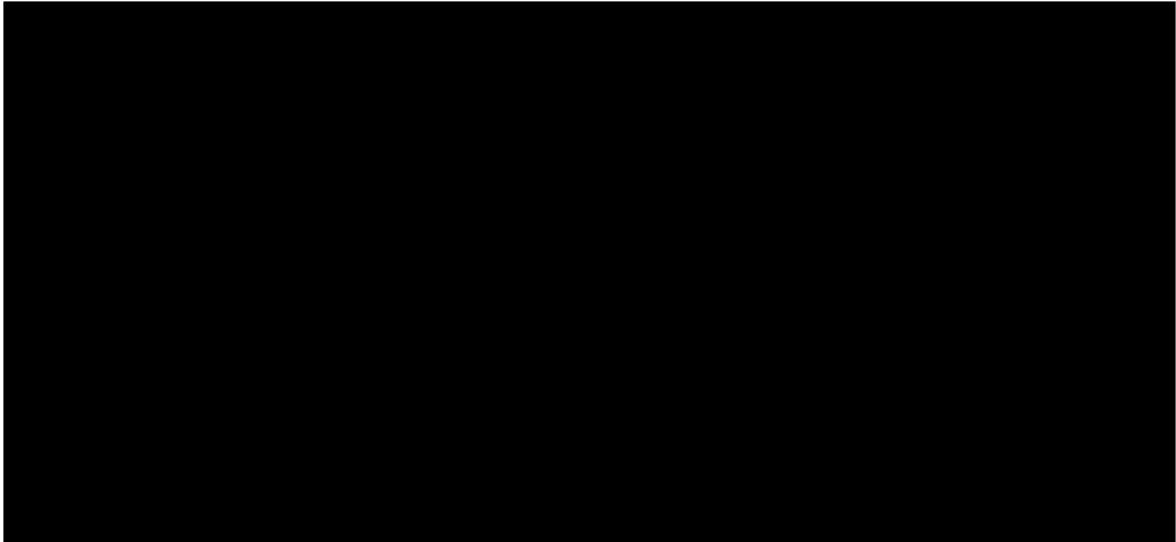
46. Generally, the evidence of the disgruntled members of the HSCC follows the same lines and that they felt demeaned at the meeting as a result of the conduct of both the Minister and Ms August-Hanson.





49. I interviewed two officers of the DHSC,





*The Minister's Response*

53. I met with Minister Hooper on 7 December 2023. Prior to the meeting I had sent to him the witness statements and evidence produced by the HSCC Members and ██████████. I did not

share with him any evidence from the DHSC employees. At my request Mr. Hooper provided a witness statement. Regarding the meeting on 26 June, he rejects the characterisation of his behaviour as intimidating and bullying. He also denies there was any shouting or that his behaviour was in any way improper. He says the purpose of the meeting was for him to provide feedback on the Annual Report and that this *“inevitably involves challenging assertions that the Report makes and asking for substantiation where the Report fails to provide it.”* He felt that the HSCC members were unable to provide substantiation for any of the comments they were challenged on and he gave examples. He is anxious to point out in his statement that he does not take issue with the HSCC regarding their views, even where he disagrees with them, but does take issue with factual inaccuracy. He says that the members of the HSCC did not take well to being challenged on points of fact especially on the matters that were easily checkable, such as the budget figures published in the annual Pink book. However, whilst this did engender a frank exchange of views the meeting did not escalate into anything that would be considered inappropriate. He said that had this happened he is confident that even if he didn't take corrective action the Chair of the meeting would have intervened or, indeed, the DHSC staff members would have interjected. This did not happen. He also says that had his remarks been inappropriate then he feels sure the DHSC staff would have challenged him on it after the meeting, either directly or via the CEO and this did not happen either.

54. Minister Hooper comments that at the meeting he reiterated his well-established view that the HSCC method of reporting was not compliant with the 2012 Regulations. This view was communicated to the HSCC on 9 January, confirmed in writing on 27 January by the HSCC and further confirmed in writing on 14 June 2023. He says that the Regulations require each member of the Committee to have particular responsibility for scrutinising the activity, performance and quality of up to three areas of the health services provided under the Act or under the Manx Care Act. The Minister states that the 2001 Act lists the health services provided throughout Parts 2 & 3 but none of the HSCC members has been assigned to any of those areas. He also makes a complaint about the requirement for the HSCC to meet the Minister and Members three times a year, when they actually only meet twice a year. This is the *“unlawful”* point referred to at the meeting. He says that at the meeting he outlined the policy direction the Department was planning on taking and that the HSCC were to be *“refocused back on to services”*. The Minister outlined the changes which would include matters such as how the HSCC members were appointed and how they reported and that he wanted them to observe services directly. He said they would be consulted on the Regulations in due course and that there would remain no requirement to report to Tynwald and that he would seek to remove the requirement to report to Tynwald members as *“this was highly unusual”*.

55. The Minister says that he cannot say much more about the meeting but that he was quite critical of the Report and the process that had been followed to produce it. The Report was full of factual errors and he clearly did not like the HSCC's attempt to lay the Report directly before Tynwald. [REDACTED]
56. With regard to the House of Keys complaint, Mr. Hooper says in his statement that his primary concern was with the statement on page 16 of the Report which says that since January 2023 the HSCC has aligned its scrutiny and reporting against recommendations in the Independent Health Review 2019 and with the mandate objectives. The statement that this approach has ministerial support, confirmed in January 2023, was what annoyed Mr. Hooper. He states that he believes this statement to have been made deliberately to engender support for the HSCC way of operating and that the statement is untrue. Mr. Hooper goes on in his witness statement to say that in a meeting on 9 January 2023 he raised concerns with the HSCC around their manner of operating and that it was not in compliance with the 2012 Regulations. He takes the position that at the 9 January 2023 meeting it was made very clear by him that the HSCC's methodology and the matters it was turning its attention to were not the statutory matters it had to address. On 27 January the HSCC acknowledged to Mr. Hooper in writing that he had concerns about their operating methods and that he believed them not to be compliant with the law. That letter states "*The Minister raised an issue on 9 January at Minister meets all HSCC Event regarding the HSCC revised reporting areas saying our remit under the Regulations is to report on three service areas and suggesting that the revised reporting areas are not service areas.*" Mr. Hooper argues that it is therefore self-evident that the HSCC knew in January that he did not support their interpretation of their function and that their decision to align reporting areas with the Independent Health Review did not have ministerial support as their Report claimed. Given that the HSCC knew this to be the case and had confirmed such to Mr. Hooper in writing, then for them to state the opposite in their Annual Report can, according to Mr. Hooper, only have been deliberate and therefore he takes the position that the HSCC knew their statement to be untrue but included it in the Report anyway and he therefore called them out in the House of Keys. Mr. Hooper says he also communicated his views on 14 June and again in the meeting on 26 June but the HSCC chose not to issue any corrective statement.
57. In the House of Keys, of course, Mr. Hooper says he was simply answering a question. He did not volunteer the statement off the cuff. He also refers to various Manx Radio interviews which seem to have done little more than pour petrol on the fire. Again, Mr. Hooper says he has never raised these issues first in the public forum. [REDACTED]
- [REDACTED]
- Mr. Hooper says "*I have at every stage attempted to keep my own counsel but have been*




*forced into an uncomfortable and in my view unnecessary public dispute due to the actions of the HSCC.”* It is, therefore, Mr. Hooper’s firm position that the HSCC knew at least from January 2023 that their reporting methodology was not accepted by Mr. Hooper as being the correct one and therefore the statement on page 16 of the Annual Report could only be deliberately made and deliberately false.

58. On 27 January 2023, [REDACTED] sent to the Minister [REDACTED] opinion on the role of the HSCC under the 2001 Act. [REDACTED]

***Ms Tanya August-Hanson’s Response***

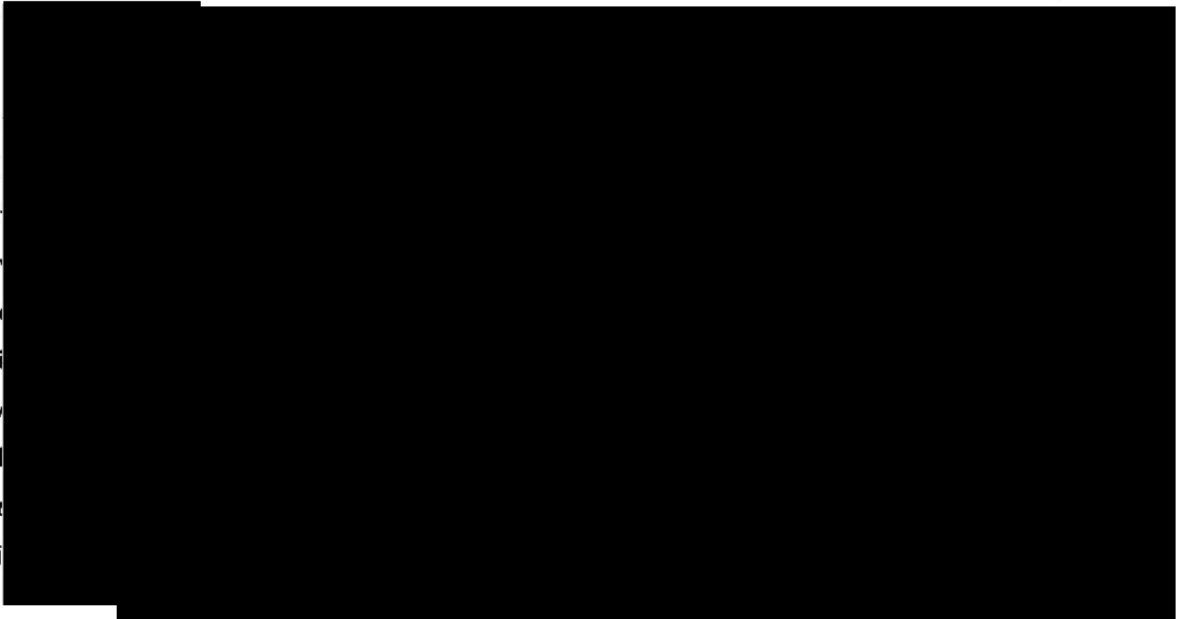
59. I met with Ms August-Hanson at the Legislative Buildings and she subsequently provided me with a witness statement. That statement contains an opening section explaining the working environment everyone was in at the time of the 26 June meeting. She described it as being *“high stress, substantial change and at times very emotional.”* She reminds me that all of this came at a time in the administration following the separation of Manx Care from DHSC. The Jonathan Michael recommendations in the main focused on the creation of Manx Care as the service provider. Alongside this she says that all parties were at the centre of the Covid response which brought its own stresses and then came the Rosalind Ranson matter. Following

[REDACTED] She reminds me that there were existing pay and resourcing issues at Manx Care and DHSC with inflationary issues in health care and the general cost of living crisis affecting everyone.

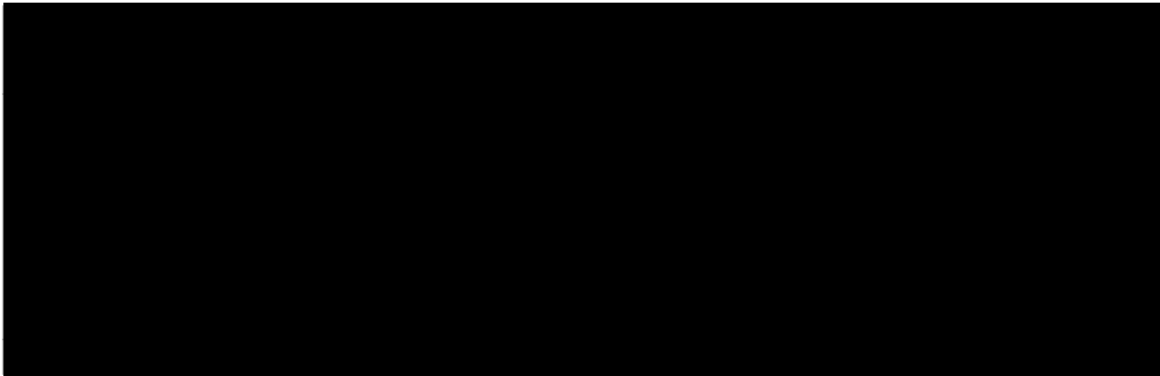
60. She says that the HSCC seems to have whipped itself up into a frenzy over this and considers she herself has been bullied by them. As regards the meeting on 26 June, she describes it as a fractious one and it
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61. With regard to calling the operating processes of the HSCC illegal, she denies having said it but she does say that the Manx public deserves a HealthWatch type model and that this was the model decided upon "*long ago*". All in all, Ms August-Hanson denies the complaint that she was bullying or intimidatory at the 26 June meeting.

***Discussion and Decision – Ms August-Hanson***

62. My view is that the complaint against Ms August-Hanson that she exhibited intimidating and bullying behaviour towards the HSCC members at the 26 June meeting is not made out. It is a serious complaint and although this Report is private to the Chief Minister, unless he decides to make it more public, I remind myself that this is not a judicial tribunal. Nevertheless, I have treated the standard of proof (perhaps rather generously towards the HSCC) as being to the civil standard – that is on a balance of probabilities. Part of the Complaint is that the Minister launched into a rant and was vocally supported by Ms August-Hanson; she raised her voice to a level described as shouting and she described the HSCC as being illegal or acting illegally. The
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63.



64. I do not find the Complaint against Ms August-Hanson to be proved. My finding is based on several matters. An allegation of bullying and intimidation is a very serious allegation. I have taken into account the statements made by the members of the HSCC who were present at the meeting. I have also taken account of the response from Ms August-Hanson and the [REDACTED] which directly contradicts the evidence of the HSCC members and of importance is the email written by the Secretary on 27 June which noted that the Minister's feedback was not in accordance with the Nolan Principles re "*objectivity*" and "*leadership*" but did not mention bullying or intimidation and further did not mention Ms August-Hanson at all.
65. There is then the questionnaire that was sent to the Members of the HSCC prior to them making their witness statements and I note that the five questions posed do not all address the Complaint against Ms August-Hanson (or indeed the Minister). Question 2 asks the members if they are concerned regarding regulation change and the curtailment of the role of the HSCC going forward. Question 3 asked if the members were prepared to accept DHSC imposed procedures in the new regulations. Question 4 was more to the point in question and asked if the members understood that Ms August-Hanson said they were acting illegally or unlawfully and Question 5 dealt with whether Manx Care had received a sufficient amount of scrutiny from HSCC. So, it is really only the question regarding support for a complaint and a question regarding Ms August-Hanson's use of the word illegally that had any relevance to the issues in the Complaint.
66. It is clear from the questions though that the meeting formed only a part of the concerns of the HSCC. The changes to the regulations and the limitation on the HSCC's access to DHSC meetings were foremost in their minds. I wonder whether that was a correct position for the HSCC to take. I discuss this later.
67. All in all, I do not think the serious allegations against Ms August-Hanson have been established. I have looked up various definitions of bullying and the common thread that runs through them is that the behaviour complained of must be repetitive. Indeed, the Ministerial Code states that an isolated incident would not amount to bullying. Insofar as the HSCC members latched on to the use of the word 'illegal', I am satisfied on the preponderance of

evidence that Ms August-Hanson did use such a term but realising she was in error she corrected it to unlawfully or unlawful. I do not believe that any members of the HSCC could possibly have thought they were being accused of some criminal act. They were not and they could not have mistaken even the wrong word “illegally” to mean that. Had they been accused of a criminal act I do not think they would have left it unchallenged at this time. I am satisfied that Ms August-Hanson clearly meant unlawful in that, in her view, the HSCC was not complying in its obligations under the 2001 Act and the 2012 Regulations.

#### ***Discussion and Decision – Minister Hooper – The 26 June Meeting***

68. I find that the case against Mr. Hooper that he was bullying and intimidatory at the meeting on 26 June again not to have been made out, although I have to say that Mr. Hooper flies closer to the sun by some margin than Ms August-Hanson. Nevertheless, there is a disparity of evidence between the HSCC members and Mr. Hooper. Mr. Hooper has given an explanation. This was always going to be a difficult meeting. I am satisfied that Minister Hooper did find in the Annual Report matters that he considered to be factually incorrect. He refers to some of these in his witness statement but, as he says, it is not important who is right as to the law. It is important for the purpose of this investigation how the meeting was conducted and, in that regard, I remind myself that the Minister was not chairing the meeting, Mr. Clarke was. That said, there can be no doubt that the Minister took a prominent role in the meeting and I am prepared to accept the description from [REDACTED] that the meeting was “*fractious*”. Other witnesses use the word “*robust*” and “*challenging*”. Indeed it was and I suspect the relationship between the Minister and the HSCC had been one that did nothing but deteriorate since the Minister’s appointment to his office. He had already received one Annual Report for 2021/22. That resulted in a rather difficult meeting and the same applied to the 2022/23 meeting. All in all, there is a disparity of evidence. I am not satisfied that this single event can amount to bullying under the Ministerial Code but I do think that Mr. Hooper would have been well advised to have exerted his influence on the meeting to make it more temperate. At the end of the day the HSCC is supposed to be an added resource to assist the DHSC in the provision of health care to the Isle of Man population. Minister Hooper had it within his power to reach out to the HSCC and to have constructive dialogue with them regarding, in particular, their role and how they saw it. It is obvious to me that the HSCC and the Minister were poles apart as to the function of the HSCC. For this reason alone, any meeting regarding the HSCC’s Annual Report on matters the Minister did not consider to be within their remit was going to be a challenging meeting. Nevertheless, for all of these reasons I do not find that the Minister bullied or intimidated members of the HSCC at the 26 June 2023 meeting. Could he have handled the meeting better? Undoubtedly.

69. Both sides knew before they even went into the meeting that it was going to be challenging. It is, therefore, quite remarkable that what happened at the meeting was what they all predicted would happen. No-one seems to have taken any initiative to set the meeting on a different course. Having considered all the witness statements and the Minister's response I think it is probable that the meeting was badly handled by all concerned in that it was allowed to become "*fractious*".
70. I am satisfied that voices were raised but perhaps it is a bit of a stretch to accept that the meeting became as hostile as some of the HSCC members describe. I remind myself that these members made their witness statements some six months after the meeting occurred and I can see that in that time positions will have become more entrenched and opinions fixed. I am satisfied that the word illegal was used and that it caused something of a stir. First though, I am sure that unlawful was what was meant and that points to the underlying problem in the relationship between the HSCC and the DHSC and the Minister in particular. That problem is that no-one has identified for certain what the role of the HSCC is. There is an open argument about it. I comment further about this later but the unlawful accusation, perhaps a little inelegantly expressed, refers to the fact that the Minister and Ms August-Hanson and probably the Department as a whole, thought the HSCC was to scrutinise medical services. On the other hand, the HSCC thinks they should have insight into and the right to comment on matters which would normally be in the political arena – policy, priorities, funding, etc.
71. This battle over the identity of the HSCC has escalated to the point where the Minister has introduced and succeeded in Tynwald adopting new regulations which dramatically affect the operation of the HSCC. I think therefore that the discord at the 26 June meeting was fundamentally caused because of this core disagreement.

### ***The House of Keys Complaint***

72. This complaint relates to the remarks made by Minister Hooper in the House of Keys in answer to a question from Mr. Ashworth. The evidence to support the complaint that what the Minister said was untrue is largely provided by [REDACTED]. I met with [REDACTED] and he subsequently provided me with a witness statement. The first part of that statement deals
- [REDACTED]

73. As regards what was said by the Minister in the House of Keys on 31 October 2023, [REDACTED] position is that the Minister had said at the meeting on 9 January 2023 that it "*seems sensible*" for the reporting of the HSCC in its Annual Reports to be aligned with the recommendations in the Sir Jonathan Michael Report. Following the *Gef the Mongoose* commentaries, [REDACTED]



77. The Minister meets these points head-on in his witness statement to me and he demonstrates that there was a difference of opinion over the function of the HSCC and this carried on at least from January 2023 through the rest of the year. What is more I am perfectly satisfied, as he maintains, that the HSCC knew this. Also, I am satisfied that this rift made working relationships between the HSCC, DHSC and the Minister all the more difficult; if not nigh on impossible during 2023.
78. Was the Minister wrong and out of order to say what he did to the House of Keys on 31 October 2023? I think he was not wrong but it was a pretty shabby approach for him to take, particularly after ██████ had offered to meet with him and talk through the issue. That would undoubtedly have resulted in some less public spat than actually occurred through the media of *Gef the Mongoose* and then culminating in the remarks in the House of Keys.

### ***The Definition of Services***

79. As I have progressed with this report it has become increasingly obvious to me that the fundamental issues between the DHSC, the Minister and the HSCC relate to this definition of services. By pure co-incidence Ms August-Hanson telephoned me on 3 January to check progress of my report. Whilst she was on, I asked her why no-one had ever thought to obtain a legal opinion on the issue of the HSCC's true function. She told me that she thought an opinion had been obtained. I found it hard to believe that this could have been the case when no-one during the course of this investigation had mentioned it to me. However, on 3 January I received an email from ██████ and it exhibits a section from an opinion on this very point from the Attorney General's Chambers. I now see that this opinion was shared with the HSCC. Also, there is a letter to the HSCC setting out their functions under the 2001 Act, as opined upon by the Attorney General's Chambers.
80. Apparently the opinion was obtained on the back of the intended changes to the HSCC regulations which Mr. Hooper intended to put before Tynwald in October 2023. The opinion includes advice that *"The DHSC must have regard to any views received from the consultative body which fall within its remit. The remit of the consultative body is restricted to services provided under the NHS Act and Manx Care Act. Previously, advice from the Attorney General's Chambers (primary team – legislative drafting division) confirmed that the remit of the body established means and is limited to services set out in the NHS Act, whether delivered by DHSC or by Manx Care under the mandate. It does not include services set out in other Acts."*
81. For what it is worth, this accords with my own view. The HSCC was set up to be a voice for users of the National Health Services. I do not find any ambiguity in Section 2 of the 2001 Act, especially as the Act then goes on to identify the very services that it seeks to roll out to the

Manx public. I have looked at the debate in the House of Keys on 7 November 2000 when the clauses of the NHS Bill were being considered, in particular the debate focused on Clause 2. It is quite obvious to me that the focus was on the services to be provided by the NHS and the interaction with the consultative body which was to be set up under Clause 2 (of course, the 2001 Act was then only in bill form). The debate anticipated the consultative body being peopled either mainly by medical professionals or by a mix of medical professionals and lay parties. Either way a full reading of the debate leaves one in no doubt as to the services that were to be scrutinised by what became the HSCC.

82. In addition, the Report by Sir Jonathan Michael again highlights beyond doubt what services are and what the functions of the Department are under the new split regime.
83. The 2023 Annual Report has little to say about services at all and the HSCC has made its position clear in [REDACTED] opinion referred to above. [REDACTED]  
[REDACTED]  
[REDACTED] It is no part of my function to provide legal advice or statutory interpretation but I respectfully disagree with [REDACTED] on this point and consider that Section 2 of the 2001 Act does not mean what [REDACTED] suggests it does and in that respect I agree with the opinion of the Attorney General's Chambers.
84. It may seem that this part of the Report drifts outside of my remit but it is important because the fundamental rift between the Minister and the HSCC emanates from this basic misunderstanding. I do think a great deal of angst could have been avoided if this legal opinion from the Attorney General's Chambers had been obtained a year earlier at least.
85. For these reasons I do not consider either of the two complaints against Minister Hooper to have been made out. However, he was able and should have defused the tense meeting on 26 June and he could have met with [REDACTED] and (at least attempted) to reach an accord so that the fateful wording on page 16 of the Annual Report could be corrected. [REDACTED] maintains that he and the Minister were really talking about two different things but this is difficult to accept when such a fundamental difference existed between the HSCC and the Minister regarding the very purpose of the HSCC. The Minister was affronted by what he saw as a direct attempt to undermine publicly his well stated view of the limited role of the HSCC.

[REDACTED]

15 January  
2024

Alan Gough